

**1. Maine law states that the municipal officers or clerk will notify the department in writing of the appointment. May I perform that notification?**

No, you may not perform that notification. The notification is to be made by the municipal officers or clerk on Official letterhead signifying that the appointment has "officially" been made by the municipality. Once that is done, you may contact the Department of Health and Human Services.

**2. Maine law states that the health officer in towns or plantations contiguous to unorganized territory shall perform the duties of health officer in such territory. Does that mean I have to actually perform tasks in those locations?**

You are employed by the municipality and as such, perform tasks assigned by the municipal officers. If it is determined that this can be done and compensation has been arranged, you will be expected to perform those tasks.

**3. Our town's current Local Health Officer is away for three months. Is that okay?**

Maine law provides for absences of an appointed Local Health Officer. The law states "In the event of incapacity or absence of the local health officer, the municipal officers shall appoint a person to act as health officer during such incapacity or absence. Failing such appointment, the chairman of the municipal officers shall perform the duties of local health officer until the regular health officer is returned to duty or appointment of another person has been made. In municipalities with a manager form of government, when the charter so provides, the appointments provided for in this section may be made by the said manager and the duty prescribed for the chairman of the municipal officers during incapacity or absence of the health officer shall be performed by the manager."

**4. I have heard from others that I will be getting notifications from Department of Health and Human Services. What are these and what am I supposed to do with them?**

The alerts you are likely to receive are called "Health Alerts" or "Health Alert Network." These are sent to many people in Maine, to include all Local Health Officers. These notifications are designed to keep LHOs updated on priority public health issues in Maine. If you have access to the Internet, these are located at <http://www.maine.gov/dhhs/boh/newhan.htm>.

**5. As a Local Health Officer I am concerned about any liability I may assume during the performance of my duties. How am I protected?**

Maine legislature considered this during the drafting of the law. All Local Health Officers are covered under the Maine Tort Claims Act, 14 MRSA §8101 et seq. This law defines an employee and the Local Health Officer falls under this definition. Further, §8103 expressly provides all governmental entities immunity from suit on any and all tort claims seeking recovery of damages.

**6. Can our town employ our Code Enforcement Officer or Local Plumbing Inspector as Local Health Officer? If so, are they permitted to be part-time as the CEO and LPI are?**

The person appointed as Local Health Officer may hold other positions such as the CEO or the LPI. Since complaints to LHOs often involve "land use activities," many municipalities have combined the Code Enforcement Officer and Local Health Officer duties into one full time position. There is currently no restriction as to being employed part-time or full-time although the Maine Legislature this session did enact a bill authorizing the Department of Health and Human Services to set qualifications for LHOs.

**7. What is the level of responsibility that might be expected from a LHO?**

Public employees can't be all things to all people. Local Health Officers and Code Enforcement Officers can only

work within the state laws or local ordinances that are available. Many of the existing laws are over 40 years old. As a result, they are written very generally and might not pass legal scrutiny in today's court system. If a serious problem is before you and you can't get it resolved, the Town may have to enact a local ordinance. If the Local Health Officer is confronted with a problem, all public employees have an obligation to assist the person requesting help – whether or not there is a law or ordinance that covers that problem. You should, at the least, direct the person requesting assistance to some place or some one where the answer will be found. In other words, assist by visiting the location and confirming or refuting the complaint raised by the caller. For example, the Local Health Officer could visit with the local fire chief or code officer (it is always a good thing to go with two to assist in verifying the problem). If you determine the complaint is valid (for example, a hole in an outside wall at an apartment building), you could speak to the landlord and inquire what he or she plans to do about the complaint.

## **8. What types of situations can I expect to be asked to resolve?**

The types of situations you will be asked to resolve are:

- Protect occupants in a “dangerous building.” This is covered in T 17 M.R.S.A. §2851. Dangerous buildings. A lien is authorized in this law. <http://janus.state.me.us/legis/statutes/17/title17sec2851.html>
- Inspect and examine any place or premises where filth or a public health threat may exist. This is covered under 22 MRSA §461. Notice to owner to clean premises; expenses on refusal. The law authorizes the LHO to have the premises cleaned at the expense of the owner, or may close the premises. <http://janus.state.me.us/legis/statutes/22/title22sec461.html>
- Removal of filth on property. This is covered by 22 M.R.S.A. §1561. Removal of private nuisance. This law authorizes the LHO, at the expense of the owner or occupant, to remove or discontinue the nuisance. If the owner or occupant or the person who caused it delays correction, that person is assessed \$300, in addition to having to repay the municipality for all expenses for the removal or discontinued of the nuisance. <http://janus.state.me.us/legis/statutes/22/title22sec1561.pdf>
- Removal of dead animals (domesticated - such as cow, horse, fox, rat, etc., includes fowl). This is covered under T 22 M.R.S.A. §1562. Depositing of dead animal where nuisance. Unless there is a municipal ordinance, the only remedy is going to District court where the offender must be fined \$10 to \$100, or by imprisonment for not more than 3 months. NOTE: Undomesticated animals suspected of having rabies are dealt with by the Department of Inland Fish and Wildlife, unless the animal is a wolf hybrid, in which case the Animal Control Officer is responsible. Maine law, T 22 M.R.S.A. §1313-A is the associated law. <http://janus.state.me.us/legis/statutes/22/title22sec1562.pdf>
- Unlawful dumping. This is covered by T 30-A M.R.S.A. §3352. Prohibited dumping. Similar to the previous example, unless there is a municipal ordinance, the only remedy is going to District court where the offender must be fined \$10 to \$100. The municipality can recover all costs. <http://janus.state.me.us/legis/statutes/30-A/title30-Asec3352.html>
- Malfunctioning sewage system. This is covered by T 30-A M.R.S.A. §3428. Malfunctioning domestic waste water disposal units; abatement of nuisance. Municipal Officials (generally the Local Plumbing Inspector with the assistance of the LHO) can remedy the problem and put a lien on the property or go to court. <http://janus.state.me.us/legis/statutes/30-A/title30-Asec3428.pdf>
- Landlord tenant issues. These issues are covered by T 14 M.R.S.A. §6021 which contains an “implied warranty” and “covenant of habitability”. Remedies to these problems may sometimes be expedited by resolving it similarly to one of the other complaints already discussed, such as the dangerous building. <http://janus.state.me.us/legis/statutes/14/title14sec6021.html>

## **9. Does the municipality have to hire a lawyer to go to court?**

When a municipality goes to court for most of these LHO situations, it will be to District Court. Rule 80K in the

Maine Rules of Civil Procedure allows a trained Municipal Official to represent the municipality in court for Land use violations. The complete list of laws and ordinances which municipal code enforcement officers may enforce under Rule 80K is set forth at 30-A M.R.S.A., §4452, subsections 5,6 and 7. For example:

- Subsurface wastewater disposal rules adopted by the Maine Department of Health and Human Services;
- Local land use and zoning ordinances and other local ordinances, e.g., junkyards, automobile graveyards, electrical installations, plumbing, subsurface waste water disposal;
- The subdivision law;
- Laws pertaining to public water supplies;
- Laws administered by health officials;
- Laws pertaining to fire prevention and protection;
- Laws pertaining to the construction of buildings for the physically disabled;
- Local building and housing codes;
- Shoreland zoning ordinances;
- Laws pertaining to harbors;
- Natural resources protection laws;
- The state junkyard and automobile graveyard statute.

#### **Section 4 FAQ's: How Do I Solve This Problem**

##### **1. I have a complaint with mold in an apartment unit. How dangerous is mold?**

Mold can be overrated as a source of major health problems, though that's not to say that it can't aggravate existing health problems. The first thing to consider is to have a professional inspector inspect the home to or have an Energy Star rater rate the home before and after the work has been completed.

##### **2. What can be done to make things safe if mold is found in a home?**

Mold requires moisture, warmth and a food source to survive. Remove any one of the three and the mold will go dormant.

#### **Tips for Dealing With Mold in the Accessible Areas of The Home**

1. Cut out any mold found on drywall or sheetrock.
2. If you can see mold growing on the finished side of the drywall, the back or unfinished side is probably much worse.
3. Although plaster does not support the growth of mold, the paint, wallpaper and sealers used on the plaster will. Scrape and clean the surface of plastered walls.
4. Lead-based paint will not support mold growth, but the oils and dirt that collect on the surface will. Therefore, the paint should be cleaned using a mild bleach and warm water wash.
5. Do not sand or scrape lead-based paint as the lead will become airborne, which is a more serious health threat than the mold.
6. Mold found on wood in the under-floor areas is common and probably would not affect the occupants of the home.
7. To treat, use a bleach and water solution on mold in under-floor areas, then seal the wood with a "boat coat" or clear varnish sealer once the wood has dried. Same for the attic.

8. Molds on wood are natural and are a part of the decay process, so look for and correct the sources of moisture that are contributing to the decay.
9. An air conditioner is a dehumidifier, but if it has been left off while the house was unoccupied, that may be why mold is present inside the home.
10. Have the ductwork cleaned, including the interior cooling coil, coil box and fan.
11. Remove any and all damp insulation in the walls, attic or under-floor areas.
12. Insulate the walls if they are not already insulated. An R-13 or higher rating is preferred. Use expanding foam in the under-floor and in the wall cavities. Use expanding foam or loose fill fiberglass in the attics. Insulate the attic to an R-48 to save on energy costs.
13. Install storm doors and low-E replacement windows.
14. Seal all air leaks to the interior of the home.

When the drywall has been removed and wall cavities are exposed, seal all four sides of the cavity where the wood studs meet the exterior sheathing with silicone caulk.

### Section 5 FAQ: You Make the Call

**1. There are many laws you refer to but still say the town may have to take court action. What if the Town doesn't want to spend the time and money?**

This is a common problem. Local politics can come into play – as well as the idea that “if you do it to someone in town, you should do it to all violators.” Taking on all violators may be too big a task.

In any case, the best course of action with noncompliant individuals is to go to court. The town needs to stand up to violators in order to insure repeat violations do not occur with other building owners.

After all, these problems are to be addressed using “due process” and as such you are giving the owner all sorts of options. It is only the long-term noncompliant ones who may face the full penalties. Regarding the cost issue, it is possible to go to District Court very inexpensively, other than the time you put into it. This is under a provision the court system allows in their listing of rules, viz. Rule 80K. This rule allows municipal officials to go to court without benefit of attorney.