


Is Real Estate Licensing Necessary?

What the Research Tells Us

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EXECUTIVE SUMMARY

Over the past several years, the number of occupations requiring licensure has grown exponentially. This research project was undertaken to identify the origins of professional licensing, the concerns occasioned by the growth of licensing, the standards that should govern a decision to license or deregulate a given occupation, and more specifically, the need for licensure of real estate professionals.

- As market complexities made it more difficult to access information needed in order to avoid being cheated or misled, licensing was adopted to signal professional competence. Properly designed and implemented licensing benefits consumers through higher-quality services and improved professional standards.
- While true that not all occupations pose equivalent threats to the health, safety and pocketbooks of the public, as early as 1912 states began to see the need to license real estate salespeople and brokers. By 1950 two-thirds of the states had real estate license laws and by the early 1970's all states had adopted license laws and implemented licensing for salespeople and brokers.
- Foreseeable harms attendant to real estate transactions are primarily financial, although when a property sale involves a residence, personal risks can also arise. Foreseeable financial harms include, but are not limited to, purchase of properties that are noncompliant with local laws, have latent defects or that will otherwise necessitate considerable unanticipated expenses due to failure to understand the requirements or operation of state and local law, or failure of a contract to properly specify terms and conditions.
- Real estate licensure imposes important fiduciary duties meant to minimize the danger of financial harm: The duty to fully disclose all material facts to the client; a duty to fully disclose all purchase offers to sellers; a duty to handle client information and affairs with loyalty and confidentiality; and the duty to act honestly and in good faith, and without self-dealing and conflicts of interest.
- The education and examination requirements for real estate licensing are both minimal and germane. The number of hours required, on average, is much less than the number currently required of many similarly complex professions, and the curricula are rigorously monitored and calibrated to the entry-level professional.
- Real estate requires considerable specialized knowledge. Applicants for real estate licenses must demonstrate proficiency in the principles and practices of the profession; state real estate and license law; professional standards; state agency law; real estate financing; real estate settlement

procedures; escrow responsibilities; state record-keeping requirements; government regulations applicable to real estate; the basics of real estate appraisal and a familiarity with state contract law.

- The Federal Trade Commission has determined that licensing real estate professionals does not increase costs to the consumer. From the FTC website: “Because buying a home is the single most important purchase many consumers will make, the Federal Trade Commission has enforced antitrust rules in the real estate business to make sure that increased competition continues to lead to more choices, better prices and stepped-up services for buyers and sellers.”
- Policymakers considering substantial revisions of their state’s occupational licensing laws cannot avoid the often-tedious process of applying separate cost/benefit analyses to each occupation currently subject to licensure. Rest assured that these analyses, along with license recognition between states, will support real estate licensure for the protection of the public interest.

SECTION ONE: INTRODUCTION

The recent assaults on occupational licensing have frequently failed to highlight critical distinctions between occupations in which licensing prevents foreseeable harms to the public and those in which it serves the interests of practitioners rather than providing a public benefit. Research undertaken in support of efforts at wholesale deregulation often focuses solely on the latter category, and fails to provide guidelines that policymakers can use to identify differences between situations in which licensing protects the public and those in which the practice mainly serves to insulate practitioners from market competition.

This study is an effort to identify those distinctions and provide that guidance, using real estate licensing as a case in point. Real estate licensing provides a particularly useful case for analysis because it is not an immediately obvious candidate for state regulation, like medicine or architecture, where the harms of incompetence are clearly foreseeable to the general public, and because it is rarely mentioned in research studies attacking or defending occupational licensing, and thus offers a fresh model for analysis.

There is little doubt that many—probably most—of the arguments attacking licensure as it exists in the U.S. today are correct—*when applied to occupations that need not be licensed to protect the public*. However, those arguments are mostly irrelevant to the licensing of occupations that meet the criteria for which the practice was developed. This study is intended to determine whether occupations in real estate meet the criteria for appropriate licensing regulation.

Accordingly, this research report will document the history of licensing and the policy goals that licensing laws were intended to advance; the subsequent operation of the practice as applied to the real estate profession; and the significant and foreseeable harms to the public should real estate professionals no longer be subject to licensing’s educational and ethical requirements. It will also compare state licensing requirements to the occupational skills required, and to the most common critiques of licensing in order to facilitate an independent assessment of the reasonableness and relevance of the educational and other requirements imposed.

Section Two will consider the history of occupational regulation, and the original reasons for it, including the identities of the professions that were originally subject to licensure and the elements they had in common.

Section Three will undertake analysis of recent research on occupational licensing, identifying the major criticisms of current practice. Section Three will consider those criticisms in the context of the public policy goals that prompted the practice historically and will offer guidance intended to

aid policymakers in determining which occupations ought to be licensed and which may be safely practiced without requiring licensing.

Section Four will apply the historic criteria and the analytic template to the specific case being considered: the licensing of Real Estate professionals. The Section will describe the current landscape, including the extent and reasonableness of laws requiring real estate licensure; jurisdictional commonalities and differences in the legal requirements for real estate licensure; the justifications offered for those requirements; and the disciplinary actions available for remedying deviations from professional rules. Section Four will also consider the negative consequences of licensing in general that have been identified by prior research, and provide data demonstrating that real estate licensing either does not produce those negative results or that such negatives, where present, are clearly outweighed by the benefits real estate licensing offers the public.

Section Five will identify foreseeable harms that would result from deregulation of the real estate profession, and will conclude by arguing that failure to draw appropriate distinctions—failure to recognize the differences between licensing occupations like florists or interior designers, on the one hand, and doctors, lawyers, CPAs and real estate professionals on the other, poses unacceptable risks to the public.

SECTION TWO: A BRIEF HISTORY OF OCCUPATIONAL LICENSING

The practice of occupational licensing first emerged during the Progressive Era (1897-1920), although restrictions on who might pursue what craft have been with us since the days of the medieval guild.

Legally, states were granted the right to license occupations following the Supreme Court's ruling in *Dent v. West Virginia* (1889), a case challenging the constitutionality of West Virginia's then-new licensing law for physicians. In *Dent*, the Supreme Court confirmed that states have the authority to set entry standards for a subset of occupations that may protect citizens from the "consequences of ignorance and incapacity, as well as of deception and fraud."

In an important study of licensing's origins, Marc T. Law and Sukkoo Kim (2004) conducted a rigorous investigation into the widespread theory that licensing regulation was adopted primarily as an effort to restrict entry and reduce competition. They concluded that the evidence pointed to a different explanation: occupational regulation was adopted to "improve markets as specialization and advances in knowledge made it increasingly difficult for consumers to judge the quality of professional services."

The authors acknowledged that over the years, much regulatory licensing has been captured by occupational groups to erect entry restrictions for their own benefit; however, they argued convincingly that the original impetus for such regulation was the growing problem of asymmetric information, especially as urbanization diminished the informational role that had previously been played by local reputation. As professionalism developed, sellers of specialized services were better informed than buyers, and thus significantly advantaged in market exchanges. As the authors noted, the market failures that occur in non-professional labor markets (monopsony and labor immobility) are different from failures arising in professional labor markets, the most significant of which is information asymmetry.

During the colonial period and early nineteenth century, state governments regulated the practice of law and medicine but, as noted above, widespread occupational licensing did not take hold until the late 19th Century. (For a complete list of the occupations currently licensed by U.S. states, visit *Council of State Governments-Occupational Licensing*, <https://licensing.csg.org>.)

Initially, licensing was applied to four professions: architecture, dentistry, medicine and veterinary medicine. Such licensing was more likely to be adopted in states with significant urban populations, a fact that supports the asymmetric thesis. Specialization, urbanization and other increases in market complexities made it more difficult for consumers to access information needed in order to avoid being cheated or misled, and licensing thus began in markets for services where both the

chances and consequences of poor choices or outright fraud were greatest. (As the authors of the paper note, the costs of a bad haircut are relatively low.) The degree of specialization in all fields that is characteristic of complex societies often means that the general public is rendered unable to distinguish between competent and incompetent, honorable and dishonorable practitioners. Occupational licensing provides important signals that protect against incompetence, fraud and dishonesty.

The identity of the professions initially subjected to licensing supports those who attribute the origin of occupational licensing to recognition of the harms of informational asymmetry. The first professions to be licensed were those requiring specialized skills and in which the potential for harm from malpractice was obvious: architects, attorneys, dentists, nurses, doctors and veterinarians. Licensing later was extended to barbers¹, plumbers, teachers and real estate professionals, all of whom have been subject to licensing for the past hundred years or more. More recently, states have licensed lower-risk occupations like florists and interior designers, where harms from malpractice are difficult to identify.

When Law and Kim analyzed the effects of occupational licensing laws enacted in turn-of-the-century America, they found that licensing had not reduced entry for most occupations, lending additional support to the theory that asymmetries of information, rather than capture, motivated most early licensing.

Other scholarship supports the Law and Kim analysis. *The Market for “Lemons”: Quality Uncertainty and the Market Mechanism*, (1970) by George A. Akerlof was one of the first in-depth investigations into the relationship of occupational quality and uncertainty, the economic costs of dishonesty, and the sorts of situations in which governmental intervention can be expected to increase the welfare of all parties. More recently, Neil Katsuyama has defended the protective nature of licensing in situations characterized by asymmetrical information, while conceding the negative consequences of licensing when such asymmetries are few or absent, in *“The Economics of Occupational Licensing: Applying Antitrust Economics to Distinguish Between Beneficial and Anti-Competitive Professional Licenses.”* (2007). As Katsuyama wrote,

All of the reasons that supporters of licensing laws have given, including safety and setting a minimum quality standard, are connected to the central problem of informational asymmetry. In a world with perfect information, licenses would be unnecessary because consumers would know exactly what quality of service they were purchasing and the safety risks of that service. But we live in a world with a certain degree of informational asymmetry; the sellers of a service almost always know more about what is being sold than the consumer does. Overall, licenses benefit consumers

¹ Barbers initially did more than cut hair. The famous barber pole that we identify with the profession was used to represent that barbers were once barber-surgeons.

when informational asymmetry is high and hurt consumers when information asymmetry is low.

These studies, and numerous others, confirm that occupational licensing was originally undertaken to protect an increasingly urbanized public in which consumers could no longer depend upon word-of-mouth reputation to protect themselves in market transactions. It should be noted that Internet resources such as *Yelp* in no way replace the sort of reputational information that was formerly available in small communities and is currently, under a license, available to the public after due process where the rights of all parties are respected. Online ranking information, while it can sometimes be helpful, has been shown to be easily manipulated by unscrupulous competitors, aggrieved clients, persons with personal grudges and the sites themselves; *Yelp*, for example, has been sued multiple times by businesses asserting manipulation.

A Ninth Circuit Court of Appeals decision in one such case is illustrative of both the threat of misinformation and the lack of legal recourse: The appellate court in *Levitt v. Yelp* affirmed a lower court's dismissal of a lawsuit brought by small business owners alleging that *Yelp* had attempted to extort advertising payments from them by manipulating user reviews and penning negative reviews of their businesses. The court held that the plaintiffs had failed to state a claim for unlawful business practices in violation of California's Unfair Competition Law because, under that law, threatening economic harm to induce a person to pay for a legitimate service is not extortion. (See: *Levitt v. Yelp! Inc.*, 2014 WL 4290615 (9th Cir. Sept. 2, 2014)) *Yelp* and similar sites have been sued multiple times, generally but not always unsuccessfully. However, individuals posting negative reviews to such sites *have* been successfully sued by businesses aggrieved by those reviews, and online warnings to the effect that posting a hostile review may trigger such a lawsuit are ubiquitous. Many consumers who *have* experienced substandard services are thus dissuaded from posting, with the result that many of these sites are of very limited utility. A number of publications have warned consumers against their lack of reliability. (See, for example: <https://www.kiplinger.com/article/spending/To62-Cooo-Soo2-can-you-trust-online-reviewers.html>)

Licensure, which is resistant to such manipulation, was instituted to protect the public from foreseeable harms resulting from the growing disconnect between professional specialization and consumers' ability to evaluate professional competence.

SECTION THREE: FROM THEN TO NOW

According to most authorities, in the 1950s, approximately 5% of workers in the United States had an occupational license, signifying that they had completed additional schooling or training, paid the necessary fees, and passed a state-required examination in order to be licensed to practice the profession in that state. As of mid-2018, the Bureau of Labor Statistics estimated that 23% of full-time workers were licensed. This dramatic increase in the percentage of licensed workers is a consequence of the significant growth of occupational licensing laws, often in response to lobbying by practitioners of the occupations to be licensed, although some portion of this growth may be attributable to an increase in the number of professions, as new technologies replaced older ones. In the early 1990s, there were 800 occupations requiring licenses in at least one state; by 2016, that number had increased to approximately 1,100 occupations, generating a number of concerns about the necessity and economic impact of that regulatory growth. [*White House*, 2015]

Over the past few years, there have been a number of comprehensive analyses of the costs and benefits of occupational licensing. This research report draws heavily upon three of them: the Hamilton Project of the Brookings Institution (2015); the Council of State Governments (2017); and a study for the Obama White House (2015). Those three studies summarize the findings of most of the research into licensure that has been done to date, and their conclusions deserve to be taken seriously. All three recommend reforms meant to retain the practice in cases where licensing protects public health, safety and welfare, and all three counsel against over-reaction leading to unwarranted abandonment of licensing in cases where that protection can be demonstrated. The report issued by the White House recommended “several best practices to ensure that licensing protects consumers without placing unnecessary restrictions on employment, innovation, or access to important goods and services,” and emphasized that “When designed and implemented carefully, licensing can benefit consumers through higher-quality services and improved health and safety standards.” Careful design and implementation require that licensing requirements “closely match” the qualifications needed to perform the job in question. (*Part Four*, below, will investigate whether that “close match” exists in the case of real estate licensing.)

Perhaps the best description of the licensing issues currently facing state lawmakers was contained in the Introduction to the *Hamilton Project’s* research analysis:

The main rationales for occupational licensing are to protect the health and safety of consumers and to ensure a sufficiently high level of product or service quality. By making would-be practitioners undergo specific training, pass exams, and complete other requirements, according to this rationale, the public is better protected from fraudulent, disreputable and unqualified service providers. **However, not all occupations pose equivalent threats to health and safety.** While work by an unskilled electrician could lead to faulty wiring and a fire hazard, it is hard to imagine a similar

level of risk from a less skilled interior designer, travel guide or auctioneer. (emphasis supplied.) (Kleiner, 2015).

Most states consider the risk of economic harm as significant as risks to health and safety; thus all states require licensure for lawyers, CPAs and real estate professionals. Some scholars recommend that licensing be limited to occupations that can be shown to meet two tests: the occupation or profession requires specialized skills that make it difficult for members of the general public to assess the competence of practitioners; and it is an occupation in which incompetent or unethical practitioners pose a significant risk of harm to the health, safety or pocketbook of consumers.

Credible studies emphasize the importance of licensure where these risks exist. As the White House report acknowledges, few people would feel comfortable traveling in a commercial plane flown by an unlicensed pilot, or having a medical procedure performed by an unlicensed doctor. The two central questions lawmakers confront are thus: (1) which occupations must be subjected to licensing regulation in order to protect against significant harm to the public; and (2) what modifications, if any, to current licensing laws would minimize unnecessary costs or burdens while continuing to provide necessary benefits and protections?

There are three major cost-benefit assumptions about the current status of occupational licensing that are highlighted in virtually all of the literature analyzing the practice: (1) licensing requirements are barriers to entry which reduce employment opportunities and increase costs to consumers by diminishing competition; (2) variations in licensing requirements from state to state make it difficult and/or costly for practitioners of many occupations to relocate across state lines; and (3) the costs of licensing fall disproportionately on certain populations, especially military spouses, the formerly incarcerated, and immigrants.

Suggestions for mitigating these negative effects typically begin with an occupation-specific cost/benefit analysis, accompanied by efforts at standardization geared to making cross-state relocations less onerous, and—most controversially—replacing licensure in many occupations with less rigorous certification, and eliminating others entirely.

SECTION FOUR: THE CASE OF REAL ESTATE PROFESSIONALS

GENERAL

There is a reason that all states license real estate brokers and salespersons. Although possession of a license may not be an ironclad guarantee of professional competence or honesty, it vastly minimizes the potential for a number of foreseeable (and sometimes not so foreseeable) harms to both consumers and the economy at large.

Although most foreseeable harms attendant to real estate transactions are financial (see below), when a property sale involves a residence, personal risks also arise, since placing one's home on the market requires allowing some number of unknown persons access to that residence. The presence of a trustworthy professional who is charged with monitoring potential buyers on the premises operates as a safeguard against theft, vandalism or even physical assaults on the owner. Licensing restrictions, including criminal background checks, and the probability of sanctions also reduce the likelihood that the real estate licensee will be the one committing a crime.

Foreseeable financial harms include, but are not limited to, purchase of a property that is improperly zoned or otherwise noncompliant with local laws, or properties with latent defects, that are overpriced for the area, or that will otherwise necessitate considerable out-of-pocket expenses. For example, the 2018 case of *McKay Career Training, Inc. v. Baker* involved a buyer's lack of awareness that local building codes required that the building being acquired have a sprinkler system. For sellers, misrepresentations—inadvertent or not—may lead to claims for reimbursement or to costly litigation. In *Phelps v. Caperoon*, for example, the seller erroneously believed that a contract provision asserting that the sale was “as is” relieved him of liability for latent defects.

Failure to understand the requirements or operation of state and local law, failure of a contract to properly condition the closing of a sale on the buyer's ability to obtain acceptable financing or to specify other conditions precedent, can prove costly for both the buyer and seller. In 2018 alone, the Federal Bureau of Investigation's Internet Crime Complaint Center received 11,300 complaints alleging real estate or rental fraud, resulting in losses of more than \$149 million dollars. What proportion of those losses might have been averted by professional representation is unknown. What is known, thanks to a research study published in 1986 in the journal *Urban Studies* by G. Donald Judd and James Frew, titled “Real Estate Brokers, Housing Prices, and the Demand for Housing,” is that, contrary to much public opinion, “broker-assisted home-sellers obtain higher prices for their homes and implicitly shift part of the brokerage commission to buyers.” Overall, sales “by owner” garnered prices 30% lower than sales in which the buyer was represented by a real estate professional.

Real estate transactions are inevitably complex and their proper execution is subject to state laws governing property transfers, recording requirements, consumer protections, civil rights laws and lending restrictions that vary substantially from jurisdiction to jurisdiction. Navigating those laws can be daunting, and not just for individuals.

It is important to recognize the extent to which banks and other mortgage lenders rely upon licensed real estate professionals to ensure that the properties securing their loans are compliant with state law and local ordinances (and federal laws, where applicable), that the (often copious) paperwork involved has been properly completed, that all required notices have been given and their receipt documented, and that representations about the value and condition of the property are accurate. Without widespread confidence in the ability of real estate professionals to independently verify these matters, mortgage loan rates would necessarily be adjusted upward to reflect the uncertainties and increased risks involved, with repercussions for the housing market and the economy as a whole.

SECTION FIVE: PROFESSIONAL OBLIGATIONS, SKILLS AND LICENSURE

One of the most important consequences of licensure is the imposition of a fiduciary duty. Licensing imposes such a duty on real estate professionals, just as it does on lawyers, CPAs, and others occupying positions of trust, because real estate professionals are legally authorized to assume certain of the duties (including but not limited to the preparation of contracts) that would otherwise require the services of lawyers.

Fiduciaries are individuals entrusted with acting for the benefit of others, and who are thus charged with a legally-enforceable duty to provide services in the best interests of those being represented. Fiduciaries are obligated to their clients by virtue of their experience and specialized training, and by virtue of their role as an advisor for the client in the context of real property transactions.

A real estate license imposes the following fiduciary duties: The duty to fully disclose all material facts to the client; a duty to fully disclose all purchase offers to sellers; a duty to handle client information and affairs with loyalty and confidentiality; and the duty to refrain from representing an opposing party in the same transaction (where this is allowed) without the knowledge and explicit consent of both parties. The duty of loyalty imposes a requirement to act in good faith and honesty, and specifically forbids self-dealing and conflicts of interest. One benefit of licensing in the age of the Internet is the enhanced ability of consumers to access state records in order to ascertain whether a given licensee has been subject to professional discipline for failure to discharge these fiduciary responsibilities.

In order to act in the best interests of a client, a licensed real estate professional must be familiar with the real estate laws of the jurisdiction in which s/he is licensed. As noted, those laws vary from jurisdiction to jurisdiction. The licensee should also be familiar with the case law of the relevant jurisdiction, in order to know how the courts have interpreted contract terms and ambiguities.

In addition to knowing the legal provisions applicable to real estate transactions in the state, applicants for a license are uniformly expected to know and understand the practical elements of property transactions, elements which are not state-specific.

A comprehensive investigation of real estate licensing laws in the United States reveals that the following provisions are substantially standard and consistent across jurisdictions.

- State statutes governing licensure all establish state boards or commissions, specify their enforcement powers, and enumerate the requirements for licensure. Commissions thus established are quasi-governmental; a number of persons appointed to serve on them (generally by the

governor of the relevant state) are usually members of the profession who possess necessary specialized knowledge and know the standard of practice that may be expected, there are also public members, without specialized knowledge who represent the perspective of the general public, all are answerable to the relevant legislative and administrative authorities of the authorizing state.

- The educational requirements for a license are enumerated in statutes. Applicants generally must complete between sixty and ninety hours of study (a minimal requirement when compared to the 300 hours required of manicurists in Indiana, or the 1,500 hours required to be a barber in Texas) and must pass an examination that ensures their proficiency in the following areas: the principles and practices of the profession; the requirements of the state’s license law; applicable professional standards; the state’s agency and contract laws; real estate financing; real estate settlement procedures; escrow responsibilities; state record-keeping requirements; government regulations applicable to real estate; and real estate appraisal. In order keep the educational requirements to the minimum necessary for competence, newly licensed professionals are required to work under the supervision of a broker for a specified length of time. Brokers are required to have had additional education and experience, and to be legally responsible for the newly licensed individual’s real estate practices.

Approximately, every five years, the national testing companies charged with responsibility for real estate testing conduct an in-depth job analysis of the knowledge and skills required of a real estate professional, in order to ensure that the tests—and thus the curricula geared to those tests—remain germane and up-to-date.

- Commissions promulgate, and update as necessary, a variety of ministerial tasks, including but not limited to assessments of on-line and in-person classwork, provisions governing the handling of and accounting for trust funds, and requirements for continuing education (especially important since innovations in business models are reflected in state law and regulation changes).

- In addition to the ability to impose sanctions on a practitioner who has committed malpractice, state commissions generally choose one of two methods for protecting members of the public who may have suffered losses as a result of a real estate licensee’s malpractice: a requirement that brokerages maintain Errors and Omissions Insurance, or that they establish “recovery funds” from which such persons can be compensated.

- Commissions also serve the public by including information on their websites that is intended to lessen informational asymmetry. They define terminology, “map out” the elements of transactions, explain agency options, and clarify what consumers can and cannot expect from real estate professionals.

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- Commissions take a narrowly-tailored approach to applicants' criminal histories. Previous crimes that may bar an individual from licensure are generally considered on a case-by-case basis, limited to those having a direct bearing on the practice of the profession or showing a propensity to endanger the public; furthermore, applicants who believe that their previous criminal activity is no longer relevant, or who can present other mitigating factors, have the right to appeal decisions barring them from licensure.
 - Although some state commissions enter into reciprocity agreements, most handle issues of cross- or multi-state practice through what is technically categorized License Recognition, under which individuals holding licenses in good standing in other states or jurisdictions and who wish to relocate are entitled to a substantially expedited process. They may waive the national portion of the receiving state's licensing exam, and receive other accommodations depending upon the degree of similarity of the licensing requirements of the two states involved. All states have enacted special provisions expediting licensure for military spouses.
 - Real estate commissions have moved with alacrity to take advantage of the Internet; most courses required for licensure are offered online, and state commissions have developed websites intended to be intuitive and "user friendly" for the general public, allowing clients and potential clients to determine, among other things, whether a complaint has been lodged or adjudicated against a given real estate professional, and providing comprehensive information to members of the public who are considering entering the profession.

The above, necessarily abbreviated, description of standard state laws applicable to real estate licensing in the U.S. allows for the formulation of a non-abstract response to criticisms of licensing *as applied to real estate professionals*. Taking those criticisms and questions in order:

- *What are the justifications for real estate licensing?* Licensing was developed in order to protect the public from foreseeable harms—including fiscal harms—arising from asymmetric information. A survey of the expertise required in order to facilitate property exchanges or to engage in property management demonstrates the multiple risks inherent in such exchanges and the need for the assistance of knowledgeable and ethical professionals. These risks are not limited to residential transactions; negative financial consequences can be far greater when the transaction involves commercial or industrial real estate, not simply for the parties but for the local economy.
- *What of concerns that the requirements for real estate licensing are excessive or burdensome?* As the above description demonstrates, the standard requirements for real estate licensing are both minimal and germane. The number of hours required is much lower than the number currently required of many (arguably less demanding) professions, and the curricula are rigorously monitored to ensure that the subject-matter to be mastered is essential to the competent practice of real estate and thus the protection of the public.

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- *What about assertions that licensing increases costs by reducing competition within an industry?* The Federal Trade Commission has analyzed this concern as applied to real estate professionals, and has found that this criticism no longer applies, if it ever did: the agency's website contains the following paragraph:

Real estate professionals are changing the way they do business: offering potential buyers the chance to view detailed property listings online, using websites to gather leads on potential customers, and using the Internet to match buyers and sellers. Some are changing the "menu" of services they're offering. More and more, consumers can choose among real estate professionals who do business on a "fee per service" basis and others who provide the full complement of services. Because buying a home is the single most important purchase many consumers will make, the Federal Trade Commission has enforced antitrust rules in the real estate business to make sure that increased competition continues to lead to more choices, better prices and stepped-up services for buyers and sellers.

- *If reduced competition hasn't increased costs to consumers, has licensing increased the costs of property transactions in some other way?* Available research does not provide a method for determining whether net costs of real estate transactions increase due to licensing, because the employment of licensed real estate professionals has been shown to increase the over-all amounts realized (see Urban Studies citation above), because such employment helps buyers and sellers avoid expensive risks, and because licensure provides additional legal remedies, including reimbursement, in cases of malpractice or ethical violation.
- *Does real estate licensure erect barriers to relocation?* Due to the fact that the real estate laws of the states differ, real estate professionals (including, it should be noted, lawyers) who wish to obtain licensure in a state other than their home state face procedural requirements necessary to determine their familiarity with those differences. However, as the foregoing discussion demonstrates, real estate commissions have expedited those procedures, enhancing the ease of relocation and eliminating the need for those who wish to relocate, or simply cooperate across state lines, to submit to the entire licensing regime of the receiving state.
- *What about the costs imposed upon special populations, like military spouses and the previously incarcerated?* As the foregoing discussion details, real estate commissions have addressed these issues as well. In most states, criminal histories that will disqualify applicants from licensure must be shown to be relevant to the purchase and sale of real property, and that relevance is subject to appeal by the prospective licensee. All states offer expedited procedures for spouses of military personnel, in recognition of the unique challenges of military relocation.

CONCLUSION

Policymakers considering efforts to substantially revise their state's occupational licensing laws cannot avoid the often-tedious process of applying separate cost/benefit analyses to each occupation currently subject to licensure. Arguments about rent-seeking (the manipulation of public policy or economic conditions as a strategy for increasing profits), industry capture and the like will be applicable to some occupations and inapplicable to others. As the FTC recommends, policymakers conducting these inquiries should also consider the growing impact of the Internet on the practice of many professions.

Policymakers should especially be aware of the probability, nature and extent of public harms likely to ensue in the wake of a particular industry's deregulation. An increased probability of bad haircuts is not equivalent to an increase in monetary losses attributable to the purchase of legally non-compliant properties, or assumptions of mortgage liabilities exceeding the value of the property securing the loan, or costly deviations from local building codes. Recent research suggests that the general public agrees: a 2020 survey of 952 voters conducted by the Benenson Strategy Group for the Alliance for Responsible Professional Licensing (ARPL) found that 71% favored requiring occupational licensing unless it can be demonstrated that its elimination will not negatively affect public welfare, and 67% believed consumers are best protected from professional incompetence by imposing standards for education, examinations and experience.

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