

LICENSE PORTABILITY

AMONG REAL ESTATE REGULATORY JURISDICTIONS

POSITION STATEMENT

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Intent of Document

This document sets out the Position of the Association of Real Estate License Law Officials (ARELLO®) with regard to the issue of license recognition between real estate regulatory authorities, especially as it relates to ARELLO Member Jurisdictions.

POSITION STATEMENT

ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS

LICENSE PORTABILITY

INTRODUCTION

Real estate brokerage, like many professions, requires an occupational license from each State or jurisdiction where the licensee wants to practice. Eligibility for real estate licensing typically requires the applicant to successfully complete prescribed pre-license education and pass a State/jurisdiction license examination. In most jurisdictions, the examination is comprised of two parts: a national portion that includes questions applicable across the country, and a “State” or jurisdiction level portion that addresses topics specific to that particular jurisdiction’s real estate laws, rules, and practices.

As society has become increasingly mobile, the pressure to increase the “portability” of occupational licenses has risen. In response, many jurisdictions have reduced their licensing requirements to varying degrees for applicants already licensed elsewhere. Historically, this came in the form of license **reciprocity** agreements whereby two jurisdictions agreed that they would license applicants from the other jurisdiction on the same terms and conditions. This has not generally translated to a **license-for-license** without additional requirements. Rather, under reciprocal licensing agreements, each jurisdiction imposed the same requirements on applicants from the reciprocal jurisdiction, and those requirements were traditionally less than would be required of an applicant who was not licensed at all, or who was licensed in a jurisdiction where there was no reciprocal agreement. These arrangements were effective regionally, but required a separate agreement with each reciprocating jurisdiction, resulting in different requirements for applicants depending upon where they were licensed.

More recently, many jurisdictions have abandoned reciprocity agreements in favor of a more broad-based approach that applies equally to all applicants licensed elsewhere. This approach imposes only limited licensing requirements on out-of-jurisdiction applicants and is aimed at assuring that applicants are aware of particular laws and practices in the jurisdiction that may differ from those in other jurisdictions. This is most commonly handled by giving applicants licensed in one jurisdiction credit for having passed the national portion of the licensing examination and requiring only that the applicant pass the “State” portion of the license examination. Some jurisdictions give the applicant the option of taking prescribed education in lieu of the State portion of the exam. At least one US State (Georgia) requires no education or examination of licensees from other jurisdictions, (with the exception of Florida residents).

On a broader level, political discourse regarding recognition of all licensed occupations and professions has continued, and with it, a variety of new legislation has been introduced. Currently, discussions are centering around further reducing or eliminating jurisdictional requirements for license recognition for some or all applicants. For example, many United States jurisdictions have new laws exempting members of the military and their spouses from some or all occupational licensing requirements. More recently, “universal licensing” legislation has extended exemptions from some or all occupational licensing requirements to new residents who are already licensed elsewhere.

Set out below are the typical bases for license recognition in the United States and Canada: universal portability of real estate licenses ("universal license portability"); total license recognition; reciprocity by written agreement between individual jurisdictions ("full" or "limited"); and cooperation by written agreement between licensed brokers in different jurisdictions ("broker cooperation agreements"). (The last alternative listed should not be misconstrued. It is not merely the sharing of commissions between, or the payment of referral fees to, licensed brokers in two different jurisdictions, which activity is allowed in most jurisdictions. It is a different level of license recognition.)

APPROACHES TO LICENSE PORTABILITY

Historically, jurisdictions have sought to balance the demand for portability of real estate licenses against the need for public protection. As a result, jurisdictions have avoided the "driver's license" approach to real estate licensing (whereby a driver licensed in one jurisdiction can drive in all jurisdictions without further qualification). Instead, jurisdictions have reduced and expedited their licensing requirements for applicants licensed elsewhere, in recognition of their existing education, experience, and/or examination.

"LICENSE RECOGNITION" - A real estate regulatory jurisdiction will recognize the licensure of a person in their jurisdiction of residence (or immediately preceding jurisdiction of residence) and issue an equivalent type of license in its jurisdiction without having to enter into written agreements with other jurisdictions. "License recognition" requires the making of a formal application to the jurisdiction wherein the licensee wishes to conduct licensed activity as a nonresident or upon moving to the jurisdiction. It often requires the applicant to successfully complete jurisdiction-specific education and/or to pass an examination on jurisdiction-specific laws, rules, and practices. In this situation the jurisdictions are, in essence, issuing a license in their jurisdiction based on the license in the licensee's jurisdiction of residence or immediately preceding jurisdiction of residence with fewer requirements than would be imposed on an unlicensed applicant. Historically, this form of "license recognition" was only extended to licensees who remained a nonresident. Nonresident licensees were sometimes permitted to convert the nonresident license to a resident license upon becoming a resident of the jurisdiction. Today, there is some movement toward license recognition of out-of-jurisdiction licensees who become residents without regard to whether they previously held a nonresident license.

"BROKER COOPERATION AGREEMENTS" - These are written cooperating agreements between a nonresident broker and a resident broker. These agreements are authorized by law in a number of regulatory jurisdictions and allow a nonresident broker to enter into a written cooperating agreement with a resident broker so that the nonresident broker (and sometimes any of those licensees affiliated with the nonresident broker) can conduct real estate activities in the resident broker's jurisdiction. The resident broker assumes some or all responsibility for assuring that the nonresident licensee complies with their jurisdiction's laws. These cooperation agreements are, in effect, a supervised form of "license portability." Such agreements do not address licensees moving between the jurisdictions, and, some jurisdictions only allow "broker cooperation agreements" for commercial transactions and most of the agreements apply to only a single transaction or limited number of transactions.

"FULL WRITTEN RECIPROCITY" – As outlined above, this approach requires two real estate regulatory jurisdictions to enter into a written agreement, authorized by statute and/or rule, which allows licensees in both jurisdictions to acquire a license in the other jurisdiction upon the filing of a formal application whether the licensee is a nonresident or moving to either jurisdiction from the other. "Full written reciprocity" would be "license recognition" achieved through the two jurisdictions entering into a written agreement.

"LIMITED WRITTEN RECIPROCITY" - In this approach, a jurisdiction will, as authorized by statute or rule, enter into a written agreement with another jurisdiction to provide that each jurisdiction will waive some of its education, examination, and/or experience requirements for applicants licensed in the other jurisdiction.

This agreement may also allow licensees moving between the two jurisdictions to acquire a resident license. Such agreements usually express exactly which pre-license and post-license requirements the real estate regulatory authorities will mutually waive or modify.

REASONS FOR ENCOURAGING LICENSE PORTABILITY

ARELLO believes that the regulation of real estate licensees properly exists only at the jurisdiction level and should continue at that level. ARELLO has long had a policy of encouraging its member jurisdictions to pursue legislation and policies that permit as comprehensive a program of license portability as they can effectively regulate. The reasons for encouraging comprehensive license portability are many. Among them are:

- a. In 1992, the members of the European Community, with their wide diversity of culture, language, legal systems, and economic bases, began allowing licensed professionals in one nation to practice in other member nations without meeting additional licensure qualifications.
- b. In 1988, the United States and Canada entered into a Free Trade Agreement that in Part Four, Chapter Fourteen provided for "mutual recognition of licensing and certification requirements" for real estate brokerage services by nationals of both nations and called for both nations to ensure that licensing regulations shall not "be used as a disguised restriction on trade." The North American Free Trade Agreement of 1995 made similar provisions and included the nation of Mexico.
- c. The courts of the United States have consistently ruled that jurisdictions may not place unreasonable barriers to a licensed professional of one jurisdiction practicing in another jurisdiction. In addition, the Congress of the United States has mandated that jurisdiction regulation of real estate appraisers must permit duly qualified practitioners in one jurisdiction to practice in another jurisdiction based solely on their qualifications in their jurisdiction of residency.
- d. Despite the wide knowledge and competitive advantage that a local real estate licensee usually enjoys over a nonresident, members of the public should still have the option to engage the services of a competent real estate licensee in whom they have confidence without undue regard for the residency of the licensee.
- e. The denial of reasonable license recognition, through burdensome or nonexistent requirements for nonresident licensees, has often unnecessarily led to the unauthorized practice of real estate brokerage through such schemes as: (1) being paid "consultant fees"; (2) fees being paid for services that require no license when, in fact, the payment is actually for real estate brokerage services; or (3) trading in options in order to circumvent licensure. Such schemes leave the public without such license law protections as fidelity bonds, errors and omissions insurance or recovery funds. In addition, they discredit and diminish the authority of real estate regulatory authorities.
- f. Two groups of real estate licensees have a constant need to cross jurisdiction borders - those who practice a particular specialty (e.g., commercial real estate licensees, and licensees engaged in the management of real property owned by a national or international corporation) and those whose regular working market is adjacent to a jurisdiction border. Real estate law should not place artificial barriers to competition into natural competitive areas.
- g. Local laws and practices may necessitate a licensee's meeting targeted education and/or examination requirements in each jurisdiction in which the licensee elects to practice. While there are variations in laws and practices, many fundamental principles regulating the transfer of real property interests and

general real estate brokerage activity are similar from jurisdiction to jurisdiction. A nonresident licensee's understanding of local laws and customs can be handled with specific education and/or examination on jurisdiction topics of importance.

- h. The national portion of the examination, utilized by most jurisdictions, assures competency on aspects of law and practice common across jurisdictions.
- i. All jurisdictions have in place appropriate psychometric criteria for assessing and assuring the minimum competency levels of persons to whom they issue licenses.
- j. Jurisdictions' license laws generally allow the regulatory authority issuing a license to discipline a licensee who commits unlawful acts in real estate transactions outside of the jurisdiction.

ARELLO POSITION

1. The regulation of real estate licensees should continue at the jurisdiction level, whether province, state, or similar political subdivision of a sovereign nation.
2. The real estate regulatory jurisdictions should not erect unreasonable barriers unrelated to any public purpose or benefit to impede the ability of real estate licensees to conduct licensed activity as they move among jurisdictions.
3. The real estate regulatory jurisdictions should impose on nonresident licensees only the minimum administrative requirements necessary to obtain and continue an authorization to do business in their jurisdictions.
4. The real estate regulatory jurisdictions should initiate legislation, rules and regulations, or policies to allow for the recognition of licensure by the least restrictive means from other real estate regulatory jurisdictions in as comprehensive a program as they can effectively regulate with the goal to be the recognition of licensure from other real estate regulatory jurisdictions.
5. In recognition of the differences in laws regulating real estate transactions and real estate agency from jurisdiction to jurisdiction, least restrictive means of license recognition may include requirements reasonably related to ensuring that a license applicant holding a current license from another jurisdiction has sufficient knowledge of the laws and rules in the jurisdiction where the license is sought to provide competent and ethical services for the benefit of clients and protection of the general public.