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Executive Office of Environmental Affairs

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QUESTIONS AND ANSWERS ON CHAPTER 91

What is the purpose of Chapter 91?

Adopted in 1866, Massachusetts General Law Chapter 91 protects the public's interest in waterways of the Commonwealth. It ensures that public rights to fish, fowl, and navigate are not unreasonably restricted and that unsafe or hazardous structures are repaired or removed. Chapter 91 also protects the waterfront property owner's ability to approach his land from the water. In addition, Chapter 91 helps protect wetlands resource areas by requiring compliance with the Wetlands Protection Act.

The latest regulations for Chapter 91, adopted in 1990, include an amnesty provision. This is an effort to bring people into compliance while recognizing that many are unaware of their responsibilities under the law.

What is amnesty?

Amnesty is an opportunity for many owners of unlicensed waterfront structures to apply for authorization under the old regulations and without facing penalties. Applications reviewed under the old regulations generally mean lower fees and longer license terms. The amnesty period ends October 4, 1996.

To qualify for amnesty, the structure or fill must have been in place before January 1, 1984, and have had no substantial alteration or change in use. Owners should submit an application for either an amnesty license or interim approval before the amnesty deadline.

What kinds of structures or areas require Chapter 91 authorization?

You need Chapter 91 authorization if there has been an alteration in tidelands, great ponds (over 10 acres in its natural state), and certain rivers and streams. Types of structures include: piers, wharves, floats, retaining walls, revetments, pilings, bridges, dams and some waterfront buildings (if on filled lands or over the water). You may also need a new license if there has been a structural change or change in use of a previously licensed structure.

Do temporary or seasonal docks require a license?

If the float is bottom-anchored, seasonal, and approved by the local harbormaster or other authorized town official, you don't need a license. However, seasonal and permanent pile-supported piers require licenses.

Why don't some people have permits?

Over 17,000 licenses have been issued since 1866, but many structures remain unlicensed for a variety of reasons. Many owners don't realize they need authorization. Some owners simply are unaware of the law; others assume that prior owners obtained proper licensing; and still others don't know that a change in structure or use requires new licensing.

Are there penalties for unlicensed structures or work?

Unlicensed structures may be considered a public nuisance or a hazard to public safety or may significantly interfere with navigation. Unless properly licensed, these structures can be ordered removed and may be subject to fines. Our goal, however, is to bring people into compliance with Chapter 91 and to help them take advantage of the amnesty opportunity. Even after October 4, 1996, applications will be accepted for existing structures without fines or penalties being issued, although these applications will be reviewed under the 1990 regulations, and most of these structures can be licensed. Owners of existing structures are always given an opportunity to obtain authorization before any formal enforcement action begins.

Do structures built after January 1, 1984 still get amnesty?

Structures built after this date would not qualify for amnesty authorization, but owners should still apply for a license. DEP will not assess a fine if the owner applies. The project will be reviewed under the 1990 regulations.

If an owner submits an application for an existing structure, will he automatically get a license?

Amnesty applications are reviewed, under the 1978 regulations, to ensure that the structure does not significantly interfere with navigation, fishing or other public rights. Chapter 91 gives DEP authority to require owners to modify the structure or to deny the application, but this rarely has happened since the amnesty program started. Program staff try to work with the owner to solve any conflicts. Less than five percent of amnesty applications have been denied or required modifications and most revisions to existing structures have been minor.

How much does amnesty authorization cost?

There is no application fee for interim approvals. The application fee for a water-dependent amnesty license is \$100. This fee covers only part of the costs the state incurs protecting the public's interest in waterways. Some people are charged tidewater displacement and/or occupation fees, which are similar to "rents" charged by the state for private owners to use "public" waters or land. These fees are minor. No occupation fees are charged for amnesty licenses for structures in great ponds or for occupying private tidelands.

How long does it take to get a license?

The application review process usually takes less than 6 months. However, due to the increased number of filings, delays may occur. As long as a license application is received by the Department during the amnesty period, the structure or use may continue no matter how long license processing may take.

Can an owner maintain or repair licensed structures?

Maintenance or repair of licensed structures is allowed as long as the work is done according to the conditions of the license (including using materials of the same dimensions and quality and in the same locations and elevations as specified in the license).

How long are license terms?

Generally, an amnesty license carries a 99-year term and is transferable with the property. An interim approval expires in 30 years or one year from the date of the sale of the property. A regular (non-amnesty) license usually has a 30-year term and is renewable.

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For more information on Chapter 91, please call the amnesty hotline at 617/292-5777 or write to the Division of Wetlands and Waterways, Department of Environmental Protection, 1 Winter Street, 8th floor, Boston, MA 02108.

DO YOU QUALIFY FOR CHAPTER 91 AMNESTY AUTHORIZATION?

In order to qualify for amnesty under the latest regulations of Massachusetts General Law Chapter 91, the Public Waterfront Act, your unlicensed structure or fill must have been in use since January 1, 1984 and had no substantial change in use or structural alteration since that time.

If your structure or fill meets these criteria, you are eligible for amnesty authorization: either an amnesty license or an amnesty interim approval.

1. Amnesty License

Description

An amnesty license is similar to a standard Chapter 91 license, except amnesty license applications are subject to the Waterways regulations in effect prior to October 4, 1990 - meaning longer license terms and lower fees in general. However, amnesty license applications are subject to the same procedural regulatory requirements as non-amnesty projects. Amnesty licenses are valid for 99 years.

Qualification Requirements

Same as listed above.

2. Amnesty Interim Approval

Description

Amnesty interim approvals are 30-year nonrenewable authorizations. Interim approvals do not require payment of tidewater displacement fees or tidelands occupation fees. In addition, plans submitted for interim approvals need not be certified by a professional engineer or land surveyor if the fill or structure is accurately drawn by the applicant on a scaled plan in accordance with instructions.

Interim approvals are valid for one year after the sale of the property. Within one year of the sale of the property, or upon expiration of the 30-year term, an application for a regular (non-amnesty) waterways license must be submitted.

Qualification Requirements

To be eligible for interim approval, a project must meet the amnesty criteria listed above and consist entirely of an existing dock, pier, seawall, bulkhead, or other small-scale water-dependent structure that is accessory to a single family residence.

For more information or an application, contact the Chapter 91 Amnesty Hotline at 617/292-5777 or write: Waterways Program, Division of Wetlands and Waterways, Department of Environmental Protection, One Winter St., 8th floor, Boston, MA 02108.