

22 Overview of Licensing and Regulation

State License Law Obtaining a Real Estate License License Regulation

STATE LICENSE LAW

Virtually every real estate practitioner in the United States is subject to license requirements according to the laws of the state in which the practitioner resides and does business.

States have enacted real estate license laws to ensure a minimal level of competence in real estate professionals. State license laws also protect the public by requiring licensees to adhere to standards of ethical conduct and professionalism. A licensee who violates ethical and professional standards faces the temporary or permanent loss of the legal right to practice real estate.

The general thrust of state real estate legislation is to:

- ▶ establish personal, educational, and professional requirements for obtaining a license
- ▶ establish statutory guidelines of professional conduct and continuing education to maintain a license
- ▶ establish a regulatory entity to administer and enforce licensing
- ▶ authorize the regulatory body to create regulations and procedures that will enable it to discharge its legal responsibilities

For all students of real estate who are planning to enter a field of practice, it is vitally important to understand state real estate license laws and their effect on one's envisioned career in real estate. Since real estate is a large and complex industry, students must investigate local licensing requirements for specific activities. For example, it is likely that a state has special license requirements for appraisers. On the other hand, a state may require no license at all for one who works in corporate real estate. All fifty states have licensing requirements for practicing brokers and agents.

Where state license laws and regulations conflict with federal laws, the state's laws prevail.

OBTAINING A REAL ESTATE LICENSE

Services requiring licensure

Types of license

Licensing requirements and procedures

Services requiring licensure

Generally, any person who performs a real estate service *on behalf of another party for consideration* must be duly licensed under state law. For example, a person who receives payment for helping a buyer locate a house must be licensed. However, an investor searching for a property to buy does not need to be licensed because the investor is not acting on behalf of another party.

Consideration includes money compensation, exchange of free services, or any other valuable good or service that a person expects to be paid.

The following services generally fall into the license-required category:

- ▶ brokering of sale, lease and exchange transactions
- ▶ managing property, including rental activities
- ▶ appraising
- ▶ counseling
- ▶ syndicating
- ▶ auctioning

Within these service areas, states may have more specific requirements or exemptions, depending on the nature of the activity. For example, some states include business brokerage in the brokerage category while other states do not. Similarly, some states allow certain forms of counseling while others do not. The point is to find out what kind of license, if any, your state requires for the real estate activity you will be pursuing.

Exemptions. Real estate license laws commonly exempt the following from licensing requirements:

- ▶ employees of a property owner who are not paid on a per-transaction basis, such as an onsite rental agent in an apartment complex
- ▶ employees of transient lodging facilities such as motels and hotels
- ▶ managers of residential condominiums or cooperatives
- ▶ dealers in cemetery lots
- ▶ attorneys performing regular legal duties for a principal
- ▶ persons acting in a court-appointed capacity

Types of license

State licensing agencies issue two principal types of license: a broker's license and a salesperson's license. Within these types are variations based on the active or inactive status of the license and on the business identity and professional capacity of the licensee.

Exhibit 22.1 Types of Real Estate License

Broker's license	Salesperson's license
individual: active or inactive corporation limited liability company partnership non-resident	individual: active or inactive broker-salesperson: active or inactive

Broker's license. An active broker's license authorizes a licensee to represent clients by performing real estate services. A broker whose license has expired or is inactive may not perform brokerage services. Broker's licenses are typically valid for a one- or two-year period, after which they must be renewed. Inactive status typically occurs at the option of a licensee who wants to leave the real estate business temporarily. A broker who is acting under another name must register the name as a fictitious business identity.

The most common brokerage identity is the sole proprietorship. Other business entities, however, may broker real estate. These include corporations, general partnerships, and limited partnerships. In order for these entities to perform real estate services, certain individuals within the organization generally must maintain an active broker's license.

A broker who does business at locations other than the principal office requires a branch office license. While the branch office must be licensed, state laws vary as to whether the branch manager requires a broker's license.

A broker's license authorizes a broker to perform services anywhere within the state's borders. This allows a broker to arrange the sale of an out-of-state property as long as the services are conducted within the state. It also allows a broker from one state to co-broker a transaction with a broker in another state, provided neither broker performs services in the other's state. A *non-resident license* empowers a broker to practice in another state. This type of license is commonly issued in areas near state lines where residents of the two states are frequently principals in transactions.

In the absence of a non-resident license, a broker's license from one state usually does not confer the authority to operate in another state since there is no *reciprocity* in licensing between states. A broker who holds a Virginia real estate license has no authority to operate in Wyoming. However, a licensed broker desiring a license in another state may be excused from some of the licensing requirements that an unlicensed applicant has to meet.

Salesperson's license. A salesperson may hold an active or inactive license, depending on whether the agent is currently employed and performing services. As in the case of a broker's license, a salesperson who wishes to leave the business temporarily can voluntarily de-activate the license.

A broker-salesperson's license is a salesperson's license held by a duly licensed

broker who prefers to act as a salesperson on behalf of an employing broker instead of performing services as a broker. Since a salesperson can only act in one capacity -- as agent of an employing broker -- an individual may not be an active broker while holding an active broker-salesperson license.

Voided license. Licensees may not practice real estate with a voided license. The three causes for voiding of a license are:

- ▶ expiration
- ▶ suspension
- ▶ revocation

In addition, it is important to note that if an employing broker's license expires, is suspended, or is revoked, then the licenses of all of the broker's salespeople are likewise voided.

Licensing requirements and procedures

To obtain a real estate license, an applicant must fulfill certain requirements. While license requirements vary from state to state, they commonly focus on personal background, education, real estate experience, and a licensing examination.

Personal requirements. To qualify for a broker's or salesperson's license, an applicant must be of legal age and mentally competent. In addition, an applicant may be required to have a high school diploma or its equivalent.

Moral character. The application process in most states also evaluates an applicant's character and reputation in terms of honesty, trustworthiness, and possible criminal record. Direct questioning, reference checking, and fingerprinting are part of the process.

Educational prerequisites. Most states now require successful completion of a certain number of hours of classroom or self-study instruction for licensing. Other states may allow for testing or conditional licensure provided that the licensee or licensee-candidate has completed portions of the requirement, or commits to completion within a certain time-frame following issuance of the license.

For salespeople, the pre-license education requirement may range from 24-180 contact hours of instruction. In most cases, an applicant must first enroll in a number of required courses and then a number of elective courses to complete the hour requirement. In certain states, prior college courses may be counted toward the education requirement.

Educational prerequisites for a broker's license usually consist of additional required real estate courses and other advanced courses, including college business courses. Whenever a real estate course is required, a student must demonstrate successful completion by passing a course examination.

Required brokerage experience. Most states require an applicant for a broker's license to have experience as an actively licensed salesperson within a certain period preceding the date of the application. For example, an applicant may need to have completed one year of service for a broker within the previous four years

prior to the application.

Agency affiliation. Generally, an applicant for a salesperson's license does not need to have a commitment from an employing broker to obtain a license. In the absence of an employer, the state will issue an inactive license which can be activated when the licensee is hired. Similarly, a broker may obtain an inactive license without any pre-existing commitment to begin practice immediately.

Application. All aspects of the license application, including background data, references, prior experience in real estate, fingerprinting, and required fees must be complete for an application to be processed. An application is usually completed and processed before an applicant takes the state license examination.

The state license examination. All states require license applicants to pass a comprehensive license examination. Generally, the examination consists of multiple-choice questions. If an applicant passes the exam, the state issues a broker's or salesperson's license, provided all other licensing requirements are met.

Continuing education. Most states now require licensees to complete continuing education courses in order to *renew* a license. Failure to complete continuing education requirements can cause a licensee to lose the license to practice real estate.

LICENSE REGULATION

The Real Estate Commission Regulation focus Bonds and recovery funds

The Real Estate Commission

In addition to establishing real estate license requirements, state license laws provide for the establishment of a real estate regulatory entity to administer and enforce licensing legislation. This entity is most often known as the state's *real estate commission*. In some states, it is a *real estate department* or similarly-named entity within the state's department of license regulation.

A state real estate commission has the authority to:

- ▶ oversee the licensing process
- ▶ administer all aspects of the license laws
- ▶ receive and deliberate on consumer complaints
- ▶ handle problems between licensees

To enable it to discharge its responsibilities, a state empowers its real estate commission to institute binding regulations for licensees.

Structure. Most real estate commissions are comprised of a group of commissioners appointed by the executive branch of state government, commonly the governor. Commissioners serve a term of office which may be renewable, depending on state law. A real estate commission usually employs a support staff

to manage the day-to-day affairs of the agency. It is common for the support staff to be headed by a salaried executive director.

Authority. A real estate commission's authority is generally

- ▶ regulatory
- ▶ judicial
- ▶ administrative

Regulatory powers enable the agency to pass specific regulations and rules to support the administration of the license law. Judicial powers enable it to conduct hearings and investigations into the activities of licensees and to rule on license suspensions or revocations. Administrative powers enable it to establish the staff organization, records, and facilities to manage the licensing process and the licensees themselves.

Education and research foundation. In addition to administering the licensing process and the conduct of licensees, most real estate commissions establish and maintain an education and research foundation. The foundation serves the real estate industry and the public by carrying out various real estate research projects.

Regulation focus

License status. As primary tasks, a real estate commission manages the initial licensing and then the maintenance of license status of practitioners. Managing the status of licenses entails establishing rules and procedures for changes of status: activation, deactivation, renewal, re-issue, suspension, revocation. Among other things, the commission validates education certificates, sets rules for changing employers, and keeps track of licensee's address changes.

Real estate schools. As part of managing the licensing process, real estate commissions approve and regulate the practices of real estate schools and the pre-license curricula of colleges and universities. This regulatory activity extends to the approval or certification of courses, materials, instructors, and administrative policies of any organization or institution offering courses that apply toward the state's education requirements for licensure.

Regulated standards of practice and conduct. A second mission of a real estate commission is to enact enforceable guidelines defining the ethical and professional behavior of licensees. These guidelines may include specific sanctions against

- ▶ fraud, including misrepresentation, concealment, and collusion
- ▶ violations of fiduciary duty
- ▶ negligence
- ▶ failure to make required disclosures
- ▶ practicing law in completing or interpreting contracts
- ▶ mismanaging escrow funds, earnest money deposits, advance fees, and rental deposits
- ▶ making improper commission arrangements with clients, customers, or other licensees
- ▶ accepting or paying illegal kickbacks and referral fees
- ▶ false or misleading advertising

- ▶ noncompliance with office identity requirements
- ▶ exceeding one's authority as a broker or salesperson

Handling complaints against licensees. Real estate commissions must enforce license laws and regulations. Enforcement commonly takes the form of acting on complaints received from consumers and other licensees. A real estate commission typically establishes a formal procedure to handle complaints and disputes in an orderly fashion. When a complaint comes into the commission, the complainant generally must file a formal complaint detailing all relevant circumstances of the dispute. Delegated officials then investigate the complaint. If they find the complaint has substance, the commission conducts hearings and further investigation. If necessary, the commission then issues an official order of disciplinary action. The licensee may appeal the commission's ruling in the appropriate state court.

Violation of any license law provision or regulation is punishable by suspension or revocation of license. If the infraction is a violation of criminal law, the commission may report the case to the proper judicial authority.

Bonds and recovery funds

The outcome of many cases of license law violation is a negotiated financial settlement or a court-ordered money judgment against the violator. If the licensee lacks financial resources, the settlement or judgment may be to some extent uncollectible. To avoid this situation, many states require licensees to obtain a bond at the cost of a nominal annual fee. The bond covers the difference between a potential settlement amount and the licensee's financial resources for satisfying the judgment or settlement.

Other states, rather than requiring a bond, establish a real estate recovery fund. The recovery fund is a reserve account funded through license fees and collected fines. The fund pays portions of a money judgment on behalf of a licensee, up to a prescribed amount. A licensee must repay all amounts so withdrawn, during which time the person's license is suspended.

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Licensing And Regulation Overview Snapshot Review

STATE LICENSE LAW	• most real estate practitioners must be licensed • protects public, ensures professional competency of licensees • establishes: requirements for licensure, guidelines of conduct for maintaining license, commission to administer the law • applicants need a sound understanding of local license law
OBTAINING A REAL ESTATE LICENSE	
Services requiring licensure	• license required to perform a real estate service for another for consideration, specifically: brokerage; property management; appraising; counseling; syndicating; auctioning • exemptions: wage-paid employees of property owners, transient facility employees, condo or coop managers, cemetery lot merchants, attorneys; court-appointed representatives
Types of license	• broker's: individual, corporation, partnership, branch office, non-resident; salesperson's: individual, broker-salesperson • active if practicing; inactive if not practicing; inactive or expired if renewal requirements not met • voided: by suspension, revocation, expiration
Licensing requirements	• personal: age, mental competence, general education, character • specific education: completion of required real estate courses • experience: salesperson experience may be required if applying for a broker's license • agency affiliation: not necessary • other: complete application; pass state license examination; complete continuing education if applicable
LICENSE REGULATION	
The Real Estate Commission	• state-level government entity that regulates and administers the license law • oversees licensing process; enforces license law provisions; handles consumer and licensee complaints; consists of appointed commissioners and permanent support staff; maintains education and research foundation
Regulation focus	• management of licensing and license status; regulation of real estate schools and programs; regulation of practices of licensees; enactment of professional guidelines to protect public; resolution of disputes and complaints; suspension or revocation of licenses
Bonds and recovery funds	• ensure that the public will be able to collect on settlements for damages and money judgments against licensees