

HB 1594-FN – AS INTRODUCED

2014 SESSION

14-2841
05/03

HOUSE BILL ***1594-FN***

AN ACT requiring licensure of community association property managers.

SPONSORS: Rep. K. Williams, Hills 4; Rep. LeBrun, Hills 32; Rep. Almy, Graf 13;
Sen. Cataldo, Dist 6

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill requires community association property managers to be licensed by the board of property managers.

The bill is a request of the committee to study laws relating to condominium and homeowners' associations, established in RSA 356-B:70.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Fourteen

AN ACT requiring licensure of community association property managers.

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

1 1 New Subdivision; Community Association Property Managers. Amend RSA 310-A by inserting
2 after section 201 the following new subdivision:

3 Community Association Property Managers

4 310-A:202 Definitions. In this subdivision:

5 I. "Property manager" means a person who provides property management services either as
6 an employee of the association or under contract for a community association.

7 II. "Community association" means a residential homeowners' association in which
8 membership is a condition of ownership of a lot, parcel, unit, or interest, whether in condominium,
9 subdivision, or within a planned unit development. "Community association" shall not include
10 associations of owners of property held under time-share arrangements.

11 III. "Property management" means remunerated services requiring specialized knowledge,
12 judgment, and managerial skill, that include some or all of the following:

13 (a) Controlling or disbursing funds of a community association.

14 (b) Preparing the association's budgets or other financial documents.

15 (c) Assisting in notice or conducting of association meetings.

16 (d) Coordinating maintenance for association property.

17 (e) Coordinating day to day services for the association members.

18 IV. "Board" means the board of property managers.

19 310-A:203 Standards Of Practice. The board shall adopt, under RSA 541-A, minimum and
20 uniform standards of practice which shall apply to New Hampshire property managers and be
21 enforced by the board.

22 310-A:204 Board of Property Managers.

23 I. A board of property managers is established to administer the provisions of this
24 subdivision. The board shall consist of 7 persons as follows:

25 (a) Five members shall be property managers, from at least 3 executive council districts,
26 appointed by the governor from a list of 8 persons nominated by the Community Associations
27 Institute, and approved by the council. Each property manager member shall hold a current and
28 valid New Hampshire property manager license and shall have actively practiced property
29 management for a minimum of 5 years as a means of his or her livelihood prior to appointment.

30 (b) Two shall be members of community associations, each to be appointed by the
31 governor and council. Each community association member of the board shall be a person who is not,

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1 and never was, a property manager or the spouse of any such person, and who does not have, and
2 never has had, a material financial interest in either the provision of property manager services or
3 an activity directly related to the property management trade.

4 II. Initial property manager appointees to the board shall not be required to hold a current
5 and valid New Hampshire property manager's license, but shall have been actively practicing
6 property management for a minimum of 5 years as a means of his or her livelihood prior to
7 appointment.

8 III. Each member of the board shall be a citizen of the United States and a resident of this
9 state.

10 IV. Members shall be appointed for 3-year terms. Appointments for terms of less than 3
11 years may be made in order to stagger the appointments. No appointed member shall be eligible to
12 serve more than 2 full consecutive terms, provided that for this purpose only a period actually served
13 which exceeds 1/2 of the 3-year term shall be deemed a full term. Upon expiration of a member's
14 term, the member shall serve until a successor is qualified and appointed. Vacancies occurring prior
15 to the expiration of a specific term shall be filled by appointment for the unexpired term. Appointees
16 to the unexpired portion of a full term shall become members of the board on the day following such
17 appointment. A board member may be removed for cause by the governor and council under
18 RSA 4:1.

19 V. Members of the board shall be reimbursed for all actual travel, incidental, and clerical
20 expenses necessarily incurred in carrying out the provisions of this subdivision.

21 VI. The board shall hold at least 3 regular meetings each year and special meetings at such
22 times as it may deem necessary. Notice of all meetings shall be given in such a manner as rules
23 adopted by the board may provide. The board shall biennially elect or appoint a chairperson, vice-
24 chairperson, and secretary. Four members shall constitute a quorum.

25 VII.(a) The board shall keep a record of its proceedings and a register of all applications for
26 licensure, which shall show:

- 27 (1) The name, age, and residence of each applicant.
- 28 (2) The date of application.
- 29 (3) The place of business of such applicant.
- 30 (4) The applicant's educational and other qualifications.
- 31 (5) Proof of passing a property management course deemed relevant by the board.
- 32 (6) Whether the applicant was rejected and the reasons for such rejection.
- 33 (7) Whether a license was granted.
- 34 (8) The date of the action of the board.
- 35 (9) Such other information as may be deemed necessary by the board.

36 (b) The records of the board shall be prima facie evidence of the proceedings of the board,
37 and a transcript of such records certified by the secretary of the board under seal shall be admissible

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1 in evidence with the same force and effect as if the original were produced. Biennially, as of
2 December 31, the board shall submit to the governor a report of the transactions of the preceding
3 biennium, and a complete statement of the receipts and expenditures of the board.

4 VIII. The secretary of the board shall publish a roster listing the names and addresses of all
5 property managers licensed under this subdivision by the board during February of each even-
6 numbered year. Copies of this roster shall be sent to each person so licensed, placed on file with the
7 secretary of state, and furnished to the public upon request at a fee to be established by the board.
8 The board may include in such roster any other information it deems appropriate.

9 IX. The board, its members, and its agents shall be immune from personal liability for
10 actions taken in good faith in the discharge of the board's responsibilities, and the state shall hold
11 the board, its members, and its agents harmless from all costs, damages, and attorneys' fees arising
12 from claims and suits against them with respect to matters to which such immunity applies.

13 310-A:205 Rulemaking Authority.

14 I. The board shall adopt rules, pursuant to RSA 541-A, relative to:

15 (a) The application procedure for a license to practice under this subdivision.

16 (b) The qualifications of applicants in addition to requirements of this subdivision, and
17 including the qualifications for satisfactory evidence of good professional character.

18 (c) Procedures for auditing applicants and licensees.

19 (d) How a license to practice under this subdivision shall be renewed or reinstated,
20 including late fees and any requirements for continuing education.

21 (e) The establishment of all fees required under this subdivision.

22 (f) Disciplinary actions by the board that shall be implemented for violations of the
23 standards of practice, code of ethics, and rules adopted by the board.

24 (g) Procedures for the conduct of hearings consistent with the requirements of due
25 process.

26 (h) Procedures for approving education courses for eligibility for licensure and for a
27 continuing education program.

28 (i) How an applicant shall be examined, including the time, place, type, and form of the
29 examination.

30 (j) The design of an official seal.

31 (k) The establishment of administrative fines which may be levied in the administration
32 of this subdivision.

33 II. At least 40 days prior to any hearing to be held pursuant to RSA 541-A:11, the board
34 shall furnish a copy of any proposed rules of or amendments thereto, to all affected professionals
35 licensed by the board.

36 310-A:206 Fees. The board shall adopt rules, under RSA 541-A, which shall establish fees
37 required under this subdivision, which shall be sufficient to produce estimated revenues equal to 125

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1 percent of the direct operating expenses of the board, including the following:

- 2 I. Application for licensure.
- 3 II. Renewal for licensed property managers.
- 4 III. Late fees for a late renewal of license.
- 5 IV. Replacement of a lost or mutilated license.
- 6 V. Transcribing and transferring records and other services.
- 7 VI. Reinstatement fees.
- 8 VII. Other fees or fines deemed necessary by the board.

9 310-A:207 License Required. Beginning January 1, 2017, no person shall practice as a property
10 manager or conduct property management in this state without a property manager's license issued
11 by the board under this subdivision.

12 310-A:208 Eligibility Requirements for Licensure as a Property Manager.

13 I. Each applicant for licensure as a property manager shall meet the following minimum
14 requirements:

- 15 (a) Completion of no less than 20 hours of board-approved education.
- 16 (b) Have successfully completed high school or its equivalent.
- 17 (c) Be at least 18 years of age.

18 (d) Submit to the board a notarized criminal history records release form as provided by
19 the New Hampshire state police, which authorizes the release of the applicant's criminal records, if
20 any. The applicant shall bear the cost of the criminal records check.

- 21 (e) Pay the initial fee.

22 II. The board shall approve all education programs under subparagraph I(a) of organizations
23 or education institutions providing acceptable education and training.

24 III. The board shall have the discretion to reject an applicant who is not of good professional
25 character, as evidenced by:

- 26 (a) Conviction for commission of a felony;
- 27 (b) Misstatement of facts by the applicant in connection with the application;
- 28 (c) Violation of any of the standards of practice or code of ethics as they are set forth in

29 rules adopted by the board; or

30 (d) Practicing property management without being licensed in violation of laws of the
31 jurisdiction in which the practice took place.

32 310-A:209 License Applications.

33 I. Applications for licensure shall be on forms prescribed and furnished by the board.

34 II. Applicants shall include the following:

- 35 (a) Proof of required education.
- 36 (b) Proof of passing the eligibility testing requirements.
- 37 (c) Payment of applicable fees.

1 (d) Proof of liability insurance.

2 (e) Any other attachments as required by the board.

3 III. If the board denies the issuance of a license to any applicant, any fee paid shall be
4 retained as an application fee.

5 310-A:210 Continuing Education. Evidence satisfactory to the board of the completion in each 2-
6 year renewal period of a minimum of 10 hours of continuing education shall be required for license
7 renewal. The board shall approve educational courses and activities that would further the
8 professional competence of licensees. The continuing education credits shall be determined on the
9 basis of one credit for each contact hour of course instruction or professional development activity
10 actually attended by a licensee.

11 310-A:211 Issuance of Licenses. The board shall issue a license upon payment of the license fee
12 established by the board, to any applicant who, in the opinion of the board, has satisfactorily met all
13 the requirements of this subdivision. Licenses shall show the full name of the licensee, have a serial
14 number, and be signed by the chairperson or the secretary of the board. The issuance of a license by
15 the board shall be prima facie evidence that the person named in the license is entitled to all the
16 rights and privileges of a licensed property manager while the license remains valid. It shall be a
17 class B misdemeanor for the licensee to perform property management after the license of the
18 licensee has expired or has been revoked, unless such license shall have been renewed, reinstated, or
19 reissued.

20 310-A:212 Expiration and Renewals.

21 I. The board shall send, by mail or otherwise, notification of the impending license expiration
22 to each licensee at least one month prior to the expiration of the license, along with a request for
23 payment of a renewal fee. Licensees in good standing may renew their licenses by paying the
24 renewal fee prior to the expiration date of the license, and by presenting evidence satisfactory to the
25 board of completion of the continuing education requirements. If properly renewed, a license shall
26 remain in effect continuously from the date of issuance, unless suspended or revoked by the board for
27 just cause.

28 II. All licenses issued by the board shall expire on the last day of the licensee's month of
29 birth in the second year following the year of issuance. If the renewal fee is not submitted within 12
30 months after the expiration date, the licensee's name shall be removed from current status, and
31 application for reinstatement shall be required to return to current status. The board shall charge a
32 20 percent late fee for each month or fraction of a month the renewal is late, up to 12 months, in
33 addition to the renewal fee. Any renewal application received 12 months after the expiration date
34 shall be rejected, unless accompanied by proof of successful completion of the examination required
35 by the board. A licensed property manager shall complete at least 10 hours of board-approved
36 continuing education during each license period in order to maintain his or her license. If a licensee
37 fails to renew such license within the 12 months after the date of expiration, it shall become null and

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1 void and the licensee shall be required to reapply and to complete the original requirements for
2 licensure.

3 III. Licensees who have been activated by the military shall be exempt from any penalties or
4 fees for renewal or reinstatement due to their absence, as approved by the board.

5 310-A:213 Disciplinary Action.

6 I. The board may undertake disciplinary proceedings:

7 (a) Upon its own initiative; or

8 (b) Upon written complaint of any person which charges that a person licensed by the
9 board has committed misconduct under paragraph II and which specifies the grounds therefor.

10 II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

11 (a) The practice of fraud or deceit in procuring or attempting to procure a license to
12 practice under this subdivision.

13 (b) Conviction of a felony or any offense involving moral turpitude.

14 (c) Any unprofessional conduct, or dishonorable conduct unworthy of, and affecting the
15 practice of, the profession.

16 (d) Unfitness or incompetence by reason of negligence or other causes; or negligent or
17 willful acts performed in a manner inconsistent with the interests of persons relying on the expertise
18 of the licensee.

19 (e) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders
20 the licensee unfit to practice under this subdivision.

21 (f) Mental or physical incompetence to practice under this subdivision.

22 (g) Willful or repeated violation of the provisions of this subdivision.

23 (h) Suspension or revocation of a license, similar to one issued under this subdivision, in
24 another jurisdiction and not reinstated.

25 (i) Violations of rules adopted by the board.

26 (j) Providing false testimony before the board.

27 (k) Failure to provide, within 30 calendar days of receipt of notice by certified mail,
28 return receipt requested, information requested by the board as a result of any formal complaint to
29 the board alleging a violation of this subdivision.

30 (l) Knowingly making or signing any false statement, certificate, or affidavit in
31 connection with the practice of property management.

32 310-A:214 Hearings.

33 I. The board shall take no disciplinary action without a hearing. At least 14 days prior to
34 hearing, both parties to a disciplinary proceeding shall be served, either personally or by certified
35 mail, return receipt requested, with a written copy of the complaint filed and notice of the time and
36 place for hearing. All complaints shall be objectively received and appropriately pursued by the
37 board. Written complaints received by the board shall be acknowledged within 3 months of the date

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1 of notice to the board. Written notice of all disciplinary decisions made by the board shall be given to
2 both parties to the proceeding upon their issuance.

3 II.(a) The board shall have the power to administer oaths or affirmations, preserve
4 testimony, subpoena witnesses, and to compel, by subpoena duces tecum, the production of all books,
5 records, files, and documents, whether originals, copies, or in electronic or other form, and other
6 materials, relevant to its investigation of any grievance, complaint, or disciplinary proceeding before
7 the board.

8 (b) The board may issue subpoenas with the approval of the office of the attorney
9 general.

10 (c) A minimum of 10 business days' notice shall be given for compliance with a subpoena
11 under this subdivision.

12 III. At any hearing, the named person or licensee shall have the right to:

13 (a) Appear in person, by counsel, or both.

14 (b) Produce evidence and witnesses.

15 (c) Cross-examine witnesses.

16 IV. If the named person fails or refuses to appear, the board may proceed to hear and
17 determine the validity of the charges.

18 V. The board, upon making an affirmative finding under RSA 310-A:213, II, may take
19 disciplinary action in any one or more of the following ways:

20 (a) By written reprimand.

21 (b) By suspension, refusal to renew, limitation or restriction of a license, or probation for
22 a period of time determined to be reasonable by the board.

23 (c) By revocation of a license.

24 (d) By requiring the person to participate in a program of continuing education in the
25 area or areas in which the person has been found deficient.

26 (e) By requiring the person to practice under the direct supervision of a licensed property
27 manager for a period of time specified by the board.

28 (f) By assessing civil penalties, after notification and due process, in amounts established
29 by the board which shall not exceed \$2,000 per offense or, in the case of continuing offenses, \$200 for
30 each day the violation continues, whichever is greater.

31 (g) By requiring the property manager to obtain insurance against loss, expense, and
32 liability resulting from errors and omissions or neglect in the performance of services as a property
33 manager.

34 VI. Any person affected by a final decision of the board may appeal such final decision to the
35 superior court.

36 VII. In addition to any other action, the board may assess all reasonable costs incurred in
37 connection with any disciplinary proceeding, including investigations, stenographers, and attorneys'

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1 fees, as a condition of probation or reinstatement.

2 VIII. Any disciplinary action by the board shall be published in the report of the board and
3 shall be a public record in accordance with RSA 91-A.

4 310-A:215 Reissuance of Licenses. The board, for reasons it may deem sufficient, may reissue a
5 license to any person whose license has been suspended or revoked, provided a majority of those
6 present, and at least 3 members, of the board vote in favor of such reissuance. A new license may be
7 issued, subject to the rules of the board, and a fee shall be charged for such issuance.

8 310-A:216 Violations; Penalty. It shall be a class B misdemeanor for any natural person or a
9 felony for any business organization to:

10 I. Present or attempt to use the license of another as one's own;

11 II. Give any false or forged evidence of any kind to the board or to any board member in
12 obtaining a license;

13 III. Falsely impersonate any other licensee of like or different name;

14 IV. Attempt to use an expired or revoked license;

15 V. Beginning January 1, 2017, practice property management or to offer, advertise, or hold
16 oneself out to the public as being in the practice of property management in this state without a
17 license; or

18 VI. Violate any of the provisions of this subdivision.

19 310-A:217 Restraint of Violations. The superior court shall have jurisdiction in equity to
20 restrain violations of RSA 310-A:216 on proceedings brought by the attorney general, the board, or
21 any society of licensed property managers duly incorporated under the laws of this state.

22 310-A:218 Exemption. Nothing in this subdivision shall be construed to prevent or affect a
23 person who is regulated in another profession from acting within the scope of that person's license,
24 registration, or certification.

25 2 Effective Date. This act shall take effect January 1, 2015.

HB 1594-FN - FISCAL NOTE

AN ACT requiring licensure of community association property managers.

FISCAL IMPACT:

The Judicial Branch, Department of Justice, Joint Board of Licensure and Certification, and New Hampshire Association of Counties state this bill, **as introduced**, will increase state general fund revenue and expenditures, and may increase county expenditures, by an indeterminable amount in FY 2015 and each year thereafter. There will be no impact on local expenditures, or county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill requires licensure of community association property managers and establishes a board of property managers. The following four components of the bill may have a fiscal impact on the Branch: (1) proposed RSA 310-A:211 and :216 provide for potential Class B misdemeanors; (2) proposed RSA 310-A:216 provides for a potential felony offense; (3) proposed RSA 310-A:217 provides for potential injunction actions brought in the superior court; and (4) decisions of the board of building officials are appealable to the superior court pursuant to proposed RSA 310-A:214, VI. The Branch has no information on which to estimate how many cases of each type will be prosecuted as a result of the bill. With respect to (1), the Branch projects that the average cost of a Class B misdemeanor case will be \$46.99 in FY 2015, and \$48.02 in FY 2016. With respect to (2), the Branch projects the average cost of a felony case will be \$425.27 in FY 2015, and \$433.34 in FY 2016. With respect to (3) and (4), the Branch projects that the average cost of such cases, both of which are classified as complex equity cases, will be \$668.25 in FY 2015, and \$683.30 in FY 2016. These projections are based on studies that are now more than eight years old, and do not include the cost of any appeals that may be undertaken following trial.

The Department of Justice states that it will be responsible for providing legal counsel to the board of building managers, and will likely require the services of a part-time attorney. The Department estimates 160 hours per year of attorney time will be needed, at a rate of \$135 per hour including benefits. Attorney costs will therefore total \$10,800 in FY 2015 (the Department assumes a January 1, 2015 start date), and \$21,600 each year thereafter.

The Joint Board of Licensure and Certification states the bill will increase state general fund revenue by an indeterminable amount due to fees paid by licensees of the proposed board. The Joint Board states it has no way to estimate how much additional revenue will be generated, but that revenue shall be at least 125 percent of the direct operating expenses of the proposed board. Fee amounts will be established via the rulemaking process. The Joint estimates that, in order to administratively serve the new board, it will need to hire a part-time license clerk for 29 hours per week. The Joint Board projects these costs as follows, assuming a January 1, 2015 start date:

	FY 2015	FY 2016	FY 2017	FY 2018
Expenditures:				
License Clerk (LG 12, 29 hours per week, with annual steps)	\$10,775	\$22,593	\$23,523	\$24,390
Social Security contributions	\$824	\$1,728	\$1,800	\$1,866
Other (equipment, current expense, etc.)	\$2,882	\$6,164	\$6,164	\$6,164
Total:	\$14,481	\$30,485	\$31,487	\$32,420

The New Hampshire Association of Counties states it is unable to determine any fiscal impact as a result of the bill, because it cannot predict whether there will be any prosecutions under the proposed law.