RHODE ISLAND LAWS

PERTAINING TO

SURVEYING AND BOUNDARIES

COMPILED AND EDITED BY

Donald A. Wilson, R.L.S. Land Boundary Consultant

and

The Rhode Island Society of Professional Land Surveyors

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The Rhode Island Society of Professional Land Surveyors wishes to express its appreciation to the Office of the Secretary of State, Providence, Rhode Island, for extending permission of the copyright holder, The State of Rhode Island and Providence Plantations, to reprint selected statutes from official sources, General Laws of Rhode Island 1956, Reenactment of 2019 © 2019; and to the West Publishing Company which granted permission to reproduce copyrighted material from West's Rhode Island Digest © 1952, 1963, 1964, 1965, 1971, West's Corpus Juris Secumdum © 1938, 1980, and West's Atlantic Digest 2d ©1996.

The Rhode Island Society of Professional Land Surveyors also extends its sincere appreciation to the late Pierre H. Guillemette, P.L.S., and to Elson W. Stanley, P.L.S. whose vision and dedication were responsible for the production of the first edition of this volume.

EXCERPTS FROM THE

INTRODUCTION TO THE FIRST EDITION

The Rhode Island law for registration of land surveyors contained in Title 5, Chapter 8 of the Rhode Island Revised Statutes states that a land surveyor is a person who surveys areas for "the establishment of corners, lines, boundaries and monuments;... the defining and location of corners, lines, boundaries and monuments of land after they have been established..." In order to do this properly and to act in the best interests of his client and the public, the land surveyor must be familiar with the laws relating to his profession. He must know the laws which govern his decision—making, and he must know how to apply rules of evidence for the correct determination and interpretation of land boundaries.

This compilation of statute and case law consists of selected material from three sources: the Statutes of Rhode Island, West's Rhode Island Digest and Corpus Juris Secundum, the latter being a library reference and supplement to the Digest. This book was compiled with the practicing boundary surveyor in mind, although the reader will find items of little or no application to land boundaries. The reader will also find that this work is not all-inclusive, nor is it intended to be, and the user will often find the need to consult the legal volumes, the sources of this material, for further information.

Since laws continually change, it is always advisable to consult the latest sources and supplements for the most current law. This treatment should, however, serve as a convenient reference to past decisions of the courts, fundamental legal principles relating to land, and important Rhode Island statutes.

The format used herein is the same as found in the legal volumes themselves. Statutes appear under Title, Chapter and Section, while the case law summaries are arranged by topic according to the key number system. Citations accompany each case summary and selected library references appear throughout.

Since the courts have not ruled on every question of boundary law, many items do not appear here, but may be found elsewhere. In addition, a compilation such as this requires judgement and therefore contains only selected items.
It is hoped that this treatment will be of value not only to land surveyors practicing in Rhode Island and perhaps elsewhere, but also to others in related disciplines as well, such as law and real estate.

Donald A. Wilson
Land Boundary Consultant New Hampshire
1982

INTRODUCTION TO

THE SECOND EDITION

This edition to the original version of this book reflects changes and additions to existing laws since 1982. Mr. Wilson has undertaken a review of new, amended, and repealed statutes, together with a search of relevant case law which was not included in the first edition. The material contained herein clearly adds new depth to the volume, and is a welcome addition to the resources available to the land surveying community in Rhode Island.

Mr. Wilson has made every effort to proof the material for errors, inconsistencies, and omissions. Since it is the intention of Rhode Island Society of Professional Land Surveyors to periodically update this volume, it would be appreciated if any reader discovering an error or omission would contact The Rhode Island Society of Professional Land Surveyors c/o the Law Book Committee so that corrections can be made in future editions.

John Mensinger, P.L.S. Law Book Coordinator September, 1998

INTRODUCTION TO

THE THIRD EDITION

This edition to the original version of this book reflects changes and additions to existing laws since 1998. This edition of the "Blue Book" was spearheaded by Douglas R. Faulds, a Professional Land Surveyor from Connecticut applying for his Rhode Island Professional Land Surveyors License. He brought to attention of the Rhode Island Professional Land Surveyors Society (RISPLS) that the "Blue Book" was in need of an update. Doug sought out permission from Don Wilson to update the publication and Mr. Wilson was gracious enough to give RISPLS permission to update the publication as needed. An Ad-Hoc Committee was formed in an effort to proof the material for errors, inconsistencies, and omissions and 2020 updated version of "Blue Book" was created and vetted by the Committee and RISPLS at their General Membership Meetings.

The Rhode Island Society of Professional Land Surveyors extends its sincere appreciation to Douglas R. Faulds and Don Medeiros whose dedication were responsible for the production of this volume.

Since it is the intention of Rhode Island Society of Professional Land Surveyors to periodically update this volume, it would be appreciated if any reader discovering an error or omission would contact The Rhode Island Society of Professional Land Surveyors c/o the Law Book Committee so that corrections can be made in future editions.

20 November 2020
Edward J OBrien, P.L.S., C.F.M.
RISPLS President NSPS DI

INTRODUCTION TO

THE FOURTH EDITION

This edition to the original version of this book reflects changes and additions to existing laws since 2022. The Legislative sessions in 2023 and early 2024 brought about significant changes to Rhode Island General Laws, thus the need for a fourth edition to the original book prepared by Donald A. Wilson in 1982 as updated by the Rhode Island Society of Professional Land Surveyors. The material contained herein clearly adds new updated depth to the volume, and is a welcome addition to the resources available to the land surveying community in Rhode Island.

Since it is the intention of Rhode Island Society of Professional Land Surveyors to periodically update this volume, it would be appreciated if any reader discovering an error or omission would contact The Rhode Island Society of Professional Land Surveyors so that corrections can be made in future editions.

Douglas R. Faulds, P.L.S.
Law Book Coordinator December 2024

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AGRICULTURAL FUNCTIONS OF DEPARTMENT OF NATURAL RESOURCES

§ 2-1-13 – 2-1-17 Repealed. –

§ 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/or 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.)

§ 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.)

§ 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/or where a vegetational community has over fifty percent (50%) of the ground or water surface covered with sphagnum moss (Sphagnum) and/or 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/or 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/or 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.

§ 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.)

§ 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.)

§ 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.)

§ 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.)

§ 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.)

§ 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.)

TITLE 5

BUSINESSES
AND PROFESSIONS

CHAPTER 1

ARCHITECTS

§ 5-1-1 Declaration of policy. – In order to protect the health, safety and property of the people of Rhode Island, and to promote their welfare, no person shall practice architecture in this state except in compliance with the requirements of this chapter.

History of Section.
(P.L. 1977, ch. 232, § 2.)

§ 5-1-2 Definitions. – The following definitions apply in the interpretation of the provisions of this chapter, unless the context requires another meaning:

(1) "Architect" means any person who engages in the practice of architecture, as that term is defined in this section as attested by his or her licensing as an architect in this state.

(2) "Board" means the board of examination and registration of architects established by this chapter.

(3) "Certificate" means the certificate of registration issued annually by the board, indicating that the individual named in the certificate is an architect.

(4) "Certificate of authorization" means the certificate of authorization issued by the board, indicating the sole proprietor, partnership, limited liability partnership, corporation, or limited liability company named in the certificate is permitted to practice architecture in the state.

(5) "Practice of architecture" means rendering or offering to render those services, described as follows:

(i) Rendering or offering to render services in connection with the design and construction, enlargement or alteration of a building or group of buildings and the space

within and surrounding the buildings, which have as their principal purpose human occupancy or habitation;

(ii) The services referred to in this section include, but are not limited to, planning, providing preliminary studies, designs, drawings, specifications, and other technical submissions, the administration of construction contracts and the coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects;

(iii) The practice of architecture does not include the practice of engineering as defined in § 5-8-2(f)(1), but a registered architect may perform any engineering work that is incidental to the practice of architecture.

(6) "Responsible control" means that amount of control over and detailed knowledge of the content of technical submissions during their preparations as is ordinarily exercised by registered architects applying the required professional standard of care. Reviewing, or reviewing and correcting, technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

(7) "Department" means the department of business regulation.

(8) "Director" means the director of the department of business regulation or his or her designee.

History of Section.
(P.L. 1977, ch. 232, § 2; P.L. 1982, ch. 442, § 1; P.L. 1997, ch. 30, art. 25, § 2; P.L. 1998, ch. 348, § 1; P.L. 2004, ch. 56, § 1; P.L. 2004, ch. 63, § 1; P.L. 2005, ch. 406, § 1; P.L. 2013, ch. 298, § 1; P.L. 2013, ch. 378, § 1.)

§ 5-1-14 Practices permitted. – Nothing contained in this chapter shall be construed to prohibit practices normally permitted to employees, engineers, contractors, and others, including the following:

(1) A draftsperson, student, superintendent, or other employee of a lawfully practicing registered architect acting under the instruction, responsible control and supervision of his or her employer. This chapter does not prevent the employment of a superintendent of the construction, enlargement, or alteration of a building or part of a building who acts under the immediate responsible control of the registered architect by whom the plans and specifications of the building, enlargement, or alteration were prepared.

(2) A registered professional engineer doing architectural work as may be incident to the practice of his or her engineering profession, not to exceed thirty-five thousand (35,000) cubic feet of enclosed space, provided all drawings for that construction are signed by the

author of the drawing with his or her true appellation as a "registered professional engineer" without the use in any form of the title "architect".

(3) The construction or alteration of any single-family or two-family house or any minor accessory building to it by a person other than a registered architect.

(4) The construction or alteration of any building used for farm purposes, as long as it is not for human habitation or occupancy, by a person other than a registered architect.

History of Section.
(P.L. 1977, ch. 232, § 2; P.L. 1982, ch. 442, § 1; P.L. 1997, ch. 30, art. 25, § 2; P.L. 2005, ch. 406, § 1.)

CHAPTER 5-8
ENGINEERS

§ 5-8-1 Registration required for practice of engineering. – In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering in this state is declared to be subject to regulation in the public interest. It is unlawful for any person to practice, or to offer to practice, engineering in this state, as defined in the provisions of this chapter, or to use in connection with his or her name or otherwise assume, or advertise any title or description tending to convey the impression that he or she is an engineer, unless that person has been registered or exempted under the provisions of this chapter. The right to engage in the practice of engineering is deemed a personal right, based on the qualifications of the individual as evidenced by his or her certificate of registration, which is not transferable.

History of Section.
(P.L. 1990, ch. 330, § 2.)

§ 5-8-2. Definitions.

As used or within the intent of this chapter:

(a) "Accredited program" means specific engineering curricula within established institutions of higher learning that have both met the criteria of, and have been designated by, the following commissions of the Accreditation Board for Engineering and Technology, Inc. ("ABET"): the Engineering Accreditation Commission ("ABET-EAC") and the Engineering Technology Accreditation Commission ("ABET-ETAC").

(b) "Board" means the state board of registration for professional engineers subsequently provided by this chapter.

(c) "Department" means the department of business regulation.

(d) "Director" means the director of the department of business regulation or his or her designee.

(e) "Engineer" means a person who, by reason of his or her special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering, as subsequently defined, and as attested by his or her registration as an engineer.

(f) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character, and has passed an examination in the fundamental engineering subjects, as provided in §§ 5-8-11 and 5-8-13.

(g) "National Council of Examiners for Engineering and Surveying (NCEES)" is a nationally recognized organization that assists state boards and territorial boards to better discharge their duties and responsibilities in regulating the practice of engineering and land surveying.

(h) (1) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to services or creative work, such as consultation, investigation, evaluation surveys, planning and design of engineering systems, and the supervision of construction for the purpose of assuring compliance with specifications; and embracing those services or work in connection with any public or private utilities, structures, buildings, machines, equipment, processes, work, or projects in which the public welfare or the safeguarding of life, health, or property is concerned.

(2) Any person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who:

(i) Practices any branch of the profession of engineering;

(ii) By verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer, or through the use of some other title implies that he or she is an engineer or that he or she is registered under this chapter; or

(iii) Holds himself or herself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner or recognized as engineering.

(i) "Professional engineer" means a person who has been registered and licensed by the state board of registration for professional engineers.

(j) "Responsible charge" means direct control and personal supervision of engineering work.

(k) "Rules and regulations" means that document of the same title, as amended from time to time, subject to the director's approval, that has been adopted by the board and filed with the secretary of state in accordance with §§ 42-35-3(a), 42-35-4(b), and 5-8-8.

History of Section.
P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 1; P.L. 2007, ch. 420, § 1; P.L. 2013, ch. 298, § 2; P.L. 2013, ch. 378, § 2; P.L. 2021, ch. 162, art. 9, § 1, effective July 6, 2021.

§ 5-8-3 Board – Creation – Duties – Composition – Appointments – Terms. – (a) The duty of the board of engineers is to administer those provisions of this chapter that relate to the regulation of professional engineering and the registration of professional engineers.

(b) Subject to the approval of the director, the board of engineers shall establish any rules and regulations for the conduct of its own proceedings, for examination of applicants, for registration of professional engineers and engineers-in-training, for continuing education requirements, for investigating complaints to the board and for governing the practice of engineering all that it deems appropriate.

(c) Members of the board are subject to the provisions of chapter 14 of title 36. The board consists of five (5) persons, who are appointed by the governor, and must have the qualifications required by § 5-8-4. Each member of the board shall receive a certificate of his or her appointment from the governor and shall file with the secretary of state his or her written oath or affirmation for the faithful discharge of his or her official duty. Appointments to the board shall be in the manner and for a period of time that the term of each member expires at a different time. On the expiration of the term of any member, the governor shall in the manner previously provided appoint for a term of five (5) years a registered professional engineer having the qualifications required in § 5-8-4. A member may be reappointed to succeed himself or herself, but shall not serve more than two (2) full consecutive terms. Each member may hold office until the expiration of the term for which appointed or until a successor has been appointed and has qualified.

(2) The board shall designate and establish a system of registration by discipline not later than December 31, 1994, and shall subsequently administer that registration system.

(3) The registration system shall provide, at a minimum, for the registration of:

(i) Civil engineers;

(ii) Chemical engineers;

(iii) Electrical engineers;

(iv) Mechanical engineers;

(v) Structural engineers;

(vi) Environmental engineers; and

(vii) Fire protection engineers.

(4) The board may establish additional classifications by rule and regulation subject to the approval of the director.

(5) Classification of disciplines shall conform to the standards established by the NCEES. Nothing in this section shall be construed to limit the registration of a qualified applicant to only one discipline.

(d) [Deleted by P.L. 2015, ch. 82, § 4 and P.L. 2015, ch. 105, § 4].

History of Section.
P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 1; P.L. 2007, ch. 420, § 1; P.L. 2013, ch. 298, § 2; P.L. 2013, ch. 378, § 2; P.L. 2015, ch. 82, § 4; P.L. 2015, ch. 105, § 4.

§ 5-8-4 Board – Member qualifications. – The board of engineers shall consist of five (5) persons. All five (5) persons must be professional engineers registered in Rhode Island, one of whom may also be a professional land surveyor registered in the state. Each member of the board must be a qualified elector of this state for three (3) consecutive years prior to appointment. Each member shall have been engaged in the lawful practice of engineering for at least twelve (12) years and been in responsible charge of engineering work for at least five (5) years. The professional engineer members of the state board of registration for professional engineers serving on February 1, 1991, shall complete their terms of appointment. Upon the expiration of their terms, the governor may make subsequent appointments as subsequently provided.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 1; P.L. 2007, ch. 420, § 1.)

§ 5-8-5 Board – Compensation and expenses of members. – The chairperson and each other member shall not be compensated for their service on the board but shall be reimbursed for all traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 1; P.L. 2005, ch. 117, art. 21, § 3.)

§ 5-8-6 Board – Removal of members – Vacancies. – The governor may remove any member of the board for misconduct, incompetency, neglect of duty, or for any sufficient cause, in the manner prescribed by law for removal of state officials. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as provided in § 5-8-3.

History of Section.
(P.L. 1990, ch. 330, § 2.)

§ 5-8-7 Board – Organization – Meetings – Quorum. – The board shall hold at least six (6) regular meetings each year. Special meetings may be held as the bylaws of the board

provide. The board shall elect or appoint annually the following officers: a chairperson, a vice-chairperson and a secretary. A quorum of the board shall consist of not less than three

(3) members.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 1.

§ 5-8-8 Board – Powers. – (a) Subject to the approval of the director, the board has the power to adopt and amend all bylaws and rules of procedure, not inconsistent with the constitution and laws of this state or this chapter, which may be reasonably necessary for the proper performance of its duties.

(2) The board shall adopt and have an official seal, which is affixed to each certificate issued.

(b) In carrying into effect the provisions of this chapter, the board, under the hand of its chairperson and the seal of the board, may recommend that the director subpoena witnesses and compel their attendance, and also may recommend that the director order the submission of books, papers, documents, or other pertinent data, in any disciplinary matters, or in any case in which a violation of this chapter or chapter 5-84 is alleged. Upon failure or refusal to comply with that order, or upon failure to honor the subpoena, as provided in this section, the director may apply to a court of any jurisdiction to enforce compliance with that order or subpoena.

(c) Either on his or her own initiative or on the recommendation of the board, the director is authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this chapter, or to restrain any violation of the provisions of this chapter. In injunction proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation. The department and/or members of the board are not personally liable under this proceeding.

(d) The state shall indemnify the department and/or board and the members, employees, or agents thereof, and hold them harmless from, any and all costs, damages, and reasonable attorneys' fees arising from or related in any way to claims or actions or other legal proceedings taken against them for any actions taken in good faith in the intended performance of any power granted under this chapter or for any neglect or default in the performance or exercise in good faith of that power.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 2013, ch. 298, § 2; P.L. 2013, ch. 378, § 2.)

CHAPTER 5-8.1
LAND SURVEYORS

§ 5-8.1-1 Declaration of policy. – In order to safeguard life, health, and property and to promote the public welfare, the practice of land surveying in this state is declared to be subject to regulation in the public interest. It is unlawful for any person to practice, or to offer to practice, land surveying in this state, as defined in the provisions of this chapter, or to use in connection with his or her name or otherwise assume, or advertise any title or description tending to convey the impression that he or she is a professional land surveyor, unless the person has been registered or exempted.

History of Section.
(P.L. 1990, ch. 330, § 2.)

§ 5-8.1-2 Definitions. – The following definitions apply in the interpretation of the provisions of this chapter, unless the context requires another meaning:

(1) "ABET" means the Accreditation Board for Engineering and Technology.

(2) "Accredited program" means an approved program or course of study currently accredited and subject to review by the accepted national organization ABET (land surveying) and any other similar school or course of study which fulfills equivalent requirements which the board approves.

(3) "Applicant" means an individual who has submitted an application for registration to practice land surveying as a surveyor-in-training, and/or a certification of authorization.

(4) "Board of land surveyors", "board of professional land surveyors" or "board" means the board of registration for professional land surveyors, as subsequently provided by this chapter.

(5) "Candidate" means a person who has the qualifications prerequisite by statute and board regulation for admission to examination and who has filed with the board an application for registration accompanied by the required examination fee.

(6) "Certificate of registration" means a certificate issued by the board of professional land surveyors to a person to engage in the profession regulated by the board.

(7) "Experience" means combined office and field work in land surveying satisfactory to the board, including any work which is performed under the direct control and personal supervision of a professional land surveyor.

(8) "Land surveyor-in-training" means a person who has qualified for, taken and passed an examination in the fundamentals of land surveying.

(9) "NCEES" means the National Council of Examiners for Engineering and Surveying.

(10) "Part-time" means any type of employment or work engagement that requires less than twenty (20) hours of labor per week.

(11) "Practice of land surveying" means any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence to perform the act of measuring and locating lines, angles, elevations, natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and their subdivisions, including the topography, alignment, and grades of streets and for the preparation of maps, record plats, field note records and property descriptions that represent these surveys.

(12) "Practice or offer to practice" means a person who engages in land surveying, or who by verbal claim, sign, letterhead, card or in any other way represents himself or herself to be a professional land surveyor.

(13) "Principal" means an individual who is a registered professional land surveyor and who is an officer, shareholder, director, partner, member, manager or owner of that organization and who is in responsible charge of an organization's professional practice for which he or she is registered.

(14) "Professional land surveyor" means a person who has been duly registered as a professional land surveyor by the board established under this chapter, and who is a professional specialist in the technique of measuring land, educated in the basic principles of mathematics, the related physical and applied sciences and the relevant requirements of law for adequate evidence and all to surveying of real property and engaged in the practice of land surveying as defined in this section.

(15) "Registrant" means an individual who has been issued a certificate of registration by the board of professional land surveyors.

(16) "Registrant's seal" means an emblem of a type, shape, and size and as specified by the board of registration of professional land surveyors for use by an individual registrant to stamp legal descriptions final drawings, specifications, and reports.

(17) "Related curriculum" means an educational program of sufficient length and academic quality and content to satisfy the board.

(18) "Responsible charge" means direct control and personal supervision of the work performed. No person may serve in responsible charge of land surveying work done in Rhode Island unless that person is registered as a professional land surveyor by the board.

(19) "Rules and regulations" means that document of the same title, as amended from time to time, subject to the director's approval, that has been duly adopted by the board of professional land surveyors and which prescribes the manner in which that board administers its affairs and establishes rules of conduct, procedures, and standards for adherence by all persons registered by the board, filed with the secretary of state in accordance with the provisions of §§ 42-35-3(a) and 42-35-4(b), and this chapter.

(20) "Department" means the department of business regulation.

(21) "Director" means the director of the department of business regulation or his or her designee.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4; P.L. 1992, ch. 337, § 1; P.L. 1997, ch. 86, § 1; P.L. 2004, ch. 56, § 3; P.L. 2004, ch. 63, § 3; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3.)

5-8.1-3. [Repealed.]

§ 5-8.1-4 Board of registration for professional land surveyors – Authority, powers, and duties. – (a) The duty of the board of land surveyors is to administer the provisions of this chapter in regards to the regulation of professional land surveying and the registration of professional land surveyors.

(b) Subject to the director's approval, the board of land surveyors may establish any rules and regulations for the conduct of its own proceedings, for examination of applicants, for registration of professional land surveyors and surveyors in training, for continuing education requirements, and for governing the practice of land surveying, that it deems appropriate.

(2) Upon July 12, 1990, the rules and regulations in effect prior to that date shall remain in effect until adoption of new rules and regulations.

(c) The board of professional land surveyors shall hold examinations for qualified individuals applying for registration as professional land surveyors or for certification as surveyors-in-training at least once a year.

(d) With the assistance of the department, the board of land surveyors shall issue and renew certificates of registration to individuals who have qualified to practice professional land surveying under the provisions of this chapter.

(e) The director, on his or her own motion or upon recommendation of the board of professional land surveyors has the power to suspend, revoke, or take other permitted action with respect to certificates of registration in accordance with the provisions of this chapter. In all disciplinary proceedings brought pursuant to this chapter, the director has the power to administer oaths, to summon witnesses and to compel the production of documents in accordance with procedures applicable in the superior court. Upon failure of any person to appear to produce documents in accordance with the order, the director may apply to a court of any jurisdiction to enforce compliance with the order.

(f) Either on his or her own initiative or on the recommendation of the board, the director is authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this chapter, or to restrain any violations of this chapter. In those proceedings, it is not necessary to allege or prove, either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation of this chapter. The department and/or the members of the board are not personally liable under this proceeding.

(g) The state shall indemnify the department and/or board and the members, employees, or agents thereof, and hold them harmless from, any and all costs, damages, and reasonable attorneys' fees arising from or related in any way to claims or actions or other legal proceedings taken against them for any actions taken in good faith in the intended performance of any power granted under this chapter or for any neglect or default in the performance or exercise in good faith of that power.

(h) The department and/or board is empowered to collect any fees and charges prescribed in this chapter and to apply the fees and charges to the cost of fulfilling the requirements and responsibilities of this chapter.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4; P.L. 1992, ch. 337, § 1; P.L. 2004, ch. 90, § 1; P.L. 2004, ch. 98, § 1; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3.)

§ 5-8.1-4.1 Continuing education exemption. – Notwithstanding any law, rule or regulation to the contrary, any person who was registered as a professional land surveyor in the state of Rhode Island before July 1, 1975, will be exempt from any continuing education requirements as may be established by the board of land surveyors of the state of Rhode Island.

History of Section.
(P.L. 2004, ch. 163, § 1.)

§ 5-8.1-5 Board of registration for professional land surveyors – Membership, appointments, terms, and vacancies. – (a) The board of land surveyors shall consist of five (5) professional land surveyors only one of whom may also be a professional engineer and all of whom shall be registered in the state. Each member of the board must be a qualified elector of this state for three (3) years prior to appointment. Each member shall have been engaged in the lawful practice of land surveying for at least seven (7) years and shall have been in responsible charge of surveying work for at least five (5) years.

(b) Each member of the board shall be appointed by the governor, within sixty (60) days of the enactment of this chapter [July 12, 1990], for staggered terms, to serve a term of five (5) years or until his or her successor is appointed and qualified; in the original appointments under this section:

(1) One member shall be appointed for a period of one year,

(2) One member shall be appointed for a period of two (2) years,

(3) One member shall be appointed for a period of three (3) years,

(4) One member shall be appointed for a period of four (4) years, and

(5) One member shall be appointed for a period of five (5) years.

(c) No member of the board of land surveyors shall be associated in the practice of surveying either individually or as a member of a partnership, limited liability partnership, corporation or limited liability company, with any other member of the board.

(d) Vacancies in the membership of the board of land surveyors shall be filled for any unexpired terms by appointment of the governor.

(e) A member appointed for a full term shall not be eligible for more than two (2) consecutive terms.

(f) The governor may remove any member of the board of land surveyors for misconduct, incompetency, neglect of duty, or for any sufficient cause, in the manner prescribed by law for removal of state officials.

(g) Each member of the board of land surveyors shall receive a certificate of his or her appointment from the governor and shall file his or her written oath or affirmation for the faithful discharge of his or her official duties with the secretary of state.

(h) Within thirty (30) days of the appointment of the board, the director or his or her designee shall summon the members of the board to organize and elect a chairperson, vice-

chairperson and secretary from the appointed members.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1997, ch. 86, § 1; P.L. 2004, ch. 56, § 3; P.L. 2004, ch. 63, § 3.)

§ 5-8.1-6 Board of registration for professional land surveyors – Compensation and expenses. – The chairperson and each other member of the board of land surveyors shall not be compensated for their service on the board but shall be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this chapter.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1992, ch. 337, § 1; P.L. 2005, ch. 117, art. 21, § 4.)

§ 5-8.1-7. Board of registration for professional land surveyors – Organization.

(a) The board of land surveyors shall hold at least three (3) regular meetings each year. A meeting of the board shall be held once each year, at which time the board shall elect from its membership a chairperson, vice-chairperson, and a secretary, who shall serve one year or until their successors are elected and qualified. Special meetings of the board may be called by the chairperson or other members of the board in accordance with the rules and regulations of the board.

(b) Three (3) members of the board shall constitute a quorum for the transaction of all business, but no action shall be taken at any meeting without three (3) members in accord.

(c) The board shall adopt a seal for its official actions.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1992, ch. 337, § 1; P.L. 2016, ch. 347, § 2; P.L. 2016, ch. 363, § 2.)

§ 5-8.1-8. Board of registration for professional land surveyors – Records and reports.

(a) The board of land surveyors shall keep a record of its proceedings and of all applications for registration, which applications shall show:

(1) Name, date of birth, and last known address of each applicant;

(2) Date of the application;

(3) The last known place of business of the applicant;

(4) The education, experience, and other qualifications of the applicant;

(5) The type of examination administered;

(6) Whether or not the applicant was accepted or rejected;

(7) Whether or not a certificate of registration was granted;

(8) The date of action of the board; and

(9) Any other information that the board deems appropriate.

(b) Board records and papers of the following classes are of a confidential nature and are not public records:

(1) Examination material for examinations not yet given;

(2) File records of examination problem solutions;

(3) Letters of inquiry and references concerning applicants;

(4) Completed board inquiry forms concerning applicants;

(5) Investigatory files where any investigation is still pending; and

(6) All other materials of like nature.

(c) The record of the board of land surveyors is prima facie evidence of the proceedings of the board and a certified transcript by the board is admissible in evidence with the same force and effect as if the original were produced.

(d) A complete roster showing the names and last-known addresses of all registered professional land surveyors and surveyors in training and any sole proprietorship, partnership, limited-liability partnership, corporation, or limited-liability company receiving a certificate of authorization shall be available on the board's website.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1992, ch. 337, § 1; P.L. 2004, ch. 56, § 3; P.L. 2004, ch. 63, § 3; P.L. 2015, ch. 82, § 5; P.L. 2015, ch. 105, § 5.)

§ 5-8.1-9. Board of registration for professional land surveyors – Application and qualification for registration.

(a)(1) Application for registration as a professional land surveyor or certification as a

surveyor-in-training shall be made, in writing, on a form prescribed and furnished by the board of registration for professional land surveyors. The application shall:

(i) Contain statements made under oath;

(ii) Show the applicant's education;

(iii) Contain a detailed summary of the applicant's technical and professional experience; and

(iv) Designate references as described in this section.

(b) The fee established in § 5-8.1-11 must accompany each application. Failure to include this fee will result in the application being returned to the applicant without consideration by the board.

(c) To be eligible for registration as a professional land surveyor, an applicant must be of good character and reputation. Additionally, the applicant must submit five (5) references with his or her application, three (3) of which are from registered professional land surveyors having personal knowledge of his or her land surveying experience. No person seeking his or her initial registration as a professional land surveyor shall be granted the certificate without first completing a surveyor-in-training program as prescribed and approved by the board and passing an examination in the fundamentals of land surveying. Upon passing that examination, the applicant is granted a surveyor-in-training certificate in this state.

(d) To be eligible for certification as a surveyor-in-training, an applicant must be of good character and reputation substantiated by an interview with a quorum of the board of registration for professional land surveyors and additionally must submit three (3) character references one of which must be from a professional land surveyor.

(e) One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a professional land surveyor or for certification as a land-surveyor-in training, respectively:

(i) *Graduation from a four-year (4) survey degree program, experience, and examination.* A graduate of a four-year (4) survey degree program applicant will need a specific record of a minimum four (4) years of experience in land surveying. This verified experience shall be under the direct supervision of a registered professional land surveyor, satisfactory to the board, and shall be broken down as follows: At a minimum, twenty percent (20%) shall be field experience; twenty percent (20%) shall be research, deed evidence, reconciliation, etc.; and twenty percent (20%) shall be property line calculations and determination. Once the experience has been deemed satisfactory to the board, the applicant may be admitted to an examination in the principles and practice of land surveying, plus an additional Rhode Island legal portion. Upon passing that examination, the applicant is granted a certificate of registration to practice land surveying in this state, provided the applicant is qualified.

(ii) *Graduation from a four-year (4) degree program, experience, and examination.* A graduate of a four-year (4) degree program applicant who has also fulfilled the core curriculum (see subsection (h) of this section) will need a specific record of a minimum five (5) years of experience in land surveying. This verified experience shall be under the direct supervision of a registered professional land surveyor, satisfactory to the board, and shall be broken down as follows: At a minimum, twenty percent (20%) shall be field experience; twenty percent (20%) shall be research, deed evidence, reconciliation, etc.; and twenty percent (20%) shall be property line calculations and determination. Once the experience has been deemed satisfactory to the board, the applicant may be admitted to an examination in the principles and practice of land surveying, plus an additional Rhode Island legal portion. Upon passing that examination, the applicant is granted a certificate of registration to practice land surveying in this state, provided the applicant is qualified.

(iii) *Graduation from a two-year (2) survey degree program, experience, and examination.* A graduate of a two-year (2) survey degree program applicant will need a specific record of a minimum five (5) years of verified experience in land surveying. All five (5) years of experience shall be under the direct supervision of a registered professional land surveyor, satisfactory to the board, and shall be broken down as follows: At a minimum, twenty percent (20%) shall be field experience; twenty percent (20%) shall be research, deed evidence, reconciliation, etc.; and twenty percent (20%) shall be property line calculations and determination. Once the experience has been deemed satisfactory to the board, the applicant may be admitted to an examination in the principles and practice of land surveying, plus an additional Rhode Island legal portion. Upon passing that examination, the applicant is granted a certificate of registration to practice land surveying in this state, provided the applicant is qualified.

(iv) *Graduation from a two-year (2) degree program, experience, and examination.* A graduate of a two-year (2) degree program applicant who has also fulfilled the core curriculum (see subsection (h) of this section) will need a specific record of a minimum five (5) years of verified experience in land surveying. All five (5) years of experience shall be under the direct supervision of a registered professional land surveyor, satisfactory to the board, and shall be broken down as follows: At a minimum, twenty percent (20%) shall be field experience; twenty percent (20%) shall be research, deed evidence, reconciliation, etc.; and twenty percent (20%) shall be property line calculations and determination. Once the experience has been deemed satisfactory to the board, the applicant may be admitted to an examination in the principles and practice of land surveying, plus an additional Rhode Island legal portion. Upon passing that examination, the applicant is granted a certificate of registration to practice land surveying in this state, provided the applicant is qualified.

(v) *Experience and examination.* An applicant who has recorded a minimum of seven (7) years verified experience and who has also fulfilled the core curriculum (see subsection (h)) will need a specific record of a minimum of seven (7) years of verified experience in land surveying. All seven (7) years of experience shall be under the direct supervision of a registered professional land surveyor, satisfactory to the board, and shall be broken down as follows: At a minimum, twenty percent (20%) shall be field experience; twenty percent (20%) shall be research, deed evidence, reconciliation, etc.; and twenty percent (20%) shall be property line calculations and determination. Once the experience has been deemed

satisfactory to the board, the applicant may be admitted to an examination in the principles and practice of land surveying, plus an additional Rhode Island legal portion. Upon passing that examination, the applicant is granted a certificate of registration to practice land surveying in this state, provided the applicant is qualified.

(vi) *Surveying teaching.* Teaching of advanced land surveying subjects in a college or university offering an approved land surveying curriculum may be considered as land surveying experience satisfactory to the board.

(vii) *Registration by comity or endorsement.* A person holding a current certificate of registration to engage in the practice of land surveying issued to him or her by a proper authority of a state, territory, or possession of the United States, or the District of Columbia must have, at the time he or she was licensed, met the existing Rhode Island requirements for licensure. All applicants applying under this section must have passed the written examinations in the fundamentals of land surveying and the principles and practice of land surveying. If, based upon verified evidence and the opinion of the board, the applicant meets all appropriate requirements of this section, the applicant will be allowed to take the Rhode Island legal portion. Upon passing this examination, the applicant shall be granted a certificate of registration to practice land surveying in this state, provided the applicant is qualified.

(f) The passing grade on all examinations offered by the land surveyors is not less than seventy percent (70%). An applicant failing any examination may apply for reexamination upon payment of the appropriate fees. An applicant who scores less than fifty percent (50%) on any examination may not apply for reexamination for at least one year.

(g) An applicant who fails any of the exams three (3) times shall be interviewed by the board, before any further application can be acted upon. It is the applicant's responsibility to show the board that he or she will be successful if allowed to take the exam again. If, in the board's opinion, the applicant cannot satisfactorily demonstrate that he or she is qualified to re-take the exam, the board may require that the applicant acquire additional knowledge, education, and/or experience, satisfactory to the board before the applicant may sit for another exam.

(h) *Core curriculum.* An applicant with a four-year (4) degree as described in subsection (e)(ii) of this section, a two-year (2) degree as described in subsection (e)(iv), or experience as described in subsection (e)(v) of this section may need to take additional courses to fulfill, at a minimum, the following core curriculum. For the following list of classes, any equivalent class may be taken and any survey-related course may be substituted upon approval of the board:

(1) *Surveying (six (6) credit hours).* Surveying I or equivalent, Surveying II or equivalent. Courses must cover topics of GPS & geodetic control and boundary adjustment computations.

(2) *Mathematics (nine (9) credit hours).* Qualifying courses: Algebra, trigonometry, pre-calculus, or higher.

(3) *Business and law (six (6) credit hours).* Qualifying courses: boundary law, contract law, property law, trusts and estates, professional ethics, quantitative business analysis I, business administration, small business management, micro economics, accounting principles, or related courses.

(4) *Science (nine (9) credit hours).* Qualifying courses: physics, geology, astronomy, soils, dendrology, chemistry, biology, or ecology.

(5) *Computer usage (three (3) credit hours).* Qualifying courses: introduction to computer, computer science, computer programing, AutoCad basics, AutoCAD advantage, geographic/land information systems, introduction to spreadsheets, or word processing.

(6) *English composition,* English composition II, technical writing, creative writing, or speech (six (6) credit hours).

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4; P.L. 1992, ch. 337, § 1; P.L. 1997, ch. 86, § 1; P.L. 2004, ch. 90, § 1; P.L. 2004, ch. 98, § 1; P.L. 2009, ch. 157, § 1; P.L. 2009, ch. 165, § 1; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3; P.L. 2018, ch. 11, § 1; P.L. 2018, ch. 23, § 1.)

§ 5-8.1-10. Board of registration for professional land surveyors – Issuance and renewal of certificates.

(a) *Surveyors previously registered.* Each land surveyor holding a certificate of registration under the laws of this state as previously in effect shall be deemed registered as a professional land surveyor under this chapter.

(b) *Surveyors-in-training previously registered.* Each surveyor-in-training previously enrolled under the laws of this state as previously in effect shall be deemed enrolled under this chapter.

(c) *Certificates of registration.* With the assistance of the department, the board of land surveyors shall issue a certificate of registration upon payment of the registration fee as provided for in this chapter to any applicant, who, in the judgment of the board, has met the requirements of this chapter. Enrollment cards are issued to those who qualify as surveyors-in-training. The certificate of registration shall:

(1) Carry the designation "professional land surveyor";

(2) Show the full name of the registrant, without any titles;

(3) Have a serial number; and

(4) Be signed by both the chairperson and secretary of the board of land surveyors.

(d) *Effect of certification.* The issuance of a certificate of registration by the board of land surveyors is prima facie evidence that the person named in the certificate is entitled to all rights and privileges of a professional land surveyor while the certificate of registration remains unrevoked or unexpired.

(e) *Expiration and renewals.* Certificates of registration that expire are invalid, rendering practice authorized on the basis of that certificate illegal. It is the duty of the board of land surveyors to notify every person registered under this chapter of the date of the expiration of his or her certificate and the amount of the fee required for its renewal. That notice shall be delivered, electronically or otherwise, to the registrant, at his or her last-known address, at least one month in advance of the date of the expiration of that certificate, and it is the responsibility of each person registered under this chapter to renew his or her certificate of registration prior to its expiration. Renewal may be effected at any time prior to, or during the month of, June of each odd-numbered year (meaning biennially) commencing in year 2003 (provided, that any said renewal shall be postmarked no later than June 30th in that year in order to be valid), or at any other time that the law provides for, by the payment of the fee required by this chapter. Renewal of an expired certificate may be effected, with the director's approval, within a period of four (4) years; provided, that evidence is submitted to the board of land surveyors attesting to the continued competence and good character of the applicant. The amount to be paid for the renewal of a certificate after the date of expiration shall be double the regular fee. In the event renewal is not made before the end of the second year, the board of land surveyors may require any reexamination that it deems appropriate and the amount to be paid for the renewal shall be as stated in this section.

(f) *Lapsed certificates.* Any registrant who allows his or her certificate of registration to lapse for more than four (4) years, shall reapply for registration in accordance with the requirements stated in § 5-8.1-9.

(g) Any party aggrieved by the board's decision regarding license issuance or renewal may, within ten (10) days of the decision, appeal the matter to the director by submitting a written request for a formal hearing to be conducted in accordance with the provisions of § 5-8.1-15.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1992, ch. 337, § 1; P.L. 2004, ch. 90, § 1; P.L. 2004, ch. 98, § 1; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3; P.L. 2015, ch. 82, § 5; P.L. 2015, ch. 105, § 5; P.L. 2016, ch. 347, § 2; P.L. 2016, ch. 363, § 2.)

§ 5-8.1-11. Board of registration for professional land surveyors – Fees – Payment and disposition.

(a) The fees paid by an applicant for filing an application for examination or for renewal shall be determined by the board and shall not exceed one hundred eighty dollars ($180) per year, plus any administrative costs associated with an application for examination, reexamination, or annual renewal. The administrative costs shall be determined by the board. All revenues received pursuant to this section shall be deposited as general revenues.

(b) The fees paid by an applicant for the examination, for reexamination, or for renewal of any expired certificate shall be determined by the board to cover the direct expenses associated with administering the examination, reexamination, or the renewal of an expired certificate.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4; P.L. 1992, ch. 337, § 1; P.L. 1995, ch. 370, art. 40, § 8; P.L. 1997, ch. 86, § 1; P.L. 2004, ch. 90, § 1; P.L. 2004, ch. 98, § 1; P.L. 2009, ch. 68, art. 12, § 11; P.L. 2015, ch. 82, § 5; P.L. 2015, ch. 105, § 5.)

§ 5-8.1-12 Board of registration for professional land surveyors – Official stamp of professional land surveyor. –(a) A registrant under this chapter may obtain a Rhode Island seal of the design authorized by the board of land surveyors, bearing the registrant's name, registration number, and the legend "Professional Land Surveyor". Final surveys, drawings, reports, plats, replats, plans, legal descriptions, and calculations prepared by a registrant shall, when issued, be signed, dated, and stamped with the seal or facsimile of a seal. It is unlawful for a land surveyor to affix, or permit his or her seal or facsimile of a seal to be affixed, to any survey, drawing, report, plan, legal descriptions, plat, replat, report, legal description or calculations after expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provisions of this chapter. It is unlawful for any person other than the registered land surveyor who has signed and sealed the survey, drawing, plan, plat, replat, report, legal description or calculations to modify, change, amend, add, or delete any data, information, lines, angles, or areas shown on the survey, drawing, plan, plat, replat, or report.

(b) Upon revocation or suspension of his or her certificate of registration, or upon expiration of the certificate without renewal, a professional land surveyor shall surrender his or her stamp to the board of land surveyors. The director has the power to institute proceedings in superior court to enforce this subsection.

(c) Upon the death of any professional land surveyor registered under this chapter, that person(s) appointed to administer the estate of the decedent shall surrender the stamp of the deceased professional land surveyor to the board of land surveyors. The director has the power to institute proceedings in superior or probate court to enforce this subsection.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4; P.L. 1992, ch. 337, § 1; P.L. 1997, ch. 86, § 1; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3.)

§ 5-8.1-13. Board of registration for professional land surveyors – Permitted practices.

(a) *Exemption clause.* This chapter shall not be construed to prevent or to affect:

(1) *Employees and subordinates.* The work of an employee or subordinate of a person holding a certificate of registration under this chapter; provided, that the work does not include final land surveying work or decisions and is done under the direct supervision of, or checked by, a person holding a certificate of registration issued under this chapter.

(2) *Federal employees.* The practice by officers and employees of the government of the United States while engaged within this state in the practice of land surveying for the government on property owned by the federal government; provided, that no right to practice land surveying accrues to those persons as to any other land surveying work. The right to registration after government employment shall not be granted except under the provisions prescribed under § 5-8.1-11.

(3) *Other professions.* The practice of engineering, architecture, or landscape architecture.

(b) *Sole proprietorship, partnership, limited-liability partnership, corporate, and limited-liability company practice.*

(1) The practice, or offer to practice, land surveying, as defined by this chapter, by sole proprietorship, partnership, limited-liability partnership, corporation, or limited-liability company, subsequently referred to as the "firm," through individuals is permitted; provided, that the individuals are in direct control of that practice; exercise personal supervision of all personnel who act in behalf of the firm in professional and technical matters; and are registered under the provisions of this chapter; and provided, that the firm has been issued a certificate of authorization by the board of land surveyors.

(2) Within one year after the enactment of this chapter [July 12, 1990], every firm must obtain a certificate of authorization from the board and those individuals in direct control of the practice and who exercise direct supervision of all personnel who act in behalf of the firm in professional and technical matters must be registered with the board. The certificate of authorization shall be issued by the board upon satisfaction of the provisions of this chapter and the payment of an annual fee not to exceed sixty dollars ($60).

(3) It is the intent of the board of registration to establish that the professional land surveyor is responsible for land surveying services.

(4) Every firm desiring a certificate of authorization must file with the board an application for the certificate on a form provided by the board. A separate form provided by the board shall be filed with each renewal of the certificate of authorization, and within thirty (30) days of the time any information previously filed with the board has changed, is no longer true or valid, or has been revised for any reason. If, in its judgment, the information contained on the application and renewal form is satisfactory and complete, the board shall issue a certificate of authorization for the firm to practice land surveying in this state.

(5) No firm that has been granted a certificate of authorization by the board of land surveyors is relieved of responsibility for the conduct or acts of its agents, employees, partners (if a partnership or a limited-liability partnership), officers or directors (if a corporation), or members or managers (if a limited-liability company) because of its compliance with the provisions of this section. No individual practicing land-surveying under the provisions of this chapter is relieved of responsibility for land surveying services performed by reason of his or her employment or other relationship with a firm holding a certificate of authorization as subsequently described. In the event of unexpected death, retirement, dismissal, or any other occasion where an entity has one person who is a registered land surveyor, and that person no longer can continue in the operation of the entity, then the board of registration may waive certain requirements for a certificate of authorization for a period of not longer than forty-five (45) days; provided that the entity retains a person who is a registered professional land surveyor to review and pursue the duties of surveying that are required under this chapter.

(6) A land surveyor may not, for the purposes of this section, be designated as being in responsible charge on more than two (2) certificates of authorization.

(7) Certificates of authorization shall be treated for all purposes hereunder, including, but not limited to, renewal, expiration and lapsing, as previously provided for certificates of registration in § 5-8.1-10; provided, however, that renewal may be effected at any time prior to or during the month of June of each even-numbered year (meaning biennially) commencing in year 2004.

(8) Limited-liability partnerships, corporations, and limited-liability companies shall submit a copy of their articles of incorporation, articles of organization, or certificate of registration in order to obtain a certificate of authorization from the board of land surveyors.

(9) Corporations, other than those organized under chapter 5.1 of title 7, partnerships, and sole proprietorships practicing in this state prior to July 12, 1990, shall fully comply with the provisions of this section within one year of that date.

(c) *Land surveyor previously registered.* Each land surveyor holding a certificate of registration, and each land surveyor-in-training under the laws of this state as previously in effect, shall be deemed registered as a land surveyor or land surveyor-in-training as appropriate under this chapter.

(d) This section does not exempt the political subdivisions of the state, such as county, city, or town, or legally constituted boards, districts, or commissions, from obtaining a certificate of authorization from the board of registration when applicable.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4; P.L. 1992, ch. 337, § 1; P.L. 1997, ch. 86, § 1; P.L. 2004, ch. 56, § 3; P.L. 2004, ch. 63, § 3; P.L. 2004, ch. 90, § 1; P.L. 2004, ch. 98, § 1; P.L. 2005, ch. 407, § 1; P.L. 2009, ch. 68, art. 12, § 11; P.L. 2016, ch. 347, § 2; P.L. 2016, ch. 363, § 2.)

§ 5-8.1-14 Board of registration for professional land surveyors – Unlawful practices. – It is unlawful for any person to practice or offer to practice land surveying in this state, as defined by this chapter, or to use in connection with his or her name or assume, or advertise any title or description tending to convey the impression that he or she is a land surveyor unless that person is registered or exempted from registration under the provisions of this chapter.

History of Section.
(P.L. 1990, ch. 330, § 2.)

§ 5-8.1-15. Board of registration for professional land surveyors — Disciplinary actions.

(a) **Revocation, suspension, and censure.** After notice and a hearing as provided in this section, the director may in his or her discretion or upon recommendation of the board: (1) Suspend, revoke, or take other permitted action with respect to any certificate of registration; (2) Revoke, suspend, or take other permitted action with respect to any certificate of authorization; (3) Publicly censure, or reprimand or censure in writing; (4) Limit the scope of practice of; (5) Impose an administrative fine, not to exceed one thousand dollars ($1,000) for each violation; (6) Place on probation; and/or (7) For good cause shown, order a reimbursement of the department for all fees, expenses, costs, and attorney's fees in connection with the proceedings, which amounts shall be deposited as general revenues; all with or without terms, conditions, or limitations, holders of a certificate of registration or a certificate of authorization, hereafter referred to as registrant(s), for any one or more of the causes set out in subsection (b).

(b) **Grounds.** The director may take actions specified in subsection (a) for any of the following causes:

(1) Bribery, fraud, deceit, or misrepresentation in obtaining a certificate of registration or certificate of authorization;

(2) Practicing land surveying in another state or country or jurisdiction in violation of the laws of that state, country, or jurisdiction;

(3) Practicing land surveying in this state in violation of the standards of professional conduct established by the board and approved by the director;

(4) Fraud, deceit, recklessness, gross negligence, misconduct, or incompetence in the practice of land surveying;

(5) Use of a land surveyor's stamp in violation of § 5-8.1-12;

(6) Violation of any of the provisions of this chapter or chapter 84 of this title;

(7) Suspension or revocation of the right to practice land surveying before any state or before any other country or jurisdiction;

(8) Conviction of or pleading guilty or nolo contendere to any felony or to any crime of, or an act constituting a crime of, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any other similar offense, in a court of competent jurisdiction of this state or any other state or of the federal government;

(9) Failure to furnish to the department and/or board, or any person acting on behalf thereof, in a reasonable time such information as may be legally requested by the department and/or board;

(10) In conjunction with any violation of subsections (b)(1) — (b)(9), any conduct reflecting adversely upon the registrant's fitness to engage in the practice of land surveying; and

(11) In conjunction with any violation of subsections (b)(1) — (b)(9), any other conduct discreditable to the land surveying profession.

(c) **Procedures.**

(1) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, or misconduct against any applicant or registrant. In addition, the department or board may, on its own motion, investigate the conduct of an applicant or registrant of the board, and may in appropriate cases file a written statement of charges with the secretary of the board. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the board of land surveyors. All charges, unless dismissed by the director as unfounded or trivial, shall be heard by the director within three (3) months after the date on which they were referred.

(2) The time and place for the hearing shall be fixed by the department, and a copy of the charges, together with a notice of the time and place of the hearing, shall be personally served on or mailed to the last known address of the registrant at least thirty (30) days before the date fixed for the hearing. At any hearing, the accused registrant or applicant has the right to appear personally and/or by counsel, to cross-examine witnesses appearing against him or her, and to produce evidence and witnesses in his or her defense.

(3) If, after the hearing, the charges are sustained, the director, on his or her own motion or upon recommendation of the board of land surveyors, may in his or her discretion suspend, revoke, or take other permitted action with respect to the certificate of registration or certificate of authorization or publicly censure the registrant, or take any other action and/or order any other penalty permitted by this section.

(4) The director may, at his or her discretion, reissue a certificate of registration or certificate of authorization or renewal to any person or firm denied registration under this section or upon presentation of satisfactory evidence of reform and/or redress.

(5) The board may participate in hearings before the director through representation by the department's legal staff acting as the prosecuting agent before the director.

(d) **Legal counsel.** The department shall make its legal staff available to act as legal advisor to the board and to render any legal assistance that is necessary in carrying out the provisions of this chapter. The director may employ other counsel and necessary assistance to aid in the enforcement of this chapter, and their compensation and expenses shall be paid from the funds of the department.

(e) Nothing in this chapter shall prevent the department and/or board of land surveyors from charging one or both parties a fee for the direct costs associated with hearings and transcripts in accordance with the department's rules of procedure for administrative hearings.

(f) Nothing in this chapter shall prevent the board from entering into consent agreements or informal resolutions with any party under investigation for violations under this chapter and/or chapter 84 of this title.

History of Section.
P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4; P.L. 1992, ch. 337, § 1; P.L. 1999, ch. 290, § 1; P.L. 2004, ch. 90, § 1; P.L. 2004, ch. 98, § 1; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3; P.L. 2021, ch. 400, § 4, effective July 13, 2021; P.L. 2021, ch. 401, § 4, effective July 13, 2021.

§ 5-8.1-16 Board of registration for professional land surveyors – Appeals. – Any person aggrieved by any decision or ruling of the department may appeal that decision in accordance with the provisions of chapter 35 of title 42.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3.)

§ 5-8.1-17 Board of registration for professional land surveyors – Violations and penalties – Injunctions. – (a) No individual shall: (1) practice or offer to practice land surveying in this state; (2) use any title, sign, card, or device implying that the individual is a land surveyor or is competent to practice land surveying in this state; (3) use in connection with his or her name or otherwise any title or description conveying or tending to convey the impression that the individual is a land surveyor or is competent to practice land surveying in this state; or (4) use or display any words, letters, figures, seals, or advertisements indicating that the individual is a land surveyor or is competent to practice land surveying in this state; unless that individual holds a currently valid certificate issued pursuant to this chapter or is specifically exempted from the certificate requirement under the provisions of this chapter.

(b) It shall be the duty of all duly constituted officers of this state and all political subdivisions of the state to enforce the provisions of this chapter and to prosecute any persons violating those provisions.

(c) No sole proprietorship, partnership, limited liability partnership, corporation or limited liability company shall: (1) practice or offer to practice land surveying in this state; (2) use any title, sign, card, or device implying that the sole proprietorship, partnership, limited liability partnership, corporation or limited liability company is competent to practice land surveying in this state; (3) use in connection with its name or otherwise any title or description conveying or tending to convey the impression that the entity is a land surveying firm or is competent to practice land surveying in this state; or (4) use or display any words, letters, figures, seals, or advertisements indicating that the entity is a land surveying firm or is competent to practice land surveying in this state; unless that sole

proprietorship, partnership, limited liability partnership, corporation or limited liability company complies with the requirements of this chapter.

(d) Any individual, sole proprietorship, partnership, limited liability partnership, corporation or limited liability company which knowingly and willfully: (1) violates subsection (a) or (c) of this section; (2) presents or attempts to use the certificate of registration/authorization of another; (3) gives any false or forged evidence of any kind to the department and/or board or to any member of the board in obtaining or attempting to obtain a certificate of registration/authorization; (4) falsely impersonates any other registrant whether of a like or different name; (5) uses or attempts to use an expired, revoked, or nonexistent certificate of registration/authorization; (6) falsely claims to be registered under this chapter; or (7) otherwise violates any provision of this chapter; shall be guilty of a misdemeanor and, upon conviction by a court of competent jurisdiction, shall be sentenced to pay a fine of not more than four thousand dollars ($4,000) for the first offense and a fine of not less than four thousand dollars ($4,000) nor more than ten thousand dollars ($10,000) for each subsequent offense, or imprisonment for not more than one year, or both; in the court's discretion and upon good cause shown reimburse the department and/or board for any and all fees, expenses, and costs incurred by the department and/or board in connection with the proceedings, including attorneys' fees, which amounts shall be deposited as general revenues; and be subject to, in the board's discretion, public censure or reprimand.

(e) Either on his or her own initiative or on the recommendation of the board, the director has the power to institute injunction proceedings in superior court to prevent violations of subsection (a) or (c) of this section or violations of § 5-8.1-1. In injunction proceedings, the director is not required to prove that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from continued violations. The superior court, in its discretion and in addition to any injunctive relief granted to the department, may order that any person or entity in violation of this section shall:

(1) Upon good cause shown reimburse the department for any and all fees, expenses, and costs incurred by the department and/or board in connection with the proceedings, including attorneys fees, which amounts shall be deposited as general revenues; and/or

(2) Be subject to public censure or reprimand.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1999, ch. 290, § 1; P.L. 2004, ch. 56, § 3; P.L. 2004, ch. 63, § 3; P.L. 2006, ch. 219, § 1; P.L. 2013, ch. 298, § 3; P.L. 2013, ch. 378, § 3.)

§ 5-8.1-18 Board of registration for professional land surveyors – Public works. – This state and its political subdivisions, such as county, city, town or legally constituted board, districts, commissions, or authorities, shall not engage in the practice of land surveying involving either public or private property without the surveying being under the direct charge and supervision of a land surveyor registered under this chapter.

History of Section.
(P.L. 1990, ch. 330, § 2.)

§ 5-8.1-19 Board of registration for professional land surveyors – Duties of recorders. – It is unlawful for the recorder of deeds or the registrar of titles or any city or town clerk or employee of these to accept, file, or record any map, plat, replat, survey, or other documents within the definition of land surveying which do not have impressed on them and affixed to them the personal signature, date, and seal of a professional land

surveyor registered under this chapter and by whom or under whose direct supervision the map, plat, replat, survey, or other documents were prepared.

History of Section.
(P.L. 1990, ch. 330, § 2; P.L. 1991, ch. 304, § 4.)

§ 5-8.1-20 Land surveyors rendering assistance during disaster emergency – Immunity from civil liability. – (a) A land surveyor, duly licensed to practice in Rhode Island under this chapter, who voluntarily and without compensation provides land surveying services at the scene of a disaster emergency, shall not be liable for any personal injury, wrongful death, property damage, or other loss or damages caused by an act or omission of the land surveyor in performing the services.

(b) As used in this section, "disaster emergency" means a disaster emergency declared by executive order or proclamation of the governor pursuant to chapter 15 of title 30.

(c) The immunity provided in subsection (a) of this section applies only to the practice of land surveying as defined in this chapter regarding a land surveying service that:

(1) Concerns a land, air, space, or water resource, whether publicly or privately owned that is identified pursuant to a disaster emergency executive order or proclamation;

(2) Relates to the integrity of the entire land, air, space, or water resource or any portion of that resource and affects public safety; and

(3) Is rendered during the time in which a state of disaster emergency exists, as provided in chapter 15 of title 30.

(d) The immunity granted by this section does not apply to acts or omissions constituting gross negligence or willful misconduct.

History of Section.
(P.L. 2000, ch. 403, § 3.)

5-8.1-21. Right of entry for professional land surveyor performing surveying services.

(a) A professional land surveyor, issued a current and valid certificate of registration in accordance with the provisions of this chapter, when performing surveying services at the request of a landowner or person with an interest in real estate, may, without the consent of the owner or person in possession, enter upon or cross any lands, air, space or water resource, whether publicly or privately owned, except for property owned or operated by a public or private utility, railroad, airport or limited access highway, security facility (prison) or any property with a documented safety or security plan, necessary to perform surveying services.

(b) Nothing in this section shall be construed as authorizing a professional land surveyor to intentionally destroy, injure, damage or move any object, chattel or item on the lands of another without the permission of the owner.

(c) This section shall not be construed to provide statutory protection from civil liability for actual damage to land, chattels, crops, trees, structures or personal property.

(d) This section shall not be construed to authorize a professional land surveyor to enter any building or structure.

(e) A professional land surveyor shall make reasonable effort to notify a landowner and person in possession upon whose land, air, space or water resource it is necessary for the professional land surveyor to enter or cross. Notice provided as follows meets the requirement of this subsection:

(1) Written notice delivered by hand to the person in possession of the land and the landowner or to the residence of the landowner upon whose land, air, space or water resource the surveyor may enter or cross, delivered at least seventy-two (72) hours prior to the surveyor's entering the land, air, space or water resource; or

(2) Written notice mailed by first class mail to the person in possession of the land and the landowner upon whose land, air, space or water resource the surveyor may enter or cross, postmarked at least seven (7) days prior to the surveyor's entering the land, air, space or water resource. The surveyor may rely on the address of the landowner as contained in the municipal property tax records or their equivalent.

(f) Surveyors who enter land, air, space or water resource pursuant to this section shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification upon request.

(g) Vehicular access to perform surveys is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(h) Approval of the landowner is required for the clearing of trees, brush, or other vegetation.

(i) A registered professional land surveyor, or any employee or agent of the land surveyor, who enters land as allowed under this section is owed no greater duty of care than that owed by a landowner to a trespasser.

(j) As an act of good will and in order to keep the landowner informed, a professional land surveyor shall supply the landowner with information on located, established, or reestablished corners that lie on the land or that may affect the boundaries of the land. Upon request, the professional land surveyor shall provide the landowner with a copy of any relevant survey filed or recorded.

(k) A professional land surveyor and the surveyor's assistant shall comply with any other federal and state safety rules and regulations that apply to the land that they enter or cross in addition to the provisions set forth in this section.

TITLE 9

COURTS and CIVIL PROCEDURE
CHAPTER 19

EVIDENCE

§ 9-19-15 Stenographic transcripts of testimony in superior court. – Transcripts from stenographic notes of testimony duly taken in the superior court or the family court, under statutory authority, verified by the certificate of the stenographer taking the testimony, and allowed by the court, shall be admissible as evidence that the testimony was given, whenever proof of the testimony is otherwise competent.

History of Section.
(C.P.A. 1905, § 394; G.L. 1909, ch. 292, § 42; G.L. 1923, ch. 342, § 52; G.L. 1938, ch. 538, § 2; G.L. 1956, § 9-19-15; P.L. 1961, ch. 73, § 5.)

§ 9-19-29 Admissibility of records of deceased physicians, dentists and professional engineers. – (a) In all actions for the recovery of benefits under the Workers' Compensation Act, chapters 29 – 38 of title 28, for personal injury or death, and in all actions for the recovery of damages for personal injury or death in any civil proceeding, if a physician, dentist, or professional engineer has died prior to the time of the trial of the action, the written records, reports, or bills of the physician or dentist concerning the patient who suffered the injury or death, and the reports and scale drawings of the professional engineer concerning matter relevant to the circumstances under which the injury or death was sustained, shall be admissible in evidence.

(b) In all actions for the recovery of benefits under the Workers' Compensation Act for personal injury or death and in all actions for the recovery of damages for personal injury or death in any civil proceeding, if a physician, dentist, or professional engineer has moved out of this state prior to trial or cannot be located within this state after a reasonable search, and whose whereabouts and address are unknown, any written records, reports, or bills of the physician or dentist concerning the patient who suffered the injury or death, and the reports and scale drawings of the professional engineer concerning matter relevant to the circumstances under which the injury or death was sustained, shall be admissible in evidence and the patient may testify as to the medical or dental services provided and the treatment received, and another physician or dentist may provide evidence as to the medical or dental services or treatment as if the physician or dentist had been the one who rendered the services or treatment, including evidence as to the fair and reasonable charge for the services, the necessity of the services or treatment and any other matter.

History of Section.
(P.L. 1969, ch. 229, § 1; P.L. 1982, ch. 453, § 1.)

CHAPTER 22

COSTS

§ 9-22-6 Apportionment of costs in action for partition. – In all actions of partition, the court before which the action may be pending may adjudge and determine, as to it shall appear equitable and just, relative to the apportionment of costs among the parties, plaintiff and defendant, by dividing the costs equally or subjecting either party to the payment of the whole or any part thereof.

History of Section.
(C.P.A. 1905, § 446; G.L. 1909, ch. 295, § 6; G.L. 1923, ch. 345, § 6; G.L. 1938, ch. 536, § 6; G.L. 1956, § 9-22-6.)

§ 9-22-7 Apportionment of surveyors' and other fees. – Any court may divide or apportion, between the parties in a suit pending, the fees of surveyors and other persons performing services therein by direction of the court.

History of Section.
(C.P.A. 1905, § 447; G.L. 1909, ch. 295, § 7; G.L. 1923, ch. 345, § 7; G.L. 1938, ch. 536, § 7; G.L. 1956, § 9-22-7.)

TITLE 11
CRIMINAL OFFENSES

CHAPTER 22

HIGHWAYS

§ 11-22-1 Injuring highway boundary markers. – Every person who shall willfully break down, remove, injure, or destroy any monuments, walls, fences, or bounds, erected for the purpose of designating the boundaries of any public highway, shall be imprisoned not exceeding one year or fined not exceeding five hundred dollars ($500). In addition, any and all costs incurred by the state of Rhode Island due to damages/loss under this section shall be fully reimbursed by the party or parties causing the damage.

History of Section.
(G.L. 1896, ch. 279, § 35; G.L. 1909, ch. 345, § 39; G.L. 1923, ch. 397, § 39; G.L. 1938, ch. 608, § 39; G.L. 1956, § 11-22-1; P.L. 1990, ch. 494, § 1.)

CHAPTER 44
TRESPASS AND VANDALISM

§ 11-44-2 Injury or removal of vegetation – Buildings and fences. – Every person who shall take and carry away, without the consent of the owner, any corn, grain, fruit, or growing vegetable out of any field, garden, or orchard, or who shall willfully and without the consent of the owner root up, cut down, or otherwise injure or destroy or take and carry away any tree or underwood growing or standing upon the land of another, or remove any cord wood, or shall maliciously root up, cut down, or otherwise injure or destroy any tree, root, fruit, or vegetable growing in any garden, field, orchard, highway, common, or public square, or who shall take and carry away, without the consent of the owner, any cultivated plant, tree, or shrub from any graveyard or from any public or private grounds, or who shall wantonly or maliciously injure or destroy any plant or shrub growing upon the land or in the building of another, or who shall poison the earth about any plant or shrub so as to prevent or injure its growth, or who shall maliciously or wantonly in any way injure or deface any building not his or her own, or break the glass or any part of it in any building, or shall maliciously injure any fence or stone wall on or enclosing lands not his or her own, shall be imprisoned not exceeding one year or be fined not exceeding triple the value of the damage or one thousand dollars ($1,000), whichever is lower; and shall be required to pay the party injured a penalty not to exceed triple the value of the damage caused by the person; provided, that if any person shall knowingly use or permit to be used any vehicle for the commission of any of the offenses enumerated in this section, he or she shall also be penalized in the manner specified in title 31.

History of Section.
(G.L. 1896, ch. 279, § 23; P.L. 1900, ch. 736, § 1; C.P.A. 1905, § 1177; G.L. 1909, ch. 345, § 23; G.L. 1923, ch. 397, § 23; P.L. 1928, ch. 1215, § 1; G.L. 1938, ch. 608, § 23; G.L. 1956, § 11-44-2; P.L. 1980, ch. 276, § 2; P.L. 1982, ch. 237, § 1; P.L. 1992, ch. 426, § 1.)

§ 11-44-11 Injury to boundary or line markers. – Every person who shall willfully break down, remove, injure, obscure, or destroy any monument erected for the purpose of designating the boundaries of any town or city or any tract or lot of land, or any tree marked for that purpose, or any stake set up to mark the line or grade of any railroad, or any marker erected for the purpose of designating a public right-of-way to water areas of the state, shall be imprisoned not exceeding one year or be fined not exceeding five hundred dollars ($500).

History of Section.
G.L. 1896, ch. 279, § 34; G.L. 1909, ch. 345, § 38; G.L. 1923, ch. 397, § 38; G.L. 1938, ch. 608, § 38; G.L. 1956, § 11-44-11; P.L. 1971, ch. 27, § 1.

§ 11-44-12. Injury to public property.

Every person who shall willfully cut or deface or otherwise injure any public building or fence or other property shall be fined not less than one hundred dollars ($100) unless the amount of damage exceeds one hundred dollars ($100). If that amount shall exceed one hundred dollars ($100), then he or she shall be punished by a fine which is not less than three (3) times the amount of the damage nor more than five hundred dollars ($500), or imprisonment not exceeding one year, or both, and, in addition to any sentence, shall be ordered to make restitution in the full amount of damage done.

History of Section.
(G.L. 1896, ch. 278, § 4; G.L. 1909, ch. 344, § 4; G.L. 1923, ch. 396, § 4; G.L. 1938, ch. 607, § 4; G.L. 1956, § 11-44-12; P.L. 1982, ch. 243, §§ 1, 2.)

§ 11-44-26. Willful trespass — Remaining on land after warning — Exemption for tenants holding over.

(a) Every person who willfully trespasses or, having no legitimate purpose for his or her presence, remains upon the land of another or upon the premises or curtilage of the domicile of any person legally entitled to the possession of that domicile, after having been forbidden to do so by the owner of the land or the owner's duly authorized agent or a person legally entitled to the possession of the premises, shall be punished by a fine not exceeding one thousand dollars ($1,000), or imprisonment for a term not exceeding one year, or both.

(b) This section shall not apply to tenants or occupants of residential premises who, having

rightfully entered the premises at the commencement of the tenancy or occupancy, remain after that tenancy or occupancy has been or is alleged to have been terminated. The owner or landlord of the premises may recover possession only through appropriate civil proceedings.

(c) Where the provisions of The Domestic Violence Prevention Act, chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in § 12-29-5.

History of Section.
P.L. 1973, ch. 279, § 1; P.L. 1975, ch. 175, § 1; P.L. 1980, ch. 360, § 1; P.L. 1983, ch. 52, § 1; P.L. 1987, ch. 119, § 1; P.L. 1988, ch. 539, § 11

TITLE 23

HEALTH and SAFETY

CHAPTER 18

CEMETERIES

§ 23-18-1 Definitions. – The following terms used in this chapter, unless the context indicates otherwise, have the following meanings:

(1) "Agencies" mean town cemeteries, religious or ecclesiastical society cemeteries, cemetery associations, or any person, firm, corporation, or unincorporated association previously or hereafter engaged in the business of conducting a cemetery or operating a community mausoleum or columbarium.

(2) "Columbarium" means a structure or room, or other space in a building or structure of durable or lasting fireproof construction, containing niches, used, or intended to be used, to contain cremated human remains.

(3) "Community mausoleum" means a structure or building of durable or lasting construction, used or intended to be used, for the permanent disposition in crypts or spaces therein of the remains of deceased persons, provided the crypts or spaces and their use are available to or may be obtained by individuals for a price in money or other form of security.

(4) "Crypt" means the chamber in a mausoleum of sufficient size to contain the remains of a deceased person.

(5) "Historic cemetery" means any tract of land which has been for more than one hundred (100) years used as a burial place, whether or not marked with an historic marker, including but not limited to, ancient burial places known or suspected to contain the remains of one or more American Indians.

(6) "Niche" means a recess in a columbarium or other structure, used, or intended to be used, for the permanent disposition of the cremated remains of one or more deceased persons.

History of Section.
(P.L. 1939, ch. 721, § 1; G.L. 1956, § 23-18-1; P.L. 1992, ch. 478, § 1.)

§ 23-18-2 Location of mausoleums and columbaria. – Every community mausoleum, other than structures containing crypts erected or controlled by churches and religious societies, and every columbarium, or other similar structure intended to hold or contain the bodies or remains of the dead, the spaces, crypts, or niches of which are available to the

public, shall be located only within the confines of an established cemetery.

History of Section.
(P.L. 1939, ch. 721, § 2; G.L. 1956, § 23-18-2.)

§ 23-18-3 Approval of construction plans – Supervisory control. – Before commencing the building, construction, or erection of any community mausoleum or columbarium, the agency constructing the structure shall make and file plans and specifications of the structure with the city or town clerk of the city or town where the structure is to be erected, and secure the approval of the city or town to erect the community mausoleum or columbarium. Before the approval shall be granted, the city or town wherein the structure is located shall satisfy itself that the proposed new structure or any alterations or additions to an old structure for that purpose, shall be built in accordance with the standards set forth in ordinances adopted by the city or town wherein the structure is located under its supervision, and shall comply with any further requirements as to perpetual care and maintenance that shall then be or later prescribed by the city or town. The city or town wherein the structure is located shall have supervisory control over the construction of the structure and it shall be the duty of the cities and towns to adopt suitable ordinances concerning the structures.

History of Section.
(P.L. 1939, ch. 721, § 3; G.L. 1956, § 23-18-3; P.L. 1993, ch. 45, § 1.)

§ 23-18-10.1 Registering historical cemeteries. – In addition to the records and indexes now required to be maintained by every recorder of deeds in all cities and towns, the recorder of deeds in every city and town shall maintain a register of all historical cemeteries located within the city or town. The tax assessor of each city or town shall note the location of each historical cemetery so registered on the appropriate tax assessor's map with a symbol consisting of the letters "CEM" inside a rectangle.

History of Section.
(P.L. 1979, ch. 383, § 1; P.L. 2011, ch. 117, § 1; P.L. 2011, ch. 126, § 1.)

§ 23-18-11 Regulation of excavation around cemeteries. – (a) The city or town council of any municipality may by ordinance prescribe standards regulating any construction or excavation in the city or town, when those standards are reasonably necessary to prevent deterioration of or damage to any cemetery or burial ground, or to any structures or gravesites located in any cemetery or burial ground. The rules and regulations shall not apply to the ordinary installation of gravesites or of monuments, markers, or mausoleums.

(b) No city or town shall permit construction, excavation or other ground disturbing activity within twenty-five feet (25') of a recorded historic cemetery except in compliance with the following provisions:

(1) The boundaries of the cemetery are adequately documented and there is no reason to believe additional graves exist outside the recorded cemetery and the proposed construction or excavation activity will not damage or destructively alter the historic cemetery through erosion, flooding, filling, or encroachment; or

(2) The proposed construction or excavation activity has been reviewed and approved by the city or town in accordance with § 23-18-11.1.

(c) Whenever an unmarked cemetery or human skeletal material is inadvertently located during any construction, excavation, or other ground disturbing activity, including archaeological excavation, the building official of the city or town where the unmarked cemetery or human skeletal material is located shall be immediately notified. The building official shall, in turn, notify the state medical examiner and the Rhode Island historical preservation and heritage commission if the grave, cemetery, or skeletal material appears to be historic. Prior to the continuation of any further construction, excavation, or other ground disturbing activity, and unless the provisions of § 23-18-7 shall apply, the property owner shall undertake an archaeological investigation to determine the boundaries of the unmarked cemetery and shall so inform the building official. In the event that the cemetery meets the criteria for a historic cemetery, the building official shall so advise the recorder of deeds of the city or town who shall record and register the cemetery in accordance with the provisions of § 23-18-10.1.

History of Section.
(P.L. 1980, ch. 31, § 1; P.L. 1992, ch. 478, § 1.)

§ 23-18-11.1 Permit required to alter or remove historic cemetery – Powers of city or town council – Appeal. – (a) Before an agency or a property owner may authorize or commence alteration or removal of any historic cemetery, the agency or owner must apply to the city or town council where the historic cemetery is located for a permit to alter or remove. The city or town council shall prescribe by ordinance standards to regulate the alteration or removal of any historic cemetery within its municipal limits, but shall at a minimum provide that:

(1) The applicant examine all alternatives, and demonstrate that no prudent or feasible alternative to the proposed alteration is possible;

(2) The city or town provide for notification and participation in the permitting process of parties which may be interested in the proposed alteration or removal by virtue of their status as a governmental health or historic preservation authority, or as a private or nonprofit historical, genealogical or civic organization, or, in the case of American Indian cemeteries and burial grounds, the appropriate tribal organization; and

(3) The city or town provide for due consideration of the rights of descendants in any application to substantially alter or remove a historic cemetery.

(b) When an application for alteration or removal of a historic cemetery has been made and the boundary is unknown or in doubt, the city or town may require that the applicant, at its own expense, conduct an archaeological investigation to determine the actual size of the cemetery prior to final consideration by the city or town of the application to alter or remove.

(c) After due consideration, the city or town council may grant the application to alter or remove the historic cemetery in whole or in part, under the supervision of an archaeologist and with any restrictions and stipulations that it deems necessary to effectuate the purposes of this section, or deny the application in its entirety. Any person or persons aggrieved by a decision of the city or town council shall have the right of appeal concerning the decision to the superior court and from the superior court to the supreme court by writ of certiorari.

(d) Nothing in this section shall be deemed to contravene the authority of municipal bodies under § 45-5-12 to hold, manage, repair, or maintain any neglected burial ground.

History of Section.
(P.L. 1992, ch. 478, § 2; P.L. 1993, ch. 422, § 6; P.L. 1994, ch. 14, § 6; P.L. 2008, ch. 475, §)

§ 23-18-11.2 Regulation of excavation – Removal and transfer of graves and cemeteries – Penalties. – (a) The city or town council of any municipality may by ordinance prescribe standards, in addition to those required by § 23-18-10, regulating the excavation, removal, and transfer of any graves, grave sites, and cemeteries in the municipality so as to provide an accurate record of any activity and to insure that any remains removed are properly re-interred and the location of the new interment is recorded. In the absence of a local ordinance establishing standards, regulations adopted by the historical preservation and heritage commission shall govern. A report of any grave removal and relocation from one cemetery or burial ground to another shall be filed in the clerk's office for each municipality and shall, to the extent permitted by law, be available for public inspection. In instances where there is a headstone or other burial marker identifying the original grave, the headstone or burial marker shall be erected on the site to which any remains are transferred.

(b) To the extent not promulgated pursuant to § 23-3-5.1, the state registrar of vital records shall promulgate regulations to establish a system of record-keeping to allow descendants to locate their ancestors' graves in Rhode Island.

(c) Any person convicted of violating this section shall be subject to a fine of not more than one thousand dollars ($1,000) and such fine shall be deemed civil in nature and not a criminal penalty.

(d) The provisions of this section shall be considered to be in addition to any other penalties provided for desecration or vandalism to cemeteries.

History of Section.
(P.L. 1996, ch. 148, § 1; P.L. 2011, ch. 117, § 1; P.L. 2011, ch. 126, § 1.)

§ 23-18-13 Notification of historical preservation and heritage commission. – The historical preservation and heritage commission shall be notified whenever an ancient burial place contains or is suspected to contain the remains of one or more persons.

History of Section.
(P.L. 1992, ch. 478, § 2; P.L. 2011, ch. 117, § 1; P.L. 2011, ch. 126, § 1.)

CHAPTER 19.2

LOCAL HEALTH REGULATIONS

§ 23-19.2-11 Percolation tests and ground water determinations. – Whenever a percolation test and/or ground water determination is required on any property within this state, the registered professional engineer or registered surveyor conducting the tests shall notify the city or town engineering department where the tests are to be taken, in writing, of the date and location of the tests, at least seven (7) days prior to the taking of the tests.

History of Section.
(P.L. 1926, ch. 85, § 1; G.L. 1923, § 23-19-11; P.L. 1979, ch. 39, § 1; G.L. 1956, § 23-19.2-11.)

CHAPTER 19.5

PERCOLATION TESTS AND WATER TABLE ELEVATION DETERMINATIONS

§ 23-19.5-1 When test and determination and/or data required – Filing of results. – (a) No parcel of real property that is not readily accessible to a public sewer system shall be advertised or represented as being for sale or other transfer or conveyance as a "buildable", or "developable" property, so called, unless the seller shall first apply for and receive from the department of environmental management either a valid certification of the property's suitability for development as part of a subdivision or a valid approval for the installation of an individual sewage disposal system(s) on the property.

(b) A public sewer shall be presumed to be readily accessible to a parcel of property if it is located within two hundred (200) feet of any property line of the parcel of property.

(c) Nothing in this section shall prohibit a person from selling a parcel of property as "raw land", so called, without making any representations as to its ability to be developed. In this case, the seller shall, at the first available opportunity, expressly advise any prospective buyer that the property has not been certified for development as part of a subdivision or approved by the department of environmental management as being suitable for the on-site disposal of sanitary sewage or other liquid waste. When conveying property in this manner, a seller shall not accept any offer, sign any purchase and sale agreement, complete any closing or enter into any other agreement for transfer or conveyance of property without requiring the buyer to acknowledge, in writing, that the property has not been approved by the department of environmental management as being suitable for the on-site disposal of sanitary sewage or other liquid waste.

History of Section.
(P.L. 1976, ch. 269, § 1; P.L. 1977, ch. 182, § 10; G.L. 1956, § 23-55-1; P.L. 1979, ch. 39, § 1; G.L. 1956, § 23-19.5-1; P.L. 1992, ch. 266, § 1.)

§ 23-19.5-2 Certification by department of environmental management. – (a) Prior to advertising or representing any parcel of property as being for sale or other transfer or conveyance as a "buildable" or "developable" property, so called, the seller shall cause a registered professional engineer or registered professional land surveyor to submit and receive approval of any applications, plans, specifications, fees, percolation tests, groundwater table elevation determinations and other compilations of information as may be required by the department of environmental management in order to certify the property's suitability for development as a subdivision or to approve or renew an approval for the installation of an individual sewage disposal system on the property. No building shall be erected on the property after this unless an approval for the installation of an individual sewage disposal system has been issued and remains valid in accordance with the rules and regulations of the department of environmental management.

(b) No subdivision certification or approval or renewal for the installation of an individual sewage disposal system shall be issued by the department unless the application for this certification, approval or renewal is accompanied by valid tests, determinations, and/or data in accordance with this chapter.

(c) All tests, determinations and/or data necessary for the design and installation of an individual sewage disposal system, compiled by a registered professional engineer or registered professional land surveyor after January 1, 1992 and certified in accordance with subsection (a) shall be considered valid, provided that at the time of application to install, construct or alter a system using these tests, determination, and/or data, that a registered professional engineer or registered professional land surveyor shall present to the department of environmental management an affidavit, in a form satisfactory to the department, stating that the tests, determinations and/or data are still valid and that there have been no significant changes to the property and/or surrounding properties that would adversely affect the validity of the tests, determinations, and/or data previously obtained and/or submitted.

(2) All tests, determinations and/or data necessary for the design and installation of an individual sewage disposal system, compiled by a registered professional engineer or registered professional land surveyor between July 21, 1987 and January 1, 1992 certified in accordance with subsection (a) shall be considered valid provided that at the time of application to install, construct, alter, or repair a system using the tests, determinations, and/or data, that a registered professional engineer or registered professional land surveyor shall present an affidavit, in form satisfactory to the department of environmental management, stating that the tests, determination and/or data are still valid and that there have been no significant changes to the property and/or surrounding properties that would adversely affect the validity of the tests, determinations, and/or data previously obtained and/or submitted; provided, however, that the director of the department of environmental management reserves the right to require additional tests, determinations and/or data for the design and installation upon the finding of good cause.

(d) When a person seeks to both renew tests, determinations, or data that have been relied upon by the department of environmental management in approving an application and seeks also to renew the approval, the application for renewal of the approval and tests, determinations and/or data shall be accompanied by the affidavit of a registered professional engineer or registered professional land surveyor, as described in subsection (c) of this section, and new or revised plans and specifications for the previously approved sewage disposal system that meet the department's current regulatory requirements.

History of Section.
(P.L. 1976, ch. 269, § 1; P.L. 1977, ch. 182, § 10; G.L. 1956, § 23-55-2; P.L. 1979, ch. 39, § 1; G.L. 1956, § 23-19.5-2; P.L. 1992, ch. 266, § 1; P.L. 1995, ch. 78, § 1.)

§ 23-19.5-4 Keeping of records – Regulations. – The department of environmental management shall keep the records of all percolation tests, ground water table elevation determinations performed, and also a record of all other required information for a period of at least fifteen (15) years. The director of environmental management may promulgate any rules and regulations as the director may deem necessary for the proper implementation of the provisions of this chapter. The director may authorize licensed designers of individual sewage disposal systems to make submittals under this chapter.

History of Section.
(P.L. 1976, ch. 269, § 1; P.L. 1977, ch. 182, § 10; G.L. 1956, § 23-55-4; P.L. 1979, ch. 39, § 1; G.L. 1956, § 23-19.5-4; P.L. 1996, ch. 273, § 3; P.L. 1996, ch. 291, § 3.)

§ 23-19.5-5 Exclusion of certain property. – The requirements of this chapter shall not apply to any conveyance if the deed contains an express condition that the parties to it covenant that no building will be erected on this land during ownership by the grantee which will require sanitary sewage disposal, and a statement to that effect is filed with the department of environmental management. These requirements shall not apply to that portion of any tract of land in the conveyance upon which no building is to be erected.

History of Section.
(P.L. 1976, ch. 269, § 1; P.L. 1977, ch. 182, § 10; G.L. 1956, § 23-55-5; P.L. 1979, ch. 39, § 1; G.L. 1956, § 23-19.5-5; P.L. 2001, ch. 86, § 88.)

§ 23-19.5-7 Violation – Penalty. – Anyone found guilty of falsifying data or presenting misleading information to the department of environmental management shall be guilty of a misdemeanor.

History of Section.
(P.L. 1976, ch. 269, § 1; P.L. 1977, ch. 182, § 10; G.L. 1956, § 23-55-7; P.L. 1979, ch. 39, § 1; G.L. 1956, § 23-19.5-7.)

§ 23-19.5-8 Violation – Rescission of real estate sale. – Any person aggrieved or injured by the purchase of real property based on tests or data which are false or misleading, shall have the right to bring a court action within two (2) years after the fact becomes known to him or her, to rescind the sale and to be reimbursed the purchase price and costs directly incurred as a result of the false or misleading data.

History of Section.
(P.L. 1976, ch. 269, § 1; G.L. 1956, § 23-55-8; P.L. 1979, ch. 39, § 1: G.L. 1956, § 23-19.5-8.)

TITLE 24

HIGHWAYS

CHAPTER 1

LAYING OUT and TAKING BY CITIES and TOWNS

§ 24-1-1 Authorization of condemnation. – Whenever the city council of any city or the town council of any town shall determine that the public interest and convenience makes necessary or advantageous the acquisition of land or other real property, or any interest, estate, or right therein for the establishing, laying out, widening, extending or relocating, regrading, straightening, or improving any public highway, street, parkway, or driftway, or to secure more suitable lines, grades or safety, it may proceed to acquire the same by the exercise of eminent domain in the manner prescribed in this chapter, provided that no real property or interest, estate, or right therein belonging to the state shall be acquired without its consent and no real property or interest, estate, or right therein belonging to or used by a public utility shall be acquired without the consent of the division of public utilities and carriers.

History of Section.
(P.L. 1962, ch. 216, § 1; P.L. 1989, ch. 542, § 67.)

§ 24-1-2 Filing of plat and declaration. – Within one year after its passage, the city or town council shall cause to be filed in the land evidence records a copy of its resolution declaring that the public interest and convenience makes necessary or advantageous the acquisition of real property in the manner prescribed by this chapter and also a description of the land or other real property indicating the nature and extent of the estate or interest therein taken as provided in this chapter and a plat thereof, and a copy of the resolution, description and plat shall be certified by the city or town clerk.

History of Section.
(P.L. 1962, ch. 216, § 1; P.L. 1997, ch. 326, § 97.)

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§ 24-1-4 Vesting of title to property taken. – Upon the filing of the copy of the resolution, description and plat in the land evidence records and upon the making of the deposit in accordance with the order of the superior court, title to the real property in fee simple absolute or such lesser estate or interest therein specified in the resolution shall vest in the city or town, and the real property shall be deemed to be condemned and taken for the use of the city or town, and the right to just compensation for the real property shall vest in the persons entitled thereto.

History of Section.
(P.L. 1962, ch. 216, § 1.)

§ 24-1-13 Unknown owners. – If any real property or any estate or interest therein is unclaimed or held by a person or persons whose whereabouts are unknown, after making inquiry satisfactory to the superior court for the county in which the real property lies, the city or town council, after the expiration of two (2) years from the first publication of the copy of the resolution and description and plat, may petition the court that the value of the estate or interest of the unknown person or persons be determined. After such notice by publication to the person or persons as the court in its discretion may order, and after a hearing on the petition, the court shall fix the value of the estate or interest and shall order a sum to be deposited in the registry of the court in a special account to accumulate for the benefit of the person or persons, if any, entitled thereto. The receipt of the clerk of the superior court therefor shall constitute a discharge of the city or town from all liability in connection with the taking. When the person entitled to the money deposited shall have satisfied the superior court of his or her right to receive the same, the court shall cause it to be paid over to the person, with all accumulations thereon.

History of Section.
(P.L. 1962, ch. 216, § 1.)

§ 24-1-15 Exchange of property. – Whenever in the opinion of the city or town council a substantial saving in the cost of acquiring title can be effected by conveying other real property, title to which is in the city or town, to the person or persons from whom the estate or interest in real property is being purchased or taken, or by the construction or improvement by the city or town of any work or facility upon the remaining real property of the person or persons from whom the estate or interest in real property is being purchased or taken, the city or town council shall be and hereby is authorized to convey such other real property of the city or town to the person or persons from whom the estate or interest in real property is being purchased or taken and to construct or improve any work or facility upon the remaining land of the person or persons.

History of Section.
(P.L. 1962, ch. 216, § 1.)

CHAPTER 2
HIGHWAYS by GRANT or USE

§ 24-2-1 Creation of public highways by use. – All lands which have been or shall be quietly, peaceably, and actually used and improved and considered as public highways for the space of twenty (20) years, and which shall be declared by the town council of the town wherein they lie to be public highways, shall be taken and considered as public highways to all intents and purposes as fully and effectually as if the lands had been regularly laid out, recorded and opened by the town council of the town where the lands may lie.

History of Section.
(G.L. 1896, ch. 71, § 18; G.L. 1909, ch. 82, § 18; G.L. 1923, ch. 95, § 18; G.L. 1938, ch. 72, § 18; G.L. 1956, § 24-2-1.)

§ 24-2-3 Appeal of declaration. – Every person aggrieved by the proceedings described in § 24-2-2 may appeal therefrom to the superior court.

History of Section.
(G.L. 1896, ch. 71, § 20; C.P.A. 1905, § 1223; G.L. 1909, ch. 82, § 20; G.L. 1923, ch. 95, § 20; G.L. 1938, ch. 72, § 20; G.L. 1956, § 24-2-3; P.L. 1997, ch. 326, § 53.)

§ 24-2-4 Platting of highway. – In declaring lands which have been quietly, peaceably and actually used and improved and considered as public highways and streets for the space of twenty (20) years, to be public highways as provided in § 24-2-1, the town council of the town in which the lands lie shall determine, mark out, plat, or cause to be marked out and platted, the lands, in width as well as length, by use and improvement appropriated as public highways, and declared as such, and shall cause the plats to be recorded; but nothing contained in this section shall be so construed as to affect the requirements or provisions of § 24-2-3.

History of Section.
(G.L. 1896, ch. 71, § 21; G.L. 1909, ch. 82, § 21; G.L. 1923, ch. 95, § 21; G.L. 1938, ch. 72, § 21; G.L. 1956, § 24-2-4; P.L. 1997, ch. 326, § 53.)

§ 24-2-5 Platting of highways previously declared. – In case any lands have previously been declared to be a public highway under § 24-2-1, and no such plat was made and recorded as provided in § 24-2-4, the town council may cause the lands, appropriated by such declaration as a public highway, to be marked out, platted, and recorded as provided in § 24-2-4; in which case they shall give the notice and their proceedings shall be subject to the appeal provided in § 24-2-3.

History of Section.
(G.L. 1896, ch. 71, § 23; G.L. 1909, ch. 82, § 23; G.L. 1923, ch. 95, § 23; G.L. 1938, ch. 72, § 22; G.L. 1956, § 24-2-5; P.L. 1989, ch. 542, § 68; P.L. 1997, ch. 326, § 53.)

§ 24-2-6 Widening of highways. – If any lands used and improved for twenty (20) years and upwards as a public highway or street, shall not in the judgment of the town council be wide enough for the necessities or convenience of the public, the town council may proceed to widen the highway in whole or in part, pursuing, as to the portions so widened, the steps required by law for laying out new highways.

History of Section.
(G.L. 1896, ch. 71, § 22; G.L. 1909, ch. 82, § 22; G.L. 1923, ch. 95, § 22; G.L. 1938, ch. 72, § 22; G.L. 1956, § 24-2-6.)

§ 24-2-7 Proceedings and plats as evidence of highway. – The proceedings before the town council under §§ 24-2-1 – 24-2-6, insofar as the proceedings shall not have been set aside on appeal as provided in § 24-2-3, with the accompanying plat or duly certified copies thereof, shall forever thereafter be conclusive evidence upon the town and all parties notified, and their privies, as to the existence of the highway in width and length as platted, and prima facie evidence thereof as to all others.

History of Section.
(G.L. 1896, ch. 71, § 24; G.L. 1909, ch. 82, § 24; G.L. 1923, ch. 95, § 24; G.L. 1938, ch. 72, § 24; G.L. 1956, § 24-2-7; P.L. 1997, ch. 326, § 53.)

§ 24-2-8 Acceptance and opening of highway on land specially granted. – Except as otherwise provided by special act concerning particular cities and towns, whenever the owner of any land shall make a deed thereof to the town in which the land lies, for the especial purpose of being used and improved as a public highway, and the deed shall have been duly acknowledged and recorded, the land shall be thenceforward a public highway to all intents and purposes, and be liable to be opened by the town council of the town where the land shall lie, in the same manner as highways which are laid out by the town council; but no town shall be liable to repair a highway, until the town council thereof shall decree and order that the highway shall be repaired at the expense of the town.

History of Section.
(G.L. 1896, ch. 71, § 25; G.L. 1909, ch. 82, § 25; G.L. 1923, ch. 95, § 25; G.L. 1938, ch. 72, § 25; G.L. 1956, § 24-2-8.)

§ 24-2-9. Common law rights and remedies preserved.

Nothing contained in this chapter shall be so construed as to hinder or prevent the public from acquiring, by dedication or user, lands or any interests in lands for highways or other public uses, according to the course of the common law, or to take away or abridge any legal or equitable remedy by the common or the general law provided in cases of injuries to, or obstructions to, the enjoyment of lands, or in any interest in lands thus or otherwise by law acquired by the public, or devoted to public uses.

History of Section.
G.L. 1896, ch. 71, § 26; G.L. 1909, ch. 82, § 26; G.L. 1923, ch. 95, § 26; G.L. 1938, ch. 72, § 26; G.L. 1956, § 24-2-9.

CHAPTER 3

IMPROVEMENT AND GRADING BY TOWNS

§ 24-3-1 Power to mark out, widen or relocate municipal roads. – Town councils may mark out, relay, widen, straighten, or change the location of the whole of or any part of any municipal road, whether laid out by the state or otherwise, except the highways on both sides of the Woonasquatucket River directed to be laid out by chapter 362 of the Public Laws, passed at the January session of the general assembly in the year 1861; and thereupon like proceedings shall be had in all respects, so far as the same are applicable, including appeals, as are provided in this chapter in case of taking land and ascertaining damages to the owners of lands taken in laying out or in case of the abandonment of highways.

History of Section.
(G.L. 1896, ch. 71, § 28; P.L. 1903, ch. 1106, § 1; G.L. 1909, ch. 82, § 28; G.L. 1923, ch. 95, § 28; G.L. 1938, ch. 72, § 28; G.L. 1956, § 24-3-1; P.L. 1988, ch. 633, § 1.)

§ 24-3-2 Repealed. –

§ 24-3-6 Filing and notice of report. – The town council or city council shall, within fourteen (14) days after the making of a report, cause personal notice to be served upon all persons named in the report, residing in the state, and shall also cause a copy of the notice to be published, as provided in § 24-3-7, to the effect that the report has been filed in the clerk's office, and that any person aggrieved by the report must file, with the clerk of the superior court for the county where the town or city is situated, a notice in writing of his or her intention to claim a jury trial as provided in § 24-3-8; and he or she shall also cause a copy of the report to be filed with the clerk of the superior court.

History of Section.
(G.L. 1896, ch. 71, § 35; C.P.A. 1905, § 1216; G.L. 1909, ch. 82, § 38; G.L. 1923, ch. 95, § 38; G.L. 1938, ch. 72, § 38; G.L. 1956, § 24-3-6; P.L. 1997, ch. 326, § 54.)

§ 24-3-9 Election by council to make or discontinue improvements. – The town or city council shall, within one hundred twenty (120) days after the first publication of notice required by § 24-3-8, elect whether or not they will make improvements, and the town or city council may, at any time before election, discontinue all further proceedings relative thereto, but the town or city, upon the discontinuance, shall be liable for all costs, fees and expenses which shall have accrued; and the court may enter judgment and issue execution therefor as to the costs accrued on an appeal.

History of Section.
(G.L. 1896, ch. 71, § 37; G.L. 1909, ch. 82, § 40; G.L. 1923, ch. 95, § 40; G.L. 1938, ch. 72, § 40; G.L. 1956, § 24-3-9.)

§ 24-3-10 Taking of possession by town – Removal of crops and improvements. –The town or city, after electing by the town or city council to make the improvements as provided in § 24-3-9, shall become seized of all the land in the report mentioned that shall be required for making the improvements, in trust for use as a public highway. And the town or city may, by the person and at such time as the town council or city council shall order, take possession of the land or any part thereof, without any process of law, and remove all buildings and other impediments as the town council or city council shall order and direct; provided, that the owner of the land shall have the right, within thirty (30) days after the town or city council shall have elected to make the improvements, or within such further time as the town council or city council may grant, to remove all crops, trees, buildings or other improvements thereon, for his or her own use and benefit.

History of Section.
(G.L. 1896, ch. 71, § 38; G.L. 1909, ch. 82, § 41; G.L. 1923, ch. 95, § 41; G.L. 1938, ch. 72, § 41; G.L. 1956, § 24-3-10; P.L. 1997, ch. 326, § 55.)

§ 24-3-16 Declaration of opening of highway. – Whenever all buildings and impediments have been removed, by order of the town council or city council, from the street or portion thereof taken, and the street shall be open for public use, the town council or city council shall declare the opening, and it shall be a public highway.

History of Section.
(G.L. 1896, ch. 71, § 45; G.L. 1909, ch. 82, § 48; G.L. 1923, ch. 95, § 48; G.L. 1938, ch. 72, § 48; G.L. 1956, § 24-3-16.)

§ 24-3-17 Cities and towns affected. – Sections 24-3-3 – 24-3-16 shall apply only to the cities of Newport, Pawtucket, Woonsocket, Central Falls, Cranston, Warwick, and the towns of Lincoln, Johnston, Warren, Bristol, Middletown, East Greenwich, East Providence, New Shoreham, Little Compton, West Warwick, Cumberland, Barrington, Jamestown, North Providence, Westerly, South Kingstown, Narragansett, and Glocester.

History of Section.
(G.L. 1896, ch. 71, § 46; P.L. 1897, ch. 503, § 1; G.L. 1909, ch. 82, § 49; G.L. 1923, ch. 95, § 49; G.L. 1938, ch. 72, § 49; G.L. 1956, § 24-3-17; P.L. 1990, ch. 296, § 1.)

§ 24-3-21 Effect of definition of grade. – Whenever any street or way shall be received and established as a public highway, the defined grade shall be the established grade of the street or highway; but no action relating to the grade of any street or highway shall be so construed as to be a receiving or establishing of any street or way as a public highway.

History of Section.
(G.L. 1896, ch. 72, § 40; G.L. 1909, ch. 83, § 40; G.L. 1923, ch. 96, § 39; G.L. 1938, ch. 73, § 39; G.L. 1956, § 24-3-21.)

§ 24-3-23 Grading or change of grade – Notice and hearing. – Town councils may order highways or parts of highways to be graded within their respective towns, and whenever a grade for any highway shall be established the grade shall not be changed without the consent of the town council of the town in which it is located, nor without notice to the proprietors of lands abutting on the highway, which notice, if the proprietor resides within this state, shall be served five (5) days before the passing of an order for the grade or change of grade, and if any of the proprietors reside without the state, notice shall be served upon them as provided by § 24-1-6. At the time and place named in the notice, the town council shall proceed to hear the parties, and to pass an order in reference to the grade, or change of grade, as they may think proper.

History of Section.
(G.L. 1896, ch. 72, § 28; G.L. 1909, ch. 83, § 28; G.L. 1923, ch. 96, § 27; G.L. 1938, ch. 73, § 27; G.L. 1956, § 24-3-23.)

CHAPTER 5

MAINTENANCE of TOWN HIGHWAYS

§ 24-5-2 Division of towns into districts – Election and terms of surveyors. – The town council of each town shall divide the town into highway districts not exceeding four (4) in number, or shall constitute the entire town one highway district, and shall annually elect one surveyor of highways for each highway district, and fix his or her compensation; provided, however, that in the town of South Kingstown the powers and duties of surveyors of highways shall vest in the town council and the town shall not be required to elect surveyors of highways, and provided further that in the town of Smithfield there shall be one highway district which shall constitute the entire town, and one highway commissioner who shall be elected and be compensated and hold office as provided in Public Laws 1930, chapter 1675; the highway commissioner to perform the duties of highway surveyor in the town and have all the power and authority and be subject to all the duties now pertaining to the office of highway surveyors elected by the town councils under the laws of the state. Surveyors of highways so elected shall hold their offices until the next annual financial town meeting of the town and thereafter until their successors are elected. Vacancies occurring from any cause may be filled by the town council, and the town council may remove from office any surveyor of highways elected by them at their pleasure.

History of Section.
(G.L. 1896, ch. 72, § 2; G.L. 1909, ch. 83, § 2; G.L. 1923, ch. 96, § 2; P.L. 1929, ch. 1365, § 1; P.L. 1930, ch. 1675, § 1; G.L. 1938, ch. 73, § 2; G.L. 1956, § 24-5-2.)

§ 24-5-8 General duties of surveyors of highways. – Every surveyor of highways shall execute the directions given to the surveyor by the town council or the committee thereof as provided for in this chapter, and shall purchase and use such materials and employ such personnel, teams, and road making apparatus as may be necessary therefor at the rates of compensation fixed by the town council. The surveyor shall keep himself or herself informed as to the condition of all the highways in the surveyor's district, taking particular care to do so immediately after all storms and freshets, and shall seasonably communicate such information to the town council or to the committee thereof having care of his or her district; and it shall be the surveyor's duty, in case of sudden and unforeseen damage to any highway or bridge, to immediately repair the damage at the expense of the town so that it will be safe and passable, without instruction or direction from the town council or committee.

History of Section.
(G.L. 1896, ch. 72, § 7; G.L. 1909, ch. 83, § 7; G.L. 1923, ch. 96, § 7; G.L. 1938, ch. 73, § 7; G.L. 1956, § 24-5-8; P.L. 1997, ch. 326, § 56.)

§ 24-5-9 Removal of obstructions by surveyors. – Surveyors of highways may cut down, lop off, dig up, and remove all sorts of trees, bushes, stones, fences, rails, gates, bars, enclosures, or other matter or thing that shall in any manner straighten, obstruct, or incommode any highway; provided, that nothing herein contained shall be so construed as to authorize any surveyor, except under the direction of the town council, to cut down or destroy, or other than in a reasonable and proper manner, to lop off or trim up any shade or ornamental tree so planted or maintained by any adjacent owner or occupant upon or near the side of any highways as not to incommode the traveled path.

History of Section.
(G.L. 1896, ch. 72, § 8; G.L. 1909, ch. 83, § 8; G.L. 1923, ch. 96, § 8; G.L. 1938, ch. 73, § 8; G.L. 1956, § 24-5-9.)

§ 24-5-18 Bridges and fences on artificial watercourses along preexisting highways. – Whenever any artificial watercourse has been or shall be made under, through or by the side of any highway previously existing, the proprietors or occupants of the watercourse shall make and maintain all necessary bridges over the watercourse and all fences which may be necessary along the side of the watercourse.

History of Section.
(G.L. 1896, ch. 72, § 17; G.L. 1909, ch. 83, § 17; G.L. 1923, ch. 96, § 17; G.L. 1938, ch. 73, § 17; G.L. 1956, § 24-5-18.)

§ 24-5-19 Bridges and fences along preexisting watercourses. – Whenever any highway has been or shall be laid out, over, or by the side of any artificial watercourse made previously to the laying out of the highway, the town laying out the highway shall make and maintain the necessary bridges over the watercourse and the fences along the side of the watercourse as may be needed for the safety of travelers.

History of Section.
(G.L. 1896, ch. 72, § 18; G.L. 1909, ch. 83, § 18; G.L. 1923, ch. 96, § 18; G.L. 1938, ch. 73, § 18; G.L. 1956, § 24-5-19.)

§ 24-5-20 Bridges on boundary lines. – All public bridges, except such as are part of the state highway system, on the dividing lines between towns shall be established and kept in repair at the expense of the towns adjoining the bridges; and every public bridge except such as are part of the state highway system on the dividing line between this state and the adjoining states shall be established and kept in repair, on the part of this state, at the expense of the town adjoining the bridge.

History of Section.
(G.L. 1896, ch. 72, § 19; G.L. 1909, ch. 83, § 19; G.L. 1923, ch. 96, § 19; G.L. 1938, ch. 73, § 19; G.L. 1956, § 24-5-20.)

§ 24-5-21 Penalty for neglect of boundary line bridge. – If any town adjoining any boundary line bridge shall refuse or neglect to keep in good repair the part of the bridge within and next adjoining the line of the town, the town so neglecting or refusing shall be fined not less than twenty dollars ($20.00) nor more than one thousand dollars ($1,000), and

execution shall issue for the amount of the fine and costs against the town; but nothing contained in this section shall be so construed as to impair any agreement made between any towns relative to the supporting and repairing of bridges.

History of Section.
(G.L. 1896, ch. 72, § 20; G.L. 1909, ch. 83, § 20; G.L. 1923, ch. 96, § 20; G.L. 1938, ch. 73, § 20; G.L. 1956, § 24-5-21; P.L. 1997, ch. 326, § 56.)

§ 24-5-23. Bridges and culverts built by adjoining landowners.

Any person owning land adjoining any public highway may build such bridges or culverts over the ditches, which may be made in the highway for the passage of water, as may be necessary to render the passage from the land to the highway safe and convenient; and no bridge or culvert shall be altered, removed, or disturbed by any person, except under the direction of the town council of the town where the bridge or culvert may be situated, or of some person by them appointed for that purpose.

History of Section.
G.L. 1896, ch. 72, § 23; G.L. 1909, ch. 83, § 23; G.L. 1923, ch. 96, § 22; G.L. 1938, ch. 73, § 22; G.L. 1956, § 24-5-23.

§ 24-5-24 Undermining of walls and fences. – No surveyor of highways shall remove the earth so near to any wall or fence erected upon or without the limits of a highway as to undermine or overthrow the wall or fence, unless the undermining or overthrowing shall be absolutely necessary for the security or convenience of the public; and, in that case, the repairs shall be made under the supervision of the town council, or of some person appointed by them; and the town shall be at the expense of repairing or resetting the wall or fence removed.

History of Section.
(G.L. 1896, ch. 72, § 24; G.L. 1909, ch. 83, § 24; G.L. 1923, ch. 96, § 23; G.L. 1938, ch. 73, § 23; G.L. 1956, § 24-5-24.)

§ 24-5-25 Compensation of surveyors. – Surveyors of highways shall be paid out of the town treasury at the rate of two dollars ($2.00) per day for all the time necessarily spent in the discharge of the duties of their office, whenever no other mode or amount of compensation shall have been provided by any town or town council.

History of Section.
(G.L. 1896, ch. 72, § 25; G.L. 1909, ch. 83, § 25; G.L. 1923, ch. 96, § 24; G.L. 1938, ch. 73, § 24; G.L. 1956, § 24-5-25.)

§ 24-5-26 Penalty for neglect by surveyors. – Every surveyor of highways who shall neglect the duties of his or her trust shall forfeit twenty dollars ($20.00) for every neglect, to be recovered in the name of the town treasurer to the use of the town.

History of Section.
(G.L. 1896, ch. 72, § 26; G.L. 1909, ch. 83, § 26; G.L. 1923, ch. 96, § 25; G.L. 1938, ch. 73, § 25; G.L. 1956, § 24-5-26.)

CHAPTER 6

ABANDONMENT by TOWNS

§ 24-6-1. Order of abandonment — Reversion of title — Notice.

(a) Whenever, by the judgment of the town council of any town, a highway or driftway in the town, or any part of either, has ceased to be useful to the public, the town council of the town is authorized so to declare it by an order or decree that shall be final and conclusive; and, thereupon, the title of the land upon which the highway or driftway or part thereof existed shall revert to its owner and the town shall be no longer liable to repair the highway or driftway; provided, however, that the town council shall cause a sign to be placed at each end of the highway or driftway, having thereon the words "Not a public highway," and after the entry of the order or decree, shall also cause a notice thereof to be published in a newspaper of general circulation, printed in English, at least once each week for three (3) successive weeks in a newspaper circulated within the city or town and a further and personal notice shall be served upon every owner of land abutting upon that part of the highway or driftway that has been abandoned who is known to reside within this state. Nothing contained in this chapter shall, in any manner, affect any private right-of-way over the land so adjudged to be useless as a highway or driftway if the right had been acquired before the taking of the land for a highway or driftway. Provided, however, that the town of Coventry and any community with a population of not less than one hundred thousand (100,000), receiving a request for the abandonment of a highway or driftway from an abutting property owner, may sell the highway or driftway to the abutting owner at fair market value; and provided, further, that the town of North Providence, upon receiving a request for the abandonment of a highway or driftway from an abutting property owner may sell the highway or driftway to the abutting owner, at fair market value; and provided further, that the town of New Shoreham, upon receiving a request for the abandonment of a highway or driftway from an abutting property owner, may sell the highway or driftway to the abutting owner at fair market value; and provided, further, that the town of Barrington, upon receiving a request for the abandonment of a highway or driftway from an abutting property owner, may sell the highway or driftway to the abutting owner at fair market value; and provided, further, that the city of Cranston, upon receipt of a request for abandonment of a highway or driftway within the city of Cranston, where the sale of the highway or driftway to an abutting owner would result in the creation of a new lot that would be in compliance with the minimum-area requirement for construction of a building that is a permitted use, may sell the highway or driftway to the abutting owner at fair market value; and provided, further, that the city of Warwick, upon receiving a request for the abandonment of a highway or driftway from an abutting property owner, may sell the highway or driftway to the abutting owner at fair market value; and provided, further, that the town of Middletown, upon receiving a request for the abandonment of a highway or driftway from an abutting property owner, may sell the highway or driftway to the abutting owner at fair market value; and provided, further, that the town of Cumberland, upon receiving a request for abandonment of a highway or driftway from an abutting property owner, may sell the highway or driftway to the abutting owner at fair market value; and provided, further, that the town of Narragansett, upon receiving a request for the

abandonment of a highway or driftway from an abutting property owner, may sell the highway or driftway to the abutting owner at fair market value.

(b) Provided, further, that nothing in this section shall apply to private ways regardless of their use or maintenance thereof by any municipal corporation.

(c) All abandonments must be recorded in land evidence records by the petitioner(s) in the applicable municipality through the filing of an administrative subdivision in accordance with chapter 23 of title 45. The newly created boundary lines shall be certified to a Class 1 measurement specification pursuant to the rules and regulations promulgated by the Rhode Island board of registration for professional land surveyors in accordance with chapter 8.1 of title 5.

History of Section.
G.L. 1896, ch. 71, § 30; P.L. 1903, ch. 1106, § 2; G.L. 1909, ch. 82, § 30; G.L. 1923, ch. 95, § 30; G.L. 1938, ch. 72, § 30; G.L. 1956, § 24-6-1; P.L. 1967, ch. 214, § 1; P.L. 1975, ch. 74, § 1; P.L. 1988, ch. 667, § 1; P.L. 1992, ch. 55, § 1; P.L. 1992, ch. 298, § 1; P.L. 1996, ch. 210, § 1; P.L. 1997, ch. 326, § 57; P.L. 2007, ch. 260, § 1; P.L. 2007, ch. 366, § 1; P.L. 2009, ch. 33, § 1; P.L. 2009, ch. 73, § 1; P.L. 2014, ch. 46, § 1; P.L. 2014, ch. 52, § 1; P.L. 2021, ch. 194, § 1, effective July 8, 2021; P.L. 2021, ch. 195, § 1, effective July 8, 2021; P.L. 2022, ch. 37, § 1, effective June 8, 2022; P.L. 2022, ch. 38, § 1, effective June 8, 2022; P.L. 2023, ch. 73, § 1, effective June 14, 2023; P.L. 2023, ch. 74, § 1, effective June 14, 2023; P.L. 2023, ch. 358, § 1, effective June 27, 2023; P.L. 2023, ch. 359, § 1, effective June 27, 2023.

§ 24-6-2 Notice to abutting landowners of proposed abandonment. – Every town council, before proceeding to abandon any highway or driftway or any part thereof, shall give notice to the owners of the lands abutting upon any part of the highway or driftway within the town to appear, if they see fit, and be heard for or against the abandonment, and as to the damage, if any, which they will sustain thereby. Notice shall be given by advertisement once a week for three (3) successive weeks next prior to the meeting of the town council at which the abandonment is to be first considered, in some newspaper of general circulation within the city or town printed in English and a further and personal notice shall be served upon every person known to reside within this state who is an owner of land, abutting upon that part of the highway or driftway which it is proposed to abandon.

History of Section.
(P.L. 1903, ch. 1106, § 4; G.L. 1909, ch. 82, § 32; G.L. 1923, ch. 95, § 32; G.L. 1938, ch. 72, § 32; G.L. 1956, § 24-6-2; P.L. 1967, ch. 214, § 2; P.L. 1975, ch. 74, § 1.)

§ 24-6-3 Damages payable to abutting landowners. – The owners of land abutting upon a highway or driftway in any town shall be entitled, upon the abandonment of the highway or driftway, either wholly or in part, to receive compensation from the town for the damages, if any, sustained by them by reason of the abandonment; and the town council, whenever it abandons the whole or any part of a public highway or driftway, shall at the same time appraise and award the damages.

History of Section.
(P.L. 1903, ch. 1106, § 3; G.L. 1909, ch. 82, § 31; G.L. 1923, ch. 95, § 31; G.L. 1938, ch. 72, § 31; G.L. 1956, § 24-6-3.)

§ 24-6-5 Abandonment by non-use. – Notwithstanding the foregoing provisions of this chapter, when a public way of any kind in the town of Glocester has ceased to be used by the public and maintained by the town of Glocester for a period of twenty (20) years or more it shall be deemed abandoned and the abutting landowners shall not be entitled to recover damages against the city or town. Upon such abandonment the abutting landowners shall have a private right of access to their land along the abandoned way.

History of Section.
(P.L. 1990, ch. 511, § 1.)

TITLE 29

LIBRARIES

CHAPTER 2

HISTORICAL SOCIETY LIBRARIES

§ 29-2-1 Appropriations for Rhode Island historical society. – The general assembly shall annually appropriate such a sum as it may deem necessary out of any money in the treasury not otherwise appropriated, to be expended by the state librarian for the purpose of caring for, preserving, and cataloguing the property of the state in the keeping of the Rhode Island historical society, including such historical materials as may from time to time be transferred to the society from the state library collections by the state librarian, and for the purchase and binding of books relating to the history of the state and for copying and preserving the records of the several towns of the state, and the state librarian, with the approval of the secretary of state, may pay this sum to the Rhode Island historical society for this purpose.

History of Section.
(G.L. 1896, ch. 28, § 8; G.L. 1909, ch. 38, § 14; P.L. 1915, ch. 1207, § 1; G.L. 1923, ch. 36, § 17; P.L. 1929, ch. 1374, § 1; P.L. 1929, ch. 1398, § 1; G.L. 1938, ch. 22, § 15; G.L. 1956, § 29-2-1; P.L. 1978, ch. 404, § 2.)

§ 29-2-2 Appropriations for Newport historical society. – The general assembly shall annually appropriate such a sum as it may deem necessary, out of any money in the treasury not otherwise appropriated, to be expended by the state librarian for the purpose of caring for, preserving, and cataloguing the property of the state in the keeping of the Newport historical society, and for the purchase and binding of books relating to the history of the state and for copying and preserving the records of the several towns of the state, and the state librarian, with the approval of the secretary of state, may pay this sum to the Newport historical society for this purpose.

History of Section.
(G.L. 1896, ch. 28, § 8; G.L. 1909, ch. 38, § 14; P.L. 1915, ch. 1207, § 1; G.L. 1923, ch. 36, § 17; P.L. 1929, ch. 1374, § 1; P.L. 1929, ch. 1398, § 1; G.L. 1938, ch. 22, § 15; G.L. 1956, § 29-2-2.)

§ 29-2-2.1. Appropriations for the Rhode Island Black Heritage Society. - The general assembly shall annually appropriate such a sum as it may deem necessary, out of any money in the treasury not otherwise appropriated, to be expended by the state librarian for the purpose of caring for, preserving, and cataloguing the property of the state in the keeping of the Rhode Island Black Heritage Society, and for the purchase and binding of books relating to the history of the state, and for copying and preserving the records of the several towns of the state, and the state librarian, with the approval of the secretary of state, may pay this sum to the Rhode Island Black Heritage Society for this purpose.

History of Section.
P.L. 2023, ch. 144, § 2, effective June 20, 2023; P.L. 2023, ch. 145, § 2, effective June 20, 2023.

§ 29-2-4. Use of historical society libraries. - All books, periodicals, and papers in the keeping of the Rhode Island Historical Society, the Rhode Island Black Heritage Society, and the Newport Historical Society, shall at all reasonable times be open to the use of all the citizens of the state, under the same conditions pertaining to the members of the society as long as funds are provided under §§ 29-2-1, 29-2-2, 29-2-2.1, and 29-2-3.

History of Section.
G.L. 1896, ch. 28, § 10; G.L. 1909, ch. 38, § 16; G.L. 1923, ch. 36, § 19; G.L. 1938, ch. 22, § 17; G.L. 1956, § 29-2-4; P.L. 1978, ch. 404, § 2; P.L. 2023, ch. 144, § 1, effective June 20, 2023; P.L. 2023, ch. 145, § 1, effective June 20, 2023.

CHAPTER 3

STATE LAW LIBRARY

§ 29-3-1 Custody – Use of library materials. – The supreme court shall have the custody of the state law library, and shall be responsible for the care and keeping of it. The state law library shall be open to the public; provided, however, no library materials shall be taken from it, except for the use of the Rhode Island judiciary, the general assembly, officers and employees of the executive branch, and attorneys at law admitted to practice in the courts of this or any other state, but any person may use the books within the library rooms.

History of Section.
(G.L. 1896, ch. 28, § 6; C.P.A. 1905, § 1088; G.L. 1909, ch. 38, § 12; G.L. 1923, ch. 36, § 15; G.L. 1938, ch. 22, § 13; G.L. 1956, § 29-3-1; P.L. 2002, ch. 222, § 1; P.L. 2002, ch. 377, § 1.)

§ 29-3-2 Law librarian – Hours library open. – The supreme court shall appoint a librarian, who shall cause the library to be kept open daily, Sundays and holidays excepted, from nine o'clock in the morning (9:00 a.m.) until five o'clock in the afternoon (5:00 p.m.), except during summer hours of the courts, when it may be closed at four-thirty o'clock in

the afternoon (4:30 p.m.), and on Saturdays, when it may be closed at three o'clock in the afternoon (3:00 p.m.). The state court administrator, in consultation with the chief justice, shall have the authority to change the state law library hours for operational purposes and in the interest of public safety.

History of Section.
(G.L. 1896, ch. 28, § 6; C.P.A. 1905, § 1088; G.L. 1909, ch. 38, § 12; G.L. 1923, ch. 36, § 15; G.L. 1938, ch. 22, § 13; G.L. 1956, § 29-3-2; P.L. 2002, ch. 222, § 1; P.L. 2002, ch. 377, § 1.)

§ 29-3-3 Repealed. –

TITLE 32

PARKS and RECREATIONAL AREAS

CHAPTER 1

GENERAL PROVISIONS

§ 32-1-3. Acquisition of land – Riparian rights – Control of land use.

To more effectually carry out the purposes of this chapter and chapter 2 of this title, the department of environmental management may acquire by purchase, gift, devise, or condemnation, lands, easements, rights, and interests in land for a park, recreation ground, or bathing beach in any part of the state, whether that property is situated in the cities or towns in which its powers may be exercised under the provisions of § 32-2-1, or is situate in any other city or town; provided, that all property other than tide-flowed lands acquired by condemnation shall remain subject to all rights of riparian proprietors on any waters bordering upon the property, that no riparian rights shall be taken, destroyed, impaired, or affected by the condemnation, that all riparian proprietors shall have the right to continue to maintain, repair, or reconstruct dams and their appurtenances now existing on the waters bordering upon that property and for this purpose to enter upon that property, restoring it after repair or reconstruction to its previous condition as nearly as may be, and shall continue to enjoy the same rights of flowage with respect to that property that the riparian proprietors have heretofore used and enjoyed. Subject to the foregoing provisions of this section, the department may use, or permit the use of, property, acquired by it under the provisions of this section and the waters bordering thereon, for bathing, boating, fishing, and skating, and shall have the same authority, supervision, and control over that property as it has over other property acquired by the department under other provisions of this chapter or any other law.

History of Section.
(G.L., ch. 279, § 15; P.L. 1927, ch. 1031, § 1; G.L. 1938, ch. 220, § 14; impl. am. P.L. 1952, ch. 2973, § 2; G.L. 1956, § 32-1-3; P.L. 2016, ch. 511, art. 2, § 52.)

§ 32-1-4 Procedure for condemnation of land. – For the purpose of acquiring by condemnation any of the lands, estates, and interests therein authorized to be taken by § 32-1-3, the director of the department of environmental management shall have the powers conferred, and be subject to the duties imposed, upon towns taking property under the provisions of chapter 15 of title 39, so far as those powers and duties are consistent with the provisions of § 32-1-3 and appropriate for the purposes thereof. A description, plat, and statement of any land or any estate or interest therein taken as described in § 32-1-3 shall be

signed by the director of the department and filed in the records of land evidence as required by chapter 15 of title 39 with respect to takings thereunder, and the owner of any land, estate, or interest therein taken under the authority of § 32-1-3 shall have the same right of petition and of jury trial thereon and all other rights given or secured to owners of property taken under chapter 15 of title 39.

History of Section.
(G.L. 1923, ch. 279, § 16; P.L. 1927, ch. 1031, § 1; G.L. 1938, ch. 220, § 15; impl. am. P.L. 1952, ch. 2973, § 2; G.L. 1956, § 32-1-4.)

§ 32-1-5.1 John L. Curran state park – Prohibition of development. – John L. Curran state park, comprised of two hundred sixty three (263) acres, more or less, located within the city of Cranston, shall not at any time be commercially developed or in any way modified from its current undeveloped state; nor shall the land be used for any purpose other than passive outdoor recreation; nor shall the land be sold, leased, or otherwise conveyed or transferred except that short term leasing of one year or less may be allowed provided such lease does not allow or at any time result in the development of the land or in any way alter the land's current undeveloped state. The land shall be designated "open space" within the meaning of § 45-36-1. For purposes of this section, "passive outdoor recreation" shall mean the use of land for natural areas, nature trails, forests, wetlands and marsh lands preservation, wildlife habitat, hunting, fishing, boating, swimming, picnicing, gardening, and scenic preservation.

History of Section.
(P.L. 1999, ch. 271, § 1.)

§ 32-1-10 Employees – Records – Annual report. – The director of environmental management shall determine the duties of all employees, remove them in the manner provided by chapter 4 of title 36, and make all reasonable rules and regulations concerning them. The maps, plans, documents, records, books, papers, and accounts of the department shall be subject to public inspection at such times as the director may determine. The director shall make an annual report to the general assembly together with a full statement of the receipts and disbursements of the division of parks and recreation.

History of Section.
(P.L. 1907, ch. 1466, § 2; G.L. 1909, ch. 238, § 2; G.L. 1923, ch. 279, § 3; P.L. 1926, ch. 824, § 1; P.L. 1929, ch. 1357, § 1; G.L. 1938, ch. 220, § 3; impl. am. P.L. 1952, ch. 2973, § 2; impl. am. P.L. 1952, ch. 2975, § 17; G.L. 1956, § 32-1-10.)

TITLE 33

PROBATE PRACTICE and PROCEDURE

CHAPTER 1

RULES of DESCENT

§ 33-1-1. Real estate descending by intestacy to children or descendants, parents, or brothers and sisters.

Whenever any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in equal portions to his or her kindred, in the following course:

(1) First to the intestate's children or their descendants, if there are any.

(2) Second, if there be no children nor their descendants, then to the intestate's parents in equal shares, or to the surviving parent.

(3) Third, if there is no parent, then to the intestate's brothers and sisters, and their descendants.

History of Section.
(C.P.A. 1905, § 933; G.L. 1909, ch. 316, § 1; P.L. 1913, ch. 924, § 1; G.L. 1923, ch. 367, § 1; G.L. 1938, ch. 567, § 1; P.L. 1943, ch. 1283, § 2; G.L. 1956, § 33-1-1; P.L. 2014, ch. 260, § 1; P.L. 2014, ch. 312, § 1.)

§ 33-1-2. Descent of real estate to paternal or maternal kindred.

If the intestate has no surviving parent, nor brother, nor sister, nor their descendants, the inheritance shall go in equal moieties to the intestate's paternal and maternal kindred, each in the following course:

(1) First to the grandparents, in equal shares, if any there be.

(2) Second, if there be no grandparent, then to the uncles and aunts, or their descendants by representation, or such of them as there be.

(3) Third, if there be no grandparent, nor uncle, nor aunt, nor their descendants, then to the great grandparents in equal shares, if any there be.

(4) Fourth, if there be no great grandparent, then to the great uncles and great aunts or their descendants by representation, or such of them as there be; and so on, in other cases, without end, passing to the nearest lineal ancestors and their descendants or such of them as there be.

History of Section.
(C.P.A. 1905, § 934; G.L. 1909, ch. 316, § 2; P.L. 1913, ch. 924, § 2; G.L. 1923, ch. 367, § 2; G.L. 1938, ch. 567, § 2; G.L. 1956, § 33-1-2; P.L. 2014, ch. 260, § 1; P.L. 2014, ch. 312, § 1.)

§ 33-1-3. Descent when no paternal or maternal kindred survive.

When in this chapter the inheritance is directed to go by moieties to the intestate's paternal and maternal kindred, if there are no such kindred on the one part, the whole shall go to the other part; and if there are no kindred either on the one part or the other the whole shall go to the intestate's surviving spouse or if the spouse did not survive the intestate, it shall go to the spouse's kindred in the like course as if he or she had survived the intestate and then died entitled to the estate.

History of Section.
C.P.A. 1905, § 936; G.L. 1909, ch. 316, § 4; P.L. 1919, ch. 1787, § 7; G.L. 1923, ch. 367, § 4; G.L. 1938, ch. 567, § 4; P.L. 1944, ch. 1421, § 1; G.L. 1956, § 33-1-3; P.L. 2014, ch. 260, § 1; P.L. 2014, ch. 312, § 1.

§ 33-1-4 Descent to persons not in being or not capable to take as heirs. – No right in the inheritance shall accrue to any persons whatsoever other than to the children of the intestate, unless such persons are in being and capable in law to take as heirs at the time of the intestate's death.

History of Section.
(C.P.A. 1905, § 935; G.L. 1909, ch. 316, § 3; G.L. 1923, ch. 367, § 3; G.L. 1938, ch. 567, § 3; G.L. 1956, § 33-1-4.)

§ 33-1-5. Life estate descending to spouse.

Whenever the intestate dies and leaves a surviving spouse, the real estate of the intestate shall descend and pass to the surviving spouse for his or her natural life. The provisions of §§ 33-1-1 and 33-1-2 shall be subject to the provisions of this section and § 33-1-6.

History of Section.
(G.L., ch. 316, § 4, as enacted by P.L. 1919, ch. 1787, § 7; G.L. 1923, ch. 367, § 4; G.L. 1938, ch. 567, § 4; P.L. 1944, ch. 1421, § 1; G.L. 1956, § 33-1-5; P.L. 2014, ch. 260, § 1; P.L. 2014, ch. 312, § 1.)

CHAPTER 3

DIVISION of REAL ESTATE

§ 33-3-1 Power of probate court – Application for division. – After payment of the debts, charges, and expenses of settling the estate of any person dying intestate, the probate court which granted administration on the estate may divide the real estate of which such intestate died seised, among the parties entitled thereto, in the proportion by law prescribed, whenever application in writing shall be made to it for such purpose by all the parties setting forth and particularly describing each parcel of the real estate.

History of Section.
(C.P.A. 1905, § 942; G.L. 1909, ch. 316, § 10; G.L. 1923, ch. 367, § 10; G.L. 1938, ch. 567, § 10; G.L. 1956, § 33-3-1.)

§ 33-3-6 Division of property by commissioners. – The commissioners shall proceed, as soon as may be after receiving their warrant, to execute the duties required of them by virtue thereof and divide the real estate in the manner and proportions prescribed in the decree recited in the warrant.

History of Section.
(C.P.A. 1905, § 946; G.L. 1909, ch. 316, § 14; G.L. 1923, ch. 367, § 14; G.L. 1938, ch. 567, § 14; G.L. 1956, § 33-3-6.)

§ 33-3-7 Assignment of shares by lot or agreement. – If the share of any of the parties shall be less than the share of each of the other parties, and the shares of those other parties be equal, in such case the commissioners shall set off the smaller share to such party and assign the other shares by lot; and the assignment shall also be by lot if all the shares be equal; provided, that if all the parties be sui juris the assignment may be made by agreement among themselves.

History of Section.
(C.P.A. 1905, § 947; G.L. 1909, ch. 316, § 15; G.L. 1923, ch. 367, § 15; G.L. 1938, ch. 567, § 15; G.L. 1956, § 33-3-7.)

§ 33-3-8 Commissioners' report. – The commissioners shall make report of all their proceedings under the warrant to the probate court that appointed them; which report shall be passed upon by the court after notice, and, if finally established, shall be recorded in the records of land evidence in the several towns or cities wherein any of the lands lie.

History of Section.
(C.P.A. 1905, § 948; G.L. 1909, ch. 316, § 16; G.L. 1923, ch. 367, § 16; G.L. 1938, ch. 567, § 16; G.L. 1956, § 33-3-8.)

§ 33-3-10 Real estate not disposed of by will. – Whenever any person shall die leaving a last will and testament duly executed, and shall at the time of his or her decease be seised of any real estate not disposed of by the will, the estate shall be divided among the heirs at law of the deceased in the same manner as though he or she had left no will.

History of Section.
(C.P.A. 1905, § 950; G.L. 1909, ch. 316, § 18; G.L. 1923, ch. 367, § 18; G.L. 1938, ch. 567, § 18; G.L. 1956, § 33-3-10.)

§ 33-3-11 Division of real estate devised in common. – Real estate held in common by devise may be divided, according to the respective rights of the parties entitled to such real estate, in the manner and form prescribed in this chapter for the division of intestate estates, and the like proceedings shall be had for effecting and confirming the same; provided, that the interest of surviving spouse shall be subject to distribution in accordance with §§ 33-25-1 – 33-25-6.

History of Section.
(C.P.A. 1905, § 951; G.L. 1909, ch. 316, § 19; G.L. 1923, ch. 367, § 19; G.L. 1938, ch. 567, § 19; G.L. 1956, § 33-3-11.)

§ 33-3-12 Division of remainder in property. – Any part of the real estate of any testator or intestate as shall be assigned to his widow pursuant to § 33-1-6 shall, after her death, be divided among the devisees, or heirs at law, of the deceased, in the same manner as the real estate would have been divided in case it had not been assigned pursuant to § 33-1-6.

History of Section.
(C.P.A. 1905, § 952; G.L. 1909, ch. 316, § 20; G.L. 1923, ch. 367, § 20; G.L. 1938, ch. 567, § 20; G.L. 1956, § 33-3-12; P.L. 1995, ch. 323, § 23.)

§ 33-3-13 Payment of expenses of division on appeal to superior court. – Whenever partition or division shall be made by any probate court, and there shall be an appeal to the superior court, and any one or more of the interested parties shall neglect or refuse to pay their just proportion of the expense of such division, the probate court which ordered such division may issue a warrant of distress against such delinquent; provided, that an account of such expense be first laid before such probate court, and the just proportions of the persons interested be settled and allowed, they having been duly notified to be present at such settlement and allowance.

History of Section.
(C.P.A. 1905, § 953; G.L. 1909, ch. 316, § 21; G.L. 1923, ch. 367, § 21; G.L. 1938, ch. 567, § 21; G.L. 1956, § 33-3-13.)

§ 33-3-14 Certificate of descent. – Prior to acceptance by the probate court of the final account or affidavit of complete administration, the fiduciary shall submit to the probate court an affidavit of no real property or a duly recorded certificate of descent which shall contain the name and place of residence of each person to whom the real property, or any portion thereof or interest therein is distributed, set out, or divided or descends, or a particular description of the estate, portion, or interest distributed, set out, or divided or descending to each person. Said certificate of descent shall be signed by the fiduciary.

History of Section.
(P.L. 2001, ch. 296, § 1; P.L. 2006, ch. 589, § 1.)

CHAPTER 4

DOWER AND JOINTURE

§ 33-4-1 – 33-4-34. Repealed..

CHAPTER 19

REAL PROPERTY of DECEDENTS and INCOMPETENTS

§ 33-19-3 Authority to sell real estate. – The probate court which issued letters testamentary, of administration, guardianship, or conservatorship may grant authority to an executor or administrator to sell the real estate of a deceased person, or to a guardian or conservator to sell the real estate of his or her ward, for cash or on credit, upon a petition filed describing the particular estate to be sold and setting forth the facts on which the petition is founded.

History of Section.
(C.P.A. 1905, § 738; G.L. 1909, ch. 308, § 5; G.L. 1923, ch. 359, § 5; G.L. 1938, ch. 570, § 5; G.L. 1956, § 33-19-3; P.L. 1983, ch. 204, § 3.)

§ 33-19-13 Laying out of roads and platting of land. – Probate courts shall also have the power to grant petitions of executors, administrators, or guardians for leave to lay out, make, or dedicate highways, streets, or gangways upon lands of the deceased or ward, and to plat those lands into house lots, with streets, gangways, or open spaces: (1) in the case of executors or administrators, as preliminary to the sales of lands of the deceased, and (2) in the case of guardians, either as preliminary to the sale or as beneficial to the estate of the ward; provided, that no petition shall be granted except upon notice, as the court may require, and upon proof that the action will be beneficial to the estate.

History of Section.
(C.P.A. 1905, § 741; G.L. 1909, ch. 308, § 8; G.L. 1923, ch. 359, § 8; G.L. 1938, ch. 570, § 8; G.L. 1956, § 33-19-13.)

CHAPTER 21

UNCLAIMED PROPERTY

§ 33-21-1 Town taking possession of property. – Whenever any person shall die leaving any real estate within this state, and shall leave no heir or legal representative to claim the real estate, the town council of the town in which the real estate is located may direct the town treasurer of the town to take the property into his or her possession for the use of the town until the heir or other legal representative of the deceased shall call for the real estate, to whom the real estate shall be delivered on being claimed and evidence of the right or title of the claimant shown; and the town shall in that case account with the claimant for the real estate, but not including any income or interest received from the real estate.

History of Section.
(C.P.A. 1905, § 956; G.L. 1909, ch. 317, § 1; G.L. 1923, ch. 368, § 1; G.L. 1938, ch. 582, § 1; G.L. 1956, § 33-21-1; P.L. 1961, ch. 195, § 1.)

TITLE 34

PROPERTY

CHAPTER 1

CONFIRMATION of LEGISLATIVE GRANTS

§ 34-1-1 Perpetuation of colonial acts quieting title. – The act entitled "An Act Confirming the Grants Heretofore Made by the Inhabitants of the Towns of Newport, Providence, Portsmouth, Warwick and Westerly", passed in May, 1682, and the act entitled "An Act Quieting Possessions and Establishing Title of Land Within the Towns of Bristol, Tiverton, Little Compton, Warren and Cumberland", passed in January, 1746, are hereby continued in force as perpetual statutes.

History of Section.
(G.L. 1896, ch. 204, § 1; G.L. 1909, ch. 255, § 1; G.L. 1923, ch. 299, § 1; G.L. 1938, ch. 441, § 1; G.L. 1956, § 34-1-1.)

§ 34-1-2 Confirmation of legislative conveyances generally. – Whereas, at the first settling of this state, and for sundry years afterwards, lands were of little or no value, and skillful men in the law were much wanted, whereby many deeds, grants, and conveyances were weakly made, which may occasion great contests in law if not timely prevented; therefore, all grants, charters and conveyances previously made by the general assembly unto any town, corporation, community or propriety, or to any other person or persons whomsoever, shall be and hereby are ratified and confirmed as good and effectual, to all intents and purposes in law, for conveying all such lands, tenements, hereditaments, rights, privileges and profits as are therein mentioned, to the towns, corporations, communities, proprieties, person, or persons, and to their respective successors, heirs, and assigns forever.

History of Section.
(G.L. 1896, ch. 205, § 1; G.L. 1909, ch. 256, § 1; G.L. 1923, ch. 300, § 1; G.L. 1938, ch. 438, § 1; G.L. 1956, § 34-1-2.)

CHAPTER 3

TENANCY in COMMON

§ 34-3-1 Tenancy in common presumed in conveyances. – All gifts, feoffments, grants, conveyances, devises or legacies, of real or personal estate, which shall be made to two (2) or more persons, whether they be husband and wife or otherwise, shall be deemed to create a tenancy in common and not a joint tenancy, unless it be declared that the tenancy is to be joint, or that the conveyance is to those persons and the survivors or survivor of them, or to them as trustees or executors, or unless the intention manifestly appears that the persons shall take as joint tenants and not as tenants in common.

History of Section.
(G.L. 1896, ch. 201, § 1; G.L. 1909, ch. 252, § 1; G.L. 1923, ch. 296, § 1; G.L. 1938, ch. 431, § 1; G.L. 1956, § 34-3-1.)

§ 34-3-2 Joint heirs. – Joint heirs shall be deemed tenants in common.

History of Section.
(G.L. 1896, ch. 201, § 2; G.L. 1909, ch. 252, § 2; G.L. 1923, ch. 296, § 2; G.L. 1938, ch. 431, § 2; G.L. 1956, § 34-3-2.)

§ 34-3-3 Proprietors of common and undivided lands. – Whereas, there is still remaining within several of the towns of this state, lands belonging to the original proprietors of the land, lying common or undivided, for the better government of the proprietors, the management of their prudential affairs, the more just and equal division of the lands and the allotments and preservation of the boundaries of the lands; it shall be lawful for the proprietors of the several towns within this state, being convened by warrant specifying the occasion for convening, under the hand and seal of a justice of the peace of the town, to choose a clerk, a surveyor or surveyors, and such other officers as they shall judge necessary for the orderly carrying on and management of their affairs, and in like manner to proceed from time to time as shall be necessary.

History of Section.
(G.L. 1896, ch. 190, § 1; G.L. 1909, ch. 55, § 1; G.L. 1923, ch. 56, § 1; G.L. 1938, ch. 341, § 1; G.L. 1956, § 34-3-3.)

CHAPTER 4

ESTATES in REAL PROPERTY

§ 34-4-2 Grant for life with remainder to heirs in fee. – When lands are conveyed by deed or devised by will hereafter executed, to a person for his or her life, and after his or her death to his or her heirs in fee, or by words to that legal effect, the conveyance or devise shall be construed to vest an estate for life only in the first taker and a remainder in fee simple in his or her heirs.

History of Section.
(G.L. 1896, ch. 201, § 6; G.L. 1909, ch. 252, § 6; G.L. 1923, ch. 296, § 6; G.L. 1938, ch. 433, § 2; G.L. 1956, § 34-4-2.)

§ 34-4-21. Limitation of restrictive covenants.

If a covenant or restriction concerning the use of land, other than housing restrictions as set forth in § 34-39.1-3, and conservation restrictions and preservation restrictions as set forth in §§ 34-39-3 and 34-39-4, is created by any instrument taking effect after May 11, 1953, the covenant or restriction, if unlimited in time in the instrument, shall cease to be valid and operative thirty (30) years after the execution of the instrument creating it; provided, however, that the terms of this section shall not apply to any covenants and/or restrictions initially created by the Commerce Oil Refining Corporation with respect to land in the town of Jamestown.

History of Section.
(G.L. 1938, ch. 435, § 23; P.L. 1953, ch. 3213, § 1; G.L. 1956, § 34-4-21; P.L. 2006, ch. 368, § 1; P.L. 2006, ch. 464, § 1; P.L. 2008, ch. 271, § 1; P.L. 2008, ch. 418, § 1.)

CHAPTER 7

By POSSESSION and PRESCRIPTION

§ 34-7-1 Conclusive title by peaceful possession under claim of title. – Where any person or persons, or others from whom he, she, or they derive their title, either by themselves, tenants or lessees, shall have been for the space of ten (10) years in the uninterrupted, quiet, peaceful and actual seisin and possession of any lands, tenements or hereditaments for and during that time, claiming the same as his, her or their proper, sole and rightful estate in fee simple, the actual seisin and possession shall be allowed to give and make a good and rightful title to the person or persons, their heirs and assigns forever; and any plaintiff suing for the recovery of any such lands may rely upon the possession as conclusive title thereto, and this chapter being pleaded in bar to any action that shall be brought for the lands, tenements or hereditaments, and the actual seisin and possession being duly proved, shall be allowed to be good, valid and effectual in law for barring the action.

History of Section.
(G.L. 1896, ch. 205, § 2; G.L. 1909, ch. 256, § 2; P.L. 1912, ch. 798, § 1; G.L. 1923, ch. 300, § 2; G.L. 1938, ch. 438, § 2; G.L. 1956, § 34-7-1.)

NOTES TO DECISIONS

1. Dedicated property.

Title to land previously dedicated or given for a charitable use to a portion of the public may be acquired by adverse possession. Wowry v Providence (1871), 10 RI 52.

Title to land offered but not accepted for a highway could be obtained by adverse possession. Parrillo v Riccitelli (1956), 84 RI 276, 123 A.2d 248.

Where complainants show by clear and positive evidence that they under a claim of rights have used a roadway openly, adversely and continuously for more than 20 years, they have acquired an easement by prescription. Carpenter v Dos Santos (1963), 96 RI 334, 191 A.2d 282.

10. Disputed Boundary.

Adjoining landowners cannot dispute a boundary line which has been recognized and

acquiesced in by them for the length of time prescribed by this section. O'Donnell v Penney (1890), 17 RI 164, 20 A 305.

Existence of fence between adjacent landowners for more than ten years did not establish adverse possession where right to occupy such land had not been claimed continuously for more than ten years. Ungaro v Mete (1942), 68 RI 419, 27 A 2d 826.

Defendant who entered on premises under a deed describing premises including disputed strip and who claimed possession of all of the premises including disputed strip was not restricted in her claim to that portion actually occupied. Daniels v Blake (1953), 81 RI 103, 99 A 2d 7.

11. Title Limited by possession.

Landowner claiming an easement for a driveway was entitled to an easement over only that portion of the adjoining lot which he or she had used adversely. Foley v Lyons (1956), 85 RI 86, 125 A 2d 247.

§ 34-7-3 Easement of light and air denied. – Whoever has erected or may erect any house or other building near the land of another person, with windows overlooking the land, shall not, by mere continuance of the windows, acquire any easement of light or air so as to prevent the erection of any building thereon.

History of Section.
(G.L. 1896, ch. 205, § 4; G.L. 1909, ch. 256, § 4; G.L. 1923, ch. 300, § 4; G.L. 1938, ch. 438, § 4; G.L. 1956, § 34-7-3.)

§ 34-7-4 Right of footway denied. – No right of footway, except claimed in connection with a right to pass with carriages, shall be acquired by prescription or adverse use for any length of time.

History of Section.
(G.L. 1896, ch. 205, § 5; G.L. 1909, ch. 256, § 5; G.L. 1923, ch. 300, § 5; G.L. 1938, ch. 438, § 5; G.L. 1956, § 34-7-4.)

NOTES TO DECISIONS

Right of public way over strip of land could not be established by occasional use of strip by foot passers. Daniels V Slake (1953), 81 RI 103, 99 A 2d 7.

§ 34-7-5 Utility rights-of-way not acquired by enjoyment. – No enjoyment by any persons, companies or corporations, for any length of time, of the privilege of maintaining telegraph, telephone, electric, or other posts, wires or apparatus in, upon or over any lands or buildings of other persons or corporations, shall thereby confer any right to the continued enjoyment of the easement or raise any presumption of a grant thereof.

History of Section.
(G.L. 1896, ch. 205, § 9; G.L. 1909, ch. 256, § 9; G.L. 1923, ch. 300, § 9; G.L. 1938, ch. 438, § 9; G.L. 1956, § 34-7-5.)

§ 34-7-6 Notice of intent to dispute interrupting adverse possession. – Whenever the legal owner of any lands anticipates that any other person or persons may obtain the title to those lands, or any way, easement or privilege therein, by possession under the provisions of this chapter, he or she may give notice in writing to the person claiming or using the lands, way, easement, or privilege, of his or her intention to dispute any right arising from that claim or use; and the notice, served and recorded as hereinafter provided, shall be deemed an interruption of the use and prevent the acquiring of any right thereto by the continuance of the use for any length of time thereafter. The notice, signed by the owner of the lands, his guardian or agent, may be served by any disinterested person, making return under oath, on the party so claiming or using the property, his or her agent or guardian, if within this state, otherwise, on the tenant or occupant, if there be any; and the notice, with the return thereon, shall be recorded within three (3) months thereafter in the records of land evidence in the town in which the land is situated, and a copy of the record, certified by the recording officer to be a true copy of the record of the notice, and the return thereon, shall be evidence of the notice and of the service of the same.

History of Section.
(G.L. 1896, ch. 205, § 6; G.L. 1909, ch. 256, § 6; G.L. 1923, ch. 300, § 6; G.L. 1938, ch. 438, § 6; G.L. 1956, § 34-7-6.)

§ 34-7-7 Action by claimant in possession after notice of intent to dispute. – Whenever notice is given to prevent the acquisition of lands or way, privilege or other easement, the notice shall be considered so far a disturbance of the right or claim as to enable the party claiming to bring an action for disturbing the same, in order to try the right; and if the plaintiff in the suit prevails, he or she shall recover full costs.

History of Section.
(G.L. 1896, ch. 205, § 7; G.L. 1909, ch. 256, § 7; G.L. 1923, ch. 300, § 7; G.L. 1938, ch. 438, § 7; G.L. 1956, § 34-7-7.)

§ 34-7-8 Shore rights preserved – Prospective applicability. – Nothing herein contained shall affect any rights of the shore to which the people of this state are now entitled under the charter, the constitution or by the law, or be construed to apply to any

preceding action.

History of Section.
(G.L. 1896, ch. 205, § 8; G.L. 1909, ch. 256, § 8; G.L. 1923, ch. 300, § 8; G.L. 1938, ch. 438, § 8; G.L. 1956, § 34-7-8.)

§ 34-7-9 Land preserved for open space, conservation or cemetery purposes. – Any land held or preserved by a nonprofit corporation or nonprofit association for purposes of conservation, open space, or a cemetery is not subject to adverse possession or prescription.

History of Section.
(P.L. 2008, ch. 63, § 1; P.L. 2008, ch. 67, § 1; P.L. 2012, ch. 277, § 1; P.L. 2012, ch. 288, § 1.)

CHAPTER 8
RHODE ISLAND COORDINATE SYSTEM

§ 34-8-1 Adoption of ocean and geodetic survey systems. – The two (2) systems of plane coordinates which have been established by the national ocean/national geodetic survey, or its successors, for defining and stating the geographic positions or locations of points on the surface of the earth within the state are hereafter to be known and designated as the "Rhode Island coordinate system of 1927" and the "Rhode Island coordinate system of 1983".

History of Section.
(P.L. 1945, ch. 1653, § 1; G.L. 1956, § 34-8-1; P.L. 1983, ch. 241, § 1.)

§ 34-8-2 Use of term in documents. – The use of the term "Rhode Island coordinate system of 1927" or "Rhode Island coordinate system of 1983" on any map, report of survey, or other document, shall be limited to coordinates based on the Rhode Island coordinate system as defined in this chapter.

History of Section.
(P.L. 1945, ch. 1653, § 5; G.L. 1956, § 34-8-2; P.L. 1983, ch. 241, § 1.)

§ 34-8-3 Location of point by coordinates. – The plane coordinate values for a point on the earth's surface, to be used to express the geographic position or location of such point on the Rhode Island coordinate system, shall consist of two (2) distances, expressed in U. S. survey feet and decimals of a survey foot when using the Rhode Island coordinate system of 1927, and expressed in meters and decimals of a meter when using the Rhode Island coordinate system of 1983. One of these distances, to be known as the "x-coordinate", shall give the position in an east and west direction; the other, to be known as the "y-coordinate", shall give the position in a north and south direction. These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey or its successors, and whose plane coordinates have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either Rhode Island coordinate system set forth in § 34-8-1 of this chapter.

History of Section.
(P.L. 1945, ch. 1653, § 2; G.L. 1956, § 34-8-3; P.L. 1983, ch. 241, § 1.)

§ 34-8-4 Technical definition of systems – Origin of coordinates. – (a) For purposes of more precisely defining the Rhode Island coordinate system of 1927, the following definition by the national ocean survey/national geodetic survey is adopted:

The Rhode Island coordinate system of 1927 is a transverse Mercator projection of the Clarke spheroid of 1866, having a central meridian 71° 30' west of Greenwich, on which meridian the scale is set at one part in one hundred sixty thousand (160,000) too small. The origin of coordinates is at the intersection of the meridian 71° 30' west of Greenwich and the parallel 41° 05' north latitude. This origin is given the coordinates: x = 500,000 feet and y = 0 feet.

(b) For the purposes of more precisely defining the Rhode Island coordinate system of 1983, the following definition by the national ocean survey/national geodetic survey is adopted:

The Rhode Island coordinate system of 1983 is a transverse Mercator projection of the North American datum of 1983 having a central meridian 71° 30' west of Greenwich, on which meridian the scale is set at one part in one hundred sixty thousand (160,000) too small. The origin of coordinates is at the intersection of the meridian 71° 30' west of Greenwich and the parallel 41° 05' north latitude. This origin is given the coordinates: x = 100,000 meters, and y = 100,000 meters, and y = 0 meters.

History of Section.
(P.L. 1945, ch. 1653, § 3; G.L. 1956, § 34-8-4; P.L. 1983, ch. 241, § 1.)

34-8-5. [Repealed.]

§ 34-8-6 Proximity to established station required for use of coordinates in public records. – No coordinates based on either Rhode Island coordinate system, purporting to define the position of a point on land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one kilometer of a monumented horizontal control station and unless minimum THIRD ORDER – class II procedures are used in conformity with the standards of accuracy and specifications prepared and published by the federal geodetic control committee established in conformity with the standards of accuracy and specifications for first – or second-order geodetic surveying as prepared and published by the federal geodetic control committee (FGCC) of the United States department of commerce. Standards and specifications of the FGCC or its successor in force on date of the survey shall apply. The publishing of the existing control stations, or the acceptance with intent to publish the newly established control stations, by the national ocean survey/national geodetic survey will constitute evidence of adherence to the FGCC specifications. Above limitations may be modified by the Rhode Island department of transportation land surveying section to meet local conditions.

History of Section.
(P.L. 1945, ch. 1653, § 4; G.L. 1956, § 34-8-6; P.L. 1983, ch. 241, § 1.)

§ 34-8-7 Reliance on system not required – Describing location of survey system or land boundary corner. – (a) Nothing contained in this chapter shall require any purchaser

or mortgagee of real property to rely wholly on a land description, any part of which depends exclusively upon either Rhode Island coordinate system.

(b) For purposes of describing the location of any survey station or land boundary corner in the state it shall be considered a complete, legal, and satisfactory description of such location to give the position of the survey station or land boundary corner on the system of plane coordinates defined in this chapter.

History of Section.
(P.L. 1945, ch. 1653, § 6; G.L. 1956, § 34-8-7; P.L. 1983, ch. 241, § 1.)

§ 34-8-8 Severability. – If any provision of this chapter shall be declared invalid such invalidity shall not affect any other portion of this chapter which can be given effect without the invalid provision, and to this end the provisions of this chapter are declared to be severable.

History of Section.
(P.L. 1945, ch. 1653, § 7; G.L. 1956, § 34-8-8.)

§ 34-8-9 Use of coordinate systems. – The Rhode Island coordinate system of 1927 may be used up to and including December 31, 1989, but shall not be used thereafter. The Rhode Island coordinate system of 1983 may be used up to and including December 31, 1989, and shall be the exclusive Rhode Island coordinate system thereafter.

History of Section.
(P.L. 1983, ch. 241, § 3.)

§ 34-8-10 Meter-to-foot conversion. – For purposes of this chapter, and for purposes of conversion between the two (2) systems set forth in § 34-8-1 of this chapter, one meter equals 3.2808- 1/3 survey feet.

History of Section.
(P.L. 1983, ch. 241, § 3.)

CHAPTER 9

BOUNDARY LINE DETERMINATION

§ 34-9-1 Petition for determination of boundaries covered by tidewater. – Any person having any interest in land bordering on public tidewater, whenever a harbor line shall have been confirmed and established in front of or adjacent to the land, may apply by petition to the supreme court for the settlement and determination of the lines and boundaries of his interest and of the interests of all others in the land covered by public tidewater within such harbor line.

History of Section.
(G.L. 1896, ch. 266, § 1; C.P.A. 1905, § 1166; G.L. 1909, ch. 331, § 1; G.L. 1923, ch. 382, § 1; G.L. 1938, ch. 593, § 1; G.L. 1956, § 34-9-1.)

Maintenance of Private Easements and Rights-Of-Way

§ 34-9.1-1. Definitions.

As used in this chapter:

(1) "Benefited property" or "property that benefits" means and includes residential real property enjoying the use of an easement or right-of-way;

(2) "Burdened property" means and includes residential real property over which the easement runs;

(3) "Easement" or "right-of-way" means a private appurtenant easement or right-of-way; and

(4) "Residential real property" means one- to four-family (4) residential real estate located in this state, but does not include property owned by the state or any political subdivision thereof.

History of Section.
(P.L. 2018, ch. 142, § 1; P.L. 2018, ch. 241, § 1.)

§ 34-9.1-2. Maintenance of private easement and rights-of-way.

(a) In the absence of an enforceable, written agreement to the contrary, the owner of any residential real property that benefits from an easement or right-of-way, the purpose of

which is to provide access to the residential real property, shall be responsible for the cost of maintaining the easement or right-of-way in good repair and the cost of repairing or restoring any damaged portion of the easement or right-of-way. The maintenance shall include, but not be limited to, the removal of snow from the easement or right-of-way.

(b) In the absence of an enforceable, written agreement, the cost of maintaining and repairing or restoring the easement or right-of-way shall be shared by each owner of a benefited property in proportion to the benefit received by each property; provided, that the market value or assessed valuation of each such property shall not be taken into consideration in the calculation of benefit received.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, any owner of a benefited property or any owner of a burdened property who directly or indirectly damages any portion of the easement or right-of way shall be solely responsible for repairing or restoring the portion damaged by that owner.

(d) If any owner of a benefited or burdened property refuses to repair or restore a damaged portion of an easement or right-of-way in accordance with this section, or fails, after a demand in writing, to pay the owner's proportion of the cost of maintaining or repairing or restoring the easement or right-of-way in accordance with subsection (b), an action for specific performance or contribution may be brought in the superior court against the owner by other owners of benefited or burdened properties, either jointly or severally.

(e) In the event of any conflict between the provisions of this section and an agreement described in subsections (a) or (b) of this section, the terms of the agreement shall control.

History of Section.
(P.L. 2018, ch. 142, § 1; P.L. 2018, ch. 241, § 1.)

§ 34-9-2 Appointment of commissioners – Report – Recording. – Upon such petition the court may appoint three (3) commissioners to make a survey of the land within and adjacent to the harbor line, covering the area of land as the commissioners may deem necessary, to include the interests of all persons whose rights may be affected by the determination of the lines; and the commissioners, being first sworn to a faithful discharge of their duties, shall determine the boundary lines of the interests of all the persons whose rights may be affected by the determination of the lines, and shall report to the court the boundaries so established, with a plat of the land, within and adjacent to the harbor line, showing the lines established for each person having an interest therein, which plat, after its approval by the court, shall by order of the court be recorded in the records of land evidence in the town where such land lies and in the office of the director of environmental management.

History of Section.
(G.L. 1896, ch. 266, § 2; G.L. 1909, ch. 331, § 2; G.L. 1923, ch. 382, § 2; G.L. 1938, ch. 593, § 2; G.L. 1956, § 34-9-2.)

§ 34-9-3 Notice and hearing by commissioners – Effect of report. – Before proceeding to make a survey and to establish the lines according to § 34-9-2, the commissioners shall notify all persons whose rights may be affected by the determination of the lines, in the manner as the court shall direct, to appear at a time and place named to be heard in relation to the survey. The report and plan of the commissioners, when approved by the court and recorded as provided in § 34-9-2, shall forever fix and determine the rights of all persons and parties, except when definite boundary lines have been established by parties legally authorized so to do.

History of Section.
(G.L. 1896, ch. 266, § 3; G.L. 1909, ch. 331, § 3; G.L. 1923, ch. 382, § 3; G.L. 1938, ch. 593, § 3; G.L. 1956, § 34-9-3.)

§ 34-9-6 Persons acquiring title during proceedings. – Any person who shall acquire, during the pendency of such proceedings, an interest in, or title to, any lands covered by public tidewater within such harbor line, which are the subject matter of such proceedings, may, by order of the court, be made a party to such proceedings, and chargeable with a share of the costs and expenses thereof, in such manner and to such extent as the court may prescribe.

History of Section.
(G.L. 1896, ch. 266, § 6; G.L. 1909, ch. 331, § 6; G.L. 1923, ch. 382, § 6; G.L. 1938, ch. 593, § 6; G.L. 1956, § 34-9-6.)

§ 34-9-7 State interest unaffected. – No proceedings under the provisions of this chapter shall affect any right or title of the state to any lands, unless it consents to become a party to the proceedings.

History of Section.
(G.L. 1896, ch. 266, § 7; G.L. 1909, ch. 331, § 7; G.L. 1923, ch. 382, § 7; G.L. 1938, ch. 593, § 7; G.L. 1956, § 34-9-7.)

CHAPTER 10

FENCES

§ 34-10-1 Lawful fences defined. – The following fences shall be adjudged to be lawful fences:

(1) A hedge with a ditch shall be three feet (3') high upon the bank of the ditch, well staked, at the distance of two feet and a half (2 1/2'), bound together at the top and sufficiently filled to prevent small stock from creeping through; and the bank of the ditch shall not be less than one foot (1') above the surface of the ground.

(2) A hedge without a ditch shall be four feet (4') high, staked, bound and filled, as a hedge with a ditch.

(3) A post-and-rail fence on the bank of a ditch shall be four (4) rails high, each well set in posts, and not less than four feet and a half (4 1/2') high.

(4) A stone wall fence shall be four feet (4') high, with a flat stone hanging over the top thereof or a good rail or pole thereon, well staked or secured with crotches or posts.

(5) A stone wall without flat stones, rails or posts on the top, shall be four feet and a half (4 1/2') high.

(6) A woven wire fence of wire not less than number nine, firmly fastened to posts not more than sixteen feet (16') apart, constructed of not less than eleven (11) horizontal wires, the top wire not less than fifty-four inches (54") from the ground, the bottom wire not more than two inches (2") from the ground and with stays or uprights not more than six inches (6") apart.

(7) All other kinds of fences not herein particularly described shall be four feet and a half (4 1/2') high.

History of Section.
(G.L. 1896, ch. 126, § 1; G.L. 1909, ch. 152, § 1; P.L. 1916, ch. 1386, § 1; G.L. 1923, ch. 182, § 1; G.L. 1938, ch. 645, § 1; G.L. 1956, § 34-10-1.)

§ 34-10-2 Consent of adjoining owner to barbed-wire fence. – No fence shall be constructed wholly or in part of barbed wire, as a line fence between adjoining owners, without the consent in writing of the adjoining owners.

History of Section.
(P.L. 1906, ch. 1364, § 1; G.L. 1909, ch. 152, § 2; G.L. 1923, ch. 182, § 2; G.L. 1938, ch. 645, § 2; G.L. 1956, § 34-10-2.)

§ 34-10-3 Removal of barbed-wire fence. – Any adjoining owner who shall not have given his or her consent as provided in § 34-10-2 may complain of the fence to any fence viewer of the town where the fence is located, and may advance to the fence viewer the reasonable expense necessary to remove and store the fence. It shall then be the duty of the fence viewer to notify in writing the other adjoining owner to forthwith remove the fence. If the fence shall not be removed within fifteen (15) days after the giving of the notice, then it shall be the duty of the fence viewer to remove the fence and to store the materials removed. He or she shall deliver the fence materials removed to the owner upon demand.

History of Section.
(P.L. 1906, ch. 1364, § 2; G.L. 1909, ch. 152, § 3; G.L. 1923, ch. 182, § 3; G.L. 1938, ch. 645, § 3; G.L. 1956, § 34-10-3.)

§ 34-10-4 Expense of removal of barbed-wire fence. – The fence viewer or the adjoining owner who has advanced the necessary expense to remove and store the fence may recover all of the expense in an action of debt from the person or persons who caused or suffered the fence to be built.

History of Section.
(P.L. 1906, ch. 1364, § 3; G.L. 1909, ch. 152, § 4; G.L. 1923, ch. 182, § 4; G.L. 1938, ch. 645, § 4; G.L. 1956, § 34-10-4.)

§ 34-10-5 Barbed-wire fences through woodland – Fences existing before 1906. – The provisions of §§ 34-10-2 – 34-10-4 shall not apply to line fences running through woodland nor to barbed-wire fences constructed before April 20, 1906.

History of Section.
(P.L. 1906, ch. 1364, § 4; G.L. 1909, ch. 152, § 5; G.L. 1923, ch. 182, § 5; G.L. 1938, ch. 645, § 5; G.L. 1956, § 34-10-5.)

§ 34-10-6 Maintenance of water fences. – Coterminous owners or possessors of land adjoining water, whenever their land is under improvement, shall make and maintain a sufficient water fence to prevent trespass by cattle in the same manner as other partition fences are directed to be made by this chapter.

History of Section.
(G.L. 1896, ch. 126, § 7; G.L. 1909, ch. 152, § 11; G.L. 1923, ch. 182, § 11; G.L. 1938, ch. 645, § 11; G.L. 1956, § 34-10-6.)

§ 34-10-7 Marshland exempt. – All tracts of marshland so situated and exposed to the flow and wash of the sea as to render it impracticable for the several owners thereof to keep up partition fences around the respective shares or lots, shall be exempted from the operation of this chapter.

History of Section.
(G.L. 1896, ch. 126, § 14; G.L. 1909, ch. 152, § 18; G.L. 1923, ch. 182, § 18; G.L. 1938, ch. 645, § 18; G.L. 1956, § 34-10-7.)

§ 34-10-9 Placement of partition fences – Maintenance throughout year. – All partition fences shall run on the dividing line, and the owners shall have the right to place one-half (1/2) of the width thereof on the land of each adjoining proprietor. The fences shall be kept up and maintained in good order through the year, unless the parties concerned shall otherwise agree.

History of Section.
(G.L. 1896, ch. 126, § 2; G.L. 1909, ch. 152, § 6; G.L. 1923, ch. 182, § 6; G.L. 1938, ch. 645, § 6; G.L. 1956, § 34-10-9.)

§ 34-10-10 Partition fences between lands under improvement. – Partition fences between lands under improvement shall be made and maintained in equal halves in length and quality, by the proprietors or possessors of those lands respectively.

History of Section.
(G.L. 1896, ch. 126, § 3; G.L. 1909, ch. 152, § 7; G.L. 1923, ch. 182, § 7; G.L. 1938, ch. 645, § 7; G.L. 1956, § 34-10-10.)

§ 34-10-11 Partition fences between improved and unimproved lands. – In case any proprietor of land shall improve his or her land, the land adjoining being unimproved, and shall make the whole partition fence, the proprietor or possessor of the land adjoining and unimproved shall, upon improvement thereof, pay for one-half (1/2) of the partition fence, according to the value thereof at that time, and shall keep up and maintain the same ever afterwards, whether he or she shall continue to improve the land or not.

History of Section.
(G.L. 1896, ch. 126, § 4; G.L. 1909, ch. 152, § 8; G.L. 1923, ch. 182, § 8; G.L. 1938, ch. 645, § 8; G.L. 1956, § 34-10-11.)

§ 34-10-12 Payment for previously constructed fence. – Whenever the whole or more than one-half (1/2) of any partition fence shall have been made by the proprietor or possessor of the land on one side of the fence, the proprietor or possessor of the land adjoining, when he or she improves the land, shall pay to the proprietor or possessor who made the fence the value of so much of the fence erected as the fence may exceed one-half

(1/2) of the fence on the whole line; and in case of his or her refusal so to do, the value shall be ascertained by any fence viewer of the town where the land is situated, on application to him or her for that purpose.

History of Section.
(G.L. 1896, ch. 126, § 10; G.L. 1909, ch. 152, § 14; G.L. 1923, ch. 182, § 14; G.L. 1938, ch. 645, § 14; G.L. 1956, § 34-10-12.)

§ 34-10-13 Viewing and division of fence – Award of cost. – The fence viewer, on an application, shall cite the parties in interest on the dividing line, at a convenient time, to view the fence; shall ascertain the value of the whole, and award the one-half (1/2) of the sum against the proprietor or possessor so refusing, with costs, and divide the whole fence between the parties, and make report into the office of the town clerk, which division shall be permanent; and if any person against whom report shall be made as aforesaid shall refuse to pay the sum so reported, the sum, with costs, shall be recovered by the party aggrieved, against that person, by action of debt.

History of Section.
(G.L. 1896, ch. 126, § 11; G.L. 1909, ch. 152, § 15; G.L. 1923, ch. 182, § 15; G.L. 1938, ch. 645, § 15; G.L. 1956, § 34-10-13.)

§ 34-10-14 Holding and improving partition fences – Agreements between owners. – In all cases where partition fences are erected as one-half (1/2) of the partition fence between proprietors or possessors of adjoining lands, or where the fence may be hereafter erected by the agreement of the parties in interest or other lawful manner, the proprietors of the fences in either of the cases erected, their heirs, successors, or assigns, shall hold and improve the fences without molestation; and shall be forever afterwards excused from making other fence on such dividing line in all cases whatever, except by the special agreement of the parties to the contrary; and all agreements which shall be made relating to the partition fences shall be registered in the office of the town clerk in the town where such lands shall lie.

History of Section.
(G.L. 1896, ch. 126, § 9; G.L. 1909, ch. 152, § 13; G.L. 1923, ch. 182, § 13; G.L. 1938, ch. 645, § 13; G.L. 1956, § 34-10-14.)

§ 34-10-15 Complaint of neglect to maintain fence. – (a) Whenever any proprietor, possessor or owner of land shall neglect or refuse to repair, build, or rebuild any partition fence or shall withdraw his or her fence from any division line, the aggrieved party may complain to any fence viewer of the town, who, after ten (10) days' notice to the proprietor, possessor, or owner, shall attend and view the same; the notice, if the address of the owner is not known to the fence viewer, to be given by posting up the same in three (3) or more

public places in the town where the lands lie, and if he or she shall find the complaint to be true, he or she shall in writing order the delinquent party to repair, build, or rebuild the same within such time as he or she shall therein appoint, not exceeding fifteen (15) days, and shall lodge a copy of the order in the office of the town clerk of the town in which the land is situated.

(b) Whenever any vegetation overgrows and damages a partition fence, the proprietor, possessor or owner of the land from which the vegetation originates shall be liable for the removal of all of the overgrown vegetation and the necessary repairs to the partition fence caused by the overgrown vegetation.

History of Section.
(G.L. 1896, ch. 126, § 5; P.L. 1902, ch. 992, § 1; G.L. 1909, ch. 152, § 9; G.L. 1923, ch. 182, § 9; G.L. 1938, ch. 645, § 9; G.L. 1956, § 34-10-15; P.L. 2007, ch. 373, § 1.)

§ 34-10-17 Settlement of controversies by viewer. – Whenever any controversy or dispute shall arise about the rights of the respective occupants or owners in division lines or partition fences and their obligations to maintain the same, either party may apply to a fence viewer of the town where the lands lie, who, after ten-days' notice to each party, to be given as provided in § 34-10-15, may in writing determine the division line and assign to each his or her part of the partition fence, and direct the time within which each party shall erect, build, or repair his or her part of the fence, which line and assignment being recorded in the office of the town clerk, shall be binding on the parties and all succeeding owners and occupants of the lands, and they shall always thereafter maintain their respective parts of the fence, until the rights of the respective parties shall be differently determined in some proper action.

History of Section.
(G.L. 1896, ch. 126, § 8; P.L. 1902, ch. 992, § 1; G.L. 1909, ch. 152, § 12; G.L. 1923, ch. 182, § 12; G.L. 1938, ch. 645, § 12; G.L. 1956, § 34-10-17.)

§ 34-10-20 Spite fences. – A fence or other structure in the nature of a fence which unnecessarily exceeds six feet (6') in height and is maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance, and any owner or occupant who is injured, either in the comfort or enjoyment of his or her estate thereby, may have an action to recover damages for the injury.

History of Section.
(G.L. 1896, ch. 126, § 16, as enacted by P.L. 1909, ch. 416, § 1; G.L. 1923, ch. 182, § 20; G.L. 1938, ch. 645, § 20; G.L. 1956, § 34-10-20.)

CHAPTER 11

FORM and EFFECT of CONVEYANCES

§ 34-11-1 Conveyances required to be in writing and recorded. – Every conveyance of lands, tenements or hereditament absolutely, by way of mortgage, or on condition, use or trust, for any term longer than one year, and all declarations of trusts concerning the conveyance, shall be void unless made in writing duly signed, acknowledged as hereinafter provided, delivered, and recorded in the records of land evidence in the town or city where the lands, tenements or hereditaments are situated; provided, however, that the conveyance, if delivered, as between the parties and their heirs, and as against those taking by gift or devise, or those having notice thereof, shall be valid and binding though not acknowledged or recorded. A lease for the term of one year or less shall be valid although made by parol. Leases for terms of more than one year may be recorded with a memorandum of lease in writing rather than the original lease; provided, however, that the memorandum shall contain the names of the parties to be charged, a description of the real estate, the duration of the lease, including renewal options and purchase options.

History of Section.
(G.L. 1896, ch. 202, § 2; G.L. 1909, ch. 253, § 2; G.L. 1923, ch. 297, § 2; G.L. 1938, ch. 435, § 1; G.L. 1956, § 34-11-1; P.L. 1979, ch. 231, § 1; P.L. 1981, ch. 380, § 1.)

§ 34-11-1.2 Name and address of grantee – Recording. – Every deed presented for record shall contain or have endorsed upon it the name, residence and/or post office address of the grantee and that address shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. A city or town clerk may decline to accept a deed for recording which is not in compliance with the requirements of this section.

History of Section.
(P.L. 1979, ch. 393, § 1.)

§ 34-11-1.5 Historical cemeteries. – Every deed presented for recording a transfer in ownership of property that has located on it a historical cemetery registered pursuant to § 23-18-10.1 shall have endorsed upon the deed, in capital letters, a notation that a historical cemetery is located on the property. Failure to comply with this section shall not effect the validity of any deed.

History of Section.
(P.L. 2011, ch. 117, § 3; P.L. 2011, ch. 126, § 3.)

§ 34-11-2 Seal not required in conveyances. – No seal shall be required to any instrument conveying lands, tenements or hereditaments; and any instrument purporting to convey lands, tenements or hereditaments may be referred to as, and shall be, a deed, though no seal be affixed thereto; and the word "covenant" used in any deed or instrument to which no seal is affixed, shall have the same effect as though a seal had been affixed thereto.

History of Section.
(G.L. 1896, ch. 202, § 4; G.L. 1909, ch. 253, § 4; G.L. 1923, ch. 297, § 4; G.L. 1938, ch. 435, § 3; G.L. 1956, § 34-11-2.)

§ 34-11-3 Creation of co-tenancies by deed – Conveyances between husband and wife. – (a) In deeds hereafter made, lands, tenements and hereditaments, or a thing in action, may be conveyed by a person to him or herself jointly with another person by the like means by which it might be conveyed by him or her to another person; and may in like manner, be conveyed by a husband to his wife and by a wife to her husband, alone or jointly with another person; and may also in like manner, be conveyed by a husband to himself and to his wife and by a wife to herself and to her husband as tenants by the entirety; and may also in like manner be conveyed by co-tenants to any one of the co-tenants.

(b) A husband and his wife or any two (2) or more persons may convey real estate or interests therein to themselves as co-tenants under any tenancy allowable between them by law. This subsection shall not be construed so as to invalidate any deed of real estate or interest therein heretofore given by a husband and his wife or any two (2) or more persons to themselves as co-tenants under any tenancy allowable between them by law.

History of Section.
(G.L. 1896, ch. 202, § 20; G.L. 1909, ch. 253, § 20; G.L. 1923, ch. 297, § 20; G.L. 1938, ch. 435, § 17; P.L. 1947, ch. 1915, § 1; P.L. 1955, ch. 3616, § 1; G.L. 1956, § 34-11-3; P.L. 1990, ch. 506, § 1.)

§ 34-11-4 Delivery of conveyance sufficient to pass title. – Any form of conveyance in writing, duly signed and delivered by the grantor, or the attorney of the grantor duly authorized, shall be operative to convey to the grantee all the possession, estate, title and interest, claim, demand or right of entry or action, of the grantor, absolutely in and to the land conveyed, unless otherwise expressly limited in estate, condition, use or trust, and if otherwise expressly limited, shall convey such property for the time or estate or on the condition, use or trust as declared, without any other act or ceremony; and if also duly acknowledged and recorded, shall be operative as against third parties.

History of Section.
(G.L. 1896, ch. 202, § 11; G.L. 1909, ch. 253, § 11; G.L. 1923, ch. 297, § 11; P.L. 1926, ch. 839, § 2; G.L. 1938, ch. 435, § 10; G.L. 1956, § 34-11-4.)

§ 34-11-11 Use of statutory forms. – The forms set forth in § 34-11-12 may be used, and shall be sufficient for their respective purposes. They shall be known as "statutory forms" and may be referred to as such. They may be altered as circumstances require, and the authorization of such forms by this chapter shall not preclude the use of other forms.

History of Section.
(P.L. 1927, ch. 1056, § 1; P.L. 1928, ch. 1171, § 1; G.L. 1938, ch. 436, § 1; G.L. 1956, § 34-11-11.)

§ 34-11-12 Statutory forms set out. – The statutory forms referred to in § 34-11-11 are as follows:

(1) WARRANTY DEED.

of for consideration paid, grant to

of with warranty covenants (description, and encumbrances, if any)

Witness hand this day of (Here add acknowledgment.)

(2) QUITCLAIM DEED.

of for consideration paid, grant to

of with quitclaim covenants, (description, and encumbrances, if any)

Witness hand this day of (Here add acknowledgment.)

(3) DEED OF EXECUTOR, ADMINISTRATOR, TRUSTEE, GUARDIAN, CONSERVATOR, RECEIVER, OR COMMISSIONER.

executor of the will of administ rator of the estate

of trustee under guardian of conserva tor

of receiver of the estate of commissi oner by the power conferred by and by every other power me thereunto enabling, for dollars paid, grant to (description, and encumbrances, if any)

Witness hand this day of (Here add acknowledgment.)

(4) MORTGAGE DEED.

of for consideration paid, grant to of with mortgage covenants, to secure the payment of dollars in years with interest at per cent per annum, payable semiannually , as provided in a certain negotiable promissory note of even date herewith, (description, and encumbrances, if any)

This mortgage is made upon the statutory condition and with the statutory power of sale.

Witness hand this day of (Here add acknowledgment.)

(5) PARTIAL RELEASE OF MORTGAGE.

the holder of a mortgage by to dated recorded in the records of deeds in in book no. at page , for consideration paid, release to all interest acquired under the mortgage in the following described portion of the mortgaged premises: (description)

Witness hand this day of (Here add acknowledgment.)

(6) ASSIGNMENT OF MORTGAGE.

holder of a mortgage by to dated

recorded in the records of deeds in in book

no. at page , for consideration paid, assign the mortgage and the note and claim secured thereby to

Witness hand this day of (Here add acknowledgment.)

(7) FORECLOSURE DEED UNDER POWER OF SALE IN MORTGAGE.

holder of a mortgage by to dated

recorded in the records of deeds in in book no.

at page , by the power conferred by the mortgage and by every other power me thereunto enabling, for dollars paid, grant to the premises conveyed by the mortgage.

Witness hand this day of (Here add acknowledgment.)

(8) AFFIDAVIT OF SALE UNDER POWER OF SALE OF MORTGAGE.

named in the foregoing deed, make oath and say that the principal interest obligati on mentione d in the mortgage above referred to was not paid or tendered or performed when due or prior to the sale, that I have mailed notice to the mortgagor as required by law and by the mortgage and that I published

on the days of in the , a public newspaper published in , in accordance with the provisions of the mortgage, a notice of which the following is a true copy: (insert copy of advertisement.)

Pursuant to the notice, at the time and place there appointed, I sold the mortgaged premises at public auction by an auctioneer, to above-na med, for dollars, bid by him or her, being the highest bid made for the premises at said auction.

Sworn to by on this day of , before me,

(9) DISCHARGE OF MORTGAGE.

The undersigned, having received full payment and satisfaction of the within mortgage recorded in the of in the state of Rhode Island, in the in book no. page , hereby cancel and discharge the same. And covenant to and with the payer that the present owner of the mortgage.

Witness, this day of 19

History of Section.
(P.L. 1927, ch. 1056, § 17; P.L. 1928, ch. 1171, § 2; G.L. 1938, ch. 436, § 16; G.L. 1956, § 34-11-12; P.L. 1992, ch. 224, § 2; P.L. 1993, ch. 377, § 1.)

§ 34-11-13 Construction of terms. – (a) Whenever the phrase "incorporation by reference" is used in §§ 34-11-14 – 34-11-31, the method of incorporation as indicated in the forms shall be sufficient, but this shall not be construed to preclude other methods.

(b) Whenever the words "his heirs, executors and administrators" or "his executors, administrators" are used in §§ 34-11-14 – 34-11-31, they shall be construed, in the case of a corporation, to mean "its successors"; and whenever the words "his heirs and assigns" are so used, they shall be construed, in the case of a corporation, to mean "its successors and assigns."

History of Section.
(P.L. 1927, ch. 1056, § 1; P.L. 1928, ch. 1171, § 1; G.L. 1938, ch. 436, § 1; G.L. 1956, § 34-11-13.)

§ 34-11-15 Effect of warranty deed. – A deed substantially following the form entitled "Warranty Deed" shall, when duly executed, have the force and effect of a deed in fee simple to the grantee and his or her heirs and assigns, to his or her and their own use, with covenants on the part of the grantor, for himself or herself and for his or her heirs, executors, and administrators, with the grantee and his or her heirs and assigns,

(1) That at the time of the delivery of such deed he or she is lawfully seised in fee simple of the granted premises,

(2) That the granted premises are then free from all incumbrances,

(3) That he or she has then good right, full power, and lawful authority to sell and convey the same to the grantee and his or her heirs and assigns,

(4) That the grantee and his or her heirs and assigns shall at all times after the delivery of such deed peaceably and quietly have and enjoy the granted premises, and

(5) That the grantor will, and his or her heirs, executors, and administrators shall, warrant and defend the granted premises to the grantee and his or her heirs and assigns forever against the lawful claims and demands of all persons.

History of Section.
(P.L. 1927, ch. 1056, § 3; G.L. 1938, ch. 436, § 3; G.L. 1956, § 34-11-15.)

§ 34-11-16 Meaning of warranty covenants. – In any conveyance of real estate the words "with warranty covenants" shall have the full force, meaning, and effect of the following words: "The grantor, for himself or herself and for his or her heirs, executors and administrators, covenants with the grantee and his or her heirs and assigns, that he or she is lawfully seised in fee simple of the granted premises; that the premises are free from all incumbrances; that he or she has good right, full power and lawful authority to sell and convey the premises to the grantee and his or her heirs and assigns; that the grantee and his or her heirs and assigns shall at all times hereafter peaceably and quietly have and enjoy the granted premises; and that the grantor will, and his or her heirs, executors and administrators shall, warrant and defend the premises to the grantee and his or her heirs and assigns forever against the lawful claims and demands of all persons."

History of Section.
(P.L. 1927, ch. 1056, § 9; G.L. 1938, ch. 436, § 8; G.L. 1956, § 34-11-16.)

§ 34-11-17 Effect of quitclaim deed. – A deed substantially following the form entitled "Quitclaim Deed" shall, when duly executed, have the force and effect of a deed in fee simple to the grantee and his or her heirs and assigns, to his, her, and their own use, with covenants on the part of the grantor, for himself or herself and for his or her heirs, executors, and administrators, with the grantee and his or her heirs and assigns, that he or she will, and his or her heirs, executors, and administrators shall, warrant and defend the granted premises to the grantee and his or her heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under the grantor.

History of Section.
(P.L. 1927, ch. 1056, § 4; G.L. 1938, ch. 436, § 4; G.L. 1956, § 34-11-17.)

§ 34-11-18 Meaning of quitclaim covenants. – In any conveyance of real estate the words "with quitclaim covenants" shall have the full force, meaning, and effect of the following words: "The grantor, for himself or herself and for his or her heirs, executors and

administrators, covenants with the grantee and his or her heirs and assigns, that he or she will, and his or her heirs, executors and administrators shall, warrant and defend the granted premises to the grantee and his or her heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under the grantor."

History of Section.
(P.L. 1927, ch. 1056, § 10; G.L. 1938, ch. 436, § 9; G.L. 1956, § 34-11-18.)

§ 34-11-41. Reimposition of restrictive covenants.

The mere recital in a deed or other instrument of conveyance to the effect that the conveyance is subject to restrictive covenants or other restrictions shall not operate to impose, reimpose, or recreate the restrictive covenants or other restrictions which have expired according to their terms or which have ceased to be valid and operative by virtue of the provisions of § 34-4-21, unless the intent to make the imposition, reimposition, or recreation is expressly stated in the instrument of conveyance, or unless the instrument whereby the restrictive covenants or other restrictions were created provides for automatic renewal or extension of the covenants.

History of Section.
P.L. 1991, ch. 359, § 1.

§ 34-11-43. Effect of special warranty deed.

A deed entitled “special warranty deed” shall, when duly executed, have the force and effect of a deed in fee simple to the grantee and his or her heirs and assigns, to his, her, and their own use, with covenants on the part of the grantor, for himself or herself and for his or her heirs, executors, and administrators, with the grantee and his or her heirs and assigns, that he or she will, and his or her heirs, executors, and administrators shall, warrant and defend the granted premises to the grantee and his or her heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under the grantor.

History of Section.
P.L. 2016, ch. 113, § 1; P.L. 2016, ch. 122, § 1.

§ 34-11-44. Meaning of special warranty covenants.

In any deed of conveyance of real estate, the use of the words “special warranty” in the title of said deed, and/or use of the words “special warranty covenants” in the body of said deed shall have the full force, meaning, and effect of the following words: “The grantor, for himself or herself and for his or her heirs, executors and administrators, covenants with the grantee and his or her heirs and assigns, that he or she will, and his or her heirs, executors, and administrators shall, warrant and defend the granted premises to the grantee and his or her heirs and assigns forever against the lawful claims and demands of all persons claiming, by, through, or under the grantor.”

History of Section.
P.L. 2016, ch. 113, § 1; P.L. 2016, ch. 122, § 1

CHAPTER 13

RECORDING of INSTRUMENTS

§ 34-13-1 Instruments eligible for recording. – Any of the following instruments shall be recorded or filed by the town clerk or recorder of deeds, in the manner prescribed by law, on request of any person and on payment of the lawful fees therefor:

(1) Letters of attorney.

(2) All contracts for sale of land.

(3) Bonds for title or covenants or powers concerning lands, tenements and hereditaments.

(4) All notices to be filed under the provisions of § 9-4-9.

(5) All notices and process to be filed under other statutory provisions, and all decrees in equity and judgments at law affecting the title to land.

(6) All instruments evidencing or relating to a security interest in personal property or fixtures that may be filed pursuant to chapter 9 of title 6A.

(7) All instruments required by statute to be recorded, including deeds, mortgages and transfers and discharges thereof, leases or memoranda thereof, and transfers and cancellations thereof, and the covenants, conditions, agreements and powers therein contained.

(8) Instruments of defeasance.

(9) Instruments (excepting wills) creating trusts.

(10) All instruments and notices, affecting, or purporting to affect, the title to land or any interest therein or giving or terminating the right to sever any building or part thereof or fixture, when signed and acknowledged as required for deeds.

(11) All affidavits as to family facts, including dates of birth, marriage, and death, which relate or purport to relate to title to land.

(12) All affidavits as to bounds and monuments of land.

(13) All certificates of the secretary of state as to change of corporate name.

(14) All original linen and/or original mylar maps, plats, surveys, and drawings, whether or not attached to, or a part of, another recordable instrument, Provided, however, That those requiring the approval of any council; commission, officer, or other body by law shall not be recorded without such approval.

All survey plans received for recording shall be drawn on archival mylar or linen, those of which shall not exceed a size of 24" x 36" and shall be recorded as originally drafted. Said plans shall contain as a minimum all items set forth in the "Procedural and Technical Standards for the practice of Land Surveying in the State of Rhode Island and Providence Plantations" as adopted by the Rhode Island Board of Registration of Professional Land Surveyors effective April 1, 1994 and any amendments or modifications thereof. Further, all plans must be able to be reproduced so that the contents of said plans are legible.

Indexes of survey plans shall be maintained indicating (a) the title of the plan; and (b) the street(s) or road(s) on which the subject property abuts. Such plans shall include a separate listing, in or attached to the legend on the plan, of all streets and roads on which the subject property abuts.

(15) All declarations of restrictions and covenants in connection with a plat of record or to be recorded or with a tract or parcel of land which is to be subdivided.

(16) Statements of covenants, conditions, and powers of sale which are intended to be incorporated in mortgages by reference.

History of Section.
(G.L. 1896, ch. 202, § 6; C.P.A. 1905, § 1139; G.L. 1909, ch. 253, § 6; G.L. 1923, ch. 297, § 6; G.L. 1938, ch. 435, § 5; G.L. 1956, § 34-13-1; P.L. 1956, ch. 3750, § 1; P.L. 1960, ch. 147, § 3; P.L. 1981, ch. 380, § 2; P.L. 1992, ch. 318, § 1; P.L. 1997, ch. 303, § 1.)

§ 34-13-2 Recording as constructive notice. – A recording or filing under § 34-13-1 shall be constructive notice to all persons of the contents of instruments and other matters so recorded, so far as they are genuine.

History of Section.
(G.L. 1896, ch. 202, § 7; G.L. 1909, ch. 253, § 7; G.L. 1923, ch. 297, § 7; G.L. 1938, ch. 435, § 6; G.L. 1956, § 34-13-2.)

§ 34-13-4 Entry of time of presentation for recording – Receiving book. – Whenever any instrument entitled to be recorded shall be presented for recording, the town clerk or recorder of deeds, as the case may be, immediately upon its presentment, shall cause to be entered in writing on the instrument the day, the hour, and the minute when the instrument was presented for recording, and shall enter this information, in the order of presentment, in a receiving book to be kept for that purpose.

History of Section.

(G.L. 1896, ch. 202, § 3; G.L. 1909, ch. 253, § 3; G.L. 1923, ch. 297, § 3; G.L. 1938, ch. 435, § 2; G.L. 1956, § 34-13-4.)

§ 34-13-5 Index of instruments recorded. – (a) It shall be the duty of the clerk or recorder of deeds of each city and town within the state to make and keep a separate alphabetical general index of all deeds, mortgages, and other instruments recorded in the office of the city or town clerk or recorder of deeds, which indices shall refer to the book and page of the records wherein the deeds, mortgages, and other instruments are recorded. Mortgage discharges and assignments of mortgage shall be indexed under the names of all parties to the original mortgage instrument and all subsequent assignees of parties to the original instrument.

(b) The provisions of §§ 45-13-7 – 45-13-10 shall not apply to this section.

History of Section.
(G.L., ch. 41, § 6; P.L. 1899, ch. 663, § 1; G.L. 1909, ch. 51, § 6; G.L. 1923, ch. 52, § 6; G.L. 1938, ch. 334, § 6; G.L. 1956, § 34-13-5; P.L. 1986, ch. 323, § 1; P.L. 1993, ch. 226, § 1.)

§ 34-13-6 Recording of certified copies. – If any instrument has been recorded or filed by a city or town clerk, or recorder of deeds, in the manner prescribed by law, a copy thereof duly certified by the proper official may be recorded or filed in the office of any city or town clerk or recorder of deeds, wherein the original might properly have been recorded or filed, and, when so recorded or filed, shall have the same effect as a recording or filing of the original instrument.

History of Section.
(G.L. 1923, ch. 297, § 25; P.L. 1933, ch. 2044, § 1; G.L. 1938, ch. 435, § 21; G.L. 1956, § 34-13-6.)

§ 34-13-9 Fees for copies of record. – Recording officers shall charge one dollar and fifty cents ($1.50) per page and three dollars ($3.00) for certifying of the record of any instrument described in this chapter.

History of Section.
(P.L. 1927, ch. 1056, § 20; G.L. 1938, ch. 436, § 19; G.L. 1956, § 34-13-9; P.L. 1970, ch. 205, § 1; P.L. 1971, ch. 174, § 1; P.L. 1985, ch. 86, § 1; P.L. 1989, ch. 209, § 1; P.L. 1990, ch. 156, § 1; P.L. 1990, ch. 323, § 1.)

CHAPTER 13.1

MARKETABLE RECORD TITLE

§ 34-13.1-1 Marketable record title – Definitions. – As used in this chapter:

(a) "Marketable record title" means a title of record which operates to extinguish such interest and claims, existing prior to the effective date of the root of title as are stated in § 34-13.1-4.

(b) "Person dealing with land" includes a purchaser of any estate or interest therein, a mortgagee, an attaching or judgment creditor, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon;

(c) "Recorded" means recorded as provided by chapter 13 of this title;

(d) "Records" means the Land Evidence Records of the town or city where the particular land is located;

(e) "Root of title" means that conveyance or other title transaction in the chain of title of a person, purporting to create or containing language sufficient to transfer the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty (40) years prior to the time when marketability is being determined. The effective date of the root of title is the date on which it is recorded;

(f) "Title transaction" means any transaction affecting title to any interest in land, including, but not limited to, title by will or descent, title by tax deed, by public sale, by trustee's, referee's, guardian's, executor's, administrator's, conservator's, Tax collector's, sheriff's, commissioner's, constable's warranty or quitclaim deed, by mortgagee's deed or by decree of any court.

History of Section.
(P.L. 1995, ch. 241, § 1; P.L. 1995, ch. 299, § 1; P.L. 2011, ch. 363, § 14.)

§ 34-13.1-2 Chain of title for not less than forty years creates marketable record title. – Any person having legal capacity to own land in this state, who has an unbroken chain of title to any interest in land for forty (40) years or more, shall be deemed to have a marketable record title to that interest, subject only to the matters stated in § 34-13.1-3. A person has such an unbroken chain of title when the land records of the town in which the land is located disclose a conveyance or other title transaction, of record not less than forty (40) years at the time the marketability is to be determined, which conveyance or other title

transaction purports to create such interest in land, or which contains language sufficient to transfer the interest, either in the person claiming that interest, or some other person from whom, by one or more conveyances or other title transactions of record, the purported interest has become vested in the person claiming the interest; with nothing appearing of record, in either case, purporting to divest the claimant of the purported interest.

History of Section.
(P.L. 1995, ch. 241, § 1; P.L. 1995, ch. 299, § 1.)

§ 34-13.1-3 Interest to which title is subject. – Such marketable record title is subject to: (1) All interest and defects which are created by or arise out of the muniments of which the chain of record title is formed; provided a general reference in the muniments, or any of them, to easements, use restriction, encumbrances or other interests created prior to the root of title are not sufficient to preserve them, unless specific identification is made therein of a recorded title transaction which creates the easement, use restriction, encumbrance or other interest; (2) all interests preserved by the recording of proper notice or by possession by the same owner continuously for a period of forty (40) years or more, in accordance with § 34-13.1-5; (3) the rights of any person arising from a period of adverse possession or use, which was in whole or in part subsequent to the effective date of the root of title; (4) any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record started; provided such recording shall not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of § 34-13.1-4; (5) the exceptions stated in § 34-13.1-17 as to rights of reversioners in leases, as to apparent easements and interests in the nature of easements, and as to interests of the United States, this state and political subdivisions thereof, public service companies and natural gas companies; and (6) the rights or interests arising out of any conservation or preservation restriction and or easement, created either: (i) if executed and recorded subsequent to the effective date of chapter 39 of this title entitled "Conservation and Preservation Restrictions on Real Property", any conservation or preservation easement or restriction granted or reserved in accordance with and pursuant to the terms and provisions thereof; or (ii) if executed and recorded prior to the effective date of chapter 39 of this title, a conservation and/or preservation easement or restriction granted or reserved for the same, or substantially the same, stated purposes as those set forth in § 34-39-2, although executed and recorded prior thereto, and which is held by a entity duly recognized in chapter 39 of this title to hold such restrictions and/or easements.

History of Section.
(P.L. 1995, ch. 241, § 1; P.L. 1995, ch. 299, § 1; P.L. 1998, ch. 330, § 1.)

§ 34-13.1-5 Notice of claim filed within forty (40) year period. – (a) Any person claiming an interest of any kind in land may preserve and keep effective that interest by

recording, during the forty (40) year period immediately following the effective date of the root title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone suspends the running of the forty (40) year period. Such notice may be recorded by the claimant or by any other person acting on behalf of any claimant who is: (1) Under a disability (2) unable to assert a claim on his or her own behalf or (3) one of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim record.

(b) If the same record owner of any possessory interest in land has been in possession of that land continuously for a period of forty (40) years or more, during which period no title transaction with respect to the interest appears of record in his or her chain of title and no notice has been recorded by him or her on his or her behalf as provided in subsection (a) of this section, and the possession continues to the time when marketability is being determined, that period of possession shall be deemed equivalent to the recording of the notice immediately preceding the termination of the forty (40) year period described in subsection (a) of this section.

History of Section.
(P.L. 1995, ch. 241, § 1; P.L. 1995, ch. 299, § 1.)

§ 34-13.1-11 Forty year period extended to all for recording of notice. – If the forty (40) year period specified in this chapter has expired, or would expire, prior to two (2) years after the effective date of this statute, such period shall be extended two (2) years after the effective date of this statute to allow for the recording of notice pursuant to this chapter.

History of Section.
(P.L. 1995, ch. 241, § 1; P.L. 1995, ch. 299, § 1.)

Chapter 13.2
Uniform Real Property Electronic Recording Act

§ 34-13.2-1. Short title.

This chapter shall be known and may be cited as the "Uniform Real Property Electronic Recording Act."

History of Section.
P.L. 2018, ch. 101, § 1; P.L. 2018, ch. 113, § 1

§ 34-13.2-2. Definitions.

As used in this chapter:

(1) "Document" means information that is:

(i) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(ii) Eligible to be recorded in the land records maintained by the recorder of deeds.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the recorder of deeds in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Jurisdiction" means any municipality, city, or town incorporated in the state of Rhode Island.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Recorder of deeds" means the officer who has authority under state law to accept documents for recording in the land records office. This could include such officers as the "registrar", "clerk", and/or the "recorder".

(8) "State" means the state of Rhode Island.

History of Section.
P.L. 2018, ch. 101, § 1; P.L. 2018, ch. 113, § 1.

§ 34-13.2-3. Validity of electronic documents.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

History of Section.
P.L. 2018, ch. 101, § 1; P.L. 2018, ch. 113, § 1.

§ 34-13.2-4. Recording of documents.

(a) In this section, "paper document" means a document that is received by the recorder of deeds in a form that is not electronic.

(b) A recorder of deeds:

(1) Who implements any of the functions listed in this section shall do so in compliance with the most recent standards and best practices.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the recorder of deeds began to record electronic documents.

(7) May accept electronically any fee or tax that the recorder of deeds is authorized to collect pursuant to § 34-13-7.

(8) May agree with other officials of other cities or towns within the state on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

History of Section.
P.L. 2018, ch. 101, § 1; P.L. 2018, ch. 113, § 1.

§ 34-13.2-5. Administration and standards.

To keep the standards and practices of recorder of deeds in this state in harmony with other jurisdictions in this state, the recorder of deeds, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards, shall consider the following:

(1) Standards and practices of other jurisdictions;

(2) Best practices that are accepted or prescribed as being correct or most effective;

(3) The views of interested persons and governmental officials and entities;

(4) The needs of municipalities of varying size, population, and resources; and

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

History of Section.
P.L. 2018, ch. 101, § 1; P.L. 2018, ch. 113, § 1.

§ 34-13.2-6. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that chapter (15 U.S.C. § 7003(b)).

History of Section.
P.L. 2018, ch. 101, § 1; P.L. 2018, ch. 113, § 1.

CHAPTER 15

PARTITION

§ 34-15-1 Cotenants of estates of inheritance. – All joint tenants, coparceners, and tenants in common, who now are or hereafter may be actually seised or possessed of any estate of inheritance in any lands, tenements or hereditaments, whether in their own right or as receiver appointed by any state or federal court, or as trustee in bankruptcy, may be compelled to make partition between them of those lands, tenements, and hereditaments by civil action.

History of Section.
(G.L. 1896, ch. 265, § 2; G.L. 1909, ch. 330, § 2; G.L. 1923, ch. 381, § 2; G.L. 1938, ch. 586, § 2; P.L. 1956, ch. 3730, § 1; G.L. 1956, § 34-15-1.)

§ 34-15-29 Subdivision and platting of lands. – (a) In all actions for partition, whenever the circumstances in the opinion of the court require that the land to be divided should be platted into lots and certain portions of land laid out for streets or gangways for the convenience of the lots, the decree may authorize the commissioners to take that course subject to the approval of the court on the return of their report.

(b) The action described in subsection (a) shall not be taken unless all the parties to the proceedings consent; provided that:

(1) If any party is an infant or person non compos mentis, the consent of the guardian ad litem of such infant or non compos shall be sufficient;

(2) If any party is a trustee, the consent of that trustee shall be sufficient to bind the trust estate; and

(3) Any party in interest, being a married woman, shall have the right to consent as if sole and unmarried.

History of Section.
(G.L. 1896, ch. 265, § 31; G.L. 1909, ch. 330, § 30; G.L. 1923, ch. 381, § 30; G.L. 1938, ch. 586, § 30; G.L. 1956, § 34-15-30.)

CHAPTER 16

QUIETING TITLE

§ 34-16-1 Action brought by person claiming through sale or proceedings requiring notice. – Any person or persons claiming title to real estate, which title is based upon or has come through a deed of a tax collector or town or city treasurer upon sale of real estate for the collection of taxes, assessments, or municipal liens of any kind, or of a sheriff on execution sale, or any deed, grant, or conveyance given under judicial proceedings, or otherwise, the validity of which depends upon notice of any kind, may, although his or her title to the real estate is undisputed, bring a civil action against the person or persons whose title and interest, or either, were sold out under the sale or proceedings, and against any other persons that may be interested in the real estate because of the sale or proceedings, or the giving of such a deed to determine the validity of the title or estate of the person or persons therein, to remove any cloud thereon, and to affirm and quiet the possession and title of the person or persons; provided, however, that where a period of redemption is by statute provided, in which the real estate passing under any sale or proceedings described in this section may be redeemed, the period of redemption must have expired before the bringing of any action under this section.

History of Section.
(G.L. 1923, ch. 339, § 40; P.L. 1932, ch. 1906, § 1; G.L. 1938, ch. 528, § 26; G.L. 1956, § 34-16-1.)

§ 34-16-2 Examination of title – Notice to parties in interest. – Upon filing his or her complaint, the plaintiff shall thereafter, at his or her own cost, select, with the approval of the court, a title company or an attorney familiar with the examination of land titles, which company or attorney shall proceed to examine the title to the real estate described in the complaint, and when the examination is completed, shall deposit an abstract of title to the real estate in the court, together with a report of the status of the title and a list of the parties found interested therein, and who should, in the opinion of the company or attorney, be made parties to the action. Upon receipt of the abstract and report, the court shall order all persons not parties to the action but found by it to be necessary to the cause to be made parties defendant and shall order notice to be given to those defendants.

History of Section.
(G.L. 1923, ch. 339, § 40; P.L. 1932, ch. 1906, § 1; G.L. 1938, ch. 528, § 26; G.L. 1956, § 34-16-2.)

§ 34-16-3 Determination of title – Decree. – A cause of action under this chapter shall follow the course of equity so far as equity is applicable, and the court shall determine the validity of the title of the plaintiffs, and may affirm the title, or if it finds other parties to have any title and estate therein, it shall also determine the interest, title, and estate of those

parties therein, and may remove any clouds on the title by reason of any deed, grant, or conveyance as described in § 34-16-1 or otherwise, and all decrees in the action shall forever thereafter be binding upon all parties thereto and those claiming by, through, under, or by virtue of them, or any of them.

History of Section.
(G.L. 1923, ch. 339, § 40; P.L. 1932, ch. 1906, § 1; G.L. 1938, ch. 528, § 26; G.L. 1956, § 34-16-3.)

§ 34-16-4 Action brought by person claiming through conveyance, devise, or inheritance. – Any person or persons claiming title to real estate, or any interest or estate, legal or equitable, in real estate, including any warrantor in any deed or other instrument in the chain of title to the real estate, which title, interest, or estate is based upon, or has come through, a deed, grant, conveyance, devise, or inheritance, purporting to vest in the person or persons or his, her, or their predecessors in title the whole title to such real estate, or any fractional part thereof or any interest or estate therein, may bring a civil action against all persons claiming, or who may claim, and against all persons appearing to have of record any adverse interest therein, to determine the validity of his, her, or their title or estate therein, to remove any cloud thereon, and to affirm and quiet his, her, or their title to the real estate. The action may be brought under the provisions of this section whether the plaintiff may be in or out of possession and whether or not the action might be brought under the provisions of § 34-16-1 or under the provisions of any other statute.

History of Section.
(G.L. 1938, ch. 528, § 26; P.L. 1940, ch. 938, § 1; P.L. 1941, ch. 1005, § 1; G.L. 1956, § 34-16-4.)

§ 34-16-5 Contents of complaint. – The complaint shall contain, among other things, to the extent known to plaintiff:

(1) A complete and accurate description of the real estate involved, and the right, title and interest of the plaintiff claimed therein and the character and source thereof;

(2) A recital of the character and source of claims adverse, or which may become adverse, whether asserted or unasserted, and, if unasserted, then of record;

(3) The names and last known addresses of those asserting, or who may assert, any adverse claims;

(4) The efforts made to ascertain and determine those claimants, who, or whose names and/or addresses, are unknown to plaintiff;

(5) The duration of ownership, occupation, possession, and enjoyment by the plaintiff, and when relevant, by his or her predecessors in title, of the estate involved, together with a recital of acts performed as a normal incident of the possession enjoyed and the title

claimed.

History of Section.
(G.L. 1938, ch. 528, § 26; P.L. 1940, ch. 938, § 1; G.L. 1956, § 34-16-5.)

§ 34-16-6 Filing of abstract of title. – Upon the filing of the complaint the court may, in its discretion, require that the plaintiff file an abstract of title to the real estate as specified in § 34-16-2.

History of Section.
(G.L. 1938, ch. 528, § 26; P.L. 1941, ch. 1005, § 1; G.L. 1956, § 34-16-6.)

§ 34-16-7 Presumption of lost grant by adverse possession. – Open, adverse, exclusive, and uninterrupted possession and enjoyment by the plaintiff, or by his or her predecessors in title or both the plaintiff and predecessors together of the real estate or his, her, or their interest therein described in the complaint, for a period of at least ten (10) years, shall raise the rebuttable presumption in law and in fact of a lost grant, properly executed and delivered, effective to cure the defect or defects in plaintiff's title, as set forth in the complaint and/or to remove the cloud thereon, as it concerns any party named or referred to in the cause.

History of Section.
(G.L. 1938, ch. 528, § 26; P.L. 1940, ch. 938, § 1; G.L. 1956, § 34-16-7.)

§ 34-16-8 Parties barred by presumption of lost grant. – Under § 34-16-7, proof satisfactory to the court, and adequate to justify it, shall be effective to bar every claim of any party named or referred to in the cause adverse to plaintiff's title, and every adverse and inconsistent right, title, and interest therein of any such party, whether as owner, tenant, joint tenant or tenant in common, mortgagee, creditor, lienholder, or otherwise and the heirs, executors, administrators, successors, and assigns of each of them, and all those in privity with them, who shall claim, or but for this provision might claim, an interest in the real estate involved, and to remove every cloud thereon; and the presumption provided in § 34-16-7, unless rebutted, shall be conclusive.

History of Section.
(G.L. 1938, ch. 528, § 26; P.L. 1940, ch. 938, § 1; G.L. 1956, § 34-16-8.)

§ 34-16-9 Inclusion of unknown defendants in complaint. – (a) The complaint may include as defendants in such cause, in addition to such persons as appear of record to have, or are known to have or to assert, or who may have or assert, some claim to, or interest in, the lands described in the complaint adverse to the plaintiff's right, title or interest therein:

(1) All other persons unknown to, or unascertained by, the plaintiff, who claim, or may claim, any right, title or interest in such real estate; and

(2) All others in privity with them or whose interest does or may constitute a cloud upon the title of the plaintiff thereto, as described in the complaint.

(b) The complaint may include such unknown defendants in substantially the following language:

"Also all other persons unknown and unascertained, claiming, or who may claim, any right, title, estate, lien, or interest in the real estate involved, which is, or might become, adverse to the plaintiff's right, title, or interest therein as alleged or which does or may constitute any cloud upon plaintiff's title thereto, as set forth in the complaint."

History of Section.
(G.L. 1938, ch. 528, § 26; P.L. 1940, ch. 938, § 1; G.L. 1956, § 34-16-9.)

CHAPTER 20

TRESPASS ACTIONS FOR POSSESSION

§ 34-20-1. Liability for unauthorized cutting of trees or wood.

Every person who shall cut, destroy, or carry away any tree, timber, wood or underwood whatsoever, lying or growing on the land of any other person, without leave of the owner thereof, shall, for every such trespass, pay the party injured twice the value of any tree so cut, destroyed, or carried away; and for the wood or underwood, thrice the value thereof; to be recovered by civil action.

History of Section.
G.L. 1896, ch. 270, § 1; C.P.A. 1905, § 1168; G.L. 1909, ch. 335, § 1; G.L. 1923, ch. 386, § 1; G.L. 1938, ch. 588, § 1; G.L. 1956, § 34-20-1; P.L. 1965, ch. 72, § 1.

§ 34-20-1.1. Damages for willful encroachment on state, municipal or nonprofit land conservation organization open space land — Civil action.

(a) **Definitions.** As used in this section, the following words and terms shall have given to them the meanings set forth below, unless the context indicates another or different meaning or intent.

(1) "Encroach" means to conduct an activity that causes substantial damage or alteration to the land or vegetation or other features thereon, including, but not limited to, erecting buildings or other structures; constructing roads, driveways, or trails; destroying or moving stone walls; cutting trees or other vegetation, other than de minimus cutting; removing boundary markers; installing lawns or utilities; or using, storing, or depositing vehicles, substantial amounts of materials, or debris.

(2) "Nonprofit land conservation organization" means a not-for-profit entity organized with a mission of permanently protecting open-space land for conservation purposes.

(3) "Open-space land" means and includes, but is not limited to, any park, forest, wildlife management area, refuge, preserve, sanctuary, green or wildlife area owned, or held pursuant to a conservation restriction as defined in § 34-39-1 et seq., by the state, a political

subdivision of the state, or a nonprofit land conservation organization.

(b) No person may encroach, or cause another person to encroach, on open-space land without permission of the owner of the open-space land or holder of the conservation restriction on the open-space land or without other legal authorization.

(c) Any owner, or holder of a conservation restriction as defined above in open-space land, subject to the provisions of subsection (b), may bring an action in the superior court for the county where the land is located against any person who knowingly and intentionally violates the provisions of subsection (b) with respect to the owner's land or land subject to the conservation restriction. The court shall order any person who knowingly and intentionally violates the provisions of subsection (b) to restore the land to its condition as it existed prior to the violation or shall award the landowner the costs of the restoration, including reasonable management costs necessary to achieve the restoration. In addition, the court may award reasonable attorney's fees and costs and injunctive or equitable relief as the court deems appropriate.

(d) In addition to any damages and relief ordered pursuant to subsection (c), the court may award damages of up to five (5) times the cost of restoration or statutory damages of up to five thousand dollars ($5,000). In determining the amount of the award, the court shall consider the willfulness of the violation; the extent of damage done to natural resources, if any; the appraised value of any trees or shrubs damaged, or carried away as determined in accordance with the latest revision of The Guide for Plant Appraisal, as published by the International Society of Arboriculture, Urbana, Illinois, or a succeeding publisher; any economic gain realized by the violator; and any other relevant factors.

History of Section.
P.L. 2018, ch. 145, § 1; P.L. 2018, ch. 261, § 1.

CHAPTER 36.1

CONDOMINIUM OWNERSHIP

§ 34-36-1 Short title. – This chapter shall be known and may be cited as the "Condominium Ownership Act".

History of Section.
(P.L. 1963, ch. 181, § 1.)

§ 34-36-2 Applicability. – This chapter shall be applicable only to property which the sole owner or all the owners submit to the provisions of the chapter by duly executing and recording a declaration as provided in the chapter.

History of Section.
(P.L. 1963, ch. 181, § 1.)

§ 34-36-3 Definitions. – As used in this chapter:

(1) "Association of unit owners" means all of the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a building, containing four (4) or more units, or two (2) or more buildings, with a total of four (4) or more units for all the buildings, and comprising a part of the property.

(3) "Common areas and facilities," unless otherwise provided in the declaration or lawful amendments thereto, means and includes:

(i) The land on which the building is located;

(ii) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;

(iii) The basements, yards, gardens, parking areas, and storage spaces;

(iv) The premises for lodging of janitors or persons in charge of the property;

(v) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;

(vi) The elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(vii) Such community and commercial facilities as may be provided for in the declaration; and

(viii) All other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(4) "Common expenses" means and includes:

(i) All sums lawfully assessed against the unit owners;

(ii) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(iii) Expenses agreed upon as common expenses by the association of unit owners;

(iv) Expenses declared common expenses by provisions of this chapter, or by the declaration or the bylaws.

(5) "Common profits," unless otherwise provided in the declaration or lawful amendments thereto, means and includes the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(6) "Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property.

(7) "Condominium project" means a real estate condominium project; a plan or project whereby four (4) or more apartments, rooms, office spaces, or other units in existing or proposed apartment, commercial, or industrial buildings or structures are separately offered or proposed to be offered for sale.

(8) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter, as it from time to time may be lawfully amended.

(9) "Limited common areas and facilities" means and include those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.

(10) "Majority" or "majority of the unit owners" unless otherwise provided in the declaration or lawful amendments thereto, mean the owners of more than fifty per cent (50%) in the aggregate in interest of the undivided ownership of the common areas and facilities.

(11) "Management committee" means the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the property.

(12) "Person" means individual, corporation, partnership, association, trustee or other legal entity.

(13) "Property" means and includes the land, the building, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(14) "Record," "recording," "recorded," and "recorder" shall have the meaning stated in chapter 13 of this title.

(15) "Record of survey map" means a plat or plats of survey of the property and of all units in the property submitted to the provisions of this chapter, which may consist of a three-dimensional, horizontal, and vertical delineation of all such units.

(16) "Unit" means a part of the property intended for any type of independent use, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building.

(17) "Unit number" means the number, letter or combination thereof designating the unit in the declaration and in the record of survey map.

(18) "Unit owner" means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration.

History of Section.
(P.L. 1963, ch. 181, § 1.)

§ 34-36-4 Units deemed separable. – Each unit, together with its undivided interest in the common areas and facilities, shall, for all purposes, constitute real property and may be individually conveyed, leased, and encumbered and may be inherited or devised by will and be subject to all types of juridic acts inter vivos or mortis causa as if it were sole and entirely independent of all other units, and the separate units shall have the same incidents as real property, and the corresponding individual titles and interests therein shall be recordable.

History of Section.
(P.L. 1963, ch. 181, § 1.)

§ 34-36-13. Survey map.

(a) Simultaneously with the recording of the declaration there shall be recorded a standard size, original linen/mylar (21" × 31") record of survey map, as defined in § 34-36-3(15), with 6 1/4" × 1 1/2" recording information block, which map shall be made by a registered land surveyor and shall set forth (1) a description of the surface of the land included within the project, including all angular and linear data along the exterior boundaries of the property; (2) the linear measurement and location, with reference to the exterior boundaries, of the building or buildings located on the property; (3) diagrammatic floor plans of the building or buildings built or to be built thereon in sufficient detail to identify each unit,

including its identifying number or symbol, the official datum elevations of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and the lateral extensions, of every unit in the building; and (4) a certificate consenting to the recordation of such record of survey map pursuant to this chapter, signed and acknowledged by the record owner of such property. Every unit shall be identified on the record of survey map by a distinguishing number or other symbol.

(b) In interpreting the record of survey map or any deed or other instrument affecting a building or unit, the boundaries of the building or unit constructed or reconstructed in substantial accordance with the record of survey map shall be conclusively presumed to be the actual boundaries rather than the description expressed in the record of survey map, regardless of the settling or lateral movement of the building and regardless of minor variance between boundaries shown on the record of survey map and those of the building or unit.

History of Section.
(P.L. 1963, ch. 181, § 1; P.L. 1992, ch. 319, § 1.)

§ 34-36-14. Descriptions of unit.

Every deed, lease, mortgage, or other instrument may legally describe a unit by its identifying number or symbol as designated in the declaration or as shown on the record of survey map, and every description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber, or otherwise affect the unit owner's corresponding percentage of ownership in the common areas and facilities even though the description is not expressly mentioned or described.

History of Section.
(P.L. 1963, ch. 181, § 1.)

CHAPTER 36.1

CONDOMINIUM LAW

§ 34-36.1-1.01 Short title. – This act shall be known and may be cited as the "Rhode Island Condominium Act".

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-1.02 Applicability. – (a) This chapter applies to all condominiums created within this state after July 1, 1982, except that any condominium created within this state prior to July 1, 1982, may voluntarily accept the provisions of this chapter in lieu of the provisions under which it was originally organized. Acceptance shall be evidenced by an agreement in writing executed by and in behalf of the condominium association and by all of the owners of all of the individual condominium units within the condominium, in which agreement it is clearly stated that they all accept the provisions of this chapter in lieu of those in the statute under which the condominium was organized and wish to be governed in the future by the provisions of this chapter. The agreement shall be recorded in the land evidence records of each and every town or city where all or any part of the land in the condominium concerned may be located and shall become effective when first so recorded. The acceptance shall only apply to the governance of the condominium concerned as to all matters which are prospective or executory in nature; and nothing herein shall be deemed to abrogate, amend, limit, effect, or impair the continued effectiveness, legality, or validity of all actions lawfully taken by or in behalf of the condominium prior to the effective date of the acceptance, including, but without limitation, the condominium declaration and all amendments thereto, the by-laws of the condominium and/or of its association, all deeds, mortgages, leases and any further documents affecting the titles or rights of unit owners, or of the condominium or the prior lawful acts or deeds of any kind, of the condominium association, its officers, directors, or members.

(2) Sections 34-36.1-1.05 (separate titles and taxation), 34-36.1-1.06 (applicability of local ordinances, regulations, and building codes), 34-36.1-1.07 (eminent domain), 34-36.1-2.03 (construction and validity of declaration and bylaws), 34-36.1-2.04 (description of units), 34-36.1-3.02(a)(1) – (6) and (11) – (17) (powers of unit owners' association), 34-36.1-3.11 (tort and contract liability), 34-36.1-3.16 (lien for assessments), 34-36.1-3.18 (association records), 34-36.1-4.09 (resale of units), and 34-36.1-4.17 (effect of violation on rights of action; attorney's fees), § 34-36.1-3.20 (enforcement of declaration, bylaws and rules), and 34-36.1-1.03 (definitions), to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1982; but those sections apply only with respect to events and circumstances occurring after July 1, 1982 and do not invalidate existing provisions of the declaration, bylaws, plats, or plans of those condominiums.

(3) A condominium created as an additional phase by amendment of a condominium created prior to July 1, 1982, if the original declaration contemplated the amendment, shall be deemed to be a condominium created prior to July 1, 1982; provided, however, the provisions of subdivision (a)(2) shall apply as defined therein.

(4) Section 34-36.1-3.21 (foreclosure of condominium lien) applies, with respect to all condominiums created in this state prior to June 19, 1991, only with respect to events and circumstances occurring after June 18, 1991, does not invalidate existing provisions of the declarations, bylaws, plats, or plans of those condominiums, and applies in all respects to all condominiums created in this state after June 18, 1991.

(b) The provisions of the Condominium Ownership Act, chapter 36 of this title, do not apply to condominiums created after July 1, 1982 and do not invalidate any amendment to the declaration, bylaws, plats, and plans of any condominium created before July 1, 1982 if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 36 of this title. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this state, but the public offering statement provisions (§§ 34-36.1-4.02 – 34-36.1-4.07) apply to all contracts for the disposition thereof signed in this state by any party unless exempt under § 34-36.1-4.01(b).

History of Section.
(P.L. 1982, ch. 329, § 2; P.L. 1991, ch. 247, § 1; P.L. 1991, ch. 369, § 1; P.L. 1992, ch. 8, § 1; P.L. 1994, ch. 356, § 1.)

§ 34-36.1-1.03 Definitions. – In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant.

(i) A person "controls" a declarant if the person:

(A) Is a general partner, officer, director, or employer of the declarant,

(B) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the declarant,

(C) Controls in any manner the election of a majority of the directors of the declarant, or

(D) Has contributed more than twenty percent (20%) of the capital of the declarant.

(ii) A person "is controlled by" a declarant if the declarant:

(A) Is a general partner, officer, director, or employer of the person,

(B) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interest in the person,

(C) Controls in any manner the election of a majority of the directors of the person, or

(D) Has contributed more than twenty percent (20%) of the capital of the person.

(iii) Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Association" or "unit owners' association" means the unit owners' association organized under § 34-36.1-3.01.

(4) "Common elements" means all portions of a condominium other than the units.

(5) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to § 34-36.1-2.07.

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(ii) Provided that each unit owner has a vested, undivided interest in the common elements greater that 0.0 percent, no minimum percentage interest in the common elements is otherwise required by this chapter.

(8) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(9) "Declarant" means any person or group of persons acting in concert who:

(i) As part of a common promotional plan, offers to dispose of his, her or its interest in a unit not previously disposed of; or

(ii) Reserves or succeeds to any special declarant right.

(10) "Declaration" means any instruments, however denominated, that create a condominium, and any amendments to those instruments.

(11) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to:

(A) Add real estate to a condominium,

(B) Create units, common elements, or limited common elements within a condominium,

(C) Subdivide units or convert units into common elements, or

(D) Withdraw real estate from a condominium.

(12) "Person with a disability" means any person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve (12) months or any person having an impairment of mobility or vision which is expected to be of at least twelve (12) months duration, and is a substantial impediment to his or her ability to live independently.

(13) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(14) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(15) [Deleted by P.L. 1999, ch. 83, § 80, and P.L. 1999, ch. 130, § 80 which enacted identical amendments to this section.]

(16) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(17) "Land only units" shall mean units designated as land only units on the plats and plans which units may be comprised entirely or partially of unimproved real property and the air space above the real property. The boundaries of a land only unit are to be described pursuant to § 34-36.1-2.05(a)(5). Land only units may, but need not, contain a physical structure. The declaration may provide for the conversion of land only units to other types of units and/or common elements provided the conversion shall be effective only upon the recording of an amendment to the declaration which amendment will include new plats and plans identifying any portion of the land only unit converted to another type of unit and/or common element.

(18) "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(19) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 34-36.1-2.02(2) or (4) for the exclusive use of one or more but fewer than all of the units.

(20) "Master association" means an organization described in § 34-36.1-2.20, whether or not it is also an association described in § 34-36.1-3.01.

(21) "Offering" means any advertisement, inducement, solici- tation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

(22) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. (In the case of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.)

(23) "Purchaser" means any person, other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than:

(i) A leasehold interest including renewal options of less than twenty (20) years, or

(ii) As security for an obligation.

(24) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(25) "Residential purposes" means use for dwelling or recreational purposes, or both.

(26) "Special declarant rights" means rights reserved for the benefit of a declarant to:

(i) Complete improvements indicated on plats and plans filed with the declaration, (§ 34-36.1-2.09),

(ii) To exercise any development right, (§ 34-36.1-2.10),

(iii) To maintain sales offices, management offices, signs advertising the condominium, and models, (§ 34-36.1-2.15),

(iv) To use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium, (§ 34-36.1-2.16),

(v) To make the condominium part of a larger condominium or a planned community, (§ 34-36.1-2.21),

(vi) To make the condominium subject to a master association, (§ 34-36.1-2.20),

(vii) Or to appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control, (§ 34-36.1-3.03(d)).

(27) "Time share" means a right to occupy a unit or any of several units during five (5) or more separated time periods over a period of at least five (5) years, including renewal options, whether or not coupled with an estate or interest in a condominium or a specified portion thereof.

(28) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to § 34-36.1-2.05(a)(5).

(29) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

History of Section.
(P.L. 1982, ch. 329, § 2; P.L. 1988, ch. 340, § 1; P.L. 1991, ch. 369, § 2; P.L. 1999, ch. 83, § 80; P.L. 1999, ch. 130, § 80.)

ARTICLE 36.1-2.01

CREATION, ALTERATION, and TERMINATION of CONDOMINIUMS

§ 34-36.1-2.01 Creation of condominium. – (a) A condominium may be created pursuant to this chapter only by recording a declaration in the municipal land evidence records. The declaration must be recorded in every municipality in which any portion of the condominium is located, and must be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of each person executing the declaration.

(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of the building containing or comprising any units thereby created are substantially completed in accordance with the plans of that building, as evidenced by a certificate of completion executed by an independent registered engineer or architect which shall be recorded in the

local land evidence records. No provision of this chapter shall be construed as prohibiting the recording of a declaration or amendment to a declaration which creates a condominium containing land only units or adds land only units to an existing condominium.

(c) A declaration or an amendment to a declaration creating land only units shall set forth restrictions on the development of such land only units which address at a minimum the following items:

(1) Floor area square footage,

(2) Lot coverage,

(3) Height,

(4) Set backs from unit boundaries,

(5) Use, and

(6) Architectural and design standards.

History of Section.
(P.L. 1982, ch. 329, § 2; P.L. 1991; ch. 369, § 2.)

§ 34-36.1-2.02 Unit boundaries. – Except as provided by the declaration:

(1) If walls, floors or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subdivision (2), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-2.09. Plats and plans.

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this chapter if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

(1) The name and a boundary survey of the entire condominium;

(2) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) The extent of any encroachments by or upon any portion of the condominium;

(5) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium;

(6) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(7) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(8) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) The distance between noncontiguous parcels of real estate comprising the condominium;

(10) The location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in § 34-36.1-2.02(2) and (4);

(11) In the case of real estate not subject to development rights, all other matters customarily shown on land surveys.

(c) A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE

BUILT".

(d) To the extent not shown or projected on the plats, plans of the units must show or project:

(1) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number, provided, that if two (2) or more units have the same vertical boundaries one plan may be used for such units if so designated;

(2) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) Any units in which the declarant has reserved the right to create additional units or common elements (§ 34-36.1-2.10), identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) Any certification of a plat or plan required by this section or § 34-36.1-2.01(b) must be made by an independent registered surveyor, architect, or engineer.

History of Section.
P.L. 1982, ch. 329, § 2.

§ 34-36.1-2.12. Relocation of boundaries between adjoining units.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

History of Section.
P.L. 1982, ch. 329, § 2.

§ 34-36.1-2.14. Easement for encroachments.

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his or her willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

History of Section.
P.L. 1982, ch. 329, § 2

§ 34-36.1-3.03 Executive board members and officers. – (a) Except as provided in the declaration, the bylaws, subsection (b), or in other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise:

(1) If appointed by the declarant, the care required of fiduciaries of the unit owners; and

(2) If elected by the unit owners, ordinary and reasonable care.

(b) The executive board may not act on behalf of the association to amend the declaration (§ 34-36.1-2.17), to terminate the condominium, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(c) Within thirty (30) days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all the unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:

(i) Sixty (60) days after conveyance of eighty percent (80%) of the units which may be created to unit owners other than a declarant;

(ii) Two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business; or

(iii) Two (2) years after any development right to add new units was last exercised.

(2) A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before terminations of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the

declarant, be approved by the declarant before they become effective.

(e) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the executive board must be elected by unit owners other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units which may be created to unit owners other than a declarant, not less than one-third (1/3) of the members of the executive board must be elected by unit owners other than the declarant.

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three (3) members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-3.15 Assessments for common expenses. – (a) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(b) Except for assessments under subsections (c) – (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to § 34-36.1-2.07(a). Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding twenty-one percent (21%) per year.

(2) Except in the case of a condominium in which all units are restricted to non-residential use, the declarant must pay common expense assessments to the association on all units it

owns once a common expense assessment is imposed; the obligation of the declarant to pay common expense assessments on the units it owns shall commence when the declaration or an amendment to a declaration adding units to a condominium is recorded, for those units referenced in the declaration or in any amendment to the declaration, pursuant to § 34-36.1-2.01.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefitted; and

(3) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his or her unit.

(f) If common expenses liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(g) Whenever an assessment for common expenses has remained unpaid for a period of sixty (60) days, and the condominium unit is occupied by a tenant, the association may subject to the rights of a superior lienholder make demand upon the tenant for payment of the amount in arrears, and for payment of succeeding assessments on a monthly basis. All amounts paid directly to the association shall be used as a credit against the rent owed for occupancy of the unit.

(2) Acceptance by an association of payments made by a tenant shall not constitute a waiver of any other rights an association may have with respect to the collection of assessments.

History of Section.
(P.L. 1982, ch. 329, § 2; P.L. 1993, ch. 355, § 1; P.L. 1995, ch. 57, § 1.)

§ 34-36.1-4.03 Public offering statement – General provisions. – (a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the condominium;

(2) A general description of the condominium, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that declarant anticipates including in the condominium;

(3) The number of units in the condominium;

(4) Copies and a brief narrative description of the significant features of the declaration, other than the plats and plans, and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § 34-36.1-3.05;

(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

(i) An annual amount to establish a sufficient reserve for the painting and/or staining of exterior wood surfaces, replacement of roof shingles, resurfacing of roadways, and replacement of other items subject to deterioration which shall include but not be limited to, exterior wooden decks and mulch;

(ii) An itemization of the life-span and expense for restaining or repainting the exterior wood surfaces, resurfacing the roadways, and reshingling the roof, replacing exterior wooden decks, and replacing mulch, said expenses to be defined as annual and monthly sums per unit as part of the common expense assessment;

(iii) The projected common expense assessment by category of expenditures for the association; and

(iv) The projected monthly common expense assessment for each type of unit;

(6) Any services not reflected in the budget that the declarant provides, or expenses that he or she pays, and that he or she expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

(7) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(8) A description of any liens, defects, or encumbrances on or affecting the title to the condominium;

(9) A description of any financing offered or arranged by the declarant;

(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

(11) A statement that:

(i) Within ten (10) days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant;

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent (10%) of the sales price of the unit; and

(iii) If a purchaser receives the public offering statement more than ten (10) days before signing a contract, he or she cannot cancel the contract;

(12) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;

(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to § 34-36.1-4.08, together with the name and address of the escrow agent;

(14) Any restraints on alienation of any portion of the condominium;

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;

(17) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to § 34-36.1-4.19;

(18) A brief narrative description of any zoning and other land use requirements affecting the condominium; and

(19) All unusual and material circumstances, features, and characteristics of the condominium and the units.

(b) If a condominium composed of not more than twelve (12) units is not subject to any development rights, and no power is reserved to a declarant to make the condominium part

of a larger condominium, group of condominiums, or other real estate, a public offering statement may, but need not, include the information otherwise required by subdivisions (a)(9), (10), and (15) – (19) and the narrative descriptions of documents required by subdivision (a)(4).

(c) If a condominium composed of not more than twelve (12) units is not subject to any development rights, and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, a declarant who owns units for more than two (2) years from the date of the sale of the first unit shall not be required to issue a public offering statement pursuant to this section for those units owned for more than two (2) years.

(d) A declarant promptly shall amend the public offering statement to report any material

change in the information required by this section.

History of Section.
(P.L. 1982, ch. 329, § 2; P.L. 1988, ch. 662, § 1; P.L. 1990, ch. 432, § 1.)

§ 34-36.1-4.04 Public offering statement – Condominiums subject to development rights. – If the declaration provides that a condominium is subject to any development rights, the public offering statement must disclose, in addition to the information required by § 34-36.1-4.03:

(1) The maximum number of units, and the maximum number of units per acre, that may be created;

(2) A statement of how many or what percentage of the units which may be created will be restricted exclusively to residential use, or a statement that no representations are made regarding use restrictions;

(3) If any of the units that may be build within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

(4) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(5) A statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in subdivision (3);

(6) A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the condominium will be compatible with existing buildings and improvements in the condominium in terms of

architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

(7) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(8) A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the condominium pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the condominium, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

(10) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(11) A statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

(12) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.05 Public offering statement – Time shares. – If the declaration provides that ownership or occupancy of any units is or may be in time shares, the public offering statement shall disclose, in addition to the information required by § 34-41-4.03:

(1) The number and identity of units in which time shares may be created;

(2) The total number of time shares that may be created;

(3) The minimum duration of any time shares that may be created; and

(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in § 34-36.1-3.16.

History of Section.
(P.L. 1982, ch. 329, § 2; P.L. 1984, ch. 141, § 3.)

§ 34-36.1-4.06 Public offering statement – Condominiums containing conversion buildings. – (a) The public offering statement of a condominium containing any conversion building must contain, in addition to the information required by § 34-36.1-4.03:

(1) A statement by the declarant, based on a report prepared by a registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) A statement by the declarant of the expected useful life of each item reported on in subdivision (a)(1) or a statement that no representations are made in that regard; and

(3) A list of any outstanding notices of incurred violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to buildings containing units that may be occupied for residential use.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.07 Public offering statement – Condominium securities. – If an interest in a condominium is currently registered with the securities and exchange commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if he delivers to the purchaser a copy of the public offering statement filed with the securities and exchange commission.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.08 Purchaser's rights to cancel. – (a) A person required to deliver a public offering statement pursuant to § 34-36.1-4.02(c) shall provide a purchaser of a unit with a copy of the public offering statement and all amendments thereto before conveyance of that unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than ten (10) days before execution of a contract for the purchase of a unit the purchaser, before conveyance, may cancel the contract within ten (10) days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he or she may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or offeror's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(c) If a person required to deliver a public offering statement pursuant to § 34-36.1-4.02(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent (10%) of the sales price of the unit.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.09. Resale of units.

(a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under § 34-36.1-4.01(b), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than the plats and plans), the bylaws, the rules or regulations of the association, and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(3) A statement of any other fees payable by unit owners;

(4) A statement of any capital expenditures anticipated by the association for the current and two (2) next succeeding fiscal years;

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(7) The current operating budget of the association;

(8) A statement of any unsatisfied judgments against the association and the status of any

pending suits in which the association is a defendant;

(9) A statement describing any insurance coverage provided for the benefit of unit owners;

(10) A statement as to whether the executive board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

(11) A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium; and

(12) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(b) (1) The association, within ten (10) days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section.

(2) The association may require a unit owner to pay a fee that does not exceed one hundred twenty-five dollars ($125) to prepare and provide an electronic version or physical version of the resale certificate.

(3) In addition to those remedies as set forth in § 34-36.1-4.17, any association that fails to provide a certificate to the unit owner within ten (10) days of a written request by the unit owner is subject to a civil penalty of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) per occurrence.

(4) A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser contract is voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs.

History of Section.
P.L. 1982, ch. 329, § 2; P.L. 2019, ch. 39, § 1; P.L. 2019, ch. 48, § 1; P.L. 2021, ch. 56, § 1, effective June 18, 2021; P.L. 2021, ch. 59, § 1, effective June 18, 2021.

§ 34-36.1-4.10 Escrow of deposits. – Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to § 34-36.1-4.02(c) shall be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by a licensed

title insurance company, an attorney, a licensed real estate broker, an independent bonded escrow company, or any financial institution whose deposits are insured until:

(1) Delivered to the declarant at closing;

(2) Delivered to the declarant because of purchaser's default under a contract to purchase the unit; or

(3) Refunded to the purchaser.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.11 Release of liens. – (a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to § 34-36.1-4.02(c), a seller shall, before conveying a unit, record or furnish to the purchaser releases of all liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any real estate which a declarant has the right to withdraw.

(b) Before conveying real estate to the association the declarant shall have that real estate released from:

(1) All liens the foreclosure of which would deprive unit owners of any right of access to

or easement of support of their units, and

(2) All other liens on that real estate unless the public offering statement describes certain real estate which may be conveyed subject to liens in specified amounts.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.12 Conversion buildings. – (a) A declarant of a condominium containing conversion buildings, and any person in the business of selling real estate for his or her own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty (120) days before the tenants and any subtenant in possession are required to vacate. Rents shall not be increased during the notice period. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than one hundred twenty (120)

days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

(b) For sixty (60) days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. Tenants shall have the right to cancel their lease and receive no penalties for the cancellation as long as all obligations of the lease have been met. If a tenant fails to purchase the unit during that sixty (60) day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty (180) days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit for conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, and otherwise complies with the provisions of chapter 18 of this title the notice also constitutes a notice to vacate specified by that statute.

(e) Notwithstanding the notice provisions of subsection (a) herein any tenant who has continuously resided in the unit for ten (10) years or more or any tenant who has attained the age of sixty-two (62) shall be given one year notice. Rents shall not be increased during the notice period. A tenant as described in this subsection shall have one hundred eighty (180) days within which to purchase the unit as provided for in subsection (b) and the remaining provisions of that subsection shall apply.

(2) The owner or developer shall pay reasonable moving expenses and costs, to any tenant who is disabled or has attained the age of sixty-two (62), within a fifty (50) mile radius.

(f) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

History of Section.
(P.L. 1982, ch. 329, § 2; P.L. 1988, ch. 340, § 1; P.L. 1999, ch. 83, § 80; P.L. 1999, ch. 130, § 80.)

§ 34-36.1-4.13 Express warranties of quality. – (a) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(1) Any written or printed affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(2) Any model or description of the physical characteristics of the condominium, including plans and specifications of or for improvements, creates an express warranty that the condominium will substantially conform to the model or description;

(3) Any description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(4) A provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(b) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.14 Implied warranties of quality. – (a) A declarant and any person in the business of selling real estate for his or her own account warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant and any person in the business of selling real estate for his or her own account impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him or her, or made by any person before the creation of the condominium, will be:

(1) Free from defective materials; and

(2) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) In addition, a declarant and any person in the business of selling real estate for his or her own account warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in § 34-36.1-4.15.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.15 Exclusion or modification of implied warranties of quality. – (a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

(1) May be excluded or modified by agreement of the parties; and

(2) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.16 Statute of limitations for warranties. – (a) A judicial proceeding for breach of any obligation arising under § 34-36.1-4.13 or § 34-36.1-4.14 must be commenced within six (6) years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two (2) years. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by a separate instrument executed by the purchaser.

(b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) As to each common element, at the time the common element is completed or, if later:

(i) As to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or

(ii) As to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.17 Effect of violations on rights of action – Attorney's fees. – If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful failure to comply with this chapter. The court, in an appropriate case, may award reasonable attorney's fees.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.18 Labeling of promotional material. – If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT."

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.19 Declarant's obligation to complete and restore. – (a) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to § 34-36.1-2.09.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by §§ 34-36.1-2.10 – 34-36.1-2.13, 34-36.1-2.15 and 34-36.1-2.16.

History of Section.
(P.L. 1982, ch. 329, § 2.)

§ 34-36.1-4.20 Substantial completion of units. – In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect or engineer, or by issuance of a certificate of occupancy authorized by law.

History of Section.
(P.L. 1982, ch. 329, § 2.

SECTION 3. The secretary of state is hereby authorized and directed to print in the general laws following each section of this act, the corresponding official comments as defined in the Uniform Condominium Act (1980) which shall be used as guidance as to the intent of the legislature in adopting this chapter unless the statutory language shall clearly express otherwise in which case the statutory language shall prevail.

SECTION 4. This act shall take effect on July 1, 1982 and all acts and parts of acts inconsistent herewith are hereby repealed.

TITLE 37

PUBLIC PROPERTY and WORKS

CHAPTER 7

MANAGEMENT and DISPOSAL of PROPERTY

§ 37-7-4. Land taken for improvements adjacent to roads.

Whenever land is taken for the establishing, laying out, widening, extending, or relocating of public highways, streets, places, parks, or parkways, the acquiring authority may take more land and property than is needed for actual construction; provided, however, that the additional land and property so acquired or taken shall be no more in extent than would be sufficient to form suitable building sites abutting on the public highway, street, place, park, or parkway. After so much of the land and property has been appropriated for the public highway, street, place, park, or parkway as is needed therefor, the remainder may be held and improved by the acquiring authority for any public purpose or purposes, or may, with the approval of the state properties committee, be sold or leased for value, with or without suitable restrictions, and in the case of any sale or lease, the person or persons from whom the remainder was taken shall have the first right to purchase or lease the property upon such terms as the acquiring authority, with the approval of the state purchasing agent, is willing to sell or lease the property. The first right to purchase or lease shall be conclusively presumed to have been waived in the event that a written offer to sell or lease the property, containing the terms of the offer, shall have been sent by registered or certified mail to the last known address of the person or persons from whom the remainder was taken and the offer shall not have been accepted within thirty (30) days from the date of the mailing, and provided further that in the event the person or persons from whom the land was originally purchased refuse or waive their right to repurchase, or lease the land or property, the city or town wherein the land is situated shall have the second right to purchase or lease the land and property upon the same terms and conditions as the acquiring authority was willing to sell or lease the land or property to the original owners thereof. A second right to purchase or lease the land or property shall be conclusively presumed to have been waived in the event a written offer to sell or lease the land or property, containing the terms of the offer, shall have been sent by registered or certified mail to the city or town clerk, as the case may be, wherein the land and property are situated and the offer shall not have been accepted within thirty (30) days from the date of the mailing.

History of Section.
(P.L. 1953, ch. 3105, § 17; impl. am. P.L. 1956, ch. 3717, § 1; G.L. 1956, § 37-7-4; P.L. 1966, ch. 203, § 1.)

§ 37-7-6 Transfer of land between departments and agencies. – The governor, upon the request in writing of any interested general officer or the head of any department, board, bureau, commission, or agency of the state government, may execute a certificate transferring custody, control, and supervision over any land, and all buildings and improvements thereon and other real property, title to which is vested in the state of Rhode Island, or the title to which will be vested in the state upon completion of any condemnation or other proceeding then pending, from the department, board, bureau, commission, or agency exercising custody, control, or supervision to another department, board, bureau, commission, or agency of the state government.

History of Section.
(P.L. 1953, ch. 3105, § 19; G.L. 1956, § 37-7-6.)

§ 37-7-7 Filing, publication, and recording of transfers between departments and agencies – Costs. – The governor shall file the certificate referred to in § 37-7-6 with the secretary of state who shall place the certificate on file and who shall cause a true copy of the certificate to be published at least once in a newspaper published in the county in which the land or property is situated, and shall file a certified copy of the certificate for record in the office of the recorder of deeds or town clerk in the city or town where the land or property is situated. The date and hour of the filing of the certified copy shall be noted thereon, and the filing shall be deemed to constitute a transfer of the custody, control, and supervision over the land described therein in accordance with the provisions of the certificate as of the day and hour noted upon the certified copy. No fee shall be charged or collected for the filing or recording. The cost of the publication shall be borne by the department, board, bureau, commission, or agency to which custody, control, or supervision has been transferred.

History of Section.
(P.L. 1953, ch. 3105, § 19; G.L. 1956, § 37-7-7; P.L. 1982, ch. 380, § 1.)

§ 37-7-8 Grant of easements and rights of way over acquired lands. – Whenever, in the opinion of the acquiring authority, an easement or right of way may be granted in land owned or held by the state without thereby jeopardizing the interests of the state, and the granting of the easement or right of way will be for the public good, the acquiring authority, with the approval of the state properties committee, is hereby authorized and empowered to grant the easement or right of way by proper instrument, approved as to substance by the director of administration and as to form by the attorney general, for such consideration, and in such manner and upon such terms and conditions as may, in the judgment of the state purchasing agent, be most advantageous to the public interest.

History of Section.
(P.L. 1953, ch. 3105, § 20; G.L. 1956, § 37-7-8.)

§ 37-7-15. Sale of state-owned land, buildings and improvements thereon and other real property.

(a) Total annual proceeds from the sale of any land and the buildings and improvements thereon, and other real property, title to which is vested in the state of Rhode Island or title to which will be vested in the state upon completion of any condemnation or other proceedings, shall be transferred to the information technology restricted receipt account (ITRR account) and made available for the purposes outlined in § 42-11-2.5(a), unless otherwise prohibited by federal law.

(b) Provided, however, this shall not include proceeds from the sale of any land and the buildings and improvements thereon that will be created by the relocation of interstate route 195, which is sometimes collectively referred to as the "I-195 Surplus Land," which land is identified in the "Rhode Island Interstate 195 Relocation Surplus Land: Redevelopment and Market Analysis" prepared by CKS Architecture & Urban Design dated 2009, and such term means those certain tracts or parcels of land situated in the city of Providence, county of Providence, state of Rhode Island, delineated on that certain plan of land captioned "Improvements to Interstate Route 195, Providence, Rhode Island, Proposed Development Parcel Plans 1 through 10, Scale: 1″=20′, May 2010, Bryant Associates, Inc., Engineers-Surveyors-Construction Managers, Lincoln, Rhode Island, Maguire Group, Inc., Architects/Engineers/Planners, Providence, Rhode Island."

(c) Subject to the approval of the director of the department of administration, the state controller is authorized to offset any currently recorded outstanding liability on the part of developmental disability organizations (DDOs) to repay previously authorized startup capital advances against the proceeds from the sale of group homes within a fiscal year prior to any sale proceeds being deposited into the information technology investment fund.

History of Section.
P.L. 2011, ch. 151, art. 26, § 1; P.L. 2017, ch. 302, art. 7, § 12; P.L. 2023, ch. 79, art. 2, § 6, effective June 16, 2023.

TITLE 39

PUBLIC UTILITIES and CARRIERS

Chapter 1
Public Utilities Commission

§ 39-1-30.3 Installation of public utility services for abutting owners on private ways authorized. – The owner or owners of real estate abutting on a private way who have by deed or by prescription existing rights of ingress and egress upon such way or other private ways, shall have the right to place, install or construct in, on, along, under and upon the private way or other private ways, poles and other appurtenances necessary for the transmission of electricity, or telephone service provided such facilities do not unreasonably obstruct the private way or other private ways, and do not interfere with or be inconsistent with the existing use by others of such way or other private ways; and, provided further, that such placement, installation, or construction is done in accordance with regulations, plans and practices of the utility company which is to provide the electricity or telephone service. The agencies which provide such service shall comply with the rules and regulations of the public utilities commission. Any such owner or owners may grant permission to a public utility company to enter upon the way or other private ways to place, install, repair, or relocate poles and other necessary appurtenances for the transmission of electricity or telephone service in accordance with such company or companies regulations, practices and tariffs filed with the public utilities commission; provided, however, that no charge or added assessment shall be levied by the public utility company or companies against the owner or owners not connected to such service or services. Neither the person installing or repairing public utility facilities, nor such facilities, nor the electricity or telephone service transmitted shall be deemed to constitute a trespass upon the way or ways.

History of Section.
(P.L. 1994, ch. 353, § 1.)P.L. 1969, ch. 240, § 9; P.L. 1992, ch. 331, § 1.)

CHAPTER 6

RAILROAD COMPANIES

§ 39-6-7 Abandonment of condemned lands. – Any railroad corporation chartered by the general assembly of this state may, at any time before final court confirmation of the report of the commissioners appointed by any court, under the provisions of its charter and of law, to estimate all damages which any person shall sustain whose lands are mentioned or described in any location of the whole or any part of its railroad, abandon the whole or any part of the location, and may report the abandonment to the court; and thereupon all further proceedings by the commissioners with reference to so much of the location as shall have been so abandoned shall forthwith cease, and all costs and expenses incurred in the proceedings up to the date of the abandonment with reference to the abandoned location shall be paid by the railroad company, and the court shall make all necessary orders in the premises.

History of Section.
(G.L. 1896, ch. 187, § 55; G.L. 1909, ch. 215, § 59; G.L. 1923, ch. 251, § 50; G.L. 1938, ch. 124, § 50; G.L. 1956, § 39-6-7; P.L. 1990, ch. 492, § 11.)

§ 39-6-8 Reversion of abandoned lands. – Any and all lands, materials, and their appurtenances, covered by an abandoned location, that may have been taken or used and not paid for by the railroad company before abandonment, shall immediately, on the report thereof to such court as provided in § 39-6-7, revert to, and the title thereof become revested in, the several owners thereof, and their respective heirs and assigns, in the same way and with the same effect as if the location had never been made, and the abandonment and reverter may be pleaded by the railroad company in offset and diminution of damages, if any, in any action or proceeding to recover damages for the taking or use.

History of Section.
(G.L. 1896, ch. 187, § 56; G.L. 1909, ch. 215, § 60; G.L. 1923, ch. 251, § 51; G.L. 1938, ch. 124, § 51; G.L. 1956, § 39-6-8; P.L. 1997, ch. 326, § 109.)

§ 39-6-9 Possession of land adverse to railroad. – No length of possession, user, or occupancy of land belonging to a railroad corporation by an owner or occupier of adjoining land shall hereafter create any right in or to the land of the corporation in an adjoining owner or occupant or in any person claiming under him or her.

History of Section.
(P.L. 1899, ch. 657, § 1; G.L. 1909, ch. 215, § 61; G.L. 1923, ch. 251, § 52; G.L. 1938, ch. 124, § 52; G.L. 1956, § 39-6-9.)

§ 39-6-10 Adverse possession by railroad. – No length of possession, user, or occupancy by a railroad corporation of land belonging to an adjoining owner shall hereafter create any right in or to adjoining land in the railroad corporation or in any person or corporation claiming under it.

History of Section.
(P.L. 1899, ch. 657, § 2; G.L. 1909, ch. 215, § 62; G.L. 1923, ch. 251, § 53; G.L. 1938, ch. 124, § 53; G.L. 1956, § 39-6-10.)

§ 39-6-12 Filing of location of road – Citation. – Whenever any railroad company shall locate its road or any part thereof, it may file the report of the location with the clerk of the superior court for the county in which the located road is situated, and may, in writing, request the action of the court thereon according to charter or general or special act, or the provisions of § 39-6-13; and thereupon the clerk shall cause a citation to issue addressed to the parties named in the application, and made returnable to the superior court in the county, which citation shall be served upon the adverse parties in the same manner as process in a civil action, and, upon the return and entry thereof, the matter shall proceed in all respects as a civil action.

History of Section.
(G.L. 1896, ch. 187, § 61; C.P.A. 1905, § 1131; G.L. 1909, ch. 215, § 67; G.L. 1923, ch. 251, § 58; G.L. 1938, ch. 124, § 58; G.L. 1956, § 39-6-12.)

§ 39-6-31 Declaration of policy regarding abandoned railroad property. – The general assembly finds and declares that the preservation of open spaces and the orderly control and development of unused or undeveloped land bears a substantial relationship to the public health, safety, and welfare of the people of this state. When a railroad is granted permission to abandon any rail line by the Interstate Commerce Commission and gives up use of the entire width of its right of way in that area, an opportunity is afforded for the establishment of a facility for another means of transportation or for a necessary public recreation or conservation area in the community land which was not theretofore readily available. Railroads by reason of their statutory privilege of land acquisition by condemnation and statutory protection from acquisition of their land by condemnation are a proper subject for a special statutory procedure for the disposition of their unused or undeveloped lands.

History of Section.
(P.L. 1969, ch. 240, § 9; P.L. 1992, ch. 331, § 1.)

§ 39-6-32. Disposition of abandoned railroad property.

Whenever any railroad is granted permission to abandon any rail line by the Interstate Commerce Commission and ceases to be used by the railroad claiming title thereto, and within one year thereafter the head of any department, board, bureau, commission, or

agency of the state government, hereinafter referred to as the acquiring authority, declares that in his or her opinion the acquisition thereof will be advantageous to the establishment, construction, development, betterment, or maintenance of any governmental facility, public work, public improvement, or public preserve, the acquiring authority shall be and hereby is authorized and empowered, within the limits of the appropriations available or that shall be made available therefor, with the approval of the governor, to acquire interests, estates, easements, and privileges in the right of way for public use, by purchase, lease, gift, or by proceedings pursuant to § 39-6-33.

History of Section.
P.L. 1969, ch. 240, § 9; P.L. 1992, ch. 331, § 1.

CHAPTER 15

WATER SUPPLY

§ 39-15-5 Plat and description of property condemned. – The town, person or corporation taking any property, estate, or right of property under the provisions of this chapter, shall first cause a plat with a description thereof to be made, which, with a certificate of the taking of the property, estate, or right of property, shall contain a list of the owners thereof and of the persons interested therein, so far as the owners or person interested therein may be known to the town, person, or corporation taking the the property, estate, or right of property, and which shall be filed in the office of the clerk of the superior court for the county where the property or estate is located.

History of Section.
(G.L. 1896, ch. 123, § 4; C.P.A. 1905, § 1222; G.L. 1909, ch. 149, § 4; G.L. 1923, ch. 179, § 4; G.L. 1938, ch. 637, § 4; G.L. 1956, § 39-15-5.)

TITLE 44
TAXATION

CHAPTER 9
TAX SALES

§ 44-9-1. Tax titles on real estate.

(a) Taxes assessed against any person in any city or town for either personal property or real estate shall constitute a lien on the real estate. The lien shall arise and attach as of the date of assessment of the taxes, as defined in § 44-5-1.

(b) The lien shall terminate at the expiration of three (3) years after it first arises if the estate has in the meantime been alienated and the instrument alienating the estate has been recorded and no action for the enforcement of the lien has commenced; otherwise, it shall continue until a recorded alienation of the estate. The lien shall be superior to any other lien, encumbrance, or interest in the real estate whether by way of mortgage, attachment, receivership order, or otherwise, except easements, restrictions, and prior tax title(s) held by the Rhode Island housing and mortgage finance corporation. A final decree foreclosing all rights of redemption under this title shall constitute an alienation within the meaning of this section. The tax sale shall constitute an enforcement of the lien, but itself shall not constitute an alienation.

History of Section.
(G.L. 1896, ch. 48, §§ 2, 3; G.L. 1909, ch. 60, §§ 2, 3; P.L. 1912, ch. 769, § 44; G.L. 1923, ch. 62, §§ 2, 3; G.L. 1938, ch. 32, §§ 2, 3, 22; P.L. 1939, ch. 695, § 1; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-1; P.L. 2018, ch. 351, § 1.)

§ 44-9-2 Taxes for which particular property liable. – If any person is taxed for several parcels of real estate, each of the parcels shall be liable for the payment of the tax assessed against it, even though the parcel may have been alienated, but no parcel shall be liable for any tax assessed against any other parcel. If any person is taxed for real estate and for personal estate in the same tax, the whole of the person's tax may be collected either out of the real or personal estate. If any person is taxed for several parcels of real estate and for personal estate in the same tax, the tax on personal estate may be collected out of the real estate, and each of the parcels shall be liable for the payment of the tax assessed against it, together with the portion of the tax on the personal estate as the assessed value of the parcel bears to the aggregate assessed values of all parcels.

History of Section.
(G.L. 1896, ch. 48, § 7; P.L. 1898, ch. 586, § 1; G.L. 1909, ch. 60, § 9; G.L. 1923, ch. 62, § 9; G.L. 1938, ch. 32, §§ 9, 23; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-2.)

§ 44-9-7 Advertising and taking or sale of real estate. – The collector may advertise and take, or sell any real estate liable for taxes in the manner directed.

History of Section.
(G.L. 1896, ch. 48, § 9; G.L. 1909, ch. 60, § 11; G.L. 1923, ch. 62, § 11; G.L. 1938, ch. 32, §§ 11, 28; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-7; P.L. 1997, ch. 42, § 1; P.L. 1997, ch. 74, § 1.)

§ 44-9-8 Sale of undivided part or whole of land. – If the taxes are not paid, the collector shall, at the time and place appointed for the sale, sell by public auction for the amount of the taxes, assessments, rates, liens, interest, and necessary intervening charges, the smallest undivided part of the land which will bring the amount, but not less than one percent (1%), or the whole for the amount if no person offers to take an undivided part.

History of Section.
(G.L. 1896, ch. 48, § 10; G.L. 1909, ch. 60, § 12; G.L. 1923, ch. 62, § 12; P.L. 1934, ch. 2100, § 1; G.L. 1938, ch. 32, §§ 12, 29; P.L. 1939, ch. 695, § 1; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-8; P.L. 2002, ch. 385, § 1.)

§ 44-9-8.2 Deed of taking. – The instrument of taking shall be under the hand and seal of the collector and shall contain a statement of the cause of taking, a substantially accurate description of each parcel of land taken, the name of the person to whom the tax was assessed, the amount of the tax, and the incidental expenses and costs to the date of taking, and if notice of the sale was given to the Rhode Island Housing and Mortgage Finance Corporation and/or to the department of elderly affairs under the provisions of § 44-9-10, an affirmative certification as to which entity received notice and the date(s) on which each such notice was given shall be set forth in the instrument. This instrument of taking is not valid unless recorded within sixty (60) days of the date of taking. If recorded, it is prima facie evidence of all facts essential to the validity of the title taken. Title to the land taken shall vest in the city or town, subject to the right of redemption. The title shall, until redemption or until the right of redemption is foreclosed, be held as security for the repayment of the taxes with all intervening costs, terms imposed for redemption, and charges, with interest. The premises taken, both before and after either redemption or foreclosure, is also subject to and has the benefit of all easements and restrictions lawfully existing in, upon or over the land or appurtenant to the land, and all covenants and agreements running with the premises either at law or in equity, when taken.

History of Section.
(P.L. 1997, ch. 42, § 2; P.L. 1997, ch. 74, § 2; P.L. 2006, ch. 534, § 4; P.L. 2006, ch. 537, § 4.)

§ 44-9-9 Notice and advertisement of sale. – Before the sale, the collector shall give notice of the time and place of sale posted in two (2) or more public places in the city or town at least three (3) weeks before the time of the sale. The collector shall also cause to be published in some public newspaper published in the city or town, if there is one, and if

there is no public newspaper published in the city or town, then in some public newspaper published in the county, a statement concerning the time and place of sale, the real estate liable for payment of taxes, and the name of the person against whom the real estate was assessed, with a list of the parcel or parcels to be offered for sale by the recorded plat and lot number, or by assessors' plat and lot number, or by other adequate description. The newspaper notice giving this full description shall be inserted, once, at least three (3) weeks prior to the date of the advertised sale, and thereafter a weekly formal legal notice, between

the date of original advertisement and the time of sale specified in the notice, shall be inserted, stating that the collector will sell at public auction the real estate advertised. The subsequent formal legal notice shall include reference to the original advertisement, which gave a full description. Whenever an advertised tax sale is continued or postponed, a formal legal notice giving the new date shall be inserted at least one week prior to the new date. Any notice of sale shall inform any party entitled to notice of its right of redemption and shall explain to such party the manner in which said right shall be exercised and inform said party of the penalties and forfeiture that may occur if the right of redemption is not exercised.

History of Section.
(G.L. 1896, ch. 48, § 10; G.L. 1909, ch. 60, § 12; G.L. 1923, ch. 62, § 12; P.L. 1934, ch. 2100, § 1; G.L. 1938, ch. 32, §§ 12, 29; P.L. 1939, ch. 695, § 1; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-9; P.L. 2003, ch. 262, § 1.)

§ 44-9-12. Collector's deed – Rights conveyed to purchaser – Recording.

(a) The collector shall execute and deliver to the purchaser a deed of the land stating the cause of sale; the price for which the land was sold; the places where the notices were posted; the name of the newspaper in which the advertisement of the sale was published; the names and addresses of all parties who were sent notice in accordance with the provisions of §§ 44-9-10 and 44-9-11; the residence of the grantee; and if notice of the sale was given to the Rhode Island housing and mortgage finance corporation or to the office of healthy aging under the provisions of § 44-9-10. The deed shall convey the land to the purchaser, subject to the right of redemption. The conveyed title shall, until redemption or until the right of redemption is foreclosed, be held as security for the repayment of the purchase price with all intervening costs, terms imposed for redemption, and charges, with interest; and the premises conveyed, both before and after either redemption or foreclosure, shall also be subject to, and have the benefit of, all easements and restrictions lawfully existing in, upon, or over the land or appurtenant to the land. The deed is not valid against any intervening interests unless recorded within sixty (60) days after the sale. If the deed is recorded, it is prima facie evidence of all facts essential to the validity of the title conveyed by the deed. It shall be the duty of the collector to record the deed within sixty (60) days of the sale and to forward said deed promptly to the tax sale purchaser. The applicable recording fee shall be paid by the purchaser. The purchaser shall be reimbursed for said fee upon redemption by the redeeming party, if any. Except as provided, no sale shall give to the purchaser any right to either the possession, or the rents or profits of the land until the expiration of one year after the date of the sale, nor shall any sale obviate or transfer any responsibility of an owner of property to comply with any statute of this state or ordinance

of any municipality governing the use, occupancy, or maintenance or conveyance of property until the right of redemption is foreclosed.

(b) The rents to which the purchaser shall be entitled after the expiration of one year and prior to redemption shall be those net rents actually collected by the former fee holder or a mortgagee under an assignment of rents. Rents shall not include mere rental value of the land, nor shall the purchaser be entitled to any rent for owner-occupied, single-unit residential property. For purposes of redemption, net rents shall be computed by deducting from gross rents actually collected any sums expended directly or on behalf of the tenant from whom the rent was collected. Such expenditure shall include utilities furnished, repairs made to the tenanted unit, and services provided for the benefit of the tenant. However, mortgagee payments, taxes, and sums expended for general repair and renovation (i.e. capital improvements) shall not be deductible expenses in the computation of the rent.

(c) This tax title purchaser shall not be liable for any enforcement or penalties arising from violations of environmental or minimum-housing standards prior to the expiration of one year from the date of the tax sale, or five (5) years from the date of the tax sale if the Rhode Island housing and mortgage finance corporation is the tax title purchaser pursuant to § 44-9-8.3, except for violations that are the result of intentional acts by the tax sale purchaser or his or her agents.

(d) Upon the expiration of one year after the date of the sale, the tax title holder shall be jointly and severally liable with the owner for all responsibility and liability for the property and shall be responsible to comply with any statute of this state or ordinance of any municipality governing the use, occupancy, or maintenance or conveyance of the property even prior to the right of redemption being foreclosed; except, however, that if the Rhode Island housing and mortgage finance corporation is the tax title holder pursuant to § 44-9-8.3, then joint and several liability shall arise upon the expiration of five (5) years after the date of the sale. Nothing in this section shall be construed to confer any liability upon a city or town that receives tax title as a result of any bids being made for the land offered for sale at an amount equal to the tax and charges.

(e) In the event that the tax title is acquired by the Rhode Island housing and mortgage finance corporation, and the corporation has to take the property in its own name, pursuant to applicable statutes and any regulations duly adopted by the corporation. Upon such notice by the corporation, the collector shall execute and deliver a deed to the corporation as herein provided.

(f) The priority of any tax title with respect to other tax titles shall be determined by the chronological order in which the underlying tax sales were conducted, with subsequent tax titles being superior to earlier tax titles.

(g) The holder of an earlier tax title shall be entitled to exercise the right of redemption with respect to any subsequent tax title, in the manner provided in this chapter, unless and until the right to redeem the subsequent tax title is foreclosed in accordance with this chapter. The holder of an earlier tax title shall be entitled to notice of any proceedings to foreclose the right of redemption with respect to a subsequent tax title.

(h) The mere existence of a subsequent tax title shall have no effect upon:

(1) The existence or validity of an earlier tax title; or

(2) The validity of any proceedings to foreclose the right of redemption with respect to the earlier tax title, so long as the right of redemption with respect to a subsequent tax title has not been foreclosed.

(i) Any proceeding to foreclose the right of redemption with respect to an earlier tax title shall have no effect upon a subsequent tax title, and in any such proceeding, the holder of a subsequent tax title is not a necessary party.paid the taxes due, title shall remain with the owner of the property, subject to the right of the corporation

History of Section.
(G.L. 1938, ch. 32, § 32; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-12; P.L. 1985, ch. 448, § 1; P.L. 1997, ch. 42, § 1; P.L. 1997, ch. 74, § 1; P.L. 2003, ch. 262, § 1; P.L. 2006, ch. 534, § 3; P.L. 2006, ch. 537, § 3; P.L. 2010, ch. 239, § 40; P.L. 2015, ch. 247, § 1; P.L. 2015, ch. 271, § 1; P.L. 2016, ch. 112, § 1; P.L. 2016, ch. 121, § 1; P.L. 2017, ch. 210, § 1; P.L. 2017, ch. 324, § 1; P.L. 2018, ch. 351, § 1.)

§ 44-9-14 Purchase by collector for city or town. – If at the time and place of sale no person bids an amount equal to the tax and charges for the land offered for sale, the collector shall then and there make public declaration of the fact; and, if no bid equal to the tax and charges is then made, the collector shall give public notice that the collector purchases for the city or town by which the tax is assessed the land as offered for sale at the amount of the tax and the charges and expenses of the levy and sale. This amount, together with the cost of recording the deed of purchase, shall be allowed the collector in his or her settlement with the city or town; provided, that the collector causes the deed to be duly recorded within sixty (60) days after the purchase and to be delivered to the city or town treasurer.

History of Section.
(G.L. 1923, ch. 62, §§ 42, 43; P.L. 1935, ch. 2259, § 4; G.L. 1938, ch. 32, §§ 34, 43, 44; P.L. 1939, ch. 695, § 1; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-14.)

§ 44-9-15 Recital in deed to city or town. – If the city or town becomes the purchaser, the deed to it, in addition to the statements required by § 44-9-12, shall set forth the fact that no sufficient bid was made at the sale or that the land was taken by the city or town and shall confer upon the city or town the rights and duties of an individual purchaser.

History of Section.
(G.L. 1923, ch. 43; P.L. 1935, ch. 2259, § 4; G.L. 1938, ch. 32, §§ 35, 44; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-15; P.L. 1997, ch. 42, § 2; P.L. 1997, ch. 74, § 1.)

§ 44-9-16 Conveyance of several unimproved parcels by single deed – Apportionment of costs. – If any unimproved and unoccupied parcels of land are sold for nonpayment of taxes assessed against the same person, the collector may convey in one deed to the same purchaser, or convey to the city or town any number of lots so advertised and sold, and the deed shall state the amount of the taxes and costs due for each lot. The cost of the sale shall be apportioned equally among all the lots sold, and the cost of the deed shall be apportioned equally among all the lots conveyed by the deed.

History of Section.
(G.L. 1923, ch. 62, § 48; P.L. 1937, ch. 2533, § 1; G.L. 1938, ch. 32, §§ 37, 49; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-16.)

§ 44-9-18 Management and sale of land purchased by city or town – Assignment of tax title. – (a) Cities or towns may make regulations for the possession, management, and sale of land purchased or taken for taxes not inconsistent with law or with the right of redemption. The treasurer of any city or town holding a tax title, upon payment to the city or town of a sum not less or more than the amount necessary for redemption, may assign and transfer the tax title to any person, and may execute and deliver on behalf of the city or town any instrument necessary for this purpose. The treasurer shall send notice of the intended assignment to the owner of record at the owner's last known address, by registered or certified mail, at least ten (10) days prior to the assignment, but failure to receive the notice shall not affect the validity of the assignment. The instrument of assignment shall be recorded within sixty (60) days from its date and if recorded shall be prima facie evidence of all facts essential to its validity. Except as provided, all provisions of law applicable in cases where the original purchaser at a tax sale is other than the city or town shall after this apply in the case of an assignment, as if the assignee had been a purchaser for the original sum at the original sale and had paid to the city or town the subsequent taxes and charges included in the sum paid for the assignment (Forms 1 and 2).

(b) Neither a city or town nor any of its officers, agents or employees shall be liable or accountable to the owner or to any other person having an interest in the land for failure to collect rent or other income from the land; and neither the city or town nor any of its officers, agents or employees shall be liable for injury or damage caused by the possession of land or to the person or property of any person.

History of Section.
(G.L. 1938, ch. 32, § 39; P.L. 1946, ch. 1800, § 1; impl. am. P.L. 1956, ch. 3717, § 1; G.L. 1956, § 44-9-18; P.L. 1997, ch. 42, § 2; P.L. 1997, ch. 74, § 1.)

§ 44-9-19 Right of redemption from city or town. – (a) Any person having an interest in land sold for nonpayment of taxes, or his or her heirs or assigns, at any time prior to the filing of a petition for foreclosure under § 44-9-25, if the land has been purchased by the city or town and has not been assigned, may redeem the land by paying or tendering to the

treasurer the sum for which the real estate was purchased, plus a penalty which shall be ten percent (10%) of the purchase price if redeemed within six (6) months after the date of the collector's sale, and an additional one percent (1%) of the purchase price for each succeeding month, together with all charges lawfully added for intervening taxes, which have been paid to the municipality, plus interest thereon at a rate of one percent (1%) per month, and expenses assessed subsequently to the collector's sale.

(b) The certificate of redemption shall be recorded by the treasurer on the land records within twenty (20) days after the entire redemption amount has been paid to the municipality. The recording costs for the certificate of redemption shall be paid by the redeeming party.

(c) The right of redemption may be exercised only by those entitled to notice of the sale pursuant to §§ 44-9-10 and 44-9-11.

History of Section.
(G.L. 1896, ch. 48, § 16; G.L. 1909, ch. 60, § 18; G.L. 1923, ch. 62, § 18; P.L. 1936, ch. 2374, § 1; G.L. 1938, ch. 32, §§ 17, 40; P.L. 1939, ch. 695, § 1; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-19; P.L. 2003, ch. 262, § 1.)

§ 44-9-20 City or town treasurer's release. – If land sold to a city or town for nonpayment of taxes, which has not been assigned, is redeemed, the treasurer shall sign, execute, and deliver on behalf of the city or town a release of all the right, title, and interest, which it acquired by the purchase in and to the land redeemed. The delivery of the instrument shall extinguish all right and title under the collector's deed. If a person other than the owner of the fee rightfully redeems, the instrument when duly recorded shall be notice to all persons of the payment. If the amount so paid for redemption is paid by a holder of a mortgage on the premises, pays the amount so paid may be added to the mortgage debt (Form 3).

History of Section.
(G.L. 1938, ch. 32, § 40; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-20.)

§ 44-9-21. Redemption from purchaser other than city or town.

Any person may redeem by paying or tendering to a purchaser, other than the city or town, his or her legal representatives, or assigns, or to the person to whom an assignment of a tax title has been made by the city or town, at any time prior to the filing of the petition for foreclosure, in the case of a purchaser the original sum and any intervening taxes that have been paid to the municipality plus interest thereon at the rate of one percent (1%) per month and costs paid by him or her, plus a penalty as provided in § 44-9-19, or in the case of an assignee of a tax title from a city or town, the amount stated in the instrument of assignment, plus the above-mentioned penalty. He or she may also redeem the land by paying or tendering to the treasurer the sum that he or she would be required to pay to the purchaser or to the assignee of a tax title, in which case the city or town treasurer shall be constituted the agent of the purchaser or assignee until the expiration of one year from the

date of sale and not thereafter. The right of redemption may be exercised only by those entitled to notice of the sale pursuant to §§ 44-9-10 and 44-9-11.

History of Section.
(G.L. 1896, ch. 48, § 16; G.L. 1909, ch. 60, § 18; G.L. 1923, ch. 62, § 18; P.L. 1936, ch. 2374, § 1; G.L. 1938, ch. 32, §§ 17, 40; P.L. 1939, ch. 695, § 1; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-21; P.L. 2003, ch. 262, § 1; P.L. 2018, ch. 351, § 1.)

§ 44-9-24. Title absolute after foreclosure of redemption – Jurisdiction of proceedings.

The title conveyed by a tax collector's deed shall be absolute after foreclosure of the right of redemption by decree of the superior court as provided in this chapter. Notwithstanding the rules of civil procedure or the provisions of chapter 21 of title 9, no decree shall be vacated except in a separate action instituted within six (6) months following entry of the decree and in no event for any reason, later than six (6) months following the entry of decree. Furthermore, the action to vacate shall only be instituted for inadequacy of notice of the petition amounting to a denial of due process or for the invalidity of the tax sale because the taxes for which the property was sold had been paid or were not due and owing because the property was exempt from the payment of such taxes. The superior court shall have exclusive jurisdiction of the foreclosure of all rights of redemption from titles conveyed by a tax collector's deed, and the foreclosure proceedings shall follow the course of equity in a proceeding provided for in §§ 44-9-25 – 44-9-33.

History of Section.
(G.L. 1938, ch. 32, § 42; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-24; P.L. 2002, ch. 140, § 1; P.L. 2003, ch. 262, § 1; P.L. 2006, ch. 534, § 4; P.L. 2006, ch. 537, § 4; P.L. 2018, ch. 351, § 1.)

§ 44-9-32. Recording of notices of foreclosure petition and final disposition.

Notice of filing the petition for foreclosure and notice of the final disposition shall be recorded in the proper registry of deeds (Forms 7 and 10).

History of Section.
G.L. 1938, ch. 32, § 50; P.L. 1946, ch. 1800, § 1; G.L. 1956, § 44-9-32.

TITLE 45
TOWNS and CITIES

CHAPTER 1
BOUNDARIES

§ 45-1-1 Boundaries remain as established. – The extent and boundaries of the several cities and towns shall remain as now established by law.

History of Section.
(G.L. 1896, ch. 4, § 1; G.L. 1909, ch. 4, § 1; G.L. 1923, ch. 4, § 1; G.L. 1938, ch. 4, § 1; G.L. 1956, § 45-1-1.)

CHAPTER 5
COUNCILS and GOVERNING BODIES

§ 45-5-8 Suspension or removal of surveyor of highways. – In case of the incapacity of any surveyor of highways, or of any tyrannical and unwarrantable exercise by the surveyor of the powers of his or her office, the town council may, after giving the surveyor notice that the council deems reasonable, either suspend or altogether remove the surveyor from his or her office and appoint another in his or her place.

History of Section.
(G.L. 1896, ch. 40, § 12; G.L. 1909, ch. 50, § 12; G.L. 1923, ch. 51, § 12; G.L. 1938, ch. 333, § 12; G.L. 1956, § 45-5-8.)

CHAPTER 22.2
RHODE ISLAND COMPREHENSIVE PLANNING and LAND USE ACT

§ 45-22.2-4 Definitions. – As used in this chapter the following words have the meanings stated herein:

(1) "Agricultural land" means land suitable for agriculture by reason of suitability of soil or other natural characteristics or past use for agricultural purposes.

(2) "Capacity" or "land capacity" means the suitability of the land, as defined by geology, soil conditions, topography, and water resources, to support its development for uses such as residential, commercial, industrial, open space, or recreation. Land capacity may be modified by provision of facilities and services.

(3) "Capital improvements program" means a proposed schedule of all future projects listed in order of construction priority together with cost estimates and the anticipated means of financing each project.

(4) "Chief" means the highest-ranking administrative officer of the division of planning as established by subsection 42-11-10(g).

(5) "Coastal features" means any coastal beach, barrier island or spit, coastal wetland, coastal headland, bluff or cliff, rocky shore, manmade shoreline or dune as outlined and defined by the coastal resources management program, and as may be amended.

(6) "Comprehensive plan" or "comprehensive land use plan" means a document containing the components described in this chapter, including the implementation program which is consistent with the goals and guidelines established by this chapter.

(7) "Days" means calendar days.

(8) "Division of planning" means the office established as a division of the department of administration by subsection 42-11-10(g).

(9) "Floodplains" or "flood hazard area" means an area that is subject to a flood from a storm having a one percent (1%) chance of being equaled or exceeded in any given year, as delineated on a community's flood hazard map as approved by the federal emergency management agency pursuant to the National Flood Insurance Act of 1968, as amended (P.L. 90-448), 42 U.S.C. 4011 et seq.

(10) "Forecast" means a description of the conditions, quantities, or values anticipated to occur at a designated future time.

(11) "Goals" means those goals stated in § 45-22.2-3.

(12) "Historic or cultural resource" means any real property, structure, natural object, place, landmark, landscape, archaeological site or configuration or any portion or group of the preceding which has been listed on the federal or state register of historic places or that is considered by the Rhode Island Historical Preservation & Heritage Commission to meet the eligibility criteria for listing on the state register of historic places pursuant to § 42-45-5 or is located in a historic district established by a municipality in accordance with chapter 45-24.1, Historic Area Zoning.

(13) "Land" means real property including improvements and fixtures on, above, or below the surface.

(14) "Land use regulation" means a rule or statute of general application adopted by the municipal legislative body which controls, directs, or delineates allowable uses of land and the standards for these uses.

(15) "Local government" means any governmental agency authorized by this chapter to exercise the power granted by this chapter.

(16) "Maintain" means to evaluate regularly and revise as needed or required in order to ensure that a comprehensive plan remains consistent with the goals and guidelines established by this chapter.

(17) "Municipal legislative body" means the town council in a town or the city council in a city; or that part of a municipal government that exercises legislative powers under a statute or charter.

(18) "Municipal reviewing authority" means the municipal planning board or commission.

(19) "Open space" means any parcel or area of land or water set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring the open space; provided that the area may be improved with only those buildings, structures, streets, and off-street parking, and other improvements that are designed to be incidental to the natural openness of the land.

(20) "Planning board" or "commission" means the body established by a municipality under chapter 45-22 or combination of municipalities which has the responsibility to prepare a comprehensive plan and make recommendations concerning that plan to the municipal legislative body.

(21) "State guide plan" means goals, policies, and plans or plan elements for the physical, economic, and social development of the state, adopted by the state planning council in accordance with § 42-11-10.

(22) "State or regional agency" means, for the purposes of this chapter, any state agency, department, public authority, public corporation, organization, commission, or other governing body with regulatory or other authority affecting the goals established either in this chapter or the state guide plan. Pursuant to § 45-22.2-2, the definition of state and regional agency shall not be construed to supersede or diminish any regulatory authority granted by state or federal statute.

(23) "State agency program or project" State agency program means any non-regulatory, coordinated group of activities implemented for the purpose of achieving a specific goal or objective. State agency project means a specific initiative or development on an identifiable parcel(s) of land.

(24) "Voluntary association of local governments" means two (2) or more municipalities that have joined together pursuant to a written agreement and pursuant to the authority

granted under this chapter for the purpose of drafting a comprehensive land use plan and implementation program.

(25) "Wetland" a marsh, swamp, bog, pond, river, river or stream flood plain or bank; an area subject to flooding or storm flowage; an emergent or submergent plant community in any body of fresh water; or an area within fifty feet (50') of the edge of a bog, marsh, swamp, or pond, as defined in § 2-1-20; or any salt marsh bordering on the tidal waters of this state, whether or not the tidal waters reach the littoral areas through natural or artificial watercourses, and those uplands directly associated and contiguous thereto which are necessary to preserve the integrity of that marsh, and as further defined by the RI coastal resources management program, as may be amended.

(26) "Zoning" means the reservation of certain specified areas within a community or city for building and structures, or use of land, for certain purposes with other limitations as height, lot coverage, and other stipulated requirements.

History of Section.
(P.L. 1988, ch. 601, § 1; P.L. 1990, ch. 431, § 2; P.L. 1994, ch. 92, § 4; P.L. 2002, ch. 407, § 1; P.L. 2004, ch. 286, § 7; P.L. 2004, ch. 324, § 7; P.L. 2009, ch. 310, § 51; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1.)

§ 45-22.2-5 Formulation of comprehensive plans by cities and towns. – (a) The comprehensive plan is a statement (in text, maps, illustrations, or other media of communication) that is designed to provide a basis for rational decision making regarding the long-term physical development of the municipality. The definition of goals and policies relative to the distribution of future land uses, both public and private, forms the basis for land use decisions to guide the overall physical, economic, and social development of the municipality.

(b) There is established a program of local comprehensive planning to address the findings and intent and accomplish the goals of this chapter. Rhode Island's cities and towns, through the exercise of their power and responsibility pursuant to the general laws, applicable articles of the Rhode Island Constitution, and subject to the express limitations and requirements of this chapter, shall prepare, adopt, amend, and maintain comprehensive plans, including implementation programs, that relate development to land capacity, protect our natural resources, promote a balance of housing choices, encourage economic development, preserve and protect our open space, recreational, historic and cultural resources, provide for orderly provision of facilities and services and are consistent with the goals, findings, intent, and other provisions of this chapter and the laws of the state.

(c) Each municipality shall ensure that its zoning ordinance and map are consistent with its comprehensive plan.

(d) Each municipality shall submit to the chief, as provided for in §§ 45-22.2-9 and 45-22.2-12 and the rules promulgated by the state planning council:

(1) Its locally adopted comprehensive plan;

(2) Any amendment to its comprehensive plan;

(3) An informational report on the status of its implementation programs; and

(4) Its zoning ordinance text and generalized zoning map or maps.

History of Section.
(P.L. 1988, ch. 601, § 1; P.L. 1991, ch. 112, § 1; P.L. 1991, ch. 307, § 6; P.L. 1999, ch. 354, § 49; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1.)

§ 45-22.2-6. Required content of a comprehensive plan.

(a) Except as set forth herein, the comprehensive plan must utilize a minimum twenty-year (20) planning timeframe in considering forecasts, goals, and policies.

(b) The comprehensive plan must be internally consistent in its policies, forecasts, and standards, and shall include the content described within this section. The content described in subsections (b)(1) — (b)(10) may be organized and presented as deemed suitable and appropriate by the municipality. The content described in subsections (b)(11) and (b)(12) must be included as individual sections of the plan.

(1) Goals and policies. The plan must identify the goals and policies of the municipality for its future growth and development and for the conservation of its natural and cultural resources. The goals and policies of the plan shall be consistent with the goals and intent of this chapter and embody the goals and policies of the state guide plan.

(2) Maps. The plan must contain maps illustrating the following as appropriate to the municipality:

(i) Existing conditions:

(A) Land use, including the range of residential housing densities;

(B) Zoning;

(C) Key infrastructure such as, but not limited to: roads, public water, and sewer;

(D) Service areas for public water and sewer;

(E) Historical and cultural resource areas and sites;

(F) Open space and conservation areas (public and private); and

(G) Natural resources such as, but not limited to: surface water, wetlands, floodplains, soils, and agricultural land;

(ii) Future land use illustrating the desired patterns of development, density, and conservation as defined by the comprehensive plan; and

(iii) Identification of discrepancies between future land uses and existing zoning use categories.

(3) Natural resource identification and conservation. The plan must be based on an inventory of significant natural resource areas such as, but not limited to, water, soils, prime agricultural lands, forests, wildlife, wetlands, aquifers, coastal features, and floodplains. The plan must include goals, policies, and implementation techniques for the protection and management of these areas.

(4) Open space and outdoor recreation identification and protection. The plan must be based on an inventory of outdoor recreational resources, open space areas, and recorded access to these resources and areas. The plan must contain an analysis of forecasted needs, policies for the management and protection of these resources and areas, and identification of areas for potential expansion. The plan must include goals, policies, and implementation techniques for the protection and management of existing resources and acquisition of additional resources if appropriate.

(5) Historical and cultural resources identification and protection. The plan must be based on an inventory of significant historical and cultural resources such as historical buildings, sites, landmarks, and scenic views. The plan must include goals, policies, and implementation techniques for the protection of these resources.

(6) Housing. The plan must include the identification of existing housing patterns, an analysis of existing and forecasted housing needs, and identification of areas suitable for future housing development or rehabilitation. The plan shall include an affordable housing program that meets the requirements of § 42-128-8.1, the "Comprehensive Housing Production and Rehabilitation Act of 2004" and chapter 53 of this title, the "Rhode Island Low and Moderate Income Housing Act." The plan must include goals and policies that further the goal of § 45-22.2-3(c)(3) and implementation techniques that identify specific programs to promote the preservation, production, and rehabilitation of housing, as well as specific goals, implementation actions, and time frames for development of low- and moderate-income housing, as defined in § 45-53-3.

(7) Economic development. The plan must include the identification of existing types and patterns of economic activities including, but not limited to, business, commercial, industrial, agricultural, and tourism. The plan must also identify areas suitable for future economic expansion or revitalization. The plan must include goals, policies, and implementation techniques reflecting local, regional, and statewide concerns for the expansion and stabilization of the economic base and the promotion of quality employment opportunities and job growth.

(8) Services and facilities. The plan must be based on an inventory of existing physical infrastructure such as, but not limited to, educational facilities, public safety facilities, libraries, indoor recreation facilities, and community centers. The plan must describe services provided to the community such as, but not limited to, water supply and the management of wastewater, storm water, and solid waste. The plan must consider energy production and consumption. The plan must analyze the needs for future types and levels of services and facilities, including, in accordance with § 46-15.3-5.1, water supply system management planning, which includes demand management goals as well as plans for water conservation and efficient use of water concerning any water supplier providing service in the municipality, and contain goals, policies, and implementation techniques for meeting future demands.

(9) Circulation/Transportation. The plan must be based on an inventory and analysis of existing and proposed major circulation systems, including transit and bikeways; street patterns; and any other modes of transportation, including pedestrian, in coordination with the land use element. Goals, policies, and implementation techniques for the provision of fast, safe, efficient, and convenient transportation that promotes conservation and environmental stewardship must be identified.

(10) Natural hazards. The plan must include an identification of areas that could be vulnerable to the effects of sea-level rise, flooding, storm damage, drought, or other natural hazards. Goals, policies, and implementation techniques must be identified that would help to avoid or minimize the effects that natural hazards pose to lives, infrastructure, and property.

(11) Land use. In conjunction with the future land use map as required in subsection (b)(2)(ii) of this section, the plan must contain a land use component that designates the proposed general distribution and general location and interrelationships of land uses including, but not limited to: residential, commercial, industrial, open space, agriculture, recreation facilities, and other categories of public and private uses of land. The land use component shall be based upon the required plan content as stated in this section. It shall relate the proposed standards of population density and building intensity to the capacity of the land and available or planned facilities and services. The land use component must contain an analysis of the inconsistency of existing zoning districts, if any, with planned future land use. The land use component shall specify the process and schedule by which the zoning ordinance and zoning map shall be amended to conform to the comprehensive plan and shall be included as part of the implementation program, but in no event shall it take longer than eighteen (18) months for a zoning map to be brought into compliance with the future land use map. The future land use map in a valid comprehensive plan updated in accordance with this chapter shall govern all local municipal land use decisions.

(12) Implementation program.

(i) A statement which defines and schedules the specific public actions to be undertaken in order to achieve the goals and objectives of each component of the comprehensive plan. Scheduled expansion or replacement of public facilities, and the anticipated costs and revenue sources proposed to meet those costs reflected in

a municipality's capital improvement program, must be included in the implementation program.

(ii) The implementation program identifies the public actions necessary to implement the objectives and standards of each component of the comprehensive plan that require the adoption or amendment of codes and ordinances by the governing body of the municipality.

(iii) The implementation program identifies other public authorities or agencies owning water supply facilities or providing water supply services to the municipality, and coordinates the goals and objectives of the comprehensive plan with the actions of public authorities or agencies with regard to the protection of watersheds as provided in § 46-15.3-1 et seq.

(iv) The implementation program must detail the timing and schedule of municipal actions required to amend the zoning ordinance and map to conform to the comprehensive plan.

(v) The implementation program shall contain a concise strategic plan that details the actions to be taken annually to achieve the goals and policies of the plan. The strategic plan shall be reviewed annually by a municipality and the annual review shall be accomplished in the following manner: a municipal planning department shall submit a report to the municipal planning board for the board's review, comment, and findings. The planning board shall submit to the respective city or town council a report summarizing the status of the implementation of the strategic plan which report shall be reviewed by the city or town council at a public meeting.

History of Section.
P.L. 1988, ch. 601, § 1; P.L. 1989, ch. 519, § 1; P.L. 1990, ch. 431, § 2; P.L. 2004, ch. 286, § 7; P.L. 2004, ch. 324, § 7; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1; P.L. 2023, ch. 314, § 1, effective March 1, 2024; P.L. 2023, ch. 315, § 1, effective March 1, 2024.

45-22.2-7 Coordination of municipal planning activities. – (a) A municipality shall exercise its planning authority over the total land and inland water area within its jurisdiction.

(b) Any combination of contiguous municipalities may, upon formal adoption of an official comprehensive planning and enforcement agreement by the municipal legislative bodies, conduct joint planning and regulatory programs to fulfill the responsibilities established under this chapter. The municipalities shall agree:

(1) On procedures for joint action in the preparation and adoption of comprehensive plans and land use regulations;

(2) On the manner of representation on any joint land use body;

(3) On the amount of contribution from each municipality for any costs incurred in the development of the plan and land use ordinances; and

(4) On the zoning designation for those areas in contiguous municipalities which border upon each other. The zoning designations for these border areas must be consistent and compatible with the adjacent area in the neighboring community.

(c) All agreements between municipalities shall be in writing, approved in appropriate official action by the municipal legislative bodies, and forwarded to the director. All joint plans adopted by contiguous municipalities must be submitted to the director for approval.

(d) All municipalities shall provide for coordinating land uses with contiguous municipalities, other municipalities, and other agencies, as appropriate, including the management of resources and facilities that extend beyond municipal boundaries as rivers, aquifers, transportation facilities, and others. The comprehensive plan shall demonstrate consistency with the comprehensive plans of contiguous municipalities and other municipalities as appropriate.

History of Section.
(P.L. 1988, ch. 601, § 1.)

§ 45-22.2-8. Preparation, adoption, and amendments of comprehensive plans.

(a) The preparation of a comprehensive plan shall be conducted according to the following provisions in addition to any other provision that may be required by law:

(1) In addition to the duties established by chapter 22 of this title, local planning board or commission, to the extent that those provisions do not conflict with the requirements of this chapter, a planning board or commission has the sole responsibility for performing all those acts necessary to prepare a comprehensive plan for a municipality.

(2) Municipalities that choose to conduct joint planning and regulatory programs pursuant to this section shall designate and establish a local planning committee that has responsibility for the comprehensive planning program.

(3) The conduct of the planning board, commission, or the local planning committee shall include:

(i) Preparation of the comprehensive plan, including the implementation program component.

(ii) Citizen participation through the dissemination of information to the public and solicitation of both written and oral comments during the preparation of the plan.

(iii) Conducting a minimum of one public hearing.

(iv) Submission of recommendations to the municipal legislative body regarding the adoption of the plan or amendment.

(4) The municipality may enter into a formal written agreement with the chief to conduct a review of a draft plan or amendment in order to provide comments prior to the public hearing by the planning board, commission, or committee.

(b) The adoption or amendment of a comprehensive plan shall be conducted according to the following provisions in addition to any other provision that may be required by law:

(1) Prior to the adoption or amendment of a comprehensive plan, the city or town council shall first conduct a minimum of one public hearing.

(2) A comprehensive plan is adopted, for the purpose of conforming municipal land use decisions and for the purpose of being transmitted to the chief for state review, when it has been incorporated by reference into the municipal code of ordinances by the legislative body of the municipality. All ordinances dealing with the adoption of or amendment to a municipal comprehensive plan shall contain language stating that the comprehensive plan ordinance or amendment shall not become effective for the purposes of guiding state agency actions until it is approved by the State of Rhode Island pursuant to the methods stated in this chapter, or pursuant to any rules and regulations adopted pursuant to this chapter. The comprehensive plan of a municipality shall not take effect for purposes of guiding state agency actions until approved by the chief or the Rhode Island superior court.

(3) A municipality may not amend its comprehensive plan more than four (4) times in any one calendar year. Amendments that are required to address the findings of the chief, changes to the state guide plan, or changes to this act shall not be included under this provision.

(c) The intent of this section is to provide for the dissemination and discussion of proposals and alternatives to the proposed comprehensive plan by means of either individual or joint legislative and planning commission hearings which disseminate information to the public and which seek both written and oral comments from the public. Public hearing requirements for either joint hearings or for individual hearings of the planning board or commission and for the municipal legislative body shall include the following:

(1) Prior to the adoption of, or amendment to, a comprehensive plan, notice shall be given of the public hearing by publication of notice in a newspaper of local circulation within the city or town at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held, at which hearing opportunity shall be given to all persons interested to be heard. The same notice shall be posted in the town or city clerk's office and one other municipal building in the municipality and the municipality must make the notice accessible on the municipal home page of its website at least fourteen (14) days prior to the hearing.

The notice shall be mailed to the statewide planning program of the department of administration at least fourteen (14) days prior to the hearing. The notice shall:

(i) Specify the place of the hearing and the date and time of its commencement;

(ii) Indicate that adoption of, or amendment to, the comprehensive plan is under consideration;

(iii) Contain a statement of the proposed amendments to the comprehensive plan that may be printed once in its entirety, or summarize and describe the matter under consideration; the plan need not be published in its entirety;

(iv) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and

(v) State that the plan or amendment may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the hearing.

History of Section.
P.L. 1988, ch. 601, § 1; P.L. 1992, ch. 385, § 3; P.L. 1995, ch. 247, § 1; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1; P.L. 2023, ch. 316, § 1, effective June 24, 2023; P.L. 2023, ch. 317, § 1, effective June 24, 2023.

§ 45-22.2-9 State review of local comprehensive plans. – (a) There is established a program of comprehensive planning review to promote the preparation and implementation of local comprehensive plans, and to provide technical and financial assistance to accomplish this purpose. The program also ensures that all local comprehensive plans are consistent with the goals, findings, and intent as established by this chapter and the state guide plan.

(b) The chief is designated as the reviewing agent, and is responsible for carrying out the provisions of this chapter and ensuring that the findings, intent, and goals of this chapter are achieved. The chief shall publish guidelines for the preparation of comprehensive plan content required by § 45-22.2-6.

(c) The chief shall review any comprehensive plan or amendments adopted under the provisions of this chapter for consistency with the goals and intent established in the chapter and in the state guide plan, and in accordance with the following schedule:

(1) Comprehensive plans or amendments shall be submitted to the chief within thirty (30) days of adoption by the municipal legislative body, pursuant to subdivision 45-22.2-8(b)(2).

(2) Within fifteen (15) days of the receipt of a comprehensive plan the chief shall solicit comments from the public, regional and state agencies, and all municipalities contiguous to

the municipality submitting the plan or amendment. The comment period shall extend for thirty (30) days and shall be posted on the division of planning website.

(3) Review of the plan or amendment, and comments by the chief shall be completed and forwarded to the municipality as follows:

(i) Within one hundred twenty (120) days of the end of the comment period for new plansor amendments that have not been submitted under the provisions of subdivision 45-22.2-8(a)(4); or

(ii) Within thirty (30) days of the end of the comment period for new plans or amended plans previously submitted for review under subdivision 45-22.2-8(a)(4).

(iii) The chief is authorized to discuss and negotiate, with the municipality, concerning any aspect of a plan or amendment being reviewed under subdivision (3)(i) or (3)(ii) of this subsection.

(iv) The chief and the municipality submitting a plan amendment may mutually agree, in writing, to reduce or extend the review period established by this section.

(4) Municipalities shall correct any deficiencies reported by the chief within sixty (60) days of the receipt of the chief's review and comments provided that the chief and the municipality submitting a plan or amendment may mutually agree, in writing, to reduce or extend this period.

(5) The chief shall review all corrections and related material submitted by the municipality and render a final decision on the plan. In the event of disapproval, the chief shall notify the municipality by registered mail and shall issue findings specifically describing the deficiencies in the plan or amendment as it relates to the goals and other provisions of this chapter.

(6) The municipality may appeal the decision of the chief to a hearing officer as provided for under § 45-22.2-9.1. The appeal must be filed within thirty (30) days of receipt of the decision by the chief.

(d) Comprehensive plans and amendments shall be reviewed by the chief to ensure that the following requirements are complied with:

(1) The intent and goals of this chapter have been met.

(2) All required content as stated in § 45-22.2-6 is complete.

(3) The plan or amendment is consistent with, and embodies the goals and policies of, the state and its departments and agencies as contained in the state guide plan and the laws of the state.

(4) Municipal planning activities have been coordinated according to the provisions of § 45-22.2-7.

(5) The plan or amendment has been officially adopted and submitted for review in accordance with § 45-22.2-8 of this chapter and other applicable procedures.

(6) The plan or amendment complies with rules and regulations adopted by the state planning council as provided for by subsection 45-22.2-10(c).

(7) Adequate, uniform, and valid data have been used in preparing each plan or amendment.

(e) State approval of a plan and any amendment thereto shall expire upon the tenth (10th) anniversary of the chief's or superior court's approval and shall not be extended.

(f) After an amendment to this chapter or to the state guide plan, all municipalities shall, within one year, amend their comprehensive plan to conform with the amended chapter or the amended state guide plan. Failure to do so may result in the rescission, in whole or in part, of state approval. The chief shall notify the municipality in writing of a rescission.

(g) Disapproval of an amendment to a state approved plan shall apply to the amendment only and not affect the validity of a previously existing plan approval.

(h) Upon approval by the chief or superior court, the municipality is eligible for all benefits and incentives conditioned on an approved comprehensive plan pursuant to this chapter, and the municipality is allowed to submit the approved comprehensive plan or relevant section thereof to any state agency which requires the submission of a plan as part of its requirements, and the plan or relevant section thereof shall satisfy that requirement.

(i) Those portions of a comprehensive plan for which state approval was rescinded under subsection 45-22.2-9(f) and those amendments to a state approved plan for which state approval was not received under subsection 45-22.2-9(g), shall not be subject to the provisions of subsection 45-22.2-9(h).

History of Section.
(P.L. 1988, ch. 601, § 1; P.L. 1992, ch. 385, § 3; P.L. 2004, ch. 286, § 7; P.L. 2004, ch. 324, § 7; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1.)

§ 45-22.2-10 Coordination of state agencies. – (a) State agencies shall develop their respective programs and conduct their respective activities in a manner consistent with the findings, intent, and goals established under this chapter.

(b) The chief shall develop standards to assist municipalities in the incorporation of the state goals and policies into comprehensive plans, and to guide the chief's review of comprehensive plans and state agency activities.

(c) The state planning council shall adopt and maintain all rules and regulations necessary to implement the standards established by this chapter.

(d) The chief shall develop and make readily available to all municipalities statewide data and technical information for use in the preparation of comprehensive plans. Data specific to each municipality shall be provided by that municipality. The chief shall make maximum use of existing information available from other agencies.

(e) The chief may contract with any person, firm, or corporation to develop the necessary planning information and coordinate with other state agencies as necessary to provide support and technical assistance for local planning efforts.

(f) The chief shall notify appropriate state agencies of the approval of a comprehensive plan or amendment to a comprehensive plan.

(g) Once a municipality's comprehensive plan is approved, programs and projects of state agencies, excluding the state guide plan as provided for by § 42-11-10, shall conform to that plan. In the event that a state agency wishes to undertake a program, project, or to develop a facility which is not in conformance with the comprehensive plan, the state planning council shall hold a public hearing on the proposal at which the state agency must demonstrate:

(1) That the program, project, or facility conforms to the stated goals, findings, and intent of this chapter; and

(2) That the program, project, or facility is needed to promote or protect the health, safety, and welfare of the people of Rhode Island; and

(3) That the program, project, or facility is in conformance with the relevant sections of the state guide plan; and

(4) That the program implementation, project, or size, scope, and design of the facility will vary as little as possible from the comprehensive plan of the municipality.

History of Section.
(P.L. 1988, ch. 601, § 1; P.L. 1992, ch. 385, § 3; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1.)

§ 45-22.2-12. Maintaining and re-adopting the plan.

(a) A municipality must maintain a single version of the comprehensive plan including all amendments, appendices, and supplements. One or more complete copies of the comprehensive plan, including all amendments, shall be made available for review by the public. Availability shall include print, digital formats, and placement on the internet.

(b) A municipality shall periodically review and amend its plan in a timely manner to account for changing conditions. At a minimum, a municipality shall fully update and re-adopt its entire comprehensive plan, including supplemental plans, such as, but not limited to, special area plans, that may be incorporated by reference, at least once every ten (10) years from the date of municipal adoption. A minimum twenty-year (20) planning

timeframe in considering forecasts, goals, and policies must be utilized for an update. If a municipality fails to fully update and re-adopt its comprehensive plan within twelve (12) years from the date of the previous plan's adoption, such municipality shall not be able to utilize the comprehensive plan as a basis for denial of a municipal land use decision.

(c) A newly adopted plan shall supersede all previous versions.

(d) A municipality shall file an informational report on the status of the comprehensive plan implementation program with the chief not more than five (5) years from the date of municipal approval.

History of Section.
P.L. 1988, ch. 601, § 1; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1; P.L. 2023, ch. 314, § 1, effective March 1, 2024; P.L. 2023, ch. 315, § 1, effective March 1, 2024

§ 45-22.2-13. Compliance and implementation.

(a) The municipality is responsible for the administration and enforcement of the plan.

(b) All municipal land use decisions shall be in conformance with the locally adopted municipal comprehensive plan subject to § 45-22.2-12(b).

(c) Each municipality shall amend its zoning ordinance and map to conform to the comprehensive plan in accordance with the implementation program as required by § 45-22.2-6(b)(11) and § 45-22.2-6(b)(12)(iv). The zoning ordinance and map in effect at the time of plan adoption shall remain in force until amended. Except with respect to comprehensive plans that have failed to be updated within twelve (12) years, as set forth in § 45-22.2-6(b)(11), in instances where the zoning ordinance is in conflict with an adopted comprehensive plan, the zoning ordinance in effect at the time of the comprehensive plan adoption shall direct municipal land use decisions until such time as the zoning ordinance is amended to achieve consistency with the comprehensive plan and its implementation schedule. In instances of uncertainty in the internal construction or application of any section of the zoning ordinance or map, the ordinance or map shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable content of the adopted comprehensive plan.

(d) Limitations on land use approvals may be imposed according to the following provisions in addition to any other provision that may be required by law.

> **(1)** Nothing in the chapter shall be deemed to preclude municipalities from imposing limitations on the number of building permits or other land use approvals to be issued at any time, provided such limitations are consistent with the municipality's comprehensive plan in accordance with this chapter and are based on a reasonable, rational assessment of the municipality's sustainable capacity for growth.

(2) In the event of a dire emergency not reasonably foreseeable as part of the comprehensive planning process, a municipality may impose a limitation on the number of building permits or other land use approvals to be issued at any time, provided that such limitation is reasonably necessary to alleviate the emergency and is limited to the time reasonably necessary to alleviate the emergency.

(e) A one-time moratorium, for the purpose of providing interim protection for a planned future land use or uses, may be imposed during the twelve (12) months subsequent to the adoption of the local comprehensive plan provided that a change to the zoning ordinance and map has been identified and scheduled for implementation within twelve (12) months of plan adoption. The moratorium shall be enacted as an ordinance and may regulate, restrict, or prohibit any use, development, or subdivisions under the following provisions:

(1) The moratorium is restricted to those areas identified on the map or maps as required by § 45-22.2-6(b)(2)(iii).

(2) A notice of the moratorium must be provided by first class mail to property owners affected by said moratorium at least fourteen (14) days in advance of the public hearing.

(3) The ordinance shall specify:

(i) The purpose of the moratorium;

(ii) The date it shall take effect and the date it shall end;

(iii) The area covered by the moratorium; and

(iv) The regulations, restrictions, or prohibitions established by the moratorium.

(4) The moratorium may be extended up to an additional ninety (90) days if necessary to complete a zoning ordinance and map change provided that: (i) The public hearing as required by § 45-24-53 has commenced; and (ii) The chief approves the extension based on a demonstration of good cause. Said extension shall not be deemed as non-conformance to the implementation schedule.

(f) A moratorium enacted under the provisions of subsection (e) shall not apply to state agencies until such time that the municipal comprehensive plan receives approval from the chief or superior court.

(g) In the event a municipality fails to amend its zoning ordinance and map to conform to the comprehensive plan within the implementation schedule, or by the expiration of the moratorium period, a municipality must amend either their implementation schedule or, if the future land use is no longer desirable or feasible, amend the future land use map.

(1) Failure to comply with this provision within one hundred twenty (120) days of the date of the implementation schedule or the expiration of the moratorium period shall

result in the denial or rescission, in whole or in part, of state approval of the comprehensive plan and of all benefits and incentives conditioned on state approval.

(2) An implementation schedule amended under this provision shall not be eligible for an additional moratorium as provided for in subsection (e).

History of Section.
P.L. 1988, ch. 601, § 1; P.L. 1995, ch. 247, § 1; P.L. 2001, ch. 179, § 1; P.L. 2011, ch. 215, § 1; P.L. 2011, ch. 313, § 1; P.L. 2023, ch. 314, § 1, effective March 1, 2024; P.L. 2023, ch. 315, § 1, effective March 1, 2024.

§ 45-22.2-14. Severability.

If any provision of this chapter or of any rule, regulation or determination made under it, or the application to any person, agency, or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected by the invalidity. The invalidity of any section or sections or parts of any section or sections of this chapter shall not affect the validity of the remainder of the chapter.

History of Section.
P.L. 1988, ch. 601, § 1.

CHAPTER 23
SUBDIVISION of LAND

§ 45-23-1 – 45-23-24. Repealed.. –

§ 45-23-25 Title. – Sections 45-23-25 – 45-23-74 shall be known as the "Rhode Island Land Development and Subdivision Review Enabling Act of 1992". The short title shall be the "Development Review Act".

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-26 Requirement in all municipalities. – (a) Every municipality in the state shall adopt land development and subdivision review regulations, referred to as local regulations in this chapter, which comply with all the provisions of this chapter.

(b) All municipalities shall establish the standard review procedures for local land development and subdivision review and approval as specified in this chapter. The procedures are intended to provide thorough, orderly, and expeditious processing of development project applications.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-27. Applicability.

(a) §§ 45-23-25 — 45-23-74 and all local regulations are applicable to all applications under this chapter.

(b) Plats required.

(1) All activity defined as a subdivision requires a new plat, drawn to the specifications of the local regulations, and reviewed and approved by the planning board or its agents as provided in this chapter; and

(2) Prior to recording, the approved plat shall be submitted for signature and recording as specified in § 45-23-64.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-28 Continuation of ordinances – Supersession – Relation to other statutes. – (a) Any land development and subdivision review ordinance, regulation or rule, or amendment, enacted after December 31, 1994 shall conform to the provisions of this chapter. All lawfully adopted land development and subdivision review ordinances, regulations, and rules shall be brought into conformance with this chapter by December 31, 1995.

(b) All subdivision ordinances, regulations or rules adopted under authority of §§ 45-23-1 through 45-23-24, or any special subdivision enabling act that is in effect on July 21, 1992 remains in full force and effect until December 31, 1995, unless amended earlier so as to conform to the provisions of this chapter.

(c) Sections 45-23-1 through 45-23-24 and all special subdivision enabling acts in effect on July 21, 1992 are repealed effective December 31, 1995.

(d) Nothing contained in this chapter and no local ordinance, rule or regulation adopted under this chapter impairs the validity of any plat legally recorded prior to the effective date of the ordinance, rule or regulation.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 1993, ch. 36, §§ 1, 2; P.L. 1993, ch. 144, §§ 1, 2; P.L. 1994, ch. 92, § 2; P.L. 2009, ch. 310, § 54.)

§ 45-23-29 Legislative findings and intent. – (a) The general assembly recognizes and affirms in §§ 45-23-25 – 45-23-74 that the findings and goals stated in §§ 45-22.2-3 et seq. and 45-24-27 et seq., known as the Rhode Island Comprehensive Planning and Land Use Regulation Act and the Rhode Island Zoning Enabling Act of 1991, respectively, present findings and goals with which local regulations must be consistent.

(b) The general assembly further finds that:

(1) The subdivision enabling statutes contained in §§ 45-23-1 through 45-23-24, hereby repealed as of December 31, 1995, have been enacted in a series of separate actions over many years and do not provide for all the elements presently necessary for proper municipal review and approval of land development and subdivision projects;

(2) The character of land development and subdivision, and the related public and private services, have changed substantially in recent years;

(3) The responsibilities of the local governments in regulating land development and subdivision have changed, increased in complexity, and expanded to include additional areas of concern;

(4) State and federal laws increasingly require the interaction of local land development regulatory authorities with those of the federal and state agencies and adjacent municipalities;

(5) Not all instances of land development or subdivision are sufficiently reviewed prior to recording or construction, resulting in unwarranted environmental impacts, financial impacts on private individuals and communities, and inappropriate design;

(6) At present the cities and town throughout the state each establish their own procedures for review, approval, recording, and enforcement of land development and subdivision projects;

(7) It is necessary to provide for review and approval of land development projects within the subdivision review and approval procedures, as specified in the Rhode Island Zoning Enabling Act of 1991 (§ 45-24-27 et seq.); and

(8) It is necessary to require that the regulations and standards for all land development projects and subdivisions be sufficiently definite to provide clear direction for development design and construction and to satisfy the requirements for due process for all applicants for development approval.

(c) Therefore, it is the intent of the general assembly:

(1) That the land development and subdivision enabling authority contained in this chapter provide all cities and towns with the ability to adequately address the present and future needs of the communities;

(2) That the land development and subdivision enabling authority contained in this chapter require each city and town to develop land development and subdivision regulations in accordance with the community comprehensive plan, capital improvement plan, and zoning ordinance and to ensure the consistency of all local development regulations;

(3) That certain local procedures for review and approval of land development and subdivision are the same in every city and town;

(4) That the local procedure for integrating the approvals of state regulatory agencies into the local review and approval process for land development and subdivision is the same in every city and town; and

(5) That all proposed land developments and subdivisions are reviewed by local officials, following a standard process, prior to recording in local land evidence records.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 1993, ch. 36, § 1; P.L. 1993, ch. 144, § 1; P.L. 1994, ch. 92, § 2.)

§ 45-23-30 General purposes of land development and subdivision review ordinances, regulations and rules. –Land development and subdivision review ordinances, regulations and rules shall be developed and maintained in accordance with this

chapter and with a comprehensive plan which complies with chapter 22.2 of this title and a zoning ordinance which complies with § 45-24-27 et seq. Local regulations shall address the following purposes:

(1) Providing for the orderly, thorough and expeditious review and approval of land developments and subdivisions;

(2) Promoting high quality and appropriate design and construction of land developments and subdivisions;

(3) Promoting the protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment;

(4) Promoting design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;

(5) Encouraging local design and improvement standards to reflect the intent of the community comprehensive plans with regard to the physical character of the various neighborhoods and districts of the municipality;

(6) Promoting thorough technical review of all proposed land developments and subdivisions by appropriate local officials;

(7) Encouraging local requirements for dedications of public land, impact mitigation, and payment-in-lieu thereof, to be based on clear documentation of needs and to be fairly applied and administered; and

(8) Encouraging the establishment and consistent application of procedures for local record-keeping on all matters of land development and subdivision review, approval and construction.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-31 Purpose and consistency with comprehensive plan, zoning ordinance and other local land use regulations. – (a) Local regulations adopted pursuant to this chapter shall provide a statement of purposes. These purposes shall be consistent with purposes stated in chapters 22.2 and 24 of this title concerning comprehensive plans and zoning ordinances, respectively, as well as with § 45-23-30. The local regulations shall also be consistent with the adopted local comprehensive plan, local zoning ordinance and all other duly adopted local development regulations.

(b) In the instance of uncertainty in the construction or application of any section of the local regulations, the local regulations shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable elements of the comprehensive plan. Furthermore, the local regulations shall be construed in a manner which is consistent with the legislative findings, intents, and purposes of §§ 45-23-25 – 45-23-74.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-32. Definitions.

Where words or phrases used in this chapter are defined in the definitions section of either the Rhode Island Comprehensive Planning and Land Use Regulation Act, § 45-22.2-4, or the Rhode Island Zoning Enabling Act of 1991, § 45-24-31, they have the meanings stated in those acts. Additional words and phrases may be defined in local ordinances, regulations, and rules under this act in a manner that does not conflict or alter the terms or mandates in this act, the Rhode Island Comprehensive Planning and Land Use Regulation Act § 45-22.2-4, and the Rhode Island Zoning Enabling Act of 1991. The words and phrases defined in this section, however, shall be controlling in all local ordinances, regulations, and rules created under this chapter. In addition, the following words and phrases have the following meanings:

(1) Administrative officer. The municipal official(s) designated by the local regulations to administer the land development and subdivision regulations to review and approve qualified applications and/or coordinate with local boards and commissions, municipal staff, and state agencies as set forth herein. The administrative officer may be a member, or the chair, of the planning board, an employee of the municipal planning or zoning departments, or an appointed official of the municipality. See § 45-23-55.

(2) Board of appeal. The local review authority for appeals of actions of the administrative officer, which shall be the local zoning board of review constituted as the board of appeal. See § 45-23-57.

(3) Bond. See improvement guarantee.

(4) Buildable lot. A lot where construction for the use(s) permitted on the site under the local zoning ordinance is considered practicable by the planning board, considering the physical constraints to development of the site as well as the requirements of the pertinent federal, state, and local regulations. See § 45-23-60(a)(4).

(5) Certificate of completeness. A notice issued by the administrative officer informing an applicant that the application is complete and meets the requirements of the municipality's regulations, and that the applicant may proceed with the review process.

(6) Concept plan. A drawing with accompanying information showing the basic elements of a proposed land development plan or subdivision as used for pre-application meetings and early discussions, and classification of the project within the approval process.

(7) Consistency with the comprehensive plan. A requirement of all local land use regulations which means that all these regulations and subsequent actions are in accordance with the public policies arrived at through detailed study and analysis and adopted by the municipality as the comprehensive community plan as specified in § 45-22.2-3.

(8) Dedication, fee-in-lieu-of. Payments of cash that are authorized in the local regulations when requirements for mandatory dedication of land are not met because of physical conditions of the site or other reasons. The conditions under which the payments will be allowed and all formulas for calculating the amount shall be specified in advance in the local regulations. See § 45-23-47.

(9) Development plan review. Design or site plan review of a development of a permitted use. A municipality may utilize development plan review under limited circumstances to encourage development to comply with design and/or performance standards of the community under specific and objective guidelines, for developments including, but not limited to:

(i) A change in use at the property where no extensive construction of improvements is sought;

(ii) An adaptive reuse project located in a commercial zone where no extensive exterior construction of improvements is sought;

(iii) An adaptive reuse project located in a residential zone that results in less than nine (9) residential units;

(iv) Development in a designated urban or growth center;

(v) Institutional development design review for educational or hospital facilities; or

(vi) Development in a historic district.

(10) Development regulation. Zoning, subdivision, land development plan, development plan review, historic district, official map, flood plain regulation, soil erosion control, or any other governmental regulation of the use and development of land.

(11) Division of land. A subdivision.

(12) Environmental constraints. Natural features, resources, or land characteristics that are sensitive to change and may require conservation measures or the application of special development techniques to prevent degradation of the site, or may require limited development, or in certain instances, may preclude development. See also physical constraints to development.

(13) Final plan. The final stage of land development and subdivision review. See § 45-23-43.

(14) Final plat. The final drawing(s) of all or a portion of a subdivision to be recorded after approval by the planning board and any accompanying material as described in the community's regulations and/or required by the planning board.

(15) Floor area, gross. See R.I. State Building Code.

(16) Governing body. The body of the local government, generally the city or town council, having the power to adopt ordinances, accept public dedications, release public improvement guarantees, and collect fees.

(17) Improvement. Any natural or built item that becomes part of, is placed upon, or is affixed to, real estate.

(18) Improvement guarantee. A security instrument accepted by a municipality to ensure that all improvements, facilities, or work required by the land development and subdivision regulations, or required by the municipality as a condition of approval, will be completed in compliance with the approved plans and specifications of a development. See § 45-23-46.

(19) Land development project. A project in which one or more lots, tracts, or parcels of land or a portion thereof are developed or redeveloped as a coordinated site for one or more uses, units, or structures, including but not limited to, planned development or cluster development for residential, commercial, institutional, recreational, open space, or mixed uses. The local regulations shall include all requirements, procedures, and standards necessary for proper review and approval of land development projects to ensure consistency with this chapter and the Rhode Island zoning enabling act.

(i) Minor land development project. A land development project involving any one of the following:

(A) Seven thousand five hundred (7,500) gross square feet of floor area of new commercial, manufacturing, or industrial development, or less; or

(B) An expansion of up to fifty percent (50%) of existing floor area or up to ten thousand (10,000) square feet for commercial, manufacturing, or industrial structures; or

(C) Mixed-use development consisting of up to six (6) dwelling units and two thousand five hundred (2,500) gross square feet of commercial space or less; or

(D) Multi-family residential or residential condominium development of nine (9) units or less; or

(E) Change in use at the property where no extensive construction of improvements is sought; or

(F) An adaptive reuse project of up to twenty-five thousand (25,000) square feet of gross floor area located in a commercial zone where no extensive exterior construction of improvements is sought; or

(G) An adaptive reuse project located in a residential zone that results in less than nine (9) residential units;

A community can increase but not decrease the thresholds for minor land development set forth above if specifically set forth in the local ordinance and/or regulations. The process by which minor land development projects are reviewed by the local planning board, commission, technical review committee, and/or administrative officer is set forth in § 45-23-38.

(ii) Major land development project. A land development project that exceeds the thresholds for a minor land development project as set forth in this section and local ordinance or regulation. The process by which major land development projects are reviewed by the local planning board, commission, technical review committee, or administrative officer is set forth in § 45-23-39.

(20) Local regulations. The land development and subdivision review regulations adopted under the provisions of this act. For purposes of clarification, throughout this act, where reference is made to local regulations, it is to be understood as the land development and subdivision review regulations and all related ordinances and rules properly adopted pursuant to this chapter.

(21) Maintenance guarantee. Any security instrument that may be required and accepted by a municipality to ensure that necessary improvements will function as required for a specific period of time. See improvement guarantee.

(22) Master plan. An overall plan for a proposed project site outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, rather than giving full engineering details. Required in major land development or major subdivision review only. It is the first formal review step of the major land development or major subdivision process and the step in the process in which the public hearing is held. See § 45-23-39.

(23) Modification of requirements. See § 45-23-62.

(24) Parcel. A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development. Also referred to as a tract.

(25) Parking area or lot. All that portion of a development that is used by vehicles, the total area used for vehicular access, circulation, parking, loading, and unloading.

(26) Permitting authority. The local agency of government, meaning any board, commission, or administrative officer specifically empowered by state enabling law and local regulation or ordinance to hear and decide on specific matters pertaining to local land use.

(27) Phased development. Development, usually for large-scale projects, where construction of public and/or private improvements proceeds by sections subsequent to approval of a master plan for the entire site. See § 45-23-48.

(28) Physical constraints to development. Characteristics of a site or area, either natural or man-made, which present significant difficulties to construction of the uses permitted on that site, or would require extraordinary construction methods. See also environmental constraints.

(29) Planning board. The official planning agency of a municipality, whether designated as the plan commission, planning commission, plan board, or as otherwise known.

(30) Plat. A drawing or drawings of a land development or subdivision plan showing the location, boundaries, and lot lines of individual properties, as well as other necessary information as specified in the local regulations.

(31) Pre-application conference. An initial meeting between developers and municipal representatives that affords developers the opportunity to present their proposals informally and to receive comments and directions from the municipal officials and others. See § 45-23-35.

(32) Preliminary plan. A required stage of land development and subdivision review that generally requires detailed engineered drawings. See § 45-23-39.

(33) Public hearing. A hearing before the planning board that is duly noticed in accordance with § 45-23-42 and that allows public comment. A public hearing is not required for an application or stage of approval unless otherwise stated in this chapter.

(34) Public improvement. Any street or other roadway, sidewalk, pedestrian way, tree, lawn, off-street parking area, drainage feature, or other facility for which the local government or other governmental entity either is presently responsible, or will ultimately assume the responsibility for maintenance and operation upon municipal acceptance.

(35) Slope of land. The grade, pitch, rise, or incline of the topographic landform or surface of the ground.

(36) Storm water detention. A provision for storage of storm water runoff and the controlled release of the runoff during and after a flood or storm.

(37) Storm water retention. A provision for storage of storm water runoff.

(38) Street. A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets are further classified by the functions they perform. See street classification.

(39) Street, access to. An adequate and permanent way of entering a lot. All lots of record shall have access to a public street for all vehicles normally associated with the uses permitted for that lot.

(40) Street, alley. A public or private thoroughfare primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

(41) Street, cul-de-sac. A local street with only one outlet and having an appropriate vehicular turnaround, either temporary or permanent, at the closed end.

(42) Street, limited access highway. A freeway or expressway providing for through traffic. Owners or occupants of abutting property on lands and other persons have no legal right to access, except at the points and in the manner as may be determined by the public authority having jurisdiction over the highway.

(43) Street, private. A thoroughfare established as a separate tract for the benefit of multiple, adjacent properties and meeting specific, municipal improvement standards. This definition does not apply to driveways.

(44) Street, public. All public property reserved or dedicated for street traffic.

(45) Street, stub. A portion of a street reserved to provide access to future development, which may provide for utility connections.

(46) Street classification. A method of roadway organization that identifies a street hierarchy according to function within a road system, that is, types of vehicles served and anticipated volumes, for the purposes of promoting safety, efficient land use, and the design character of neighborhoods and districts. Local classifications use the following as major categories:

> **(i)** Arterial. A major street that serves as an avenue for the circulation of traffic into, out of, or around the municipality and carries high volumes of traffic.

(ii) Collector. A street whose principal function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties.

(iii) Local. Streets whose primary function is to provide access to abutting properties.

(47) Subdivider. Any person who: (i) Having an interest in land, causes it, directly or indirectly, to be divided into a subdivision; or who (ii) Directly or indirectly sells, leases, or develops, or offers to sell, lease, or develop, or advertises to sell, lease, or develop, any interest, lot, parcel, site, unit, or plat in a subdivision; or who (iii) Engages directly or through an agent in the business of selling, leasing, developing, or offering for sale, lease, or development a subdivision or any interest, lot, parcel, site, unit, or plat in a subdivision.

(48) Subdivision. The division of a lot, tract, or parcel of land into two or more lots, tracts, or parcels or any adjustment to existing lot lines is considered a subdivision.

(i) Administrative subdivision. Subdivision of existing lots that yields no additional lots for development, and involves no creation or extension of streets. This subdivision only involves division, mergers, mergers and division, or adjustments of boundaries of existing lots. The process by which an administrative officer or municipal planning board or commission reviews any subdivision qualifying for this review is set forth in § 45-23-37.

(ii) Minor subdivision. A subdivision creating nine (9) or fewer buildable lots. The process by which a municipal planning board, commission, technical review committee, and/or administrative officer reviews a minor subdivision is set forth in § 45-23-38.

(iii) Major subdivision. A subdivision creating ten (10) or more buildable lots. The process by which a municipal planning board or commission reviews any subdivision qualifying for this review under § 45-23-39.

(49) Technical review committee. A committee or committees appointed by the municipality for the purpose of reviewing, commenting, approving, and/or making recommendations to the planning board or administrative officer, as set forth in this chapter.

(50) Temporary improvement. Improvements built and maintained by a developer during construction of a development project and prior to release of the improvement guarantee, but not intended to be permanent.

(51) Vested rights. The right to initiate or continue the development of an approved project for a specified period of time, under the regulations that were in effect at the time of approval, even if, after the approval, the regulations change prior to the completion of the project.

(52) Waiver of requirements. See § 45-23-62.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1; P.L. 2013, ch. 458, § 1; P.L. 2013, ch. 467, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-33 General provisions – Required contents of local regulations. – The local regulations consist of the regulations and other text, together with charts, graphs, appendices and other explanatory material. All local regulations include, at a minimum, the elements listed below and as further described in this chapter:

(1) Statement of enabling authority for land development and subdivision derived from § 45-23-25 et seq.;

(2) Statement of the city or town enabling ordinance as specified in § 45-23-51;

(3) Statement of purpose and consistency with the comprehensive plan, the zoning ordinance and other federal, state and local land use regulations;

(4) Definitions;

(5) General provisions;

(6) Special provisions;

(7) Procedures for review and approval of plats and plans;

(8) Procedures for recording of plats and plans;

(9) Procedures for guarantees of public improvements;

(10) Procedures for waivers and modifications;

(11) Procedures for enforcement and penalties;

(12) Procedures for the adoption of the regulations and amendments;

(13) Procedures for the administration of the regulations and amendments;

(14) Procedures for appeals;

(15) Design and public improvement standards for all districts within the municipality;

(16) Construction specifications for improvement standards; and

(17) Specification of all application documents and other documents to be submitted.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-34. General provisions — Definitions. [Repealed effective January 1, 2024.]

History of Section.
P.L. 1992, ch. 385, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-35 General provisions – Pre-application meetings and concept review. – (a) One or more pre-application meetings shall be held for all major land development or subdivision applications. Pre-application meetings may be held for administrative and minor applications, upon request of either the municipality or the applicant. Pre-application meetings allow the applicant to meet with appropriate officials, boards and/or commissions, planning staff, and, where appropriate, state agencies, for advice as to the required steps in the approvals process, the pertinent local plans, ordinances, regulations, rules and procedures and standards which may bear upon the proposed development project.

(b) At the pre-application stage the applicant may request the planning board or the technical review committee for an informal concept plan review for a development. The purpose of the concept plan review is also to provide planning board or technical review committee input in the formative stages of major subdivision and land development concept design.

(c) Applicants seeking a pre-application meeting or an informal concept review shall submit general, conceptual materials in advance of the meeting(s) as requested by municipal officials.

(d) Pre-application meetings aim to encourage information sharing and discussion of project concepts among the participants. Pre-application discussions are intended for the guidance of the applicant and are not considered approval of a project or its elements.

(e) Provided that at least one pre-application meeting has been held for major land development or subdivision application or sixty (60) days has elapsed from the filing of the pre-application submission and no pre-application meeting has been scheduled to occur within those sixty (60) days, nothing shall be deemed to preclude an applicant from thereafter filing and proceeding with an application for a land development or subdivision project in accordance with § 45-23-36.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1.)

§ 45-23-36. General provisions — Authority and application for development and certification of completeness.

(a) Authority. Municipalities shall provide for the submission and approval of land development projects and subdivisions, as such terms are defined in the Rhode Island Zoning Enabling Act of 1991, and/or this chapter, and such are subject to the local regulations which shall be consistent with the requirements of this chapter. The local regulations must include all requirements, procedures, and standards necessary for proper review and approval of applications made under this chapter to ensure consistency with the intent and purposes of this chapter and with § 45-24-47 of the Rhode Island Zoning Enabling Act of 1991.

(b) Classification. In accordance with this chapter, the administrative officer shall advise the applicant as to which category of approval is required for a project. An applicant shall not be required to obtain both land development and development plan review, for the same project. The following categories of applications, as defined in this chapter, may be filed:

(1) Subdivisions. Administrative subdivision, minor subdivision, or major subdivision;

(2) Land development projects. Minor land development or major land development; and

(3) Development plan review.

(c) Certification of a complete application. An application shall be complete for purposes of commencing the applicable time period for action when so certified by the administrative officer. Every certification of completeness required by this chapter shall be in writing. In the event the certification of the application is not made within the time specified in this chapter for the type of plan, the application is deemed complete for purposes of commencing the review period unless the application lacks information required for these applications as specified in the local regulations and the administrative officer has notified the applicant, in writing, of the deficiencies in the application. See §§ 45-23-38, 45-23-39, and 45-23-50 for applicable certification timeframes and requirements.

(d) Notwithstanding other provisions of this section, the planning board may subsequently require correction of any information found to be in error and submission of additional information specified in the regulations but not required by the administrative officer prior to certification, as is necessary to make an informed decision.

(e) Where the review is postponed with the consent of the applicant, pending further information or revision of information, the time period for review is stayed and resumes when the administrative officer or the planning board determines that the required application information is complete.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 464, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-36.1. Electronic permitting.

(a) On or before October 1, 2025, every municipality in the state shall adopt and implement electronic permitting for all development applications filed under this chapter. For purposes of this section, "electronic permitting" means use of computer-based tools and services that automate and streamline the application process to include, but not be limited to, task-specific tools for: applications; submission of plans; completed checklists and checklist documents; reports; plan review; permitting; scheduling; certificates of completeness and incompleteness; supplemental submissions; project tracking; staff and technical review committee comments; fee calculation and collection.

(b) The state building commissioner, with the assistance of the office of regulatory reform and the division of statewide planning, pursuant to the provisions of § 23-27.3-108.2 may promulgate rules and regulations to implement the provisions of this section.

(c) The local towns and cities shall charge each applicant an additional one-tenth of one percent (.001%) of the total application fee for each application submitted. This additional amount shall be transmitted monthly to the state building office at the department of business regulation, and shall be used to staff and support the purchase or lease and operation of one web-accessible service and/or system to be utilized by the state and municipalities for the uniform, statewide electronic submission, review and processing of development applications as set forth in this section.

(d) On or before October 1, 2025, notwithstanding any other provision of this chapter to the contrary, all acts, requirements, filings, and documents necessary to comply with the application process shall be conducted by means of electronic permitting.

(e) The department of business regulation shall reimburse annual fees and costs associated with compliance with this program in accordance with procedures established by the department.

History of Section.
P.L. 2024, ch. 219, § 1, effective June 24, 2024; P.L. 2024, ch. 220, § 1, effective June 24, 2024.

§ 45-23-37 General provisions – Administrative subdivision. – (a) Any applicant requesting approval of a proposed administrative subdivision, as defined in this chapter, shall submit to the administrative officer the items required by the local regulations.

(b) The application shall be certified, in writing, as complete or incomplete by the administrative officer within a fifteen (15) day period from the date of its submission according to the provisions of § 45-23-36(b).

(c) Review process:

(1) Within fifteen (15) days of certification of completeness, the administrative officer, or the technical review committee, shall review the application and approve, deny or refer it to

the planning board with recommendations. The officer or committee shall report its actions to the planning board at its next regular meeting, to be made part of the record.

(2) If no action is taken by the administrative officer or the technical review committee within the fifteen (15) days, the application shall be placed on the agenda of the next regular planning board meeting.

(d) If referred to the planning board, the board shall consider the application and the recommendations of the administrative officer and/or the technical review committee and either approve, approve with conditions, or deny the application within sixty-five (65) days of certification of completeness. Failure of the planning board to act within the prescribed period constitutes approval of the administrative subdivision plan and a certificate of the administrative officer as to the failure of the planning board or committee to act within the required time and the resulting approval shall be issued on request of the applicant.

(e) Denial of an application by the administrative officer and/or the technical review committee is not appealable and requires the plan to be submitted as a minor subdivision application.

(f) Any approval of an administrative subdivision shall be evidenced by a written decision which shall be filed and posted in the office of the city or town clerk.

(g) Approval of an administrative subdivision expires ninety (90) days from the date of approval unless within that period a plat in conformity with that approval is submitted for signature and recording as specified in § 45-23-64.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 464, § 1.)

§ 45-23-38. General provisions — Minor land development and minor subdivision review.

(a) Application types and review stages.

(1) Applications requesting relief from the zoning ordinance.

(i) Applications under this section that require relief that qualifies only as a modification under § 45-24-46 and local ordinances shall proceed by filing an application under this chapter and a request for a modification to the zoning enforcement officer. If such modification is granted, the application shall then proceed to be reviewed by the administrative officer pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in § 45-24-46, such application shall proceed under unified development plan review pursuant to § 45-23-50.1.

(ii) Applications under this section that require relief from the literal provisions of the zoning ordinance in the form of a variance or special-use permit, shall be reviewed by the planning board under unified development plan review pursuant to § 45-23-50.1, and a request for review shall accompany the preliminary plan application.

(iii) Any application involving a street creation or extension shall be reviewed by the planning board and require a public hearing.

(2) Other applications. The administrative officer shall review and grant, grant with conditions, or deny all other applications under this section and may grant waivers of design standards as set forth in the local regulations and zoning ordinance. The administrative officer may utilize the technical review committee for initial review and recommendation. The local regulations shall specifically list what limited waivers an administrative officer is authorized to grant as part of their review.

(3) Review stages. Minor plan review consists of two (2) stages, preliminary and final; provided, that unless otherwise set forth in this section, if a street creation or extension is involved, or a request for variances and/or special-use permits is submitted, pursuant to the regulation's unified development review provisions, a public hearing is required before the planning board. The administrative officer may combine the approval stages, providing requirements for both stages are met by the applicant to the satisfaction of the administrative officer.

(b) Submission requirements. Any applicant requesting approval of a proposed, minor subdivision or minor land development, as defined in this chapter, shall submit to the administrative officer the items required by the local regulations.

(c) Certification. For each applicable stage of review, the application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days of the submission so long as a completed checklist of the requirements for submission is provided as part of the submission. Such certification shall be made in accordance with the provisions of § 45-23-36(c). If no street creation or extension is required, and/or unified development review is not requested, and a completed checklist of the requirements for submission is provided as part of the submission, such application shall be certified, in writing, complete or incomplete by the administrative officer within fifteen (15) days according to the provisions of § 45-23-36(c). The running of the time period set forth in this section will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

(d) Decision on preliminary plan. If no street creation or extension is required, the planning board or administrative officer will approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within any further time that is agreed to by the applicant and the board, according to the requirements of §§ 45-23-60 and 45-23-63. If a street extension or creation is required, or the application

is reviewed under the unified development plan review, the planning board will hold a public hearing prior to approval according to the requirements in § 45-23-42 and will approve, deny, or approve with conditions, the preliminary plan within ninety-five (95) days of certification of completeness, or within any specified time that is agreed to by the applicant and the board, according to the requirements of §§ 45-23-60 and 45-23-63.

(e) Failure to act. Failure of the planning board to act within the period prescribed constitutes approval of the preliminary plan, and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval will be issued on request of the application.

(f) Re-assignment to major review. The planning board may re-assign a proposed minor project to major review only when the planning board is unable to make the positive findings required in § 45-23-60.

(g) Final plan. Final plans shall be reviewed and approved by either the administrative officer or technical review committee. The officer or committee will report its actions, in writing to the planning board at its next regular meeting, to be made part of the record. The administrative officer or technical review committee shall approve, deny, approve with conditions, or refer the application to the planning board based upon a finding that there is a major change within twenty-five (25) days of the certificate of completeness.

(h) Modifications and changes to plans.

(1) Minor changes, as defined in the local regulations, to the plans approved at any stage may be approved administratively, by the administrative officer. The changes may be authorized without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the permitting authority. Denial of the proposed change(s) shall be referred to the applicable permitting authority for review as a major change.

(2) Major changes, as defined in the local regulations, to the plans approved at any stage may be approved only by the applicable permitting authority and must follow the same review and hearing process required for approval of preliminary plans, which shall include a public hearing if originally required as part of the application.

(3) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines the change to be a major change.

(i) Appeal. Decisions under this section shall be considered an appealable decision pursuant to § 45-23-71.

(j) Expiration of approvals. Approvals of a minor land development or subdivision plan expire one year from the date of approval unless, within that period, a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and

recording as specified in § 45-23-64. Validity may be extended for a longer period, for cause shown, if requested by the application in writing, and approved by the planning board.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1996, ch. 404, § 36; P.L. 1999, ch. 157, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 464, § 1; P.L. 2016, ch. 527, § 2; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-39. General provisions — Major land development and major subdivision review stages.

(a) Stages of review. Major land development and major subdivision review consists of three stages of review, master plan, preliminary plan, and final plan, following the pre-application meeting(s) specified in § 45-23-35. Also required is a public hearing at the master plan stage of review or, if combined at the first stage of review.

(b) The administrative officer may combine review stages and to modify but only the planning board may waive requirements as specified in § 45-23-62. Review stages may be combined only after the administrative officer determines that all necessary requirements have been met by the applicant or that the planning board has waived any submission requirements not included by the applicant.

(c) Master plan review.

(1) Submission requirements.

(i) The applicant shall first submit to the administrative officer the items required by the local regulations for master plans.

(ii) Requirements for the master plan and supporting material for this phase of review include, but are not limited to: information on the natural and built features of the surrounding neighborhood, existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries, the floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing; and potential neighborhood impacts.

(iii) Initial comments will be solicited from:

(A) Local agencies including, but not limited to, the planning department, the department of public works, fire and police departments, the conservation and recreation commissions;

(B) Adjacent communities;

(C) State agencies, as appropriate, including the departments of environmental management and transportation and the coastal resources management council; and

(D) Federal agencies, as appropriate. The administrative officer shall coordinate review and comments by local officials, adjacent communities, and state and federal agencies.

(iv) Applications requesting relief from the zoning ordinance.

(A) Applications under this chapter that require relief that qualifies only as a modification under § 45-24-46 and local ordinances shall proceed by filing a master plan application under this section and a request for a modification to the zoning enforcement officer. If such modification is granted, the application shall then proceed to be reviewed by the planning board pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in § 45-24-46, such application shall proceed under unified development plan review pursuant to § 45-23-50.1.

(B) Applications under this section that require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning board under unified development plan review pursuant to § 45-23-50.1.

(2) Certification. The application must be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days of the submission, according to the provisions of § 45-23-36(c), so long as a completed checklist of requirements is provided with the submission. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

(3) Technical review committee. To the extent the community utilizes a technical review committee, it shall review the application prior to the first planning board meeting and shall comment and make recommendations to the planning board.

(4) Public hearing.

(i) A public hearing will be held prior to the planning board decision on the master plan. If the master plan and preliminary plan review stages are being combined, a public hearing shall be held during the combined stage of review.

(ii) Notice for the public hearing is required and must be given at least fourteen (14) days prior to the date of the meeting in a newspaper of local circulation within the municipality. Notice must be mailed to the applicant and to all property owners within the notice area, as specified by local regulations.

(iii) At the public hearing, the applicant will present the proposed development project. The planning board must allow oral and written comments from the general public. All public comments are to be made part of the public record of the project application.

(5) Decision. The planning board shall, within ninety (90) days of certification of completeness, or within a further amount of time that may be consented to by the applicant through the submission of a written waiver, approve of the master plan as submitted, approve with changes and/or conditions, or deny the application, according to the requirements of §§ 45-23-60 and 45-23-63.

(6) Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the master plan, and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval will be issued on request of the applicant.

(7) Vesting.

(i) The approved master plan is vested for a period of two (2) years, with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for the annual review. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested by the applicant, in writing, and approved by the planning board. Master plan vesting includes the zoning requirements, conceptual layout, and all conditions shown on the approved master plan drawings and supporting materials.

(ii) The initial four-year (4) vesting for the approved master plan constitutes the vested rights for the development as required in § 45-24-44.

(d) Preliminary plan review.

(1) Submission requirements.

(i) The applicant shall first submit to the administrative officer the items required by the local regulations for preliminary plans.

(ii) Requirements for the preliminary plan and supporting materials for this phase of the review include, but are not limited to: engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, and a perimeter survey.

(iii) At the preliminary plan review phase, the administrative officer shall solicit final, written comments and/or approvals of the department of public works, the city or town engineer, the city or town solicitor, other local government departments, commissions, or authorities as appropriate.

(iv) Prior to approval of the preliminary plan, copies of all legal documents describing the property, proposed easements, and rights-of-way.

(v) Prior to approval of the preliminary plan, an applicant must submit all permits required by state or federal agencies, including permits related to freshwater wetlands, the coastal zone, floodplains, preliminary suitability for individual septic disposal systems, public water systems, and connections to state roads. For a state permit from the Rhode Island department of transportation, a letter evidencing the issuance of such a permit upon the submission of a bond and insurance is sufficient, but such actual permit shall be required prior to the issuance of a building permit.

(vi) If the applicant is requesting alteration of any variances and/or special-use permits granted by the planning board or commission at the master plan stage of review pursuant to adopted unified development review provisions, and/or any new variances and/or special-use permits, such requests and all supporting documentation shall be included as part of the preliminary plan application materials, pursuant to § 45-23-50.1(b).

(2) Certification. The application will be certified as complete or incomplete by the administrative officer within twenty-five (25) days, according to the provisions of § 45-23-36(c) so long as a completed checklist of requirements is provided with the submission. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event shall the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

(3) Technical review committee. To the extent the community utilizes a technical review committee, it shall review the application prior to the first planning board meeting and shall comment and make recommendations to the planning board.

(4) Public notice. Prior to the first planning board meeting on the preliminary plan, public notice shall be sent to abutters only at least fourteen (14) days before the hearing.

(5) Public improvement guarantees. Proposed arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees, shall be reviewed and approved by the planning board at preliminary plan approval.

(6) Decision. A complete application for a major subdivision or development plan shall be approved, approved with conditions, or denied, in accordance with the requirements of §§ 45-23-60 and 45-23-63, within ninety (90) days of the date when it is certified complete, or within a further amount of time that may be consented to by the developer through the submission of a written waiver. Provided that, the timeframe for decision is automatically extended if evidence of state permits has not been provided, or otherwise waived in accordance with this section.

(7) Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the preliminary plan, and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant.

(8) Vesting. The approved preliminary plan is vested for a period of two (2) years with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for each annual review and provide proof of valid state or federal permits as applicable. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the planning board. The vesting for the preliminary plan approval includes all general and specific conditions shown on the approved preliminary plan drawings and supporting material.

(e) Final plan.

(1) Submission requirements.

(i) The applicant shall submit to the administrative officer the items required by the local regulations for the final plan, as well as all material required by the planning board when the application was given preliminary approval.

(ii) Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees.

(iii) Certification by the tax collector that all property taxes are current.

(iv) For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.

(2) Certification. The application for final plan approval shall be certified complete or incomplete by the administrative officer in writing, within fifteen (15) days, according to the provisions of § 45-23-36(c) so long as a completed checklist of requirements is provided with the submission. This time period may be extended to twenty-five (25) days by written notice from the administrative officer to the applicant where the final plans contain changes to or elements not included in the preliminary plan approval. The running of the time period set forth herein shall be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and shall recommence upon the resubmission of a corrected application by the

applicant. However, in no event shall the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as complete and does not require submission to the planning board as per subsection (c) of this section, the final plan shall be considered approved.

(3) Decision. The administrative officer, or, if referred to it, the planning board, shall review, grant, grant with conditions, or deny final plan approval. A decision shall be issued within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, approve or deny the final plan as submitted.

(4) Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the final plan, and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant.

(5) Expiration of approval. The final approval of a major subdivision or land development project expires one year from the date of approval with the right to extend for one year upon written request by the applicant, who must appear before the planning board for the annual review, unless, within that period, the plat or plan has been submitted for signature and recording as specified in § 45-23-64. Thereafter, the planning board may, for good cause shown, extend the period for recording.

(6) Acceptance of public improvements. Signature and recording as specified in § 45-23-64 constitute the acceptance by the municipality of any street or other public improvement or other land intended for dedication. Final plan approval shall not impose any duty upon the municipality to maintain or improve those dedicated areas until the governing body of the municipality accepts the completed public improvements as constructed in compliance with the final plans.

(7) Validity of recorded plans. The approved final plan, once recorded, remains valid as the approved plan for the site unless and until an amendment to the plan is approved under the procedure stated in § 45-23-65, or a new plan is approved by the planning board.

(f) Modifications and changes to plans.

(1) Minor changes, as defined in the local regulations, to the plans approved at any stage may be approved administratively, by the administrative officer. The changes may be authorized without an additional planning board meeting, to the extent applicable, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the permitting authority. Denial of the proposed change(s) shall be referred to the applicable permitting authority for review as a major change.

(2) Major changes, as defined in the local regulations, to the plans approved at any stage may be approved only by the applicable permitting authority and must include a public hearing.

(3) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines the change to be a major change of the approved plans.

(g) Appeal. Decisions under this section shall be considered an appealable decision pursuant to § 45-23-71.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-40. [Repealed.]

History of Section.
P.L 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 294, § 1; P.L. 2008, ch. 464, § 1; P.L. 2016, ch. 527, § 2; P.L. 2017, ch. 109, § 1; P.L. 2017, ch. 175, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-41. [Repealed.]

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 294, § 1; P.L. 2008, ch. 464, § 1; P.L. 2016, ch. 527, § 2; P.L. 2017, ch. 109, § 1; P.L. 2017, ch. 175, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-42. General provisions — Major land development and major subdivision — Public hearing and notice.

Where a public hearing is required pursuant to this chapter, the following requirements shall apply:

(1) Notice requirements. Public notice of the hearing shall be given at least fourteen (14) days prior to the date of the hearing in a newspaper of local circulation within the municipality following the municipality's usual and customary practices for this kind of advertising. The same notice shall be posted in the town or city clerk's office and one other municipal building in the municipality and the municipality must make the

notice accessible on the municipal home page of its website at least fourteen (14) days prior to the hearing. Notice shall be sent to the applicant and to each owner within the notice area, by first class mail, of the time and place of the hearing not less than ten (10) days prior to the date of the hearing. Notice shall also be sent to any individual or entity holding a recorded conservation or preservation restriction on the property that is the subject of the application at least fourteen (14) days prior to the hearing. The notice shall also include the street address of the subject property, or if no street address is available, the distance from the nearest existing intersection in tenths (1/10's) of a mile. Local regulations may require a supplemental notice that an application for development approval is under consideration be posted at the location in question. The posting is for informational purposes only and does not constitute required notice of a public hearing. For any notice sent by first-class mail, the sender of the notice shall submit a notarized affidavit to attest to such mailing.

(2) Notice area.

(i) The distance(s) for notice of the public hearing shall be specified in the local regulations. The distance may differ by zoning district and scale of development. At a minimum, all abutting property owners to the proposed development's property boundary shall receive notice.

(ii) Watersheds. Additional notice within watersheds shall also be sent as required in § 45-23-53(b) and (c).

(iii) Adjacent municipalities. Notice of the public hearing shall be sent by the administrative officer to the administrative officer of an adjacent municipality if: (1) The notice area extends into the adjacent municipality; or (2) The development site extends into the adjacent municipality; or (3) There is a potential for significant negative impact on the adjacent municipality.

(3) Notice cost. The cost of all newspaper and mailing notices shall be borne by the applicant.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2007, ch. 161, § 1; P.L. 2007, ch. 283, § 1; P.L. 2023, ch. 316, § 2, effective June 24, 2023; P.L. 2023, ch. 317, § 2, effective June 24, 2023; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-43. General provisions — Major land development and major subdivision — Final plan. [Repealed effective January 1, 2024.]

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1996, ch. 404, § 36; P.L. 1999, ch. 157, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 294, § 1; P.L. 2008, ch. 464, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-44. General provisions – Physical design requirements.

(a) All local regulations shall specify, through reasonable, objective standards and criteria, all physical design requirements for subdivisions and land-development projects that are to be reviewed and approved pursuant to the regulations. Regulations shall specify all requirements and policies for subdivisions and land-development projects that are not contained in the municipality's zoning ordinance.

(b) Nothing in this section shall be construed to restrict a municipality's right, within state and local regulations, to establish its own minimum lot size per zoning district in its town or city.

(c) The slope of land shall not be excluded from the calculation of the buildable lot area or the minimum lot size, or in the calculation of the number of buildable lots or units.

(d) Wetland buffers, as defined in § 2-1-20, shall be included in the calculation of a minimum lot area and in the total number of square feet or acres of a tract or parcel of land before calculating the maximum potential number of units or lots for development; provided, however, that this shall not apply to lots directly abutting surface reservoirs with direct withdrawals used for public drinking water. Nothing herein changes the definition and applicability of a "buildable lot" as set forth under § 45-23-60(a)(4); and nothing herein permits the disturbance of wetlands or wetland buffers or otherwise alters the provisions of the freshwater wetlands act, § 2-1-18 et seq.

(e) The requirements and policies may include, but are not limited to: requirements and policies for rights-of-way, open space, landscaping, connections of proposed streets and drainage systems with those of the surrounding neighborhood; public access through property to adjacent public property; and the relationship of proposed developments to natural and man-made features of the surrounding neighborhood.

(f) The regulations shall specify all necessary findings, formulas for calculations, and procedures for meeting the requirements and policies. These requirements and policies apply to all subdivisions and land development projects reviewed and/or administered under the local regulations.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 2001, ch. 179, § 2; P.L. 2013, ch. 467, § 1; P.L. 2013, ch. 458, § 1; P.L. 2016, ch. 339, § 1; P.L. 2016, ch. 360, § 1.)

§ 45-23-45. General provisions – Public design and improvement standards.

(a) Public design and improvement standards for development projects shall be specified, through reasonable, objective standards and criteria, in the design and improvement standards section of the local regulations. Appropriate public improvement standards shall be specified for each area or district of the municipality. Standards may include, but are not limited to, specifications for rights-of-way, streets, sidewalks, lighting, landscaping, public access, utilities, drainage systems, fire protection, and soil erosion control.

(b) All public improvements required in a land development project or subdivision by a municipality shall reflect the physical character and design for that district that is specified by the municipality's adopted comprehensive plan. Public improvement requirements and standards need not be the same in all areas or districts of a municipality. The technical details of the improvement standards may be contained in an appendix to the local regulations but shall be considered part of the regulations.

(c) A town or city that requires the installation of a common cistern or any other water reservoir for fire protection purposes in a residential subdivision may, by ordinance, provide the developer the option in lieu thereof to require the installation of code-compliant residential sprinkler systems in structures for human habitation.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 2001, ch. 179, § 2; P.L. 2018, ch. 212, § 1; P.L. 2018, ch. 268, § 1.)

§ 45-23-46 General provisions – Construction and/or improvement guarantees. – (a) The local regulations shall require planning board approval of agreements for the completion of all required public improvements prior to final plan approval in the form of (1) completion of actual construction of all improvements, (2) improvement guarantees, or (3) combination thereof.

(b) Where improvements are constructed without a financial guarantee, the work is to be completed prior to final approval. All construction shall be inspected and approved under the direction of the administrative officer and according to local regulations.

(c) Improvement guarantees shall be in an amount and with all necessary conditions to secure for the municipality the actual construction and complete installation of all the required improvements, within the period specified by the planning board. The amount shall be based on actual cost estimates for all required public improvements and these estimates shall be reviewed and approved by the planning board. The board may fix the guarantee in a reasonable amount in excess of the estimated costs to anticipate for economic or construction conditions. Local regulations may include provisions for the review and/or upgrade of guarantees.

(d) The security shall be in the form of a financial instrument acceptable to the approving authority and shall enable the municipality to gain timely access to the secured funds, for cause.

(e) The local regulations shall establish procedures for the setting of improvement guarantee amounts, for inspections of improvements, for acceptance of improvements by the municipality and for the release of the improvement guarantees to the applicant. Procedures may include provisions for partial releases of the guarantees as stages of the improvements are completed, inspected and approved under the coordination of the administrative officer and reported to the planning board.

(f) In the cases of developments and subdivisions which are being approved and constructed in phases, the planning board shall specify improvement guarantee requirements related to each particular phase.

(g) The planning board may also require maintenance guarantees to be provided for a one year period subsequent to completion, inspection and acceptance of the improvement(s) unless there are extenuating circumstances.

(h) Procedures for the acceptance of required improvements shall stipulate that all improvements, once inspected and approved, shall be accepted by the municipality or other appropriate municipal agency for maintenance and/or part of the municipal system.

(i) The municipality is granted the power to enforce the guarantees by all appropriate legal and equitable remedies.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-47 General provisions – Requirements for dedication of public land – Public improvements and fees. –Where a municipality requires, as a condition of approval of a proposed land development or subdivision project, dedication of land to the public, public improvements, payment-in-lieu of dedication or construction, or payment to mitigate the impacts of a proposed project, local regulations must require the following:

(1) All required public improvements must reflect the character defined for that neighborhood or district by the community's comprehensive plan;

(2) The need for all dedications of land to the public and for payments-in-lieu of dedications must be clearly documented in the adopted plan of the community, i.e., the

comprehensive plan and the capital improvement plan;

(3) No dedications of land to the public or payments-in-lieu of dedications may be required until the need for the dedications are identified and documented by the

municipality, the land proposed for dedication is determined to be appropriate for the proposed use, and the formulas for calculating a payment-in-lieu of dedication have been established in the local regulations;

(4) All dedications, improvements, or payments-in-lieu of dedication or construction, for mitigation of identified negative impacts of proposed projects must meet the previously stated standards. Furthermore, the significant negative impacts of the proposed development on the existing conditions must be clearly documented. The mitigation required as a condition of approval must be related to the significance of the identified impact; and

(5) All payment-in-lieu of dedication or construction to mitigate the impacts of the proposed development shall be kept in restricted accounts and shall only be spent on the mitigation of the identified impacts for which it is required.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-48 Special provisions – Phasing of projects. – (a) A municipality may provide for the preliminary and final review stages, and for the construction of major land developments and subdivisions, to be divided into reasonable phases.

(b) When local regulations allow development phasing, the regulations must require the following:

(1) Approval of the entire site design first as a master plan. Thereafter the development plans may be submitted for preliminary and/or final review and/or approval by phase(s).

(2) General standards and regulations for determining physical limits of phases, completion schedules, and guarantees, for allowing progression to additional phases, for allowing two (2) or more phases to proceed in review or construction simultaneously, for interim public improvements or construction conditions, for changes to master or preliminary plans and may include other provisions as necessitated by local conditions.

(3) The master plan documents may contain information on the physical limits of the phases, the schedule and sequence of public improvement installation, improvement guarantees, and the work and completion schedules for approvals and construction of the phases.

(c) Vesting. The master plan remains vested as long as it can be proved, to the satisfaction of the planning board, that work is proceeding on either the approval stages or on the

construction of the development as shown in the approved master plan documents. Vesting extends to all information shown on the approved master plan documents.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-49. Special provisions — Land development projects. [Repealed effective January 1, 2024.]

History of Section.
P.L. 1992, ch. 385, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-49.1 Farmland residential compounds. – (a) The general assembly finds and declares that multiple dwelling units were historically common on farms because farming was a multi-generational way of life and because farm workers needed to be close to the land they worked; that this historical development pattern is centuries old, and that it is in the interest of the state to provide for the continuation of this development pattern as a means of preserving and enhancing agriculture and promoting sound development in rural areas of the state.

(b) Farmland residential compounds may be provided for by municipal ordinance as a minor land development project, consistent with the special provisions of this subdivision, which ordinances may treat farmland residential projects as a specific form of cluster development for purposes of zoning.

(1) Such farmland residential compounds shall only be allowed on agricultural operations, as defined in subsection 42-82-2(3), that have a net annual income of twenty thousand dollars ($20,000) or more for the most recent three (3) consecutive years preceding the date of the application for the farmland residential compound, which income is directly attributable to said agricultural operations.

(2) Such farmland residential compounds shall be limited to one dwelling unit for the first twenty (20) acres and one dwelling unit for each additional twenty (20) acres to a maximum of five (5) dwelling units, which shall be allowable without subdivision of the farmland parcel into separate lots and without meeting frontage requirements.

(3) Any road necessary to provide access to the dwelling units shall be constructed in accordance with applicable standards for private roads and shall be owned and maintained by the agricultural operation.

(4) Water supply and waste water treatment (ISDS) for the farmland residential compound shall comply with standards for residential systems.

(c) The dwelling units of a farmland residential compound need not be located in a single area on the farm and may be constructed in phases consistent with the limitations and provisions set forth in subdivision (b) of this section.

(d) Approval of a farmland residential compound shall not affect eligibility to participate in programs for farmland preservation or for taxation of farm, forest and open space land.

(e) For any agricultural operation, farmland residential compounds shall be permitted only to the limits set forth in subdivision (b)(2) of this section; in the event that the agricultural operation is subsequently divided into two (2) or more agricultural operations, no additional farmland residential compound shall be permitted until ten (10) years after the date of the approval of the application for the prior farmland residential compound, and all of the requirements for a farmland residential compound shall apply to each farmland residential compound; in the event that the agricultural operation ceases and the farmland is subdivided, a parcel at least equal to the minimum residential lot size for the zone times the number of dwelling units in the farmland residential compound plus the road in which the farmland residential compound is located shall be dedicated to the farmland residential

compound, which overall parcel shall include the water supply and waste water treatment systems for the farmland residential compound.

History of Section.
(P.L. 2006, ch. 406, § 1; P.L. 2006, ch. 452, § 1.)

§ 45-23-50. Special provisions — Development plan review.

(a) Municipalities may provide for development plan review, as defined in §§ 45-23-32 and 45-24-49 of the Rhode Island Zoning Enabling Act of 1991, as part of the local regulations. In these instances, local regulations must include all requirements, procedures, and standards necessary for proper review and recommendations of projects subject to development plan review to ensure consistency with the intent and purposes of this chapter and with § 45-24-49 of the Rhode Island Zoning Enabling Act of 1991. The local regulations and/or ordinances shall identify the permitting authority with the responsibility to review and approve applications for development plan review, which shall be designated as the planning board, technical review committee, or administrative officer. The local regulations and/or ordinances shall provide for specific categories of projects that may review and approve an application administratively as well as categories that are required to be heard by the designated planning board, or authorized permitting authority.

(b) The authorized permitting authority may waive requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought. The waiver may be granted only by a decision by the permitting authority finding that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting, and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements. The application for a waiver of development plan approval review shall include documentation, as required by the permitting authority, on prior use of the site. the proposed use, and its impact.

(c) The authorized permitting authority may grant waivers of design standards as set forth in the local regulations and zoning ordinance. The local regulations shall specifically list what limited waivers an administrative officer is authorized to grant as part of their review.

(d) Review stages. Administrative development plan review consists of one stage of review, while formal development plan review consists of two (2) stages of review, preliminary and final. The administrative officer may combine the approval stages, providing requirements for both stages are met by the applicant to the satisfaction of the administrative officer.

(1) Application requesting relief from the zoning ordinance.

(i) Applications under this chapter that require relief that qualifies only as a modification under § 45-24-46 and local ordinances shall proceed by filing an application under this chapter and a request for a modification to the zoning

enforcement officer. If such modification is granted the application shall then proceed to be reviewed by the administrative officer pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in § 45-24-46, such application shall proceed under unified development plan review pursuant to § 45-23-50.1.

(ii) Applications under this section that require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning board under unified development plan review pursuant to § 45-23-50.1, and a request for review shall accompany the preliminary plan application.

(e) Submission requirements. Any applicant requesting approval of a proposed development under this chapter, shall submit to the administrative officer the items required by the local regulations. Requests for relief from the literal requirements of the zoning ordinance and/or for the issuance of special-use permits or use variances related to projects qualifying for development plan review shall be submitted and reviewed under unified development review pursuant to § 45-23-50.1.

(f) Certification. The application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days or within fifteen (15) days if no street creation or extension is required, and/or unified development review is not required, according to the provisions of § 45-23-36(c). The running of the time period set forth in this section will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(g) Timeframes for decision.

(1) Administrative development plan approval. An application shall be approved, denied, or approved with conditions within twenty-five (25) days of the certificate of completeness or within any further time that is agreed to in writing by the applicant and administrative officer.

(2) Formal development plan approval.

(i) Preliminary plan. Unless the application is reviewed under unified development review, the permitting authority will approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within any further time that is agreed to by the applicant and the permitting authority.

(ii) Final plan. For formal development plan approval, the permitting authority shall delegate final plan review and approval to the administrative officer. The

officer will report its actions in writing to the permitting authority at its next regular meeting, to be made part of the record. The final plan shall be approved or denied within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, in writing.

(h) Failure to act. Failure of the administrative officer or the permitting authority to act within the period prescribed constitutes approval of the preliminary plan, and a certificate of the administrative officer as to the failure to act within the required time and the resulting approval shall be issued on request of the application.

(i) Vested rights. Approval of development plan review shall expire two (2) years from the date of approval unless, within that period, a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and recording as specified in § 45-23-64. Validity may be extended for an additional period upon application to the administrative officer or permitting authority, whichever entity approved the application, upon a showing of good cause.

(j) Modifications and changes to plans.

(1) Minor changes, as defined in the local regulations, to the plans approved at any stage may be approved administratively, by the administrative officer, whereupon final plan approval may be issued. The changes may be authorized without an additional planning board meeting, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the permitting authority. Denial of the proposed change(s) shall be referred to the permitting authority for review as a major change.

(2) Major changes, as defined in the local regulations, to the plans approved at any stage may be approved only by the permitting authority and must follow the same review and hearing process required for approval of preliminary plans, which shall include a public hearing.

(3) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines that there has been a major change to the approved plans.

(k) Appeal. A decision under this section shall be considered an appealable decision pursuant to § 45-23-71.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1996, ch. 404, § 36; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-50.1. Special provisions — Unified development review.

(a) A municipal zoning ordinance shall provide for unified development review pursuant to § 45-24-46.4, and the local regulations must include procedures for the filing, review, and approval of applications, pursuant to § 45-24-46.4 and this section.

(b) Review of projects submitted under the unified development review provisions of the regulations shall adhere to the procedures, timeframes, and standards of the underlying category of the project as listed in § 45-23-36, but shall also include the following procedures:

(1) Minor subdivisions and land development projects. Except for dimensional relief granted by modification as set forth in § 45-23-38, requests for variances and/or for the issuance of special-use permits related to minor subdivisions and land development projects shall be submitted as part of the application materials for the preliminary plan stage of review or if combined, for the first stage of reviews. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection (d) of this section shall be held prior to consideration of the preliminary plan by the planning board or commission. The planning board or commission shall conditionally approve or deny the request(s) for the variance(s) and/or special-use permit(s) before considering the preliminary plan application for the minor subdivision or land development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the minor subdivision or land development project.

(2) Development plan review. Except for dimensional relief granted by modification as set forth in § 45-23-38, requests for relief from the literal requirements of the zoning ordinance and/or for the issuance of special-use permits related to minor subdivisions and land development projects shall be submitted as part of the application materials for the preliminary plan stage of review. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection (d) of this section shall be held prior to consideration of the preliminary plan by the planning board or commission relevant permitting authority. The planning board or commission authorized permitting authority shall conditionally approve or deny the request(s) for the variance(s) and/or special-use permit(s) before considering the preliminary plan application for the minor subdivision or land development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the minor subdivision or land development project.

(3) Major subdivisions and land development projects — Master plan. Except for dimensional relief granted by modification as set forth in § 45-23-39, requests for variances for relief from the literal requirements of the zoning ordinance and/or for the issuance of a special-use permit related to major subdivisions and land development projects shall be submitted as part of the application materials for the master plan stage of review, or if combined, the first stage of review. A public hearing on the application, including any variance and special-use permit requests, that meets the requirements of subsection (d) of this section, shall be held prior to consideration of the master plan by the planning board or commission. The planning board or commission shall conditionally approve or deny the requests for the variance(s) and/or special-use permit(s) before considering the master plan application for the major subdivision or

land development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the major subdivision or land development project.

(4) Major subdivisions and land development projects — Preliminary plan. During the preliminary plan stage of review, applicants shall have the ability to request alteration of any variance(s) and/or special-use permit(s) granted by the planning board or commission during the master plan stage of review, and/or to request new variance(s) and/or special-use permit(s), based on the outcomes of the more detailed planning and design necessary for the preliminary plan. If necessary, the applicant shall submit such requests and all supporting documentation along with the preliminary plan application materials. If the applicant requests new or additional zoning relief at this stage, a public hearing on the application, that meets the requirements of subsection (d) of this section, shall be held prior to consideration of the preliminary plan by the planning board or commission. The planning board or commission shall conditionally approve, amend, or deny the requests for alteration(s), new variance(s), and/or new special-use permit(s), before considering the preliminary plan application for the major subdivision or land development project. Approval of the alteration(s), new variance(s), and/or new special-use permit(s) shall be conditioned on approval of the final plan of the major subdivision or land development project. If the planning board or commission denies the request for alteration(s), new variance(s), and/or new special-use permit(s), the planning board shall have the option of remanding the application back to the master plan stage of review. Alternatively, if the planning board or commission denies the request for alteration(s), new variance(s), and/or new special-use permit(s), the applicant may consent to an extension of the decision period mandated by § 45-23-41(f) [repealed] so that additional information can be provided and reviewed by the board or commission.

(c) Decision. The time periods by which the planning board or commission must approve or deny applications for variances and special-use permits under the unified development review provisions of the local regulations shall be the same as the time periods by which the board must make a decision on the applicable review stage of the category of project under review.

(d) Unless otherwise provided in this chapter all applications under this section shall require a single public hearing, held pursuant to subsection (b) of this section. The public hearing must meet the following requirements:

(1) Public hearing notice shall adhere to the requirements found in § 45-23-42(1);

(2) The notice area for notice of the public hearing shall be specified in the local regulations, and shall, at a minimum, include all property located in or within not less than two hundred feet (200′) of the perimeter of the area included in the subdivision and/or land development project. Notice of the public hearing shall be sent by the administrative officer to the administrative officer of an adjacent municipality if: (i) The notice area extends into the adjacent municipality; or (ii) The development site extends into the adjacent municipality; or (iii) There is a potential for significant

negative impact on the adjacent municipality. Additional notice within watersheds shall also be sent as required in § 45-23-53(b) and (c);

(3) Public notice shall indicate that dimensional variance(s), use variance(s), and/or special-use permit(s) are to be considered for the subdivision and/or land development project; and

(4) The cost of all public notice is to be borne by the applicant.

(e) The time periods by which the permitting authority must approve, approve with conditions, or deny requests for variances and special-use permits under the unified development review provisions of a zoning ordinance shall be the same as the time periods by which the board must make a decision on the applicable review stage of the underlying type of project under review.

(f) The expiration periods of an approval of a variance or special use permit granted under this section shall be the same as those set forth in the statute for the underlying type of project under review.

(g) Decisions under this section, including requests for the variance(s) and/or special-use permits that are denied by the permitting authority, may be appealed pursuant to § 45-23-71.

History of Section.
P.L. 2016, ch. 527, § 3; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-51 Local regulations – Authority to create and administer regulations. – The city or town council shall empower, by ordinance, the planning board to adopt, modify and amend regulations and rules governing land development and subdivision projects within that municipality and to control land development and subdivision projects pursuant to those regulations and rules.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-52 Local regulations – Procedure for adoption and amendment. – (a) The local planning board, once authorized by the ordinance required under § 45-23-51, shall adopt or repeal, and provide for the administration, interpretation, and enforcement of land development and subdivision review regulations.

(b) Provisions of the local regulations and appendices shall be presented in text and may incorporate maps, and other technical and graphic material. The local regulations, and all of their amendments, shall be consistent with all provisions of this chapter as well as the municipality's comprehensive plan and zoning ordinance.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-53. Local regulations — Public hearing and notice requirements.

(a) No local regulations shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the city or town planning board. The city or town planning board shall first give notice of the public hearing by publication of notice in a newspaper of local circulation within the municipality at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held. The same notice shall be posted in the town or city clerk's office and one other municipal building in the municipality and the municipality must make the notice accessible on the municipal home page of its website at least fourteen (14) days prior to the hearing. At this hearing, opportunity shall be given to all persons interested on being heard upon the matter of the proposed regulations. The newspaper notice shall:

(1) Specify the place of the hearing and the date and time of its commencement;

(2) Indicate that adoption, amendment, or repeal of local regulations is under consideration;

(3) Contain a statement of the proposed amendments to the regulations that may be printed once in its entirety, or may summarize or describe the matter under consideration as long as the intent and effect of the proposed regulation is expressly written in that notice;

(4) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and

(5) State that the proposals shown on the notice may be altered or amended prior to the close of the public hearing without further advertising as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the hearing.

(b) Notice of the public hearing shall be sent by first-class mail to the city or town planning board of any municipality where there is a public or quasi-public water source, or private water source that is used, or is suitable for use, as a public water source, located within two thousand feet (2,000′) of the municipal boundaries.

(c) Notice of a public hearing shall be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used, or is suitable for use, as a public water source, located within either the municipality or two thousand feet (2,000′) of the municipal boundaries; provided, that a map survey has been filed with the building inspector as specified in § 45-24-53(f).

(d) Notwithstanding any of the requirements set forth in subsections (a) through (c) above, each municipality shall establish and maintain a public notice registry allowing any person or entity to register for electronic notice of any changes to the local regulations.

Municipalities shall annually provide public notice of the existence of the registry by a publication of notice in a newspaper of general circulation within the municipality. In addition, each municipality is hereby encouraged to provide public notice of the existence of the public notice registry in all of its current and future communications with the public, including, but not limited to, governmental websites, electronic newsletters, public bulletins, press releases, and all other means the municipality may use to impart information to the local community.

(1) Provided, however, notice pursuant to a public notice registry as per this section does not alone qualify a person or entity on the public notice registry as an "aggrieved party" under § 45-24-31.

(e) No defect in the form of any notice under this section renders any regulations invalid, unless the defect is found to be intentional or misleading.

(f) The cost of newspaper notice and mailings shall be borne by the applicant.

(g) The requirements in this section are to be construed as minimum requirements.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 57, § 2; P.L. 2013, ch. 185, § 1; P.L. 2013, ch. 235, § 1; P.L. 2014, ch. 528, § 70; P.L. 2019, ch. 191, § 2; P.L. 2019, ch. 244, § 2; P.L. 2023, ch. 316, § 2, effective June 24, 2023; P.L. 2023, ch. 317, § 2, effective June 24, 2023.

§ 45-23-54. Local regulations – Publication and availability.

(a) Printed copies of the local regulations shall be available to the general public and shall be revised to include all amendments. Any appendices shall also be available. A reasonable charge may be made for copies.

(b) Upon publication of local regulations and any amendments to the local regulations, the municipality shall send a copy to the state law library.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 57, § 2; P.L. 2019, ch. 191, § 2; P.L. 2019, ch. 244, § 2.)

§ 45-23-55. Administration — The administrative officer.

(a) Local administration of the local regulations shall be under the direction of the administrative officer(s), who shall report to the planning board.

(b) The local regulations shall specify the process of appointment and the responsibilities of the administrative officer(s) who shall oversee and coordinate the review, approval, recording, and enforcement provisions of the local regulations. The administrative officer(s)

shall serve as the chair of the technical review committee, where established. The local regulations shall state minimum qualifications for this position regarding appropriate education, training, or experience in land use planning and site plan review.

(c) The administrative officer(s) shall be responsible for coordinating reviews of proposed land development projects and subdivisions with adjacent municipalities as is necessary to be consistent with applicable federal, state, and local laws and as directed by the planning board.

(d) The administrative officer(s) has the authority to issue approvals and all other authority where specifically set forth in this chapter.

(e) Enforcement of the local regulations shall be under the direction of the administrative officer(s). The officer(s) shall be responsible for coordinating the enforcement efforts of the zoning enforcement officer, the building inspector, planning department staff, the city or town engineer, the department of public works and other local officials responsible for the enforcement or carrying out of discrete elements of the regulations.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-56. Administration — Technical review committee.

(a) The municipality may establish a technical review committee(s) of not fewer than three (3) members, to conduct technical reviews of applications subject to their jurisdiction. The administrative officer shall serve as chairperson. Membership of this committee, to be known as the technical review committee, or design review committee, may include, but is not limited to, members of the planning board, planning department staff, other municipal staff representing departments with responsibility for review or enforcement, conservation commissioners, public members, or other duly appointed local public commission members.

(b) If a municipality establishes a technical review committee or committees, the planning board shall adopt written procedures establishing the committee's responsibilities.

(c) The technical review committee(s) has the authority to issue approvals, make findings, and provide recommendations as specifically set forth in this chapter.

(d) Reports of the technical review committee to the planning board shall be in writing and kept as part of the permanent documentation on the development application. In no case shall the recommendations of the technical review committee be binding on the planning board in its activities or decisions. All reports of the technical review committee shall be made available to the applicant prior to the meeting of the planning board at which the reports are first considered.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 464, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-57 Administration – The board of appeal. – The city or town council shall establish the city or town zoning board of review as the board of appeal to hear appeals of decisions of the planning board or the administrative officer on matters of review and approval of land development and subdivision projects.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-58 Administration – Administrative fees. – Local regulations adopted pursuant to this chapter may provide for reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the applicant for the adequate review and hearing of applications, issuance of permits and recordings of subsequent decisions.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-59 Administration – Violations and penalties. – (a) Local regulations adopted pursuant to this chapter shall provide for a penalty for any violation of the local regulations, or for a violation of any terms or conditions of any action imposed by the planning board or of any other agency or officer charged in the regulations with enforcement of any of the provisions.

(b) Violation of the regulations include any action related to the transfer or sale of land in unapproved subdivisions. Any owner, or agent of the owner, who transfers, sells or negotiates to sell any land by reference to or exhibition of, or by other use, a plat of the subdivision before the plat has been approved by the planning board and recorded in the municipal land evidence records, is in violation of the local regulations and subject to the penalties described in this chapter.

(c) The penalty for violation shall reasonably relate to the seriousness of the offense, and shall not exceed five hundred dollars ($500) for each violation, and each day of existence of any violation is deemed to be a separate offense. Any fine shall inure to the municipality.

(d) The municipality may also cause suit to be brought in the supreme or superior court, or any municipal court, including a municipal housing court having jurisdiction in the name of the municipality, to restrain the violation of, or to compel compliance with, the provisions of its local regulations. A municipality may consolidate an action for injunctive relief and/or fines under the local regulations in the superior court of the county in which the subject property is located.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-60 Procedure – Required findings. – (a) All local regulations shall require that for all administrative, minor, and major development applications the approving authorities responsible for land development and subdivision review and approval shall address each of the general purposes stated in § 45-23-30 and make positive findings on the following standard provisions, as part of the proposed project's record prior to approval:

(1) The proposed development is consistent with the comprehensive community plan and/or has satisfactorily addressed the issues where there may be inconsistencies;

(2) The proposed development is in compliance with the standards and provisions of the municipality's zoning ordinance;

(3) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval;

(4) The subdivision, as proposed, will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable. (See definition of Buildable lot). Lots with physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans; and

(5) All proposed land developments and all subdivision lots have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.

(b) Except for administrative subdivisions, findings of fact must be supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 2000, ch. 327, § 1.)

§ 45-23-61. Procedure – Precedence of approvals between planning board and other local permitting authorities.

(a) Zoning board.

(1) Where an applicant requires both a variance from the local zoning ordinance and planning board approval, and the application is not undergoing unified development review

pursuant to § 45-23-50.1 and the local zoning ordinance, the applicant shall first obtain an advisory recommendation from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain conditional zoning board relief, and then return to the planning board for subsequent required approval(s).

(2) Where an applicant requires both a special-use permit under the local zoning ordinance and planning board approval, and the application is not undergoing unified development review pursuant to § 45-23-50.1 and the local zoning ordinance, the applicant shall first obtain an advisory recommendation from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional special-use permit from the zoning board, and then return to the planning board for subsequent required approval(s).

(b) *City or town council.* Where an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s).

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 2016, ch. 527, § 2.)

§ 45-23-62. Procedure — Waivers — Modifications and reinstatement of plans.

(a) Waiver and/or modification of requirements. The planning board has the power to grant waivers and/or modifications from the requirements for land development and subdivision approval as may be reasonable and within the general purposes and intents of the provisions for local regulations. The only grounds for waivers and/or modifications are where the literal enforcement of one or more provisions of the regulations is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question or where waiver and/or modification is in the best interest of good planning practice and/or design as evidenced by consistency with the municipality's comprehensive plan and zoning ordinance.

(b) Local regulations shall include provisions for an applicant to seek reinstatement of development applications when the deadlines set in the local regulations and approval agreements for particular actions are exceeded and the development application or approval is therefore rendered invalid. Where an approval has expired, the local regulations shall specify the point in the review to which the application may be reinstated.

(c) Decision. The planning board shall approve, approve with conditions, or deny the request for either a waiver or modification as described in subsection (a) or (b) in this section, according to the requirements of § 45-23-63.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-63. Procedure — Meetings — Votes — Decisions and records.

(a) All records of the planning board proceedings and decisions shall be written and kept permanently available for public review. Completed applications for proposed land development and subdivisions projects under review by the planning board shall be available for public review.

(b) Participation in a planning board meeting or other proceedings by any party is not a cause for civil action or liability except for acts not in good faith, intentional misconduct, knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

(c) All final written comments to the planning board from the administrative officer, municipal departments, the technical review committee, state and federal agencies, and local commissions are part of the permanent record of the development application.

(d) Votes. All votes of the planning board shall be made part of the permanent record and show the members present and their votes. A decision by the planning board to approve any land development or subdivision application requires a vote for approval by a majority of planning board members present at the time of the vote. A decision by the planning board to approve a variance or special-use permit pursuant to any adopted unified development review regulations requires a vote for approval by a majority of the planning board members that were present at the public hearing at which the request was heard.

(e) All written decisions of the planning board shall be recorded in the land evidence records within twenty (20) days after the planning board vote. A copy of the recorded decision shall be mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant and to any objector who has filed a written request for notice with the administrative officer.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2008, ch. 224, § 1; P.L. 2008, ch. 464, § 1; P.L. 2016, ch. 527, § 2; P.L. 2017, ch. 109, § 1; P.L. 2017, ch. 175, § 1; P.L. 2022, ch. 208, § 1, effective January 1, 2023; P.L. 2022, ch. 209, § 1, effective January 1, 2023.

§ 45-23-63.1. Procedure – Tolling of expiration periods.

(a) Notwithstanding any other provision set forth in this chapter, all periods pertaining to the expiration of any approval issued pursuant to the local regulations promulgated under

this chapter shall be tolled until June 30, 2017. For the purposes of this section, "tolling" shall mean the suspension or temporary stopping of the running of the applicable permit or approval period.

(b) Said tolling need not be recorded in the land evidence records to be valid; however, a notice of the tolling must be posted in the municipal planning department and near the land evidence records.

(c) The tolling shall apply only to approvals or permits in effect on November 9, 2009, and those issued between November 9, 2009, and June 30, 2017, and shall not revive expired approvals.

(d) The expiration dates for all permits and approvals issued before the tolling period began will be recalculated as of July 1, 2017, by adding thereto the number of days between November 9, 2009, and the day on which the permit or approval would otherwise have expired. The expiration dates for all permits and approvals issued during the tolling period will be recalculated as of July 1, 2017, by adding thereto the number of days between the day the permit or approval was issued and the day the permit or approval otherwise would have expired.

History of Section.
(P.L. 2009, ch. 198, § 2; P.L. 2009, ch. 199, § 2; P.L. 2010, ch. 209, § 1; P.L. 2010, ch. 215, § 1; P.L. 2011, ch. 56, § 2; P.L. 2011, ch. 65, § 2; P.L. 2013, ch. 137, § 2; P.L. 2013, ch. 184, § 2; P.L. 2015, ch. 103, § 2; P.L. 2015, ch. 114, § 2; P.L. 2016, ch. 117, § 1; P.L. 2016, ch. 118, § 1.)

§ 45-23-64 Procedure – Signing and recording of plats and plans. – (a) All approved final plans and plats for land development and subdivision projects are signed by the appropriate planning board official with the date of approval. Plans and plats for major land developments and subdivisions are signed by the planning board chairperson or the secretary of the planning board attesting to the approval by the planning board. All minor land development or subdivision plans and plats and administrative plats are signed by the planning board chairperson or secretary or the board's designated agent.

(b) Upon signature, all plans and plats are submitted to the administrative officer prior to recording and filing in the appropriate municipal departments. The material to be recorded for all plans and plats include all pertinent plans with notes thereon concerning all the essential aspects of the approved project design, the implementation schedule, special conditions placed on the development by the municipality, permits and agreements with state and federal reviewing agencies, and other information required by the planning board.

(c) Other parts of the applications record for subdivisions and land development projects, including all meeting records, approved master plan and preliminary plans, site analyses, impact analyses, all legal agreements, records of the public hearing and the entire final approval set of drawings are permanently kept by the municipal departments responsible for implementation and enforcement.

(d) The administrative officer shall notify the statewide "911" emergency authority and the local police and fire authorities servicing the new plat with the information required by each of the authorities.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-65 Procedure – Changes to recorded plats and plans. – (a) For all changes to the approved plans of land development projects or subdivisions subject to this act, an amendment of the final development plans is required prior to the issuance of any building permits. Any changes approved in the final plan shall be recorded as amendments to the final plan in accordance with the procedure established for recording of plats in § 45-23-64.

(b) Minor changes, as defined in the local regulations, to a land development or subdivision plan may be approved administratively, by the administrative officer, whereupon a permit may be issued. The changes may be authorized without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting a recommendation from either the technical review committee or the planning board. Denial of the proposed change(s) shall be referred to the planning board for review as a major change.

(c) Major changes, as defined in the local regulations, to a land development or subdivision plan may be approved, only by the planning board and must follow the same review and public hearing process required for approval of preliminary plans as described in § 45-23-41.

(d) Rescission procedure. The planning board, only upon application by all landowners of the plat to be affected, may determine that the application for plat rescission is not consistent with the comprehensive community plan and is not in compliance with the standards and provisions of the municipality's zoning ordinance and/or land development and subdivision review regulations and shall hold a public hearing, which adheres to the requirements for notice described in § 45-23-42. The planning board shall approve, approve with conditions or modifications, or deny the application for rescission of the plat according to the requirements of § 45-23-63. If it is necessary to abandon any street covered under chapter 6 of title 24, the planning board shall submit to the city or town council the documents necessary for the abandonment process. Once the required process for rescission or for rescission and abandonment has been completed, the revised plat shall be signed and recorded as specified in § 45-23-64.

History of Section.
(P.L. 1992, ch. 385, § 1; P.L. 1994, ch. 92, § 1.)

§ 45-23-66. Appeals — Right of appeal. [Repealed effective January 1, 2024.]

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-67. Appeals from decision of administrative officer.

(a) Process and timing. Local regulations adopted pursuant to this chapter shall provide that an appeal from any decision of the administrative officer charged in the regulations with enforcement of any provisions, except as provided in this section, may be taken to the board of appeal by an aggrieved party as set forth in this section. Decisions by the administrative officer approving or denying projects under § 45-23-38 or § 45-23-50 shall not be subject to this section and shall proceed directly to superior court as set forth in § 45-23-71.

(1) An appeal to the board of appeal from a decision or action of the administrative officer may be taken by an aggrieved party to the extent provided in § 45-23-66 [repealed]. The appeal must be taken within twenty (20) days after the decision has been recorded in the city's or town's land evidence records and posted in the office of the city or town clerk.

(2) The appeal shall be in writing and state clearly and unambiguously the issue or decision that is being appealed, the reason for the appeal, and the relief sought. The appeal shall either be sent by certified mail, with a return receipt requested, or be hand-delivered to the board of appeal. The city or town clerk shall accept delivery of an appeal on behalf of the board of appeal, if the local regulations governing land development and subdivision review so provide.

(3) Upon receipt of an appeal, the board of appeal shall require the administrative officer to immediately transmit to the board of appeal, all papers, documents, and plans, or a certified copy thereof, constituting the record of the action that is being appealed.

(b) Stay. An appeal stays all proceedings in furtherance of the action being appealed.

(c) Hearing.

(1) The board of appeal shall hold a hearing on the appeal within forty-five (45) days of the receipt of the appeal, give public notice of the hearing, as well as due notice to the parties of interest. At the hearing the parties may appear in person, or be represented by an agent or attorney. The board shall render a decision within ten (10) days of the close of the public hearing. The cost of any notice required for the hearing shall be borne by the applicant.

(2) The board of appeal shall only hear appeals of the actions of an administrative officer at a meeting called especially for the purpose of hearing the appeals and that has been so advertised.

(3) The hearing, which may be held on the same date and at the same place as a meeting of the zoning board of review, must be held as a separate meeting from any zoning board of review meeting. Separate minutes and records of votes as required by § 45-23-70(d) [repealed] shall be maintained by the board of appeal.

(d) Standards of Review.

(1) As established by this chapter, in instances of a board of appeal's review of an administrative officer's decision on matters subject to this chapter, the board of appeal shall not substitute its own judgment for that of the administrative officer but must consider the issue upon the findings and record of the administrative officer. The board of appeal shall not reverse a decision of the administrative officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record.

(2) The concurring vote of three (3) of the five (5) members of the board of appeal sitting at a hearing, is necessary to reverse any decision of the administrative officer.

(3) In the instance where the board of appeal overturns a decision of the administrative officer, the proposed project application is remanded to the administrative officer, at the stage of processing from which the appeal was taken, for further proceedings before the administrative officer and/or for the final disposition, which shall be consistent with the board of appeal's decision.

(4) The board of appeal shall keep complete records of all proceedings including a record of all votes taken, and shall put all decisions on appeals in writing. The board of appeal shall include in the written record the reasons for each decision.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 1999, ch. 157, § 1; P.L. 2017, ch. 109, § 1; P.L. 2017, ch. 175, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-68. Appeals — Stay of proceedings. [Repealed effective January 1, 2024.]

History of Section.
P.L. 1992, ch. 385, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-69. Appeals — Public hearing. [Repealed effective January 1, 2024.]

History of Section.
P.L. 1992, ch. 385, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-70. Appeals — Standards of review. [Repealed effective January 1, 2024.]

History of Section.
P.L. 1992, ch. 385, § 1; repealed by P.L. 2023, ch. 308, § 3, effective January 1, 2024; repealed by P.L. 2023, ch. 309, § 3, effective January 1, 2024.

§ 45-23-71. Appeals to the superior court.

(a) An aggrieved party may appeal a decision of the board of appeal; a decision of an administrative officer made pursuant to § 45-23-38 or § 45-23-50 where authorized to approve or deny an application; a decision of the technical review committee where authorized to approve or deny an application; or a decision of the planning board, to the superior court for the county in which the municipality is situated by filing a complaint stating the reasons for the appeal within twenty (20) days after the decision has been recorded and posted in the office of the city or town clerk. Recommendations by any public body or officer under this chapter are not appealable under this section. The authorized permitting authority shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies of the original documents, together with any other facts that may be pertinent, with the clerk of the court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the planning board shall be made parties to the proceedings. No responsive pleading is required for an appeal filed pursuant to this section. The appeal does not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make any other orders that it deems necessary for an equitable disposition of the appeal.

(b) Appeals from a decision granting or denying approval of a final plan shall be limited to elements of the approval or disapproval not contained in the decision reached by the planning board at the preliminary stage; providing that, a public hearing has been held on the plan, if required pursuant to this chapter.

(c) The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the planning board and, if it appears to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present evidence in open court, which evidence, along with the report, shall constitute the record upon which the determination of the court shall be made.

(d) The court shall not substitute its judgment for that of the planning board as to the weight of the evidence on questions of fact. The court may affirm the decision of the board of appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions that are:

(1) In violation of constitutional, statutory, ordinance, or planning board regulations provisions;

(2) In excess of the authority granted to the planning board by statute or ordinance;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History of Section.
P.L. 1992, ch. 385, § 1; P.L. 2023, ch. 308, § 1, effective January 1, 2024; P.L. 2023, ch. 309, § 1, effective January 1, 2024.

§ 45-23-72 Appeals to the superior court – Enactment of or amendment of local regulations. – (a) Any appeal of an enactment of or an amendment of local regulations may be taken to the superior court for the county in which the municipality is situated by filing a complaint, as stated in this section, within thirty (30) days after the enactment, or amendment has become effective. The appeal may be taken by any legal resident or landowner of the municipality or by any association of residents or landowners of the municipality. The appeal does not stay the enforcement of the local regulations, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make any other orders that it deems necessary for an equitable disposition of the appeal.

(b) The complaint shall state with specificity the area or areas in which the enactment or amendment is not consistent with the Comprehensive Planning Act, chapter 22.2 of this title; the Rhode Island Zoning Enabling Act of 1991, § 45-24-27 et seq.; the municipality's comprehensive plan; or the municipality's zoning ordinance.

(c) The review shall be conducted by the court without a jury. The court shall consider whether the enactment or amendment of the local regulations is consistent with the Comprehensive Planning Act, chapter 22.2 of this title; the Rhode Island Zoning Enabling Act of 1991, § 45-24-27 et seq.; the municipality's comprehensive plan; or the municipality's zoning ordinance. If the enactment or amendment is not consistent, then the court shall invalidate the enactment or the amendment, or those parts of the enactment or amendment which are not consistent. The court shall not revise the local regulations to be consistent, but may suggest appropriate language as part of the court decision.

(d) The court may in its discretion, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as stated herein, including a municipality.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-73 Appeals to the superior court – Priority in judicial proceedings. – Upon the entry of any case or proceeding brought under the provisions of this chapter, including pending and future appeals taken to the court, the court shall, at the request of either party, advance the case, so that the matter is afforded precedence on the calendar and be heard and determined with as little delay as possible.

History of Section.
(P.L. 1992, ch. 385, § 1.)

§ 45-23-74 Severability. – If any provision of this chapter or of any rule, regulation or determination made under this chapter, or the application of the provisions to any person, agency or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected by the invalidity. The

invalidity of any section or sections of this chapter shall not affect the validity of the remainder of the chapter.

History of Section.
(P.L. 1992, ch. 385, § 1.)

CHAPTER 23.1
MAPPED STREETS

§ 45-23.1-1 Establishment of official maps. – The city or town council of any city or town having a plan commission established pursuant to chapters 22 and 23 of this title or pursuant to any special act applicable to certain cities or towns, is authorized and empowered to establish an official map of the city or town identifying and showing the location of the streets of the city or town existing and established by law as public streets and the exterior lines of other streets deemed necessary by the city or town council for sound physical development. A public hearing in relation to the map shall precede the adoption, at which parties in interest and citizens shall have an opportunity to be heard. At least ten (10) days' notice of a public hearing shall be published in a newspaper of

general circulation in the city or town. Before adoption of the ordinance, the city or town council shall refer the matter to the plan commission for a report on the map, but if the plan commission does not make its report within forty-five (45) days of the reference, the necessity for the report may be deemed to be waived. The city or town council shall certify the fact of the establishment of an official map to the city or town recorder.

History of Section.
(P.L. 1962, ch. 89, § 1; P.L. 1972, ch. 198, § 1.)

§ 45-23.1-1.1 Establishment or opening of streets not implied. – (a) The placing of any street or street line upon the official map does not in and of itself constitute nor is it deemed to constitute the opening or establishment of any street or the taking or acceptance of any land for street purposes; provided, that in the town of North Kingstown, regularly performed maintenance by the town, upon any paved mapped street of at least forty feet (40') in width, for a period of not less than twenty (20) years, constitutes the opening or establishment of a street as a public way.

(b) For the purposes of this section the term "regularly performed maintenance" is construed to include snow plowing and salting and sanding operations, and any type of repair work regularly undertaken by the city or town.

History of Section.
(P.L. 1972, ch. 198, § 2; P.L. 1987, ch. 393, § 1.)

§ 45-23.1-2 Additions and changes. – (a) A city or town council is authorized and empowered to make, from time to time, additions to or modifications of the official map by placing on it the exterior lines of planned new streets or street extensions, widenings, narrowings, or vacations.

(b) No changes become effective until after a public hearing in relation to the changes, at which parties in interest and citizens shall have an opportunity to be heard.

(c) At least ten (10) days' notice of a public hearing shall be published in a newspaper of general circulation in the city or town.

(d) Before making additions or changes, the city or town council shall refer the matter to the plan commission for a report, but if the plan commission shall not make its report within forty-five (45) days of the reference, the necessity for the report may be deemed to be waived.

(e) The locating, widening, or closing, or the approval of the locating, widening, or closing of streets by the city or town, under provisions of law other than those contained in this chapter, are deemed to be changes or additions to the official map, and are subject to all the provisions of this chapter except provisions relating to public hearing and referral to the

plan commission.

History of Section.
(P.L. 1962, ch. 89, § 1; P.L. 1972, ch. 198, § 1.)

§ 45-23.1-3 Regulation of buildings in bed of mapped streets. – (a) For the purpose of preserving the integrity of the official map of a city or town, the city or town council is authorized and empowered to provide by ordinance that no permit shall be issued for any building in the bed of any street shown on the official map except as provided in this section.

(b) Whenever one or more parcels of land upon which is located the bed of a mapped street cannot yield a reasonable return to the owner unless a building permit is granted, the zoning board of review in a city or town which has established a board, or the city or town council in any city or town which has not established a board, may, in a specific case after public hearing for which reasonable notice has been given to all interested parties and at which parties in interest and others have an opportunity to be heard, grant a permit for a building in the bed of the mapped street which will, as little as practicable, increase the cost of opening the street, or tend to cause a minimum change of the official map, and the board or council, as the case may be, may impose reasonable requirements as a condition of granting the permit to promote the health, safety, morals, and general welfare of the public.

(c) The board or council shall refer the application to the plan commission for a report and a recommendation before taking action, and shall refuse a permit where the applicant will not be substantially damaged by placing his or her building outside the mapped street.

History of Section.
(P.L. 1962, ch. 89, § 1.)

§ 45-23.1-4 Buildings not on mapped streets. – (a) A city or town council is authorized and empowered to provide by ordinance that no permit for the erection of any building shall be issued unless the building lot abuts a street which has been placed on the official map giving access to the proposed structure, and that before a permit is issued, the street has been certified to be suitably improved, or suitable improvements have been assured by means of a performance guarantee, in accordance with rules and regulations adopted in the same manner as rules and regulations for subdivisions as provided in chapter 23 of this title.

(b) Where the enforcement of this section would entail practical difficulty or unnecessary hardship, or where the circumstances of the case do not require the structure to be related to a street, the board or council may, in a specific case and after a public hearing for which reasonable notice has been given to all interested parties and at which parties in interest and others have an opportunity to be heard, make reasonable exceptions and issue a permit subject to conditions that will assure adequate access for firefighting equipment, ambulances, and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the official map.

History of Section.
(P.L. 1962, ch. 89, § 1.)

CHAPTER 24
ZONING ORDINANCES

§ 45-24-27 Title. – Sections 45-24-27 through 45-24-72 shall be known as the "Rhode Island Zoning Enabling Act of 1991".

History of Section.

(P.L. 1991, ch. 307, § 1.)

§ 45-24-28 Continuation of ordinances – Supercession – Relation to other statutes. – (a) Any zoning ordinance or amendment of the ordinance enacted after January 1, 1992, shall conform to the provisions of this chapter. All lawfully adopted zoning ordinances shall be brought into conformance with this chapter by December 31, 1994. Each city and town shall review its zoning ordinance and make amendments or revisions that are necessary to bring it into conformance with this chapter.

(b) All zoning ordinances adopted under authority of §§ 45-24-1 through 45-24-26 or any special zoning enabling act that is in effect on June 17, 1991, shall remain in full force and effect until December 31, 1994, unless earlier amended so as to conform to the provisions of this chapter, except that § 45-24-37 and § 45-24-44 shall become effective on January 1, 1992.

(c) Former §§ 45-24-1 through 45-24-26 and all special zoning enabling acts, including, but not limited to, chapter 2299 of the public laws of 1922, as amended (town of Westerly); chapter 1277 of the public laws of 1926, as amended (town of Narragansett); chapter 2065 of the public laws of 1933, as amended (town of West Warwick); chapter 2233 of the public laws of 1935, as amended (town of Johnston); chapter 2079 of the public laws of 1948, as amended (town of North Kingstown); chapter 3125 of the public laws of 1953, as amended (town of New Shoreham); chapter 101 of the public laws of 1973, as amended (town of South Kingstown); are repealed effective December 31, 1994. All provisions of zoning ordinances adopted under authority of the provisions of former §§ 45-24-1 through 45-24-26 or of any special act are repealed and are null and void as of December 31, 1994, unless amended so as to conform to the provisions of this chapter.

(d) Chapter 24.1 of this title, entitled "Historical Area Zoning", and chapter 3 of title 1, entitled "Airport Zoning", are not superseded by this chapter; provided, that any appeal to the superior court pursuant to chapter 24.1 of this title, entitled "Historical Area Zoning", or

pursuant to chapter 3 of title 1, entitled "Airport Zoning", is taken in the manner provided in § 45-24-69.

(e) Nothing in this chapter shall be construed to limit the authority of agencies of state

government to perform any regulatory responsibilities.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1993, ch. 36, § 2; P.L. 1993, ch. 144, § 2; P.L. 1994, ch. 92, § 3.)

§ 45-24-29. Legislative findings and intent.

(a)(1) The general assembly recognizes and affirms in §§ 45-24-27 through 45-24-72 that

the findings and goals stated in § 45-22.2-3 present findings and goals with which zoning must be consistent.

(2) The general assembly further finds that:

(i) The zoning enabling statutes contained in §§ 45-24-1 through 45-24-26, repealed as of December 31, 1994, were largely enacted in 1921;

(ii) The character of land development and related public and private services have changed substantially in the intervening years;

(iii) It is necessary to provide for innovative land development practices to enable cities and towns to adequately regulate the use of land and employ modern land development practices;

(iv) It is necessary to take full account of the requirement that each city and town amend its zoning ordinance to conform to, and be consistent with, its comprehensive plan adopted pursuant to chapter 22.2 of this title, and to all the elements contained therein; and

(v) A substantial updating and revision of the original statutory zoning enabling authority is required to meet these changed conditions.

(3) It is therefore found that the preparation and implementation of zoning ordinances is necessary to address the findings and needs identified in this section; to general assembly to carry out its duty to provide for the conservation of the natural resources of the state; and to adopt all means necessary and proper by law for the preservation, regeneration, and restoration of the natural environment of the state in accordance with R.I. Const., Art. I, Sec. XVI and XVII; to promote good planning practice; and to provide for sustainable economic growth in the state.

(b) Therefore, it is the intent of the general assembly:

(1) That the zoning enabling authority contained in this chapter provide all cities and towns with adequate opportunity to address current and future community and statewide needs;

(2) That the zoning enabling authority contained in this chapter require each city and town to conform its zoning ordinance and zoning map to be consistent with its comprehensive plan developed pursuant to chapter 22.2 of this title;

(3) Except as prohibited pursuant to §§ 45-24-30(b), 45-24-30(c), or 45-24-30(d), that the zoning enabling authority contained in this chapter empower each city and town with the capability to establish and enforce standards and procedures for the proper management and protection of land, air, and water as natural resources, and to employ contemporary concepts, methods, and criteria in regulating the type, intensity, and arrangement of land uses, and provide authority to employ new concepts as they may become available and feasible;

(4) That the zoning enabling authority contained in this chapter permit each city and town to establish an economic impact commission whose duties would be to advise municipalities on the economic impact new zoning changes would have on cities and towns and private property owners, and to assist municipalities in determining financial impacts when new or changed zoning adversely affects business climate, land use, property value, natural and historic resources, industrial use, or development of private property; and may permit the use of land and buildings within the groundwater protection zones for agricultural purposes and shall encourage the use of farmland in a manner that is consistent with the protection of groundwater resources; and

(5) That each city and town amend its zoning ordinance to comply with the terms of this chapter.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1993, ch. 36, § 2; P.L. 1993, ch. 144, § 2; P.L. 1994, ch. 92, § 3; P.L. 1999, ch. 420, § 1; P.L. 2015, ch. 218, § 3.)

§ 45-24-30. General purposes of zoning ordinances.

(a) Zoning regulations shall be developed and maintained in accordance with a comprehensive plan prepared, adopted, and as may be amended, in accordance with chapter 22.2 of this title and shall be designed to address the following purposes. The general assembly recognizes these purposes, each with equal priority and numbered for reference purposes only.

(1) Promoting the public health, safety, and general welfare.

(2) Providing for a range of uses and intensities of use appropriate to the character of the city or town and reflecting current and expected future needs.

(3) Providing for orderly growth and development that recognizes:

(i) The goals and patterns of land use contained in the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title;

(ii) The natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;

(iii) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands;

(iv) The values of unique or valuable natural resources and features;

(v) The availability and capacity of existing and planned public and/or private services and facilities;

(vi) The need to shape and balance urban and rural development; and

(vii) The use of innovative development regulations and techniques.

(4) Providing for the control, protection, and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation.

(5) Providing for the protection of the natural, historic, cultural, and scenic character of the city or town or areas in the municipality.

(6) Providing for the preservation and promotion of agricultural production, forest, silviculture, aquaculture, timber resources, and open space.

(7) Providing for the protection of public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and other public requirements.

(8) Promoting a balance of housing choices, for all income levels and groups, to assure the health, safety, and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing.

(9) Providing opportunities for the establishment of low- and moderate-income housing.

(10) Promoting safety from fire, flood, and other natural or unnatural disasters.

(11) Promoting a high level of quality in design in the development of private and public facilities.

(12) Promoting implementation of the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title.

(13) Providing for coordination of land uses with contiguous municipalities, other municipalities, the state, and other agencies, as appropriate, especially with regard to resources and facilities that extend beyond municipal boundaries or have a direct impact on that municipality.

(14) Providing for efficient review of development proposals, to clarify and expedite the zoning approval process.

(15) Providing for procedures for the administration of the zoning ordinance, including, but not limited to, variances, special-use permits, and, where adopted, procedures for modifications.

(16) Providing opportunities for reasonable accommodations in order to comply with the Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States

Fair Housing Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with Disabilities Act, chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

Provided, however, that any zoning ordinance in which a community sets forth standards or requirements for the location, design, construction, or maintenance of on-site wastewater treatment systems shall first be submitted to the director of the department of environmental management for approval as to the technical merits of the ordinance. In addition, any zoning ordinance in which a municipality sets forth standards regarding wetland requirements, shall first be submitted to the director of the department of environmental management for approval as to the technical merits of the ordinance.

(b) Upon the effective date of this section, a city or town shall no longer be authorized to adopt as a provision of its zoning ordinance new requirements that specify buffers or setbacks in relation to freshwater wetland, freshwater wetland in the vicinity of the coast, or coastal wetland or that specify setback distances between an onsite wastewater treatment system and a freshwater wetlands, freshwater wetland in the vicinity of the coast, or coastal wetland.

(c) Cities and towns shall be prohibited from applying the requirements in existing zoning ordinances pertaining to both wetland buffers and onsite wastewater treatment system setbacks to development, redevelopment, construction, or rehabilitation applications submitted to a municipality. Nothing herein shall rescind the authority of a city or town to enforce other local zoning requirements.

(d) Cities and towns shall act to amend their ordinances and regulations to conform to this section within twelve (12) months of the effective date of state regulations referenced herein.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1996, ch. 213, § 1; P.L. 1999, ch. 83, § 128; P.L. 1999, ch. 130, § 128; P.L. 2012, ch. 369, § 1; P.L. 2012, ch. 388, § 1; P.L. 2015, ch. 218, § 3; P.L. 2024, ch. 296, § 1, effective June 25, 2024; P.L. 2024, ch. 297, § 1, effective June 25, 2024.

§ 45-24-31. Definitions.

Where words or terms used in this chapter are defined in § 45-22.2-4 or § 45-23-32, they have the meanings stated in that section. In addition, the following words have the following meanings. Additional words and phrases may be used in developing local ordinances under this chapter; however, the words and phrases defined in this section are controlling in all local ordinances created under this chapter:

(1) Abutter. One whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land.

(2) Accessory dwelling unit (ADU). A residential living unit on the same parcel where the primary use is a legally established single-unit or multi-unit dwelling. An ADU provides complete independent living facilities for one or more persons. It may

take various forms including, but not limited to: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled primary dwelling.

(3) Accessory use. A use of land or of a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use may be restricted to the same lot as the principal use. An accessory use shall not be permitted without the principal use to which it is related.

(4) Adaptive reuse. "Adaptive reuse," as defined in § 42-64.22-2.

(5) Aggrieved party. An aggrieved party, for purposes of this chapter, shall be:

(i) Any person, or persons, or entity, or entities, who or that can demonstrate that his, her, or its property will be injured by a decision of any officer or agency responsible for administering the zoning ordinance of a city or town; or

(ii) Anyone requiring notice pursuant to this chapter.

(6) Agricultural land. "Agricultural land," as defined in § 45-22.2-4.

(7) Airport hazard area. "Airport hazard area," as defined in § 1-3-2.

(8) Applicant. An owner, or authorized agent of the owner, submitting an application or appealing an action of any official, board, or agency.

(9) Application. The completed form, or forms, and all accompanying documents, exhibits, and fees required of an applicant by an approving authority for development review, approval, or permitting purposes.

(10) Buffer. Land that is maintained in either a natural or landscaped state, and is used to screen or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.

(11) Building. Any structure used or intended for supporting or sheltering any use or occupancy.

(12) Building envelope. The three-dimensional space within which a structure is permitted to be built on a lot and that is defined by regulations governing building setbacks, maximum height, and bulk; by other regulations; or by any combination thereof.

(13) Building height. For a vacant parcel of land, building height shall be measured from the average, existing-grade elevation where the foundation of the structure is proposed. For an existing structure, building height shall be measured from average grade taken from the outermost four (4) corners of the existing foundation. In all cases, building height shall be measured to the top of the highest point of the existing or

proposed roof or structure. This distance shall exclude spires, chimneys, flag poles, and the like. For any property or structure located in a special flood hazard area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), or depicted on the Rhode Island coastal resources management council (CRMC) suggested design elevation three foot (3′) sea level rise (CRMC SDE 3 SLR) map as being inundated during a one-hundred-year (100) storm, the greater of the following amounts, expressed in feet, shall be excluded from the building height calculation:

(i) The base flood elevation on the FEMA FIRM plus up to five feet (5′) of any utilized or proposed freeboard, less the average existing grade elevation; or

(ii) The suggested design elevation as depicted on the CRMC SDE 3 SLR map during a one-hundred-year (100) storm, less the average existing grade elevation. CRMC shall reevaluate the appropriate suggested design elevation map for the exclusion every ten (10) years, or as otherwise necessary.

(14) Cluster. A site-planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings shall be specified in the ordinance and may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development, there is no increase in the number of lots that would be permitted under conventional development except where ordinance provisions include incentive bonuses for certain types or conditions of development.

(15) Common ownership. Either:

(i) Ownership by one or more individuals or entities in any form of ownership of two (2) or more contiguous lots; or

(ii) Ownership by any association (ownership may also include a municipality) of one or more lots under specific development techniques.

(16) Community residence. A home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care. This does not include halfway houses or substance-use-disorder-treatment facilities. This does include, but is not limited to, the following:

(i) Whenever six (6) or fewer children or adults with intellectual and/or developmental disability reside in any type of residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All requirements pertaining to local zoning are waived for these community residences;

(ii) A group home providing care or supervision, or both, to not more than eight (8) persons with disabilities, and licensed by the state pursuant to chapter 24 of title 40.1;

(iii) A residence for children providing care or supervision, or both, to not more than eight (8) children, including those of the caregiver, and licensed by the state pursuant to chapter 72.1 of title 42;

(iv) A community transitional residence providing care or assistance, or both, to no more than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8) persons, requiring temporary financial assistance, and/or to persons who are victims of crimes, abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days nor more than two (2) years. Residents will have access to, and use of, all common areas, including eating areas and living rooms, and will receive appropriate social services for the purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

(17) Comprehensive plan. The comprehensive plan adopted and approved pursuant to chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in compliance.

(18) Day care — Daycare center. Any other daycare center that is not a family daycare home.

(19) Day care — Family daycare home. Any home, other than the individual's home, in which day care in lieu of parental care or supervision is offered at the same time to six (6) or less individuals who are not relatives of the caregiver, but may not contain more than a total of eight (8) individuals receiving day care.

(20) Density, residential. The number of dwelling units per unit of land.

(21) Development. The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; or any change in use, or alteration or extension of the use, of land.

(22) Development plan review. See §§ 45-23-32 and 45-23-50.

(23) District. See "zoning use district."

(24) Drainage system. A system for the removal of water from land by drains, grading, or other appropriate means. These techniques may include runoff controls to minimize erosion and sedimentation during and after construction or development; the means for preserving surface and groundwaters; and the prevention and/or alleviation of flooding.

(25) Dwelling unit. A structure, or portion of a structure, providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

(26) Extractive industry. The extraction of minerals, including: solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

(27) Family member. A person, or persons, related by blood, marriage, or other legal means, including, but not limited to, a child, parent, spouse, mother-in-law, father-in-law, grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the household.

(28) Floating zone. An unmapped zoning district adopted within the ordinance that is established on the zoning map only when an application for development, meeting the zone requirements, is approved.

(29) Floodplains, or Flood hazard area. As defined in § 45-22.2-4.

(30) Freeboard. A factor of safety expressed in feet above the base flood elevation of a flood hazard area for purposes of floodplain management. Freeboard compensates for the many unknown factors that could contribute to flood heights, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

(31) Groundwater. "Groundwater" and associated terms, as defined in § 46-13.1-3.

(32) Halfway house. A residential facility for adults or children who have been institutionalized for criminal conduct and who require a group setting to facilitate the transition to a functional member of society.

(33) Hardship. See § 45-24-41.

(34) Historic district or historic site. As defined in § 45-22.2-4.

(35) Home occupation. Any activity customarily carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit.

(36) Household. One or more persons living together in a single-dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. The term "household unit" is synonymous with the term "dwelling unit" for determining the number of units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:

(i) A family, which may also include servants and employees living with the family; or

(ii) A person or group of unrelated persons living together. The maximum number may be set by local ordinance, but this maximum shall not be less than three (3).

(37) Incentive zoning. The process whereby the local authority may grant additional development capacity in exchange for the developer's provision of a public benefit or amenity as specified in local ordinances.

(38) Infrastructure. Facilities and services needed to sustain residential, commercial, industrial, institutional, and other activities.

(39) Land development project. As defined in § 45-23-32.

(40) Lot. Either:

(i) The basic development unit for determination of lot area, depth, and other dimensional regulations; or

(ii) A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or recorded map, and that is recognized as a separate legal entity for purposes of transfer of title.

(41) Lot area. The total area within the boundaries of a lot, excluding any street right-of-way, usually reported in acres or square feet.

(42) Lot area, minimum. The smallest land area established by the local zoning ordinance upon which a use, building, or structure may be located in a particular zoning district.

(43) Lot building coverage. That portion of the lot that is, or may be, covered by buildings and accessory buildings.

(44) Lot depth. The distance measured from the front lot line to the rear lot line. For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

(45) Lot frontage. That portion of a lot abutting a street. A zoning ordinance shall specify how noncontiguous frontage will be considered with regard to minimum frontage requirements.

(46) Lot line. A line of record, bounding a lot, that divides one lot from another lot or from a public or private street or any other public or private space and shall include:

(i) Front: the lot line separating a lot from a street right-of-way. A zoning ordinance shall specify the method to be used to determine the front lot line on lots fronting on more than one street, for example, corner and through lots;

(ii) Rear: the lot line opposite and most distant from the front lot line, or in the case of triangular or otherwise irregularly shaped lots, an assumed line at least ten feet (10′) in length entirely within the lot, parallel to and at a maximum distance from, the front lot line; and

(iii) Side: any lot line other than a front or rear lot line. On a corner lot, a side lot line may be a street lot line, depending on requirements of the local zoning ordinance.

(47) Lot size, minimum. Shall have the same meaning as "minimum lot area" defined herein.

(48) Lot, through. A lot that fronts upon two (2) parallel streets, or that fronts upon two (2) streets that do not intersect at the boundaries of the lot.

(49) Lot width. The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum front setback line.

(50) Mere inconvenience. See § 45-24-41.

(51) Mixed use. A mixture of land uses within a single development, building, or tract.

(52) Modification. Permission granted and administered by the zoning enforcement officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional variance other than lot area requirements from the zoning ordinance to a limited degree as determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent (25%) of each of the applicable dimensional requirements.

(53) Nonconformance. A building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption or amendment of a zoning ordinance and not in conformity with the provisions of that ordinance or amendment. Nonconformance is of only two (2) types:

(i) Nonconforming by use: a lawfully established use of land, building, or structure that is not a permitted use in that zoning district. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance is nonconformity by use; or

(ii) Nonconforming by dimension: a building, structure, or parcel of land not in compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations include all regulations of the zoning ordinance, other than those pertaining to the permitted uses. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance is nonconforming by use; a building or structure containing a permitted number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot area per dwelling unit regulations, is nonconforming by dimension.

(54) Overlay district. A district established in a zoning ordinance that is superimposed on one or more districts or parts of districts. The standards and

requirements associated with an overlay district may be more or less restrictive than those in the underlying districts consistent with other applicable state and federal laws.

(55) Performance standards. A set of criteria or limits relating to elements that a particular use or process must either meet or may not exceed.

(56) Permitted use. A use by right that is specifically authorized in a particular zoning district.

(57) Planned development. A "land development project," as defined in subsection (39), and developed according to plan as a single entity and containing one or more structures or uses with appurtenant common areas.

(58) Plant agriculture. The growing of plants for food or fiber, to sell or consume.

(59) Preapplication conference. A review meeting of a proposed development held between applicants and reviewing agencies as permitted by law and municipal ordinance, before formal submission of an application for a permit or for development approval.

(60) Setback line or lines. A line, or lines, parallel to a lot line at the minimum distance of the required setback for the zoning district in which the lot is located that establishes the area within which the principal structure must be erected or placed.

(61) Site plan. The development plan for one or more lots on which is shown the existing and/or the proposed conditions of the lot.

(62) Slope of land. The grade, pitch, rise, or incline of the topographic landform or surface of the ground.

(63) Special use. A regulated use that is permitted pursuant to the special-use permit issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to as a special exception.

(64) Structure. A combination of materials to form a construction for use, occupancy, or ornamentation, whether installed on, above, or below the surface of land or water.

(65) Substandard lot of record. Any lot lawfully existing at the time of adoption or amendment of a zoning ordinance and not in conformance with the dimensional or area provisions of that ordinance.

(66) Use. The purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.

(67) Variance. Permission to depart from the literal requirements of a zoning ordinance. An authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance of a use of land, that is prohibited by

a zoning ordinance. There are only two (2) categories of variance, a use variance or a dimensional variance.

(i) Use variance. Permission to depart from the use requirements of a zoning ordinance where the applicant for the requested variance has shown by evidence upon the record that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the zoning ordinance.

(ii) Dimensional variance. Permission to depart from the dimensional requirements of a zoning ordinance under the applicable standards set forth in § 45-24-41.

(68) Waters. As defined in § 46-12-1(23).

(69) Wetland, coastal. As defined in § 45-22.2-4.

(70) Wetland, freshwater. As defined in § 2-1-20.

(71) Zoning certificate. A document signed by the zoning enforcement officer, as required in the zoning ordinance, that acknowledges that a use, structure, building, or lot either complies with, or is legally nonconforming to, the provisions of the municipal zoning ordinance or is an authorized variance or modification therefrom.

(72) Zoning map. The map, or maps, that are a part of the zoning ordinance and that delineate the boundaries of all mapped zoning districts within the physical boundary of the city or town.

(73) Zoning ordinance. An ordinance enacted by the legislative body of the city or town pursuant to this chapter and in the manner providing for the adoption of ordinances in the city or town's legislative or home rule charter, if any, that establish regulations and standards relating to the nature and extent of uses of land and structures; that is consistent with the comprehensive plan of the city or town as defined in chapter 22.2 of this title; that includes a zoning map; and that complies with the provisions of this chapter.

(74) Zoning use district. The basic unit in zoning, either mapped or unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a specified use. Zoning use districts include, but are not limited to: agricultural, commercial, industrial, institutional, open space, and residential. Each district may include sub-districts. Districts may be combined.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1999, ch. 83, § 128; P.L. 1999, ch. 130, § 128; P.L. 2004, ch. 286, § 8; P.L. 2004, ch. 324, § 8; P.L. 2009, ch. 310, § 55; P.L. 2011, ch. 32, § 1; P.L. 2011, ch. 36, § 1; P.L. 2012, ch. 342, § 1; P.L. 2013, ch. 458, § 2; P.L. 2013, ch. 467, § 2; P.L. 2016, ch. 337, § 1; P.L. 2016, ch. 361, § 1; P.L. 2018, ch. 165, § 1; P.L. 2018, ch. 244, § 1; P.L. 2019, ch. 104, § 1; P.L. 2019, ch. 144, § 1; P.L. 2019, ch. 214, § 1; P.L. 2019, ch. 267, § 1; P.L. 2022, ch. 437, § 1, effective June 30, 2022; P.L. 2022, ch. 440, § 1, effective June 30, 2022; P.L. 2023, ch. 304, § 1, effective January 1, 2024; P.L. 2023, ch. 305, § 1, effective January 1, 2024;

P.L. 2023, ch. 308, § 2, effective January 1, 2024; P.L. 2023, ch. 309, § 2, effective January 1, 2024; P.L. 2023, ch. 321, § 1, effective January 1, 2024; P.L. 2023, ch. 322, § 1, effective January 1, 2024.

§ 45-24-32 Contents of zoning ordinances. – The zoning ordinance consists of the ordinance and other text, together with all charts, graphs, and other explanatory material, and the zoning map together with any explanatory matter shown on the ordinance. All municipal zoning ordinances shall include at a minimum the following provisions listed below and further described in this chapter:

(1) A statement of purpose and consistency with the comprehensive plan;

(2) Definitions;

(3) General provisions;

(4) Special provisions;

(5) Procedures for the adoption of the ordinance or amendments;

(6) Procedures for the administration of the ordinance or amendments;

(7) Procedures for the appeal of the ordinance or amendments; and

(8) A zoning map and supporting documentation.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-33. Standard provisions.

(a) A zoning ordinance shall address each of the purposes stated in § 45-24-30 and shall address, through reasonable objective standards and criteria, the following general provisions which are numbered for reference purposes only except as prohibited by § 45-24-30(b), § 45-24-30(c), or § 45-24-30(d):

(1) Permitting, prohibiting, limiting, and restricting the development of land and structures in zoning districts, and regulating those land and structures according to their type and the nature and extent of their use;

(2) Regulating the nature and extent of the use of land for residential, commercial, industrial, institutional, recreational, agricultural, open space, or other use or

combination of uses, as the need for land for those purposes is determined by the city or town's comprehensive plan;

(3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and other development by performance standards, or other requirements, related to air and water and groundwater quality, noise and glare, energy consumption, soil erosion and sedimentation, and/or the availability and capacity of existing and planned public or private services;

(4) Regulating within each district and designating requirements for:

(i) The height, number of stories, and size of buildings;

(ii) The dimensions, size, lot coverage, layout of lots or development areas and floor area ratios provided that zoning ordinances must exclude any portion of a basement as defined in § 45-24.3-5 from the calculation of floor area ratio;

(iii) The density and intensity of use;

(iv) Access to air and light, views, and solar access;

(v) Open space, yards, courts, and buffers;

(vi) Parking areas, road design, and, where appropriate, pedestrian, bicycle, and other circulator systems;

(vii) Landscaping, fencing, and lighting;

(viii) Appropriate drainage requirements and methods to manage stormwater runoff;

(ix) Public access to waterbodies, rivers, and streams; and

(x) Other requirements in connection with any use of land or structure;

(5) Permitting, prohibiting, limiting, and restricting development in flood plains or flood hazard areas and designated significant natural areas;

(6) Promoting the conservation of energy and promoting energy-efficient patterns of development;

(7) Providing for the protection of existing and planned public drinking water supplies, their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and watershed;

(8) Providing for adequate, safe, and efficient transportation systems; and avoiding congestion by relating types and levels of development to the capacity of the circulation system, and maintaining a safe level of service of the system;

(9) Providing for the preservation and enhancement of the recreational resources of the city or town;

(10) Promoting an economic climate that increases quality job opportunities and the overall economic well-being of the city or town and the state;

(11) Providing for pedestrian access to and between public and private facilities, including, but not limited to, schools, employment centers, shopping areas, recreation areas, and residences;

(12) Providing standards for, and requiring the provision of, adequate and properly designed physical improvements, including plantings, and the proper maintenance of property;

(13) Permitting, prohibiting, limiting, and restricting land use in areas where development is deemed to create a hazard to the public health or safety;

(14) Permitting, prohibiting, limiting, and restricting extractive industries and earth removal and requiring restoration of land after these activities;

(15) Regulating sanitary landfill, except as otherwise provided by state statute;

(16) Permitting, prohibiting, limiting, and restricting signs and billboards and other outdoor advertising devices;

(17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and enforcement of airport hazard area zoning regulations under the provisions established in that chapter;

(18) Designating areas of historic, cultural, and/or archaeological value and regulating development in those areas under the provisions of chapter 24.1 of this title;

(19) Providing standards and requirements for the regulation, review, and approval of any proposed development in connection with those uses of land, buildings, or structures specifically designated as subject to development plan review in a zoning ordinance;

(20) Designating special protection areas for water supply and limiting or prohibiting development in these areas, except as otherwise provided by state statute;

(21) Specifying requirements for safe road access to developments from existing streets, including limiting the number, design, and location of curb cuts, and provisions

for internal circulation systems for new developments, and provisions for pedestrian and bicycle ways;

(22) Reducing unnecessary delay in approving or disapproving development applications through provisions for preapplication conferences and other means;

(23) Providing for the application of the Rhode Island Fair Housing Practices Act, chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of People with Disabilities Act, chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.; and

(24) Regulating drive-through windows of varied intensity of use when associated with land-use activities and providing standards and requirements for the regulation, review, and approval of the drive-through windows, including, but not limited to:

(i) Identifying within which zoning districts drive-through windows may be permitted, prohibited, or permitted by special-use permit;

(ii) Specifying requirements for adequate traffic circulation; and

(iii) Providing for adequate pedestrian safety and access, including issues concerning safety and access for those with disabilities.

(b) A zoning ordinance may include special provisions for any or all of the following:

(1) Authorizing development incentives, including, but not limited to, additional permitted uses, increased development and density, or additional design or dimensional flexibility in exchange for:

(i) Increased open space;

(ii) Increased housing choices;

(iii) Traffic and pedestrian improvements;

(iv) Public and/or private facilities; and/or

(v) Other amenities as desired by the city or town and consistent with its comprehensive plan. The provisions in the ordinance shall include maximum allowable densities of population and/or intensities of use and shall indicate the type of improvements, amenities, and/or conditions. Conditions may be made for donation in lieu of direct provisions for improvements or amenities;

(2) Establishing a system for transfer of development rights within or between zoning districts designated in the zoning ordinance; and

(3) Regulating the development adjacent to designated scenic highways, scenic waterways, major thoroughfares, public greenspaces, or other areas of special public investment or valuable natural resources.

(c) Slope of land shall not be excluded from the calculation of the buildable lot area or the minimum lot size, or in the calculation of the number of buildable lots or units.

(d) Nothing in this section shall be construed to restrict a municipality's right, within state and local regulations, to establish its own minimum lot size per zoning district in its town or city.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1996, ch. 213, § 1; P.L. 1999, ch. 83, § 128; P.L. 1999, ch. 130, § 128; P.L. 2001, ch. 179, § 3; P.L. 2001, ch. 231, § 1; P.L. 2001, ch. 378, § 1; P.L. 2013, ch. 458, § 2; P.L. 2013, ch. 467, § 2; P.L. 2015, ch. 218, § 3; P.L. 2024, ch. 456, § 1, effective June 29, 2024; P.L. 2024, ch. 457, § 1, effective June 29, 2024.

§ 45-24-34 General provisions – Purpose and consistency with comprehensive plan. – (a) A zoning ordinance adopted pursuant to this chapter shall provide a statement of its purposes. Those purposes shall be consistent with § 45-24-30. A zoning ordinance adopted or amended pursuant to this chapter shall include a statement that the zoning ordinance is consistent with the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title, or as otherwise provided below and shall provide that in the instance of uncertainty in the construction or application of any section of the ordinance, the ordinance shall be construed in a manner that will further the implementation of, and not be contrary to, the goals and policies and applicable elements of the comprehensive plan.

(b) The city or town shall bring the zoning ordinance or amendment into conformance with its comprehensive plan as approved by the chief of the division of planning of the department of administration or the superior court in accordance with its implementation schedule as set forth in said plan. A zoning ordinance shall address and specify requirements for the coordination between contiguous communities, the state, and other agencies, as required by chapter 22.2 of this title.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1995, ch. 247, § 2; P.L. 2011, ch. 215, § 3; P.L. 2011, ch. 313, § 3.)

§ 45-24-35 General provisions – Definitions. – A zoning ordinance adopted pursuant to this chapter shall provide definitions for words or terms contained in the ordinance where it is deemed appropriate. Words or terms contained in any zoning ordinance, whether or not defined in the ordinance, that are substantially similar to words or terms defined in § 45-24-31 shall be construed according to the definitions provided in this chapter.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-36 General provisions – Division into districts. – A zoning ordinance divides a

city or town into zoning use districts, which may include overlay districts and floating zone districts, of the number, kind, type, shape, and area suitable to carry out the purposes of this chapter. Regulations and standards shall be consistent for each land use, type of development, or type of building or structure within a district, but may differ from those in other districts. Zoning use districts shall be depicted by type and location on the zoning map.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-37. General provisions — Permitted uses.

(a) The zoning ordinance shall provide a listing of all land uses and/or performance standards for uses that are permitted within the zoning use districts of the municipality. The ordinance may provide for a procedure under which a proposed land use that is not specifically listed may be presented by the property owner to the zoning board of review or to a local official or agency charged with administration and enforcement of the ordinance for an evaluation and determination of whether the proposed use is of a similar type, character, and intensity as a listed permitted use. Upon such determination, the proposed use may be considered to be a permitted use.

(b) Notwithstanding any other provision of this chapter, the following uses are permitted uses within all residential zoning use districts of a municipality and all industrial and commercial zoning use districts except where residential use is prohibited for public health or safety reasons:

(1) Households;

(2) Community residences; and

(3) Family daycare homes.

(c) Any time a building or other structure used for residential purposes, or a portion of a building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured home, or homes, as the need may be, elsewhere upon the land, for use and occupancy of the former occupants for a period of up to twelve (12) months, or until the building or structure is rehabilitated and otherwise made fit for occupancy. The property owner, or a properly designated agent of the owner, is only allowed to cause the mobile and manufactured home, or homes, to remain temporarily upon the land by making timely application to the local building official for the purposes of obtaining the necessary permits to repair or rebuild the structure.

(d) Notwithstanding any other provision of this chapter, appropriate access for people with disabilities to residential structures is allowed as a reasonable accommodation for any person(s) residing, or intending to reside, in the residential structure.

(e) Notwithstanding any other provision of this chapter, an accessory dwelling unit in an owner-occupied residence that complies with §§ 45-24-31 and 45-24-73 shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older, or to accommodate other family members.

(f) When used in this section the terms "people with disabilities" or "member, or members, with disabilities" means a person(s) who has a physical or mental impairment that substantially limits one or more major life activities, as defined in § 42-87-1(7).

(g) Notwithstanding any other provisions of this chapter, plant agriculture is a permitted use within all zoning districts of a municipality, including all industrial and commercial zoning districts, except where prohibited for public health or safety reasons or the protection of wildlife habitat.

(h) Adaptive reuse. Notwithstanding any other provisions of this chapter, adaptive reuse for the conversion of any commercial building, including offices, schools, religious facilities, medical buildings, and malls into residential units or mixed-use developments which include the development of at least fifty percent (50%) of the existing gross floor area into residential units, shall be a permitted use and allowed by specific and objective provisions of a zoning ordinance, except where such is prohibited by environmental land use restrictions recorded on the property by the state of Rhode Island department of environmental management or the United States Environmental Protection Agency preventing the conversion to residential use.

(1) The specific zoning ordinance provisions for adaptive reuse shall exempt adaptive reuse developments from off-street parking requirements of over one space per dwelling unit.

(2) Density.

(i) For projects that meet the following criteria, zoning ordinances shall allow for high density development and shall not limit the density to less than fifteen (15) dwelling units per acre:

(A) Where the project is limited to the existing footprint, except that the footprint is allowed to be expanded to accommodate upgrades related to the building and fire codes and utilities; and

(B) The development includes at least twenty percent (20%) low- and moderate-income housing; and

(C) The development has access to public sewer and water service or has access to adequate private water, such as a well and and/or wastewater treatment system(s) approved by the relevant state agency for the entire development as applicable.

(ii) For all other adaptive reuse projects, the residential density permitted in the converted structure shall be the maximum allowed that otherwise meets all standards of minimum housing and has access to public sewer and water service or has access to adequate private water, such as a well, and wastewater treatment system(s) approved by the relevant state agency for the entire development, as applicable. The density proposed shall be determined to meet all public health and safety standards.

(3) Notwithstanding any other provisions of this chapter, for adaptive reuse projects, existing building setbacks shall remain and shall be considered legal nonconforming, but no additional encroachments shall be permitted into any nonconforming setback, unless otherwise allowed by zoning ordinance or relief is granted by the applicable authority.

(4) For adaptive reuse projects, notwithstanding any other provisions of this chapter, the height of the existing structure, if it exceeds the maximum height of the zoning district, may remain and shall be considered legal nonconforming, and any rooftop construction shall be included within the height exemption

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1996, ch. 213, § 1; P.L. 1998, ch. 360, § 1; P.L. 1999, ch. 83, § 128; P.L. 1999, ch. 130, § 128; P.L. 2008, ch. 172, § 1; P.L. 2008, ch. 176, § 1; P.L. 2011, ch. 282, § 1; P.L. 2011, ch. 401, § 1; P.L. 2012, ch. 342, § 1; P.L. 2016, ch. 503, § 1; P.L. 2016, ch. 520, § 1; P.L. 2019, ch. 214, § 1; P.L. 2019, ch. 267, § 1; P.L. 2022, ch. 97, § 1, effective June 17, 2022; P.L. 2022, ch. 98, § 1, effective June 17, 2022; P.L. 2022, ch. 437, § 1, effective June 30, 2022; P.L. 2022, ch. 440, § 1, effective June 30, 2022; P.L. 2023, ch. 321, § 1, effective January 1, 2024; P.L. 2023, ch. 322, § 1, effective January 1, 2024.

§ 45-24-38. General provisions — Substandard lots of record.

(a) Any city or town adopting or amending a zoning ordinance under this chapter shall regulate the development of any single substandard lot of record or contiguous lots of record at the effective date of adoption or amendment of the zoning ordinance.

(b) Notwithstanding the failure of that lot or those lots to meet the dimensional and/or quantitative requirements, and/or road frontage or other access requirements, applicable in the district as stated in the ordinance, a substandard lot of record shall not be required to seek any zoning relief based solely on the failure to meet minimum lot size requirements of the district in which such lot is located. The setback, frontage, and/or lot width requirements for a structure under this section shall be reduced and the maximum building coverage requirements shall be increased by the same proportion as the lot area of the substandard lot is to the minimum lot area requirement of the zoning district in which the lot is located. All proposals exceeding such reduced requirement shall proceed with a modification request under § 45-24-46 or a dimensional variance request under § 45-24-41, whichever is applicable.

(c) Provisions may be made for the merger of contiguous unimproved, or improved and unimproved, substandard lots of record in the same ownership to create dimensionally

conforming lots or to reduce the extent of dimensional nonconformance. The ordinance shall specify the standards, on a district by district basis, which determine the mergers. The standards shall include, but are not to be limited to, the availability of infrastructure, the character of the neighborhood, and the consistency with the comprehensive plan. The merger of lots shall not be required when the substandard lot of record has an area equal to or greater than the area of fifty percent (50%) of the lots within two hundred feet (200′) of the subject lot, as confirmed by the zoning enforcement officer.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 2023, ch. 304, § 1, effective January 1, 2024; P.L. 2023, ch. 305, § 1, effective January 1, 2024

§ 45-24-39 General provisions – Nonconforming development. – (a) Any city or town adopting or amending a zoning ordinance under this chapter shall make provision for any use, activity, structure, building, or sign or other improvement, lawfully existing at the time of the adoption or amendment of the zoning ordinance, but which is nonconforming by use or nonconforming by dimension. The zoning ordinance may regulate development which is nonconforming by dimension differently than that which is nonconforming by use.

(b) The zoning ordinance shall permit the continuation of nonconforming development; however, this does not prohibit the regulation of nuisances.

(c) A zoning ordinance may provide that, if a nonconforming use is abandoned, it may not be reestablished. Abandonment of a nonconforming use consists of some overt act, or failure to act, which leads one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless the owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming use; however, if any nonconforming use is halted for a period of one year, the owner of the nonconforming use is presumed to have abandoned the nonconforming use, unless that presumption is rebutted by the presentation of sufficient evidence of intent not to abandon the use.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-40. General provisions — Alteration of nonconforming development — Alteration of uses established by variance or special use permit.

(a) A zoning ordinance may permit a nonconforming development to be altered under either of the following conditions:

(1) The ordinance may establish a special-use permit, authorizing the alteration, which must be approved by the zoning board of review following the procedure established in this chapter and in the zoning ordinance; or

(2) The ordinance may allow the addition and enlargement, expansion, intensification, or change in use, of nonconforming development either by permit or by right and may distinguish between the foregoing actions by zoning districts.

(b) The ordinance may require that the alteration more closely adheres to the intent and purposes of the zoning ordinance.

(c) A use established by variance or special use permit shall not acquire the rights of this section, unless allowed by specific provisions of a municipal zoning ordinance.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 2023, ch. 304, § 1, effective January 1, 2024; P.L. 2023, ch. 305, § 1, effective January 1, 2024.

§ 45-24-41. General provisions — Variances.

(a) An application for relief from the literal requirements of a zoning ordinance because of hardship may be made by any person, group, agency, or corporation by filing with the zoning enforcement officer or agency an application describing the request and supported by any data and evidence as may be required by the zoning board of review or by the terms of the ordinance. The zoning enforcement officer or agency shall immediately transmit each application received to the zoning board of review and a copy of each application to the planning board or commission.

(b) A zoning ordinance shall provide that the zoning board of review, immediately upon receipt of an application for a variance in the application of the literal terms of the zoning ordinance, may request that the planning board or commission and/or staff report its findings and recommendations, including a statement on the general consistency of the application with the goals and purposes of the comprehensive plan of the city or town, in writing, to the zoning board of review within thirty (30) days of receipt of the application from that board. The zoning board shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice at least fourteen (14) days prior to the date of the hearing in a newspaper of local circulation in the city or town. Notice of hearing shall be sent by first-class mail to the applicant, and to at least all those who would require notice under § 45-24-53. The notice shall also include the street address of the subject property. A zoning ordinance may require that a supplemental notice, that an application for a variance is under consideration, be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing. The same notice shall be posted in the town or city clerk's office and one other municipal building in the municipality and the municipality must make the notice accessible on the municipal home page of its website at least fourteen (14) days prior to the hearing. For any notice sent by first-class mail, the sender of the notice shall submit a notarized affidavit to attest to such mailing. The cost of newspaper and mailing notification shall be borne by the applicant.

(c) A zoning ordinance may provide for unified development review, pursuant to § 45-24-46.4. Requests for dimensional and use variances submitted under a unified development review provision of a zoning ordinance shall be submitted as part of the subdivision or land

development application to the administrative officer of the planning board or commission, pursuant to § 45-24-46.4(a). All subdivision or land development applications submitted under the unified development review provisions of a zoning ordinance shall have a public hearing, which shall meet the requirements of § 45-23-50.1(d).

(d) In granting a variance, the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission, shall require that evidence to the satisfaction of the following standards is entered into the record of the proceedings:

(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16);

(2) That the hardship is not the result of any prior action of the applicant; and

(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

(4) [Deleted by P.L. 2023, ch. 304, § 1 and P.L. 2023, ch. 305, § 1.]

(e) The zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission, shall, in addition to the above standards, require that evidence is entered into the record of the proceedings showing that:

(1) In granting a use variance, the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and

(2) In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission has the power to grant dimensional variances where the use is permitted by special-use permit.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1996, ch. 213, § 1; P.L. 2001, ch. 103, § 1; P.L. 2002, ch. 197, § 1; P.L. 2002, ch. 218, § 1; P.L. 2002, ch. 384, § 1; P.L. 2016, ch. 527, § 4; P.L. 2023, ch. 316, § 3, effective June 24, 2023; P.L. 2023, ch. 317, § 3, effective June 24, 2023; P.L. 2023, ch. 304, § 1, effective January 1, 2024; P.L. 2023, ch. 305, § 1, effective January 1, 2024.

§ 45-24-42. General provisions — Special-use permits.

(a) A zoning ordinance shall provide for the issuance of special-use permits approved by the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the planning board or commission.

(b) The ordinance shall:

(1) Specify the uses requiring special-use permits in each district. The ordinance shall provide for a procedure under which a proposed land use that is not specifically listed may be presented by the property owner to the zoning board of review or to a local official or agency charged with administration and enforcement of the ordinance for an evaluation and determination of whether the proposed use is of a similar type, character, and intensity as a listed use requiring a special-use permit. Upon such determination, the proposed use may be considered to be a use requiring a special-use permit;

(2) Describe the conditions and procedures under which special-use permits, of each of the various categories of special-use permits established in the zoning ordinance, shall be issued;

(3) Establish specific and objective criteria for the issuance of each type of use category of special-use permit, which criteria shall be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the city or town; however, in no case shall any specific and objective criteria for a special use permit include a determination of consistency with the comprehensive plan;

(4) Provide for public hearings and notification of the date, time, place, and purpose of those hearings to interested parties. Special-use permit requests submitted under a zoning ordinance's unified development review provisions shall be heard and noticed in conjunction with the subdivision or land development application, according to the requirements of § 45-23-50.1. Public notice for special-use permits that are not submitted under a zoning ordinance's unified development review provisions shall be given at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by first-class mail to the applicant, and to all those who would require notice under § 45-24-53. The notice shall also include the street address of the subject property. A zoning ordinance may require that a supplemental notice, that an application for a special-use permit is under consideration, be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing. The cost of notification shall be borne by the applicant;

(5) Provide for the recording of findings of fact and written decisions; and

(6) Provide that appeals may be taken pursuant to § 45-24-70 or § 45-23-66 [repealed], dependent on the board to which application was made.

(c) If an ordinance does not expressly provide for specific and objective criteria for the issuance of a category of special use permit such category shall be deemed to be permitted use.

(d) The ordinance additionally shall provide that an applicant apply for, and be issued, a dimensional variance in conjunction with a special-use permit. If the special use could not exist without the dimensional variance, the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-46.4(b), the planning board or commission shall consider the special-use permit and the dimensional variance together to determine if granting the special use is appropriate based on both the special use criteria and the dimensional variance evidentiary standards.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 2001, ch. 346, § 1; P.L. 2002, ch. 91, § 1; P.L. 2002, ch. 197, § 1; P.L. 2002, ch. 218, § 1; P.L. 2016, ch. 527, § 4; P.L. 2022, ch. 97, § 1, effective June 17, 2022; P.L. 2022, ch. 98, § 1, effective June 17, 2022; P.L. 2023, ch. 304, § 1, effective January 1, 2024; P.L. 2023, ch. 305, § 1, effective January 1, 2024.

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§ 45-24-43 General provisions – Special conditions. – In granting a variance or in making any determination upon which it is required to pass after a public hearing under a zoning ordinance, the zoning board of review or other zoning enforcement agency may apply the special conditions that may, in the opinion of the board or agency, be required to promote the intent and purposes of the comprehensive plan and the zoning ordinance of the city or town. Failure to abide by any special conditions attached to a grant constitutes a zoning violation. Those special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, but are not limited to, provisions for:

(1) Minimizing the adverse impact of the development upon other land, including the type, intensity, design, and performance of activities;

(2) Controlling the sequence of development, including when it must be commenced and completed;

(3) Controlling the duration of use or development and the time within which any temporary structure must be removed;

(4) Assuring satisfactory installation and maintenance of required public improvements;

(5) Designating the exact location and nature of development; and

(6) Establishing detailed records by submission of drawings, maps, plats, or specifications.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-44 General provisions – Creation of vested rights. – (a) A zoning ordinance provides protection for the consideration of applications for development that are substantially complete and have been submitted for approval to the appropriate review agency in the city or town prior to enactment of the new zoning ordinance or amendment.

(b) Zoning ordinances or other land development ordinances or regulations specify the minimum requirements for a development application to be substantially complete for the purposes of this section.

(c) Any application considered by a city or town under the protection of this section shall be reviewed according to the regulations applicable in the zoning ordinance in force at the time the application was submitted.

(d) If an application for development under the provisions of this section is approved, reasonable time limits shall be set within which development of the property must begin and within which development must be substantially completed.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-45. General provisions – Publication and availability of zoning ordinances.

(a) Printed copies of the zoning ordinance and map(s) of a city or town shall be available to the general public and revised to include all amendments. A reasonable charge may be made for copies to reflect printing and distribution costs.

(b) Upon publication of a zoning ordinance and map, and any amendments to them, the city or town clerk shall send a copy, without charge, to the state law library.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1999, ch. 57, § 1; P.L. 2019, ch. 191, § 3; P.L. 2019, ch. 244, § 3.)

§ 45-24-46. Special provisions — Modification.

(a) A zoning ordinance shall provide for the issuance of modifications from the literal dimensional requirements of the zoning ordinance in the instance of the construction, alteration, or structural modification of a structure or lot of record. The zoning enforcement officer is authorized to grant modification permits. The zoning ordinance shall permit modifications that are fifteen percent (15%) or less of the dimensional requirements specified in the zoning ordinance but may permit modification up to twenty-five percent (25%). A modification does not permit moving of lot lines. Within ten (10) days of the

receipt of a request for a modification, the zoning enforcement officer shall make a decision as to the suitability of the requested modification based on the following determinations:

(1) The modification requested is reasonably necessary for the full enjoyment of the permitted use;

(2) If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;

(3) The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations; and

(4) The modification requested does not violate any rules or regulations with respect to freshwater or coastal wetlands.

(b) Upon an affirmative determination, in the case of a modification of five percent (5%) or less, the zoning enforcement officer shall have the authority to issue a permit approving the modification, without any public notice requirements. In the case of a modification of greater than five percent (5%), the zoning enforcement officer shall notify, by first class mail, all property owners abutting the property which is the subject of the modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of local circulation within the city or town that the modification will be granted unless written objection is received within fourteen (14) days of the public notice. If written objection is received within fourteen (14) days, the request for a modification shall be scheduled for the next available hearing before the zoning board of review on application for a dimensional variance following the standard procedures for such variances, including notice requirements provided for under this chapter. If no written objections are received within fourteen (14) days, the zoning enforcement officer shall grant the modification. The zoning enforcement officer may apply any special conditions to the permit as may, in the opinion of the officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 2023, ch. 304, § 1, effective January 1, 2024; P.L. 2023, ch. 305, § 1, effective January 1, 2024.

§ 45-24-46.1. Inclusionary zoning.

(a) A zoning ordinance requiring the inclusion of affordable housing as part of a development shall provide that the housing will be affordable housing, as defined in § 42-128-8.1(d)(1); that the affordable housing will constitute not less than twenty-five percent (25%) of the total units in the development; and that the units will remain affordable for a period of not less than thirty (30) years from initial occupancy enforced through a land lease and/or deed restriction enforceable by the municipality and the state of Rhode Island. A zoning ordinance that requires the inclusion of affordable housing as part of a development

shall specify the threshold in which the inclusion of affordable housing is required, but in no event shall a minimum threshold triggering the inclusion of affordable housing be higher than ten (10) dwelling units.

(b) A zoning ordinance that includes inclusionary zoning may provide that the affordable housing must be built on-site or utilize one or more alternative methods of production, including, but not limited to: off-site construction or rehabilitation; donation of land suitable for development of the required affordable units; and/or the payment of a fee in lieu of the construction or provision of affordable housing units.

(c) Density bonus, zoning incentives, and municipal subsidies. For all projects subject to inclusionary zoning, subject to applicable setback, lot width, or frontage requirements or the granting of relief from the same, a municipality shall allow the addition of two (2) market rate units for each affordable unit provided and the minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to accommodate the development. Larger density bonuses for the provision of an increased percentage of affordable housing in a development may be provided by a municipality in the zoning ordinance. Nothing herein shall prohibit a municipality from providing, or an applicant from requesting, additional zoning incentives and/or municipal government subsidies as defined in § 45-53-3 to offset differential costs of affordable units. Available zoning incentives and municipal government subsidies shall be listed in the zoning ordinance.

(d) Fee-in-lieu. To the extent a municipality provides an option for the payment of a fee-in-lieu of the construction or provision of affordable housing, such fee shall be the choice of the developer or builder applied on a per-unit basis and may be used for new developments, purchasing property and/or homes, rehabilitating properties, or any other manner that creates additional low- or moderate-income housing as defined in § 45-53-3(9).

(1) Eligibility for density bonus. Notwithstanding any other provisions of this chapter, an application that utilizes a fee-in-lieu of the construction or provision of affordable housing shall not be eligible for the density bonus outlined in this section.

(2) An application that seeks to utilize a fee-in-lieu of the construction or provision of affordable housing must be permitted by the planning board or commission and is not eligible for administrative review under the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, codified at §§ 45-23-25 — 45-23-74.

(3) Amount of fee-in-lieu. For affordable single-family homes and condominium units, the per-unit fee shall be the difference between the maximum affordable sales price for a family of four (4) earning eighty percent (80%) of the area median income as determined annually by the U.S. Department of Housing and Urban Development and the average cost of developing a single unit of affordable housing. The average cost of developing a single unit of affordable housing shall be determined annually based on the average, per-unit development cost of affordable homes financed by Rhode Island housing and mortgage finance corporation (RIHMFC) over the previous three (3) years, excluding existing units that received preservation financing.

(i) Notwithstanding subsection (d)(3) of this section, in no case shall the per-unit fee for affordable single family homes and condominium units be less than forty thousand dollars ($40,000).

(4) Use of fee-in-lieu. The municipality shall deposit all in-lieu payments into restricted accounts that shall be allocated and spent only for the creation and development of affordable housing within the municipality serving individuals or families at or below eighty percent (80%) of the area median income. The municipality shall maintain a local affordable housing board to oversee the funds in the restricted accounts and shall allocate the funds within three (3) years of collection. The municipality shall include in the housing element of their local comprehensive plan and shall pass by ordinance, the process it will use to allocate the funds.

(e) As an alternative to the provisions of subsection (d), the municipality may elect to transfer in-lieu payments promptly upon receipt or within the three-year (3) period after receipt. A municipality shall transfer all fee-in-lieu payments that are not allocated within three (3) years of collection, including funds held as of July 1, 2024, to RIHMFC for the purpose of developing affordable housing within that community.

(f) Both the municipalities and RIHMFC shall report annually with the first report due December 31, 2024, to the general assembly, the secretary of housing, and the housing resources commission the amount of fees in lieu collected by community, the projects that were provided funding with the fees, the dollar amounts allocated to the projects, and the number of units created.

History of Section.
P.L. 2004, ch. 286, § 9; P.L. 2004, ch. 324, § 9; P.L. 2014, ch. 372, § 1; P.L. 2014, ch. 395, § 1; P.L. 2023, ch. 302, § 1, effective January 1, 2024; P.L. 2023, ch. 303, § 1, effective January 1, 2024.

§ 45-24-46.2 Special provisions – Transfer of development rights – North Kingstown. – (a) In addition to other powers granted to towns and cities by this chapter to establish and administer transfer of development rights programs, the town council of the town of North Kingstown may provide by ordinance for the transfer of development rights, as a voluntary program available to developers and property owners, in the manner set forth in this section.

(b) The establishment, as provided for by this section, of a system for transfer of development rights within or between zoning districts, or a portion thereof, designated in the zoning ordinance shall be:

(1) For the purpose of providing developers and property owners the ability to establish, certify, purchase, sell, convey, and/or hold land development rights; and

(2) For one or more of the following purposes:

(i) Preserving sensitive resource areas in the community such as groundwater reserves, wildlife habitat, agricultural lands, and public access to surface waters;

(ii) Directing development away from sensitive resource areas to places better suited to increased levels of development such as established or proposed mixed use, commercial, village, or residential centers;

(iii) Directing development to areas served by existing infrastructure such as established roadways, public water supply systems, centralized sewer collection systems, public transit and other utilities; or

(iv) Shaping and balancing urban and rural development; and/or promoting a high level of quality in design in the development of private and public facilities and spaces.

(c) For purposes of this section the following terms shall have the following meaning:

(1) "Receiving area district" means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or portions thereof that is eligible to receive development rights through a major land development project review. As may be necessary or desirable to achieve the intended uses, density and intensity of use, a receiving area district may allow for additional development capacity and for increased lot building coverage and building envelope that are greater than those of the underlying zoning.

(2) "Sending area district" means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or a portion thereof, that is eligible to establish development rights that may eventually be transferred to a receiving area.

History of Section.
(P.L. 2010, ch. 194, § 1; P.L. 2010, ch. 228, § 1.)

§ 45-24-46.3 Special provisions – Transfer of development rights – Exeter. – (a) In addition to other powers granted to towns and cities by this chapter to establish and administer transfer of development rights programs, the town council of the town of Exeter may provide by ordinance for the transfer of development rights, as a voluntary program available to developers and property owners, in the manner set forth in this section.

(b) For purposes of this section the following terms shall have the following meaning:

(1) "Receiving area district" means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or portions thereof, that is eligible to receive development rights through a major land development project review. As may be necessary or desirable to achieve the intended uses, density and intensity of use, a receiving area district may allow for additional development capacity and for increased lot building coverage and building envelope that are greater than those of the underlying zoning.

(2) "Sending area district" means a zoning district, which is established and mapped pursuant to a transfer of development rights ordinance and superimposed on one or more zoning use districts or a portion thereof, that is eligible to establish development rights that may eventually be transferred to a receiving area.

(c) The establishment, as provided for by this section, of a system for transfer of development rights within or between zoning districts, or a portion thereof, designated in the zoning ordinance shall be:

(1) For the purpose of providing developers and property owners the ability to establish, certify, purchase, sell, convey, and/or hold land development rights; and

(2) For one or more of the following purposes:

(i) Preserving sensitive resource areas in the community such as groundwater reserves, wildlife habitat, agricultural lands, and public access to surface waters;

(ii) Directing development away from sensitive resource areas to places better suited to increased levels of development such as established or proposed mixed use, commercial, village, or residential centers;

(iii) Directing development to areas served by existing infrastructure such as established roadways, public water supply systems, centralized sewer collection systems, public transit and other utilities; or

(iv) Shaping and balancing urban and rural development, and/or promoting a high level of quality in design in the development of private and public facilities and spaces.

History of Section.
(P.L. 2010, ch. 194, § 1; P.L. 2010, ch. 228, § 1.)

§ 45-24-46.4. Special provisions — Unified development review.

(a) A zoning ordinance shall provide that review and decision on variances and/or special-use permits for properties undergoing review which qualifies for unified development review by the authorized permitting authority, be conducted and decided by the authorized permitting authority. This process is to be known as unified development review.

(b) The local ordinance and regulation shall provide for the application and review process pursuant to § 45-23-50.1.

(c) A zoning ordinance that provides for unified development review shall:

(1) Empower the authorized permitting authority to grant, grant with conditions, or deny zoning relief; and

(2) Provide that any person, group, agency, or corporation that files an application for a project under this section shall also file specific requests for relief from the literal requirements of a zoning ordinance on the subject property, pursuant to § 45-24-41, and/or for the issuance of special-use permits for the subject property, pursuant to § 45-24-42, by including such within the application to the administrative officer with the other required application materials, pursuant to § 45-23-50.1(b).

(d) [Deleted by P.L. 2023, ch. 308, § 2 and P.L. 2023, ch. 309, § 2.]

(e) All land development and subdivision applications that include requests for variances and/or special-use permits submitted pursuant to this section shall require a public hearing that meets the requirements of § 45-23-50.1.

(f) In granting requests for dimensional and use variances, the authorized permitting authority shall be bound to the requirements of § 45-24-41 relative to entering evidence into the record in satisfaction of the applicable standards.

(g) In reviewing requests for special-use permits, the authorized permitting authority shall be bound to the conditions and procedures under which a special-use permit may be issued and the criteria for the issuance of such permits, as found within the zoning ordinance pursuant to § 45-24-42, and shall be required to provide for the recording of findings of fact and written decisions as described in the zoning ordinance pursuant to § 45-24-42.

(h) An appeal from any decision made pursuant to this section may be taken pursuant to § 45-24-71.

History of Section.
P.L. 2016, ch. 527, § 5; P.L. 2023, ch. 308, § 2, effective January 1, 2024; P.L. 2023, ch. 309, § 2, effective January 1, 2024.

§ 45-24-47. Special provisions — Land development projects.

(a) A zoning ordinance shall provide for land development projects which are defined in § 45-23-32.

(b) A zoning ordinance adopted pursuant to this chapter that permits or requires the creation of land development projects in one or more zoning districts shall require that any land development project shall be reviewed, in accordance with the procedures established by chapter 23 of this title, including those for appeal and judicial review, and with any ordinances or regulations adopted pursuant to the procedures, whether or not the land development project constitutes a "subdivision," as defined in chapter 23 of this title. No

land development project shall be initiated until a plan of the project has been submitted and approval has been granted by the authorized permitting authority. In reviewing, hearing, and deciding upon a land development project, the authorized permitting authority may be empowered to allow zoning incentives within the project; provided, that standards for the zoning incentives are described in the zoning ordinance, and may be empowered to apply any special conditions and stipulations to the approval that may, in the opinion of the authorized permitting authority, be required to maintain harmony with neighboring uses and promote the objectives and purposes of the comprehensive plan and zoning ordinance.

(c) In regulating land development projects, an ordinance adopted pursuant to this chapter may include, but is not limited to, regulations governing the following:

(1) A minimum area or site size for a land development project;

(2) Uses to be permitted within the development;

(3) Ratios of residential to nonresidential uses where applicable;

(4) Maximum density per lot and maximum density for the entire development;

(5) Roads, driveways, utilities, parking, and other facilities; regulations may distinguish between those facilities intended to remain in private ownership or to be dedicated to the public; and

(6) Buffer areas, landscaping, screening, and shading.

(d) In regulating land development projects, an ordinance adopted pursuant to this chapter shall include provisions for zoning incentives that include the adjustment of applicable lot density and dimensional standards where open space is to be permanently set aside for public or common use, and/or where the physical characteristics, location, or size of the site require an adjustment, and/or where the location, size, and type of housing, commercial, industrial, or other use require an adjustment, and/or where housing for low and moderate income families is to be provided, or where other amenities not ordinarily required are provided, as stipulated in the zoning ordinance. Provision may be made for adjustment of applicable lot density and dimensional standards for payment or donation of other land or facilities in lieu of an on-site provision of an amenity that would, if provided on-site, enable an adjustment.

(e)(1) A zoning ordinance requiring open land in a cluster development or other land development project for public or common use, shall provide that such open land either: (i) Be conveyed to the city or town and accepted by it for park, open space, agricultural, or other specified use or uses; or (ii) Be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space or resource protection; or (iii) Be conveyed to a corporation or trust owned or to be owned by the owners of lots or units within the development, or owners of shares within a cooperative development. If such a corporation or trust is used, ownership shall pass with conveyances of the lots or units; or (iv) Remain in private ownership if the use is limited to agriculture, habitat or forestry, and the city or town has set forth in its community comprehensive plan and zoning ordinance

that private ownership is necessary for the preservation and management of the agricultural, habitat or forest resources.

(2) In any case where the land is not conveyed to the city or town:

(i) A restriction, in perpetuity, enforceable by the city or town or by any owner of property in the cluster or other land development project in which the land is located shall be recorded providing that the land is kept in the authorized condition(s) and not built upon or developed for accessory uses such as parking or roadway; and

(ii) The developmental rights and other conservation easements on the land may be held, in perpetuity, by a nonprofit organization, the principal purpose of which is the conservation of open space or resource protection.

(3) All open space land provided by a cluster development or other land development project shall be subject to a community-approved management plan that will specify the permitted uses for the open space.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1992, ch. 385, § 2; P.L. 2002, ch. 184, § 1; P.L. 2004, ch. 286, § 8; P.L. 2004, ch. 324, § 8; P.L. 2023, ch. 308, § 2, effective January 1, 2024; P.L. 2023, ch. 309, § 2, effective January 1, 2024.

§ 45-24-48 Special provisions – Preapplication conference. – A zoning ordinance may provide for a preapplication conference for specific types of development proposals. A preapplication conference is intended to allow the designated agency to:

(1) Acquaint the applicant with the comprehensive plan and any specific plans that apply to the parcel, as well as the zoning and other ordinances that affect the proposed development;

(2) Suggest improvements to the proposed design on the basis of a review of the sketch plan;

(3) Advise the applicant to consult appropriate authorities on the character and placement of public utility services; and

(4) Help the applicant to understand the steps to be taken to receive approval.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-49. Special provisions — Development plan review.

(a) A zoning ordinance shall permit development plan review of applications pursuant to § 45-23-50, for uses that are permitted by right under the zoning ordinance, but the review

shall only be based on specific and objective guidelines which must be stated in the zoning ordinance. The permitting authority shall also be set forth in and be established by the zoning ordinance. A rejection of the application shall be considered an appealable decision pursuant to § 45-24-64.

(b) The permitting authority may grant relief from the zoning ordinance and may grant zoning incentives under specific conditions set forth in the zoning ordinance.

(c) [Deleted by P.L. 2023, ch. 308, § 2 and P.L. 2023, ch. 309, § 2.]

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1992, ch. 385, § 2; P.L. 2009, ch. 310, § 55; P.L. 2023, ch. 308, § 2, effective January 1, 2024; P.L. 2023, ch. 309, § 2, effective January 1, 2024.

§ 45-24-50 Adoption – Power of council to adopt – Consistency with comprehensive plan. – (a) For the purpose of promoting the public health, safety, morals, and general welfare, a city or town council has the power, in accordance with the provisions of this chapter, to adopt, amend, or repeal, and to provide for the administration, interpretation, and enforcement of, a zoning ordinance. The provisions of a zoning ordinance are stated in text and map(s), and may incorporate charts or other material.

(b) A zoning ordinance, and all amendments to it, must be consistent with the city or town's comprehensive plan, as described in chapter 22.2 of this title, and provide for the implementation of the city or town comprehensive plan.

(c) A zoning ordinance adopted or amended during the pendency of the approval of a municipality's comprehensive plan must be consistent with that plan, until the zoning ordinance is brought into full compliance with the Comprehensive Planning Act, subdivision 45-22.2-5(a)(4).

(d) The city or town must bring the zoning ordinance or amendment into conformance with its comprehensive plan as approved by the chief of the division of planning of the department of administration or the superior court in accordance with its implementation schedule as set forth in said plan.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1995, ch. 247, § 2; P.L. 2011, ch. 215, § 3; P.L. 2011, ch. 313, § 3.)

§ 45-24-51 Adoption – Procedure for adoption or amendment. – The city or town shall designate the officer or agency to receive a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map(s). Immediately upon receipt of the proposal, the officer or agency shall refer the proposal to the city or town council, and to the planning board or commission of the city or town for study and recommendation. The planning board or commission shall, in turn, notify and seek the advice of the city or town planning department, if any, and report to the city or town council within forty-five (45) days after

receipt of the proposal, giving its findings and recommendations as prescribed in § 45-24-52. Where a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map is made by the city or town planning board or commission, the requirements for study by the board may be waived; provided, that the proposal by the planning board includes its

findings and recommendations pursuant to § 45-24-52. The city or town council shall hold a public hearing within sixty-five (65) days of receipt of a proposal, giving proper notice as prescribed in § 45-24-53. The city or town council shall render a decision on any proposal within forty-five (45) days after the date of completion of the public hearing. The provisions of this section pertaining to deadlines shall not be construed to apply to any extension consented to by an applicant.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-52 Adoption – Review by planning board or commission. – Among its findings and recommendations to the city or town council with respect to a proposal for adoption, amendment, or repeal of a zoning ordinance or zoning map, the planning board or commission shall:

(1) Include a statement on the general consistency of the proposal with the comprehensive plan of the city or town, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and

(2) Include a demonstration of recognition and consideration of each of the applicable purposes of zoning, as presented in § 45-24-30.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-53. Adoption – Notice and hearing requirements.

(a) No zoning ordinance shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the city or town council. The city or town council shall first give notice of the public hearing by publication of notice in a newspaper of general circulation within the city or town at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held, at which hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance. Written notice, which may be a copy of the newspaper notice, shall be mailed to the parties specified in subsections (b), (c), (d), (e), and (f) of this section, at least two (2) weeks prior to the hearing. The newspaper notice

shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:

(1) Specify the place of the hearing and the date and time of its commencement;

(2) Indicate that adoption, amendment, or repeal of a zoning ordinance is under consideration;

(3) Contain a statement of the proposed amendments to the ordinance that may be printed once in its entirety, or summarize and describe the matter under consideration as long as the intent and effect of the proposed ordinance is expressly written in that notice;

(4) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and

(5) State that the proposals shown on the ordinance may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any alteration or amendment must be presented for comment in the course of the hearing.

(b) Where a proposed general amendment to an existing zoning ordinance includes changes in an existing zoning map, public notice shall be given as required by subsection (a) of this section.

(c) Where a proposed text amendment to an existing zoning ordinance would cause a conforming lot of record to become nonconforming by lot area or frontage, written notice shall be given to all owners of the real property as shown on the current real estate tax assessment records of the city or town. The notice shall be given at least two (2) weeks prior to the hearing at which the text amendment is to be considered, with the content required by subsection (a). If the city or town zoning ordinance contains an existing merger clause to which the nonconforming lots would be subject, the notice shall include reference to the merger clause and the impacts of common ownership of nonconforming lots. The sender of the notice shall utilize and obtain a United States Postal Service certificate of mailing, and the certificate or an electronic copy thereof shall be retained to demonstrate proof of the mailing.

(d) Where a proposed amendment to an existing ordinance includes a specific change in a zoning district map, but does not affect districts generally, public notice shall be given as required by subsection (a) of this section, with the additional requirements that:

(1) Notice shall include a map showing the existing and proposed boundaries, zoning district boundaries, existing streets and roads and their names, and city and town boundaries where appropriate; and

(2) Written notice of the date, time, and place of the public hearing and the nature and purpose of the hearing shall be sent to all owners of real property whose property is located in or within not less than two hundred feet (200') of the perimeter of the area proposed for

change, whether within the city or town or within an adjacent city or town. Notice shall also be sent to any individual or entity holding a recorded conservation or preservation restriction on the property that is the subject of the amendment. The notice shall be sent by registered, certified, or first-class mail to the last known address of the owners, as shown on the current real estate tax assessment records of the city or town in which the property is located; provided, for any notice sent by first-class mail, the sender of the notice shall utilize and obtain a United States Postal Service certificate of mailing, PS form 3817, or any applicable version thereof, to demonstrate proof of such mailing.

(e) Notice of a public hearing shall be sent by first-class mail to the city or town council of any city or town to which one or more of the following pertain:

(1) That is located in or within not less than two hundred feet (200') of the boundary of the area proposed for change; or

(2) Where there is a public or quasi-public water source, or private water source that is used, or is suitable for use, as a public water source, within two thousand feet (2,000') of any real property that is the subject of a proposed zoning change, regardless of municipal boundaries.

(f) Notice of a public hearing shall be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource or surface watershed that is used, or is suitable for use, as a public water source and that is within two thousand feet (2,000') of any real property that is the subject of a proposed zoning change; provided, that the governing body of any state or municipal water department or agency, special water district, or private water company has filed with the building inspector in the city or town a map survey, that shall be kept as a public record, showing areas of surface water resources and/or watersheds and parcels of land within two thousand feet (2,000') thereof.

(g) Notwithstanding any of the requirements set forth in subsections (a) through (e), each municipality shall establish and maintain a public notice registry allowing any person or entity to register for electronic notice of any changes to the zoning ordinance. The city or town shall provide public notice annually of the existence of the electronic registry by publication of notice in a newspaper of general circulation within the city or town. In addition, each municipality is hereby encouraged to provide public notice of the existence of the public notice registry in all of its current and future communications with the public, including, but not limited to, governmental websites, electronic newsletters, public bulletins, press releases, and all other means the municipality may use to impart information to the local community.

(1) Provided, however, notice pursuant to a public notice registry as per this section does not alone qualify a person or entity on the public notice registry as an "aggrieved party" under § 45-24-31(4).

(h) No defect in the form of any notice under this section shall render any ordinance or amendment invalid, unless the defect is found to be intentional or misleading.

(i) Costs of any notice required under this section shall be borne by the applicant.

(j) In granting a zoning ordinance amendment, notwithstanding the provisions of § 45-24-37, the town or city council may limit the change to one of the permitted uses in the zone to which the subject land is rezoned and impose limitations, conditions, and restrictions, including, without limitation: (1) Requiring the petitioner to obtain a permit or approval from any and all state or local governmental agencies or instrumentalities having jurisdiction over the land and use that are the subject of the zoning change; (2) Those relating to the effectiveness or continued effectiveness of the zoning change; and/or (3) Those relating to the use of the land as it deems necessary. The responsible town or city official shall cause the limitations and conditions so imposed to be clearly noted on the zoning map and recorded in the land evidence records; provided, that in the case of a conditional zone change, the limitations, restrictions, and conditions shall not be noted on the zoning map until the zone change has become effective. If the permitted use for which the land has been rezoned is abandoned or if the land is not used for the requested purpose for a period of two (2) years or more after the zone change becomes effective, the town or city council may, after a public hearing, change the land to its original zoning use before the petition was filed. If any limitation, condition, or restriction in an ordinance is held to be invalid by a court in any action, that holding shall not cause the remainder of the ordinance to be invalid.

(k) The above requirements are to be construed as minimum requirements.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1999, ch. 57, § 1; P.L. 2007, ch. 161, § 2; P.L. 2007, ch. 283, § 2; P.L. 2009, ch. 310, § 19; P.L. 2013, ch. 185, § 2; P.L. 2013, ch. 235, § 2; P.L. 2015, ch. 251, § 1; P.L. 2015, ch. 274, § 1; P.L. 2018, ch. 166, § 1; P.L. 2018, ch. 243, § 1; P.L. 2019, ch. 191, § 3; P.L. 2019, ch. 244, § 3.)

§ 45-24-54 Administration – Administration and enforcement of zoning ordinance. – A zoning ordinance adopted pursuant to this chapter must provide for the administration and enforcement of its provisions pursuant to this chapter. The zoning ordinance must designate the local official or agency and specify minimum qualifications for the person or persons charged with its administration and enforcement, including: (1) the issuing of any required permits or certificates; (2) collection of required fees; (3) keeping of records showing the compliance of uses of land; (4) authorizing commencement of uses or development under the provisions of the zoning ordinance; (5) inspection of suspected violations; (6) issuance of violation notices with required correction action; (7) collection of fines for violations; and (8) performing any other duties and taking any actions that may be assigned in the ordinance. In order to provide guidance or clarification, the zoning enforcement officer or agency shall, upon written request, issue a zoning certificate or provide information to the requesting party as to the determination by the official or agency within fifteen (15) days of the written request. In the event that no written response is provided within that time, the requesting party has the right to appeal to the zoning board of review for the determination.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-55 Administration – Maintenance of zoning ordinance. – The city or town clerk is the custodian of the zoning ordinance and zoning map or maps created under the ordinance. A zoning ordinance designates:

(1) The officer(s) or agency(ies) responsible for the maintenance and update of the text and zoning map comprising the zoning ordinance. Changes which impact the zoning map shall be depicted on the map within ninety (90) days of the authorized change(s); and

(2) The office or agency responsible for the review of the zoning ordinance at reasonable intervals; and, whenever changes are made to the comprehensive plan of the city or town, for the identification of any changes necessary and for the forwarding of these changes to the city or town council.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-56. Administration — Zoning board of review — Establishment and procedures.

(a) A zoning ordinance adopted pursuant to this chapter shall provide for the creation of a zoning board of review and for the appointment of members, including alternate members, and for the organization of the board, as specified in the zoning ordinance, or, in cities and towns with home rule or legislative charters, as provided in the charter. A zoning ordinance may provide for remuneration to the zoning board of review members and for reimbursement for expenses incurred in the performance of official duties. A zoning board of review may engage legal, technical, or clerical assistance to aid in the discharge of its duties. The board shall establish written rules of procedure; a mailing address to which appeals and correspondence to the zoning board of review are sent; and an office where records and decisions are filed.

(b) The zoning board of review consists of five (5) members, each to hold office for the term of five (5) years; provided, that the original appointments are made for terms of one, two (2), three (3), four (4), and five (5) years, respectively. The zoning board of review also includes two (2) alternates to be designated as the first and second alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing and the second shall vote if two (2) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the city or town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(c) Notwithstanding the provisions of subsection (b), the zoning board of review of the town of Jamestown consists of five (5) members, each to hold office for the term of five (5) years; provided, that the original appointments are made for terms of one, two (2), three (3), four (4) and five (5) years respectively. The zoning board of review of the town of Jamestown also includes three (3) alternates to be designated as the first, second, and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(d) Members of zoning boards of review serving on the effective date of adoption of a zoning ordinance under this chapter are exempt from the provisions of this chapter respecting terms of originally appointed members until the expiration of their current terms.

(e) The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses by the issuance of subpoenas.

(f) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review for the town of Little Compton shall consist of five (5) members, each to hold office for the term of five (5) years. The zoning board of review for the town of Little Compton shall also include three (3) alternates to be designated as the first, second and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in the hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(g) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review for the town of Charlestown shall consist of five (5) members, each to hold office for the term of five (5) years. The zoning board of review for the town of Charlestown shall also include three (3) alternates to be designated as the first, second, and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in the hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first

alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(h) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review for the town of Scituate shall consist of five (5) members, each to hold office for the term of five (5) years. The zoning board of review for the town of Scituate shall also include three (3) alternates to be designated as the first, second and third alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in the hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

(i) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review of the town of Middletown shall consist of five (5) members, each to hold office for a term of five (5) years. The zoning board of review of the town of Middletown shall also include three (3) alternates to be designated as the first (1st), second (2nd) and third (3rd) alternate members, their terms to be set by ordinance but not to exceed (5) years. These alternate members shall sit and may actively participate in the hearing. The first alternate shall vote if a member of the board is unable to serve at the hearing; the second alternate shall vote if two (2) members of the board are unable to serve at the hearing; and the third alternate shall vote if three (3) members of the board are unable to serve at the hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter. Where not provided for in the town charter the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members and for removal of members for due cause.

(j) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review of the city of Cranston shall consist of five (5) members, each to hold office for a term of five (5) years. The zoning board of review of the city of Cranston shall also include four (4) alternates to be designated as the first (1st), second (2nd), third (3rd), and fourth (4th), alternate members, to be appointed for a term of one year. These alternate members shall sit and may actively participate in all zoning hearings. The first alternate shall vote if a member of the board is unable to serve at the hearing; the second alternate shall vote if two (2) members of the board are unable to serve at the hearing; the third alternate shall vote if three (3) members of the board are unable to serve at the hearing; and the fourth alternate shall vote if four (4) members of the board are unable to serve at the hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they

have attended all hearings concerning that matter. Where not provided for in the city charter, the zoning ordinance shall specify procedures for filling vacancies during the unexpired terms of zoning board members and for removal of members for due cause.

(k) Notwithstanding the provisions of subsection (b) of this section, the zoning board of review for the town of Barrington shall consist of five (5) members, each to hold office for a term of five (5) years. The zoning board of review for the town of Barrington shall also include three (3) alternates to be designated as the first, second, and third alternate members, their terms are to be set by ordinance but not to exceed five (5) years. These alternate members shall sit and may actively participate in the hearing. The first alternate member shall vote if a member of the board is unable to serve at the hearing; the second alternate shall vote if two (2) members of the board are unable to serve at the hearing; and the third alternate member shall vote if three (3) members of the board are unable to serve at the hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all the hearings concerning that matter. Where not provided for in the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board members, and for removal of members for due cause.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 1996, ch. 51, § 1; P.L. 1996, ch. 72, § 1; P.L. 1999, ch. 314, § 1; P.L. 2002, ch. 22, § 1; P.L. 2002, ch. 90, § 1; P.L. 2003, ch. 222, § 1; P.L. 2003, ch. 279, § 1; P.L. 2005, ch. 368, § 1; P.L. 2005, ch. 424, § 1; P.L. 2007, ch. 17, § 1; P.L. 2007, ch. 18, § 1; P.L. 2020, ch. 23, § 1; P.L. 2020, ch. 49, § 1.

§ 45-24-57. Administration – Powers and duties of zoning board of review.

A zoning ordinance adopted pursuant to this chapter shall provide that the zoning board of review shall:

(1) Have the following powers and duties:

(i) To hear and decide appeals within sixty-five (65) days of the date of the filing of the appeal where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative officer or agency in the enforcement or interpretation of this chapter, or of any ordinance adopted pursuant hereto;

(ii) To hear and decide appeals from a party aggrieved by a decision of an historic district commission, pursuant to §§ 45-24.1-7.1 and 45-24.1-7.2;

(iii) To hear and decide appeals where the zoning board of review is appointed as the board of appeals for airport zoning regulations, pursuant to § 1-3-19;

(iv) To authorize, upon application, in specific cases of hardship, variances in the application of the terms of the zoning ordinance, pursuant to § 45-24-41;

(v) To authorize, upon application, in specific cases, special-use permits, pursuant to § 45-24-42, where the zoning board of review is designated as a permit authority for special-use permits;

(vi) To refer matters to the planning board or commission, or to other boards or agencies of the city or town as the zoning board of review may deem appropriate, for findings and recommendations;

(vii) To provide for the issuance of conditional zoning approvals where a proposed application would otherwise be approved except that one or more state or federal agency approvals that are necessary are pending. A conditional zoning approval shall be revoked in the instance where any necessary state or federal agency approvals are not received within a specified time period; and

(viii) To hear and decide other matters, according to the terms of the ordinance or other statutes, and upon which the board may be authorized to pass under the ordinance or other statutes; and

(2) Be required to vote as follows:

(i) Five (5) active members are necessary to conduct a hearing. As soon as a conflict occurs for a member, that member shall recuse himself or herself, shall not sit as an active member, and shall take no part in the conduct of the hearing. Only five (5) active members are entitled to vote on any issue;

(ii) The concurring vote of three (3) of the five (5) members of the zoning board of review sitting at a hearing are necessary to reverse any order, requirement, decision, or determination of any zoning administrative officer from whom an appeal was taken; and

(iii) The concurring vote of four (4) of the five (5) members of the zoning board of review sitting at a hearing is required to decide in favor of an applicant on any matter within the discretion of the board upon which it is required to pass under the ordinance, including variances and special-use permits.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 2014, ch. 198, § 1; P.L. 2014, ch. 217, § 1.)

§ 45-24-58. Administration — Application procedure. [Effective January 1, 2024.]

The zoning ordinance shall establish the various application procedures necessary for the filing of appeals, requests for variances, special-use permits, development plan reviews, and other applications that may be specified in the zoning ordinance as allowed by this chapter,

with the zoning board of review, consistent with the provisions of this chapter. The zoning ordinance shall provide for the creation of appropriate forms, and for the submission and resubmission requirements, for each type of application required. A zoning ordinance may establish that a time period of a certain number of months is required to pass before a successive similar application may be filed.

History of Section.
P.L. 1991, ch. 307, § 1; P.L. 2023, ch. 308, § 2, effective January 1, 2024; P.L. 2023, ch. 309, § 2, effective January 1, 2024.

§ 45-24-59 Administration – Fees. – A zoning ordinance adopted pursuant to this chapter may provide for reasonable fees, in an amount not to exceed actual costs incurred, to be paid by the appellant or applicant for the adequate review and hearing of applications, the issuance of zoning certificates, and for the recording of the decisions.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-60. Administration – Violations.

(a) A zoning ordinance adopted pursuant to this chapter shall provide for a penalty for any violation of the zoning ordinance, or for a violation of any terms or conditions of any action imposed by the zoning board of review or of any other agency or officer charged in the ordinance with enforcement of any of its provisions. The penalty for the violation must reasonably relate to the seriousness of the offense, and not exceed five hundred dollars ($500) for each violation, and each day of the existence of any violation is deemed to be a separate offense. Any fine shall inure to the city or town.

(b) The city or town may also cause suit to be brought in the supreme or superior court, or any municipal court, including a municipal housing court having jurisdiction, in the name of the city or town, to restrain the violation of, or to compel compliance with, the provisions of its zoning ordinance. A city or town may consolidate an action for injunctive relief and/or fines under the ordinance in the superior court of the county in which the subject property is located.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 2016, ch. 511, art. 1, § 21.)

§ 45-24-61. Administration – Decisions and records of zoning board of review.

(a) Following a public hearing, the zoning board of review shall render a decision within fifteen (15) days. The zoning board of review shall include in its decision all findings of fact and conditions, showing the vote of each participating member, and the absence of a

member or his or her failure to vote. Decisions shall be recorded and filed in the office of the city or town clerk within thirty (30) days from the date when the decision was rendered, and is a public record. The zoning board of review shall keep written minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and shall keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the zoning board of review in an expeditious manner upon completion of the proceeding. For any proceeding in which the right of appeal lies to the superior or supreme court, the zoning board of review shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.

(b) Any decision by the zoning board of review, including any special conditions attached to the decision, shall be mailed within one business day of recording, by any method that provides confirmation of receipt to the applicant, to any objector who has filed a written request for notice with the zoning enforcement officer, and to the zoning enforcement officer of the city or town. Any decision evidencing the granting of a variance, modification, or special use shall also be recorded in the land evidence records of the city or town and mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant, to any objector who has filed a written request for notice with the zoning enforcement officer, and to the zoning officer. A copy of the recorded decision shall be mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant, and to any objector who has filed a written request for notice with the zoning enforcement officer, as well as a copy to the zoning enforcement officer.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1999, ch. 57, § 1; P.L. 1999, ch. 296, § 1; P.L. 2002, ch. 181, § 1; P.L. 2014, ch. 198, § 1; P.L. 2014, ch. 217, § 1; P.L. 2017, ch. 109, § 2; P.L. 2017, ch. 175, § 2.)

§ 45-24-61.1. Procedure – Tolling of expiration periods.

(a) Notwithstanding any other provision set forth in this chapter, all periods pertaining to the expiration of any approval issued pursuant to the local ordinances promulgated under this chapter shall be tolled until June 30, 2017. For the purposes of this section, "tolling" shall mean the suspension or temporary stopping of the running of the applicable permit or approval period.

(b) Said tolling need not be recorded in the land evidence records to be valid; however, a notice of the tolling must be posted in the municipal planning department, and near the land evidence records.

(c) The tolling shall apply only to approvals or permits in effect on November 9, 2009, and those issued between November 9, 2009, and June 30, 2017, and shall not revive expired approvals.

(d) The expiration dates for all permits and approvals issued before the tolling period began will be recalculated as of July 1, 2017, by adding thereto the number of days between November 9, 2009, and the day on which the permit or approval would otherwise have expired. The expiration dates for all permits and approvals issued during the tolling period will be recalculated as of July 1, 2017, by adding thereto the number of days between the day the permit or approval was issued and the day the permit or approval otherwise would have expired.

History of Section.
(P.L. 2009, ch. 198, § 3; P.L. 2009, ch. 199, § 3; P.L. 2010, ch. 209, § 2; P.L. 2010, ch. 215, § 2; P.L. 2011, ch. 56, § 3; P.L. 2011, ch. 65, § 3; P.L. 2013, ch. 137, § 3; P.L. 2013, ch. 184, § 3; P.L. 2015, ch. 103, § 3; P.L. 2015, ch. 114, § 3; P.L. 2016, ch. 117, § 2; P.L. 2016, ch. 118, § 2.)

§ 45-24-62 Administration – Judicial aid in enforcement. – The supreme court and the superior court, within their respective jurisdictions, or any justice of either of those courts in vacation, shall, upon due proceedings in the name of the city or town, instituted by its city or town solicitor, have power to issue any extraordinary writ or to proceed according to the course of law or equity or both:

(1) To restrain the erection, alteration, or use of any building, structure, sign, or land erected, altered, or used in violation of the provisions of any zoning ordinance enacted under the authority of this chapter, and to order its removal or abatement as a nuisance;

(2) To compel compliance with the provisions of any zoning ordinance enacted under the authority of this chapter;

(3) To order the removal by the property owner of any building, structure, sign, or improvement existing in violation of any zoning ordinance enacted under the provisions of this chapter and to authorize some official of the city or town, in the default of the removal by the owner, to remove it at the expense of the owner;

(4) To order the reimbursement for any work or materials done or furnished by or at the cost of the city or town;

(5) To order restoration by the owner, where practicable; and/or

(6) To issue fines and other penalties.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-63 Appeals – Right of appeal. – (a) A zoning ordinance adopted pursuant to this chapter shall provide that an appeal from any decision of an administrative officer or agency charged in the ordinance with the enforcement of any of its provisions may be taken to the zoning board of review by an aggrieved party.

(b) A zoning ordinance adopted pursuant to this chapter shall provide that an appeal from a decision of the zoning board of review may be taken by an aggrieved party to the superior court for the county in which the city or town is situated.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-64 Appeals – Appeals to zoning board of review. – An appeal to the zoning board of review from a decision of any other zoning enforcement agency or officer may be taken by an aggrieved party. The appeal shall be taken within a reasonable time of the date of the recording of the decision by the zoning enforcement officer or agency by filing with the officer or agency from whom the appeal is taken and with the zoning board of review a notice of appeal specifying the ground of the appeal. The officer or agency from whom the appeal is taken shall immediately transmit to the zoning board of review all the papers constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board or commission.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-65 Appeals – Stay of proceedings. – An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning enforcement officer or agency from whom the appeal is taken certifies to the zoning board of review, after an appeal has been filed, that by reason of facts stated in the certificate a stay would in the officer's or agency's opinion cause imminent peril to life or property. In that case, proceedings shall not be stayed other than by a restraining order, which may be granted by a court of competent jurisdiction on application and upon notice to the officer or agency from whom the appeal is taken on due cause shown.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-66 Appeals – Public hearing by zoning board of review. – The zoning board of review shall fix a reasonable time for the hearing of the appeal, and shall give public notice, at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of the hearing, which shall include the street address of the subject property, shall be sent by first class mail, postage prepaid, to the appellant and to those requiring notice under § 45-24-53. The zoning board of review shall decide the matter within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The cost of any notice required for the hearing shall be borne by the appellant.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 2001, ch. 209, § 1.)

§ 45-24-67 Appeals – Participation in zoning hearing. – Participation in a zoning

hearing or other proceeding by a party is not a cause for civil action or liability except for acts not in good faith, intentional misconduct, a knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-68 Appeals – Decisions and records of zoning board of review. – In exercising its powers the zoning board of review may, in conformity with the provisions of this chapter, reverse or affirm wholly or partly and may modify the order, requirement,

decision, or determination appealed from and may make any orders, requirements, decisions, or determinations that ought to be made, and to that end has the powers of the officer from whom the appeal was taken. All decisions and records of the zoning board of review respecting appeals shall conform to the provisions of § 45-24-61.

History of Section.
(P.L. 1991, ch. 307, § 1.)

§ 45-24-69 Appeals – Appeals to superior court. – (a) An aggrieved party may appeal a decision of the zoning board of review to the superior court for the county in which the city or town is situated by filing a complaint stating the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the city or town clerk. The decision shall be posted in a location visible to the public in the city or town hall for a period of twenty (20) days following the recording of the decision in the office of the city or town clerk. The zoning board of review shall file the original documents acted upon by it

and constituting the record of the case appealed from, or certified copies, together with other facts that may be pertinent, with the clerk of the court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the zoning board are made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make any other orders that it deems necessary for an equitable disposition of the appeal.

(b) If, before the date set for the hearing in the superior court, an application is made to the court for leave to present additional evidence before the zoning board of review and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it at the hearing before the zoning board of review, the court may order that the additional evidence be taken before the zoning board of review upon conditions determined by the court. The zoning board of review may modify its findings and decision by reason of the additional evidence and file that evidence and any new findings or decisions with the superior court.

(c) The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the zoning board of review and, if it appears to the

court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present that evidence in open court, which evidence, along with the report, constitutes the record upon which the determination of the court is made.

(d) The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

(1) In violation of constitutional, statutory, or ordinance provisions;

(2) In excess of the authority granted to the zoning board of review by statute or ordinance;

(3) Made upon unlawful procedure;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 1999, ch. 296, § 1.)

§ 45-24-69.1 Appeals – Notice of appeals to superior court. – (a) Whenever an aggrieved party appeals a decision of a zoning board of review to the superior court pursuant to the provisions of § 45-24-69, the aggrieved party shall also give notice of the appeal to those persons who were entitled to notice of the hearing set by the zoning board of review. The persons entitled to notice are set forth and described in § 45-24-53.

(b) Notice of the appeal shall be mailed to those parties described in § 45-24-53 within ten (10) business days of the date that the appeal is filed in superior court not counting Saturdays, Sundays, or holidays. Notice shall be sent by first class mail, postage prepaid, and the cost of the notice shall be borne by the aggrieved party filing the appeal in superior court.

(c) The notice sent for an appeal to the superior court as described in this section shall include and contain:

(1) The caption and civil action number of the case;

(2) The date the case was filed in the superior court;

(3) The county in which the appeal to superior court was filed;

(4) The name, address and telephone number of the attorney filing the appeal on behalf of the aggrieved party, or, the name, address, and telephone number of the aggrieved party if the aggrieved party is not represented by counsel;

(5) Language in bold type notifying the person(s) receiving the notice that an appeal has been filed in the superior court;

(6) Language indicating that the aggrieved party will serve the named defendants;

(7) Language indicating that the persons receiving the notice may retain counsel and/or participate in the appeal insofar as the law allows;

(8) Language indicating that an appeal of a decision of a zoning board to the superior court is governed by § 45-24-69 and this section; and

(9) The date of the notice shall be contained on the notice.

(d) Within twenty (20) days after a notice as described in this section is sent, the aggrieved party shall file an affidavit with the court indicating and/or containing:

(1) A complete list of all the names and addresses of the intended recipients of the notice of the hearing;

(2) The date the notice was sent;

(3) An affirmative statement verifying the notice was sent by first class mail, postage prepaid;

(4) An affirmative statement verifying that each notice was sent in an envelope containing a return address and indicating the return address on the envelope;

(5) A statement identifying all notices that were returned to the return address or not delivered for whatever reason and/or an affirmative statement indicating that all other notices have not been returned as of the date and time of the affidavit; and

(6) A copy of the form of the notice shall be attached to the affidavit.

History of Section.
(P.L. 2001, ch. 209, § 2; P.L. 2004, ch. 578, § 1.)

§ 45-24-70 Appeals – Priority in judicial proceedings. – Upon the entry of any case or proceeding brought under the provisions of this chapter, including pending appeals and appeals subsequently taken to the court, the court shall, at the request of either party, advance the case, so that the matter is afforded precedence on the calendar and shall be heard and determined with as little delay as possible.

History of Section.

(P.L. 1991, ch. 307, § 1.)

§ 45-24-71 Appeals – Appeal of enactment of or amendment to zoning ordinance. – (a) An appeal of an enactment of or an amendment to a zoning ordinance may be taken to the superior court for the county in which the municipality is situated by filing a complaint within thirty (30) days after the enactment or amendment has become effective. The appeal may be taken by an aggrieved party or by any legal resident or landowner of the municipality or by any group of residents or landowners whether or not incorporated, of the

municipality. The appeal shall not stay the enforcement of the zoning ordinance, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make other orders that it deems necessary for an equitable disposition of the appeal.

(b) The complaint shall state with specificity the area or areas in which the enactment or amendment does not conform with the comprehensive plan and/or the manner in which it constitutes a taking of private property without just compensation.

(c) The review shall be conducted by the court without a jury. The court shall first consider whether the enactment or amendment of the zoning ordinance is in conformance with the comprehensive plan. If the enactment or amendment is not in conformance with the comprehensive plan, then the court shall invalidate the enactment or the amendment, or those parts of the enactment or amendment which are not in conformance with the comprehensive plan. The court shall not revise the ordinance to conform with the comprehensive plan, but may suggest appropriate language as part of the court decision.

(d) In the case of an aggrieved party, where the court has found that the enactment or

amendment of the zoning ordinance is in conformance with the comprehensive plan, then the court shall next determine whether the enactment or amendment works as a taking of property from the aggrieved party. If the court determines that there has been a taking, the court shall remand the case to the legislative body of the municipality, with its findings that a taking has occurred, and order the municipality to either provide just compensation or rescind the enactment or amendment within thirty (30) days.

(e) The superior court retains jurisdiction, in the event that the aggrieved party and the municipality do not agree on the amount of compensation, in which case the superior court shall hold further hearings to determine and to award compensation. The superior court retains jurisdiction to determine the amount of an award of compensation for any temporary taking, if that taking exists.

(f) The court may, in its discretion, upon the motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, including a municipality.

History of Section.
(P.L. 1991, ch. 307, § 1; P.L. 2001, ch. 89, § 2.)

§ 45-24-72 Severability. – If any provision of this chapter or any rule, regulation, or determination made under this chapter, or the application to any person, agency, or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the chapter, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections of this chapter shall not affect the validity of the remainder of the chapter.

History of Section.
(P.L. 1991, ch. 307, § 1.)

Chapter 24.1
Historical Area Zoning

§ 45-24.1-1. Declaration of purpose.

The preservation of structures of historic and architectural value and historic cemeteries, wherever located within a city or town, are declared to be a public purpose, and any city or town council has the power by ordinance to regulate the construction, alteration, repair, moving, and demolition of these structures within the limits of the city or town. It is recognized that the purpose of the ordinance is to:

(1) Safeguard the heritage of the city or town by preserving a district in a city or town which reflects elements of its cultural, social, economic, political, and architectural history;

(2) Stabilize and improve property values in that district;

(3) Foster civic beauty;

(4) Strengthen the local economy;

(5) Promote the use of the historic districts for the education, pleasure, and welfare of the citizens of the city or town; and

(6) Provide, where feasible, that in these historic districts housing, including, but not limited to, limited equity cooperative housing, be made available to low and/or moderate income residents.

History of Section.
P.L. 1959, ch. 131, § 1; P.L. 1986, ch. 256, § 5; P.L. 1989, ch. 311, § 1.

§ 45-24.1-1.1. Definitions.

The following terms have the following respective meanings unless a different meaning clearly appears from the context:

(1) "Alteration" means an act that changes one or more of the exterior architectural features of a structure or its appurtenances, including, but not limited to, the erection, construction, reconstruction, or removal of any structure or appurtenance.

(2) "Appurtenances" means features other than primary or secondary structures which contribute to the exterior historic appearance of a property, including, but not limited to, paving, doors, windows, signs, materials, decorative accessories, fences, and historic landscape features.

(3) "Certificate of appropriateness" means a certificate issued by a historic district commission established under this chapter indicating approval of plans for alteration, construction, repair, removal, or demolition of a structure or appurtenances of a structure within a historic district. Appropriate for the purposes of passing upon an application for a certificate of appropriateness means not incongruous with those aspects of the structure, appurtenances, or the district which the commission has determined to be historically or architecturally significant.

(4) "Construction" means the act of adding to an existing structure or erecting a new principal or accessory structure or appurtenances to a structure, including, but not limited to, buildings, extensions, outbuildings, fire escapes, and retaining walls.

(5) "Demolition" means an act or process that destroys a structure or its appurtenances in part or in whole.

(6) "Historic district" means a specific division of a city or town as designated by ordinance of the city or town pursuant to this chapter. A historic district may include one or more structures.

(7) "Removal" means a relocation of a structure on its site or to another site.

(8) "Repair" means a change meant to remedy damage or deterioration of a structure or its appurtenances.

(9) "Structure" means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to, buildings, gazebos, billboards, outbuildings, decorative and retaining walls, and swimming pools.

History of Section.
P.L. 1988, ch. 373, § 1.

§ 45-24.1-2. Historic district zoning authorized.

In order to carry out the purposes of this chapter, each city and town has the authority to establish, change, lay out, and define districts, which are deemed to be of historical or

architectural value, in the same manner as those cities and towns are presently empowered to establish or change areas and classifications of zoning.

History of Section.
P.L. 1959, ch. 131, § 2

§ 45-24.1-4. Permit required to construct, alter, or demolish structure — Application — Written decisions of commission — Powers of commission.

(a) The commission shall, within twelve (12) months of the date the local historic district zoning ordinance takes effect:

(1) Adopt and publish all rules and regulations necessary to carry out its functions under the provisions of this chapter; and

(2) Publish standards as necessary to inform historic district residents, property owners, and the general public of those criteria by which the commission determines whether to issue a certificate of appropriateness. The commission may amend these standards as reasonably necessary, and it shall publish all amendments.

(b) Before a property owner or public utility as defined in subdivision 39-1-2(20) that is installing a gas regulator or gas meter may authorize or commence construction, alteration, repair, removal, or demolition affecting the exterior appearance of a structure or its appurtenances within a historic district or affecting a historic cemetery wherever located within a city or town, the owner or public utility must apply for and receive a certificate of appropriateness from the commission. In applying, the owner or public utility must comply with application procedures established by the commission pursuant to this chapter and the applicable local ordinance. The commission shall require the owner or public utility to submit information which is reasonably necessary to evaluate the proposed construction, alteration, repair, removal, or demolition, including, but not limited to, plans, drawings, photographs, or other information. The owner of the property or the public utility must obtain a certificate of appropriateness for the project whether or not state law requires that he, she or it also obtain a permit from the local building official. The building official shall not issue a permit until the commission has granted a certificate of appropriateness.

(c) In the case of a historic cemetery, the owner must comply with all provisions of law and make suitable and appropriate provisions for the reinterment of any human remains in an established cemetery. Original or existing headstones and markers shall be preserved and installed at the site of the reinterment.

(d) In reviewing plans, the commission shall give consideration to:

(1) The historic and architectural significance of the structure and its appurtenances;

(2) The way in which the structure and its appurtenances contribute to the historical and architectural significance of the district; and

(3) The appropriateness of the general design, arrangement, texture, materials, and siting proposed in the plans.

The commission shall pass only on exterior features of a structure and its appurtenances and shall not consider interior arrangements.

(e) All decisions of the commission shall be in writing. The commission shall articulate and explain the reasons and bases of each decision on a record, and, in the case of a decision not to issue a certificate of appropriateness, the commission shall include in the bases for its conclusion that the proposed activity would be incongruous with those aspects of the structure, appurtenances, or the district which the commission has determined to be historically or architecturally significant. The commission shall send a copy of the decision to the applicant.

(f) In the case of an application for construction, repair, alteration, removal, or demolition affecting the exterior appearance of a structure, or its appurtenances, which the commission deems so valuable to the city, town, state, or nation, that the loss of that structure will be a great loss to the city, town, state, or nation, the commission shall endeavor to work out with the owner an economically feasible plan for the preservation of that structure. Unless the commission is satisfied that the retention of the structure constitutes a hazard to public safety, which hazard cannot be eliminated by economic means available to the owner, including the sale of the structure to any purchaser willing to preserve the structure, or unless the commission votes to issue a certificate of appropriateness for the proposed construction, alteration, repair, removal, or demolition, the commission shall file with the building official or duly delegated authority its rejection of the application. In the absence of a change in the structure arising from casualty, no new application for the same or similar work shall be filed within one year after the rejection.

(g) In the case of any structure deemed to be valuable for the period of architecture it represents and important to the neighborhood within which it exists, the commission may file with the building official, or other duly delegated authority its certificate of appropriateness for an application if any of the circumstances under which a certificate of appropriateness might have been given under subsection (6) are in existence or if:

(1) Preservation of the structure is a deterrent to a major improvement program which will be of substantial benefit to the community;

(2) Preservation of the structure would cause undue or unreasonable financial hardship to the owner, taking into account the financial resources available to the owner, including the sale of the structure to any purchaser willing to preserve the structure; or

(3) The preservation of the structure would not be in the interest of the majority of the community.

(h) When considering an application to demolish or remove a structure of historic or architectural value, the commission shall assist the owner in identifying and evaluating alternatives to demolition, including the sale of the structure and its present site. In addition to any other criteria, the commission also shall consider whether there is a reasonable

likelihood that some person or group other than the current owner is willing to purchase, move, and preserve the structure, and whether the owner has made continuing, bona fide, and reasonable efforts to sell the structure to any purchaser willing to move and preserve the structure.

(i) No less than fifteen (15) days after receiving an application to demolish or to remove an historic cemetery, the commission shall forward the application to the commission to study historic cemeteries. The commission shall also immediately forward to the commission to study historic cemeteries its finding of fact, if any, together with its action on the application.

History of Section.
P.L. 1959, ch. 131, § 4; P.L. 1988, ch. 373, § 2; P.L. 1989, ch. 311, § 2; P.L. 2009, ch. 110, § 3; P.L. 2009, ch. 184, § 3.

TITLE 46

WATERS and NAVIGATION

CHAPTER 2

FEDERAL NAVIGATION and FLOOD CONTROL PROJECTS

§ 46-2-9. Condemnation by cities and towns – Appropriations and borrowing.

In order to carry out the intent of §§ 46-2-7 – 46-2-11 any city or town is authorized to acquire by condemnation any land, easements, or rights-of-way required for the improvement or protection project, and any city or town is authorized to make appropriations and to expend funds, in the manner provided by law, for the improvement or protection project, and to issue bonds or other evidences of debt, subject to statutory limitation, for the improvement or protection project.

History of Section.
(P.L. 1949, ch. 2354, § 3; G.L. 1956, § 46-2-9.)

§ 46-2-12 Acquisition of land for flood control projects authorized. – Whenever the council of any city, or the electors of any town qualified to vote upon any proposition for the imposition of taxes or for the expenditure of money, shall have voted at a meeting duly called for that purpose to cooperate with the state and the federal government in any flood control project in the city or town, the city or town may acquire by gift, purchase, or by eminent domain proceedings as provided in §§ 46-2-12 – 46-2-26, land or other real property or any interest, estate, or right therein as is necessary or advantageous to the establishment, acquisition, construction, development, betterment, or maintenance of the project and from time to time to relocate and construct highways, roads, and streets, including bridges and approaches and other structures, and including water pipes, petroleum pipes, gas pipes, sewers and sewer lines, communication and power lines, railroad tracks and bridges, and other structures, tailraces, raceway conduits, and extensions and connections, incidental thereto, and for the construction or reconstruction of dams and pumping stations, both publicly and privately owned.

History of Section.
(P.L. 1956, ch. 3662, § 1; G.L. 1956, § 46-2-12.)

§ 46-2-13. Payment for property taken.

Whenever any property or estate or rights of property shall be taken under the provisions of § 46-2-12, the owner thereof, including all persons having property rights therein, shall be paid therefor according to their respective interests, by the city or town taking the same.

History of Section.
P.L. 1956, ch. 3662, § 2; G.L. 1956, § 46-2-13.

§ 46-2-14 Filing of plat and certificate – Notice to owners. – The city or town, taking any property, estate, or right of property under the provisions of §§ 46-2-12 – 46-2-26, shall first cause a plat with a description thereof to be made, which, with a certificate of the taking of the same, shall contain a list of the owners thereof and of the persons interested therein, so far as the same may be known to the town or city taking the same, and which shall be filed in the office of the clerk of the superior court for the county where the property or estate is located; and upon the filing of the certificate, the taking shall thereupon become forthwith effective and the clerk shall forthwith issue a notice to the several persons named therein which shall contain the substance of the certificate, and also a notice of a time and place when the persons may appear in the court and be heard in reference to the question of the damages sustained by reason of the taking; and the clerk shall, for four (4) successive weeks thereafter, cause to be advertised in each issue of some newspaper published in the county a copy of the notice, requiring all persons interested in the premises to appear at said time and place, if they see fit, to be heard in the premises. The personal notice upon known parties shall be served as soon as may be, and at least twenty (20) days before the time of the hearing, by some officer authorized to serve process or by some disinterested person.

History of Section.
(P.L. 1956, ch. 3662, § 3; G.L. 1956, § 46-2-14.)

§ 46-2-24. Prevention of encroachments.

Each city or town shall prescribe regulations designed to prevent encroachments on the improved channels, and shall enforce the regulations, and shall take such means as may be necessary to prevent any encroachments upon the flood channel and conduit capacities to be provided by the improvements.

History of Section.
(P.L. 1956, ch. 3662, § 13; G.L. 1956, § 46-2-24.)

CHAPTER 4

HARBORS and HARBOR LINES

§ 46-4-1 Platting and establishment of harbor lines – Hearing. – The director of the department of environmental management may mark out harbor lines suitable to be established in any of the public tidewaters of the state, where the harbor lines have not already been established, and after the harbor lines shall have been platted may report that to the governor and senate for their approval; and when the harbor lines shall have been approved by the governor and senate or as the harbor lines shall be modified and approved thereby, the harbor lines shall be confirmed and established; but before any harbor line shall be marked out or platted by the director of the department of environmental management, the director shall appoint a time and place for hearing all persons interested therein, and shall give notice of the hearing by publishing the notice for at least thirty (30) days in the newspaper which the director may determine will probably give the most publicity of the notice among the persons most likely to be interested therein, and at the time and place appointed, or at such adjournment of the hearing as the director shall make, the director shall hear all persons interested for or against the establishment of the harbor line, who may appear to be heard therein before the department shall proceed to mark out the harbor line.

History of Section.
(G.L. 1896, ch. 118, § 9; G.L. 1909, ch. 144, § 9; G.L. 1923, ch. 149, § 8; G.L. 1938, ch. 112, § 8; impl. am. P.L. 1939, ch. 660, § 100; G.L. 1956, § 46-4-1.)

CHAPTER 5

CONSTRUCTION of PORT FACILITIES

§ 46-5-1 Power to acquire land along tidewater. – The department of environmental management is authorized to acquire in fee simple from the state as authorized in § 46-5-1.1 or in the name of the state for the use and benefit of the public, by purchase or condemnation or by lease from time to time, any portion of real property, tide-flowed lands, plats, terms, easements, privileges, foreshore, riparian, and littoral rights of the owner or owners of them, bordering on tidewater in the state and as much of the uplands adjacent to the tide lands as the director of the department of environmental management deems expedient.

History of Section.
(P.L. 1910, ch. 568, § 4; P.L. 1910, ch. 643, § 1; G.L. 1923, ch. 149, § 28; G.L. 1938, ch. 112, § 27; P.L. 1945, ch. 1650, § 1; G.L. 1956, § 46-5-1; P.L. 2000, ch. 314, § 1.)

§ 46-5-1.1 Permission to conduct filling activity distinguished from grants of rights and property interest in the filled area. – (a) It is the policy of the state of Rhode Island that the state's permission to fill tidelands is separate and distinct from the state's granting of a right, title, or interest in and to the resulting filled area. Furthermore, it is the policy of the state of Rhode Island that the state permission to use tidal lands is separate and distinct from the state's conveyance of its fee title estate, or any real estate interest, in the tidal lands. Any title to a free hold estate may be conveyed only by a valid legislative grant for public trust purposes by direct enactment of the general assembly as specified in this chapter. Moreover, any leasehold interest or license to use those lands may only arise under the authority of the general assembly whether exercised by the general assembly itself or exercised pursuant to a valid delegation to a duly authorized instrumentality of the state. Any state permission to use tidal lands belonging to the state shall be deemed to create only a revocable license interest unless a greater interest is clearly intended by the permission and the requirements of this chapter for the creation of that greater interest are met.

(b) It is intended that there shall be no acquiring of any right or title whatsoever to these public lands by adverse possession or by a acquiescence of the sovereign. It is further intended that there shall be no acquiring of any right or title to any freehold estate to these public lands by any permit or approval to conduct fill activity, however denominated or manifested, or by any other means, including through the leasing and licensing of these public lands, except solely by grant and enactment of the general assembly as provided in

this chapter for a use that benefits the public under the public trust doctrine. Without impairing any right, title, or interest that may have previously vested, any placement of fill to a harbor line or other filling of tidal lands, which has not been commenced and

completed as of the date of the enactment of this section [July 18, 2000], shall not be effective as conveying the state's title nor as a limitation on the public trust.

(c) Nothing in this section shall be construed to limit, impair, increase, or add to the ownership rights or title in any filled lands which vested prior to the enactment of this section [July 18, 2000].

History of Section.
(P.L. 2000, ch. 314, § 2; P.L. 2007, ch. 340, § 39.)

§ 46-5-1.2 State ownership of tidal lands – Grants of title by the General Assembly – Approval to fill required – General Assembly to set policy – Harborlines repealed. – (a) The state of Rhode Island, pursuant to the public trust doctrine long recognized in federal and Rhode Island state case law, and to Article 1, § 17 of the Constitution of Rhode Island as originally adopted and as subsequently amended, has historically maintained title in fee simple to all soil within its boundaries that lies below the high water mark and to any land resulting from any filling of any tidal area, except those portions of tidal lands or filled tidal lands in respect to which the state has formally granted title in fee simple to private individuals or to which title has been otherwise acquired by private individuals by judicially recognized mechanisms prior to the effective date of this section [July 18, 2000]. Subsequent to the effective date of this section [July 18, 2000], no title to any freehold estate in any tidal land or filled land can be acquired by any private individual unless it is formally conveyed by explicit grant of the state by the general assembly for public trust purposes.

(b) Subsequent to the effective date of this section [July 18, 2000], no lease of any tidal land or filled land, and no license to use any of that land, can be acquired by any private individual or entity unless the lease or license has been specifically approved for public trust purposes by the general assembly itself or under the specific authority of the general assembly such as, but not limited to, the delegation of authority under chapter 23 of this title.

(c) No filling or dredging operation commenced or continued subsequent to the effective date of this section [July 18, 2000] on tidal lands, whether or not title to the tidal land is held by the state pursuant to this section, may be conducted unless the individual or entity conducting the operation obtains and satisfies all appropriate and applicable regulatory authorizations and approvals. Therefore, nothing in this chapter shall be construed to limit or impair the authority of the state, or any duly established agency of the state, to regulate filling or dredging affecting tidal lands.

(d) The general assembly, by its enactments, establishes the policies for the preservation and, in particular, for the use of natural resources of the state which are held in public trust by the state, as provided in Article 1, § 17 of the Rhode Island Constitution and in this chapter. The general assembly has the responsibility and the sole authority to arrive at, and

define, by its enactment, a policy balance between or among the competing proposed uses or developments for tidal lands and the respective competing assertions concerning the public interests in those lands, and that determination shall be deemed to be, and be accepted as, the authoritative definition of the public interest in relation to the preservation and use of tidal lands.

(2) Nothing in this section shall be deemed to repeal or limit any duly enacted delegation of regulatory or adjudicatory authority to any administrative agency of the state when exercised within statutory authority.

(e) Any prior enactment which creates a harborline is, to that extent, hereby repealed and all harborlines are abolished, except that nothing in this section shall destroy or impair any rights in previously filled land which may have already vested prior to the date of this enactment [July 18, 2000].

History of Section.
(P.L. 2000, ch. 314, § 2.)

§ 46-5-2 Filing of description, plat, and statement as to land to be condemned. – Whenever the department of environmental management has decided to take by condemnation such land or any estate or interest in land, and the phrase "such land" as used in §§ 46-5-2 – 46-5-8 shall be deemed to describe and apply to whatever land or estate or interest in land is condemned hereunder, the department of environmental management shall cause to be filed in the records of land evidence of the city or town where such land is situated a description and plat of such land and also a statement that such land is taken pursuant to the provisions of this chapter, which description, plat, and statement shall be signed by the director of the department of environmental management.

History of Section.
(G.L. 1938, ch. 112, § 27; P.L. 1945, ch. 1650, § 1; G.L. 1956, § 46-5-2.)

§ 46-5-3 Vesting of title to land taken. – Upon the filing of the description, plat, and statement, the title to and immediate right of possession of such land shall vest in the state of Rhode Island in fee simple unless a lesser estate or interest therein is specified in the statement as taken by the department of environmental management, in which last case, title to and right of possession of such land shall vest in the state to the extent and according to the nature of the title therein taken.

History of Section.
(G.L. 1938, ch. 112, § 27; P.L. 1945, ch. 1650, § 1; G.L. 1956, § 46-5-3.)

CHAPTER 15

WATER RESOURCES MANAGEMENT

§ 46-15-7 Authority to enter upon lands and waters for purpose of survey. – The water resources board, its assistants, consultants, employees, subordinates, engineers, surveyors, or other agents or servants, upon giving due notice of intent and purpose, without being liable for trespass, shall have the right, with the consent of the landowner, to enter in, over, and onto any lands or waters in the state along with the equipment and devices as may be necessary and appurtenant for the conducting of examinations, investigations, appraisals, surveys, or other studies and for the making of test pits, pumping tests, borings, and other forms of geologic investigations; provided, however, that in the event the landowner refuses to consent to the entry, the water resources board may petition the superior court for the county in which the lands and waters are located for such authorization which shall be granted upon a showing by the water resources board that the entry is necessary for the implementation of the plans and programs of the board. The petition shall be granted priority on the miscellaneous court calendar. Any landowner whose property is damaged by virtue of the authorization granted herein shall have all of the rights, and shall be subject to all of the limitations, set forth in chapter 31 of title 9.

History of Section.
(P.L. 1990, ch. 461, § 4; P.L. 1995, ch. 370, art. 30, § 2.)

CHAPTER 19

INSPECTION of DAMS and RESERVOIRS

§ 46-19-1 Periodical inspection required – Records and reports. – The director of the department of environmental management shall cause to be made a thorough inspection of every dam and reservoir in the state as often as may be necessary to keep himself or herself informed of the condition thereof; and shall make and keep a record of the result of the inspection, with whatever knowledge the director shall obtain in reference to each dam or reservoir, and shall make an annual report of his or her doings in his or her office in the month of January to the governor.

History of Section.
(G.L. 1896, ch. 124, § 2; G.L. 1909, ch. 150, § 2; G.L. 1923, ch. 180, § 2; G.L. 1938, ch. 638, § 2; impl. am. P.L. 1939, ch. 660, § 100; G.L. 1956, § 46-19-1.)

§ 46-19-2 Description and plans furnished by owner. – Every person owning, maintaining, or having control of any dam or reservoir shall, upon written request therefor, furnish to the director of the department of environmental management as full, true, and particular description of the dam or reservoir as may be practicable; and shall, as soon as may be after the request, cause to be made all the necessary surveys, plans, and drawings thereof as may be required by the director.

History of Section.
(G.L. 1896, ch. 124, § 3; G.L. 1909, ch. 150, § 3; G.L. 1923, ch. 180, § 3; G.L. 1938, ch. 638, § 3; impl. am. P.L. 1939, ch. 660, § 100; G.L. 1956, § 46-19-2.)

§ 46-19-3 Approval of plans for construction or alteration. – No dam or reservoir shall be constructed or substantially altered until plans and specifications of the proposed work shall have been filed with and approved by the director.

History of Section.
(G.L. 1896, ch. 124, § 4; P.L. 1902, ch. 991, § 1; G.L. 1909, ch. 150, § 4; G.L. 1923, ch. 180, § 4; G.L. 1938, ch. 638, § 4; impl. am. P.L. 1939, ch. 660, § 100; G.L. 1956, § 46-19-3.)

§ 46-19-6 Access of agents to private property. – The director and the director's duly authorized agents may, in the discharge of his or her or their duties, enter upon and pass over private property without rendering himself or herself or themselves liable in an action for trespass.

History of Section.
(G.L. 1896, ch. 124, § 9; P.L. 1902, ch. 991, § 2; G.L. 1909, ch. 150, § 9; G.L. 1923, ch. 180, § 9; G.L. 1938, ch. 638, § 9; impl. am. P.L. 1939, ch. 660, § 100; G.L. 1956, § 46-19-6.)

CHAPTER 20

Ditches and Drains

§ 46-20-1. Petition to drain across lands of another.

Whenever the owner or owners of any lands in this state may wish to drain the lands, and cannot agree with the proprietor or proprietors of the adjacent land or lands to be affected, as to the mode of draining the land or lands and the damages consequent thereon, the owner or owners may prefer a petition to the town council of the town in which the lands are situated, for power to drain the land or lands across the lands of other proprietors. The petition shall set forth the course of the proposed ditch or drain, and the names of the proprietors whose lands are to be affected thereby, and the petitioner shall file a bond in such sum as the town council shall direct, conditioned to pay all costs of the proceedings in case it shall be determined inexpedient to construct the ditch or drain.

History of Section.
(G.L. 1896, ch. 76, § 1; G.L. 1909, ch. 90, § 1; G.L. 1923, ch. 102, § 1; G.L. 1938, ch. 350, § 1; G.L. 1956, § 46-20-1.)

CHAPTER 23

Rights to the Shore

§ 46-23-26. The public's rights and privileges of the shore.

(a) The public's rights and privileges of the shore are established by Article I, Sections 16 and 17 of the Rhode Island Constitution.

(b) For purposes of this chapter, the "recognizable high tide line" means a line or mark left upon tidal flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface level at the maximum height reached by a rising tide. The recognizable high tide line may be determined by a line of seaweed, oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, or other suitable means that delineate the general height reached by the water's surface level at a rising tide. If there is more than one

line of seaweed, oil, scum, fine shell, or debris, then the recognizable high tide line means the most seaward line. In the absence of residue seaweed or other evidence, the recognizable high tide line means the wet line on a sandy or rocky beach. The line encompasses the water's surface level at spring high tides and other high tides that occur with periodic frequency, but does not include the water's surface level at storm surges in which there is a departure from the normal or predicted reach of the water's surface level due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storms.

(c) Notwithstanding any provision of the general laws to the contrary, the public's rights and privileges of the shore may be exercised, where shore exists, on wet sand or dry sand or rocky beach, up to ten feet (10′) landward of the recognizable high tide line; provided, however, that the public's rights and privileges of the shore shall not be afforded where no passable shore exists, nor on land above the vegetation line, or on lawns, rocky cliffs, sea walls, or other legally constructed shoreline infrastructure. Further, no entitlement is hereby created for the public to use amenities privately owned by other persons or entities, including, but not limited to: cabanas, decks, and beach chairs.

(d) Any landowner whose property abuts the shore shall, with respect to the public's exercise of rights and privileges of the shore as defined in this chapter, be afforded the liability limitations pursuant to chapter 6 of title 32.

(e) The coastal resources management council (CRMC) in collaboration with the department of environmental management (DEM), shall develop and disseminate information to educate the public and property owners about the rights set out in this section.

(f) The CRMC in collaboration with the DEM, and the attorney general, shall determine appropriate language and signage details for use at shoreline locations.

History of Section.
P.L. 2023, ch. 340, § 2, effective June 26, 2023; P.L. 2023, ch. 341, § 2, effective June 26, 2023.

***§ 46-23-26 was overturned by Superior Court decision July 12, 2004. Appeal to RI Supreme Court anticipated**

General Law Index

CASES

FROM

STATE

AND

FEDERAL COURTS

ABBREVIATIONS OF COURTS

United States Supreme Court	U.S.
United States Court of Appeals	U.S.Ct.App.
United States Circuit Court of Appeals	U.S.C.C.A.
United States Circuit Court	U.S.C.C.
United States District Court	U.S.D.C.
Supreme Court of Rhode Island	R.I.

ABBREVIATIONS

OF

PUBLICATIONS CITED

A.	Atlantic Reporter
A.2d	Atlantic Reporter, Second Series
Black	Black's Reports, U.S.
C.3.S	Corpus Juris Secundum
Cranch	Cranch's Reports, U.S.
Dall	Dallas' Reports, U.S.
F	Federal Reporter
F.2d	Federal Reporter, Second Series
Fed. Cas. No	Federal Cases
F.R.D	Federal Rules Decisions
F.Supp	Federal Supplement
How.	Howard's Reports, U.S.
L.Ed.	U.S. Supreme Court Reports, Lawyers' Edition
L.Ed.2d	U.S. Supreme Court Reports, Lawyers' Edition, Second Series
Pet.	Peter's Reports, U.S.
R.I.	Rhode Island Reports
S.Ct.	Supreme Court Reporter
U.S.	United States Supreme Court Reports
U.S.C.A	United States Code Annotated
Wall	Wallace's Reports, U.S.
Wheat	Wheaton's Reports, U.S.

ABANDONMENT

2. - In general.

R.I. 1946. Generally, "abandonment" is the voluntary relinquishment of a known right.
Doris v. Heroux, 47 A.2d 633, 71 R.I. 491.

R.I. 1916. Though there is such nonuser of the leasehold as indicates an intention to abandon, the abandonment will be prevented by efforts made by the lessor to collect the rent reserved under the lease, since it cannot be brought about by the action of the lessees alone.
Ellis v. Swan, 96 A.840, 38 R.I. 534.

Where there is an intention by the lessees to abandon a lease, the filing by the lessor of a bill to cancel it as a cloud on his title is sufficient acquiescence in the abandonment.
Ellis v. Swan, 96 A.840, 38 R.I. 534.

4. Acts and omissions.

U.S. 1854. A man cannot lose title to his lands by leaving them in their natural state without improvement, or forfeit them by non-user.
City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

R.I. 1901. Where the owners of property adjoining a gangway fence the lots to the center thereof, and remain in possession for 20 years, the original dedication does not authorize a property owner as being a part of such gangway, since the fencing was an abandonment of the entire way.
Baker v. Barry, 48 A.795, 22 R.I. 471.

Where the owners of property abutting on a gangway fence to the center of such gangway, it constitutes a mutual agreement of abandonment, which will ripen into an adverse title by an adverse occupancy for 20 years.
Baker v. Barry, 48 A.795, 22 R.I. 471.

5. Evidence.

R.I. 1916. Where the lessees of a quarry, who had not worked it for 14 years under the lease prior to the last attempt of the lessor to collect the rent due thereunder, thereafter allowed three years more to lapse without attempting to open the quarry or even visiting it, an intention on their part to abandon the lease can be inferred.
Ellis v. Swan, 96 A.840, 38 R.I. 534.

R.I. 1914. Whether or not a way has been abandoned by acts in pais is a question of intention which must be shown by positive evidence of an express declaration to that effect or by acts of a decisive character, and nonuser, though continued for many years, is not conclusive evidence of abandonment.
Sweezy v. Vallette, 90 A.1078, 37 R.I. 51.

"When a highway is once established as such by the action of the proper [public] authorities, it does not cease to be such, even though unused for many years, until it has been discontinued by the proper authorities."
Knowles, 25 R.I. at 330, 55 A. at 757 (quoting H.G. Wood, The Law of Nuisances, § 297, at 372 (3d ed. 1893)); see also Wall v. Eisenstadt, 51 R.I. 339, 345, 154 A. 651, 653 (1931).

ABSTRACTS OF TITLE

3. Rights, duties, and liabilities of examiners of title.

R.I. 1932. Title examiner's duty, in absence of special agreement, is to exercise such care and skill as quality examiner should exercise in circumstances.

Case v. Mortgage Guarantee & Title Co., 158 A.724, 52 R.I. 155.

Corporation undertaking to examine title for second mortgage did not become guarantor of value of second mortgage and was not bound to protect mortgagee from unknown and unrecorded legal claims on mortgaged premises.

Case v. Mortgage Guarantee & Title Co., 158 A.724, 52 R.I. 155.

Title examiner, correctly reporting title records for second mortgagee, is not liable to latter for loss of security for debt because of ignorance of senior incumbrancer's legal rights.

Case v. Mortgage Guarantee & Title Co., 158 A.724, 52 R.I. 155.

R.I. 1880. A town clerk's certificate that the title to a certain land is in two grantees does not imply that each grantee holds an undivided moiety of the land, so as to make the clerk liable to one who makes a loan to one of the grantees relying on such interpretation of the certificate.

Tripp v. Hopkins, 13 R.I. 99.

ADJOINING LANDOWNERS

3. Land in natural state.

R.I. 1992. When adjoining landowner removes lateral support and thereby causes his neighbors land, in its natural state, to subside, he is strictly liable for any damage.

Catalano v. Woodward 617 A.2d 1363.

Adjoining landowner could not be held strictly liable for alleged withdrawal of lateral support which occurred when he removed brush a growth on slope and replanted it with grass; affected land was not in its natural state when landowner excavated slope, and there was no evidence land would have subsided had it been in its natural state.

Id.

R.I. 1964. As between adjoining landowners, each has absolute property right to have his land laterally supported by soil of neighbor, and if either in excavating on his own premises disturbs the lateral support of neighbor's land, one so excavating is liable.

Welsh Mfg. Co. v. Fitzpatrick, 200 A. 981, 61 R.I. 359, reargument denied 1 A.2d 95, 61 R.I. 469.

R.I. 1957. In making excavations, one owes an absolute duty to furnish lateral support to adjoining land, so that it will not, by its own weight, settle or slide into the excavation.

Tucci v, Maclain, 129 A.2d 783,85 R.I. 268.

A showing that excavations were made with reasonable care is no defense in an action for damages to adjoining land which settles or slides into the excavations.

Id.

R.I. 1954. In action to recover damages for alleged disturbance of lateral support of land, evidence did not sustain finding for defendant.
Winn v. Levin, 108 A.2d 903,82 R.I. 369.

R.I. 1938. An owner of land is entitled to lateral support for it from the adjoining land of another, and he is entitled to enjoy his land free from invasion or trespass.
Welsh Mfg.Co.v. Fitzpatrick, 1 A.2d 95,61 R.I. 469.

R.I. 1899. An owner of land is entitled to have it supported in its natural condition by the land of his adjoining proprietor.
Gobeille v. Meunier, 41 A.1001, 21 R.I. 103.

If the adjoining proprietor remove such natural support, he becomes liable for all damages caused by the resulting disturbance or falling away of the soil of the former owner.
Gobeille v. Meunier, 41 A.1001, 21 R.I. 103.

4. Buildings and other structures.

4(1). In general.

R.I. 1975. Landowner who builds his lot above level of lot of adjoining landowner has no right to lateral support and adjoining landowner cannot be compelled to contribute to cost of retaining wall.
Tortolano v. DiFilippo. 349 A.2d 48, 115 R.I. 496.

R.I. 1964. The right of landowner to have his land laterally supported by soil of his neighbor does not include right to have weight of building p laced on land also supported, and when building by its weight causes land to sink on excavation by neighbor. there is no liability for injury in absence of negligence on part of the one making the excavation.
Welsh Mfg. Co. v. Fitzpatrick, 200 A. 981,61 R.I. 359, reargument denied 1 A.2d 95,61 R.I 460.

A landowner has no duty to furnish lateral support for neighbor's building, and if without negligence on landowner's part neighbor's soil falls away solely by reason of landowner's excavation on his own land and due in no respect to the weight of neighbor's building, neighbor is entitled to recover for injury to his building solely because it is p art of his damage for the actionable wrong which landowner has committed.
Id.

R.I. 1957. One owes no absolute duty to provide lateral support sufficient to maintain the extra weight of buildings on adjoining land.
Tucci v. MacLain, 129 A.2d 783,85 R.I. 268.

R.I. 1957. In suit in equity to compel residents to restore retaining wall between lands complainant and respondents, wherein some the respondents filed cross bills to compel complainant to restore the retaining wall, evidence sustained finding that complainant's agent negligent in making excavation which cause portion of the wall to fall.
Tuck v. MacLain, A.2d 783, 85 R.I. 268.

R.I. 1975. Landowner who alters grade of his land has affirmative duty not to permit his land to remain in altered state if the result of such a condition is damage to adjoining property.

Tortolano v. DiFilippo, 349 A.2d 48, 115 R.I. 496.

Owner who alters grade of his land to level above his neighbor's land is under duty to keep the fill used from falling or sliding onto the adjoining parcel and, to enforce that duty, court will require such landowner to build a retaining entirely on his own property to keep the soil within boundaries of his lot.
Id.

Cost of restoring plaintiffs' property to its former condition was appropriate measure of damages in case in which dumping of fill onto defendant's adjoining land directly resulted in large deposits of uncompacted earth sliding onto plaintiffs' land.
Id.

5. Trees and plants on or near boundary.

R.I. 1975. Landowner had common-law right to cut off limbs which were overhanging or encroaching on her property from trees located on the adjoining property.
Rosa v. Oliveira, 342 A.2d 601, 115 R.I. 277.

Defendant who filed counterclaim in action to establish boundary line for loss of lilac trees had burden of persuading trial justice that plaintiffs or their agents had damaged portion of trees that was on defendant’s side of the line.
Id.

R.I. 1975. An unsound tree standing near property boundary line is nuisance which landowner on whose land the tree stands may be required to eliminate regardless of whether it was planted or was result of natural growth.
Fabbri v. Regis Forcier, Inc. 330 A.2d 807, 114 R.I. 207.

6. Excavations, embankments, and structures affecting adjoining land.

R.I. 1975. Landowner who alters grade of his land has affirmative duty not to permit his land to remain in altered state if the result of such a condition is damage to adjoining property.
Tortolano v. DiFilippo, 349 A.2d 48, 115 R.I. 496.

Owner who alters grade of his land to level above his neighbor's land is under duty to keep the fill used from falling or sliding onto the adjoining parcel and, to enforce that duty, court may require such landowner to build a retaining wall entirely on his own property to keep the soil within boundaries of his lot.
Id.

Cost of restoring plaintiffs' property to its former condition was appropriate measure of damages in case in which dumping of fill onto defendant's adjoining land directly resulted in large deposits of uncompacted earth sliding onto plaintiffs' land.
Id.

9. Encroachments.

R.I. 1986. Fact that adjoining landowners were already in possession of property, by virtue of encroaching driveway and masonry column, before landowners received their deed that from a third party did not compel

the conclusion the landowners were thereby ousted from their property described in the deed.
Adams v. Toro, 508 A.2d 399

R.I. 1931. Where division fence over line on complainants' land was not erected by adjoining proprietors, decree ordering adjoining proprietors to remove fence was unauthorized.
Caliri v. Corvese, 153 A. 795.

In view of complainants' statement of willingness to give revocable license, decree should have been entered permitting adjoining owners' overhanging garage eave to remain until it interferes with unobstructed use by complainants of their land adjoining garage.
Caliri v. Corvese, 153 A. 795.

R.I. 1899. A. made excavations on complainant's land and proceeded to erect a supporting wall partly thereon and partly on his own land, and purposed to continue to do so along the entire length of the line between the two lots:

Held, that an injunction was the proper remedy to restrain such continuing trespass.
Goveille v. Meunier, 41 A. 1001, 21 R.I. 103.

R.I. 2006. adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry.'
Acampora v. Pearson, 899 A.2d 459, 464

10. Right to and obstruction of light, air, or view.

R.I. 1974. Plaintiffs were not entitled to recover damages on theory that presence of six-foot high fence on defendants[1] abutting property denied them their rights to light and air, in light of fact that such damage is not recognized in state.
Piccirilli v. Groccia, 327 A.2d 834, 114 R.I. 36.

R.I. 1950. Landowner has no right to light and air coming to him across neighbors land.
Musumcci v. Leonardo. 75 A.2d 175,77 R.I. 255.

ADVERSE POSSESSION

I. <u>NATURE AND REQUISITES</u>.

(A) ACQUISITION OF RIGHTS BY PRESCRIPTION IN GENERAL.

7. Public property in general.

R.I. 1920. A use, commenced wrongfully, adverse to a public easement, cannot ripen into title against the estate, whether the adverse user entirely, or only partially, excluded the public use.
Armour & Co. v. City of Newport, 110 A.645, 43 R.I. 211.

Private individuals acquired no rights to a public way by paying taxes thereon, and the public lost no rights by the unauthorized acts of the assessors in assessing the taxes.
Armour & Co. v. City of Newport, 110 A.645, 43 R.I. 211.

8. Property dedicated to or acquired for public use.

R.I. 1921. A grant in trust for use "as a free hall for any and all moral, religious, literary and scientific purposes," was a charitable trust for the benefit of the public at large, and not merely the people or a society of the locality of the property, to which the statute of limitations, Pub. Laws 1911-12, c. 798, does not apply, and against which the petitioners claiming title could not acquire title by adverse possession.

Hicks v. City of Providence, 113 A. 791, 43 R.I. 484.

R.I. 1871. The dedication of land for the use of a limited portion of the public, as here, for a burial place, is valid, as to a charitable use, and the title can be acquired by adverse possession.

Mowry v. Providence, 10 R.I. 52.

R.I. 1958. If evidence established existence of highway, no obstruction of highway thereafter, however long continued under a claim of right, can defeat the public easement of travel.

Town of Warren v. Wietecha, 124 A.2d 861, 84 R.I. 407.

R.I. 1956. No right of title can be acquired in public highway by adverse possession.

Parrillo v. Riccitelli, 123 A.2d 248, 84 R.I. 276.

Where there has been no acceptance by public of incipient dedication of street, title to portion thereof can be obtained by adverse possession.

Parrillo v. Riccitelli, 123 A.2d 248, 84 R.I. 276.

R.I. 1939. A property owner could not acquire title by prescription "It is sufficient if one goes upon the land openly and uses it adversely to the true owner, the owner being chargeable with knowledge of what is done openly on his land." Stone v. Green Hill Civic Association, Inc., 786 A.2d 387, 391 (R.I.2001) to a tract constituting portion of defined highway even though the tract was not used as a part of highway for purposes of travel.

Davis v. Girard, 196 A.254, 59 R.I. 471, opinion supplemented 196 A.795, 60 R.I. 38.

R.I. 1931. No right in established highway could be obtained by adverse possession.

Wall v. Eisenstadt, 154 A.651, 51 R.I. 339.

Adverse possession or use of a public street or highway gives no right as against the public.

R.I. 1926. Gill v. Town Council of Jamestown, 133 A.806, 47 R.I. 425.

R.I. 1893. Almy v. Church, 26 A.58, 18 R.I. 182.

R.I. 1911. The right of the public in a street dedicated to its use is not lost by adverse possession, however long continued.

Horgan v. Town Council of Jamestown, 80 A.271, 32 R.I. 528.

R.I. 1903. A private individual cannot obtain title to a public highway or street by adverse possession.

Knowles v. Knowles, 55 A.755, 25 R.I. 325.

R.I. 1893. The proprietors of the Puncatesett purchase in A.D. 1663, laid out certain highways in their allotment of lands; Records of the town of Plymouth, Vol. 1, p. 62, sq., and in A.D. 1680, recognized these highways by entries of lot descriptions on the proprietors' records. In A.D. 1710 the proprietors voted that some of these highways should be driftways. Some of these highways have for a very long time been obstructed by farm walls and buildings while parallel and equally convenient ways have been used in their stead.Almy v. Church, 26 A.58, 18 R.I. 182.

When, however, a new way substantially parallel with an old obstructed highway and equally convenient has been used in place of the old highway for a long time: Held, that the new way has by dedication and use been substituted for the former highway.
Almy v. Church, 26 A.58, 18 R.I. 182.

R.I. 1851. Where a portion of a highway, which was traveled by the public, was inclosed and occupied as private property for more than 20 years, held, that, as this inclosure began as a common and public nuisance for which one cannot prescribe, no adverse possession, however long, would give title to individuals against the public.
Simmons v. Cornell, 1 R.I. 519.

R.I. 1982. the Rhode Island Supreme Court established that a proposed street in a plat plan, which was not dedicated or used by the public at large as a roadway, may be acquired by adverse possession. 447 A.2d 361, 367

13. Character and elements of adverse possession in general.

R.I. 2013. Requiring a claim of right "is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner."
DiPippo v. Sperling, 63 A.3d 503, 508

R.I. 2008. In Rhode Island, a claimant may obtain title to property upon a showing that his use of the property was "actual, open, notorious, hostile, under claim of right, continuous, and exclusive for at least ten years."
Corrigan v. Nanian, 950 A.2d 1179, 1179

R.I. 2008. A successful claim for adverse possession "requires actual, open, notorious, hostile, continuous and exclusive use of property under a claim of right" for the requisite statutory period of ten years.
Cahill v. Morrow, 11 A.3d 82, 88 (R.I. 2011) (citing Corrigan v. Nanian, 950 A.2d 1179, 1179

R.I.2003. "This Court has long held that to establish adverse possession, a claimant's possession must be 'actual, open, notorious, hostile, under claim of right, continuous, and exclusive' for at least ten years."
Tavares v. Beck, 814 A.2d 346, 350

R.I. 2001. To establish a claim for adverse possession, a claimant must demonstrate by strict proof, the elements set forth in G.L.1956 § 34-7-1 that the possession was " 'actual, open, notorious, hostile, under claim of right, continuous, and exclusive' for the statutory period of ten years."
Carnevale v. Dupee, 783 A.2d 404, 409

R.I. 2003. "Thus, to constitute hostile use, the claimant need only show a use 'inconsistent with the right of the owner, without permission asked or given, * * * such as would entitle the owner to a cause of action against the intruder [for trespass].' "

Drescher v. Johannessen, 45 A.3d 1218, 1228 (R.I.2012) (quoting Tavares v. Beck, 814 A.2d 346, 351)

R.I. 2001. "It is sufficient if one goes upon the land openly and uses it adversely to the true owner, the owner being chargeable with knowledge of what is done openly on his land."

Stone v. Green Hill Civic Association, Inc., 786 A.2d 387, 391

R.I. 2001. "a claim of right to own or use property will arise by implication through objective acts of ownership that are adverse to the true owner's rights, one of which is to exclude or to prevent such use."

Reitsma v. Pascoag Reservoir & Dam, LLC, 774 A.2d 826, 832

R.I. 1996. The party claiming adverse possession must establish each of these elements by "strict proof, that is, proof by clear and convincing evidence."

Carneval 783 A.2d at 409 (quoting Anthony v. Searle, 681 A.2d 892, 897

> "Possession under a claim of right means that the entry by the claimant must be in accordance with a claim to the property as the claimant's own with the intent to hold it for the entire statutory period without interruption. This intention must be demonstrated by open, visible acts or by declarations regarding such purpose. * * * In essence, to require adverse possession under a claim of right is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner.

R.I. 1992. It is well settled in Rhode Island that establishing title to real property by way of adverse possession is a statutorily created right. Walsh v. Cappuccio , 602 A.2d 927, 930

R.I. 1978. Elements of "adverse possession" under Statute, as at common law, are that possession must be actual, open, notorious, hostile, under claim of right, continuous, and exclusive throughout ten-year period. Gen. Laws 1956, § 34-7-1.

Martineau v. King, 386 A.2d 1117.

R.I. 1977. In order to establish title through adverse possession, adverse claimant must have uninterrupted and peaceful possession of the property under a claim of right for ten years.

Taffinder v. Thomas, 381 A.2d 519.

Adverse possession must be actual, open, notorious, hostile, under claim of right, continuous and exclusive. -Id.

R.I. 1977. Possession required to acquire title pursuant to adverse possession statute must be actual, open, notorious, hostile, under claim of right, continuous and exclusive; claimants must establish each element of possession by proof by a preponderance of the clear and positive evidence. Gen. Laws 1956, § 34-7-1.

Russo v. Stearns Farms Realty, Inc., 367 A.2d 714, 117 R.I. 387.

R.I. 1968. Possession required under adverse possession statute to confer title must be actual, open, notorious, hostile, under claim of right, continuous and exclusive, Gen. Laws 1956, § 34-7-1.
Chace v. Anarumo, 241 A.2d 628, 104 R.I. 48.

R.I. 1967. To acquire land by adverse possession a claimant must prove actual possession of the property claimed and acts of dominion over property that will be sufficient to allow vesting of title thereto in him, and the possession required to acquire title must be actual, open, notorious, hostile, under claim of right, continuous and exclusive.
Waldman v. Town of Barrington, 227 A.2d 592, 102 R.I. 14.

R.I. 1964. Adverse possession must be actual, open, notorious, hostile, under claim of right, continuous, and exclusive. Gen. Laws 1956, § 34-7-1.
Finocchiaro v. Francescone, 198 A.2d 37, opinion adhered to 200 A.2d 703.

R.I. 1963. A possession required to acquire title by adverse possession must be actual, open, notorious, hostile, under claim of right, continuous, and exclusive. Gen. Laws 1956, § 34-7-1.
Sherman v. Coloskie, 188 A.2d 79, reargument denied 188 A.2d 370.

R.I. 1909. Claimant must have been for the statutory period in uninterrupted quiet, and actual seisin and possession, claiming the land as his sole and rightful estate in fee.
Co-operative Bldg. Bank v. Hawkins, 73 A.617, 30 R.I. 171.

(B) ACTUAL POSSESSION

16. Acts of Ownership in General.

R.I. 1992. Landowner established adverse possession of cleared area western adjoining lot extending to eastern landowner's back yard; during period between 1973 and 1985, predecessor in title and successor in title and their tenants lived an and maintained an area originally cleared by predecessor.
Gen.Laws 1956, §34-7-1 Walsh v. Cappuccio, 602 A.2d 927

R.I. 1967. Landowners who sought to enjoin municipality from operating public bathing beach on claimed land and who had built boardwalks leading to beach, erected bath houses, built roads and driveways and had caused eviction of trespassers on beach when they became noisy did not exercise such dominion over the property as to gain title by adverse possession where it appeared that things done were performed on land unquestionably belonging to claimants and not on land in dispute.
Waldman v. Town of Barrington, 227 A.2d 592, 102 R.I. 14.

R.I. 1912. Filling in of the shore front of land bordering on the sea and the cultivation of grass thereon is sufficient possession to ripen into prescriptive title.
Dodge v. Lavin, 83 A.1009, 34 R.I. 409, reargument denied 84 A.857, 34 R.I. 514.

R.I. 2006. Moreover, this Court repeatedly has made the statement that "[c]ultivating land, planting trees, and making other improvements in such a manner as is usual for comparable land have been successfully relied on as proof of the required possession."
Acampora v. Pearson, 899 A.2d 459, 467

25. Possession of Agent, Tenant, or Vendee.

R.I. 1977. A purported landowner may himself claim title through adverse possession and the actions of his tenants over the statutory period may inure to his benefit.

Taffinder v. Thomas, 381 A.2d 519.

Prescriptive rights cannot be established through a tenant unless the area in question is either expressly or impliedly within the terms of the lease.

Id.

R.I. 1951. Where tenant occupies land not under lease but as trespasser, trespass with its penalties or compensations, if any, are his and not landlord's, and since landlord cannot be held liable he likewise cannot claim benefits of trespass.

Bell v. Bomes, 78 A.2d 362, 78 R.I. 37.

R.I. 1977. To acquire title to land by adverse possession, a claimant must prove actual possession of property claimed and acts of dominion over that property as required by law. Gen. Laws 1956, § 34- 7-1.

Russo v. Stearns Farms Realty, Inc., 367 A.2d 714, 117 R.I. 387.

R.I. 1963. To acquire title to land by adverse possession, a claimant must prove actual possession of the property claimed and acts of dominion over that property that will be sufficient in law to vest title thereto in him. Gen. Laws 1956, § 34-7-1.

Sherman v. Goloskie, 188 A.2d 79, reargument denied 188 A.2d 370.

R.I. 1932. Evidence as to location of stone bound and fence formerly on disputed lot held admissible on issue of occupation, where both parties relied on adverse possession in trespass and ejectment.

Saunders v. Kenyon. 159 A.824, 52 R.I. 221.

(C) VISIBLE AND NOTORIOUS POSSESSION.

30. Notoriety of Possession.

R.I.2003. [T]o require adverse possession under a claim of right is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner."

Tavares v. Beck, 814 A.2d 346, 351

R.I.2012. "Thus, to constitute hostile use, the claimant need only show a use 'inconsistent with the right of the owner, without permission asked or given, * * * such as would entitle the owner to a cause of action against the intruder [for trespass].'

" Drescher v. Johannessen, 45 A.3d 1218, 1228 (quoting Tavares v. Beck, 814 A.2d 346, 351 (R.I.2003)

R.I. 1989. Landowner who placed shed one and a half feet into neighbors property did not show that they had acquired that parcel by ten or more years of adverse possession; Landowner conceded that he was "totally in the dark" about specific location of his boundary until three years before commencement of litigation when he encountered neighbor's surveying team, and thus possession lacked prerequisites of adversity, notoriety, or claim of right.

Aud-War Realty Co., Inc. v. Ellis, 557 A.2d 69.

31. Knowledge of or Notice to Former Owner.

R.I. 1992. Continuity of possession of uncleared area in rear of lot which landowner mistakenly believed belonged to him was not sufficient to signal to true owner that contrary claim of title was being asserted; mistaken landowner used area as dump and crossing to gin access to woods
Walsh v. Cappuccio, 602 A.2d 90

R.I. 1977. For purpose of determining whether claimant acquired title to property through adverse possession, true owner will be charged with knowledge of whatever occurs on his land in an open manner.
Taffinder v. Thomas, 381 A.2d 519.

R.I. 1893. In ejectment, defendant testified that he supposed his deed from a common grantor covered the lot in issue, and that he fenced and planted it, but did not testify that he ever claimed title to the knowledge of the grantor or of plaintiff, or had done any act which would charge them with knowledge of such claim, or would be inconsistent with permissive occupation. Held, that defendant failed to show that his occupancy amounted to a disseisin of the grantor, which would bar plaintiff's action.

33. Evidence

R.I. 1986. Finding that tax sale purchasers who purchased after notice was given to original title holders at time of tax sale and who recorded deed subsequent to tax sale and paid taxes annually openly and adversely possessed property in manner sufficiently notorious as to come to the attention of an ordinary alert owner for the purpose of constituting ample constructive notice of hostile nature of purchasers' claims and that their possession and enjoyment of the property was supported by evidence that the purchasers used the property for collection of firewood several times annually for 16 years, a use that was virtually identical to the nature and use of surrounding property, and that purchasers alone used property.
Sleboda v. Heirs at Law of Harris, 508 A.2d 652

(D) DISTINCT AND EXCLUSIVE POSSESSION.

36. Possession Exclusive of Others.

R.I. 1912. The passing and repassing over shore land, without apparent claim of right, by persons under implied license given for the user's accommodation by one claiming the land by adverse possession, would not interfere with the exclusiveness of such person's possession.
Dodge v. Lavin, 84 A.857, 34 R.I. 514.

R.I. 1903. The maintenance of steps in a street for the more convenient use of the way in going from one street to another, where there is a bank, is not an exclusive possession of the way, as any one entitled to use the street could use the steps.
Healey v. Kelly, 54 A.588, 24 R.I. 581.

38. Evidence.

R.I. 1986. Finding that tax sale purchasers' possession and enjoyment of property was sufficiently exclusive and uninterrupted to satisfy statutory requirement for adverse possession was supported

by uncontradicted evidence that use of the property for the collection of firewood several times a year was virtually identical to the nature and use of surrounding property and that firewood collection took place every year for a period of 16 years, during which there were no signs that the property was being used by anyone other then tax sale purchasers. Gen.Laws 1956, § 34-16-7.

Slebode v. Heirs at Law of Harris, 508 A.2d

(E) DURATION AND CONTINUITY OF POSSESSION.

43. Privity of Estate in General.

R.I. 1977. A party claiming title through adverse possession may tack on the period of possession of his predecessor in title. Gen. Laws 1956, § 34-7-1.

Taffinder v. Thomas, 381 A.2d 519.

44. Continuity in General.

R.I. 1970. Continuous and uninterrupted possession required to constitute adverse possession does not require constant use of occupied area; it is necessary that it be continuous only in sense that claimant exercised claim of right without interference at Such times as it was reasonable to make proper use of land. Gen. Laws 1956, § 34-7-1.

LaFreniere v. Sprague$_1$ 271 A.2d 819, 108 R.I. 43.

U.S.C.C. 1890. Occasional interruptions of possession during the period necessary to create a title by adverse possession, which do not impair the use to which the occupant subjects the property, and for which it is chiefly valuable, will not necessarily defeat the presumption of a grant.

Fuller v. Fletcher, 44 F. 34.

R.I. 2003 "This Court has long held that to establish adverse possession, a claimant's possession must be 'actual, open, notorious, hostile, under claim of right, continuous, and exclusive' for at least ten years."

Tavares v. Beck, 814 A.2d 346, 350 (R.I.2003).

46. Interruption of possession.

U.S.C.C. 1890. Occasional interruptions of possession during the period necessary to create a title by adverse possession, which do not impair the use to which the occupant subjects the property, and for which it is chiefly valuable, will not necessarily defeat the presumption of a grant.

Fuller v. Fletcher, 44 F. 34.

49. By public.

R.I. 1994. The adverse possession of a beach by a town is not affected by the passage of inhabitants of the town over the beach to get seaweed or sand, or by their using the beach as a place of temporary deposit for seaweed.

New Shoreham v. Ball, 14 R.I.. 566.

57. Evidence.

R.I. 1986. Finding that tax sale purchasers' possession and enjoyment was sufficiently exclusive and uninterrupted to satisfy statutory requirements for adverse possession was supported by uncontradicted evidence that use of the property for the collection of firewood several times a year was virtually identical to he nature and use of surrounding property and that firewood collection took place every year for a period of 16 years, during which there were no signs that the property was being used by anyone other then the tax sale purchasers. Gen.Laws 1956, § 34-16-7.

Slebode v. Heirs at Law of Harris, 508 A.2d 652

(F) HOSTILE CHARACTER OF POSSESSION.

58. Necessity.

R.I. 1977. For purpose of adverse possession requirement that occupancy be "hostile", term "hostile" does not connote a communicated emotion but rather action inconsistent with the claims of others, where a person mistakes his boundary but continuously asserts dominion over property for the statutory period, requisite "hostility" exists.

Taffinder v. Thomas, 381 A.2d 519.

R.I. 1938. The statute of adverse possession does not begin to operate until the possession becomes clearly adverse.

Walsh v. Morgan, 198 A.555, 60 R.I.. 349.

60. In General.

U.S.C.C. 1847. Adverse possession, to give title, must be such as to raise a presumption of a deed, and where one party protested against the acts done by the party during possession, and consulted counsel in regard to them, the possession was held not to be adverse.

Stillman v. White Rock Mfg. Co., Fed. Cas. No. 13,446, 3 Woodb. & M. 539.

R.I. 1979. Adverse possession statute was never intended to allow possessor of property to mask his intent and then acquire property by concealing true situation from record owner hostility of possession necessary to establish adverse possession implies denial of owner's title, and possession, however open and long it may be, is not "adverse" without denial of owner[1]s title.

Tefft v. Reynolds, 113 A.787, 43 R.I.. 538.

R.I. 2013 Requiring a claim of right "is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner."

DiPippo v. Sperling, 63 A.3d 503, 508

62. By or Against Heirs, Devisees, or Surviving Husband or Wife, or their Grantees.

R.I. 1932. Possession by widow, although not in hostility to heirs, may be converted into adverse holding which will ripen into title, if continued for statutory period. Pub. St. 1882, c.175, §§ 2,3.

Astle v. Card, 161 A.126, 52 R.I. 357.

Widow may acquire title to land by adverse possession. Pub.St. 1882, c.175, § 2.
Astle v. Card, 161 A.126, 52 R.I. 357.

63. By Vendor or Purchaser.

C.J.S. Adverse Possession § 93.

R.I. 1957. A grantor may originate adverse possession against his grantee.
Malone v. O'Connell, 133 A.2d 756, 86 R.I. 167.

Owner of adjoining lot acquired title under Statute to adjoining 10-foot strip of land by open, adverse and continuous possession thereof for more than 10 years after she allegedly had conveyed such land to others by quitclaim deed. Gen. Laws 1938, c.438, § 2.
Malone v. O'Connell, 133 A.2d 756, 86 R.I. 167.

65. Entry and Possession by Mistake.

R.I. 1970. Plaintiffs' occupation of land beyond true line, though resting on misunderstanding as to where true line was located, was hostile and adverse. Gen. Laws 1956, § 34-7-1.
LaFreniere v. Sprague, 271 A.2d 819, 108 R.I. 43.

R.I. 1912. Taking possession of land belonging to another under the belief that it belongs to claimant, and holding it under such possession, will constitute adverse possession so as to give title, if continued for a sufficient period.
Dodge v. Lavin, 84 A.857, 34 R.I. 514.

65.(1) Mistake as to Location.

R.I. 1989. Landowner who placed shed one and a half feet into neighbors property did not show that they hd aquired that parcel by ten or more years of adverse possession; Landowner conceeded that he was "totally in the dark" about specific location of his boundary until three years before commencement of litigation when he encountered neighbor's surveying team, and thus possession lacked prerequisites of adversity, notoriety, or claim of right.
Aud-War Realty Co., Inc. v. Ellis, 557 A.2d 69.

66. Extension of Possession to Boundaries or Fences.

R.I. 2006 adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry.'
Acampora v. Pearson, 899 A.2d 459, 464

R.I. 1970. If it is determined that possession of occupier is to visible line in all events, regardless of location of true boundary line, his possession is hostile and adverse possession can be established therefrom. Gen. Laws 1956, § 34-7-1.
LaFreniere v. Sprague, 271 A.2d 819, 108 ~.I. 43.

R.I. 1977. For purpose of adverse possession requirement that occupancy be "hostile", term "hostile" does not connote a communicated emotion but rather action inconsistent with the claims of others; where a person mistakes his boundary but continuuusly asserts dominion over property for the statutory period, requisite "hostility" exists.
Taffinder v. Thomas, 381 A.2d 519.

R.I. 1976. Where a person through mistake as to boundary line takes possession of land belonging to another believing it to be his own, the holding is adverse, and if continued for the requisite period, will give title by adverse possession. Gen. Laws 1956, § 34-7-1.
Paquin v. Guiorguiev, 366 A.2d 169, 117 R.I.. 239.

Where owners of adjacent lots and their predecessors in title acquiesced in boundary lines marked by fence and retaining wall for 46 years and exercised unequivocal acts of ownership over their respective parcels of land, plaintiff acquired title to disputed parcel of land on their side of fence by adverse possession and by defendants' acquiescence in boundary despite fact that defendants had record title to disputed parcel Gen. Laws 1956, §34-7-1.
Id.

U.S. 1841. In an action of one state against another to determine boundaries, defendant cannot, on demurrer, object to laches of complainant, and claim a prescriptive title to the territory occupied by her under an agreement, because the bill alleges that complainant never acquiesced in such occupancy after a mistake in such agreement was discovered, and the demurrer admits that fact.
State of Rhode Island v. Com. of Mass., 40 U.S. 233, 15 Pet. 233, 10 L.Ed. 721.

67. Adverse Entry.

R.I. 1992. Defendants who could not prevail on their claim of adverse possession by relying on purported defect in plaintiffs' title.
Gen.Law 1956, § 34-7-1
Locke v. O'Brin, 610 A.2d 552

R.I. 1931. Conveyance by warranty deed and entry of grantees claiming exclusive possession was equivalent of actual disseisin.
Tiffany v. Babcock, 154 A.784, 51 R.I. 350.

68. Trespass.

R.I. 1995. A trespasser is defined as "'one who intentionally and without consent or privilege enters another's property.'"
Ferreira v. Strack, 652 A.2d 965, 969

71. Validity and Sufficiency of Instruments in General.

R.I. 1882. A wife conveyed her realty by a deed in which her husband joined, the wife's acknowledgment being vitiated by an informality therein. The grantee took possession and, 4 years later, conveyed the property by warranty deed to another person, who, with his grantees, continued in possession more than 20 years. Held, that the title of all persons claiming under the first-named grantee was by the statute of limitations established against all persons claiming under the wife.
Union Sav. Bank v. Taber, 13 R.I. 683.

85. Evidence.

U.S. 1854. The law will not presume a man's acts to be illegal, and will therefore attribute to long continued use and enjoyment by the public of a right of way or other privilege in or over the lands of another a legal rather than an illegal origin, and will ascribe long possession, which cannot otherwise be accounted for, to a legal title.

City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

U.S.C.C. 1847. A deed will not be presumed in favor of defendant where the evidence shows that plaintiff frequently remonstrated and consulted counsel about redressing their wrongs.

Stillman v. White Rock Manuf'g. Co.1 Fed. Cas. No. 13,446, 3 Woodb. & M. 539.

R.I. 1957. Grantor's possession of land conveyed to another is presumed to be in subordination to his grantee, for grantor is estopped by his deed from claiming that his possession is adverse. Gen. Laws 1938, c.438, § 2.

Malone v. O'connell, 133 A.2d 756, 86 R.I. 167.

R.I. 1894. In order to effect a disseisin, it is essential that there should be an entry on the land with the intention to usurp the possession and oust the true owner of the freehold. Being a tortious acquisition of an estate, it must be shown affirmatively and by strict proof. The mere fact of occupation of a vacant lot without anything to show that such occupation was, or was intended to be, adverse, is not sufficient to create a disseisin.

Draper v. Monroe, 28 A.340, 18 R.I. 398.

R.I. 1840. Where a party is in actual possession, and has a right to possession under a legal title, which is not adverse, but claims the possession under another title, which is adverse, the possession will not, in law, be deemed adverse.

Nichols v. Reynolds, 1 R.I. 30, 36 Am. Dec. 238.

R.I. 1944. Evidence as to record title of property in dispute was properly considered for its hearing upon matter of interpretation of plaintiffs' evidence on issue whether plaintiffs' predecessor had been for 10 years in the uninterrupted, quiet, peaceable and actual seisin and possession of property, claiming it to be his "proper, sole and rightful estate in fee simple", as required by statute.

Gen. Laws 1938, c.438, § 2.

Vingi v. Read, 36 A.2d 152, 70 R.I. 5.

R.I. 1932. Authenticated deeds insufficient to convey title held admissible in trespass and ejectment to show hostile character of possession, where it is possible to locate land from description in them.

Saunders v. Kenyon, 159 A.824, 52 R.I. 221.

R.I. 1963. Trial justice was not clearly wrong in finding that acts of dominion upon which claimant relied to establish adverse possession were neither hostile nor notorious. Gen. Laws 1956, § 34-7-1.

Sherman v. Goloskie, 188 A.2d 79, reargument denied 188 A.2d 370.

R.I. 1938. In suit to settle boundary line, evidence held insufficient to support trial justice's finding that an occupation line existed between the parties' premises, and respondents with knowledge thereof acquiesced in such line for a period of more than 10 years.

Man **v.** Lankowicz, 200 A.953, 61 R.I. 296.

R.I. 1932. Evidence showed that widow acquired title to realty in which she had dower interest by adverse possession against next of kin of her deceased daughter on her paternal side. Pub.St. 1882, c.175, § 2; c.187, § 6.

Astle v. Card, 161 A.126, 52 R.I. 357.

R.I. 2011. A party who asserts title by adverse possession must "establish the required elements by strict proof, that is, proof by clear and convincing evidence."

McGarry v. Coletti, 33 A.3d 140, 144 (R.I. 2011) (citing Corrigan, 950 A.2d at 1179).

R.I. 1992. Clear and convincing evidence is evidence sufficient to persuade the factfinder that a proposition is "highly probable" or that "produce[s] . . . a firm belief or conviction that the allegations are true." Cahill, 11 A.3d at 87 n.7 (internal citations omitted). While this standard is higher than the preponderance of the evidence standard often employed in civil cases, it does not require "that the evidence negate all reasonable doubt or that the evidence must be uncontroverted." Id. Evidence is clear and convincing when it is unambiguous and affirmative in character.

Locke v. O"Brien, 610 A.2d 552, 555 (quoting Hilley v. Simmler, 463 A.2d 1302, 1304 (R.I. 1983)).

85(3). Weight and Sufficiency in General.

R.I. 1986. Finding that tax sale purchasers' possession and enjoyment was sufficiently exclusive and uninterrupted to satisfy statutory requirements for adverse possession was supported by uncontradicted evidence that use of the property for the collection of firewood several times a year was virtually identical to he nature and use of surrounding property and that firewood collection took place every year for a period of 16 years, during which there were no signs that the property was being used by anyone other then the tax sale purchasers. Gen.Laws 1956, § 34-16-7.

Slebode v. Heirs at Law of Harris, 508 A.2d 652

(G) PAYMENT OF TAXES

88. Act of Ownership.

R.I. 1978. Mere occupancy and payment of taxes unaccompanied by a repudiation or disclaimer neither made known expressly to owner or clearly indicated by unequivocal actions will not convert possession originally permissive in nature into claim of right that will ripen into acquisition of title by adverse possession. Gen. Laws 1956, § 34-7-1

Martineau v. King, 386 A.2d 1117.

II. OPERATION AND EFFECT

(A) Extent of Possession

100(6). Possession Under Particular Instrument or Titles.

R.I. 1986. Tax sale purchaser' constructive possession of entire tract of land for adverse possession purposes could be established by the evidence of the gathering of firewood periodically upon only a portion thereof, where occupation on the land was pursuant to a deed.
Sleboda v. Heirs at Law of Harris, 508 A.2d 652

(B) TITLE OR RIGHT ACQUIRED.

104. Presumption of grant.

U.S.C.C. 1847. possession, to be adverse, must be consistent with the idea of a deed, or raise the presumption of one; and a deed will not be presumed where plaintiffs frequently remonstrated, and consulted counsel about redressing their wrongs.
Stillman v. White Rock Manuf'g. Co., Fed. Cas. No. 13,446, 3 Woodb. & N. 539.

108. Establishment of boundaries.

When a boundary line between two adjoining estates has been recognized and acquiesced in by the owners of both for a length of time equal to that prescribed by the statute of limitations as barring a right of entry, the owners of both estates are precluded from denying it to be the true line of boundary.
O'Donnell v. Penney, 20 A.305, 17 R.I. 164.

R.I. 2006 adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry.'
Acampora v. Pearson, 899 A.2d 459, 464

III. PLEADING, EVIDENCE, TRIAL, AND REVIEW

112. Presumptions and burden of proof.

R.I. 1953. Presumption was that prior owners of land had claimed full grant contained in their respective deeds.
Daniels v. Blake, 99 A.2d 7, 91 R.I. 103.

113. Admissibility of evidence.

R.I. 1964. Evidence that seven-foot strip claimed by landowner from adjoining owner by adverse possession had been adversely used by landowner's grantor prior to conveyance, which bore metes and bounds description that did not include the strip, was admissible and did not violate parol evidence rule.
Finocchiaro v. Francescone, 200 A.2d 703.

R.I. 1932. Where, in trespass and ejectment adverse possession was relied on as defense, facts bearing on occupation by predecessors in title and alleged exchange of lot involved held material.
Saunders v. Kenyon, 159 A.824, 52 R.I. 221.

Quitclaim deed held admissible together with other evidence of defendant's claim of adverse possession in action of trespass and ejectment.
Saunders v. Kenyon, 159 *A.824,* 52 R.I. 221.

Evidence as to mortgage by predecessor in title and plaintiff's contract granting flowage rights held admissible to prove adverse possession by him in action of trespass and ejectment.
Saunders v. Kenyon, 159 A.824, 52 R.I. 221.

114. Weight and sufficiency of evidence.

R.I. 2012 "Thus, to constitute hostile use, the claimant need only show a use 'inconsistent with the right of the owner, without permission asked or given, * * * such as would entitle the owner to a cause of action against the intruder [for trespass].' "
Drescher v. Johannessen, 45 A.3d 1218, 1228 (quoting Tavares v. Beck, 814 A.2d 346, 351 R.I. 2003)

R.I.2008 In Rhode Island, a claimant may obtain title to property upon a showing that his use of the property was "actual, open, notorious, hostile, under claim of right, continuous, and exclusive for at least ten years."
Corrigan v. Nanian, 950 A.2d 1179, 1179

R.I. 2001 To establish a claim for adverse possession, a claimant must demonstrate by strict proof, the elements set forth in G.L.1956 § 34-7-1 that the possession was "'actual, open, notorious, hostile, under claim of right, continuous, and exclusive' for the statutory period of ten years."
Carnevale v. Dupee, 783 A.2d 404, 409

R.I. 2003 [T]o require adverse possession under a claim of right is the same as requiring hostility, in that both terms simply indicate that the claimant is holding the property with an intent that is adverse to the interests of the true owner."
Tavares v. Beck, 814 A.2d 346, 351

R.I. 2008 The party who asserts that adverse possession has occurred must establish the required elements by strict proof, that is, proof by clear and convincing evidence."
Id. (quoting Corrigan v. Nanian, 950 A.2d 1179, 1179

R.I. 1996 The party claiming adverse possession must establish each of these elements by "strict proof, that is, proof by clear and convincing evidence."
Carnevale, 783 A.2d at 409 (quoting Anthony v. Searle, 681 A.2d 892, 897

R.I. 1992. Evidence of adverse possession must be proved by strict proof, that is, proof by clear and convincing evidence of each of the elements of adverse possession, that possession is actual, open, notorious, hostile, under claim of right, continuous and exclusive. Gen.Law 1956, § 34-7-1.
Locke v. O'Brian, 610 A.2d 552

R.I. 1992. In order to succeed with claim of adverse possession, claimant must establish each element of preponderence of clear and convincing evidence. Gen.Law 1056, § 34-7-1.
Walsh v. Cappuccio, 602 A.2d 927

Landowner's use of uncleared area of adjoining lot as dump and occasional means of access to woods did not warrant finding by trial court that elements of exclusivity, claim to right, openness, or hostility were established by preponderence of clear and convincing

evidence.
Id.

R.I. 1987. Vendor of real estate failed to establish he acquired title to road in area of town by adverse possession in absence of evidence that vendor erected barriers or other obstructions on road, restrained anyone from using road, or evicted anyone from road, and in absence of evidence that would satisfy ten-year period necessary to establish adverse possession. Gen.Law 1956, § 34-7-1.
Samuel Nardone & Co. v. Bianchi, 534 A.2d 1114.

Burden falls upon claimant to prove each element of adverse possession by strict proof. Gen.Law 1956, § 34-7-1.
Id.

R.I. 1979. Strict proof of all elements of adverse possession is required.
Picerne v. Sylvestre, 404 A.2d 476.

R.I. 1978. In adverse possession cases, strict proof is the rule; specifically, to establish claim of adverse possession requires proof of preponderance of clear and positive evidence or by evidence that is unambiguous and affirmative in its character. Gen.Laws 1956, § 34-7- 1.
Martineau v. King, 386 A.2d 1117.

R.I. 1977. Possession required to acquire title pursuant to adverse possession statute must be actual, open, notorious, hostile, under claim of right, continuous and exclusive; claimants must establish each element of possession by proof by a preponderance of the clear and positive evidence. Gen. Laws 1956, § 34-7-1.
Russo v. Stearns Farms Realty, Inc., 367 A.2d 714, 117 R.I. 387.

R.I. 1970. Strict proof of actual, open, notorious, hostile, continuous and exclusive possession of property in question for statutory period of ten years is required in cases involving adverse possession.
Spangler v. Schaus, 264 A.2d 161, 106 R.I. 795.

R.I. 1968. In cases involving adverse possession, strict proof is required; adverse possession requires proof by preponderance of clear and positive evidence or by evidence that is unambiguous and affirmative in its character.
Chace v. Anarumo, 241 A.2d 628, 104 R.I. 48.

Trial justice who found against claim of possession was not shown to have overlooked or misconceived any material evidence.
Id.

R.I. 1977. In action to quiet title to real property by virtue of adverse possession, evidence, including testimony as to extent of cleared grassy area, supported trial justice's finding that plaintiffs' possession extended 70 feet south from their house. Gen. Laws 1956, § 34-7-1.
Russo v. Stearns Farms Realty, Inc., 367 A.2d 714, 117 R.I. 387.

R.I. 1932. Evidence held to show that town had openly, notoriously, and uninterruptedly used tract of land under claim of right for time in excess of statutory period for obtaining title by adverse user.
Talbot v. Town of Little Compton, 160 A.466, 52 R.I. 280.

R.I. 1931. In suit of quiet title, respondents held entitled to decree based on adverse possession. Gen. Laws 1923, c.300, § 2.
Tiffany v. Babcock, 154 A.784, 51 R.I. 350.

R.I. 1931. Evidence held to establish title by adverse possession to lot contiguous to complainant's but not as to other tract.
Day v. Proprietors of Swan Point Cemetery, 153 A.312, 51 R.I. 213.

Plaintiff seeking to establish title by adverse possession,

whichis attempt to tortious acquisition, has burden to support bill by

strict proof.

Day v. Proprietors of Swan Point Cemetery, 153 A.312, 51 R.I. 213.

R.I. 1929. Complainants could not maintain their claim of title by adverse possession by evidence of neglect of property by owner of record title. Gen. Laws 1923, c.300, § 2.
Narreodo v. Ricci, 148 A.33.

R.I. 1912. Each case involving claim of title by adverse possession must be largely considered upon its own facts.
Dodge v. Lavin, 84 A.857, 34 R.I. 514.

R.I. 1902. In an action of ejectment, where defendant claims by adverse possession, a verdict for the plaintiff is not against the evidence where it appears that defendant entered upon the land as a tenant and it does not appear that the owner was ever notified that defendant's holding had become adverse and it is uncertain where the adverse possession began.
Glezen v. Haskins, 51 A.219, 23 R.I. 601.

R.I. 1963. Evidence supported finding that landowner who claimed ownership of entire unnamed avenue south of his land and some land south thereof had adverse possession of eastern portion of the unnamed avenue, that land to south extended a specified distance along a street, and that the unnamed avenue commenced where westerly line of tract to south ended.
Ott v. Stein, 190 A.2d 221.

R.I. 1953. Even though earliest deed in chain of title did not include within its description the strip of land in dispute, and even though such strip was outside a wall erected on such tract, respondent would be deemed to have title to disputed strip of land, at least by adverse possession under statute, where all deeds in her chain of title for 30 year period preceding trial contained description including disputed strip and there was no showing that respondent and her predecessors in interest had. not claimed full grant contained in such deeds. Gen. laws 1938, c. 438, § 2.
Daniels v. Blake, 99 A.2d 7, 81 R.I. 103.

R.I. 1912. The conditions under which title may be acquired by adverse possession are wholly statutory; it being for the court to determine whether the acts relied on have been satisfactorily proven, and whether they are sufficient in law to constitute title by adverse possession.
Dodge v. Lavin, 84 A. 857$_1$ 34 R.I. 514.

BOUNDARIES

R. I. 2002 'the issue of what constitute[s] the boundaries of a parcel of land is a question of law, the determination of where such boundaries are is a question of fact.'
Norton v. Courtemanche, 798 A.2d 925, 932

I. DESCRIPTION

1. General rules of construction.

Library references

C.J.S. Boundaries § 1 et seq.

2. Particular words or terms.

Library references

C.J.S. Boundaries § 4.

R.I. 1909. The word "about", as used to define the location and beginning point in a description, should be construed, if possible, so as to carry out the meaning and intent of grantor.
Co-operative Bldg. Bank v. Hawkins, 73 A.617, 30 R.I. 171.

§ 1. Definition

A boundary is a line or object indicating the limit or furthest extent of a tract of land or territory.

A boundary is a line or object indicating the limit or furthest extent of a tract of land or territory; a separating or dividing line between countries, states, districts of territory, or tracts of land. The term is used to denote the physical object which divides, as well as the line of division itself.

§ 3. General Rules of Construction

The object of rules as to location of boundaries is to ascertain their actual location as made, or to retrace the surveyor's footsteps. The parties' intention is the controlling consideration. That which is certain and definite will prevail, and ambiguous or erroneous descriptions may be rejected; but as few calls should be disregarded as possible.

The general rules of construction applied to deeds and grants are applicable in the case of boundaries. The object of all rules for the establishment of boundaries is to ascertain the actual location of the boundary as made at the time. The important and controlling consideration, where there is a conflict as to a boundary, is the parties' intention, whether express or shown by surrounding circumstances; in other language, rules for the ascertainment of boundaries are controlling when, under the facts of the particular case, they best enable the court to arrive at the intention of the parties.

That which is most certain and definite and least liable to mistake will prevail over the indefinite and less certain. Ambiguous or patently erroneous descriptions may be rejected, and the land located by other calls, and a call or boundary may be rejected when it is manifest from all the circumstances that it was inserted inadvertently or by mistake;

but no calls will be rejected if all can be reconciled, and if all the calls cannot be followed, as few should be disregarded as possible, so that that construction is favored which gives effect in a measure to every call of the description and does least violence to the calls. A contemporaneous construction cannot be invoked to alter a boundary established pursuant to an unambiguous description.

Footsteps of surveyor. It has been declared that all rules of law adopted for guidance in locating boundary lines have been to the end that the steps of the surveyor who originally projected the lines on the ground may be retraced as nearly as possible; further, that in determining the location of a survey, the fundamental principle is that it is to be located where the surveyor ran it. Any call, it has been said, may be disregarded, in order to ascertain the footsteps of the surveyor in establishing the boundary of the tract attempted to be marked out on the land; and the conditions and circumstances surrounding the location should be taken into consideration to determine the surveyor's intent.

Terms of exclusion. The words "to", "from", "by", "on" and "between", when used in a description of boundaries, are to be understood as terms of exclusion, unless there is something in the connection which makes it manifest that they were used in a different sense.

"About;" "more or less". As more fully appears in § 102 of the title Deeds, 18 C.J. p 289 note 42-p 290 note 57, and § 93 of the title Vendor and Purchaser, 66 C.J. p 660 note 12-p 662 note 49, the words "about" and "more or less", when used in connection with quantity or distance, are words of safety and caution, intended to cover some slight or unimportant inaccuracy; and, while enabling an adjustment to the imperative demands of fixed monuments, they do not weaken or destroy the statements of distance and quantity when no other guides are furnished. The words in their ordinary use are to be taken in connection with all other features of the transaction, if not other calls render them necessary, they should be rejected and the distance taken as stated.

"Along," when used in the description in a deed, means "by, on, or over," according to the subject matter and context.

"Bounds" means "the legal, imaginary line by which different parcels of land are divided."

"Call." "In American land law, the designations in an entry, patent, or grant of land of visible natural objects as limits to the boundary." "A reference to, or statement of, an object, course, distance, or other matter of description, in a survey or grant, requiring or calling for a corresponding object, etc, on the land." A call, to stand as a boundary, must be indicated to be such with sufficient certainty to show that it was so intended.

Locative calls are specific calls, descriptions, or marks of location, referring to landmarks, physical objects, or other points by which the land can be exactly located and identified. Descriptive or directory calls are those which merely direct the neighborhood wherein the different specific calls may be found. Locative calls have been denominated "particular", and descriptive calls "general".

"Ditch" and "drain" have been said to have no exact technical meaning, but to be capable of bounding land if sufficiently defined.

"Flats" is a word of doubtful meaning when used as a boundary; the meaning to be attached to the word in a deed must depend on the instrument in which it occurs, taken as a whole, and on surrounding circumstances. The term is sometimes used synonymously with "shore".

"Line" in surveying and dividing grounds means prima facie, a mathematical line, without breadth; yet this theoretic idea of a line may be explained, by the facts referred to and connected with the division, to mean a wall, a ditch, a crooked fence, or a hedge, that is, a line having breadth.

"Extended line" is a produced line.

"Line trees". "Trees standing directly on the boundary; between lands of adjoining owners.. usually considered common property, which neither may destroy without the consent of the other.

"A lost boundary" is a boundary which has lost its distinctive character as such by removal, displacement, decay, or change, so that it no longer answers the purpose of a bound in defining the true line between the tracts.

Metes. "By metes in strictness may be understood the exact length of each line, and the exact quantity of land in square feet, rods, or acres Metes result from bounds; and where the latter are definitely fixed, there can be no question about the former.

"Metes and bounds mean the boundary lines or limits of a tract."

"A plat is not a mark on the land, but a representation of the land on paper, appealing to the eye by means of lines and memoranda, rather than by words alone." "A plat is a subdivision of land into lots, streets, and alleys, marked upon the earth, and represented on paper."

"A point is the extremity of a line.

"Thence", as used in a description of land, means "from that place".

Other words or terms relating to boundaries have been defined or construed, including "actual location", "all cases of boundary", "as laid out", "at", "at the southwest corner", "bounded north of", "brook", "corner", course "down the creek with the several meanders thereof", "down the river", "down the spur", "east", "easterly", "eastward", "eastwardly", "edge of the mill pond", "extend", "foot of the hill", "fork of the first fork", "half section", "half section line", "harbor", "head of a stream", "in direction of their lines continued", "location", "main channel", "map", "marked line", "near", "north", "northeasterly", "northeast part", "northerly", "northerly and easterly", "north half", "north one-third", "north part of", "north side", "northward", "northwardly", "northwest", "northwesterly", "NW", "on", "parallel", "practical location", "quarter corner", "quarter §", "running along", "running the shore", "running up the ridge", "sea", "seashore", "section", "section corner", "sedge-flat", "shore", "slough", "sound", "south", "southerly", "south side", "southward", "southwest course", "southwesterly", "southwest part", "southwest quarter", "straight line down the drain", "strand", "stream", "street", "stretching", "substantially", "supposed line", "swamp", "thence down the swamp", "thence N.", "thence up the same", "thence with the meander of the river", "up a run", "up the branch", "up the creek", "up the river", "up the west bank", "west", "west bank", "west end",

"western ocean", "west line", "westward", and "with the main falls".

3. Relative importance of conflicting elements.

Library References

C.J.S. Boundaries § 47 et seq.

C.C.R.I. 1829. The general description, "being the same land", given by the grantor's mother to the grantee by will, will not control specific boundaries in the deed.
Howell v. Saule, Fed. Cas. No. 6,782, 5 Mason 410.

R.I. 1939. When there is conflict between monuments or boundaries and distances, as given in description of land by deed conveying it, monuments or boundaries must prevail.
Nacari v. Marandola, 9 A.2d 21, 63 R.I. 369.

R.I. 1909. Where the calls of a description are definite and clearly expressed, they should not be extended to conform to an intent which might be discovered from other parts of it or from extrinsic evidence; the chief purpose being to develop the true intent.
Cooperative Bldg. Band v. Hawkins, 73 A.617, 30 R.I. 171.

R.I. 1884. Where it appears to have been the intention of the parties to convey an entire farm or tract, calls for boundaries repugnant to such intention will be rejected.
Waterman v. Andrews, 14 R.I. 589.

R.I. 1960. Where there is a conflict between the monuments or boundaries and the distances as given in a description of land being conveyed, the monuments must prevail, and the land of an adjoining proprietor is a monument within this rule.
Essex v. Lukas, 159 A.2d 612, 90 R.I. 457.

R.I. 1939. When there is conflict between monuments or boundaries and distances, as given in description of land by deed conveying it, monuments or boundaries must prevail.
Macari v. Marandola, 9 A.2d 21, 63 R.I. 369.

R.I. 1928. Monument governs measurements of land.
Di Maio v. Ranaldi, 142 A.145, 49 R.I. 204.

Land of adjoining proprietor is "monument" governing measurements of land.
Di Maio v. Ranaldi, 142 A.145, 49 R.I. 204.

R.I. 1909. In ascertaining the boundaries of surveys or grants, wherever natural or artificial permanent objects are called for, they control, and courses and distances must yield.
Co-operative Bldg. Bank v. Hawkins, 73 A.617, 30 R.I. 171.

Library References

C.J.S. Boundaries §§ 51, 58, 59.

§ 47. Relative importance of Conflicting Elements

a. General Rules
b. Control of Corners

a. General Rules

Generally, calls for natural monuments or objects, artificial monuments or objects, courses and distances, and quantity rank in that order; but the rules of comparative dignity of types of calls are not conclusive, but are rather rules of construction or evidence, adaptable to circumstances and the parties intention.

"Courts that have had to determine between conflicting calls....have generally agreed upon a classification of and gradation of calls in a grant, survey or entry of land, by which their relative importance and weight are to be determined." While the rules of comparative dignity of types of calls have been said to be not artificial rules built on mere theory, but the true results of human experience, they are not conclusive, imperative, or universal, but are called rules of construction, adaptable to circumstances, or only rules of evidence, or merely helpful in determining to which of conflicting calls controlling effect shall be given; so a call which would defeat the parties' intention will be rejected regardless of the comparative dignity of the conflicting calls, and, where calls of a higher order are made by mistake, the calls of a lower order may control, as most clearly indicating the intention of the grant.

The general order of precedence of proofs or guides in determining boundaries is, first, natural monuments or objects, like mountains, lakes and streams; second, artificial marks, stakes, or other objects, made or placed by the hand of man; third, courses and distances; fourth, recitals of quantity.

A locative call will prevail over a directory or descriptive call.

b. Control of Corners

A call for an established and identified corner may, unless uncertain or mistaken, control conflicting calls, such as for quantity, course, distance, the unmarked open line of an adjoiner, or a corner or line of an adjoiner mistakenly assumed to be in the same place as the located corner.

While a call for the corner of a survey will not necessarily control calls for marked lines, an established and identified corner may be accorded the weight and dignity of a marked line, and may control other and conflicting calls, such as one for quantity. Further, a call for an established corner will generally control calls for distance and for course and distance, unless it is shown to be an uncertain or mistaken call.

A call for an established corner cannot be disregarded in favor of a call for an unmarked open line of an adjoiner; and a corner actually located and marked will control a call for a corner or line of an adjoiner mistakenly assumed to be in the same place. However, the fact that in field notes of a survey there is a call for an unidentified corner ought not to be given controlling effect, if to do so is to disregard entirely calls for adjoining surveys and cause confusion.

A definitely fixed corner which is in accord with courses and distances will control the location of an uncertain corner.

R.I. 1887. In case of a discrepancy in area, the boundary lines given and ascertained must control, unless it appears that an exact quantity of land is the thing granted.
Doyle v. Nellen, 8 A.709, 15 R.I. 523.

Library References

C.J.S. Boundaries § 49.

R.I. 1960. Where there is a conflict between the monuments or boundaries and the distances as given in a description of land being conveyed, the monuments must prevail, and the land of an adjoining proprietor is a monument within this rule.
Essex v. Lukas, 159 A.2d 612, 90 R.I. 457.

R.I. 1928. Calls for adjoining proprietors control description by courses and distances in case of discrepancy.
Di Maio v. Ranaldi, 142 A.145, 49 R.I. 204.

5. Artificial monuments and marks.

Library References

C.J.S. Boundaries § 5 et seq.

R.I. 1909. An existing line of an adjoining tract may constitute a monument.
Co-operative Bldg. Bank v. Hawkins, 73 A.617, 30 R.I. 171.

6. Courses and Distances.

Library References

C.J.S. Boundaries § 9.

R.I. 1881. In determining title to land formed by filling in from a former shore line, where the upland boundary, if prolonged, would meet the harbor line obliquely, in the absence of any agreement or facts working an estoppel, the line will be drawn from the termination of the line on the old shore to meet the harbor line perpendicularly.
Manchester v. Point St. Iron Works, 13 R.I. 355.

7. Location of corners.

Library References

C.J.S. Boundaries § 10 et seq.

8. Location of lines.

Library References

C.J.S. Boundaries § 14 et seq.

R.I. 1881. The dividing line between riparian owners, in the absence of agreement or recognition of any different line, is a line drawn from the termination of their upland boundary, perpendicular to the harbor line.
Manchester v. Point Street Iron Works, 13 R.I. 355.

R.I. 1879. In 1855 a harbor line was established for the west side of Providence river. The line was straight, except that it made a slight turn easterly and outward before striking the projecting headland of Field's Point. North of this headland was a deep indentation in the shore. On a bill in equity, brought to determine the boundary from the shore to the harbor line between two riparian estates, one of which had a shore front slightly lengthened by the curve of the shore, it appearing that many estates along the harbor line had been filled out to it and occupied, and that the harbor line was a long one. Held, that the boundary line was to be run from the termination of the upland boundary on the shore, perpendicular to the harbor line, end the initial point of the boundary line so run was the termination on the shore of the upland boundary, however this upland boundary might have been fixed, whether by possession or by record or other title.

Aborn v. Smith, 12 R.I. 370.

R.I. 1873. Where a rock projecting into the main channel has preserved the shore of one proprietor from detrition at that point, but caused a deep inward curve beyond it, while that of the other has conformed more of the course of the river, their respective water fronts are not to be determined by the ordinary rule, drawing a line at right angles to a line drawn from headland to headland, but by the following rule: Draw a line along the main channel in the direction of the general course of the current in front of the two estates, and from the line so drawn, and at right angles with it, draw a line to meet the original division line on the shore.

Thornton v. Grant, 10 R.I. 477, 14 Am. Rep. 701.

Where adjoining properties are situated on an inlet of a navigable river, so that a continuation of the dividing line to meet a line drawn from headland to headland would pass diagonally across the front of one property, their respective water fronts will be determined by drawing a line from the division line on the shore to meet the thread of the current at right angles.

Thornton v. Grant, 10 R.I. 477, 14 Am. Rep. 701.

9. Designation, quantity, and location of land.

Library References

C.J.S. Boundaries § 19 et seq.

R.I. 1915. Where land was bounded by the lands of named persons, it was described by metes and bounds.

Moore v. Walsh, 93 A.355, 37 R.I. 436.

R.I. 1887. The "Battey Farm" contained about 100 acres, including a triangular lot of two or three acres at the southwest corner, which had once been conveyed by an invalid deed to plaintiff, who afterwards received a valid deed to the entire farm. plaintiff conveyed the farm, describing it as the "Battey Farm", and by boundaries which included the triangular lot, and as containing "97 acres, more or 1ess". Held, that the triangular lot was included, since the mere fact that the quantity mentioned was less than it should have been did not make such an inconsistency in the description as to warrant the inference that it was incorrect.

Doyle v. Mellen, B A.709, 15 R.I. 523.

R.I. 1884. The boundaries given in a deed of partition between co-tenants did not include the area named in the deed, and the area named corresponded with the remainder left after deducting from the land granted to the original grantor that granted by him under other deeds. Held, that the deed passed the entire area named therein.
Waterman v. Andrews, 14 R.I. 589.

10. Maps, plats, and field notes.

Library References

C.J.S. Boundaries § 24.

R.I. 1991. Maps and deeds are to be considered together in determining boundaries of property where deeds do not contain detailed metes and bounds description of property being conveyed and plat map is referenced describing parcel.
Hall v. Nascimento, 594 A.2d 874

R.I. 1902. In equitable proceedings under Gen. Laws cap. 266, for the settlement of the boundary lines of land covered by public tide-water, it appeared that all of the tide-flowed land embraced in the suit lay between upland formerly owned by Joseph Burgess and the harbor line as now established. Joseph Burgess died in 1829, and his farm was divided by commissioners appointed by the Court of Probate in 1830-1. The commissioners set off to J.P.B. Lot 6; to F.W. Lot 5, next south of Lot 6, to D.C. Lot 4, next south of Lot 5; and to J.B. Lot 7, next north of Lot 6; respondent H. acquired title to the tide-flowed lands appertaining to Lot 6, and one Benjamin Allen acquired title to Lots 4, 5 and 7, and to the tide-flowed lands appertaining thereto.

These lots, as marked on the partition plat, extended only to high-water mark, and they were set off by their numbers on the plat, to which reference was had for quantity and boundaries. Subsequent to the partition, J.P.B. quitclaimed to Benjamin Allen all his interest north of his north line, describing the course, "and to continue said course to the channel of Providence river, or so far as they have a right so to do." This was accepted by Benjamin Allen.
Taber v. Hall, 51 A.432, 23 R.I. 613.

Said Allen had his upland and his interests in tide-flowed land platted in 1832 and again in 1856, both of which plats extended eastward to the harbor line as then established. The north line of the J.P.B. lot on said plats, being the southern line of the Allen north section, was delineated as a straight line from the P. turnpike to the harbor line as given on the Burgess division plat, which line had been agreed on by J.P.B. and Benjamin Allen. The south line of the J.P.B. lot, being the northerly line of the southern section of the Allen land on said Allen plats, was nearly parallel with the north line of said J.P.B. lot as delineated on the Joseph Burgess partition plat on the same course to the harbor line. On said Allen plats a street named Friend street was delineated on the north side of the southern section of the Allen land, being the south line of the J.P.B. land, half of said street being taken from each proprietor. The Allen land was conveyed by mesne conveyances to the petitioners. All of the conveyances made by the petitioners predecessors in title described their north line as bounding on land of J.P.B. while recognizing the Allen plat, and the only conveyance made by petitioners bounded on the center line of Friend Street and made no mention of the J.P.B. land. Neither respondent Hall nor his predecessors ever referred to the Allen plats, nor did

respondent Hall or any of his predecessors derive title in any way from petitioners or their predecessors by instrument depending upon the Allen plats. Held, that boundary lines so far as fixed between ancestors in title would bind their successors; but unless the ancestors fixed rights and boundaries, there was no privity between successors merely because the land once belonged to a common ancestor.
Taber v. Hall, 51 A.432, 23 R.I. 613.

Held, further, that the division of the Joseph Burgess estate in 1830-1 bounded the heirs merely as to the land above high-water mark, at which mark the boundary lines fixed in said division stopped; so there was no privity between the heirs of Joseph Burgess or their successors in title by virtue of said division outside of such high-water mark.
Taber v. Hall,$_1$ 51 A.432, 23 R.I. 613.

Held, further, that, as neither Hall nor his predecessors had ever acted on the Allen plats with the acquiescence of petitioners so that it would be inequitable for petitioners not to hold themselves bound by them, the petitioners were not estopped by said Allen plats.
Taber v. Hall, 51 A.432, 23 R.I. 613.

Held, further, that respondent Halls southerly line had not been established before the commencement of the proceedings, and that the report of the commissioners should be approved.
Taber v. Hall, 51 A.432. 23 R.I. 613.

11. Adjoining or adjacent lands.

Library References

C.J.S. Boundaries § 17 at seq

R.I. 1893. In ejectment, it appeared that the land in question was bounded on the west by land owned by L. in fee, and on the east by land over which L. had an easement of way. Held, that the description in plaintiff's deed of land"bounded westerly by land of L.", referred to land owned by L. in fee, and that plaintiff was entitled to a recovery.
Segar v. Babcock, 26 A.257, 18 R.I. 203.

A deed conveyed land bounding it "thence northerly bounded westerly by land of Joseph H. Lewis * * * to point and place of beginning."
Segar v. Babcock, 26 A.257, 18 R.I. 203.

In trespass and ejectment involving the interpretation of this boundary description: Held, that it meant bounded westerly on land owned by Lewis in fee, not land over which he had an easement of way.
Segar v. Babcock, 26 A.257, 18 R.I. 203.

12. Waters and water courses.

Library References

C.J.S. Boundaries § 25.

13. In general.

Library References

C.J.S. Boundaries § 25 et seq.

R.I. 1991. Plat map referenced in original deeds showed that property did not encompass high-water mark so that littoral rights did not attach; absent showing that common grantor conveyed area of land including high-water mark, predecessors in interest to property did not acquire littoral rights.

Hall v. Nascimento, 594 A.2d 874

If deed is silent regarding littoral rights, boundary lines represented on plat plan, instead of deed, determine owner's rights to shoreline property; boundaries are deemed to be fixed by plat plan whether they lie at high-water mark or beyond.

Id.

14. Construction of language of description.

R.I. 1967. conveyance of tract "to the beach" without any language being set out therein to connote inclusiveness was a conveyance to the in shore line of the beach and therefore southerly boundary of property of landowners seeking to enjoin municipality from operating public bathing beach on their alleged property was northerly line of beach.

Waldman v. Town of Barrington, 227 A.2d 592, 102 R.I.

R.I. 1902. In equitable proceedings under Gen. Laws cap. 266, for the settlement of the boundary lines of land covered by public tide-water, 'it appeared that all of the tide-flowed land embraced in the suit lay between upland formerly owned by Joseph Burgess and the harbor line as now established. Joseph Burgess died in 1829, and his farm was divided by commissioners appointed by the Court of Probate in 1830-1. The commissioners set off to J.P.B. Lot 6; to F.W. Lot 5, next south of Lot 6, to D.C. Lot 4. next south of Lot 5; and to J.B. Lot 7, next north of Lot 6; respondent H. acquired title to the tide-flowed lands appertaining to Lot 6, and one Benjamin Allen acquired title to Lots 4, 5 and 7, and to the tide-flowed lands appertaining thereto. These lots, as marked on the partition plat, extended only to high-water mark, and they were set off by their numbers on the plat, to which reference was had for quantity and boundaries. Subsequent to the partition, J.P.B. quitclaimed to Benjamin Allen all his interest north of his north line, describing the course, "and to continue said course to the channel of Providence river, or so far as they have a right 50 to do." This was accepted by Benjamin Allen.

Taber v. Hall, 51 A.432, 23 R.I. 613.

Said Allen had his upland and his interests in tide-flowed land platted in 1832 and again in 1856, both of which plats extended eastward to the harbor line as then established. The north line of the J.P.B. lot on said plats, being the southern line of the Allen north section, was delineated as a straight line from the p. turnpike to the harbor line as given on the Burgess division plat, which line had been agreed on by J.P.B. and Benjamin Allen. The south line of the J.P.B. lot, being the northerly line of the southern section of the Allen land on said Allen plats, was nearly parallel with the north line of said J.P.B. lot as delineated on the Joseph Burgess partition plat on the same course to the harbor line. On said Allen plats a street named Friend Street was delineated on the north side of the southern section of the Allen land, being the south line of the J.P.B. land, half of said street being taken from each proprietor. The Allen land was conveyed by mesne conveyances to the petitioners. All of the conveyances made by the petitioners predecessors in title described their north line as bounding on land of J.P.B. while recognizing the Allen plat, and the

only conveyance made by petitioners bounded on the center line of Friend street and made no mention of the J.P.B. land. Neither respondent Hall nor his predecessors ever referred to the Allen plats, nor did respondent Hall or any of his predecessors derive title in any way from petitioners or their predecessors by instrument depending upon the Allen plats. Held, that boundary lines so far as fixed between ancestors in title would bind their successors; but unless the ancestors fixed rights and boundaries, there was no privity between successors merely because the land once belonged to a common ancestor.

Taber v. Hall, 51 A.432, 23 R.I. 613.

Held, further, that the division of the Joseph Burgess estate in 1830-1 bounded the heirs merely as to the land above high-water mark, at which mark the boundary lines fixed in said division stopped; so there was no privity between the heirs of Joseph Burgess or their successors in title by virtue of said division outside of such high-water mark.

Taber v. Hall, 51 A.432, 23 R.I. 613.

Held, further, that, as neither Hall nor his predecessors had ever acted on the Allen plats with the acquiescence of petitioners so that it would be inequitable for petitioners not to hold themselves bound by them, the petitioners were not estopped by said Allen plats.

Taber v. Hall, 51 A.432, 23 R.I.. 613.

Held, further, that respondent Hall's southerly line had not been established before the commencement of the proceedings, and that the report of the commissioners should be approved.

Taber v. Hall, 51 A.432, 2~ R.I.. 613.

R.I. 1897. In 1870 the State, being the owner of the "cove lands" in the city of providence, conveyed them to the city by deed in which the descriptive part contained the words, "now or heretofore flowed by tide-water". A large tract of land had formerly been a part of the cove, and was still called "cove lands", but the tide had ceased to flow thereon because of the filling by the city in 1857: Held, that the deed was intended to cover land that was then flowed by the tide, and also land that had been a part of the cove and was still traceable as such and had not been already the subject of legal grant or appropriation, and therefore included the tract of land mentioned.

Murphy v. Bullock, 37 A.348, 20 R.I.. 35.

17. Artificial bodies of water.

Library References

C.J.S. Boundaries § 28.

19. Roads, ways, and public grounds.

Library References

C.J.S. Boundaries § 35 et seq.

20. Public ways.

R.I. 1960. there is a presumption that ownership of land abutting highway carries with it fee to center line thereof, irrespective of fact that highway was originally ancient colonial highway.

Nugent v. Vallone, 161 A.2d 802, 91 R.I. 145.

R.I. 1948. In absence of special circumstances, owner of land abutting on highway owns the fee to middle line of the highway.

Newman v. Mayor of City of Newport, 57 S.2d 173, 73 R.I. 385.

R.I. 1902. Being an abutter on the highway, the claimant was prima facie the owner of the fee in the land taken to the centre thereof, and hence interested in the taking.

Sweet v. Town of Cranston, 50 A.851, 23 R.I. 466.

R.I. 1894. Where platted land is described in a deed by plat numbers and also as bounding on a street, without further qualification, the boundary will be deemed to be the street as actually opened and used, and not as marked out on the plat.

Draper v. Monroe, 28 A.340, 18 R.I. 398.

R.I. 1873. On the sale of a lot bounded by a street, the boundary is the middle of the street, unless otherwise stated expressly or by implication.

Clark v. Providence, 10 R.I. 437.

R.I. 1939. A description of land in deed conveying it as bounded northerly on the southerly line of Mill street" made northern boundary the south line of such street as used by public for highway purposes, not as indicated on plat field in abortive condemnation proceedings, 50 55 to require reversal of decree ordering grantor to move buildings back from line of street as so used on ground that they were partly on street.

Macari v. Marandola, 9 A.2d 21, 63 R.I. 369.

R.I. 1938. Rule that generally when highway is referred to as boundary, highway as it is opened rather than its layout of record is the boundary intended, has no application where there is evidence of a contrary intention.

Davis v. Girard, 196 A.254, 59 R.I. 471, supplemented 196 A.795, 60 R.I. 38.

R.I. 1894. M. being the owner of a tract of land on both sides of ocean street comprising part of a plat of lots designated by numbers, conveyed three of said lots, one of them being lot 90. The lots were designated in the deed by their plat numbers, to which description were added the words: "Ocean St. being on the West side thereof." Ocean street was marked out on the plat as adjoining lot 90 but as actually laid out, opened, and used it was fifty feet west of the platted location. Held, that under this description M.'s deed conveyed not only lot 90 as indicated on the plat, but all the intervening land up to the line of Ocean Street as actually opened and used.

Draper v. Monroe$_1$ 28 A.340, 18 R.I. 398.

D., who subsequently, by mesne conveyances, became the owner of a portion of the land described in M.'s deed, (including lot 90 and the intervening land up to Ocean Street, all of which bounded southerly on Summer Street) conveyed to the defendant in 1866 a lot described in the deed as bounding southerly on Summer Street fifty feet, westerly on Ocean street seventy-five feet, northerly by other land of the grantor fifty feet, and easterly by other land of the grantor seventy-five feet. Held, that lot 90 was not included in the deed to the defendant, but was expressly excluded by its terms.

Draper v. Monroe, 28 A.340, 18 R.I. 398.

R.I. 1883. When a street is referred to in a deed as a boundary, the street as opened and actually used, rather than its record lay-out, is the boundary intended.

Aldrich v. Billings, 14 R.I. 233.

R.I. 1903. A property owner platted a tract of land, showing streets and lots therein, and afterwards conveyed a lot not shown on the plat but located on the south side of one of these streets, the deed describing the lot as bounding "northerly till it strikes the south line of F. street (the street in question) , thence in the line of said street easterly", etc. His deed to lots on the north side carried title to the center of the street. Held that, since the grantor retained title to the south half of the street, his deed carried title to the middle thereof, subject to the easement of a way.

Healey v. Kelly, 54 A.588, 25 R.I. 581.

R.I. 1884. The grantor, prior to the location of a highway, owned the land for its entire width, and his deed of the land described it as bounding on the street. Held that, on the vacation of the street, the grantee's tract included the entire highway, and not merely to the center.

Healey v. Babbitt, 14 R.I. 533.

R.I. 1853. Where a deed of land bounds the grantee "to, on, or by a highway", the grant is presumed to include the fee of the soil to the center of the highway, if the fee thereof be in him, unless the contrary appears in the deed or monument referred to therein; but, where the grant is bounded "by the side of a highway", these words are presumed to exclude the highway, especially if this construction be consistent with the circumstances and subject-matter of the grant.

Hughes v. Providence & W.R Co., 2 R.I. 508.

R.I. 1911. Where lots are sold with reference to a plat showing a street or way intended for the benefit of adjacent lot owners, each owner acquires title in fee, not only in the lot described by number and as bounded by the way or street, but also in one-half of the width of the way in front of his lot.

Faulkner v. Rocket, 80 A.380, 33 R.I. 152.

R.I. 1867. Where a plat shows the boundary of a certain lot to be a line drawn between the lot and a Street, a deed describing the lot by its number of the plat does not convey title to the middle of the Street.

Tingley v. City of Providence, 8 R.I. 493.

21. Private ways.

R.I. 1901. A deed to a lot abutting on a gangway, which describes the lot as only extending thereto, conveys an interest in the gangway to the extent that grantor's ancestors had rights therein.

Baker v. Barry, 48 A.795, 22 R.I. 471.

R.I. 1895. The owner of land in the city of Providence laid out a gangway thereon which was a cul de sac ten feet wide running from S. street. In 1830 he conveyed a lot bounding northerly on the gangway with the privilege of using it at all times, forever, "with the express understanding that the said (grantor) is to keep a gate across said gangway, adjoining said S. street, unless otherwise agreed

on by the parties to this deed." Held, that the grantee took the fee to the centre of the gangway adjoining the lot.
Bentley v. Root, 32 A.918, 19 R.I. 205.

R.I. 1873. A deed describing the lot conveyed as a strip extending back southerly 120 feet, more or less, to a contemplated gangway, being lot No. 120, excepting so much as is contemplated to be taken from the south end of said lot for the aforesaid gangway, not exceeding 17 feet, does not include the strip contemplated to be used as a gangway.
Cushing v. Hathaway, 10 R.I. 514.

II. EVIDENCE, ASCERTAINMENT, AND ESTABLISHMENT.

26. Nature and form of remedy.

Library References

C.J.S. Boundaries §§ 96, 99.

U.S.R.I. 1838. In deciding a boundary dispute, the court will follow the same rules as in private ejectment suits.
State of R.I. v. Com. of Mass. 37 U.S. 657, 12 Pet. 657, 9 L.Ed 1233.

In ordinary cases of boundary, the function of a court of equity consists in settling the boundary by a final decree, defining and confirming it when run.
State of R.I. v. Com. of Mass. 37 U.S. 657, 12 Pet. 657, 9 L.Ed. 1233.

Where there is a confusion of boundaries by the nature of interlocking grants, the obliteration of marks, the intermixing of possession under different proprietors, the effects of accident, fraud, or time, or other kindred causes, a case appropriate to the exercise of equitable jurisdiction is made out.
State of R.I. v. Com. of Mass. 37 U.S. 657, 12 Pet. 657, 9 L.Ed. 1233.

R.I. 1877. Act April 1, 1875, Pub. Laws, c.453, confers equity jurisdiction only where boundaries once existing have been lost or have become obscure and uncertain, and not of a suit to determine a boundary which has never before been defined.
Aborn v. Smith, 11 R.I. 594.

In a bill in equity averring that the respondents have encroached upon complainants' water front, and praying that the court fix the boundary between complainants and respondents, and for an injunction to prevent further encroachments; the relief sought by both prayers is within the court's general equity jurisdiction.
Aborn v. Smith, 11 R.I. 594.

R.I. 1877. Under Act April 1, 1875, § 1 (Pub. Laws, c.453), giving the supreme court jurisdiction in equity to ascertain and fix a boundary which has become lost or obscure and uncertain by time, accident, or any other cause, the court merely ascertains the position of the lost or uncertain bounds, and no conclusion of either possession or title follows from such ascertainment of fact.
Washington Co. v. Matteson, 11 R.I. 550.

33. Presumptions and burden of proof.

Library References

C.J.S. Boundaries § 104.

R.I. 1973. It will not be presumed that either magnetic or true course was intended by grantor of deed describing course as "due" north or south; rather, it will be left in each case to trier of facts to determine from evidence presented to him the course to be followed.

Martin v. Tucker, 300 A.2d 480, 111 R.I. 192, 70 A.L.R.3d 1215.

R.I. 1948. The owner of premises bounded on a public highway is presumed, in absence of evidence to the contrary, to own the fee to the middle line of the highway.

Davis v. Girard, 59 A.2d 366, 74 R.I. 125.

R.I. 1877. The fact that an indenture of partition described a way partly by reference to terminal bounds raises the inference or presumption that such bounds were established at the execution of the deed.

Washington Co. v. Matteson, 11 R.I. 550.

34. Admissibility of evidence.

Library References

C.J.S. Boundaries § 105 et seq.

35. In general.

R.I. 1893. At the trial the defendant claimed that the description required a straight line drawn in a northerly direction, that the description was ambiguous referring either to land owned by Lewis or to land in his possession, and that this ambiguity could be explained away by parol proof of the grantor's intention. Held, that the defendant's claim could not be sustained that the "land of" Lewis, meaning land owned by Lewis, was a definite boundary, that there was no ambiguity in the description and that parol evidence of intention was inadmissible.

Segar v. Babcock, 26 A.257, 18 R.I. 203.

R.I. 1914. Where, in trespass and ejectment, there was no testimony to Identify an iron pin found in the line of a street with a pin called for in the deeds, evidence as to occupancy and use for more than 20 years of the land west of a line drawn through the pin found held admissible.

Grills v. New York, N.H. & H. R. Co., 90 A.721.

36. Documentary evidence.

Library References

C.J.S. Boundaries § 111 et seq.

R.I. 1966. Survey should have been admitted in suit in equity to enjoin respondent from maintaining and using wharf extending into reservoir, where question involved was whether land under bed of reservoir on which respondent had extended wharf was included within conveyance

to complainants, and survey had on it a legend designating location of farm which had been conveyed to complainants.
Goloskie v. Recorvitz, 219 A.2d 759, 101 R.I. 4.

37. Weight and sufficiency of evidence.

Library References

C.J.S. Boundaries § 116.

R. I. 2006 "Generally, 'the [boundary] line must be marked in a manner that customarily marks a division of ownership' and the marker must have been used for boundary purposes."
Acampora, 899 A.2d at 465.

R.I. 1970. Evidence in boundary dispute, including deeds to plaintiffs and defendants from common grantor, supported finding that record title to disputed tract was in defendants.
LaFreniere v. Sprague, 271 A.2d 819, R.I. 43.

R.I. 1973. Fact that plat prepared by predecessors in title to owners of one property involved in boundary dispute showed boundary line set out on a "true" bearing did not require conclusion that term "due south" contained in descriptive portion of deed executed in 1906 meant "true" south rather than "magnetic" south where there was no evidence that plat had ever been recorded and it was drawn up subsequent to the 1906 deed and showed boundary line meeting a stone bound which was situated on shore and distinguished by drill hole but which was not mentioned in the 1906 deed.
Martin v. Tucker, 300 A.2d 480, 111 R.I. 192, 70 A.L.R.3d 1215.

R.I. 1960. In proceeding to establish a hedgerow as the boundary line between adjoining properties, the trial justice was not clearly wrong, under the evidence and law, in finding as a fact that there had been no acquiescence in the alleged boundary line by the succeeding owners of respondents' land and that the true boundary line was the same as appeared on surveys and recorded plats.
Essex v. Lukas, 159 A.2d 612, 90 R.I. 457.

R.I. 1922. Evidence held to sustain a finding that the division line between the land of the parties is the line of an old division fence.
Bova v. Buonanno, 115 A.642.

R.I. 1963. Evidence supported finding that landowner who claimed ownership of entire unnamed avenue south of his land and some land south thereof had adverse possession of eastern portion of the unnamed avenue, that land to south extended a specified distance along a street, and that the unnamed avenue commenced where westerly line of tract to south ended.
Ott v. Stein, 190 A.2d 221, 96 R.I. 186.

R.I. 1975. Evidence in suit for determination as to location of boundary line between plaintiffs' lot and defendant's lot supported finding that defendant acquiesced in plaintiffs' occupancy of land to fence line. Gen. Laws 1956, § 34-7-1.
Rosa v. Oliveira, 342 A.2d 601, 115 R.I. 277.

R.I. 1970. plaintiffs' evidence in boundary dispute, including evidence that defendants had observed plaintiff's husband measuring off his lot up to line claimed by plaintiffs, that they had

observed him clearing area up to line and that he had planted lawn in disputed area inside of line, was insufficient to establish agreed boundary.

LaFreniere v. Sprague, 271 A.2d 819, 108 R.I. 43.

R.I. 1942. Where evidence as to existence of agreement for or recognition of and acquiescence in a fence as the true boundary is conflicting, proof of existence of fence for more than ten years does not require a finding that fence had stood for the prescribed period without objection to it as an encroachment.

Ungaro v. Mete, 27 A.2d 826, 68 R.I. 419.

In Suit to restrain continuing trespass by respondent upon a portion of complainants' land which respondent claimed by reason of location of a fence, conflicting evidence sustained finding that there was no agreement for recognition of fence as true boundary, so as to conclude complainant as to boundary

Ungaro v. Mete, 27 A.2d 826, 68 R.I.. 419.

R.I. 1928. Evidence held to justify finding that location of division fence was acquiesced in by adjoining landowners so long as to preclude claim that it was not true boundary.

DiMaio v. Ranaldi, 142 A.145, 49 R.I.. 204.

R.I.2001 Our case law has recognized that one of the methods by which a record **ow**ner can interrupt a claimant's continuous use of a disputed area is by "physical ouster of the claimant or a 'substantial interruption' of the claimant's possession by the record owner."

Carnevale v. Dupee, 783 A.2d 404, 409–10

R.I.2006 Under the doctrine of acquiescence, "adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry.'

" Acampora v. Pearson, 899 A.2d 459, 464 (quoting Locke, 610 A.2d at 556).

R.I. 1909. Where, in ejectment, it was necessary for plaintiff to show that the south boundary of a lot was a line 122 feet long, and it appeared that the deeds called for lines aggregating 110 feet in length, and that such lines corresponded with the actual occupancy of the land by the parties and their ancestors for upwards of 30 years, there could be no recovery.

First Baptist Society v. Wetherell, 72 A.641.

R.I. 1902. In proceedings before commissioners to determine the boundaries of land covered by public tide water; and lying within an established harbor line, where the commissioners adopted the boundaries fixed by the parties or their respective ancestors in interest, evidence considered, and held insufficient to show that the parties or their respective predecessors in title had agreed upon a boundary, and hence that the commissioners were authorized to determine it.

Taber v. Hall, 51 A.432, 23 R.I.. 613.

38. Trial of issues.

Library References

C.J.S. Boundaries § 117.

39. Conduct in general.

Library References

C.J.S. Boundaries § 117.

40. Questions for jury.

R.I.2002 'the issue of what constitute[s] the boundaries of a parcel of land is a question of law, the determination of where such boundaries are is a question of fact.'
Norton v. Courtemanche, 798 A.2d 925, 932

R.I. 1975. Although issue of what constitute the boundaries of a parcel of land is a question of law, the determination of where such boundaries are is a question of fact.
Rosa v. Oliveira, 342 A.2d 601, 115 R.I.. 277.

R.I. 1967. What are the boundaries of land conveyed by a deed is a question of law, though where those boundaries are is a question of fact.

Waidman v. Town of Barrington, 227 A.2d 592, 102 R.I. 14.

R.I. 1966. What are boundaries of land conveyed by deed is question of law, and where boundaries are is question of fact.
Goloskie v. Recorvitz, 29 A.2d 759, 101 R.I. 4.

R.I. 1960. Although the issue of what are the boundaries of land is a question of law, the determination of where such boundaries are is a question of fact.
Essex v. Lukas, 159 A.2d 612, 90 R.I. 457.

R.I. 1928. What are boundaries is matter of law; where they are is a question of fact.
DiNaio v. Ranaldi, 142 A.145, 49 R.I. 204.

R.I. 1909. The location of a boundary, depending on conflicting evidence, is one for the jury.
Co-operative Bldg. Bank v. Hawkins, 73 A.617, 30 R.I. 171.

Library References

C.J.S. Boundaries § 118.

R.I.2006 Under the doctrine of acquiescence, "adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry.'"
Acampora v. Pearson, 899 A.2d 459, 464 (quoting Locke, 610 A.2d at 556).

R.I.2006 under the doctrine of acquiescence, "even when there has been no express agreement, adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry."
Acampora v. Pearson, 899 A.2d 459, 464

R.I. 1992. [A] party alleging acquiescence must show that a boundary marker existed and that the parties recognized that boundary for a period equal to that prescribed in the statute of limitations to bar a reentry, or ten years."
Locke v. O'Brien at 186-87

R.I. 1960. The question as to whether a boundary line between two adjoining properties has been recognized and acquiesced in by the owners thereof for a length of time equal to that prescribed by the statute of limitations as from denying it to be the true boundary line is an issue of fact depending upon the evidence in each case.
Essex v. Lukas, 159 A.2d 612, 90 R.I. 457.

R.I. 1942. Whether a given fence has been recognized and acquiesced in as true boundary by adjoining owners for the period prescribed as a "question of fact".
Ungaro v. Mete, 27 A.2d 826, 68 R.I. 419.

41. Instructions.

R.I. 1928. Denial of requested charges that failure to object to location of fence constituted recognition of fence as true boundary line held reversible error.
Doyle v. Ralph, 141 A.180, 49 R.I. 155.

Failure to submit material issue whether old section of fence stood in same position as when adjoining owners took possession held error. Gen. Laws 1923, § 4983.
Doyle v. Ralph, 141 A.180, 49 R.I. 155.

42. Verdict and Findings.

Library References

C.J.S. Boundaries § 120.

43. Judgment and Enforcement Thereof.

Library References

C.J.S. Boundaries § 121.

U.S.R.I. 1838. A decree in a boundary dispute settles the boundary as having been by original right at the place decreed in the same manner as if settled by treaty or compact.
State of R.I. v. Corn. of Mass., 37 U.S. 657, 12 Pet. 657, 9 L.Ed. 1233.

R.I. 1902. Injunction should not be inserted in a decree in proceedings under Gen. Laws, c.206, to determine lines, from the shore to the harbor line, between the lands of different owners; the court not having

decided injunction is proper, and it not appearing that there are threats or intentions to disregard lines established.
Taber v. Hall, 52 A. 686, 24 R.I. 88.

44. Review.

Library References

C.J.S. Boundaries § 122.

45. Costs.

Library References

C.J.S. Boundaries § 123.

R.I. 1902. Costs in proceedings under Gen. Laws, c.266, to determine the lines from the shore to the harbor line, between the lands of different owners, should be taxed only to those parties whose lines are therein determined, and in proportion to the areas of their lands, and should not be taxed to persons made parties, but whole lines had previously been determined.
Taber v. Hall, 52 A.686, 24 R.I. 88.

R.I. 1889. A bill in equity to fix the boundary line between riparian owners was decided on its merits, and a decree entered giving costs to the complainant without reserve, the court supposing that the respondent assented to the decree. It subsequently appeared that the respondent did not assent. On motion made at the same term to amend the decree as it costs: Held, that the decree should be amended dividing the costs of fixing the boundary line.
Bishop v. Aborn, 18 A.203, 16 R.I. 568.

46. Agreements between Parties.

Library References

C.J.S. Boundaries § 63 et seq.

R.I. 1970. When boundary line between adjacent land is uncertain or disputed, owners may establish division line between them by express parol agreement, and if such agreement is immediately executed and given effect by actual possession according to such line, agreement is binding and conclusive and such division line may not be disturbed, though it afterwards may be made to appear that it was not true line according to paper title.
LaFreniere v. Sprague, 271 A.2d 819, 108 R.I. 43.

C.C.R.I. 1827. The line of a fence erected by agreement of parties in settlement of a boundary dispute, where possession continued according thereto for 20 years, will conclude persons claiming under the original owners.
Wakefield v. Ross, Fed. Cas. No. 17,050, 5 Mason 16.

R.I. 1923. Where adjoining owners agreed on, established, and marked the line between their respective estates, and thereafter for a long time continued to recognize the line so established as the dividing line between their lands, the agreement was conclusive as to the location of the boundary regardless of the true line according to the

paper title.
Aldrich v. Brownell, 120 A.582, 45 R.I. 142.

47. Estoppel in General.

Library References

C.J.S. Boundaries § 72 et seq.

R.I.2006 under the doctrine of acquiescence, "even when there has been no express agreement, adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry."
Acampora v. Pearson, 899 A.2d 459, 464

R.I. 1902. The grantees in successive deeds conveying lots, which, for the purpose of establishing the boundaries, referred to a plat, are not estopped from asserting that the plat did not establish the boundaries of an adjoining lot owned by third persons, where the latter had not recognized the existence of such plat, and had not acted upon it with the acquiescence of such grantees.
Taber v. Hall, 51 A.432, 23 R.I. 613.

48. Recognition and Acquiescence.

Library References

C.J.S. Boundaries § 78 et seq.

R.I. 2006 Under the doctrine of acquiescence, "even when there has been no express agreement, adjoining landowners are 'precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry."
Acampora v. Pearson, 899 A.2d 459, 464

R.I. 2003 The party claiming ownership by acquiescence must show that a boundary marker existed and the parties recognized that boundary for a period equal to that prescribed in the statute of limitations to bar a re-entry, or ten years.
DeCosta v. DeCosta , 819 A.2d 1261, 1264 (citations omitted)

Our review of the law in this area reveals that in some instances when a neighbor claims acquiescence in a boundary line, but the marker for that line is not particularly obvious, then "clear calls" in the abutting neighbors' deed can refute acquiescence. See Richard R. Powell, Powell on Real Property ¶68.05[6][b] at 68-30, 68-31 (Michael Allan Wolf ed.2000).

R.I. 2001 The doctrine of acquiescence provides that "owners of adjoining estates are precluded from denying a boundary line recognized by both owners for a length of time equal to that prescribed by the statute of limitations barring a right of reentry." Pucino v. Uttley, 785 A.2d 183, 187

R.I. 2001 "Like adverse possession, the doctrine of acquiescence to an observable physical boundary line constitutes a recognized means by

which a claimant can gain title to the real estate encompassed by that boundary line, even though another party clearly possesses record title to that land."

Pucino v. Uttley, 785 A.2d 183, 186

R.I.2001 Our case law has recognized that one of the methods by which a record owner can interrupt a claimant's continuous use of a disputed area is by "physical ouster of the claimant or a 'substantial interruption' of the claimant's possession by the record owner."

Carnevale v. Dupee, 783 A.2d 404, 409–10

R.I.2000 The doctrine of acquiescence permits a claimant to "gain title to a defendant's property * * * despite the fact that [the] defendant had record title." DelSesto v. Lewis, 754 A.2d 91, 95 (quoting Locke v. O'Brien, 610 A.2d 552, 555 (R.I.1992)).

R.I. 1992. Since acquiescence is mixed question of law and fact, trial justice's finding will be disturbed only in limited circumstances where he is clearly wrong or overlooked or misconceived material evidence; the same deferential standard applies to the trial justice's inferences drawn from the facts.

Locke v. O'Brian, 610 A.2d 552

R.I. 1992. Under doctrine of acquiescence, acts of parties and their predecessors serve as substitute for actual record title.

Locke v. O'Brian, 610 A.2d 552

R.I. 1992. Doctrine of acquiescence is invoked when determining whether boundaries marked by physical objects will be given preference over boundary lines described in recorded title.

Locke v. O'Brian, 610 A.2d 552

R.I. 1992. Doctrine to acquiescence applied to quiet title in plaintiffs where uncontradicted evidence showed that line of fence posts had marked easterly boundary of parcel since at least 1960; defendants had not disrupted existence of posts for at least ten years, and both parties tacitly recognized boundary since at least 1974 in that plaintiffs had always considered posts to mark boundary and defendants had taken no action to remove posts or to challenge plaintiffs claim that posts demarcated their property boundary.

Locke v. O'Brian, 610 A.2d 552

R.I. 1992. Absent evidence of an expressed agreement between parties, party alleging acquiescence must show that boundary maker existed and that parties recognized that boundary for a period equal to that prescribed in statute of limitations to bar reentry, or ten years; element of recognition may be inferred from the silence of one party or their predecessors in title who are aware of boundary. Gen.Law 1956, § 34-87-1.

Locke v. O'Brian, 610 A.2d 552

R.I. 1992. [A] party alleging acquiescence must show that a boundary marker existed and that the parties recognized that boundary for a period equal to that prescribed in the statute of limitations to bar a reentry, or ten years."

Locke v. O'Brien at 186-87

U.S.R.I. 1841. For the security of rights, whether of states or individuals, long possession under a claim of title is protected. And there is no controversy in which this great principle may be invoked with greater justice and propriety than in a case of disputed boundary.

State of R.I. v. Com. of Mass., 40 U.S. 233, 15 Pet. 233, 10 L.Ed. 721.

R.I. 1960. In absence of express agreement, mutual recognition and acquiescence in a boundary line can be established by the conduct of the owners of adjoining lands for the prescribed period of time.

Essex v. Lukas, 159 A.2d 612, 90 R.I. 457.

R.I. 1975. Acquiescence in a boundary line assumed or established for a period of time equal to that prescribed in the statute of limitations to bar a reentry is conclusive evidence of an agreement to establish such a line and parties will be precluded from claiming that the line so acquiesced in is not the true boundary. Gen. Laws 1956, § 34-7-1.

Rosa v. Oliveira, 342 A.2d 601, 115 R.I. 277.

R.I. 1960. When a boundary line between two adjoining properties has been recognized and acquiesced in by the owners thereof for a length of time equal to that prescribed by the statute of limitations as barring a right of entry, both owners are precluded from denying it to be the true boundary line.

Essex v. Lukas, 159 A.2d 612, 90 R.I. 457.

R.I. 1928. Recognition of fence by adjoining landowners as on true dividing line for longer time than required to create title by adverse possession precludes both from asserting contrary.

DiMaio v. Ranaldi, 142 A.145, 49 R.I. 204.

Line of fence, recognized by adjoining owners for over 30 years as on true dividing line, held true boundary line of lot described as bounded by named person’s land.

DiMaio v. Ranaldi, 142 A.145, 49 R.I. 204.

R.I. 1960. When a boundary line between two adjoining properties has been recognized and acquiesced in by the owners thereof for a length of time equal to that prescribed by the statute of limitations as barring a right of entry, both owners are precluded from denying it to be the true boundary line.

Essex v. Lukas, 159 A.2d 612, go R.I. 457.

R.I. 1976. Where owners of adjacent lots and their predecessors in title acquiesced in boundary lines marked by fence and retaining wall for 46 years and exercised unequivocal acts of ownership over their respective parcels of land. plaintiff acquired title to disputed parcel of land on their side of fence by adverse possession and by defendants' acquiescence in boundary despite fact that defendants

had record title to disputed parcel. Gen. Laws 1956, § 34-71.

Paquin v. Guiorguiev, 386 A.2d 169, 117 R.I. 239.

R.I. 1942. Where recognition of acquiescence in a fence as a true boundary line for the prescribed period has been established by uncontradicted evidence, the parties are concluded as to the boundary.

Ungaro v. Mete, 27 A.2d 826, 68 R.I. 419.

R.I. 1936. Record owners held precluded from asserting title to strip of land which was claimed by adjoining owners and which was inclosed by fence which existed for 18 years, where owners' grantors, in agreeing to repair fence, relinquished all claim to strip and acquiesced in location of fence as true boundary line.

DiSanto v. DeBellis, 182 A.488, 55 R.I. 433.

R.I. 1909. Where, in ejectment for a strip in the rear of plaintiff's church building, it appeared that when plaintiff built its church it encroached about 2 feet on the land of an individual, who conveyed to plaintiff a strip of about 2 feet, that both parties occupied without complaint from the other the land to the line made by such conveyance, and the strip sued for was beyond the line, there could be no recovery.

First Baptist Soc. v. Wetherell, 72 A.641.

R.I. 1908. Where a stone wall had been for over 30 years acquiesced in by the parties and their predecessors in title as the boundary between their adjacent lands, and the wall had also been used as a band wall for the protection of the land of one of the adjacent owners, the wall fixed the boundary, and the destruction thereof by one of the adjacent owners was a trespass.

Theilig v. Morrison, 69 A.921.

R.I. 1880. Where a riparian owner has for years recognized a certain line as a boundary between his land and that adjoining, and has made deeds of grant and partition in accordance therewith, he is estopped from denying that such line is the true boundary; and this, although the deeds in fact conveyed nothing, the land belonging to the state.

Brown v. Goddard, 13 R.I. 76.

R.I. 1976. Acquiescence in a boundary line assumed or established for a period of time equal to that prescribed in the statute of limitations to bar a reentry is conclusive evidence of an agreement to establish such a line and the parties will be precluded from claiming that the line so acquiesced in is not the true boundary.

Paquin v. Guiorguiev, 366 A.2d 169, 117 R.I. 239.

R.I. 1957. Maintenance of boundary line for statutory period of 10 years was conclusive evidence of agreement that it was the true boundary.

Malone v. O'Connell, 133 A.2d 756, 86 R.I. 167.

R.I. 1928. Acquiescence in established boundary line for period of statute of limitations is conclusive evidence of agreement, precluding denial that such line is true boundary.

R.I. 1921 It is the well settled rule that use by expressed or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since one of the elements essential to the acquisition of the easement, namely, user as of right, as distinguished from permissive use, is lacking."

Tefft v. Reynolds, 43 R.I. 538, 542-43, 113 A. 787, 789 (

R.I. 1890. Acquiescence in a boundary line assumed, when established for a period equal to that prescribed in the statute of limitations to bar an entry, is conclusive evidence of an agreement for a division line, and will preclude the parties from setting up the claim that the line so acquiesced in is not the true boundary.

O'Donnell v. Penney, 29 A.305, 17 R.I. 164.

53. Private Surveys.

Library References

C.J.S. Boundaries § 86.

R.I. 1897. In an action of trespass, where the defendant disputed the line of the plaintiff's land, it was proper for the plaintiff to procure a survey and plat of the land to be made by a civil engineer and to use the same at the trial.
McCusker v. Mitchell, 36 A.1123, 20 R.I. 13.

54. Official Surveys.

Library References

C.J.S. Boundaries § 89 et seq.

R.I. 1912. Under Pub. Laws 1895, c. 1406, §§ 1-3, a street line not correctly marked by the engineer may be questioned in a proceeding to enjoin the maintenance of a building within such line.
Greenough v. Industrial Trust Co., 82 A.266, 33 R.I. 470.

DEEDS

I. REQUISITES AND VALIDITY.

(B) FORM AND CONTENTS OF INSTRUMENTS.

26. Necessity and Sufficiency of Writing in General.

R.I. 1934. Conveyance in writing duly signed and delivered, whatever the form, passes title if intention of grantor to convey estate can be ascertained. Gen. Laws 1923, c.207, §§ 11, 21.
Bradish v. Sullivan, 173 A.117, 54 R.I. 434.

31. In General.

R.I. 1933. Person signing deed does not become bound thereby, unless he is described in body of instrument as grantor.
Hope St. Garage v. Pacific Oil Co., 165 A.370, 53 R.I. 194.

"Generally, the doctrine of estoppel by deed provides that equity will not permit a grantor, or one in privity with him or her, to assert anything in derogation of an instrument concerning an interest in real or personal property as against the grantee or his or her successors." 28 Am. Jur. 2d Estoppel and Waiver § 5 at 469 (2011).

"[a]n estoppel may be said to arise when a person executes some deed, or is concerned in or does some act, either of record or in pais, which will preclude him from averring anything to the contrary." Burke v. Barnum & Bailey, 40 R.I. 71, 77, 99 A. 1027, 1029 **(1917)**

39. Certainty in General.

R.I. 1901. Where owners of land in common, who each own in severalty a portion of a house situated thereon, execute deeds to each other for the purpose of partitioning the land, and such deeds specifically describe the boundary of the land passing through the house, a clause in each of the deeds that the internal division of the rooms and stairways of the house shall remain the same as formerly occupied, the former division of the upper floor being different from that of the lower, has no reference to the boundaries of the land, and hence the deeds are not ambiguous in describing the land by two inconsistent boundaries.

Bartlett v. Barrows, 49 A.31, 22 R.I. 642.

Such clauses constitute a binding agreement between the parties defining their relative rights and the right of their grantees to the house.
Bartlett v. Barrows, 49 A.31, 22 R.I. 642.

R.I. 1887. When the boundaries of land conveyed by deed are definitely given, and the area is stated as so much, "more or less", the fact that the actual area is less than stated does not make the description by boundaries uncertain. Doyle v. Mellen, 8 A.709, 15 ~.I. 523.

R.I. 1940. Exceptions in deeds conveying real estate must describe the part or thing excepted with such certainty that it may be identified, but there is sufficient certainty if exact location of excepted part is left to election of grantor or is capable of subsequent ascertainment otherwise.
Sherman v. Arnold's Neck Boat Club, 13 A.2d 272, 64 R.I. 485.

40. References to Maps or plats.

R.I. 1851. In order that a plat referred to in a deed may become a part of the deed for the purpose of description, the reference to such plat must be certain, so that, on production of the same, it will appear to be the plat referred to.
Kenyon v. Nichols, 1 R.I. 411.

41. False Description.

R.I. 1997. False description in a deed will not vitiate the instrument if, by rejecting the false, thereby left sufficient to make a good conveyance.
Langley v. Honey, 38 A.699, 20 R.I. 698.

50.

R.I. 1992. When plat is referred to in deed, for description of premises intended to be conveyed, it becomes for such purpose part of deed.
Catalano v. Woodward, 617 A.2d 1363

(D) DELIVERY.

55. Necessity.

R.I. 2010. "[D]elivery 'is essential to the validity of [a] deed.'"
People's Credit Union v. Berube, 989 A.2d 91, 93

Delivery is essential to the validity of a deed.
U.S.C.C. 1828. Carr v. Hoxie, Fed. Cas. No. 2,438, 5 Mason 60.

R.I. 1943. Title by deed passes only by delivery of the deed.
Paliotta v. Celletti, 30 A.2d 108, 68 R.I. 500.

56. In General.

R.I. 1937. While delivery is essential to validity of deed, no particular form of proceeding is required.
Oldham v. Oldham, 192 A.758, 58 R.I. 266.

R.I. 1955. Delivery of deed depends upon intention of grantor by his acts or words, or both, to divest himself of title to estate described in deed.
Rowan v. Betagh, 111 A.2d 641, 83 R.I. 5.

Reservation of use and enjoyment of estate described in deed was not inconsistent with intention of grantor to divest himself presently of fee-simple title thereto.
Id.

R.I. 1939. A grantor's present intent to absolutely divest himself of title to property by deed is essential to a valid 'delivery' of the deed.
Lockwood v. Rhode Island Hospital Trust co., 6 A.2d 707, 62 R.I. 494.

R.I. 1924. The ordinary test of delivery is whether grantor by acts or words intended to divest himself of title; if so, the deed is delivered; if not, no title passes.
Kelley v. McMinniman, 123 A.289.

R.I. 1914. It is essential to a valid delivery that there Should be some act or declaration from which an intent to delivery may be inferred.
Taylor v. Taylor, 90 A.746.

R.I. 1951. To constitute valid delivery of deed, grantor must divest himself of all right and authority to control deed.
Lambert v. Lambert, 77 A.2d 325, 77 R.I. 463.

R.I. 1934. Test of delivery is whether grantor absolutely parted with custody and control of deed.
Alker v. Alker, 172 A.887, 54 R.I. 326.

R.I. 1924. A delivery is essential to the validity of a deed, and to constitute a delivery the grantor must part with control over it, and retain no right to reclaim or recall it.
Kelley v. McMinniman, 123 A.289.

64. Necessity.

R.I. 1937. At common law, grantor could convey without grantee's knowledge, for grantee, on acquiring such knowledge, could disclaim and repudiate transaction, thereby revesting title in grantor.
Oldham v. Oldham, 192 A.758, 58 R.I. 268.

II. RECORDING AND REGISTRATION.

82. Necessity as between Parties to Instrument.

U.S.C.C. 1820. As between the parties, a deed is valid though not recorded.

West v. Randall, Fed. Cas. No. 17,424, 2 Mason 181.

III. CONSTRUCTION AND OPERATION

(A) GENERAL RULES OF CONSTRUCTION.

90. Application to Deeds in General.

R.I. 1933. Deed must be construed according to its plain meaning.

Kusiak v. Ucci, 163 A.226, 53 R.I. 36.

R.I. 1930. Court will construe doubtful deed most favorable to grantee.

Corrigan v. Corrigan$_1$ 149 A.374, 50 R.I. 475.

R.I. 1912. In construing a grant, the court will look to the circumstances attending the transaction, the situation of the parties, and the State of the thing granted, and, in case of doubt, will take it most strongly against the grantor.

First Baptist Society v. Wetherell, 82 A.1061, 34 R.I. 155.

R.I. 1905. A liberal construction is to be given to deeds inartificially and untechnically drawn.

Shartenberg & Robinson v. Ellbey, 62 A.979, 27 R.I. 414.

R.I. 1947. In construing a deed court must ascertain grantor's intention from the language of the deed and may not ignore entirely apt and unequivocally expressed condition of reverter intentionally placed in deed by grantor.

Town of Bristol v. Nolan, 53 A.2d 466, 72 R.I. 460.

R.I. 1936. Intention sought in construction of deed is that expressed in deed, and not some secret, unexpressed intention, even though such secret intention be that actually in mind at time of execution.

Sullivan v. Rhode Island Hospital Trust co., 185 A.148, 56 R.I. 253.

R.I. 1911. The intention of the grantor must be ascertained from the deed itself.

Gaddes v. Pawtucket Institution for savings, 80 A.415, 33 R.I. 177, Ann. Cas. 1912B, 407.

R.I. 1905. In construing a deed, the intention of the parties as it appears from the whole instrument must control.

Shartenberg & Robinson v. Ellbey, 62 A.979, 27 R.I. 414.

R.I. 1899. In the construction of deeds and other written instruments it is a cardinal rule that effect be given to the intent of the parties so far as the same can be ascertained under, and is not in conflict with, rules of law.

Fiske v. Brayman, 42 A.87B, 21 R.I. 195.

The entire instrument is to be considered in ascertaining the meaning of a particular part thereof.

Fiske v. Brayman 42 A.878, 21 R.I. 195.

97. Repugnant or Conflicting Parts or Clauses.

After having once granted estate in deed, grantor cannot restrict or nullify it by subsequent clause.

R.I. 1936. Sullivan v. Rhode Island Hospital Trust Co., 185 A.148, 56 R.I. 253.

R.I. 1911. Gaddes v. Pawtucket Institution for Savings, 80 A.415, 33 R.I. 177, Ann. Cas. 1912B, 407.

Providence & Worcester Co. v. Exxon Corp., 116 R.I. 470, 359 A.2d 329 (1976), and Newport Yacht Club, Inc. v. Deomatares, 93 R.I. 60, 171 A.2d 78 (1961). Those cases indicate that a presumption in favor of the record title holder exist

R.I. 1914. In construing repugnant provisions of a deed, effect will be given to every part of the deed, if possible, consistently with the rules of law and the intention of the grantor; otherwise the part which is repugnant to the intention is rejected.

Koehne v. Seattle, 90 A.211, 36 R.I. 316.

R.I. 1911. Where the description in a deed of property conveyed is clear and complete, reference to another deed will not restrict the quantum of the estate conveyed.

Gaddes v. Pawtucket Institution for Savings, 80 A.415, 33 R.I. 177, Ann. Cas. 1912B, 407.

Complainant, holding a fee in one half of land and a remainder in fee in the other half, subject to his fathers life estate in that half, quitclaimed all his right, title, interest, etc., in the land. A subsequent provision in the deed recited that the estate conveyed was an undivided half, which was conveyed to the parties by a specified deed. Held, that complainant's entire interest passed according to the intent of the parties, as disclosed by surrounding circumstances.

Gaddes v. Pawtucket Institution for Savings, 80 A.415, 33 R.I. 177, Ann. Cas. 1912B, 407.

R.I. 1884. The old rule that the earlier clause the later one is only applicable when reconcilement is impossible.

Waterman v. Andrews, 14 R.I. 589.

The deed should be so construed, if it can be, that all parts of it may stand together.

Waterman v. Andrews, 14 R.I. 589.

R.I. 1882. A conveyance is not to be qualified by doubtful words, inserted after the words of grant.

Ex parte Durfee, 14 R.I. 47.

69. Construing Instruments Together.

R.I. 1966. Generally, when description of land conveyed in deed is ambiguous or uncertain, resort may be had in some circumstances to another instrument to explain the meaning of description.

Goloskie v. Recorvitz, 219 A.2d 759, 101 R.I. 4.

100. Extrinsic Circumstances.

R.I. 1916. In determining question of ambiguity in deed, courts may

properly consider not only terms of grant, but the nature of the right and the surrounding circumstances.

Chase v. Cram, 97 A.481, 39 R.I. 83, L.R.A. 1918F, 444, decree modified 97 A.802.

In determining the intent of parties to a deed, the language of the instrument, together with the surrounding circumstances, should be considered.

R.I. 1913. Cram v. Chase, 85 A.642, 35 R.I. 98, 43 L.R.A., N.S., 824.

R.I. 1911. Gaddes v. Pawtucket Institution for Savings,

R.I. 1905. Where the language used in a deed is susceptible of more than one interpretation, the court will look at the circumstances existing at the time of the transaction, such as the situation of the parties, etc.

Shartenberg & Robinson v. Elibey, 62 A.979, 27 R.I. 414.

106. Representative or Official Capacity.

R.I. 1876. Under a deed the premises of which recite the payment of the consideration by a person named as trustee for a certain named firm, consisting of designated members, and which "gives, grants, bargains, sells, aliens, enfeoffs, conveys, and confirms the said realty unto him, the said [trustee], as aforesaid, his heirs and assigns, forever," and the habendum of which limits such realty "to him, the said [trustee), as aforesaid, his heirs and assigns, forever, to his and their only proper use, benefit, and behoof, forever," the legal estate to such lands vests in the trustee, and not in the partners named as tenants in common.

Mowry v. Bradley, 11 R.I. 370.

(B) PROPERTY CONVEYED.

111. Construction in General.

R.I. 1939. In construing description of land in deed thereof, language actually used, as applied to facts and construed according to pertinent rules, not draftsman’s intention, must govern.

Macan v. Marandola, 9 A.2d 21, 63 R.I. 369.

R.I. 1909. In construing the description, the intention of the parties is to be ascertained, and if definitely expressed In the deed the expression should control; but if the description is ambiguous in any particular the parties intention in that particular should be Sought for by a consideration of all the calls of the description, the state of the property and the circumstances under which the deed was made.

Co-Operative Building Bank v. Hawkins, 73 A.617, 30 R.I. 171.

112. References to Maps, Plats, Other Instruments, or Records.

R.I. 1911. Where the description in a deed of the property conveyed is clear and complete, reference to another deed will not restrict the amount of the property conveyed.

Gaddes v. Pawtucket Institution for savings, 80 A.415, 33 R.I. 177, Ann. Cas. 1912B, 407.

R.I. 1901. Where a deed describes the granted premises as extending to a ten-foot gangway, the grantee takes the fee to the center of the way.
Baker v. Barry, 48 A.795, 22 R.I. 471.

R.I. 1894. T. claimed title to land which has been platted into lots and streets under a deed from A., in which the land was described as one hundred and thirteen lots in the town of Cranston, giving their numbers without reference to a plat. The heirs of A. claimed title to the same land. In proceeding to assess the value of the land which had been condemned by the city of providence, and the title to which, as between T. and A.'s heirs, was in issue, the plat was fully identified in evidence, and it appeared that the land was sold by the plat - that the lots were checked thereon as they were compared with the deed, - that the plat was delivered with the deed, and that the grantee was put in possession of the land. The jury awarded T. the value of the lots, and found that the value of the streets was nothing. T. and the A. heirs then agreed that T. was the owner of the lots, and the A. heirs withdrew all claims against the city, and T. withdrew all claims against the city for the platted streets: Held, that the agreement between T. and the A. heirs was in effect a waiver of all exceptions to extrinsic proof.
Anthony v. City of Providence, 28 A.766, 18 R.I. 699.
Held, further, that the legal effect of the deed conveying the lots to T. was to give him also title to the platted streets on which the lots in fact were bounded.
Anthony v. City of Providence, 28 A.766, 18 R.I. 699.

R.I. 1893. The owner of lots on 0. street, which was platted as adjoining lot 90, but which was actually laid out and opened 50 feet west of such lot, deeded such lot to D. by number, but added to the description a clause to the effect that the street was the west side thereof. D. deeded the land fronting on the street, 50 feet deep, and bounded on the east by his land, to defendant, and subsequently deeded lot 90 to plaintiff. Held, that the deed to D. covered lot 90 and the strip, 50 feet wide, between such lot and the street, and that the deed to defendant covered such strip, but not part of lot 90.
Draper v. Monroe, 28 A.340, 18 R.I. 398.

R.I. 1851. Though a plat may be referred to for a description of premises conveyed, it cannot be referred to in order to enlarge or diminish the effect of the words of conveyance in the deed.
Kenyon v. Nichols, 1 R.I. 4ll.

Where, in a conveyance, a reference is made to a map of the premises conveyed, the map and the deed are to be construed together.
Kenyon v. Nichols, 1 R.I. 4ll.

113. Particular Words or Terms.

R.I. 1909. A mortgage described a lot as beginning at a point "about" 315 feet from D. street, and 363 feet from M. street, land running westerly, bounded northerly by land of the grantors, 100 feet to the land of C.; thence southerly, bounded westerly by C.'s land 50 feet to a corner; thence, turning at right angles, said land runs easterly, bounded southerly by the land of the grantors, 100 feet to a corner; thence turning at right angles, said land runs northerly, bounded easterly by land of the grantors, 50 feet to the first-mentioned boundary, together with all buildings and improvements thereon, etc. Thereafter, to prevent foreclosure proceedings, the land was conveyed to the mortgagee by the same description, and she took

possession, including the whole of the dwelling house, part of which was not within the boundaries of the tract. Held, that the word "about", as 50 used, was not equivalent to "at", but indicated that only approximation of the distance of the beginning line from the street was intended; and, it appearing from the description that the lot conveyed was not to extend more than 100 feet east of C.'s land, extrinsic evidence and general expressions in the description were ineffective to override such definite calls and extend the lines of the lot to include the whole house within the boundaries.

Co-Operative Building Hank v. Hawkings, 73 A.617, 30 R.I. 171.

R.I. 1859. The term, 'great hill or ledge of lime rock', in a deed, is to be construed, in order to ascertain its extent and limits, in the light of the circumstances attending the transaction, according to the intent of the parties, derived from the language employed by them, rather than according to geological notions, however, correct, concerning the continuity and extent of the stratum of lime at the place referred to; and where the hill or ledge is described in the deed as "lying southerly from my dwelling house", and another ledge is described in the same deed "as lying easterly from said dwelling house, and northerly from the driftway leading from said great ledge to the limekilns", the limits thus implied are to be observed, irrespective of the continuity and extent of the stratum of lime.

Dexter Lime Rock Co. v. Dexter, 6 R.I. 353.

114. Particular Description.

R.I. 1912. Where a deed described land and gave the grantee the right to land, load, and unload his boat on certain mentioned land, which was not included in the description, it did not include the land over which he was given the easement.

Dodge v. Lavin, 83 A.1009, 34 R.I. 409, reargument denied 84 A.857, 34 R.I. 514.

U.S.C.C. 1827. Where A. owned the head lot No. 18 and sold to B. 40 acres on the east end of that lot, and afterwards sold to C. by the following description: "A certain tract or parcel of land situate,", etc., and containing "30 acres by measure", being "the west part of the head lot No. 18", it not being shown that the parties at that time knew that the whole lot contained more than 70 acres, although in fact it did contain more - held, that the deed to C. conveyed all the land in the lot not conveyed to B., and was not limited to 30 acres at the west end of the lot.

Wakefield v. Ross, Fed. Cas. No. 17,050, 5 Mason 16.

R.I. 1897. A deed, by a granddaughter of J., of "all the right, title, and interest * * * which I have or may have to any portion of the estate * * * which I inherit or hereafter may be entitled to from my father, * * * and which he derived or inherited from his father, the said J.," will convey all the interest she has in the estate of her grandfather; the clause describing it as inherited from her father being rejected as false description, he having died shortly before her grandfather, whose will made provision for him.

Langley v. Honey, 38 A.699, 20 R.I. 698.

R.I. 1887. In case of a discrepancy in area, the boundary lines given and ascertained must control, unless it appears that an exact quantity of land is the thing granted.

Doyle v. Mellen, 8 A.709, 15 R.I. 523.

R.I. 1884. Any particular of a description may be rejected, if it is manifestly erroneous, and enough remains to identify the land

intended to be conveyed.
Waterman v. Andrews, 14 R.I. 589.

117. Appurtenances.

R.I. 1895. Held, further, that the term "water rights" in the agreement and conveyances meant the right to use the water for furnishing power, and as thus construed appeared to express the intention of the parties.
Cranston Print Works v. Dyer, 32 A.922, 19 R.I. 208.

119. Questions for Jury.

R.I. 1967. What are the boundaries of land conveyed by a deed is a question of law, though where those boundaries are is a question of fact.
Waidman v. Town of Barrington, 227 A.2d 592, 102 R.I. 14.

R.I. 1966. What are boundaries of land conveyed by deed is question of law and where boundaries are is question of fact.
Goloskie v. Recorvitz, 219 A.2d 759, 101 R.I. 4.

R.I. 1909. The construction of deeds to determine the description of the land conveyed is a question for the court.
Co-Operative Building Band v. Hawkings, 73 A.617, 30 R.I. 171.

(C) ESTATES AND INTERESTS CREATED.

120. Creation by Deed in General.

R.I. 1930. Grantor cannot restrict estate granted by subsequent clause in deed.
Corrigan v. Corrigan, 149 A.374.

121. Operation of Quitclaim Deed.

R.I. 1889. A. by his will gave all his property to his wife, "to be and remain to her during her life, or so much of the same as she may need for her support during that time." The wife afterwards gave a quitclaim deed of all her right, title, etc., in certain land, part of A.'s estate, to M.: Held, that the quitclaim deed applied only to the wife's life estate, and did not affect the remainder merely held an equitable contingent remainder, which contains covenants by which the grantor warrants the land conveyed against all lawful claims of persons claiming under him, is insufficient at law to convey the contingent remainder.
Bailey v. Hoppin, 12 R.I. 560.

124. Fee Simple.

R.I. 1864. The word "assigns" in the limitation of a fee is not essential to give it the quality of alienability.
Grant v. Carpenter, 8 R.I. 36.

141. Nature and Creation of Reservations.

R.I. 1931. Courts will not infer reversions, where none are expressed or implied in deed.
Buchanan v. McLyman, 153 A.304, 54 R.I. 177.

142. Validity of Reservations.

R.I. 1877. A reservation in a deed in favor of a third person is void.

In re Young, 11 R.I. 636.

(D) CONDITIONS AND RESTRICTIONS

144(1). In General.

"[a] restrictive covenant is a provision in a deed that limits the use of the property, ordinarily by prohibiting certain uses or activities." Roland F. Chase, Rhode Island Zoning Handbook § 21 (3d ed. 2016 and 2017 Supp.).

"we give the words of a restrictive covenant 'their plain and ordinary meaning unless a contrary intent is discernible from the face of the instrument.'" Id. (quoting Gregory, 495 A.2d at 1001).

"once the intention to develop a plat according to a uniform plan of development is established, it is well settled that the restrictions may be enforced against the lots retained by the common grantor." Id. at 754, 227 A.2d at 482.

D.C.R.I. 1964. Court will not construe deed to create condition subsequent unless such condition is expressed or necessarily implied.
U.S. v. Chartier Real Estate Co., 226 F. Supp. 285.

Mere declaration in deed that grant is made for special and particular purpose, without more, is insufficient to create condition subsequent.
Id.

R.I. 2003. "while it may be appropriate for a court to refuse to enjoin the violation of a covenant on the ground of waiver if that covenant 'has become obsolete,' the Rhode Island General Assembly has addressed obsolescence by creating a thirty-year limitation on the enforcement of restrictive covenants. G.L. 1956 § 34-4-21."
Ridgewood Homeowners Association v. Mignacca, 813 A.2d 965, 972-73

R.I. 2003 "This Court's objective in interpreting restrictive covenants is to achieve the delicate balance in favor of 'the free alienability of land while still respecting the purposes for which the restriction was established.'" Ridgewood Homeowners Association v. Mignacca, 813 A.2d 965, 971

R.I.2004 In the absence of a valid release we will give effect to the restrictive covenant. In doing so, "[w]e construe the terms of any restrictive covenant 'in favor of the free alienability of land while still respecting the purposes for which the restriction was established.' "
Martellini v. Little Angels Day Care, Inc., 847 A.2d 838, 843

R.I. 1931. Courts will not infer conditions There none are expressed or implied in deed.
Buchanan v. McLyman, 153 A. 304, 51 R.I. 177.

155. Conditions subsequent.

R.I. 1910. Conditions in deeds are not favored in law, but may be created if the intention appears from the whole deed.
Ball v. Milliken, 76 A.789, 31 R.I. 36, 37 L.R.A., N.S., 623, Ann. Cas. 1912B, 30, rehearing denied 78 A.625.

Strip of land deeded to city was none the less a highway because terminating on private property. A cul de sac may be a highway.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

Clause in deed stating that conveyance was made upon condition that strip should be forever kept open as public highway merely declared the purpose for which the strip of land conveyed was to be used.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

A land owner executed, acknowledged and recorded a deed to the city of Providence conveying a strip of land. Between the description of the land in the deed and the habendum clause were the words: "This conveyance is made upon the condition that the said strip of land shall be forever kept open and used as a public highway and for no other purpose." Held, that under Gen. Stat. R.I. cap. 59, section 25: Pub. Stat. R.I. cap. 64, section 25, the strip of land became a highway on the record of the deed without formal acceptance by the board of aldermen of Providence.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

IV. PLEADING AND EVIDENCE.

194. Delivery.

R.I. 1943. In absence of proof to contrary, delivery of deed is presumed to have been on date of the deed.
Paliotta v. Celletti, 39 A.2d 108, 68 R.I. 500.

196. Validity.

R.I. 1949. presumption exists that deed correctly states real intention of parties.
Vanderford v. Kettelle, 64 A.2d 483, 75 R.I. 130.

207. Execution, Existence and Identity.

R.I. 1969. Evidence sustained finding that complainant, who sought to have deed declared null and void on ground that it was forgery, had failed to sustain her burden of proving alleged forgery. Gen. Laws 1956, § 9-19-17.
Wooddell v. Hollywood Homes, Inc. 252 A.2d 28, 105 R.I. 280.

Expert evidence is not indispensable to prove authenticity of a signature on deed. Gen. Laws 1956, section 9-19-17.
Id.

U.S.C.C. 1857. A deed which is more than 30 years old at the time of the hearing, the grantor and one of the subscribing witnesses being dead, and the other testifying to her own signature as a witness, is sufficiently proved, though the witness can neither swear to the genuineness of the grantor's signature nor the execution of the deed by him.
Lonsdale Co. v. Moies, Fed. Cas. No. 8,496, Brunner, Col. Cas. 655, 21 Law Rep. 658.

208. Delivery.

R.I. 1951. Possession of deed may be important in determining grantor's intention at time of delivery thereof to grantee, but is not

necessarily controlling on question of valid delivery, which ordinarily depends on particular facts.
Lambert v. Lambert, 77 A.2d 325, 77 R.I. 463.

EASEMENTS

I. CREATION, EXISTENCE, AND TERMINATION

1. Nature and Elements of Right.

R.I.2007 However, it is incumbent upon the party claiming an easement over the land of another to present clear and convincing evidence of the claim.
Ondis v. City of Woonsocket, 934 A.2d 799, 803

R.I. 1931. Deed conveying grantor's title and interest in certain right of way held not to convey title to gangway.
Fitzpatrick v. Rrennan, 155 A.405.

R.I. 1919. An "easement" is a hereditaments and an interest in land capable of creation or transfer only by operation of law or by grant or prescription.
Ham v. Massasoit Real Estate Co., 107 A.205, 42 R.I. 293, 5 A.L.R. 440.

R.I. 1895. Where one conveyed a lot abutting on a way laid out on his own land, with the privilege of using it forever, and "with the express understanding" that the grantor was "to keep a gate across said way, unless otherwise agreed on by the parties" to the deed, and he afterwards conveyed another lot, referring to the way as "owned equally" by the adjoining landowners, the grantees took title in fee to the middle of the way.
Rentley v. Root, 32 A.918, 19 R.I. 205.

A valid dedication requires: "(1) a manifest intent by the landowner to dedicate the land in question, called an incipient dedication or offer to dedicate; and (2) an acceptance by the public either by public use or by official action to accept the same on behalf of the municipality." Warwick Sewer Authority, 45 A.3d at 500 (quoting Robidoux, 120 R.I. at 433, 391 A.2d at 1154).

R.I. 1956 "No notice of termination is necessary" to extinguish an easement "when the [easement] by its very terms provides therefore." Moulson v. Iannuccilli, 84 R.I. 85, 90, 121 A.2d 662, 664 (1956)

"[t]he result of a finding that an easement has been terminated is that the complete control of the land will ordinarily return to the owner of the underlying fee or servient tenement." David A. Thomas, 7 Thompson on Real Property §60.08(d) at 576 **(2d ed. 2006).**

R.I. 2009 '[W]here in a written instrument an easement of way is granted in express terms, the nature and extent of the easement thus established is to be determined primarily from the language used in the writing, and if the terms thereof are free from uncertainty and ambiguity, oral testimony is not admissible to explain the nature or extent of the easement grant.'" Grady v. Narragansett Electric Co., 962 A.2d 34, 45 (quoting Waterman v. Waterman, 93 R.I. 344, 349, 175 A.2d 291, 294 (1961).

2. Easements Appurtenant or in Gross.

However, like so many other common law rules that came into being in a more agrarian and pre-industrial world, this general rule prohibiting assignments of easements in gross has been modified and has become more nuanced; many jurisdictions have by now explicitly upheld the assignability of easements in gross for commercial utility purposes. See 4 Richard R. Powell, Powell on Real Property, § 34.16 at 34-164-65 (2008) ("Easements in gross for railroads, for telephone and telegraph and electric power lines, for pipelines, for stream facilities, for water ditches and business structures have been held transferable by American courts almost without exception."

Easements will be construed as appurtenant, and not in gross, if such construction is consistent with the nature of the right created, and with the intention of the parties creating it.

R.I. 1927. Sullivan Granite Co. v. Vuono, 137 A.687, 48 R.I. 292.
R.I. 1891. Cadwalader v. Bailey, 23 A.20, 17 R.I. 495, 14 L.R.A. 300.

In case of doubt presumption favors easement being appurtenant.
R.I. 1927. Sullivan Granite Co. v. Vuono, 137 A.687, 48 R.I. 292.
R.I. 1916. Chase v. Cram. 97 A.481, 39 R.I. 83, L.R.A. 1918F, 444, decree modified 97 A.802.

R.I. 1927. In considering whether easement is in gross or appurtenant, court will consider surrounding circumstances and intent of parties.
Sullivan Granite Co. v. Vuono, 137 A.687, 48 R.I. 292.

R.I. 1924. A deed which conveyed the dominant estate passed an easement which ran with the land, though the deed did not mention such easement.
Khourl v. Dapplnlan, 125 A.268, 46 R.I. 163.

R.I. 1916. An easement in gross is a mere personal interest in realty of another; distinction between an easement appurtenant and an easement in gross being that in the first there is, and the second there is not, a dominant tenement.
Chase v. Cram, 97 A.481, 39 R.I. 83, L.R.A. 1918F, 444, decree modified 97 A.802.

R.I. 2005 The law is well settled that when a property owner subdivides land and sells lots with reference to a plat, the purchasers of those lots are granted easements in the roadways shown on the subdivision plan, whether or not those roads subsequently are dedicated to the public.
Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032

R.I. 1978. An easement to use streets delineated on a plat is appurtenant to the property and passes with conveyance of the property, unless specifically excluded, even though not mentioned in the deed.
Robidoux v. Pelletler, 391 A.2d 1150.

R.I. 1927. Easement reserved across strip of land granted railway and dividing farm into two parts held appurtenant to farm.
Sullivan Granite Co. v. Vuono, 137 A.687, 48 R.I. 292.

5. In General.

R.I. 1900. An easement in light cannot be acquired by prescription, but

only by covenant or grant.
Trustees Mathewson St. M.E. Church v. Shepard, 46 A.402, 22 R.I. 112.

"It is the well settled rule that use by expressed or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription, since one of the elements essential to the acquisition of the easement, namely, user as of right, as distinguished from permissive use, is lacking."
Tefft v. Reynolds, 43 R.I. 538, 542-43, 113 A. 787, 789 (1921)

R.I. 1862. An uninterrupted adverse use and enjoyment of an easement for a period of 20 years, unexplained, is sufficient to warrant the presumption of a grant.
Evans v. Dana, 7 R.I.. 306.

7. Duration and Continuity of Use.

R.I. 1914. Where a cul-de-sac had never been used by the public or accepted as a highway, but defendant and her predecessors for more than 30 years prior to complainant's purchase of the adjoining lot had fenced, cultivated, and improved the part occupied by defendant continuously without opposition, she acquired title thereto by adverse possession against owners of the adjoining property.
Burgess v. Dufault, 90 A.659.

R.I. 1901. Where the private occupation has ripened into a title by an exclusive possession of more than twenty years, the strip is no longer a way, but is held in separate ownership.
Baker v. Barry, 48 A.795, 22 R.I.. 471.

R.I. 1921. Where the use of a way across defendant's land by plaintiff's ancestors in title ceased for 22 years, and neither defendant nor his ancestors in title knew or had reason to know that plaintiff or the former owners of his land ever claimed a right to use such way adversely and as of right, the evidence was insufficient to establish an easement by prescriptions.
Tefft v. Reynolds, 113 A.787, 43 R.I.. 538.

R.I. 1905. Where one who had used a way over two tracts of land purchased one of them before he had acquired a right of way by prescription, the purchase did not interrupt the running of the prescriptive time as to the tract not purchased.
Bullock v. Phelps, 61 A.5B9, 27 R.I.. 164.

8. Adverse Character of Use.

R.I.2013 In some cases concerning real property, such as adverse possession and establishing an easement, we require clear and convincing evidence in support of such claims.
DiPippo v. Sperling, 63 A.3d 503, 508

R.I. 1959. Complainants could not acquire an easement by adverse use of a driveway to a garage where the use was originated by permission.
Henry v. Dalton, 151 A.2d 362, 89 R.I.. 150.

R.I. 1956. Mere permissive use of a way no matter how long it may have been enjoyed will never ripen into easement by prescription and burden of proving such right of way is upon person claiming it.

Foley v. Lyons, 125 A.2d 247, 85 R.I. 86, reargument denied 125 A.2d 778, 85 R.I. 86.

Where original user of driveway over adjoining lot was permissive and by oral license, it could not ripen into adverse user no matter how long continued, provided such user was referable to permission granted.
Gen. Laws 1938, c. 438, section 1 et seq.- Id.

R.I. 1953. Permissive use cannot ripen into an easement by prescription no matter how long it is continued.

R.I. 1927. Permissive use of way, no matter how long, never ripens into easement by prescription.
Earle v. Briggs, 139 A.499, 49 R.I. 6.

R.I. 1921. Use by expressed or implied permission or license, no matter how long continued, cannot ripen into an easement by prescription; one of the elements essential to the acquisition of an easement, user as of right, as distinguished from permissive use, being lacking.
Tefft v. Reynolds, 113 A.787, 43 R.I. 538.

9. Duration of Use.

R.I. 1956. Where use of 4 feet of lot for its entire depth for driveway from December 1929 to September 1949 was open, adverse and continuous under claim of right, user acquired easement for driveway over such strip. Gen. Laws 1938, c.438, section 1 et seq.
Foley v. Lyons, 125 A.2d 247, 85 R.I., reargument denied 125 A.2d 778, 85 R.I. 86.

10. Acquisition of Rights of Way.

R.I.2007 To establish an easement by prescription, a claimant must show "actual, open, notorious, hostile, and continuous use under a claim of right for at least ten years."
Nardone v. Ritacco, 936 A.2d 200, 205

R.I.2012 "One who claims an easement by prescription bears the burden of establishing 'actual, open, notorious, hostile, and continuous use under a claim of right for at least ten years.' "
Butterfly Realty v. James Romanella & Sons, Inc., 45 A.3d 584, 588

R.I.2007 "To establish an easement by prescription, a claimant must show 'actual, open, notorious, hostile, and continuous use under a claim of right for at least ten years.' "
Hilley, 972 A.2d at 651–52 (quoting Nardone v. Ritacco, 936 A.2d 200, 205

R.I. 2003 'a claim of right may be proven through evidence of open, visible acts or declarations, accompanied by use of the property in an objectively observable manner that is inconsistent with the rights of the record owner.'" Drescher, 45 A.3d at 1228 (quoting Tavares v. Beck, 814 A.2d 346, 351

R.I.2001 "[o]ne who claims an easement by prescription bears the burden of establishing actual, open, notorious, hostile, and continuous use under a claim of right for at least ten years." Stone v. Green Hill Civic Association, Inc., 786 A.2d 387, 389

R.I.2006 A plaintiff claiming an easement is held to a higher standard

of proof than a plaintiff in an ordinary civil case. Pelletier, 46 A.3d at 35. He or she bears the heavy burden of proving "each element by a preponderance of clear and convincing evidence." Carpenter v. Hanslin, 900 A.2d 1136, 1146

An enlargement of an express easement by prescription must satisfy all the traditional requirements for acquiring a prescriptive right. See Jon W. Bruce & James W. Ely, Jr., The Law of Easements and Licenses in Land, § 8:16 (2014)

R.I. 1905. Where the owner of a right of way appurtenant to a certain tract uses it for the period of prescription as appurtenant also to another tract, he gains a prescriptive right to such enlarged use.
Bullock v. Phelps, 61 A.589, 27 R.I. 164.

R.I. 1901. Under Pub. Laws, c.976, providing that no footway can be acquired by prescription, unless in connection with a carriageway, a footway is not acquired by prescription unless the claimant and his predecessors used the way 20 years prior to the passage of the act.
Baker v. Barry, 48 A.795, 22 R.I. 471.

12. Express Grant.

U.S.C.C. 1856. The words, "rights, liberties, privileges, and appurtenances", are sufficient to create a right of common when the deed refers to a plat and papers which show that a right of common in a described lot is annexed to the land.
Knowles v. Nichols, Fed. Cas. No. 7,809, 2 Curt. 571.

"[T]o create an easement by express grant, there must be a writing containing plain and direct language evincing the grantor's intent to create a right in the nature of an easement rather than a license." 25 Am.Jur.2d Easements and Licenses § 15 at 513 (2004). Moreover, the writing generally must "contain a description of the land that is to be subjected to the easement with sufficient clarity to locate it with reasonable certainty." Id.

R.I. 1851. A clause In a deed conveying land "with all the buildings, ways, privileges and appurtenances, to the same belonging," Is not appropriate language to create a new easement.
Kenyon v. Nichols, 1 R.I. 411.

14. In General

The general rule is that no easement can be created over a section of land in favor of another adjoining parcel when one owner owns both properties. Catalano v. Woodward, 617 A.2d 1363, 1367 .I.1992). An exception to that rule, however, exists in favor of the grantee of a portion of a land from a larger parcel. Id. But, for this exception to apply, the easement or right of way must be delineated on a properly recorded subdivision or plat that is referenced in the deed to the grantee whose property claims the benefit of the easement

R.I. 1992. Generally, when single owner is in possession of two contiguous parcels of land, one of which has historically been used for the benefit of other, and that owner conveys encumbered parcel, he cannot regain right to continue use of conveyed parcel without specific reservation.
Catalano v. Woodward, 617 A.2d 1363

14.3. Reservation for Benefit of Third Person

R.I. 1992. Deed of conveyance of subdivision parcel which conveyed premises "subject to a right of way of record as shown on said plan" had effect of successfully reserving easement across parcel, in favor of remaining parcels; plan had been filed prior to conveyance, and filing constituted adequate notice to grantees that they took their land subject to easement.

Catalano v. Woodward, 617 A.2d 1363

Reference in deed to subdivision plan clearly delineating easement across parcel was sufficient to create easement in favor of other parcels.

Id.

15. Implication

R.I. 1992. Generally, when single owner is in possession of two contiguous parcels of land, one of which has historically been used for the benefit of other, and that owner conveys encumbered parcel, he cannot retain right to continue use of conveyed parcel without specific reservation.

Catalano v. Woodward, 617 A.2d 1363

R.I. 1992. "Implied easement" is predicated on theory that when person conveys property, he or she includes or intends to include the conveyance whatever is necessary for the use and enjoyment of the land retained.

Bovi v. Murray, 601 A.2d 960

16. Severance of ownership of Dominant and Servient Tenements.

R.I.2007 "[w]hen the owner of a servient estate closes with a wall or other structure the original way and points out another way which is accepted by the owner of the dominant estate, the new way may become a way by substitution."

Ondis v. City of Woonsocket, 934 A.2d 799, 803

R.I.2003 Generally, "[u]nder the merger doctrine, when both the dominant and servient estates are vested in one party, the easement is extinguished."

Nunes v. Meadowbrook Development Co., 824 A.2d 421, 423

R.I. 1992. Upon severance of heritage, grant will be implied of all those continuous and apparent easements which have in fact been used by owner during unity, though they had no legal existence as easements.

Catalano v. Woodward, 617 A.2d 1363

17. Ways in General.

R.I.2005 The law is well settled that when a property owner subdivides land and sells lots with reference to a plat, the purchasers of those lots are granted easements in the roadways shown on the subdivision plan, whether or not those roads subsequently are dedicated to the public.

Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032

R.I. 1970. When street or way is designed in conveyance of land as boundary and grantor owns fee in land represented as way or street, an easement in such way passes to grantee by implication of law.

Spangler v. Schaus, 264 A.2d 161, 106 R.I. 795.

R.I. 1978. A sale of a platted lot with reference to the plat will, as between the grantor and the grantee, given the latter a right to use all of the streets delineated on the plat, even though the plat is unrecorded.

Robidoux v. Pelletier, 391 A.2d 1150.

Since landowners who claimed an easement over certain land owned a lot which was not part of a plat, the fact that the plat showed an easement over the lot did not give them a right to easement.

Id.

R.I. 1964. Conveyance of lots abutting proposed street created private easements of way in proposed street in favor of lots.

Vallone v. City of Cranston, Dept. of Public Works, 197 A.2d 310, 97 R.I. 248.

U.S.C.C. 1905. Where deeds describe the property conveyed as parts of a platted tract and refer to streets thereon, the description is with reference to the plat, and, under the rule of law established by decision in Rhode Island, the grantees acquire as appurtenant to their lands a right of passage over all parts of such streets, and are entitled to damages whenever any part of the same is condemned for another public use which deprives them of such right.

U.S. v. Certain Lands in Town of Jamestown, 140 F. 463.

R.I. 1927. Intention to create right of way held shown by recording of plat containing way and sale of lots with reference thereto.

Del Giudice v. Shanley, 139 A.311.

R.I. 1911. Complainant purchased certain land by metes and bounds; the only road mentioned in the deed being B. avenue, on the east. Defendant, the vendor, had previously prepared a proposed plat of the property, on which was delineated C. avenue, on the west of the land conveyed. This plat was circulated in advertising the property, but was never recorded, nor was C. avenue ever laid out. It was not appurtenant to the plaintiff's lot as a way of necessity, though, if opened as shown on the plat, it would greatly enhance the value of his land. Held, that complainant, by defendant's exhibiting the plat to him prior to the sale, did not acquire a right of way over the proposed avenue, so as to entitle him to restrain defendant from so replatting the land as to move such avenue some distance west of its proper proposed location.

Pyper v. Whitman, 80 A.6, 32 R.I. 510, 35 L.R.A., N.S. 938.

R.I. 1887. The owners of a piece of land platted it into numbered lots, with intersecting Streets, which plat was duly recorded. Held, that a grantee of one of the lots, by a deed in which reference was made to the plat, and which bounded the lot by the streets designated in the plat, was entitled to a right of way over such Streets, as appurtenant to the lot; and this without reference to who might be the owner of the fee in the street.

Chapin v. Brown, 10 A.639, 15 R.I. 579.

The fact of A.'s deed conveying to A. no part of the street on which his lot fronted was immaterial.

Chapin v. Brown, 10 A.639, 15 R.I. 579.

R.I. 1886. Deeds referring to strips in front of platted lots conveyed the strips "subject to the easement of the other owners on the street to have the strip unincumbered by buildings, and ready at any time to be laid out for a street.”.

Central Land Co. v. City of Providence, 2 A.553, 15 R.I. 246.

18. Ways of Necessity.

R.I.2003 [T]he test of necessity is whether the easement is reasonably necessary for the convenient and comfortable enjoyment of the property as it existed when the severance was made."
Nunes v. Meadowbrook Development Co., 824 A.2d 421, 425

R.I. 1992. Landowners did not have implied easement across adjoining landowners' property to gain access to rear of landowners' property, although there had previously been a lease between the parties or their predecessor in interest, where there had been no unity of title between the two parties.
Bovi v. Murray, 601 A.2d 960

There can be no implied easement without unity of ownership, and thus there can be no finding of easement by necessity in land of third person who is stranger to claimant title.
Id.

R.I. 1875. M.C., owning a tract of land bounded north by W. Street, conveyed to D. the west portion, whereon was a well, reserving a right to use the well by the words, "excepting a privilege to the well of water on said lot, which I reserve for the use of my said homestead estate," this homestead estate being the remainder of the tract. M.C. devised to J. in fee simple the land between the house and the lot conveyed to D., together with a tenement in the house, and to S. the rest of the homestead estate. For a long period, but not for the time required to gain an easement by prescription, all the occupants of the homestead estate had crossed the land between the homestead and D.'s lot on their way to the well. Held, that the way across J.'s lot could not be claimed as a way of strict necessity, nor could it be implied, from the circumstances of the case, as one reasonably necessary.
0'Rorke v. Smith, 11 R.I. 259, 23 Am.Rep. 440.

R.I. 1914. Where land conveyed was entirely surrounded by the lands of the grantor and others, there was an implied grant of a way to and from the lot conveyed across the premises of the grantor.
Sweezy v. Vallette, 90 A.1078, 37 R.I. 51.

R.I. 1870. Convenience is no ground for a claim of right of way.
Valley Falls Co. v. Dolan, 9 R.I. 489.

19. Light, Air and View.

R.I. 1931. Law recognizes easement of light and air in street in favor of abutting owner.
Wall v. Eisenstadt, 154 A.651, 51 R.I. 339.

Conn. 1999. "There are essentially two types of avigation easements: clearance easements and flight easements."
See Melillo v. City of New Haven, 732 A.2d 133, 137 & n.11 (quotations omitted).
"A clearance easement is acquired to assure that no structure exceeds a maximum height, if structures are allowed at all." Id. (quotations omitted). "This will give aircraft an unobstructed view and provide a safety margin for flights that may have to descend due to pilot error, poor weather conditions, etc." Id. (quotations omitted). "The flight easement allows the frequent overflight of aircraft over the

encumbered land and constitutes a separate and distinct easement from the clearance easement." Id. (quotations omitted). A flight easement "may or may not contain provisions dealing with obstructions, but, unlike a clearance easement, in express terms it permits free flights over the land in question" and "provides for flights that may be so low and so frequent as to amount to a taking of the property." See United States v. Brondum, 272 F.2d 642, 645 (5th Cir. 1959) (Brondum)

R.I. 2021. RIDOT acted within its scope of authority when it exercised its condemnation power to claim avigation easements over the Plaintiffs' properties pursuant to §§ 1-2-3 and 37-6-1.
Kniffer, et al v. Rhode Island Airport Corp & RIDOT

21. In General.

R.I. 1977. Where land conveyed to defendants predecessors in title by grantors who reserved right to pass over same was conveyed to defendants, burden of easement was conveyed not only by operation of law but also by express provision in deed which stated that the land was subject to certain right-of-way referred to in title deeds.
Thomas v. Ross, 376 A.2d 1368.

23. Severance of Right.

R.I. 1852. The dominant estate consisted of 49-3/4 acres, whereof the owner conveyed to the owner of the servient 30 acres and subsequently conveyed the remaining 19-3/4 acres to one who afterwards repurchased the 30 acres of the dominant estate, which had been conveyed to the servient owner, and conveyed the whole to the plaintiff. plaintiff conveyed 9-3/4 acres, which had been united to the servient estate, and in said conveyance the plaintiff reserved to himself the right of common of seaweed and stone appurtenant thereto. Held that, inasmuch as Said common could not be severed from the estate to which it was appurtenant and granted over, so neither could it be retained after a conveyance of the estate, and that the plaintiff's reservation of the common appurtenant to the 9-3/4 acres conveyed away by him was of not effect, and the only common which remained was the common apportionable to the 10 acres, part of the 19-3/4 which were united with the servient estate.
Hall v. Lawrence, 2 R.I. 218, 57 Am.Dec. 715.

26. Termination in General.

R.I. 1991. Dominant landowners' alternate use of another method of egress to highway did not effect their interest in easement to reach the highway.
Jackvony v. Poncelet, 584 A.2d 1112

R.I. 1959. Where easement by deed over two lots to street was crossed by freeway for fast moving traffic, purpose for which easement was intended was impossible of accomplishment and easement therefore became extinguished.
Kilmartin Realty, Inc. v. Silver Spring Realty Co., 155 A.2d 247, 90 R.I. 103

R.I. 1932. Easement of light and air may be abandoned through substantial change in dominant estate.
Lippitt v. Weenat Shassit Ass'n, 157 A.878, 52 R.I. 100.

R.I. 1930. Right of way of necessity ceases when necessity for its continuance ceases by reason of acquisition of land over which owner of dominant estate may pass to highway.
Fusaro v. Varrecchione, 150 A.462, 51 R.I. 35.

R.I. 1970. Right-of-way by grant is not extinguished by mere nonuse, and fact that holder of easement finds another way more convenient to him does not deprive him of his easement which remains for his use and enjoyment whenever he has the occasion to use the right.
Spangler v. Schaus, 264 A.2d 161, 106 R.I. 795.

The question of abandonment of rights of way is one of intention, and must be determined by facts in each case.

R.I. 1939. Charles C. Gardiner Lumber Co. v. Graves, 8 A.2d 862, 63 R.I. 345.
R.I. 1899. Johnson v. Stitt, 44 A.513, 21 R.I. 429.

R.I. 1939. To establish abandonment of easement, evidence must show that owner thereof voluntarily acted in such decisive manner as to clearly indicate his intent to abandon it and that his acts Showing such intent were relied on by owner of land subject to easement.
Charles C. Gardiner Lumber Co. v. Graves, 8 A.2d 862, 63 R.I. 345.

Lapse of time and nonuser are competent evidence of intent to abandon easement and may be entitled to great weight when considered with all other circumstances in evidence, especially if nonuser for long time is coupled with such use of land subject to easement as is inconsistent with continued existence thereof.
Charles C. Gardiner Lumber Co. v. Graves, 8 A.2d 862, 63 R.I. 345.

R.I. 1927. Right of way, shown by plat, could be abandoned after creation.
Del Giudice v. Shanley, 139 A.311.

R.I. 1914. Whether or not a way has been abandoned by acts in pais is a question of intent which must be shown by positive evidence of an express declaration to that effect or by acts of a decisive character, and nonuser for many years is not conclusive evidence of abandonment.
Sweezy v. Vallette, 90 A.1078, 37 R.I. 51.

R.I. 1913. On facts shown, held, that there was no such cessation of use of a right of way asserted by complainant as would defeat his rights therein.
Bochterle v. Saunders, 86 A.803, 36 R.I. 39.

Where a way laid out for the common use of lots bounded on it is fenced in and appropriated along the center line by the adjoining owners, the act amounts to a mutual agreement to abandon the way; and there is no difference in principle between an original appropriation by an ancestor in title of an owner and the acceptance and continuance of such appropriation after one becomes an owner.
Baker v. Barry, 48 A.795, 22 R.I. 471.

R.I. 1899. A. and B. were owners of estates separated by a strip of land, over which B. had a right of way, as well as the fee to the centre. The strip had never been used as a way. A. erected an expensive residence on his land, laying out the grounds so as to include the whole of the way, and also erected an iron fence on his lot which extended

across the end of the way. B. knew of this, and made no objection. Subsequently the fence around B.'s lot was removed, except in front, and a post set in the corner of the lot, A. and B. being present. The driveway of A. crossed a corner of the way. A. cut the grass and cultivated flowers on the way and occupied it as a part of his estate, but not for twenty years. The way was not assessed to any one, B.'s lot was unimproved, and there was no occasion to use the way. During the time referred to the lot was for sale, the advertisement stating that a way twenty feet wide was to be opened beyond the east line.

Johnson v. Stitt 44 A.513, 21 R.I. 429.

The acts relied on to constitute abandonment of easement must not only be voluntary, but of such a character as unequivocally to show an intention to abandon the easement.

Johnson v. Stitt, 44 A.513, 21 R.I. 429.

In the absence of any proof that anything was ever said between A. and B. about the erection of the fence and the use of the way by A. the mere acquiescence of B. in the acts of A. did not constitute an abandonment of the easement.

Johnson v. Stitt, 44 A.513, 21 R.I. 429.

R.I. 1934. Right of way by grant is not lost through nonuser.

Tichman v. Straffin, 173 A. 78, 54 R.I. 356.

27. Merger

R.I. 2003 Generally, "[u]nder the merger doctrine, when both the dominant and servient estates are vested in one party, the easement is extinguished."

Nunes v. Meadowbrook Development Co., 824 A.2d 421, 423

R.I. 1994. Easement granted in favor of several estates was not extinguished by merger when owner of one lot purchased portion of easement that bordered his lot, absent showing that owners of other dominant estates released their interest in the easement.

Boorom v. Rau, 640 A.2d 963

For easement to be extinguished by merger, unity of title must exist in the same person, and ownership of dominant and servient estates must be coexistive and equal in validity, equality, and all other circumstances of right. Id.

R.I. 1992. Because unity of possession destroys existing easements, no easement can be created over section of land that is unified in possession of one owner.

Catalano v. Woodward, 617 A.2d 1363 30.

Tex.App.1988 ("There does not seem to be any reason why the law should prohibit the assignment of an easement in gross if the parties to its creation evidence their intention to make it assignable."); Farmer's Marine Copper Works, Inc. v. City of Galveston, 757 S.W.2d 148, 151

R.I. 1991. Question of abandonment of easement rights is one of intention that must be determined by the fact of each case.

Jackvony v. Poncelet, 584 A.2d 1112

In order to abandonment of easement, it is necessary to prove that the holder of the easement acted voluntary and in such a decisive manner as

to show unequivocal intention to abandon the easement.
Id.

Bilateral transaction through which easement is extinguished by the concurrence of both the owner of the easement and the owner of the servient tenement is properly named a "release," not and "abandonment".
Id.

Landowner which agreed to release that portion of easement for the benefit of his land which went over another parcel did not intend to abandon his interest in any portion of the easement and did not intend to release any other portion of the easement.
Id.

Right-of-way by express grant is not extinguished by mere nonuse, and fact that easement holder finds a more convenient alternate route does not deprive the easement holder of the easement, which remains for the holder's use and enjoyment whenever the holder has occasion to use the right.
Id.

R.I. 1970. Question of abandonment of rights-of-way is one of intention and must be determined on facts of each case.
Spangler v. Schaus, 264 A.2d 161, 106 R.I. 795

Nonuse of right-of-way for many years is not evidence of an abandonment.
Id.

32. Adverse Possession.

R.I.2013 In some cases concerning real property, such as adverse possession and establishing an easement, we require clear and convincing evidence in support of such claims.
DiPippo v. Sperling, 63 A.3d 503, 508

R.I. 1942. Where owners of land subject to right of way plowed and planted land, raised produce, and pastured cows thereon, and otherwise generally used it for farming purposes for over ten years, and throughout such period, maintained fence which obstructed right of way, without any objection to such use or obstruction, right of way was extinguished by "adverse user."
Paralano v. Duarte, 26 A.2d 629, 68 R.I. 138.

The owner of a servient tenement may, by nature of his use, for more than prescriptive period, of premises subject to easement of passage in favor of dominant tenement, extinguish and destroy such easement.
Patalano v. Duarte, 26 A.2d 629, 68 R.I. 138.

R.I. 1895. Where complainant's building for more than 20 years encroached on land in which defendant had an easement, defendant's easement therein was lost.
Bentley v. Root, 32 A.918, 19 R.I. 205.

Where a building has encroached on a private way for more than twenty years without objection, the easement in the land covered by the building is lost.
Bentley v. Root, 32 A.918, 19 R.I. 205.

36. Evidence.

R.I. 1986. In order to establish abandonment of easement, it is necessary to prove that the holder of the easement acted voluntarily and in such a decisive manner as to show an unequivocal intention to abandon the easement.
Nahabedin v. Jarcho, 510 A.2d 425

R.I. 1984. In action seeking to extinguish easement by adverse possession, burden of proof falls to the claimant to establish adversity and remains with claimant to establish each element ojd adversity by strict proof.
Thomas v. Ross, 477 A.2d 950

R.I. 1984. Normally an easement is presumed to be appurtenant to land owned by grantee or grantees of the easement or to land owned by grantors in the case of an easement reserved.
Manish v. Potvin, 472 A.2d 1220

R.I. 1968. Burden of proving right-of-way is upon person claiming it.
Berberian v. Dowd, 247 A.2d 508, 104 R.I. 585.

R.I. 1959. Where landowner's right of egress to street was obstructed by state's condemnation of portion of lot over which easement ran, it would be assumed that property owner was compensated for loss of such right of egress.
Kilmartin Realty, Inc. v. Silver Spring Realty Co., 155 A.2d 247, 90 R.I. 103.

R.I. 1953. A use originally permissive cannot be converted into an adverse use by a later use and claim of that kind, since law presumes that use originally permissive continues in absence of conduct clearly indicating change.
Daniels v. Blake, 99 A.2d 7, 81 R.I. 103.

R.I. 1950. Presumption is in favor of an easement being appurtenant rather than in gross.
Gonsalves v. Da Silva, 72 A.2d 227, 76 R.I. 474.

R.I. 1927. Burden of proving right of way is on person setting it up.
Earle v. Briggs, 139 A.499, 49 R.I. 6.

R.I. 1934. Though right of way by grant is not lost through nonuser, evidence of nonuser may be admissible as interpretative of acts which in themselves might constitute an extinguishment of the right.
Tichman v. Straffin, 173 A.78, 54 R.I. 356.

R.I. 1977. One who claims easement by prescription must establish open, adverse and continuous use under claim of right by strict proof, that is, by clear and satisfactory evidence. Gen. Laws 1956, section 34-7-1.
Jerry Brown Farm Ass'n, Inc. v. Kenyon, 375 A.2d 964.

R.I. 1968. One who seeks to establish an easement upon the land of another will be held to high degree of proof.
Berberian v. Dowd, 247 A.2d 508, 104 R.I. 585.

Clear and satisfactory evidence is required to establish all elements of an easement.
Id.

The term "clear and convincing evidence" is synonymous with "clear and

satisfactory evidence" within rule that evidence to establish all the elements of an easement must be clear and satisfactory.
Id.

R.I. 1933. Evidence held insufficient to establish easement by implication.
Kusiak v. Ucci, 163 A.226, 53 R.I. 36.

Evidence held not to show use of way was more than permissive, precluding establishment of easement by prescription.
Kusiak v. Ucci, 163 A.226, 53 R.I. 36.

R.I. 1986. Evidence that the easement holder acted in a manner inconsistent with a further desire to use the easement is not most persuasive type of evidence on the question of abandonment.
Nahabedian v. Jarcho, 510 A.2d 425

Finding that landowner had abandoned his easement rights over adjoining land was supported by evidence that landowner did not merely acquiesce in adjacent landowners control of land over which landowner claimed easement for circular driveway but also himself permanently obstructed the easement by constructing a parking lot over the general area on his land designated for a continuation of the circular driveway, that landowners' building plans depicted the parking lot as constructed shortly after the easement was agreed to, and that he knew that the adjoining landowners did not plan to construct a circular driveway but failed to take any effort to enforce his rights for more then one year.
Id.

R.I. 1986. Original deed in which grantor expressly reserved right-of-way was sufficient to finding that grantee's conveyance to electric company was subject to right-of way.
Sacco v. Narragansett Elec. Co., 505 A.2d 1153

R.I. 1984. Evidence which established that landowners parked cars in such a way so as to block assess to easement, that claimants of easement had noticed that cars obstructed right-of-way and that landowners claimed easement as their own, but which failed to establish that landowners actually occupied easement or that easement continuously obstructed for statutory period, failed to prove that landowner had actual and continuous possession of land in question, and thus, landowner did not have extinguished easement or adverse possession. Gen.Law 1956, § 34-7-1.
Thomas v. Ross, 477 A.2d 950

R.I. 1983. One who claims an easement by prescription has burden of establishing strict proof, that is, by clear and satisfactory evidence, actual, open, notorious, hostile, and continuous use under claim of right for ten years. Gen.Law 1956, § 34-7-1.
Palisades Sales Corp. v. Walsh, 459 A.2d 933

Ample evidence supported trial courts findings that defendant had demonstrated by clear and satisfactory evidence that he and is predecessors in interest had acquired by prescription an easement of right-of-way to use way or roadway over plaintiff's land.
Id.

R.I. 1978. One's title to real estate should remain free and unfettered and any individual who wishes to establish an easement in the land of another must establish the existence of such an easement of clear and convincing evidence.

Robidoux v. Pelletier, 391 A.2d 1150, 120 R.I. 425.

In absence of evidence as to the intent of corporate grantor when it granted landowners the right to use any road depicted on plat, and in slightly overlap the road which landowners' successors were claiming a right to use was specifically granted by the corporation to the landowners, evidence was insufficient to show that the landowners' successors had the easement that they claimed.
Id.

R.I. 1977. One who claims easement by prescription must establish open, adverse and continuous use under claim of right by strict proof, that is, by clear and satisfactory evidence. Gen.Law 1956, § 34-7-1.
Jerry Brown Farm Ass'n, Inc. v. Kenyon, 375A.2d 964, 119 R.I. 43

Whether claimant sustained burden of proving easement by prescription involves exercise by trial justice of his fact-finding power. Gen.Law 1956, § 34-7-1.
Id.

42. By Express Grant or Reservation.

"[T]o create an easement by express grant, there must be a writing containing plain and direct language evincing the grantor's intent to create a right in the nature of an easement rather than a license." 25 Am.Jur.2d Easements and Licenses § 15 at 513 (2004). Moreover, the writing generally must "contain a description of the land that is to be subjected to the easement with sufficient clarity to locate it with reasonable certainty." Id.

R.I. 1950. In case of doubt, a reservation of an easement is to be construed favorably to grantee of land, and that a right of way so created is limited to what is expressly reserved.
Gonsalves v. Da Silva, 72 A.2d 227, 76 R.I. 474.

The extent of an easement is to be determined by a construction of grant or reservation by which it is created, aided by any concomitant circumstances which have a legitimate tendency to show intention of parties.
Gonsalves v. Da Silva, 72 A.2d 2277, 76 R.I. 474.

R.I. 1950. The nature and extent of reservation in deed of right of grantor, her heirs and assigns, to use driveway on premises conveyed to reach part of grantor's adjoining land must be determined by language of deed and conditions existing in immediate area when reservation was created, not by condition at time of subsequent suit by grantee's successors in title for injunction against trespass on such premises by persons to whom grantor conveyed adjoining land.
Picerne v. Botvin, 71 A.2d 773, 76 R.I. 422.

A grantor's reservation in deed of right to use driveway on land conveyed will be interpreted most favorably to grantee in case of doubt.
Picerne v. Botvin, 71 A.2d 773, 76 R.I. 422.

R.I. 1927. Ambiguous language of deed conveying easement should be construed favorably to grantee.
Matteodo v. Capaldi, 138 A.38, 48 R.I. 312, 53 A.L.R. 550.

43. By Implication or Prescription.

R.I. 1913. The extent of an implied or secondary easement depends upon the purpose and extent of the grant of the primary easement.
Cram v. Chase, 85 A.642, 35 R.I. 98, 43 L.R.A., N.S. 824.

R.I. 2007. easement by prescription established when claimant demonstrates actual, open, notorious, hostile, and continuous use for at least ten years.
Nardone v. Ritacco , 936 A.2d 200, 205

R.I. 2009. "The proper inquiry for the existence of an easement by implication * * * focuses on the facts and circumstances at the time of severance."
Vaillancourt v. Motta Such an inquiry requires the consideration, 986 A.2d 985, 988

R.I. 2009. "It is well established that 'an implied easement is predicated upon the theory that when a person conveys property, he or she includes or intends to include in the conveyance whatever is necessary for the use and the enjoyment of the land retained.'"
Vaillancourt, 986 A.2d at 987 (brackets omitted) (quoting Hilley - 19 - v. Lawrence, 972 A.2d 643, 650

45. Light, Air, and View.

R.I. 1931. Right of abutting owner to light and air extends on either side reasonable distance to prevent obstruction of access of light and air.
Wall v. Eisenstadt, 154 A.651, 51 R.I. 339.

R.I. 1900. M easement in light cannot be acquired by prescription, but only by covenant or grant.
Mathewson St. M.E. Church v. Shepard, 46 A.402, 22 R.I. 112.

48. Ways.

R.I. 1968. Where easement of way is granted without designating precise location thereof, grantees are entitled to convenient, suitable and accessible way, having regard to interest and convenience of owner of land.
McConnell v. Golden, 247 A.2d 909, 104 R.I. 657.

Where easement of way is granted without designating precise location thereof, owner of servient tenement has in first instance right to designate the location, but, if he fails to do so, owner of dominant tenement may select a suitable location, having regard for interest and convenience of owner of servient estate.
Id.

50. Mode of Use.

R.I. 1957. Where an easement is created by a grant and is not limited in its extent or scope by terms of the grant, it is available for reasonable uses to which the dominant estate may be devoted.
Sharp v. Silva Realty Corp., 134 A.2d 131, 86 R.I. 276.

59.

R.I. 1994. Fence built by owners of servient estate was unlawful obstruction of right-of-way, where fence actually bisected right-of-way

and record did not reflect that fence was placed at intersection with public road or that it was readily compatible with accessibility by owners of dominant estate.

Boorom v. Rau, 640 A.2d 963

61. Actions for Establishment and Protection of Easements.

R.I. 1986. Trial court was entitled to consider extrinsic evidence as to location of easement, where deed which created right-of-way was ambiguous concerning precise location of right-of-way.

Socco v. Narragansett Elec. Co., 505 A.2d 1153

Testimony that present-day roadways over electric company's property followed route that existed at time of execution of deed creating right-of-way over certain way or drive along easterly line of tract was sufficient to support trial court's determination regarding location of easement.

Id.

R.I. 1968. Evidence that did not support trial justice's finding that plaintiff purchaser of lot conveyed defendants' predecessor in title had not known of predecessor's intention not to permanently locate right-of-way across his land to lot, in action to enjoin defendants interfering with plaintiff's passage over allege fixed right-of-way across defendants land.

McConnel v. Golden, 247 A.2d 909, 104 R.I. 657.

R.I. 1961. Location of place of an easement of way which is doubtful or uncertain may be established by oral evidence relating to circumstances surrounding establishment of easement and subsequent conduct of parties concerning use thereof.

Waterman v. Waterman, 175 A.2d 291, 93 R.I. 344.

85. Easements and Other Rights in Real Property.

U.S.C.C. 1905. Where deeds describe the property conveyed as parts of a platted tract and refer to streets thereon, the description is with reference to the plat, and, under the rule of law established by decision in Rhode Island, the grantees acquire as appurtenant to their lands a right of passage over all part of such Streets, and are entitled to damages whenever any part of the same is condemned for another public use which deprives them of such right.

U.S. v. Certain Lands in Town of Jamestown, 140 F. 463.

U.S.C.C. 1899. Where the proprietor of a tract of land, which was subdivided and sold to different purchasers, dedicated certain portions for the common use of all owners of other parts of the tract, such owners have an easement in the land so dedicated, which entitles them to compensation on its condemnation by the United States for a use which is inconsistent with the continuance of such easement.

U.S. v. Certain Lands in Town of Jamestown, R.I., 112 F.622, affirmed Wharton v. U.S., 153 F.876, 83 C.C.A. 58.

R.I. 1886. Strip subject to easement of other owners for street purposes could not be taken for a street without compensation to the owners.

Central Land Co. v. City of Providence, 2 A.553, 15 R.I. 246.

96. Taking Part of Tract.

R.I. 1924. On the exercise of the right of eminent domain, the owner is entitled to recover, not only the fair value of the land taken, but

also for the injury to the remainder.
Frank W. Coy Real Estate Co. v. Pendleton, 123 A.562, 45 R.I. 477.

99. Prevention of Access to Navigable Waters.

R.I. 1871. A riparian owner may recover for interference with his right of access to the navigable water on which his land abounds.
Clark v. Peckham, 10 R.I. 35, 14 Am. Rep. 654.

100. Occupation or Use of Street or Other Highway.

R.I. 1950. State is without power to destroy street by obstruction without compensating purchasers by plat who are injured by such obstruction.
Wolfe v. City of Providence, 74 A.2d 843, 77 R.I. 192.

Abutters right in street is a property right and cannot be unreasonably interfered with or taken away by closing highway without payment of just compensation and without due process of law.
Wolfe v. City of providence, 74 A.2d 843, 77 R.I. 192.

Use of highway inconsistent with purpose for which it was laid out is a taking of property of abutters thereon and just compensation must be provided.
Wolfe v. City of providence, 74 A.2d 843, 77 R.I. 192.

R.I. 1894. The owner of an estate purchased with reference to a recorded plat having an adjoining street marked out thereon, has an interest in such street notwithstanding it has been made a public highway, as the owner of a right of way therein, which underlies the public right in the street, and which would remain as appurtenant to his lot, if the Street should be abandoned as a highway. When, therefore, such right of way is taken by permanently closing the street at one end under condemnation proceedings, the lot owner is entitled to compensation therefor.
Johnsen v. Old Colony R. Co., 29 A.594, 18 R.I. 642, 49 Am. St. Rep. 800.

R.I. 1886. Abutters upon a public street, as such, having no private easement in the street, have no right of travel therein as against the state, which will entitle them to compensation if the street be obstructed under authority of the state, in a case where no portion of the street in front of their abutting estates is occupied or obstructed; there being other ways of access and egress to and from their estates.
Gerhard v. Seekonk River Bridqe Com'rs, 5 A.199, 15 R.I. 334.

38. Conveyance with Convenants.

R.I.2004 In the absence of a valid release we will give effect to the restrictive covenant. In doing so, "[w]e construe the terms of any restrictive covenant 'in favor of the free alienability of land while still respecting the purposes for which the restriction was established.' "
Martellini v. Little Angels Day Care, Inc., 847 A.2d 838, 843

R.I. 1898. Where a grantor conveyed land by deed containing covenants of general warranty, and subsequently became the owner of adjoining property, he and his privies are estopped by such covenants to claim or exercise a right of way over the land so conveyed.

Hodges v. Goodspeed, 40 A.373, 20 R.I. 537.

R.I. 1885. J., who had a contingent equitable interest in real estate, made a quitclaim deed thereof to P., who conveyed to defendants, before the estate became vested. Afterwards he gave B., who conveyed to complainant, a warranty deed thereof, and, after the vesting of the estate, he made another deed to defendants, confirming his prior quitclaim deed, and the trustee, holding the legal title, also conveyed to them said J.'s interest. Held, that the estate given to J. was a contingent remainder, and J.'s quitclaim deed to P. will be upheld in equity as an executory agreement to convey the estate when acquired.

Wilcox v. Daniels, 3 A.204, 15 R.I. 261.

39. Conveyances Without Covenants.

R.I. 1957. Quitclaim deed did not estop grantor from afterwords aquiring title to part of the land conveyed adverse to grantee.

Gen.Law 1938, c. 438, § 2.

Malone v. O'connell, 133 A.2d 756, 86 R.I. 167.

EVIDENCE

"Substantial evidence is defined as 'such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means [an] amount more than a scintilla but less than a preponderance.'" Id. (quoting Pawtucket Transfer Operations, LLC, 944 A.2d at 859).

R.I. 1983. Court may take judicial notice of facts generally known with certainty by all reasonably intelligent people in community, and of facts capable of accurate and ready determination by resort to sources of indesputable accuracy.

Colonial Plumbing & Heating Supply Co. v. Contempory Const. Co., Inc., 464 A.2d 741.

10. Geographical Facts.

R.I. 1855. Courts are bound to take cognizance of the boundaries in fact claimed by the state, and will exercise jurisdiction accordingly.

State v. Dunwell, 3 R.I. 127.

274. Declarations as to Boundaries.

R.I. 1977. In suit presenting question of which of two adjacent owners had title by adverse possession to small triangular parcel wherein plaintiffs had burden to prove that their grantor had also claimed the parcel and had been in quit possession thereof for atleast two years prior to the grant to plaintiffs, statements to plaintiffs by their grantor, tending to establish that the grantor believe the bounds of his property included the disputed parcel, where property admitted to show the nature and extent of the grantor's occupation.

Taffinder v. Thomas, 381 A.2d 519, 119 R.I. 545

R.I. 1932. In trespass and ejectment, evidence as to declarations of plaintiff's predecessor in title, and that he had pointed out to plaintiff bounds of property, held admissible as to occupation, where both parties relied on adverse possession.

Saunders v. Kenyon[1] 159 A.824, 52 R.I. 221.

R.I. 1915. Where the question at issue was whether certain land had been used as a highway, a plat or map in the custody of a historical society, which was a compilation of hearsay information, not an authentic public record, was not admissible to show the public use.
Greenough v. Hazard, 94 A.259.

324. Repute as to Facts.

That an old street is a public highway may be proved by reputation.
R.I. 1887. Hampson v. Taylor, 8 A.331, 15 R.I. 83.
R.I. 1885. Hampson v. Taylor, 23 A.732, 15 R.I. 83.

(A) PUBLIC OR OFFICIAL ACTS, PROCEEDINGS, RECORDS, AND CERTIFICATES.

R.I. 1898. Legal evidence may include documents, admission of parties, and testimony of persons duly sworn.
Wheeler v. Court of Probate of Westerly, 41 A.574, 21 R.I. 49.

333. Official Records and Reports.

R.I. 1897. In an action of trespass, where the defendant disputed the line of the plaintiff's land, it was proper for the plaintiff to procure a survey and plat of the land to be made by a civil engineer and to use the same at the trial.
McCusker v. Mitchell, 36 A.1123, 20 R.I. 13.

343. Records of Conveyances and Other Private Writings.

R.I. 1916. Officer having custody of records in office of recorder of deeds may take copies therefrom and certify to their correctness.
Di Ono v. Venditti, 97 A.599, 39 R.I. 101.

344. Municipal Records.

R.I. 1911. Statutory authority is not required for the introduction in evidence of certified copies of the public land records of towns and cities.
Horgan v. Town Council of Jamestown, 80 A.271, 32 R.I. 528.

R.I. 1868. Certificate by a town clerk that "it appeared by the records" of the town that a tax was assessed at a certain time is inadmissible to prove such assessment. He could only certify to the correctness of exact copies.
Hopkins v. Nillard, 9 R.I. 37.

358. Maps, Plats and Diagrams.

R.I. 1969. Court properly sustained objection to the introduction in evidence of certain sketch, where the sketch, which was made by the police, contained diagram of scene of automobile accident and certain other measurements but was not the original sketch made at the scene, where the proffered sketch was not drawn to scale and was not as accurate as the original, and where substantially all of the measurements and other markings on the sketch were covered in oral testimony.
Handy v. Geary, 252 A.2d 435, 105 R.I.. 419.

R.I. 1960. In bill in equity to enjoin continued trespass on complainants' land and a body of water covering a certain portion of such land, there was no error in admitting a map of reservoir prepared

for reservoir company by witness' father who made map in regular course of business. Gen. Laws 1956, § 9-19-13.
Goloskie v. LaLancette, 163 A.2d 325, 91 R.I. 317, certiorari denied 81 S.Ct. 285, 364 U.S. 919, 5 L.Ed.2d 260.

In action to enjoin trespassing on land, there was no error in admitting complainants' exhibit which was a plan of their land made by a licensed surveyor and engineer whose testimony properly established boundaries of complainants' land.
Id.

R.I. 1909. Plats showing the location of a house and barn with reference to the land according to plaintiff's claim were properly admitted.
Co-Operative Bldg. Bank v. Hawkins, 73 A.617, 30 R.I. 171.

359. Photographs and Other Pictures; Sound Records and Pictures.

R.I. 1911. Photographs proved to be correct are admissible as evidence to aid the court and jury to understand the evidence and witnesses to explain their testimony.
Curtis v. New York, N.H. & H.R. Co., 80 A.127, 312 R.I. 542.

372. Ancient Documents.

R.I. 1927. Private document over 30 years old is admissible, provided writer could have testified to facts appearing in writing.
Budlong v. Budlong, 136 A.308, 48 R.I. 144.

R.I. 1911. On an issue of existence of a highway, ancient deeds bounding land thereon are admissible.
Horgan v. Town Council of Jamestown, 80 A.271, 32 R.I. 528.

R.I. 1893. On the question whether certain highways over plaintiff's land were ever dedicated as such, records of the town of Plymouth, dated March 22, 1663, and the proprietors' records, dated April 2, 1680, in which lots are described with reference to highways corresponding to those in question, are admissible as ancient records, without other proofs than their proper custody and reputed genuineness.
Almy v. Church, 26 A.58, 18 R.I. 182.

390. Deeds.

R.I. 1852. A testator devised the south half of certain land, called the "C. Farm," to A., and the north half to B., and after the making of the will, and previous to the death of the testator, a portion of said south half was sold to B., under a levy by the collector of taxes. Held, that the alienation of the part sold by the collector was a revocation pro tanto of the will, and that proof of the declarations of B., to show that it was agreed between him and the testator that the deed of the part sold should be given Up to the testator, was inadmissible.
Borden v. Borden, 2 R.I. 94.

R.I. 1899. While resort may be had to parol evidence to fit the description to the land, such evidence is inadmissible where there is no description.
Hay v. Card, 43 A.846, 21 R.I. 3E2.

R.I. 1893. Where a deed definitely fixes one of the boundaries of the land conveyed, parol evidence is inadmissible, in an action involving the title to part of it, to show that the parties to the deed

contemplated a different boundary.
Segar v. Babcock, 26 A.257, 18 R.I. 203.

At the trial the defendant claimed that the description required a straight line drawn in a northerly direction$_1$ that the description was ambiguous referring either to land owned by Lewis or to land in his possession, and that this ambiguity could be explained away by parol proof of the grantor's intention. Held, that the defendants claim could not be sustained that the "land of" Lewis, meaning land owned by Lewis, was a definite boundary, that there was no ambiguity in the description and that parol evidence of intention was inadmissible.
Segar v. Babcock, 26 A.257, 18 R.I. 203.

(B) SUBJECTS OF EXPERT TESTIMONY.

460(3). Of real poperty in general.

R.I. 1963. The location of premises to which deed refers may be shown by extrinsic evidence where deed is ambiguous.
Sherman v. Goloskie, 188 A.2d 79, 95 R.I. 457, reargument renied 188 A.2d 370, 95 R.I. 457.

505. Matters of Opinion or Facts.

R.I. 1946. In action in assumpsit by depositor corporation against bank to recover amount of unauthorized checks paid out and charged to depositor's account, questions calling for witnesses' opinions on whether bank in stated circumstances used due care were properly excluded as calling for conclusions and opinions of the witnesses and invading the jury's province.
R.H. Kimball, Inc., v. Rhode Island Hospital Nat. Bank, 48 A.2d 420, 72 R.I. 144.

R.I. 1912. Expert witnesses cannot testify as to the value of the opinions of other experts.
Eastman v. Dunn, 83 A.1057, 34 R.I. 416.

513. Construction and Repair of Structures, Machinery, and Appliances.

R.I. 1891. A highway surveyor was asked whether, in his opinion as an expert, the highway was safe, convenient, and in good repair. Held, that his evidence was rightly excluded; the question of the highway defect being one of plain fact for the jury, not one of expert skill.
Yeaw v. Williams, 23 A.33, 15 R.I. 20.

STATUTE OF FRAUDS

60. In General.

R.I. 1919. Under Gen. Laws 1909, C. 283, § 6, and chapter 253, § 2, forbidding establishment of easement by parol testimony, or where the seller of lots exhibited to a purchaser a plan or plat, and made oral statements as to restrictions, which were embodies in the purchaser's deed, and subsequently other lots were conveyed or agreed to be conveyed free from restrictions, the successor of the purchaser of the restricted lot could not enforce against the seller its agreement to restrict the other lots by enjoining it from conveying lots free from restrictions and compelling the removal of buildings located within street lines shown on the plat.

Ham v. Massasoit Real Estate Co., 107 A.205, 42 R.I. 293, 5 A.L.R. 440.

R.I. 1856. A right of way is an interest in lands, and a grant thereof by parol is void, under the statute of frauds.

Foster v. Browning, 4 R.I. 47, 67 Am. Dec. 505.

110. Description of Lands.

R.I. 1925. A contract for sale of land, describing it as "the building I have sold," held insufficient description of subject-matter to satisfy Gen. Laws 1923, section 4854.

Calci v. Caianillo, 127 A.361, 46 R.I. 305.

R.I. 1920. Description of land in a memorandum of sale is sufficient to meet the requirements of the st5tute of frauds (Gen. Laws 1909, c. 283, § 6) if it can apply to but one parcel of property owned by the seller; the property being then identifiable by parol, but insufficient if it applies to more than one.

Preble v. Higgins, 109 A.707, 43 R.I. 10.

R.I. 1908. A memorandum that "I have sold this place" to another, signed by the vendor, did not sufficiently describe the premises sold to satisfy the statute of frauds.

Cunha v. Gallery, 69 A.1001, 29 R.I. 230, 18 L.R.A., N.S., 616, 132 Am. St. Rep. 811.

R.I. 1899. A letter containing no description whatever of the land to be Sold, but merely referring to it as "that lot", is not a sufficient note or memorandum of sale to answer the requirements of the statute of frauds.

Ray v. Card, 43 A.846, 21 R.I. 362.

R.I. 1855. where the memorandum signed by the defendant contained no other description of the land contracted to be sold than "a certain lot of land containing about eleven acres, to be measured, for $900 per acre, I to have the present crop," it was not sufficient, within the statute of frauds, though aided by clear proof by parol of the subject to which the treaty related.

Ives v. Armstrong, 5 R.I. 567.

HIGHWAYS

I. ESTABLISHMENT, ALTERATION, AND DISCONTINUANCE.

(A) ESTABLISHMENT BY PRESCRIPTION, USER, OR RECOGNITION.

1. Nature and Essentials of Highway by Prescription.

R.I. 1968. A "driftway" is a public highway. Gen. Laws 1956, section 24-1-1.
Berberian v. Dowd, 247 A.2d 508, 104 R.I. 585.

R.I. 1953. Public way by user is an incorporeal right of user and does not depend upon title to support it.

However, a platted street does not become a public highway until it has been accepted by the public; either by official action of the city or town or by use of the roadway by the public. Id. (citing Robidoux, 120 R.I. at 433, 391 A.2d at 1154). – Daniels v. Blake, 99 A.2d 7, 81 R.I. 103.

R.I. 1946. A driveway posted at entrance as private property public invited, but not formally dedicated as a public highway, not used by public under any claim of right adverse to the owner, and wholly within private estate, was not at common law a "public highway" by user.
Pettine v. Tuplin, 46 A.2d 42, 71 R.I. 374.

Under the rule at common law to create a public way by use, the proof must show that the use has been general, uninterrupted, continuous and adverse so as to warrant the inference that it had been laid out, appropriated, or dedicated by the proprietors of the adjoining land to the public.
Pettine v. Tuplin, 46 A.2d 42, 71 R.I. 374.

2. Constitutional and statutory provisions.

R.I. 1993. Retroactive provision of statute permitting town to abandon driftway after 20 years of nonpublic use, which purported to have effective date for more then 20 years before abandonment statute was enacted, violated due process; retroactive provision was not rationally related to legislative purpose shielding towns from damage claims on statewide basis and applying retoractive portion of statute would lead to harsh and oppressive results for abutting landowners. Gen.Law 1956, § 24-6-5 U.S.C.A. Const.amend. 14.
O'Rielly v. Town of Glocester, 621 A.2d 697

5. Mode and Extent of Use.

R.I. 1915. To establish a highway by proof of public use, the use must have been general by all those entitled to use the way.
Eddy v. Clarke, 95 A.851, 38 R.I. 371.

Proof of repairs alone is insufficient to establish the existence of a public highway according to the common law.
Eddy v. Clarke, 95 A.851, 38 R.I. 371.

R.I. 1898. The fact that travelers on a highway have been in the habit of crossing a triangular piece of private land, situated between two roads, as the shortest cut from one road to the other, is not sufficient to convert such private land into a highway, or to prevent the owner

thereof from enclosing it whenever he sees fit to do so.
Matteson v. Whaley, 41 A.232, 20 R.I. 694.

6. Duration and Continuity of Use.

U.S.C.C. 1826. The use of a certain highway from 40 to 60 years raises a presumption that it was legally laid out as used.
Hicks v. Fish, Fed. Cas. no. 6,450, 4 Mason 310.

7. Adverse Character of Use in General.

R.I. 1893. When, however, a new way substantially parallel with an old obstructed highway and equally convenient has been used in place of the old highway for a long time: Held, that the new way has by dedication and use been substituted for the former highway.
Almy v. Church, 26 A.58, 18 R.I. 182.

U.S.C.C. 1846. Use of a road for more than 20 years is evidence of its being a public highway, especially if yearly repaired during that time, and included within the limits of a warrant of one of the town's surveyors of highways.
Hull v. Richmond, Fed. Cas. No. 6,861, 2 Woodb. &~ M. 337.

14. Extent of Highway.

R.I. 1983. Fact that road may have been a public highway by perscription rather then dedication did not mean that width was limited to travel portion and that town was precluded from widening and improving the way, and town was entitled to widen the way especially as stone walls located on plaintiffs' property parallel to traveled portion were an indication and acknowledgement of edged of the public way, especially in view of steep grade between the wall and edge of the traveled way.
Anderson v. Town of East Greenwich, 460 A.2d 420

U.S.C.C. 1846. where a highway has not been laid out by a town, but has by user become a highway which the town is bound to keep in repair, the width of such highway where not fenced, is the traveled path, and the usual distance for roads of that character on each side of the traveled path.
Hull v. Richmond, Fed. Cas. No. 6,861, 2 Woodb. & M. 337.

15. Ascertainment and entry of record of highway by user.

R.I. 1970. Compliance with procedural requirements of statute governing creation of public highways by user as such for 20 years is mandatory.
Gen.Law 1956, §§ 24-2-1 to 24-2-4.
Conant v. Mott, 269 A.2d 790, 107 R.I. 637

Town council which did not cause markers or stakes to be placedin ground to delineate width and length of private roadway being taken for use as public highway, which conditioned declaration of use by providing that committee would meet with property owners regarding terminus at breachway and which considered map differing from one later filed did not comply with procedural requirements of statute in declaring that roadway was public highway. Gen.Law 1956, §§ 24-2-1, 24-2-2, 24-2-4.
Id.

16. Evidence as to Existence of Highway.

R.I.2005 The law is well settled that when a property owner subdivides land and sells lots with reference to a plat, the purchasers of those lots are granted easements in the roadways shown on the subdivision plan, whether or not those roads subsequently are dedicated to the public.

Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032 (citing Kotuby, 721 A.2d at 884). The easement granted to the purchasers is appurtenant to the property; it passes with the conveyance to a subsequent grantee. Id. at 1033.

R.I.1998 When a property owner subdivides land and "sells lots with reference to a plat, he [or she] grants easements to the purchasers in the roadways shown on the plat, with or without later dedication of the roadways to the public."

Kotuby v. Robbins, 721 A.2d 881, 884

This Court long has recognized that "the recordation of a plat with streets delineated thereon and lots sold with reference to the plat reveals the owner's intent to offer the streets to the public for use as ways." Id. (citing Volpe v. Marina Parks, Inc., 101 R.I. 80, 85, 220 A.2d 525, 529 (1966))

In Rhode Island, the general rule is that "land delineated as streets and roads on a subdivision map becomes public property upon the approval of [the subdivision arrangement by] the plan commission." Donnelly, 716 A.2d at 747 (citing Town of Bristol v. Castle Construction Co., 100 R.I. 135, 139, 211 A.2d 627, 629 (1965R.I. 1898.

The actual lay-out and use of an old highway must govern in determining the original location of the way where several plats thereof and other evidence relating thereto are conflicting.

Matteson v. Whaley, 41 A.232, 20 R.I. 694.

R.I. 1998. A member of a town council or committee on highways may be supposed to know the highways in his town, but his official character does not make him competent to declare it.

Stone v. Langworth, 40 A.832, 20 R.I. 602.

The fact of a highway may be proved by immemorial use and repair by the town, and also by dedication and acceptance.

Stone v. Langworthy, 40 A.832, 20 R.I. 602.

This evidence, however, must relate to facts and not be the opinions of witnesses who simply say a road is or is not a highway.

That an old street is a public highway may be proved by reputation.

R.I. 1887. Sampson v. Taylor, 8 A.331, 15 R.I. 83.

R.I. 1885. Sampson v. Taylor, 23 A.732, 15 R.I. 83.

21. Establishment by Legislative Act.

R.I. 1903. The Legislature may establish a highway over land owned by the state.

Knowles v. Knowles, 55 A.755, 25 R.I. 325.

Where the Legislature established a highway no acceptance is necessary.

Knowles v. Knowles, 55 A.755, 25 R.I.. 325.

The General Assembly ordered a committee to plat land owned by the state. The certificate of the surveyor on the plat stated that it was a draft of, among other things, a highway, the land of which was not included in the lots. The report of the committee stated that they had laid out a highway to a pond that every lot might have free access in case of draught. Held, that such statement of the reason therefor did not limit the meaning of the word "highway" so as to make it a private way.

Knowles v. Knowles, 55 A.755, 25 R.I. 325.

22. In General.

R.I. 2005 "the dedication of land to the public is 'an exceptional and unusual method by which a landowner passes to another an interest in his [or her] property.' "

Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1032

R.I. 1893. Clause in deed stating that conveyance was made upon condition that strip should be forever kept open as public highway did not create a condition subsequent.

The clause in deed stating that conveyance was made upon condition that strip should be forever kept open as public highway did not create a condition that the city of Providence should open and use the strip as a highway within a reasonable time.

Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

Strip of land deeded to city was none the less a highway because terminating on private property. A cul de sac may be a highway.

Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

Clause in deed stating that conveyance was made upon condition that strip should be forever kept open as public highway merely declared the purpose for which the strip of land conveyed was to be used.

Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

A land owner executed, acknowledged and recorded a deed to the city of Providence conveying a strip of land. Between the description of the land in the deed and the habendum clause were the words: "This conveyance is made upon the condition that the said strip of land shall be forever kept open and used as a public highway and for no other purpose." Held, that under Gen. Stat. R.I. cap. 59, section 25; Pub. Stat. R.I. cap. 64, § 25, the strip of land became a highway on the record of the deed without formal acceptance by the board of aldermen of Providence.

Greene v. O[1]Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

44. In General.

45.

R.I. 1959. It is no objection to the vote of a town council ordering a new highway to be laid out that it prescribes the precise course which, in the judgment of the council, the highway should pursue, as well as its termini, provided the order requires the committee appointed to survey, bound, and mark out the highway to lay out the same "in such manner as may be most advantageous to the public, and as little as may be to the injury of the owners of the land through which it passes."

Watson v. Town Council of South Kingstown, 5 R.I. 562.

50. Proceedings of Commissioners, Viewers, or Surveyors.

R.I. 1926. An existing ancient highway held not surveyed, bounded, and marked out by commissioners' establishment of new lines within existing lines capable of being definitely fixed.
Gill v. Town Council of Jamestown, 133 A.806, 47 R.I. 425.

In proceeding to mark out ancient highway, council has no authority to approve abutter[1]s holding of part of highway by establishing lines within ascertainable existing lines.
Gill v. Town Council of Jamestown, 133 A.806, 47 R.I. 425.

Abutting owners held entitled to object to establishment of highway within existing lines by commission authorized only to mark out existing lines. Gen. Laws 1909, c. 82, section 28.
Gill v. Town Council of Jamestown, 133 A.806, 47 R.I. 425.

R.I. 1902. Being an abutter on the highway, the claimant was necessarily a party to the proceedings, treated as such by the commissioners by being named in the report and by service of notice upon him, and, being aggrieved by the report, was entitled to jury trial, which, the proceedings being. otherwise regular, was his only remedy.
Sweet v. Town of Cranston, 50 A.851, 23 R.I. 466.

Under the provisions of Pub. Stat. cap. 64, sections 32-34, commissioners of estimate and assessment were appointed to lay out a highway. On account of certain deeds previously recorded, which the commissioners considered granted to the town for highway purposes all the lands within the limits of the proposed highway as defined by the town council, the commissioners reported that it was unnecessary to take any land from any of the abutters, and that the loss and damage was nothing. Within the time fixed by statute an abutter filed his notice of intention to claim a jury trial, as provided by section 36 of said chapter. This claim was, on motion of the town, dismissed, for the reason that no land was taken from the claimant and the report contained no estimate of damages or benefit to him or showed that he ever claimed any damages: Held, that the findings of the commissioners were not conclusive against any party seasonably claiming a jury trial.
Sweet v. Town of Cranston, 50 A.851, 23 R.I. 466.

R.I. 1893. Where a proposed highway has been marked out on the land, and monuments have been erected on the ground, which are delineated on a plat, and referred to in the report of the council committee, clerical errors in the plat and in the report in indicating the minutes and seconds in the courses, and a variance in some of the distances as given in the report and as stated in the plat, are not sufficient to invalidate the proceedings.
Clarke v. Town Council of South Kingstown, 27 A.336, 18 R.I. 283.

51. Consent of Landowners.

R.I. 1893. The consent of the state to the laying out of a highway over its land is not a condition precedent without which the proceedings are void; and the consent, given after the highway has been laid out, validates the proceedings, not only as against the state, but as against all other owners of land through which the highway passes.
Clarke v. Town Council of South Kingstown, 27 A.336, 18 R.I. 283.

53. Judgment or Order Establishing Road.

U.S.C.C. 1826. The highway as laid out must have a certainty of limits and direction. A direction that it shall run from a certain point "as

it may be found the most convenient way" is insufficient.
Hicks v. Fish, Fed. Cas. No. 6,459, 4 Mason, 310.

The decree of a town council adjudging a highway necessary, specifying its initial and terminal points, and describing the course which it is to follow, need not also define its width.
R.I. 1893. Clarke v. Town Council of South Kingstown, 27 A.336, 18 R.I. 283.
R.I. 1882. Boston & P.R. Corp. v. Town Council of Lincoln, 13 R.I. 705.

R.I. 1893. Discrepancies merely clerical between the report of a committee of lay out and its accompanying plat are in law unimportant, especially when the highway has been staked out; so, too, is the omission of the word feet after figures on a plat when the plat shows that the figures indicate feet.
Clarke v. Town Council of South Kingstown, 27 A.336, 18 R.I. 283.

R.I. 1882. Under the statute, a decree declaring a highway necessary, and appointing a committee of layout, need not specify the width of the proposed highway, though the width must be specified when driftways are laid out, or existing highways widened, or highways declared such after 20 years' use.
Boston & P.R. Corp. v. Town Council of Lincoln, 13 R.I. 705.

R.I. 1851. The act of May, 1715, relating to laying out highways, as amended in 1767, providing that all highways duly laid out and recorded in the records of the proprietors shall be as good, binding, and valid as though laid out in any other manner whatever, was retroactive in its operation, adopting as public highways all highways so laid out prior to its passage.
Simmons v. Cornell, 1 R.I. 519.

71. Power to Alter.

R.I. 1893. The proprietors' vote of A.D. 1710 changing the highways into driftways was, apart from its recognition of the ways as highways, of no effect.
Almy v. Church, 26 A.58, 18 R.I. 182.

77. Proceedings.

R.I. 1897. In the abandonment of a highway like proceedings are to be had in all respects, so far as applicable, as are provided in case of taking lands for a highway and ascertaining damages caused thereby to the owners of the lands taken.
Dubois v. Sherry, 37 A.344, 20 R.I. 43.

R.I. 1897. A. owned all of the land covered by a highway which, on his petition, was abandoned: Held, that the owners of other lands abutting on the highway had no interest in it.
Dubois v. Sherry, 37 A.344, 20 R.I. 43.

79. Abandonment.

R.I. 1993. Successful abandonment by town of right-of-way causes title to land on which right-of-way sits to revert to owners of property adjacent to right-of-way.
Gen.Law 1956, § 24-6-1.
O'Rielly v. Town of Glocester, 621 A.2d 697.

R.I. 1977. Statute provided that only landowners whose property abutted section of highway to be abandoned were entitled to personal notice of abandonment and other landowners whose property abutted the highway were entitled only to constructive notice by publication, and, as so construed, statute did not deny due process to landowners whose property did not abut abandoned section of highway. Gen.Law 1956, §§ 24-6-1, 24-6-2, U.S.C.A. Const. Amend. 14
D'Agostino v. Doorly, 375 A.2d 948, 118 R.I. 700.

R.I. 1953. In proceedings by town solely to survey, bound and mark out an existing highway, town has no power to abandon a portion thereof by reducing its width. Gen. Laws 1938, c. 72, section 29 Ct seq.
Davis v. Girard, 95 A.2d 847, 80 R.I. 235.

Where town, by a proceeding to survey, bound and mark out an existing highway, made an abortive attempt to abandon a portion thereof by reducing its width, but general assembly subsequently enacted statute expressly validating said abandonment, such statute was of controlling force concerning the validity of the abandonment by the town council. Pub. Laws 1944, c. 1422.
Davis v. Girard, 95 A.2d 847, 80 R.I. 235.

In equity proceeding to establish title in and right to possession of parcel of land in town of North Kingstown known as the Town pound, trial justice was not clearly wrong in finding, on conflicting evidence[1] that parcel was portion of Ten Road Road which had been abandoned by town of North Kingstown, and which reverted to owner of abutting land, under whom complainant claimed. Pub. Laws 1944, c. 1422; Gen. Laws 1938, c. 528, section 26, as amended.
Davis v. Girard, 95 A.2d 847, 80 R.I. 235.

R.I. 1931. public right to established highway could not be abandoned except in manner provided by law for abandonment of highway.
Wall v. Eisenstadt, 154 A.651, 51 R.I. 339.

R.I. 1924. A town in its corporate capacity has no power to lay out or abandon a highway, *and* hence the provision of an agreement relating to a highway improvement that the town is to abandon the old highway" is without legal effect.
Frank W. Coy Real Estate Co. v. Pendleton, 123 A.562, 45 R.I. 477.

An agreement in connection with a highway improvement that "the town is to abandon the old highway, if deemed to refer to the town council, is nevertheless ineffectual, since that body could not by such an agreement bind itself as to its future judgment in the semijudicial proceedings for abandonment.
Frank W. Coy Real Estate Co. v. Pendleton, 123 A.562, 45 R.I. 477.

R.I. 1931. No right in established highway could be obtained by nonuser.
Wall v. Eisenstadt, 154 A.651, 51 R.I.. 339.

R.I. 1903. A highway is not extinguished by adverse user of a private individual.
Knowles v. Knowles, 55 A.755, 25 R.I. 325.

The rights of the public in a highway cannot be lost by mere nonuser.
Knowles v. Knowles, 55 A.755, 25 R.I. 325.

R.I. 1926. Nonuser of highway gives abutting property owner no right therein.
Gill v. Town Council of Jamestown, 133 A.806, 47 R.I. 425.

R.I. 1924. On abandonment by a town of a highway held simply as an easement, the land therein reverts to the former owner without further action of the council.

Frank W. Coy Real Estate Co. v. Pendleton, 123 A.562, 45 R.I. 477.

(D) TITLE TO FEE AND RIGHTS OF ABUTTING OWNERS.

80. Title to Fee in General.

R.I. 1960. Sole abutting owner of land on either side of abandoned highway was presumed to own fee thereto.

Nugent v. Vallone, 161 A.2d 802, 91 R.I. 145.

R.I. 1948. The public acquires only an easement in a highway, and the fee in the soil remains in the owners of adjoining lands unless the contrary appears.

Davis v. Girard, 59 A.2d 366, 74 R.I. 125.

R.I. 1948. The public acquires only an easement in legally established public highway, the fee in the soil remaining in owners of adjoining lands.

Newman v. Mayor of City of Newport, 57 A.2d 173, 73 R.I. 385.

83. Rights as to Soil, Trees, Grass, Minerals and Other Materials Within Highway.

R.I. 1860. In opening a new highway or amending an old one, the town sergeant or surveyor may, under the law, remove growing trees or brushwood from the space appropriated to the highway, but has no right, as included within the original assessment of damages or the easement of the public, to use such trees or brushwood in the building or amendment of the roadway; and, if he does so use them, he becomes a trespasser.

Tucker v. Eldred, 6 R.I. 404.

85. Right of Access.

R.I. 1976. "Right of access" is nothing more than an easement appurtenant to the land abutting a public highway which not only affords the abutting owner with a reasonable opportunity to enter and leave his property through the use of the abutting way but also insures that once the abutter arrives on that way he can proceed from there to the general system of roadways.

Saints Sahag and Mesrob Armenian Church v. Director of Public Works, 360 A.2d 534, 116 R.I. 735.

R.I. 1969. Abutters on state highways have right of access to such highways. Gen. Laws 1956, § 31-1-23(h).

Honig v. Director of Public Works for State of R.I., 258 A.2d 73, 106 R.I. 199.

R.I. 1965. "Right of access" is nothing more than easement appurtenant to abutting land and exists irrespective of whether fee to highway to its middle line is in abutter or public.

Sullivan v. Marcello, 214 A.2d 181, 100 R.I. 241.

R.I. 1948. The right of ingress to and egress from a highway to one's land is not a mere "privilege" but a "property right" appurtenant to the land.

Newman v. Mayor of City of Newport, 57 A.2d 173, 73 R.I. 385.

86. Right to Use of Road.

R.I. 1950. Abutting owner's title to fee to middle of street entitles him to another property right in the whole street by way of easement of right of way.
Wolfe v. City of Providence, 74 A.2d 843, 77 R.I. 192.

Abutters, as members of general public, are entitled to use of street from end to end and from side to side, and if specially damaged by unauthorized obstruction of way, they are entitled to have obstruction abated.
Wolfe v. City of Providence, 74 A.2d 843, 77 R.I. 192.

R.I. 1926. Abutter has rights in a public way both as a member of the general public and by reason of its ownership of abutting land.
Gill v. Town Council of Jamestown, 133 A.806, 47 R.I. 425.

87. Rights and Remedies as to Obstructions and Injuries to Road.

R.I. 1953. Obstruction of public way would not be abatable in equity by injunction, on complaint of landowners not asserting a private easement appurtenant, unless they could show that they had thereby suffered an injury peculiar to themselves or some special injury other than that in which all general public shared.
Daniels v. Blake, 99 A.2d 7, 81 R.I. 103.

R.I. 1950. Abutter is entitled to have entire highway kept open.
Wolfe v. City of Providence, 74 A.2d 843, 77 R.I. 192.

Special rights of owner of property abutting public highway are property of which he cannot be deprived without his consent or without due process of law, and such rights are appurtenant to the land and are within jurisdiction of court of equity to protect.
Wolfe v. City of Providence, 74 A.2d 843, 77 R.I. 192.

Abutters, as members of general public, are entitled to use of street from end to end and from side to side, and if specially damaged by unauthorized obstruction of way, they are entitled to have obstruction abated.
Wolfe v. City of Providence, 74 A.2d 643, 77 R.I. 192.

Abutter is entitled to legal redress if use permitted by municipality practically closes highway.
Wolfe v. City of Providence, 74 A.2d 643, 77 R.I. 192.

R.I. 1883. A way which by user had become public lay between A.'s land and B.'s. The way formerly had belong one-half to each estate. Held, that one could maintain a suit in equity to enjoin its obstruction by the other, the only access to plaintiff's back door being over it.
Gorton v. Tiffany, 14 R.I. 95.

114. Damages from Construction or Repair.

In trespass by a landowner against a town for removing a boundary wall in widening a highway, a member of the highway committee testified that he agreed with plaintiff that a certain sum should be paid to him and that the town would remove the wall and replace it. There was a general verdict for plaintiff, and special answers that the reconstruction of the highway was made by the town with the consent of plaintiff, and that the work of reconstructing the highway was not done by the town, with knowledge of plaintiff, and without objection on his part, until after the work of reconstruction had been completed. Held, that the general verdict was not inconsistent with the first special finding.
Chapman v. Pendleton, 82 A.1063, 34 R.I. 160.

118. In General.

The illegal and unauthorized act of a town surveyor in taking land, and throwing it open for public travel, did not put the town in possession thereof, so as to render it liable for his trespass.
Briggs v. Allen, 52 A.679, 24 R.I. 80.

A surveyor of highways is not the agent of the town to the extent of rendering it liable for his acts outside of those performed in the line of his statutory duties or by direction of the town council.
Briggs v. Allen, 52 A.679, 24 R.I. 80.

154. Buildings or Other Structures Encroaching on Highway.

R.I. 1920. A structure erected on ground subject to an easement for a public way, which interferes with the public use of the land, is a public nuisance.
Armour & Co. v. City of Newport, 110 A.645, 43 R.I. 211.

R.I. 1917. An actual encroachment by a building on a highway is a "public nuisance".
Steere v. Tucker, 99 A.583, 39 R.I. 531.

(B) USE OF HIGHWAY AND LAW OF THE ROAD.

168. In General.

R.I. 1929. Public has easement on land lying within lines of highway.
Allen & Reed v. Preabrey, 144 A.888, 50 R.I. 53, appeal dismissed 50 S. Ct. 66, 280 U.S. 518, 74 L. Ed. 588.

II. TITLE, CONVEYANCES, AND CONTRACTS.

(B) CONVEYANCES IN GENERAL.

54. Sales of Land with Minerals.

U.S.D.C. 1917. Price fixed in contract for purchase of mining claim, which allowed purchaser, upon forfeiture of payments made, to abandon contract, is most uncertain indication of cash value of claim.
Munro v. Smith, 243 F.654, reversed 259 F.1, 170 C.C.A. 1.

R.I. 1859. The term "great hill or ledge of lime rock", in a deed, is to be construed, in order to ascertain its extent and limits, in the light of the circumstances attending the transaction, according to the intent of the parties, derived from the language employed by them, rather than according to geological notions concerning the continuity and extent of the stratum of lime at the place referred to. Where the hill or ledge is described in the deed as "lying southerly from my dwelling house," and another ledge is described as "lying easterly from said dwelling house and northerly from the driftway leading from such great ledge to the lime kilns," the limits thus implied are to be observed, irrespective of the continuity and extent of the stratum of lime.
Dexter Lime Rock Co. v. Dexter, 6 R.I. 353.

MUNICIPAL CORPORATIONS

I. CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION.

(A) INCORPORATION AND INCIDENTS OF EXISTENCE.

1. Nature and Status as Corporations.

R.I. 1932. A city is a "municipal corporation" created by the Legislature.
City of Providence v. Moulton, 160 A.75, 52 R.I. 236.

(B) TERRITORIAL EXTENT AND SUBDIVISIONS, ANNEXATION, CONSOLIDATION, AND DIVISION.

24. Designation of Boundaries.

R.I. 1901. In the plat of outlines made for the town of Providence in 1797. the "cove above Weybosset bridge" is shown as extending up to "Mill bridge". The plat was made in consequence of a vote of the town to appoint a committee to ascertain the boundaries of the cove, and was adopted by the town. In 1870, the State deeded to the city of Providence its interest in the "'cove landings', being all the lands now or heretofore flowed by tide-water above Weybosset bridge." Subsequent to 1823 a basin was established by the Blackstone Canal Co., extending from the tide-lock opposite the present Haymarket street to the atone lock above "Mill bridge", "or however otherwise said cove and river is bounded". After the abandonment of the basin the tide flowed again over the area called the "cove lands". The east and west sides of the basin were built upon, confining the water between banks and apparently extending the Moshassuck River, which originally flowed into the salt water at the dam above "Mill bridge". The petitioner seeks to erect a building over the water at this point, which is called the Moshassuck river, claiming title. At the place in question the tide is perceptible, and in some parts the river-bed is below mean high water: Held, that the "cove above Weybosset bridge" extended up to "Mill bridge", as shown in the plat of outlines made in 1797.
Walsh v. Hopkins, 48 A.390, 22 R.I. 418.

Held, further, that by the deed of 1870 the city succeeded to the title of the State.
Walsh v. Hopkins, 48 A.390, 22 R.I.. 418.

Held, further, that the title to all tide-flowed land being in the State, the watercourse must be treated as public water.
Walsh v. Hopkins, 48 A.390, 22 R.I. 418.

Held, further that being public waters, the maintenance of a building over the water by predecessors in title of the petitioner was by sufferance and not by right, and consequently the petitioner acquired no title to continue it.
Walsh v. Hopkins, 48 A.390, 22 R.I. 418.

Held, further, that, the fact that the plat of the cove lands made at the time of the deed to the city stopped at Smith Street Bridge was immaterial, the deed making no reference to the plat and the terms of the grant including the land above it.
Walsh v. Hopkins, 48 A.390, 22 R.I. 418.

Held, further, that where the layout of a street bounds it on a river the line is carried to the river-bank, wherever it may be, irrespective of the fact that the street has not been worked its full width, and that the fact that a small strip of land was left in order to keep the street in a straight line would not amount to an abandonment of that part of the location.
Walsh v. Hopkins, 48 A.390, 22 R.I. 418.

269. Streets and Other Ways.

U.S. 1860. Public officers of a town have no power to lay out a town way between high water and the channel of a navigable river.
Richardson v. City of Boston, 65 U.S. 188, 24 How. 188, 16 L.Ed. 625.

Public officers have no power to lay out a "town way" for boats and vessels on high seas.
Richardson v. City of Boston, 65 U.S. 188, 24 How. 188, 16 L.Ed. 625.

XI. USE AND REGULATION OF PUBLIC PLACES, PROPERTY, AND WORKS.

(A) STREETS AND OTHER PUBLIC WAYS.

646. Establishment in General.

R.I. 1978. A paper street is a street which appears on a recorded plat but which in actuality has never been opened, prepared for use, or used as a street.
Robidoux v. Pelletier, 391 A.2d 1150.

R.I. 1947. State say authorize cities and towns to establish public highways and may impose upon them duty of maintaining such highways safe and convenient for public travel.
Di Palsa v. Zoning Bd. of Review of Town of Bristol, 50 A.2d 779, 72 R.I. 286.

R.I. 1893. A land owner executed, acknowledged and recorded a deed to the city of Providence conveying a strip of land. Between the description of the land in the deed and the habendum clause were the words: "This conveyance is made upon the condition that the said strip of land shall be forever kept open and used as a public highway and for no other purpose." Held, that under Gen. Stat. R.I. cap. 59, section 25; Pub. Stat. R.I. cap. 64, section 25, the strip of land became a highway on the record of the deed without formal acceptance by the board of aldermen of Providence.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

Clause in deed stating that conveyance was made upon condition that strip should be forever kept open as public highway did not create a condition subsequent.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

The clause in deed stating that conveyance was made upon condition that strip should be forever kept open as public highway did not create a condition that the city of Providence should open and use the strip as a highway within a reasonable time.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

Strip of land deeded to city was none the less a highway because terminating on private property. A cul de sac may be a highway.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

Clause in deed stating that conveyance was made upon condition that strip should be forever kept open as public highway merely declared the purpose for which the strip of land conveyed was to be used.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

649. Establishment by Statute or Statutory Proceedings.

For there to be an effective dedication of property for public use, "two elements must exist: (1) a manifest intent by the landowner to dedicate the land in question, called an incipient dedication or offer to dedicate; and (2) an acceptance by the public either by public use or by official action to accept the same on behalf of the municipality."
Robidoux, 120 R.I. at 433, 391 A.2d at 1154.

R.I. 1968. Where documents concerning establishment of extension of street were duly executed and filed according to law, their subsequent loss or disappearance did not defeat right of public in street as it was laid out in 1852.
Spouting Rock Beach Ass'n v. Garcia, 244 A.2d 871, 104 R.I. 451.

R.I. 1938. Motion that bill of exceptions be dismissed on ground that appellant had no interest in land where city sought to establish street as public highway, was denied, where on date of order of board of aldermen establishing public highway, appellant was the record owner in fee of the land in question. Pub. Laws 1917, c. 1549.
Marwell Const. Co. v. Mayor and Board of Aldermen of City of Providence, 200 A.976, 61 R.I. 314.

R.I. 1852. A committee appointed by the town council of p. in 1817 to lay out, among other streets, "a street in continuation of F. street, and of the same width to the water," reported their proceedings, with a plat of the ways laid out, in which they stated: "We laid out and continued F. street in the same course and width, two hundred and eighty feet from S. to P. street and from p. street to river." After the coming in of the report, the town council in 1818 voted that it should be accepted, and that certain streets therein mentioned should be established, and further voted, as to the continuation of F. street and E. street, and certain other streets laid out, that "the same not being established by the council, all consideration respecting them is postponed, and they are not to be established until it be proved to the satisfaction of the council that said streets are made passable." No further action was taken on the report until 1848, when the board of aldermen, who succeeded the town council, referring to the report of the committee as to the laying out of this street, and to the postponement of the consideration thereof until it was proved to the satisfaction of the council that "said street was made passable", voted that "said street, extending from P. street, is hereby declared to be a public highway, to be hereafter repaired at the expense of the city." Held that, in order to give effect to the report of the committee, it must be received and approved by the town council, and the ways laid out ordered to be established, and that if, after the lapse of 30 years, the proceedings of the council could be revived by the vote of the board of aldermen, yet, to have any effect, the report of the committee must have been received and approved, and the street laid out have been established as a whole, or rejected as a whole, and that the vote declaring "said street, extending from P. street" to be a public street, referring to but a portion of the way reported by the committee as having been laid out and continued "from S. to p.

street, and from P. street to the river", was void.
Simmons v. Mumford, 2 R.I. 172.

650. General Plan and Maps or Plats.

R.I. 1894. The owner of an estate purchased with reference to a recorded plat having an adjoining street marked out thereon, has an interest in such street notwithstanding it has been made a public highway, as the owner of a right of way therein, which underlies the public right in the Street, and which would remain as appurtenant to his lot, if the street should be abandoned as a highway. When, therefore, such right of way is taken by permanently closing the street at one end under condemnation proceedings, the lot owner is entitled to compensation therefor.
Johnsen v. Old Colony R. Co., 29 A.594, 18 R.I. 642, 49 Am. St. Rep. 800.

Moreover, it is well settled in Rhode Island that "[t]he placing of any street or street line upon the official map does not in and of itself constitute nor is it deemed to constitute the opening or establishment of any street or the taking or acceptance of any land for street purposes. . . ." Section 45-23.1-1.1(a).

R.I. 2009. Thus, it is understood that "a platted street does not become a public highway until it has been accepted by the public; either by official action of the city or town or by 8 use of the roadway by the public."
Town of Barrington v. Williams, 972 A.2d 603, 611 (citing Newport Realty, Inc. v. Lynch, 878 A.2d 1021, 1033 (R.I. 2005)

R.I. 1998. When a property owner subdivides land and "sells lots with reference to a plat, he [or she] grants easements to the purchasers in the roadways shown on the plat, with or without later dedication of the roadways to the public."
Kotuby v. Robbins , 721 A.2d 881, 884

R.I. 1992. "[t]he recording of a plat or subdivision, which includes streets, constitutes the dedication of such streets to the public,"
Catalano v. Woodward , 617 A.2d 1363, 1368

R.I. 1956. "Where a plat is recorded with streets delineated thereon and lots are sold with reference to the plat, there is, so far as the public is concerned, an incipient dedication of such streets."
Parrillo v. Riccitelli, 84 R.I. 276, 279, 123 A.2d 248, 249 (citing Brown v. Curran, 83 A. 515, 518 (1912)).

R.I. 1982. the Rhode Island Supreme Court established that a proposed street in a plat plan, which was not dedicated or used by the public at large as a roadway, may be acquired by adverse possession. 447 A.2d 361, 367

652. Proceedings to Determine Existence or Location.

R.I. 1911. A town council, having the management of the prudential affairs and interest of the town, and having the care of the highways, even in the absence of special statutory authority therefor, would have the power, without notice and in such manner as it saw fit, to survey, bound, and mark out the lines of an existing highway, and to take action to prevent encroachments and remove obstructions upon the same.

Horgan v. Town Council of Jamestown, 80 A.271, 32 R.I. 528.

Evidence in a proceeding to bound and mark a street held to show that the street does not include any land belonging to appellant.
Horgan v. Town Council of Jamestown, 80 A.271, 32 R.I. 528.

A proceeding by a town to bound and mark out part of a street is not governed by Gen. Laws 1896, c. 71, providing for laying out highways.
Horgan v. Town Council of Jamestown, 80 A.271, 32 R.I. 528.

R.I. 1868. Where the public are entitled to an easement in certain premises, either as a common, a highway, or a landing place, the town in which the premises are situated has no authority to bind the public in regard to the extent of the easement by submission to arbitration.
State v. Peckham, 9 R.I. 1.

654. Evidence as to Existence or Location.

R.I. 1968. Superior court determination that western terminus of Street, across which plaintiff had erected fence, was shore of ocean rather than point east of shore at which plaintiff had erected fence was not unreasonable or clearly wrong.
Spouting Rock Beach Ass'n v. Garcia, 244 A.2d 871, 104 R.I. 451.

Substitution or transfer of way theory was not applicable, in proceeding to enjoin city director of public works from carrying out order given to him by members of city council to remove fence and shrubs maintained by plaintiff across public highway, in absence of proof that any other highway had been substituted for highway in question as it was laid out in 1852.
Id.

R.I. 1930. Evidence to suit to enjoin interference with lot owner's use of street, held to show that public acquired interest therein by user. Gen. Laws 1923, c. 95, section 26.
Trafton v. Downey, 151 A.4, 51 R.I. 87.

R.I. 1901. What is the legal line of a street must be determined by the record of the layout, and not by the line of the street as actually used.
Walsh v. Hopkins, 48 A.390, 22 R.I.. 418.

R.I. 1898. The existence of a highway must be proved either by record, or by immemorial use and repair, or by dedication and acceptance; and hence the mere statement of a member of a town council that a locus in quo was part of a highway is not probative of that fact.
Stone v. Langworthy, 40 A.832, 20 R.I.. 602.

656. Change Of Grade.

R.I. 1934. Once grade of street is legally established, it can be changed only by statutory procedure, and doctrine of waiver or estoppel cannot be invoked to establish change by user. Gen. Laws 1923, c. 96, section 27.

R.I. 1898. One whose estate, abutting on a highway, is injured by an unauthorized change of the grade of such highway, caused or done by the town council or surveyor of highways, is not entitled to a writ of mandamus to have the former grade restored.
Sweet v. Conley, 39 A.326, 20 R.I. 381.

A surveyor of highways has no power to change the established or actual grade of a highway, except in so far as such change may be necessary to make the highway safe and convenient for travelers.
Sweet v. Conely, 39 A.326, 20 R.I. 381.

R.I. 1888. pub. Laws R.I. cap. 634, of March 9, 1866, gave town councils power to direct surveyors of highways to grade or change the grade of any street, and provided that no change of grade should be made without notice. In 1867 a town council appointed a committee to report a grade for P. street; the town council accepted the report, and voted that "the grade be placed" as therein stated. In 1872 the town council directed the surveyor to grade P. Street, and to report a profile of the street. On this report the town council caused notice to be given. In 1880 the surveyor worked p. Street down to grade. Held, that the grade worked in 1880 was the first legal and actual grade.
Gardiner v. Town Council of Johnston, 12 A.888, 16 R.I. 94.

657. Vacation or Abandonment.

R.I. 1901. Under Gen. Laws c. 71, section 28, providing that town councils may abandon the whole or any part of a highway, the question of abandonment is left to the discretion of the town council or board, irrespective of the question whether or not the highway has ceased to be useful to the public generally.
Attorney General v. Shepard, 49 A.39, 23 R.I. 9.

Gen. Laws cap. 71, § 28, confers authority upon the board of aldermen of the city of providence to abandon a public highway without a preceding request from the city council to abandon the same.
Attorney General v. Shepard, 49 A.39, 23 R.I. 9.

The question of abandonment of a highway has been left to the discretion of the board of aldermen by Gen. Laws cap. 71, and its action is not subject to review by the court except upon appeal duly taken.
Attorney General v. Shepard, 49 A.39, 23 R.I. 9.

657(3). Abandonment or Nonuser.

R.I. 1892. A strip of land, conveyed to a city on condition that it shall be forever kept open and used for a highway, and for no other purpose, becomes a highway from the time that the deed, duly acknowledged, is recorded, as provided in Pub. St. c. 64, § 25, acceptance by the public being presumed; and the mere fact of nonuser will not divest it of that character, but it will continue to be a highway until abandoned or declared useless as such by the proper municipal authorities.
Greene v. O'Connor, 25 A.692, 18 R.I. 56, 19 L.R.A. 262.

R.I. 1900. Since an easement to light and air cannot be acquired by prescription, but only by covenant or special grant, the trustees of a church were not entitled to question the validity of proceedings for the abandonment of a street as a public highway on the ground that such abandonment would interfere with their easement to light and air by prescription.
Trustees Mathewson St. Methodist Episcopal Church v. Shepard, 46 A.402, 22 R.I. 112.

"When a highway is once established as such by the action of the proper [public] authorities, it does not cease to be such, even though unused for many years, until it has been discontinued by the proper

authorities." Knowles, 25 R.I. at 330, 55 A. at 757 (quoting H.G. Wood, The Law of Nuisances, § 297, at 372 (3d ed. 1893)); see also Wall v. Eisenstadt, 51 R.I. 339, 345, 154 A. 651, 653 (1931).

R.I. 2001. When there has been no showing of acceptance by the public, this Court has not hesitated to declare that a disputed right of way was not a public road. In such instances, a claim of title by adverse possession can be entertained.

Parrillo , 84 R.I. at 279, 123 A.2d at 249 20 (citing Marwell Construction Co. , 61 R.I. at 323, 200 A. at 980); M & B Realty, Inc. v. Duval , 767 A.2d 60, 64-65

663. Ownership on Vacation.

R.I. 1966. Where owner of tract extending to bay on the east platted a part and laid out thereon several streets, one bounding the plat on the southeasterly side, and about a year and five months after he died the city abandoned the street, a deed by his two children, to whom he had left all his property equally after selling the platted land, to the easterly half of the street together with the land southeast thereof to mean high-water mark conveyed good fee simple title.

Volpe v. Marina Parks, Inc., 220 A.2d 525, 101 R.I. 80.

Abutting owner's title to fee to middle of street entitled him to another property right in the whole street by way of easement of right of way.

Wolfe v. City of Providence, 74 A.2d 843, 77 R.I. 192.

R.I. 1918. In absence of evidence to contrary, presumption is that plaintiff owns fee of street adjacent to his land, subject at most to easement as way on part of public.

Adams v. John R. White & Son, 103 A.230, 41 R.I. 157.

R.I. 1903. The owners of a lot on one side of a street sued to enjoin the owner of lots on the opposite side from closing the street. Previous thereto complainants' grantor had been sued by respondent for maintaining an obstruction in the street, which he claimed was within his own line, the width of the street being disputed. Held, that this obstruction was not an abandonment of the easement in the street.

Healey v. Kelly, 54 A.588, 24 R.I. 581.

The grantee and his assigns were entitled to an easement in the street to its full length, and not merely to that part of the street directly in front and between the lines of the lot.

Healey v. Kelly, 54 A.588, 24 R.I. 581.

R.I. 1895. The rights which a lot owner on a plat has in the platted streets prior to their acceptance as public highways are limited to the use of them as they existed when he acquired his lot, or the use of them in such condition as he can put them without interfering with the rights of the other owners on the plat.

Swan v. Colville, 32 A.854, 19 R.I. 161.

665. In General.

R.I. 1867. A deed on lots, describing them only by numbers on a plat, conveys no rights in land embraced in a street laid down on such plat adjoining the lots, except as the same is subject to the public easement.

Tingley v. City of providence, 8 R.I. 493.

669. Access To And Use Of Roadway.

R.I. 1965. Ownership of underlying fee to middle line of boulevard, a municipal highway, did not give owner right to direct access to boulevard.

Sullivan v. Marcello, 214 A.2d 181, 100 R.I. 241.

Neither abutting property owner's right of access to boulevard, a municipal highway, nor any title he might have to underlying fee of boulevard to its middle line entitled him to have it kept open from side to side and from end to end for purposes of direct access of vehicles on boulevard to his property.

Id.

R.I. 1929. Abutting owner has same rights to use of streets as public including right of ingress and egress.

Allen & Reed v. Presbrey, 144 A.888, 50 R.I. 53, appeal dismissed 50 S. Ct. 66, 280 U.S. 518, 74 L. Ed. 588.

Abutting owner's right of ingress and egress is property right, which cannot unreasonably be interfered with.

Allen & Reed v. Presbrey, 144 A.888, 50 R.I. 53, appeal dismissed 50 S. Ct. 66, 280 U.S. 518, 74 L. Ed. 588.

R.I. 1895. A. and B. owned lots on the same plat fronting on a private Street marked out on the plat as running from a public highway to the providence River. A.'s lot was on the edge of a bluff, B.'s lot was on the flats along the shore of the river, and between them the street descended so abruptly as to be impassible. Before B. acquired his lot, A. and other lot owners on the bluff graded the street from the highway to the edge of the bluff, and in order to prevent the soil of the street in front of their lots from being washed away, built and for more than twenty years have maintained a bulkhead with a concrete gutter and spouts to discharge the water flowing on the street. The lot owners on the bluff having refused to join with B. in grading down the declivity so as to sake a way for him from his lot through the platted street to the highway. Held, that B. had no right to tear up the concrete gutter, destroy the bulkhead and dig up the soil in the Street in front of A.'s lot, thereby impairing or destroying A.'s access to his lot.

Swan v. Colville, 32 A.854, 19 R.I. 161.

NAVIGABLE WATERS

I. RIGHTS OF PUBLIC.

1. Navigability in General.

R.I. 1940. A river is "navigable" in fact if it is susceptible of use, in its ordinary condition, as a highway for commerce over which trade and travel are or may be conducted in customary modes of trade, and travel on water, and, to be navigable, it must be generally and commonly useful to purposes of trade and commerce.
Asselin v. Blount, 14 A.2d 696, R.I. 293, reargument denied 16 A.2d 328, 65 R.I. 443.

2. Power to Control and Regulate.

U.S. 1860. Public officers of a town have no power to lay out a town way between high water and the channel of a navigable river.
Richardson v. City of Boston, 65 U.S. 188, 24 How. 188, 16 L.Ed. 625.

Public officers have no power to lay out a "town way" for boats and vessels on high seas.
Richardson v. City of Boston, 65 U.S. 188, 24 How. 188, 16 L.Ed. 625.

4. Ownership of Waters.

R.I. 1901. A stream in which the tide is perceptible is public waters, though not navigable.
Walsh v. Hopkins, 48 A.390, 22 R.I. 418.

U.S.D.C. 1920. The power of the state, in the interest of commerce and navigation, to establish harbor lines, is a continuing power.
Rocky Point Oyster Co. v. Standard Oil Co. of New York, 265 F. 379.

R.I. 1894. The fixing of a harbor line by the harbor commissioners does not deprive a riparian owner of access to his land, but merely determines the line to which he may fill out encroaching on public rights.
Sherman v. Sherman, 30 A.459, 18 R.I. 504.

Where the harbor line as fixed by the harbor commissioners is so run as to protect the rights of all riparian owners in proportion to the frontage of their lands, a riparian owner cannot attach the action of the commissioners.
Sherman v. Sherman, 30 A.459, 18 R.I. 504.

R.I. 1995. "Harbor lines" were legislative determination that encroachment on waters up to harbor line would not constitute interference with fishery, commerce or navigation.
Greater Providence Chamber of Commerce v. State, 657 A.2d 1038.

16. Right in General.

U.S. 1854. The right of littoral proprietors to flats under the ordinance of 1641 was subject to the condition that until they occupied the space between high and low water mark the public had a right to use

it for purposes of navigation.
City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

U.S.D.C. 1920. The public right of navigation is the dominant right in navigable waters, and this includes the right to use the bed of the water for every purpose which is an aid to navigation.
Rocky Point Oyster Co. v. Standard Oil Co. of New York,

R.I. 1903. The pub1ic's right to use tide lands below high-water mark for passage, navigation, and fishing extends to all lands below high-water mark not used, built upon, or occupied 50 as to prevent the passage of boats and the natural ebb and flow of the tide.
Rhode Island Motor Co. v. City of providence, 55 A.696.

19. Obstruction of Navigation in General, and Injuries Therefrom.

R.I. 1901. A riparian owner has no right to maintain an obstruction over a stream in which the flow of the tide is perceptible.
Walsh v. Hopkins, 48 A.390, 22 R.I. 418.

II. LANDS UNDER WATER.

36. Ownership and Control in General.

C.A.R.I. 1976. "Historic bays" are those over which a coastal nation has traditionally asserted and maintained dominion with the acquiescence of foreign nations.
Warner v. Dunlap, 532 F.2d 767.

Bays are among those bodies of water which join the open sea and are to be distinguished from interior waters such as lakes and rivers.
Id.

D.C.R.I. 1975. "Historic bays" are bays over which coastal nation has traditionally asserted and maintained dominion with acquiescence of foreign nation.
Warner v. Replinger, 397 F. Supp. 350.

R.I. 1960. While state holds title to soil under public waters of state it holds such title not as proprietor but only in trust for public to preserve such waters, and acts of State officers in assenting to riparian owner's erection of pier were not tantamount to giving away public lands. Gen. Laws, 1956, § 46-6-2; Const. Art. 1 and 17; Art 3; Art. 4, §§ 1, 2, 14.
Nugent v. Vallone, 161 A.2d 802, 92 R.I. 145.

R.I. 1867. Title to the bed of the Moshassuck River at Railroad Crossing Street in Providence, Act of May 28, A.D. 1707, R.I. Col. Ree. Vol. IV, p. 24, explained.
Bassett v. Franklin, 10 A.592, 10 A.631, 15 R.I. 572.

36(1). Ownership by State.

R.I. 1920. When the colony became independent, the fee to the land below high-water mark, which had been in the crown, passed to the State, and the General Assembly succeeded to the rights of the king and Parliament to control or alienate such land.
Armour & Co. v. City of Newport, 110 A.645, 43 R.I. 211.

R.I. 1906. The common-law doctrine, that the ownership of and dominion over lands covered by tide waters are in the State within which such lands are located, is in force in this country, except as it has been changed by local legislation or custom; such ownership and rights being limited in their exercise to acts which can be done without impairment of the interest of the public in the waters, and subject to the right of Congress to control navigation where necessary for the regulation of commerce among the states or with foreign nations.

City of Providence v. Comstock, 65 A.307, 27 R.I. 537.

R.I. 1897. The legislation and litigation relating to the "cove lands" in the city of Providence reviewed.

Murphy v. Bullock, 37 A.348, 20 R.I. 35.

R.I. 1912. An owner of land bounding on salt water has title only to ordinary high-water mark; the fee below that mark being in the state.

Narragansett Real Estate Co. v. Mackenzie, 82 A.804, 34 R.I. 103.

U.S. 1854. The proprietor of land bounding on tidewaters has such a propriety in the flats to low-water mark that he may maintain trespass quare clausum fregit against one who shall enter and cut down piles placed thereby the owner.

City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

Under Massachusetts law, the grantee of land bounding on navigable waters where the tide ebbs and flows acquires a legal right and vested interest in soil of the shore between high and low water mark, and not a mere indulgence or gratuitous license.

City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

R.I. 1912. Pub. Laws 1745-52, p. 21, held not to bring over into Rhode Island the colonial ordinance of 1641-47, Colonial Laws Mass. 1672, reprint 1887, pp. 90, 91, of Massachusetts Bay Colony, as affecting the boundaries of tide lands.

Narragansett Real Estate Co. v. Mackenzie, 82 A.804, 34 R.I. 103.

R.I. 1903. Where a harbor line has been established in front of tide lands, the riparian owner is entitled to carry the upland or high-water mark out from the natural shore, but, until the shore is actually filled out, the public's right over the land exists to the same extent as before.

The rights of the state to tide lands below high-water mark are held in trust for the benefit of the inhabitants of the State, and not as a private proprietor.

Rhode Island Motor Co. v. City of Providence, 55 A.696.

R.I. 1805. The private rights which a riparian proprietor on tide water has to the shore between high and low water mark are in the nature of franchises or easements, the fee of the shore being in the State as trustee for the public.

Alleen v. Allen, 32 A.166, 19 R.I. 114, 30 L.R.A. 497, 61 Am.St.Rep. 738.

R.I. 1886. Tide-flowed lands in Rhode Island belong to the State. "This court has decided that the title to the soil under tide-water is in the State, and that even the establishment of a harbor line does not transfer the fee to the riparian owner, but only operates as a license to him to fill out and incorporate the flats with the upland. Gerhard v. Seekonk River Bridge Com'rs, 5 A.199, 15 R.I. 334.

R.I. 1906. The encroachment of riparian proprietors on lands over which the tide flows within the town of Providence is regulated and controlled by the town government, and the proprietors have no authority to occupy such tide lands by virtue of their ownership of the lands adjoining.

City of Providence v. Comstock, 65 A.307, 27 R.I. 537.

Title to land along the original shore of a non-navigable river in which the tide ebbs and flows, together with title to filled land between such land and the river as it now exists, does not give the owner or his lessee the right to occupy the bed of the river as against the state or its assignees.

City of Providence v. Comstock, 65 A.307, 27 R.I. 537.

Riparian rights do not attach to any lands which do not extend to the water, and such rights do not necessarily attach to a state grant of lands lying below tidal highwater mark.

City of Providence v. Comstock, 65 A.307, 27 R.I. 537.

R.I. 1903. While the title to land below high-water mark was in the crown prior to the independence of the state, and the grant from the crown in the charter endowed the colonial Legislature with power to regulate the use and improvement of tide-flowed land, so that any disposition of such land made by the towns or assumption of rights by individuals without authority from the crown or colonial government were mere usurpation's, yet by the act of 1707, 4 Col.Rec. 24, authority was expressly granted to each town in the colony to settle waters bordering on their respective townships by building houses, warehouses, wharfs, laying out lots, or any other improvements, as the body of freeholders or freeman in each town should see fit.

New York, N.H. & H.R. Co. v. Horgan, 56 A.179, 25 R.I. 408.

R.I. 1897. Where an individual interferes with a riparian owner's use of tide flowed lands, such owner may have the right to construct wharves, buildings and other improvements in front of his land if the public use be not impaired thereby; but that right is not recognized against the State or those who act under its authority. The rule stated, however, is more applicable to a good sized body of water than to a narrow stream where any occupation of the land must obstruct and deflect the flow of water.

Murphy v. Bullock, 37 A.348, 20 R.I. 35.

U.S. 1854. The proprietor of land bounding on tidewaters has such a propriety in the flats to low-water mark that he may maintain trespass quare clausum fregit against one who shall enter and cut down piles placed there by the owner.

City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15

R.I. 1879. In 1855 a harbor line was established for the west side of Providence river. The line was straight, except that it made a slight turn easterly and outward before striking the projecting headland of Field's Point, and north of this headland was a deep indentation in the shore. On a bill to determine the boundary from the shore to the harbor line between two riparian estates, one of which had a shore front slightly lengthened by the curve of the shore, it appeared that many estates along the harbor line had been filled out to it and occupied, and that the harbor line was a long one. Held, that the boundary line between the premises was to be run from the termination of the upland boundary on the shore perpendicular to the harbor line.

Aborn v. Smith, 12 R.I. 370.

37. Grants To and Acquisition by Private Owners or Municipalities.

R.I. 1995. Under public lands trust doctrine, lands below high-water mark will not be appropriately, or conferred upon, private individuals for purely private benefit.
Greater Providence Chamber of Commerce v. State, 657 A.2d 1038

R.I. 1920. The colonial act of 1707, authorizing the various towns to settle and improve coves, waters, and banks, and to authorize such improvements by others, did not grant any title to the lands.
Armour & Co. v. City of Newport, 110 A.645, 43 R.I. 211.

R.I. 1897. In 1870 the State, being the owner of the "cove lands" in the city of Providence, conveyed them to the city by deed in which the descriptive part contained the words, "now or heretofore flowed by tidewater". A large tract of land had formerly been a part of the cove, and was still called "cove lands", but the tide had ceased to flow thereon because of the filling by the city in 1857. Held, that the deed was intended to cover land that was then flowed by the tide and also land that had been a part of the cove and was still traceable as such and had not been already the subject of legal grant or appropriation, and therefore included the tract of land mentioned.
Murphy v. Bullock, 37 A.348, 20 R.I. 35.

A riparian owner erected on a part of "cove lands" supports for a structure, and the officers and agents of the city removed them; thereupon he brought his action of trespass. Held, that under the title given by the deed the city had a right to remove the obstructions.
Murphy v. Bullock, 37 A.348, 20 R.I. 35.

R.I. 1886. Persons in Rhode Island, holding tide-flowed flats under leases from the riparian owners, have no such property in the flats as will entitle them to compensation because of the building of a bridge on the flats by authority of the state.
Gerhard v. Seekonk River Bridge Com'rs, 5 A.199, 15 R.I. 334.

U.S. 1854. Under Ord. 1641, section 3, giving the proprietor of upland to low-water mark where the tide doth not ebb more than 100 rods, and not more wheresoever it ebbs further, the grantee of land bounded on navigable waters takes a vested interest in the soil of the shore to low-water mark, and not a mere revocable or gratuitous license.
City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

R.I. 1876. Where land bordering on tide water is platted into house lots, some of which extended below low-water mark, and line outside of which no lots are platted, and, after the lots have been conveyed, a harbor line is fixed by the State, running in front of the lots, the land between high-water mark and any lot not touching high-water mark with the right to fill to the harbor line does not pass by the conveyance.

R.I. 1897. Plaintiff's claimed by riparian right the bed of a stream in front of their premises. Prior to 1823 the land in question was flowed by the tides. The M. river then emptied into a salt-water cove at some distance above the place, and a canal company was authorized to erect dams to cut off the tides, and to construct necessary basins. A dam was built below the land in question, and a large area, including said land, was inclosed for a boat basin. The company afterwards conveyed the westerly portion of the basin to a railroad company. In

connection with the grant to the canal company, a street was laid out along the easterly side of the basin and in front of plaintiff's estate, and this street and the land occupied by the railroad company on the opposite side made a narrow channel, through which the N. river was brought down to the cove basin subsequently built. Such prolongation has since been called the N. river, and at the point in question there is a slight rise and fall of the tides. In 1849 the charter of the canal company was repealed on condition that the lands covered by the canal should revert to the original owners, and the land in question reverted to the state. At the same time the city of P. was authorized to maintain the dam for reservoir purposes. Held, that a deed to the city of P. in 1870 of all the state's interest in and to the 'cove lands', so called, * * * being all the lands in said city of P. now or heretofore flowed by tide water", passed the land in suit.

Murphy v. Bullock, 37 A.348, 20 R.I. 35.

R.I. 2019. the Supreme Court has established a two-part test that enables littoral owners to acquire the land submerged beneath his or her shoreline, harbor line, or otherwise. First, the landowner must fill in the land with the express or implied approval and acquiescence of the state. Greater Providence Chamber of Commerce, 657 A.2d at 1044. Second, the landowner must improve "the land in justifiable reliance on the approval." Id. These requirements allow the landowner "to establish title to that land that is free and clear," and once so acquired, "the state cannot reacquire it on the strength of the public-trust doctrine alone." Id.

H.V. Collins Propeties, Inc. v. State of Rhode Island

38. Reclamation and Improvement.

R.I. 1995. Public trust doctrine was extinguished in land created by filling in tidal seawater cove when filled land was conveyed by legislative grant to city, and thus current owners, who were city's successors in interest, had fee simple absolute title to land, construction of public streets between private property and saltwater to prevent riparian rights from arising, and special legislation dealing with cove lands, called into direct question status of any common-law riparian rights.

Greater Providence Chamber of Commerce v. State, 657 A.2d 1038

Public trust doctrine in land reclaimed from public waterways can be extinguished by valid legislative state grant.

Id.

Gas utility and electric utility held fee simple absolute title to land reclaimed from sea by placing of fill below mean high tide, and such land was not subject to public trust grants, despite lack of express legislative grant or conveyance, where utilities had express, or at least tacit, approval to fill land, and they built plants on land in reliance thereon.

Id.

Test for ownership rights in filled tidal lands should be applied on case-by-case basis according to facts in each situation.

Id.

Littoral owner who fills along his or her shoreline, whether to harbor or otherwise, with acquiescence or express or implied approval of state and improves upon land in justifiable reliance on approval, is able to establish title to that land that is free and clear; owner may pursue

course of action seeking to convey deed to that property to himself or herself and become owner in fee simple absolute provided that owner has not created any interference with public trust rights of fishery, commerce and navigation.
Id.

Once littoral owner acquires title to filled shoreline land in fee simple absolute, state cannot reacquire it on strength of public trust doctrine alone.
Id.

State can, at any time, place restrictions on filling in of shoreline provided that it does so before landowner has changed position in reliance on implied or express government permission to fill and develop shoreline.
Id.

R.I. 1991. To claim ownership rights in land created by dredging of bay, owners of property which previously abutted bay had to prove that they, through their predecessors, were entitled to littoral rights to tidelands that were filled.
Hall v. Nascimento, 594 A.2d 874.

Absent showing of legislative grant by state of filled or submerged land which had been owned in fee by state and was subject to public trust doctrine, such property uncovered by dredging of bay remained property of state; but private owners who had retained landward area when other lots were conveyed maintained certain littoral rights in this area, as long as their use of area was no inconsistent with public trust.
Id.

R.I. 1881. The upland boundary between A. and B. was in line which, if prolonged, would meet the harbor line obliquely. No agreement existed between the predecessors in title of A. and B. as to the prolongation of the upland boundary, and no such recognition of the prolongation as could effect an estoppel. Whatever recognition there had been was before the establishment of the harbor line, and when such prolongation coincided with the proper line of land made by filling in between the shore line and the harbor line. Held, in an action to determine the title to land made by filling in from the former shore line to the harbor line, that the dividing line between the premises should be drawn from the termination of the old shore of their upland boundary, perpendicular to the harbor line.
Manchester v. Point St. Iron Works, 13 R.I. 355.

R.I. 1879. The establishment of a harbor line permits the riparian owner to take and occupy the tide-flowed land by filling in, as well when his ownership is acquired by adverse possession as when it is acquired in any other manner.
Aborn v. Smith, 12 R.I. 370.

R.I. 1876. Where land bordering on tide water is platted into house lots, some of which are extended below low-water mark, and all of which are defined shoreward by a fixed line, outside of which no lots are platted, and after the lots have been conveyed a harbor line is fixed by the state, running in front of the lots, the right to fill to the harbor line does not pass by the conveyance.
Bailey v. Burges, 11 R.I. 330.

Where land bordering on tide water is platted into house lots, some of which extend below low-water mark, all the lots being defined shoreward by a fixed line, outside of which no lots are platted, and after the lots have been conveyed a harbor line is fixed by the State, running in

front of the lots, although the fee of the soil below high- water mark is in the state, yet the establishment of a harbor line is permission given by the state to fill out to it.

A grantee of a lot of land touching tide water who fills out to the harbor line fixed by the State holds the filled land directly from the state, and not under his grantor.
Bailey v. Burges, 11 R.I. 330.

III. RIPARIAN AND LITTORAL RIGHTS.

R.I. 1873. A solid rock projecting out to the main channel of a navigable stream between two adjoining proprietors has preserved the shore of one from detrition, but allowed quite a deep inward curve beyond it, while the shore of the other conformed more to the course of the river. Held, that the water front of the proprietors should be determined by drawing a line along the main channel in the direction of the general course and from said line, at right angles to it, drawing a line to meet the original division line on the shore.
Thornton v. Grant, 10 R.I. 477, 14 Am.Rep. 701.

41. Shores and Banks.

U.S. 1856. Public officers of town have no right to lay out town way between high water and channel of navigable river or appropriate shore or flats to use of inhabitants of town in form of way or road.
Richardson v. City of Boston, 60 U.S. 263, 19 How. 263, 15 L.Ed. 639.

R.I. 1901. History of littoral rights, and review of Rhode Island cases.
Carr v. Carpenter, 48 A.805, 22 R.I. 528, 53 L.R.A. 333.

R.I. 1959. The right to control up to harbor line of the city wharf would include the right to tie up to the face of the dock, and control out from the harbor line was vested in the state.
Thompson v. Sullivan, 148 A.2d 130, 88 R.I. 305.

U.S. 1854. By the old laws of Massachusetts a littoral proprietor of land owned down to low-water mark, and the city of Boston, having the same rights as other littoral proprietors, consequently had control over a dock which was situated between two wharves, one end of the dock being at high-water mark and the other at low-water mark, and the city might construct a sewer for the purpose of carrying off the drainage from the high to the low water end of the dock.
City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

An owner of upland bordering salt water cannot maintain trespass or ejectment against defendants for a wharf and a building located on tide land below high-water mark, title to which is in the state.
Narragansett Real Estate Co. v. Mackenzie, 82 A.804, 34 R.I. 103.

R.I. 1873. The erection of a wharf in tide waters is not a nuisance, if navigation is not injured by the erection.
Thornton v. Grant, 10 R.I. 477, 14 Am.Rep. 701.

R.I. 1897. Riparian owners have no right to construct wharves and other improvements in front of their lands on tide lands owned by a city, where it will obstruct and deflect the flow of the water.
Murphy v. Bullock, 37 A.348, 20 R.I. 35.

R.I. 1911. Accretions to a public highway terminating at navigable water attach to the highway, whether natural or artificial.
Horgan v. Town Council of Jamestown, 80 A.271, 32 R.I. 528.

46. Conveyances and Contracts.

R.I. 1902. A riparian owner may plat his land, and include therein lands below high-water mark, laying out a proposed street in tide water with a row of lots beyond, designated as existing and extending out to a proposed harbor line, and may convey lots as so platted, though partially below high-water mark.
Dawson v. Broome, 53 A.l51, 24 R.I. 359.

R.I. 1902. An owner of land bordering on tide water, after having platted it, including in the plat land below high-water mark, and having obtained permission from the harbor commissioners to fill in to tide water up to a fixed line, conveyed certain lots marked as bounded by a proposed street with another row of lots beyond, designated as existing and extending out to the fixed harbor line. The lots conveyed were partially covered by tide water. The deeds of conveyance referred only to the numbered lots on the plat, together with a habendum clause, "With all the privileges and appurtenances thereto appertaining." Held, that the deeds only conveyed the lots as bounded by the plat, with the right, as an appurtenant, of making the proposed street passable as a street, and did not convey the right to fill in out to the fixed harbor line.
Dawson v. Broome, 53 A.151, 24 R.I. 359.

The understanding of the grantees as to where the in view of lack of clarity in early deciions regarding whether landward boundary of shoreline was to be computed as mean or absolute high-water mark, dismissal of trespass charges against defendants, who were admittedly above mean-high-tide line but below high-water mark at time of their arrest, would be affirmed on due process grounds, even though landward boundary of shore was mean-high-tide line.
U.S.C.A. Const. Amends. 5, 14.

3. Trespass.

Any municipality that intends to impose criminal penalties for trespass on waterfront property above mean-high-tide line must prove beyond reasonable double that defendant knew location of boundary line and intentionally trespassed across it.

Dennis J. Roberts II, Atty. Ceo., Barry N. Capalbo, Sp. Asst. Atty. Gen., for plaintiff.

Nardone, Turo & Naccarato, Joseph T. Turo, Westerly, for defendants.

SHEA, Justice.

In this case we consider a question involving the interpretation of a provision of our State constitution. Article I, § 17 of the Rhode Island Constitution, as amended by Art. XXXVII, SecS. 1-2, provides that the people of the state "shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usage's of this State." The question raised is this: To what point does the shore extend on its landward boundary? The Setting of this boundary will fix the point at which the land held in trust by the State for the enjoyment of

all its people ends and private property belonging to littoral owners begins.[1]

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[1]"Littoral" is defined as "Belonging to shore, as of seas and great lakes." Black's Law Dictionary 842 (5th Ed. 1979). Littoral rights concern properties abutting an ocean, Sea, or lake rather than a river or Stream riparian) Id.

The defendants in this case, James Ibbison III, Don E. Morris, Allen E. Zuswalt, James W. Sminkey, Miles R. Stray, and William S. Gavitt were convicted in the Fourth Division District Court on February 2, 1979, of criminal trespass in violation of § 19-17 of the Westerly Code. This section of the code prohibits a person from knowingly entering upon the land of another without having been requested or invited to do so by the owner or occupant of the land. The defendants were each fined $10 plus costs. They appealed their convictions to the Superior Court. On December 9, 1980, a justice of the Superior Court granted.

defendants' motion to dismiss the charges. The District and Superior Court justices reach different conclusions based on their fixing the boundary between the shore and littoral owners at different points. The state has appealed the dismissals.

Since this case is not before us after a trial in the Superior Court and we have no transcript of the District Court proceedings, there is no record of the facts other than the assertions of counsel. Fortunately, a lengthy recitation of facts is not necessary because the key fact needed for the resolution of this appeal has been stipulated to by the parties.

This dispute arose as defendants were engaged in a beach-clean-up operation in Westerly. As defendants traveled along the beach, they were stopped by Wilfred Kay, a littoral owner, and Patrolman Byron Brown of the Westerly police Department. Kay, believing his private property extended to the mean-high-water line, had staked out that line previously. He informed defendants that they were not permitted to cross the landward side of it. The defendants, on the other hand, believed that their right to traverse the shore extended to the high-water mark. This line was defined by defendants in the Superior Court as a visible line on the shore indicated by the reach of an average high tide and further indicated by drifts and seaweed along the shore. It has been stipulated by the parties that defendants had crossed the mean-high-water tide line but were below the high-water mark at the time of their arrest. Also, at the time of the arrest, the mean-high-tide line was under water.

We have referred to the term "high water mark" as used by defendants and accepted by the Superior Court. We shall now discuss the term "mean high tide line". This line is relied upon by the state as the proper boundary, and it is the line accepted by the District Court. The mean high tide is the arithmetic average of high-water heights observed over an 18.6-year Metonic cycle.[2] It is the line that is formed by the intersection of the tidal plane of mean high tide with the shore.

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[2]This cycle begins and ends when a new moon occurs on the same day of the year as it did at the beginning of the last cycle; that is, at the end of a metonic cycle the phases of the moon recur in the same order and on the same days as in the preceding cycle.

NOAA "Tide and current Glossary" defined the Metonic Cycle as being 6939.75 days or 19.0 years.

The issue before us is in reality very narrow because the prior decided cases of this court have consistently recognized that the shore lies between high and low water. For example, the shore has been designated as "land below high-water mark", Armour & Co. v. City of Newport, 43 R.I. 211, 213, 110 A. 645, 646 (1920); "land below ordinary high-water mark", Narragansett Real Estate Co. v. MacKenzie, 34 R.I. 103, 112, 82 A. 804, 806 (1912); "lands covered by tide waters", City of providence v. Comstock, 27 R.I. 537, 542, 65 A. 307, 308 (1906); "all land below high-water mark", Rhode Island Motor Co. v. City of Providence, 55 A. 696 (R.I. 1903); "the space between high and low-water mark", "Clark v. Peckham, 10 R.I. 35, 3B (1871).

The problem we face is that none of these cases have defined how the high-water line is to be calculated. Although no prior Rhode Island case explicitly resolves the question before us, there are two cases, however, that are somewhat helpful. In Allen v. Allen, 19 R.I. 114, 32 A. 166 (1895), this court stated that "(t]he State holds the legal fee of all lands below high water mark as at common law", (Emphasis added.). Next, in Jackvony v. Powel, 67 R.I.. 218, 21 A.2d 554 (1941) , the court held unconstitutional under Art. I, Sect. 17 a statute that would have permitted the city of Newport to erect a fence at Easton's Beach between the high- and low-water marks. Id. at 219, 21 A.2d at 554.

At various times in the Jackvony case, the court referred to the high-water line or mark, and at other times it referred to the mean high tide. Specifically, with regard to the privileges of the people in the shore, the court referred to the shores as "bordering on tidewaters and lying between the lines of mean high tide and mean low tide". Id. at 225, 21 A.2d at 557. We find that the Jackvony court used the two terms interchangeably.

The interesting point about the Allen case is the court's reliance on the common law in finding that the state holds title to all lands below the high-water mark, Allen v. Allen, 19 R.I.. at 115, 32 A. at 166, because at common law the boundary was the mean-high-tide-line. Here again, we believe that the Allen court uses these terms interchangeably.

It is difficult to discern any real difference between the two positions argued here. By definition, the mean high tide is, in reality, an average high tide. Similarly, defendants have defined the high-water mark in terms of an average. The defendants contend that their high-water mark is such, however, that it is readily observable because of drifts and the presence of seaweed. Our difficulty in accepting this position is that we have absolutely no evidence before us from which we could determine that this is generally true. As noted previously, we are handicapped by the absence of a record in this case. For this reason the only permissible action for us to take is to affix the boundary as was done at common law and which this court in Allen declared to be the settled policy of this state.

The common-law background of this issue can be traced back several hundred years. Originally, land titles in England came from a grant from the Crown beginning back during the reign of King John which ended in 1216. These early grants were imprecise, however, especially because of the lack of definition of the seaward boundary of coastal grants. 1 Clark, Waters and Water Rights, § 36.3(A) at 190 (1967). The grantees, however, no doubt viewed their property as extending to the sea.

In 1568-1569, Thomas Digges, a mathematician, engineer, astronomer, and

lawyer, wrote a short treatise in which he concluded that the tidelands had not been included in the grants of the seacoasts by the Crown. Id. This work went largely unnoticed until 1670 when Sir Matthew Hale incorporated Digges' theory into his very influential treatise De Jure Mans. In this work Hale defined the shore as follows:

"The shore is that ground that is between the ordinary high-water and low-water mark. The doth prima facie and of common right belong to the kind, both in the shore of the sea and the shore of the arms of the sea." 1 Clark, supra at 191 n. 54 (quoting De Jure Maris, Ch. IV, p. 378, reprinted in Moore, A History of the Foreshore, at p. 370.)

After this time, the burden of proof was placed on landowners to show that their particular property extended to the low-water mark, and not the high-water mark. The burden placed this way made it very difficult for landowners to overcome. Id. at 191.

This was the state of development of the law in England at the time of the colonization of the eastern shoreline of North America. Id. After the Revolutionary War and the formation of our Republic, the individual states retained their own tidelands as they had previously. Id. at 192. In a series of United States Supreme Court decisions beginning with Martin v. Waddell, 41 U.S. 367, 10 L.Ed. 997 (1842), and culminating with Borax Consolidated Ltd. v. City of Los Angeles, 296 U.S. 10, 56 S.Ct. 23, 80 L.Ed. 9 (1935), the Court confirmed individual state ownership of the tidelands.

There had been some uncertainty in the United States regarding whether the boundary was properly at the point of the mean high tide or the mean low tide, but this uncertainty was largely removed in 1935 when it was held in Borax consolidated, supra, that the common-law rule put the boundary between littoral owners and the state at the line of the mean high tide. Id. at 22-23, 56 S.Ct. at 29, 80 L.Fd. at 18.

In Borax Consolidated the court reviewed a Court of Appeals decision setting the boundary between land claimed by the plaintiff under a federal preemption patent and the State of California at the mean-high-tide line. The Court analyzed this issue's common-law history in depth including the writings of Sir Matthew Hale and also an influential English decision, Attorney General v. Chambers, 4 De G.M. & G. 206. In affirming the Court of Appeals, the Court concluded as follows:

"The tideland extends to the high water mark. This does not mean, 55 petitioners contend, a physical mark made upon the ground by the waters; it means the line of high water as determined by the course of the tides. By the civil law, the shore extends as far as the highest waves reach in winter. But by the common law, the shore 'is confined to the flux and reflux of the sea at ordinary tides'. It is the land 'between ordinary high and low-water mark, the land over which the daily tides ebb and flow. When, therefore, the sea, or a bay, is named as a boundary, the line of ordinary high-water mark is always intended where the common law prevails'." [Citations omitted.] Borax Consolidated Ltd. v. City of Los Angeles, 296 U.S. at 22-23, 56 S.Ct. at 29, 80 L.Ed. at 18.

Having identified the common-law boundary of the shore as the land between the "ordinary high and low-water mark," the Court described how the line is to be determined since the range of the tide at any given

place varies from day to day. At a new moon and a full moon, the range of tides is greater than average because at these particular times, high water rises higher and low water falls lower than usual. The tides at such times are called spring tides.

Correspondingly, when the moon is in its first and third quarters, the tides does not rise as high or fall as low as on the average. During these times, the tides are called neap tides. Id. (citing "Tidal Datum Plane", U.S. Coast and Geodetic Survey, Special publication No. 135, p. 3).

The Court noted that at common law the spring tides, the highest tides of the month, were excluded as the landward boundary of the shore since for the most part this land was dry and not reached by the tides. Id. at 24, 56 S.Ct. at 30, 80 L.Ed. at 18. Presumably, the point reached by the spring tides Is the same point as that argued by defendants as being the high-water mark evidenced by drifts and seaweed.

[1] Recognizing the monthly changers of the tides, the Court recited the following formula, used by the Court of Appeals, for finding the mean-high-tide line:

"In view of the definition of the mean high tide, as given by the United States Coast and Geodetic Survey, that '[m]ean high water at any place is the average height of all the high waters at that place over a considerable period of time,' and the further observation that 'from theoretical considerations of an astronomical character' there should be a 'periodic variation in the rise of water above sea level having a period of 18.6 years' the Court of Appeals directed that in order to ascertain the mean high tide line with requisite certainty in fixing the boundary of valuable tidelands, such as those here in question appear to be, 'an average of 18.6 years should be determined as near as possible'. We find no error in that instruction." Id. at 26-27, 56 S.Ct. at 31, 80 L.Ed. at 20.

We concur in this analysis and apply the mean-high-tide line as the landward boundary of the shore for the purposes of the privileges guaranteed to the people of this state by our constitution. This court has held that the common law governs the rights and obligations of the people of the state unless that law has been modified by our General Assembly. Traugott v. Petit, R.I., 404 A.2d 77, 79 (1979); Benevides v. Kelly, 90 R.I. 310, 312-13, 316, 157 A.2d 821, 822, 824 (1960); Lombardi v. California Packing Sales Co., 83 R.I. 51, 54, 112 A.2d 701, 702 (1955). See also Bloomfield v. Brown, 67 R.I. 452, 25 A.2d 354 (1942); Allen v. Allen, supra. Here we apply the common law to govern the interpretation of a constitutional provision.

In fixing the landward boundary of the shore at the mean-high-tide line, we are mindful that there is a disadvantage in that this point is not readily identifiable by the casual observer. We doubt, however, that any boundary could be Set that would be readily apparent to an observer when we consider the varied topography of our shoreline. The mean-high-tide line represents the point that can be determined scientifically with the greatest certainty. clearly, a line determined over a period of years using modern scientific techniques is sore precise than a mark made by the changing tides driven by the varying forces of nature. In Luttes v. State, 159 Tex. 500, 519, 324 S.W.2d 167, 179 (1958) the Texas court concluded that "common sense suggests a line based on a long term average of daily highest water levels, rather than a line based on some theory of occasionally or

sporadic highest waters.

Additionally, we feel that our decision best balances the interests between littoral owners and all the people of the State. Setting the boundary at the point where the spring tides reach would unfairly take from littoral owners land that is dry for most of the month. Similarly, setting the boundary below the mean-high-tide line at the line of the mean low tide would so restrict the size of the shore as to render it practically nonexistent.

Finally, setting the boundary as we have done brings us in accord with many of the other states. People v. William Kent Estate Co., 242 Cal. App.2d 156, 51 Cal. Rptr. 215 (1966); Shorefront Park Improvement Association v. King, 157 Conn. 249, 253 A.2d 29 (1968); Wicks v. Howard, 40 Md.App. 135, 388 A.2d 1250 (1978); Harrison County v. Guice, 244 Miss. 95, 140 So.2d 838 (1962); 0'Neill v. State Highway Department, 50 N.J. 307, 235 A.2d 1 (1967); Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970); Luttes v. State, supra; Wilson v. Howard, 5 Wash.App. 169, 486 P.2d 1172 (1971). We note that in a couple of these cases the term "high water mark" is used in place of "mean high tide line". However, this is inconsequential as each state defines the phrase in terms of the mean high tide.

[2] This brings us to the actual disposition of this matter. In view of the lack of clarity in early decisions of this court regarding whether the landward boundary of the shoreline was to be computed as a mean or as an absolute high-water mark, we shall affirm the dismissals of the charges by the Superior Court justice but for different reasons. It is well settled that this court may sustain judgments entered below even though we do not accept that court's reasoning. Mesolella v. City of Providence, R.I., 439 A.2d 1370 (1982); Berberian v. Rhode Island Bar Association, R.I., 424 A.2d 1072 (1981); Mercier v. City of Central Falls, R.I., 412 A.2d 927 (1980).

We affirm the dismissals since basic due process provides that no man shall be held criminally responsible for conduct that he could not reasonably understand to be proscribed. United States v. Harriss, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 98 L.Ed. 989, 996 (1954); State v. Tweedie, R.I., 444 A.2d 855 (1982). Although this situation most often occurs when statutes are challenged for vagueness, we find that the facts of this case are such that these defendants are entitled to similar protection.

[3] In the future any municipality that intends to impose criminal penalties for trespass on waterfront property above the mean-high-tide line must prove beyond reasonable doubt that the defendant knew the location of the boundary line and intentionally trespassed across it.

For the reasons stated, the appeal is denied and dismissed, the granting of the motion to dismiss is affirmed, and the papers of the case are remanded to the Superior Court.

PARTITION

I. BY ACT OF PARTIES.

4. Agreements as to Partition.

R.I. 1807. The term "owelty" is usually, if not universally, applied to the partition of lands.
Smith v. Hall, 37 A. 698, 20 R.I. 170.

R.I. 1862. The agreement under seal that "we, the owners in the A. farm, hereby agree to any division of the remaining portion of said farm unsold which a majority of interest in said property shall decide upon as just and equitable", is to be construed as referring to the mode of division, and not as authorizing the majority in interest to set off to any owner a certain portion of the land without his assent.
Harkness v. Remington, 7 R.I. 154.

PROPERTY

6. What Law Governs.

U.S.C.C. 1847. Where persons on opposite sides of a stream which is the boundary between two states each have a water power and own the land to the center line, and one constructs a canal on his own side, so as to draw off the water, the law which governs is that of the state within whose borders the injurious act is done.
Stillman v. White Rock Mfg. Co., Fed. Cas. No. 1344E, 3 Woodb. & M. 539.

R.I. 1914. Personal property has no locality, but is sold, transmitted, bequeathed by will, and descendible by inheritance according to the law of the owners domicile, and not according to the law of the situs.
Bullard v. Redwood Library, 91 A. 30, 37 R.I. 107.

7. Ownership and Incidents Thereof.

R.I. 1932. "Title" is means by which estate is acquired.
Case v. Mortgage Guarantee & Title Co., 158 A.724, 52 R.I. 155.

R.I. 1931. Law recognizes legal and equitable interests in real estate.
Narragansett Mut. Fire Ins. Co. v. Burnham, 154 A.909, 51 R.I. 371.

R.I. 1908. The word "owner", while not a technical term, but one of wide application in various connections, primarily means, with respect to land, a person who is seised of a freehold estate therein, one who owes no service to another which limits his dominion.
American Woolen Co. v. Town Council of North Smithfield, 69 A.293, 29 R.I. 93, 16 Ann.Cas. 1227.

9. Evidence as to Title.

U.S. 1814. Evidence held insufficient to establish title to personal property.
The Frances, 12 U.S. 358, 8 Cranch 358, 3 L.Ed. 589.

R.I. 1913. In an action involving the title to land, evidence as to

whom the property was assessed was properly admitted.
Cosgrove v. Franklin, 87 A.544, 35 R.I. 527.

12. Modes and Forms of Transfer.

R.I. 1945. The term "alienation" embraces every mode of passing realty by act of the parties, as distinguished from passing it by operation of law.
Industrial Trust co. v. Pendleton, 40 A.2d 840, 70 R.I. 481.

PUBLIC LANDS

II. SURVEY AND DISPOSAL OF LANDS OF UNITED STATES.

(C) DONATIONS AND BOUNTY LANDS.

42. Grants by Congress in General.

U.S. 1830. The grant of land by the government Is a ”contract”, the object of which is that the profits issuing from it shall inure to the benefit of the grantee.
Providence Bank v. Billings, 29 U.S. 514, 4 Pet. 544, 7 L.Bd. 939.

III. DISPOSAL OF LANDS OF THE STATES.

142. In General.

R.I. 1906. Grants of land by the state or other sovereign are to be strictly construed against the grantee.
City of Providence v. Comstock, 65 A.307, 27 R.I. 537.

168. Rhode Island.

R.I. 1910. A grant by a state is evidence of title of a higher order than ordinary conveyances and is not subject to collateral attach unless it is void on its face.
Payne & Butler v. Providence Gas Co., 77 A.145, 31 R.I. 295, Ann.Cas. 1912B, 65.

R.I. 1879. The general assembly of Rhode Island, in 1784, appointed a committee to lay out and plat for sale certain confiscated lands at Point Judith. The committee platted the upland into lots, apportioned to each lot certain marsh lands, and laid out a strip or share as a "common lot", to which access was provided from each lot. The committee's report, accompanied by a plat, was submitted to the legislature and approved. Sales of the lots were made, and, pursuant to legislative authority, deeds were given by the general treasurer of the state. These deeds differed in form and language, but were all made by virtue of the same legislative proceedings and referred to the committee's plat. It appearing that no rights were sold with one lot which were not sold with every other, held, that an omission in one of the deeds to recite in full the proceedings of the legislature was immaterial.
Knowles v. Knowles, 12 R.I. 400.

R.I. 1852. A tract of land belonging to the state was laid out in a number of lots, except a portion thereof, which was reserved for a "common lot". A committee was authorized to sell the lots according to a plat thereof, which had been made, and the general treasurer was

empowered, upon payment of the purchase money, to execute to the purchaser deeds conveying fee simple. In making deeds to the purchasers no mention was made of the common lot. The common lot, however, was included within the boundaries in one of the deeds executed by the general treasurer. Held, that the general treasurer had authority to convey to the grantees only such lots as were sold by the committee, and that there had been no sale of said common lot.
Knowles v. Nichols, 2 R.I. 198.

R.I. 2016 …article 6, section 19 simply does not include language that the right of first refusal passes to the heirs, successors, and assigns of the original condemnee upon death…
we conclude that the rights guaranteed by article 6, section 19 of the Rhode Island Constitution do not extend beyond the original condemnee's lifetime. The term "the person or persons from whom such remainder was taken" connotes the original condemnee only, and not his or her heirs, successors, and assigns upon death. Estate od Richard J. Deeble v Rhode Island Department of Transportation
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QUIETING TITLE

I. RIGHT OF ACTION AND DEFENSES.

4. Inadequacy of Remedy at Law.

R.I. 1927. To maintain bill in equity to remove cloud on title, complainant must be without adequate legal remedy.
Lawton v. Lawton, 136 A.241, 48 R.I. 134.

R.I. 1902. Where a bill in equity complained of the sale of property by a constable under execution, and the constable's deed set out therein showed that the sale was adjourned from March 14, 1900, to March 16th, without giving the year, it was subject to demurrer, since two days' notice would not be a compliance with Gen. Laws. c.257, section 13, allowing adjournments of sale, and requiring one week's notice thereof by publication in a newspaper; and hence complainant had an adequate remedy at law, in ejectment.
McCudden v. Wheeler & Wilson Mfg. Co., 51 A.48, 23 R.I. 528.

R.I. 1865. A court of equity will not interpose to remove a cloud from the title of an estate held by possession for 20 years or more underthe statute of possessions, for the reason, among others, that complainant has an adequate remedy at law.
Taylor v. Staples, 8 R.I 170, 5 Am.Rep. 556.

7. Cloud on Title.

R.I. 1931. Plat recorded with statement thereon that land is claimed through adverse possession constitutes cloud upon title of record owner, which equity has jurisdiction to remove.
Day v. Proprietors of Swan Point Cemetery, 153 A.312, 51 R.I. 213.

R.I. 1932. In equity suit to settle disputed title to land, complainant must recover on the strength of her own title, and not on weakness of respondents' title.
Talbot v. Town of Little Compton, 160 A.466, 52 R.I. 280.

12. Possession of Plaintiff.

R.I. 1931. Generally, without special circumstances, one not in

possession cannot sue in equity to quiet title.
Barone Lumber Co. v. Sowden, 153 A.308, 51 R.I. 166.

R.I. 1891. Equity will not interfere to remove a cloud upon title in favor of a party out of possession, claiming under a legal title against his antagonist who is in possession under the written title which makes the cloud. The remedy at law is sufficient.
Weaver v. Arnold, 23 A.41, 15 R.I. 53.

43. Issues, Proof, and Variance.

R.I. 1927. Party seeking to remove cloud on title must allege and prove possession or show title without present title of possession.
Lawton v. Lawton, 136 A.241, 48 R.I. 134.

R.I. 1922. The answer of respondent, in suit to remove a cloud on title, simply claiming right of way in himself appurtenant to his land, he may not introduce evidence of public easement by dedication to and acceptance by the public, a matter not mentioned in his pleading.
Louttit v. Alexander, 116 A.882, 44 R.I. 257.

R.I. 1932. In equity suit to settle title to land, burden of proof is upon complainant, and all defenses are available to respondents.
Talbot v. Town of Little Compton, 160 A.466, 52 R.I. 280.

Complainant's paper title back to 1849 held insufficient to establish presumption of possession and title in equity suit to settle disputed title to land.
Talbot v. Town of Little Compton, 160 A.466, 52 R.I. 280.

14. Access to Records or Flies.

U.S.Ct.App. 1951. Members of the public in general have the right to inspect public records under a common law right.
Mccoy v. Providence Journal Co., 190 F.2d 760, certiorari denied 72 S.Ct. 200, 342 U.S. 894, 96 L.Ed.

33. Persons Entitled to Disclosure; Interest or Purpose.

R.I. 1976. There is common-law right of inspection of public records by proper person or his agent provided he has interest therein which is such as would enable him to maintain or defend action for which documents or record sought can furnish evidence or necessary information.
Daluz v. Hawksley, 351 A.2d 820, 116 R.I. 49.

REFORMATION OF INSTRUMENTS

I. RIGHT OF ACTION AND DEFENSES.
25. Defenses and Objections to Relief.

R.I. 1962. Where unrecorded real estate contract called for conveyance of "Lots 110, 111 and part of 112" to first grantees but recorded deed, given pursuant thereto, conveyed only Lots 110 and 111, and where same grantor later conveyed adjoining Lots 112 and 113 to second grantees who failed to conduct survey which would have disclosed that house and well for Lot 111 encroached upon Lot 112, first grantees were not chargeable with negligence and were entitled to have deeds reformed so as to convey to them so much of Lot 112 as was necessary to encompass house and well.
Houlihan v. Murphy, 177 A.2d 192, 93 R.I. 499.

R.I. 1959. In proper circumstances a court of equity will not deny relief even though the party Seeking relief did not read the instrument he seeks to have reformed.
Votta v. Johnson, 151 A.2d 112, 89 R.I. 71.

29. In General.

R.I. 1962. Where unrecorded real estate contract called for conveyance of "Lots 110, 111 and part of 112" to first grantees but recorded deed, given pursuant thereto, conveyed only Lots 110 and 111, and where same grantor later conveyed adjoining Lots 112 and 113 to second grantees who failed to conduct survey which would have disclosed that house and well for Lot 111 encroached upon Lot 112, first grantees were not chargeable with negligence and were entitled to have deeds reformed so as to convey to them so much of Lot 112 as was necessary to encompass house and well.
Noulihan v. Murphy, 177 A.2d 192, 93 R.I. 499.

36. Bill, Complaint, or Petition.

R.I. 1955. If a mistake is alleged in a bill in equity for reformation of a deed, mistake must be stated with precision and must be made apparent, so that court may rectify it with a feeling of certainty that court is not committing another, and perhaps greater, mistake.
Dimond v. Barlow, 110 A.2d 438, 82 R.I. 399.

In a bill in equity for reformation of a deed, on ground of mutual mistake, party alleging mistake must show exactly in what it consists, and the correction that should be made.
Id.

41. Issues, Proof and Variance.

R.I. 1955. Where it is alleged, in bill in equity for reformation of deed, that there was a mutual mistake in description of realty, mere substantial conformity between allegation and proof is not sufficient.
Dimond v. Barlow, 110 A.2d 438, 82 R.I. 399.

A court of equity cannot reform a deed for mutual mistake, unless mistake is alleged in bill with precision, and proof thereof is entirely exact and satisfactory.
Id.

In bill in equity for reformation of deed, on ground of mutual mistake, proof must be confined to averments in bill.
Id.

In a bill in equity for reformation of a deed, on ground of mutual mistake, the most ample evidence is useless without sufficient statements in pleadings, since evidence without allegation is as futile as allegation without evidence.
Id.

In a bill in equity for reformation of a deed, on ground of mutual mistake, it is necessary that exact form, to which deed should be brought, should be alleged and proved precisely as alleged.
Id.

Before Supreme Court will reform deed, on ground of mutual mistake, Supreme Court will proceed with great caution and insist that there by clear and convincing evidence unequivocally proving the mistake as

alleged in the bill.
Id.

Where there was a substantial variance, in bill in equity for reformation of deed, on ground of mutual mistake, between description alleged in sworn bill and description in final decree, and there Was no amendment of bill, decree was erroneous, even though decree may have been in conformity with the evidence.
Id.

44. Admissibility.

R.I. 1955. In a bill in equity for reformation of a deed, on ground of mutual mistake, deed itself is prima facie evidence of intention of parties, though parol evidence may be introduced to show that both parties to deed were mistaken in reducing it to writing.
Dimond v. Barlow, 110 A.2d 438, 82 R.I. 399.

R.I. 1889. In a suit in equity to reform a contract for the sale of land, and to enforce it as reformed, oral testimony is not admissible to show that defendant agreed by word. of mouth to sell, and complainant to purchase, a certain tract of land, and that by mutual mistake the agreement, as written and signed, did not include the whole tract.
Macomber v. Peckham, 17 A.910, 16 R.I. 485.

45. Weight and Sufficiency.

R.I. 1955. In a bill in equity for reformation of a deed, on ground of mutual mistake, deed itself is prima facie evidence of intention of parties, though parol evidence may be introduced to show that both parties to deed were mistaken in reducing it to writing.
Dimond v. Barlow, 110 A.2d 438, 82 R.I. 399.

In a bill in equity for reformation of a deed, on ground of mutual mistake, deed is deemed to be the sole expositor of the contract, until the contrary is clearly established.
Id.

Where there is no fraud, a deed is strong evidence of intention of parties in bill in equity for reformation of deed.
Id.

Evidence was insufficient to establish mutual mistake as a ground for reformation of description in deed.
Id.

R.I. 1949. In Suit for reformation of deed on ground of mutual mistake, the mistake must be established by clear and convincing evidence.
Vanderford v. Kettelle, 64 A.2d 483, 75 R.I. 130.

R.I. 1959. In vendor's cross bill for reformation of deed to purchasers, the evidence, including evidence that vendor owned a tract consisting of two lots and that vendor built house and garage on the tract and that thereafter the vacant lot and the lot occupied by the house and garage were separated by rear line of garage and wall extending therefrom and that purchasers looked at vacant lot and that vendor intended to sell and purchasers intended to buy the vacant lot extending up to the garage and the wall without regard to the dimensions thereof end that title company, when it prepared the deed to the vacant lot, established its dimensions by merely dividing the tract in half

so that garage and wall occupied six feet of the land conveyed to purchasers, failed to show that vendor intended to deceive purchasers, and disclosed such a mutual mistake of fact as to justify reformation of the deed.

Votta v. Johnson, 151 A.2d 112, 89 R.I. 71.

R.I. 1949. Evidence was insufficient to Sustain decree reforming deed, on ground of mutual mistake, to include a triangular piece of land.

Vanderford v. Kettelle, 64 A.2d 483, 75 R.I. 130.

R.I. 1932. In suit to reform deeds effecting amicable partition, finding of no mutual mistake respecting tract not allotted to complainant held sustained by evidence.

Bowden v. Ide, 161 A.119, 52 R.I. 362.

In suit to reform deeds effecting amicable partition, finding of no fraud in not allotting tract to complainant held sustained by evidence.

Bowden v. Ide, 161 A.119, 52 R.I. 362.

R.I. 1932. Evidence held to support decree reforming for mutual mistake description in deeds and requiring removal of fence accordingly.

Dwyer v. Curria, 160 A.206, 52 R.I. 264.

REGISTERS OF DEEDS

5. Duties and performance thereof in general

R.I. 1980. Legislature has perscribed duties of recorder of deeds to record instruments and has specified what is required for deed to be legally sufficient instrument; therefore, recorder of deeds is bound to comply with applicable statute.

Bionomic Church of Rhode Island v. Gerardi, 414 A.2d 474

6. Liabilities for Negligence or Misconduct.

R.I 1880. A town clerks certificate that the title to certain land is in two grantees does not imply that each grantee holds an undivided moiety of the land, so as to make the clerk liable to one who makes a loan to one of the grantees relying on such interpretation of the certificate.

Tripp v. Hopkins, 13 R.I. 99.

TOWNS

I. CREATION, ALTERATION, EXISTENCE, AND POLITICAL FUNCTIONS

4. Territorial Extent and Boundaries.

R.I. 1965. Township plat ordinance, which provided that listed plat requirements, one of which required construction of roads in plat to Suborned, must be met before any plat, or replat of existing plat, could be accepted and placed on record would be construed not to require one who submits replat of previously accepted plat to assume obligation to construct roads shown on original plat unless such replat affects the roads.

Town of Bristol v. Castle Const. Co., 211 A.2d 627, 100 R.I. 135.

Construction company, which in November 1949 as new owner filed replat of plat, was not obligated to construct all roads in plat to suborade as required by December 1949 town ordinance as condition to

acceptance and recording of new plats and replats, in view of fact that replat did not affect such roads, which had become public roads on approval of original plat. Pub. Laws 1945, c. 1631, section 9.
Id.

R.I. 1899. A diversion of a non-navigable fresh-water stream by artificial means by a mill owner does not change a town boundary consisting of the center of the Stream before the diversion occurred.
In re Town Boundaries, 42 A. 870, 21 R.I. 581.

The power to change the boundary line between two towns resides only in the General Assembly.
In re Town Boundaries, 42 A. 870, 21 R.I. 581.

TRESPASS

45. Ownership and Possession.

R.I. 1995. A trespasser is defined as "'one who intentionally and without consent or privilege enters another's property.'"
Ferreira v. Strack , 652 A.2d 965, 969

R.I. 1949. In action of trespass and ejectment, exhibits necessary to establish plaintiff~5 chain of title and prove their right to maintain action were admissible.
Mathison v. Griffin, 67 A.2d 833, 76 R.I. 16.

R.I. 1943. In action of trespass and ejectment, plaintiff's deed dated and acknowledged after the institution of the action was inadmissible as evidence of title in plaintiff sufficient to maintain the action, in absence of evidence of delivery of deed at or before the institution of the action.
Paliotta v. Celletti, 30 A.2d 108, 68 R.I. 500.

R.I. 1911. Where adjoining landowners, sued in trespass quare clausum fregit, pleaded a private way between the lands, and plaintiff's replications counted on adverse possession and abandonment of the way, and it appeared that the later conveyances had been made by occupation lines, rather than by metes and bounds, plaintiffs could show the extent of their and their predecessors occupation and inclosure and the scope of the possession of defendant and her predecessors.
Faulkner v. Rocket, 80 A.380, 33 R.I. 152.

"[a] continuing trespass wrongfully interferes with the legal rights of the owner, and in the usual case those rights cannot be adequately protected except by an injunction which will eliminate the trespass." (quoting Santilli v. Morelli, 102 R.I. 333, 338, 230 A.2d 860, 863 (1967))

R.I. 2003 "[T]he owner of land is entitled to a mandatory injunction to require the removal of a structure that has been unlawfully placed upon his land, and the fact that such owner has suffered little or no damage because of the offending structure, or that it was erected in good faith, or that the cost of its removal would be greatly disproportionate to the benefit accruing to the plaintiff from its removal, is not a bar to the granting of [injunctive] relief. However, the existence of such circumstances may in exceptional cases move the court to withhold the [injunctive] relief contemplated by the general rule." Santilli, 102 R.I. at 338, 230 A.2d at 863; see Renaissance Development Corp. v.

Universal Properties Group, Inc., 821 A.2d 233, 238.

46. Weight and sufficiency.

R.I. 1902. Where, in trespass quare clausum, to unoccupied woodland, plaintiff proved that he entered under a deed, went on the land three or four times, sent representatives on it several times, had the land surveyed, and never knew of any other person claiming possession for 30 years, until he learned that defendants were cutting wood thereon, such proof sufficiently showed possession, as against a plea of general issue.

Carpenter v. Logee, 53 A.288, 24 R.I. 383.

R.I. 1953. Plaintiff's could not recover, in action against adjoining landowners, double damages for allegedly entering upon plaintiff's land and cutting and removing timber therefrom, in absence of showing by fair preponderance of the evidence that third person, cutting timber on adjoining land with permission of defendant owner thereof, went upon plaintiffs' land and cut and removed trees therefrom without permission of either plaintiff. Gen. Laws 1939, c. 588, section 1.

Coulombe v. Bois, 98 A.2d 367, 80 R.I. 465.

TURNPIKES AND TOLL ROADS

I. ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE.

1. Right to Establish and Maintain in General.

2. Character of Road as Highway.

R.I. 1888. A turnpike road becomes a highway at the time the town council votes to receive it, though the deed conveying the road to the town is dated before and acknowledged after such vote is taken.

Gardiner v. Town Council of Johnston, 12 A.888, 16 R.I. 94.

R.I. 1880. A turnpike road is not a "highway" within the meaning of Gen. Laws, c.60, section 22, providing that the proprietors of any artificial water course, which "has been or shall be made under, through, or by the side of any highway previously existing":, shall maintain all necessary bridges over, and fences along, such water course.

Town of North Providence v. Dyerville Mfg. Co., 13 R.I. 45.

VENDOR AND PURCHASER

228. Effect of Notice.

R.I. 1889. A deed unacknowledged and unrecorded, but valid between the parties to it and their heirs, will be deemed valid as to other persons having actual notice of it, so that such other persons with notice will be affected by such deed as if acknowledged and recorded in due form.

Westerly Sav. Bank v. Stillman Mfg. Co., 17 A.918, 16 R.I. 497.

R.I. 1960. Record of a deed is not constructive notice to those whose titles accrued before its recording and it is only so as to subsequent purchasers who are bound to search the record.

Rebelo v. Cardeso, 161 A.2d 806.

R.I. 1848. The record of the will of a person who has had possession of land under an unrecorded deed is not a sufficient record of title as against a subsequent purchaser; and the most that can be made of such a record is that it should operate as notice of an unrecorded deed. Assuming that the administrator's deed was valid without being recorded, and that the title was perfect in the purchaser under it, it would doubtless follow that the last link in the title, viz., the devise, is sufficiently recorded.

Harris v. Arnold, 1 R.I. 126.

R.I. 1840. The lodging of a deed with the town clerk to be recorded is equivalent to an actual entry of it on record, by the terms of a statute relative to the recording of deeds. The title is thereby made complete[1] and the neglect of the town clerk to record it cannot affect the grantee's rights under the deed.

Nichols v. Reynolds, 1 R.I. 30, 36 Am.Dec. 238.

R.I. 1993. Obligation is imposed on purchaser of real property to make reasonable and diligent search of records.

In re Barnacle, 623 A.2d 445

231(6). Defective records and requisites of records.

R.I. 1993. Technical deficiency in recorded instrument that would be subject to reformation in equity, ought not to create windfall for junior encumbrances or those who would become bona fide purchasers, by negating the constructive notice that record would otherwise provide. Gen.Law 1956, § 34-13-2.

In re Barnacle, 623 A.2d 445.

II. NATURAL WATER COURSES.

(A) RIPARIAN RIGHTS IN GENERAL.

42. In General.

U.S.C.C. 1827. Every proprietor upon each bank of a river may use the water as it flows, according to his pleasure, if the use be not to the prejudice of any other proprietor.
Tyler v. Wilkinson, Fed.Cas. No. 14,312, 4 Mason 397.

(E) BED AND BANKS OF STREAM.

89. Rights to Bed.

U.S.C.C. 1827. The owner of land bordering on an unnavigable stream owns to the thread thereof.
Tyler v. Wilkinson, Fed.Cas. No. 14,312, 4 Mason 397.

90. Rights to Land Between High and Low Water Mark.

R.I.1995 Under the public-trust doctrine, "the state holds title to all land below the high water mark in a proprietary capacity for the benefit of the public." Greater Providence Chamber of Commerce v. State, 657 A.2d 1038, 1041);
Nugent v. Vallone, 91 R.I. 145, 152, 161 A.2d 802, 805 (1960); Bailey v. Burges, 11 R.I. 330, 331 (1876). The state's authority over that land is limited by article 1, section 17, of the Rhode Island Constitution, which provides that the people shall continue to enjoy "the privileges of the shore," including the right to fish, to swim, and to pass along the shore.

U.S. 1854. The proprietor of land bounding on tidewaters has such a propriety in the flats to low-water mark that he may maintain trespass quare clausum fregit against one who shall enter and cut down piles placed there by the owner.
City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Fd. 118.

Under Massachusetts law, the grantee of land bounding on navigable waters where the tide ebbs and flows acquires a legal right and vested interest in soil of the shore between high and low water mark, and not a mere indulgence or gratuitous license.
City of Boston v. Lecraw, 58 U.S. 426, 17 How. 426, 15 L.Ed. 118.

93. Accretion and Reliction.

R.I. 1901. A., the owner of one-half of the dam and of the water-rights appurtenant thereto, on the west side of a stream and pond, conveyed the property to G., who thereupon gave a mortgage of the property to A. and then conveyed it, subject to the mortgage, to S., the owner of the other one-half of the dam and of the water-rights on the east side of the river. S. assigned the entire property to C., and by foreclosure the western portion passed again to A. While C. was the owner of the whole estate he raised the dam and used the entire water-power; Held, that the raising of the dam had not modified the appurtenant water-rights of the mortgaged property. The improvements made upon the mortgaged property by C. became a part of the freehold, and when the property was sold under the power contained in the mortgage carried with it all

accretions voluntarily made by the mortgagor.
Dyer v. Cranston Print Works Co., 48 A.791, 22 R.I. 506.

V. SURFACE WATERS.

115. What are Surface Waters.

R.I. 1975. The term "surface water" means the water from rains, springs, or melting snows which lies or flows on surface of the earth but does not form part of a well-defined body of water or a natural watercourse, and such water does not lose its character as surface water merely because some of it may be absorbed by or soaked into the marshy or boggy ground where it collects.

The uniform and uninterrupted use of water from a running Stream for a period of 20 years gives a title by prescription.
U.S.C.C. 1827. Tyler v. Wilkinson, Fed.Cas. No. 14312, 4 Mason 397.
U.S.C.C. 1823. Hazard v. Robinson, Fed.Cas. No. 6,281, 3 Mason 272.
R.I. 1852. Olney v. Fanner, 2 R.I. 211, 57 Am.Dec. 711.

VII. CONVEYANCES AND CONTRACTS.

154. Easements and Rights Appurtenant to Other Property.

R.I. 1916. Easement granted daughter by father with 30 acres, part of his farm, to take water "as occasion may require" from spring which supplied such farm, held appurtenant, and not in gross.

Chase v. Cram, 97 A.481, 39 R.I. 83, L.R.A. 1918F, 444, modified 97 A.802.

Where right to take water from spring of grantor of land is given grantee, if right is a profit a prendre, it is appurtenant to estate in connection with which it is enjoyed.

Chase v. Cram, 97 A.481, 39 R.I. 83, L.R.A. 1918F, 444, modified 97 A.802.

155. Conveyances of Riparian Lands in General.

R.I. 1886. The respondent, under a claim of right, had maintained certain drains for more than 20 years, through an avenue, a private way belonging to L., and with his knowledge, when the respondent bought land from L. bounded on said avenue. The deed contained the clause: "It is distinctly understood by and between the parties hereto that there shall be no right of frontage on or access to the said avenue for any land of this grantee, except for the parcel hereby conveyed." After receiving the deed, respondent continued his drains as before through said avenue. Held, that the clause did not affect respondent's right of drainage acquired by 20 years' adverse use before he took the deed.

Fiske v. Wetmore, 10 A.627, 629, 15 R.I. 354.

R.I. 1886. After W. had by 20 years' adverse use acquired the right to drain his land through a private way belonging to L., he took from L. a deed to a lot situated on this private way, which, after describing the lot, set forth that it was distinctly understood that there should be no right of frontage on, or access to, said private way for any land of W. except the lot conveyed. After taking the deed W. continued to drain his other lands through said private way. Held, that the clause in the deed that there should be no right of frontage or access to the private way for any other land of W. did not affect his right of drainage.

Wetmore v. Fiske, 5 A.375, 15 R.I. 354, rehearing dismissed 10 A. 627, 629, 15 R.I. 354.

R.I. 1858. A grant of "a certain spring or fountain of water" - the fountain being found by the jury to be fed by a spring which issued from beneath a rock at the bottom of the fountain - which grant contemplates that the land on which the fountain is situated is to be used for agricultural purposes, does not deprive the owner of the land of the right of properly draining his land to make it productive, even though in some unknown mode the drainage of the land has the effect of draining off the waters from the fountain and preventing water from flowing into it.

Buffum v. Harris, 5 R.I. 243.

156. Grants and Reservations of Easements and Rights to Use Water.

R.I 1966. considering plat designed so that all inhabitants of lots shown thereon could travel to water of bay without any inconvenience, deed conveying two lots in the plat together with all

riparian and other rights appurtenant to those lots between two points carried with it as an easement appurtenant the riparian and other rights along the entire shore between those lots.

Volpe v. Marina Parks, Inc., 220 A.2d 525, 101 R.I. 80.

U.S.C.C. 1857. An incorporeal right to water may be granted in gross.

Lonsdale Co. v. Moies, Fed.Cas. No. 8,496, Brummer, Col. Cas. 655, 21 Law Rep. 658.

R.I. 1916. Where a deed from father to daughter gave the grantee the "privilege to take water from the spring on my farm, as occasion may require", the daughter was entitled to use any quantity of water needed for the full enjoyment of her estate.

Chase v. Cram, 97 A.481, 39 R.I. 83, L.R.A. 1918F, 444, modified 97 A.802.

R.I. 1913. Under a deed to the grantee, "her heirs and assigns, forever", granting the privilege of taking water from a nearby spring, the privilege passes to the grantee's heirs and assigns.

Cram v. Chase, 85 A. 642, 35 R.I. 98, 43 L.R.A., N.S. 824.

R.I. 1895. In a suit to reform a deed and mortgage it appeared that A. and B., the predecessors in title respectively of the complainant and respondents, were formerly owners of lands on opposite sides of a pond; that controversies had existed between them as to their respective rights in the pond; that B. had filed a bill in equity in which he claimed the right to the use and benefit of the water in the pond, and prayed to have A. enjoined from building a new dam which would raise the water in the pond; that A. and B. then made a contract by which B. agreed to sell to A. his land with the "water rights therewith connected," in pursuance of which A. purchased of B. and mortgaged back to him his land with the "water rights therewith connected;" that the mortgage was subsequently forclosed; and that for nearly twenty years the deeds had remained unquestioned. The complaintant also claimed that its predecessord in title have always been the exclusive owners of the entire water power of the pond. Held, that the question involved being that of the intention of A. and B. in using the term "water rights" in their agreement and conveyances, the fact of title could not be conclusive unless it was so clear and unequivocal a character as to exclude all claim of right in the pond. Held, further, that the term "water rights" in agreement and conveyances meant the right to use the water for furnishing power, and as thus construed appeared to express the intention of the parties.

Cranston Print Works v. Dyer, 32 A.922, 19 R.I. 208.

R.I. 1966. Deed conveying to state for park purposes all land from inner edge of streets shown on plat out to waters of bay to east between a specified lot and a point on the street and providing that the street was to be maintained as a public highway and that rights-of-way lot owners might have by reason of deeds then or thereafter made should be excepted conclusively demonstrated that grantor was well aware of manner and extent of dedication of his property and showed his intention that lot owners should have access to water at specified locations.

Volpe v. Marina parks, Inc., 220 A.2d 525, 101 R.I. 80.

R.I. 1913. Under a father's deeds to his children of tracts of his farm, including the right to take water from a nearby spring, and "to pass and repass to and from the shore" bordering his lands, the right to take water is not limited by the quoted phrase.

Cram v. Chas, 85 A.642, 35 R.I.. 98, 43 L.R.A., N.S. 824.

A deed with a privilege to "take water" from a spring held to permit a taking by pipe and pump for use in a summer hotel.
Cram v. Chas, 85 A.642, 35 R.I. 98, 43 L.R.A., N.S. 824.

Under a deed including the right to take water from the grantor's nearby spring, his successor cannot complain because the grantee's pumping plant is maintained on a tract other than that covered by the deed, unless water is used on such other tract.
Cram v. Chas, 85 A.642, 35 R.I. 98, 43 L.R.A., N.S. 824.

VIII. ARTIFICIAL PONDS, RESERVOIRS, AND CHANNELS, DAMS AND FLOWAGE.

162. In General.

R.I. 1898. Where the owner of an easement of flowing lands by water from a dam relocated the dam so that the relocation infringed the rights of certain persons, it does not avail others whose rights were not infringed, in disputing the right to the easement.
Bradley v. Warner, 41 A.564, 21 R.I. 36.

An easement of flowing land by water from a dam is not extinguished by a change in the dam's location, where the area flowed is not increased.
Bradley v. Warner, 41 A.564, 21 R.I. 36.

WHARVES

1. Right to Establish and Maintain.

R.I. 1960. Right to wharf out is common-law right which, in absence of statute to contrary, will not be denied, provided that exercise thereof does not interfere with navigation or rights of other riparian owners.
Nugent v. Vallone, 161 A.2d 802.

Sole riparian owner on shore of passage of bay had right to wharf out into passage to avail itself of full advantage of navigation.
Nugent v. Vallone, 161 A.2d 802.

R.I. 1999 Coastal Resources Management Council has exclusive jurisdiction over residential, noncommercial boating wharves.
Town of Warren v. Sandra Thornton-Whitehouse

Today, it is clear that the Legislature has chosen to limit the right to wharf out by requiring land owners to gain approval from CRMC before constructing a wharf or a dock in tidal waters, § 46-23-6(2).

16. Right in General.

U.S.D.C. 1903. The owner of a wharf extending to the harbor line in navigable waters has not an exclusive right to the occupation at all times of the berth in front of his wharf, but his right is subject to that of the public to make reasonable use of such waters, and no claim for wharfage arises in his favor against a vessel because while lying in the public waters discharging at an adjoining wharf she partially overlaps his own, at a time when he had no actual use for the space so occupied.
The Davidson, 122 F.1006, 70 L.R.A. 193.

It has been held that a wharf built from a public highway into navigable waters is an extension of a public highway
(*TheEmpire State, Newb. Adm.Rep. 541*)

that where a private dock is built over a public street upon the shore of navigable waters, the dock becomes a part of the street and the public has a right to travel over it.
(*City of Buffalo* v. *D.L.W.R.R.Co.* 190 N.Y. 84.)

WILLS

561. Particular Description of Specific Real Property.

561(1). In General.

R.I. 1928. Will devising named farm adjoining country club held to devise entire farm, including portion under lease giving lessee option to purchase.
Nocanna v. Hanan, 142 A.609, 49 R.I. 349.

R.I. 1927. Devise of "so much of my real property given to my brothers and sister * * * to H.K., my wood lot," gave devise wood lot forming part of property given brothers and sister.
Gardner v. Knowles, 136 A.883, 48 R.I. 231.

R.I. 1901. Where the lots devised by testatrix were not a part of any platted land, and had never been designated by number, but had been purchased by her at different times, and were devised by her as lots No. 1 and No. 2, No. 1 must be construed to mean the one first purchased, and No. 2 the later purchase.
McNally v. McNally, 49 A.699, 23 R.I. 180.

562. Appurtenances to Real Property.

R.I. 1924. A will giving daughter house and lot adjoining testator's homestead, with privilege to use well, and a right of way across homestead lot, held to create an easement across homestead lot running with the land.
Khouri v. Dappinian, 125 A.268, 46 R.I. 163.

ZONING

570. Variances.

The Zoning Board is empowered to grant a dimensional variance pursuant to § 45-24-41(d) and (e), which state: "(d) In granting a variance, the zoning board of review . . . require[s] that evidence to the satisfaction of the following standards is entered into the record of the proceedings: "(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16); "(2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; "(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon

which the ordinance is based; and "(4) That the relief to be granted is the least relief necessary. "(e) The zoning board of review . . . shall, in addition to the above standards, require that evidence is entered into the record of the proceedings showing that: . . . (2) [i]n granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning board of review . . . has the power to grant dimensional variances where the use is permitted by special-use permit if provided for in the special use permit sections of the zoning ordinance."

According to the Rhode Island Zoning Enabling Act, a dimensional variance is defined as "[p]ermission to depart from the dimensional requirements of a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations." Section 45-24-31(66)(ii).
To grant a request for a dimensional variance, a zoning board must find that an applicant has satisfied the following four-prong standard: 10 "(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16); "(2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; "(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based; and "(4) That the relief to be granted is the least relief necessary." Section 45-24-41(d); see also Ordinance, Article 9, § 907, Variances and special use permits.

R.I. 1978. "'the award of a variance was never intended to afford relief from a mere personal inconvenience experienced by a property owner or as a guise to guarantee such an individual a more profitable use of his property.'"

Rozes v. Smith, 120 R.I. 515, 521, 388 A.2d 816, 820 (quoting Gartsu v. Zoning Board of Review, 104 R.I. 719, 720-21, 248 A.2d 597, 598 (1968)

R.I. 2001. Importantly, the notion of a self-created hardship is "'most properly employed where one acts in violation of an ordinance and then applies for a variance to relieve the illegality.'"

Sciacca v. Caruso, 769 A.2d 578, 584 (quoting 7 Patrick J. Rohan, Zoning and Land Use Controls § 43.02[6] at 43-66 (1998)).

R.I. 1969. However, the applicant always bears the burden to demonstrate why the requested relief should be granted.

See DiIorio v. Zoning Board of Review of City of East Providence, 105 R.I. 357, 362, 252 A.2d 350, 353

571. Amendments

R.I. 1970. An amendment to a zoning map is "tantamount, for the purpose of judicial review," to an amendment of a zoning ordinance under the statute. DeLucia v. Town of Jamestown, 107 R.I. 179, 185, 265 A.2d 636, 638

572. Intrepretation

R.I. 1963. "in instances where doubt exists as to the legislative intention, the ordinance should be interpreted in favor of the property owner."

Earle v. Zoning Board of Review of City of Warwick, 96 R.I. 321, 324-25, 191 A.2d 161, 164

R.I. 2000. It is well-settled that the Zoning Board does not possess the authority to assess the validity of Subdivision Regulations § 2.2.2(a) when considering an appeal from the issuance of a building permit. "[T]he authority of [a] zoning board of review is limited in scope to that expressly conferred by statute."

Franco v. Wheelock, 750 A.2d 957, 960 (citing Noonan v. Zoning Board of Review of Barrington, 90 R.I. 466, 471, 159 A.2d 606, 608 (1960)).

R.I. 1971. A zoning board "is wholly a statutory creature which has been assigned a definite, but limited, role in the administration of the zoning laws, and it is without powers, rights, duties or responsibilities save for those conferred upon it by the Legislature."

Hassell v. Zoning Bd. of Review of City of E. Providence, 108 R.I. 349, 351-52, 275 A.2d 646, 648 (citing Reynolds v. Zoning Board of Review of Town of Lincoln, 96 R.I. 340, 343, 191 A.2d 350, 352-53 (1963)).

R.I. 2008. "if expert testimony before a zoning board is competent, uncontradicted, and unimpeached, it would be an abuse of discretion for a zoning board to reject such testimony."

Murphy v. Zoning Board of Review of Town of South Kingstown, 959 A.2d 535, 542

R.I. 2001. Regarding the Zoning Board's findings of fact, the Rhode Island Supreme Court has stated '"[t]hose findings must, of course, be factual rather than conclusional, and the application of the legal principles must be something more than the recital of a litany. These are minimal requirements. Unless they are satisfied, a judicial review of a board's work is impossible."'

Bernuth v. Zoning Board of Review of Town of New Shoreham, 770 A.2d 396, 401 (quoting Irish Partnership v. Rommel, 518 A.2d 356, 358-59 (R.I. 1986))

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