

LEGISLATIVE COMMITTEE MINUTES

**SB25**

# Bill as Introduced

SB 25 - AS INTRODUCED

2019 SESSION

19-0380

10/04

SENATE BILL

**25**

AN ACT

relative to exemptions from real estate practice license requirements.

SPONSORS:

Sen. French, Dist 7

COMMITTEE:

Executive Departments and Administration

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ANALYSIS

This bill exempts from licensure under the real estate practice act persons engaged in rental, leasing, and management of residential housing units for an owner, business, or other entity under a formal management agreement.

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Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nineteen*

AN ACT                   relative to exemptions from real estate practice license requirements.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 New Paragraph; Real Estate Practice; Exemption From Licensure. Amend RSA 331-A:4 by  
2 inserting after paragraph IX the following new paragraph:

3           X. Persons hired by property owners, businesses, or other entities engaged in rental,  
4 leasing, and management of residential housing units owned for the property owners, businesses, or  
5 other entities under a formal management agreement.

6           2 Effective Date. This act shall take effect 60 days after its passage.

# Committee Minutes

**SENATE CALENDAR NOTICE**  
**Executive Departments and Administration**

Sen Sharon Carson, Chair  
Sen Kevin Cavanaugh, Vice Chair  
Sen Cindy Rosenwald, Member  
Sen Shannon Chandley, Member  
Sen John Reagan, Member

Date: January 15, 2019

**HEARINGS**

Wednesday	01/23/2019	
(Day)	(Date)	
Executive Departments and Administration	LOB 101	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	<b>SB 31</b>	relative to membership of the New Hampshire community development advisory committee.
9:15 a.m.	<b>SB 30</b>	relative to the advisory board on services for children, youth, and families.
9:30 a.m.	<b>SB 27</b>	relative to certain unclassified positions within the department of health and human services.
9:45 a.m.	<b>SB 26</b>	relative to the New Hampshire health care quality assurance commission.
10:00 a.m.	<b>SB 29</b>	establishing a commission to study incidents of workplace violence against state employees.
10:30 a.m.	<b>SB 28</b>	relative to an active employee member of the retirement system independent investment committee.
10:50 a.m.	<b>SB 25</b>	relative to exemptions from real estate practice license requirements.

**EXECUTIVE SESSION MAY FOLLOW**

**Sponsors:**

**SB 31**

Sen. Feltes

**SB 30**

Sen. Reagan

**SB 27**

Sen. Reagan

**SB 26**

Sen. Rosenwald

Sen. Bradley

Sen. Hennessey

Sen. Fuller Clark

Rep. Campion  
Rep. Nutter-Upham

**SB 29**

Sen. Cavanaugh

**SB 28**

Sen. Cavanaugh

**SB 25**

Sen. French

Rep. McMahon

Rep. Woods

Rep. Fothergill

Jennifer Horgan 271-2609

Sharon M Carson  
Chairman

**Senate Executive Departments and Administration  
Committee**

*Jennifer Horgan 271-3092*

**SB 25**, relative to exemptions from real estate practice license requirements.

**Hearing Date:** January 23, 2019

**Time Opened:** 10:50 a.m.

**Time Closed:** 11:12 a.m.

**Members of the Committee Present:** Senators Carson, Cavanaugh, Rosenwald, Chandley and Reagan

**Members of the Committee Absent :** None

**Bill Analysis:** This bill exempts from licensure under the real estate practice act persons engaged in rental, leasing, and management of residential housing units for an owner, business, or other entity under a formal management agreement.

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**Sponsors:**  
Sen. French

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**Who supports the bill:** Senator French; Keith Phelps, NEPBA; Dan McGuire, NH Liberty Alliance; Kathleen Wikstrom

**Who opposes the bill:** Bob Quinn, NH Association of Realtors; Rick Wisler, Real Estate Commission; David Cline

**Summary of testimony presented in support:**

**Senator French** (provided written testimony)

- There are nine instances where an individual does not have to have a real estate license to sell or transfer property including, owners of buildings, attorneys, auctioneers, etc.
- This bill adds one more: 'persons hired by property owners, businesses, or other entities engaged in rental, leasing, and management of residential housing units owned for the property owners, businesses, or other entities under a formal management agreement'
- There has been some debate about what the language of the bill will do; understands those concerns.
- Intends to narrow the language and will be working on an amendment.
- There are large corporations that own buildings with 100-200+ units and often those corporations do not want to manage the property. Generally, they will hire another company to manage the property.



- Currently, the law states that a management company has to be licensed as a broker and the people working for the management company on the ground have to be licensed as sales people to lease the property.
- This is burdensome because NH does not have a corporate license.
- Will be working with the Real Estate Commission and the NH Realtors to come up with verbiage to exclude these corporations.
- Senator Reagan asked if NH requires real estate licenses for people involved in the exchange of ownership of property.
  - Yes, NH requires licensing to sell, exchange, purchase, rents, or leases real estate, offers to sell, exchange, purchase, rent or lease real estate... (RSA 331-A:2)
- Senator Cavanaugh asked if he were to rent property, would he sign the lease with an active real estate agent in the management company.
  - If someone owns the property, they can have employees working for them who are unlicensed to act as rental agents. If it is a 100+ unit, it is probably run by a management company. It is lawful to own a 400-unit complex, not be licensed and hire an employee to act as the rental agent without a license. However, the minute a company is hired to manage the property, that management company must be licensed.
- Senator Carson stated that they must be licensed because they will be renting the unit.
  - Someone in the corporation must be a broker and anyone on site that shows, talks about or negotiates on the property must be licensed. If someone were to call and ask how much the rent is, the person that answers that question must be licensed.
- Senator Carson asked if the concern of something going wrong on the property is the reason why they must be licensed. By being licensed it allows those tenants to bring a complaint against the license.
  - The tenants could bring an action suit. Does not believe there is any action a tenant can take on a license for mismanagement of something like heating.

**Summary of testimony presented in opposition:**

**Bob Quinn (NH Association of Realtors)**

- Is willing to work with Senator French on narrower language.
- NH law regulates property management functions (leasing, offers to lease, rent collection, etc.) as real estate activities, so they require a license.
- RSA 331-A:4 exempts the owner of a property and a regular employee of that owner.
- Licenses are required when a third party is hired to manage those functions and SB25 would remove that requirement.
- During a rental or lease, a property manager is responsible for collecting significant amounts of money.
- There are statutes regulating how those dollars must be handled.
- This bill would excuse that third party from having to understand those statutes.

- A licensee is responsible for understanding and knowing the state and federal laws including fair housing, discrimination, and security deposit laws.
- Licenses are given to professionals to allow a license to be removed if someone mishandles their duties.
- Without a license requirement, if someone mishandles funds they can be taken to court, but there is no way to prevent them from coming back and doing the same thing again.

**Rick Wisler (Real Estate Commission)**

- Will be willing to look as the new language Senator French comes up with.
- NH has almost 11,000 licenses for real estate.
- All licensees have passed an exam and taken the required education.
- Licensees must also pass a criminal background check.
- A broker must be bonded, which is a benefit to a consumer.
- Filing a complaint with a board incurs no cost to the consumer and the board will investigate the complaint, and if warranted brings the complaint forward to the full commission for a hearing.
- The board can levy fines, revoke or suspend licenses.

**David Cline (provided written testimony)**

- Small landlord with property in Rochester, Somersworth, and Dover.
- Provided a list of things a manager or management company does.
- These management companies get keys to all the properties and they have 24/7 access to all of these properties.
- The license ensures that a background check has been completed, which is a benefit to the owner and to the tenants.
- Was approached by an unlicensed individual who wanted rent apartments for him. This individual did not know he needed to be licensed or the difference between tenants in common and tenants at will.
- It is important to keep these protections in place.

jch

Date Hearing Report completed: January 24, 2019

# Speakers





# Testimony

## **Definition of Broker**

III. "Broker" means any person acting for another on commission or for other compensation, for the promise of such commission or other compensation, or any person licensed under this chapter who:

- (a) Sells, exchanges, purchases, rents, or leases real estate.
- (b) Offers to sell, exchange, purchase, rent or lease real estate.
- (c) Negotiates, offers, attempts or agrees to negotiate the sale, exchange, purchase, rental or leasing of real estate.
- (d) Lists, offers, attempts or agrees to list real estate for sale, lease or exchange.
- (e) Buys, sells, offers to buy or sell, or otherwise deals in options on real estate or improvements on real estate.
- (f) Collects, offers, attempts or agrees to collect rent for the use of real estate.
- (g) Advertises or holds oneself out as being engaged in the business of buying, selling, exchanging, renting or leasing real estate.

## **Section 331-A:3 Prohibition.**

It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or real estate salesperson without a license and otherwise complying with the provisions of this chapter.

## **Section 331-A:4 Exempted Classes.**

The provisions of this chapter shall not apply to:

I. An owner, builder or tenant of real estate or to regular employees with respect to property owned or leased by the owner, builder, or tenant, or to a prospective purchaser or tenant of real estate or to regular employees with respect to property sought to be acquired or leased by the purchaser or tenant, and who does not hold himself or herself out as a real estate broker;

II. An attorney in fact;

III. An attorney at law in the performance of duties as an attorney;

IV. An auctioneer selling at public auction;

V. A public official in the conduct of official duties;

VI. A person or the person's regular employees while such person is acting as a receiver, trustee, administrator, executor, conservator, guardian, or fiduciary, or while acting under court order, or while acting under the authority of a will, trust instrument, or other recorded instrument containing a power of sale;

VII. Any person owning or operating a park, including the person's regular employees, in which manufactured housing to be sold or leased is located, who may, for a fee or commission or other valuable consideration, list, sell, purchase, exchange or lease such manufactured housing without a license of a broker or salesperson;

VIII. A corporate consultant who receives a fee from a client based on site searching

services rendered in accordance with a written contract, rather than on the completion of any particular transaction and who does not hold himself or herself out as a real estate broker; or

IX. A unit owners' association that rents condominium and townhouse units for periods of 30 days or less for the exclusive benefit of the unit owners and the unit owners' association provided such rentals are managed through an on-site rental office that is operated and controlled exclusively by the unit owners' association.



# Testimony by David Cline

## Some of the Responsibilities of a Management Company Managing Residential Units

### 1. Leasing

- a. Notifying current residents of entry
- b. Determination of what rent should be
- c. Proper advertising units
- d. Prescreening of tenants
- e. Proper rental applications
- f. Collection of application fees
- g. Accepting new tenants
- h. Rejection of tenants
- i. Collection of deposits to hold apartment
- j. Collection of security deposits and proper notification regarding escrow account
- k. Collection of first month's rent
- l. Preparing and having executed the lease
- m. Lead paint disclosures for pre-1978 housing and distribution of required information
- n. Proving keys to new tenants
- o. Informing tenants of building policies and rules and regulations

### 2. Operations

- a. Retaining security deposits in an escrow account
- b. Preparing apartments for new tenants
- c. Avoiding lead paint exposure in pre-1978 apartments
- d. Maintaining and securing rental applications, credit reports, leases, lead paint disclosures, and other documents
- e. Retaining and securing keys to all apartments, common areas, and landlord only areas such as a boiler room
- f. Maintaining the interior of residential units and having an on-call service available
- g. Maintaining mechanical, electrical and plumbing systems.
- h. Collecting Rents
- i. Addressing late payments or non-payments including evictions
- j. Addressing improper conduct by a tenant, members of the household or guests.
- k. Paying building operating expenses including utilities, taxes, mortgages, maintenance
- l. Paying management fees
- m. Paying employees
- n. Paying payroll taxes
- o. Accounting for all funds received and disbursed and properly posting funds received and disbursed.

- p. Maintaining insurance, including worker's compensation
- q. Maintaining the interior and exterior common areas including snow removal, landscaping, roofs, parking areas, and avoiding situations which would result in a liability claim
- r. Lease renewals
- s. Termination of Leases
- t. Market analysis to determine rent adjustments
- u. Refunding security deposits or properly documenting any deductions from security deposits.
- v. Proper management of employees and the hiring of new employees
- w. Proper reporting and making timely distributions to the owners of the buildings
- x. Timely preparation of documents needed for owners to file required tax returns

### 3. Necessary Working Knowledge Needed

- a. Fair Housing Laws – State and Federal
- b. Fair Credit Reporting Act
- c. Americans with Disabilities Act
- d. New Hampshire Landlord and Tenant Laws (RSA 540 and RSA 540-A)
- e. Lead Paint Laws – State and Federal
- f. Basic Federal Tax Law
- g. Bookkeeping
- h. Building Maintenance and basic understanding of building codes
- i. Housing choice voucher program

#### § 331-A:4. Exempted Classes

The provisions of this chapter shall not apply to:

- I. An owner who is not a licensee, or the regular employees of an owner of real estate who are not licensees, with respect to the real property of the owner;

#### § 331-A:10. Qualifications for Licensure

- I. The commission, or designee, shall issue a salesperson's license to any applicant who:
  - (a) Has attained the age of 18;
  - (b) Has successfully completed an examination administered or approved by the commission which demonstrates satisfactory knowledge and understanding of the principles of real estate practice. The executive director shall only accept for licensure, an applicant who shows proof of completion of 40 hours of approved study which shall have been completed prior to the date of the applicant's examination;
  - (c) Demonstrates no record of unprofessional conduct;
  - (d) Furnishes any evidence required by the commission relative to good reputation for honesty, trustworthiness and integrity; and
  - (e) Complies with the criminal records check under RSA 331-A:10-a.
- II. The commission, or designee, shall issue a broker's license to any applicant who:
  - (a) Has attained the age of 18;
  - (b) Has successfully completed an examination administered or approved by the commission which demonstrates satisfactory knowledge and understanding of the principles of real estate practice. The commission, or designee, shall only accept for licensure, an applicant who shows proof of completion of 60 hours of approved

study which shall have been completed prior to the date of the applicant's examination;

- (c)
  - (1) Has been employed full time by an active principal broker for at least one year within 5 years of the date of application; or
  - (2) Has at least 2,000 part-time hours as a licensed salesperson in this state within 5 years of the date of application; or
  - (3) Proves to the commission that the applicant has experience equivalent to the experience required by subparagraph (c)(1) or (c)(2);
- (d) Demonstrates no record of unprofessional conduct;
- (e) Furnishes any evidence required by the commission relative to good reputation for honesty, trustworthiness and integrity;
- (f) For a broker acting as a principal broker or a managing broker, but excluding associate brokers or a corporation, partnership, limited liability company, or association, files a surety bond with the commission which shall be held in accordance with RSA 331-A:14 ;
- (g) Submits evidence acceptable to the commission of at least 6 separate real estate transactions in which the applicant was actively involved and was compensated or proves to the commission that the applicant has equivalent experience; and
- (h) Complies with the criminal records check under RSA 331-A:10-a.

# Voting Sheets

# Senate Executive Departments and Administration Committee EXECUTIVE SESSION

Bill # SB 25

Hearing date: \_\_\_\_\_

Executive session date: \_\_\_\_\_

Motion of: IT

VOTE: 5-0

<u>Made by</u> Carson <input type="checkbox"/>	<u>Seconded</u> Carson <input type="checkbox"/>	<u>Reported</u> Carson <input type="checkbox"/>
<u>Senator:</u> Cavanaugh <input type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input checked="" type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input type="checkbox"/>
Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>
Reagan <input checked="" type="checkbox"/>	Reagan <input type="checkbox"/>	Reagan <input type="checkbox"/>
Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>

Motion of: Consent

VOTE: 5-0

<u>Made by</u> Carson <input type="checkbox"/>	<u>Seconded</u> Carson <input type="checkbox"/>	<u>Reported</u> Carson <input type="checkbox"/>
<u>Senator:</u> Cavanaugh <input type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input type="checkbox"/>	<u>by Senator:</u> Cavanaugh <input type="checkbox"/>
Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>	Chandley <input type="checkbox"/>
Reagan <input type="checkbox"/>	Reagan <input checked="" type="checkbox"/>	Reagan <input type="checkbox"/>
Rosenwald <input checked="" type="checkbox"/>	Rosenwald <input type="checkbox"/>	Rosenwald <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Carson, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cavanaugh, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Chandley	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Reagan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Rosenwald	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

\*Amendments: \_\_\_\_\_

Notes: \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Thursday, January 31, 2019

THE COMMITTEE ON Executive Departments and Administration

to which was referred **SB 25**

AN ACT

relative to exemptions from real estate practice  
license requirements.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 5-0

Senator John Reagan  
For the Committee

This bill would have exempted persons engaged in rental, leasing, and management of residential housing units for an owner, business, or other entity under a formal management agreement from licensure under the Real Estate Practice Act. The Committee recommends Inexpedient to Legislate on the bill at the request of the prime sponsor.

Jennifer Horgan 271-3092



FOR THE CONSENT CALENDAR

**EXECUTIVE DEPARTMENTS AND ADMINISTRATION**

**SB 25**, relative to exemptions from real estate practice license requirements.

Inexpedient to Legislate, Vote 5-0.

Senator John Reagan for the committee.

This bill would have exempted persons engaged in rental, leasing, and management of residential housing units for an owner, business, or other entity under a formal management agreement from licensure under the Real Estate Practice Act. The Committee recommends Inexpedient to Legislate on the bill at the request of the prime sponsor.

# Docket of SB25

Docket Abbreviations

**Bill Title:** relative to exemptions from real estate practice license requirements.

*Official Docket of SB25.:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
1/14/2019	S	<b>Introduced</b> 01/03/2019 and Referred to Executive Departments and Administration; <b>SJ 4</b>
1/15/2019	S	<b>Hearing:</b> 01/23/2019, Room 101, LOB, 10:50 am; <b>SC 7</b>
2/4/2019	S	Committee Report: Inexpedient to Legislate; Vote 5-0; CC; 02/14/2019; <b>SC 10</b>
2/14/2019	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; 02/14/2019; <b>SJ 5</b>

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NH House

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NH Senate

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# Other Referrals

## Senate Inventory Checklist for Archives

Bill Number: SB 25

Senate Committee: E, D + A

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

Executive Session Sheet

Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

\_\_\_ - amendment # \_\_\_      \_\_\_ - amendment # \_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

\_\_\_ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

\_\_\_ Enrolled Bill Amendment(s)

\_\_\_ Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

\_\_\_ as amended by the senate      \_\_\_ as amended by the house

\_\_\_ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

\_\_\_\_\_  
Committee Aide

\_\_\_\_\_  
Date

Senate Clerk's Office jm