



To: Economic Affairs Interim Committee

From: Montana Board of Realty Regulation

Date: June 10, 2013

Subject: HB525 – RRE response to the Economic Affairs Interim Committee questions

1. What is the public health, safety or welfare rationale for licensing and regulating your profession/occupation?

The board exists to protect consumers when dealing in housing or other real estate, whether those persons are buying, selling, renting, or leasing the real estate. The real estate profession is an integral part of the daily lives of all Montana citizens.

Purchasing a home or other real estate is often the single largest expenditure or investment that a person will make in their lives. A home typically becomes a person's largest financial asset. In addition, real estate agents are often involved in complicated sale or leasing transactions involving agricultural and commercial properties. Real estate transactions can be very complicated and fraught with problems whether intentional or accidental. Public health, safety and welfare is at stake when proper disclosures are not made i.e. lead base paint, asbestos, mold. It is essential that consumers receive competent, fair, equitable, and honest counsel when buying and selling real estate.

The rental/leasing of real estate is utilized by a large sector of the public, often involving less sophisticated tenants and people entering the housing market for the first time. Owners must receive competent, fair, and equitable treatment when hiring someone to secure tenants for investment property. Likewise, tenants in rental property also have a right and expectation of competent and fair dealing from persons who manage the leased properties.

In all real estate transactions, large amounts of money are received, handled, held, and transferred. Much of Montana's economy depends on these transactions going smoothly.

2. If your profession/occupation were not licensed, what public protection would be lost?

If real estate brokers, salespeople and property managers were not licensed, the public could not identify those individuals who have met examination and experience requirements and can be relied upon to uphold current laws and properly handle complicated transactions. A real estate transaction represents a substantial investment from the consumer and is a transaction that happens infrequently. Because it happens infrequently, many, if not most, consumers do not develop significant expertise in

handling real estate transactions. This results in consumers relying on the real estate practitioner to navigate the ever changing complex process. It is important to note that the regulation of real estate professionals is expanding throughout the world as investors, financial institutions and governments seek to stabilize their markets and add credibility to their local/regional economies. This is being accomplished by establishing a real estate regulatory system that determines minimum competencies and expected conduct for practitioners and offers an avenue of complaint resolution for consumers. In addition, the Legislature and the Board have required that licensees pursue a course of continuing education that keeps them abreast of the rapidly changing real estate market and field. If licensure were lost, consumers could not be assured that their agents understood more recent developments in the field and the evolving regulatory environment pertaining to real estate transactions and ownership.

3. If a license is necessary (for health, safety, or welfare), does the profession/occupation need a board for oversight? If yes, please explain why and describe the purpose of creating a board.

Yes. All applicants must be scrutinized to determine whether an applicant can practice safely and competently. A board is necessary to provide the expertise to evaluate initial licensure applicants (such as appropriate education, exams administered and passed. The board also ensures there are no discipline concerns for initial applicants because persons with past conduct issues in Montana or elsewhere have a higher likelihood of harming Montana consumers. Not all conduct issues would prevent a person from being licensed in Montana.

Once any practitioner is licensed, whether ones with past conduct issues or not, the Board continues to monitor those licensees through complaint review, continuing education requirements, etc. in order to ensure that practitioners are practicing in a manner that minimizes harm to consumers and other licensees. As required by law, the Board of Realty Regulation is composed of practitioners and members from the general public who represent the perspective of consumers. The goal of the board is to protect the public and fellow licensees from practitioners who may intentionally or accidentally cause harm – whether that harm is of a financial nature or other. The mix of talent on the board is the most appropriate method to deal with oversight issues. Without the real estate expertise of a board composed of several members who are professionals, it would be difficult for state employees to recognize conduct that is detrimental to the public and take appropriate action to protect the public from future misconduct.

4. Does your board deal with unlicensed practice issues? If yes, what types of issues?

Yes. The board does consider unlicensed practice issues although it has no authority to prohibit, regulate or punish it.

The most prevalent unlicensed issue currently is Internet sites that attempt to solicit buyers, sellers, or tenants. They often charge consumers for information that is outdated or incorrect. They charge consumers for information and services that are free to the public and do nothing but profit the unlicensed person. Generally, they also do not practice in a way that is protective of the public or fair to other practitioners. Unlicensed persons are subject to no oversight whether to determine that they are actually minimally qualified to practice in Montana or to ensure that they are practicing in a safe manner.

5. People who are not licensed but are qualified in an occupation or profession may feel that a licensing board is preventing them from earning a living – what is your response?

A practitioner must practice in a manner that does not harm others – financially or otherwise. In order to truly determine that someone is ‘qualified’ to practice real estate, an entity separate from the proposed practitioner is in a better position to determine whether those qualifications are actually met. The requirements for licensure are not onerous and can be accomplished in a short period of time. The important aspect of licensing is to assure consumers and fellow practitioners that the licensed practitioner has met minimum competency by completing education and demonstrating a basic knowledge through examination. Persons are permitted to buy, sell, and lease real estate on their own behalf without involving licensees. Thus, persons who wish to engage in personal real estate transactions without the assistance of real estate agents and property managers may do so, and persons who wish to engage a professional to assist in the transaction can do so with the assurance that the agent has met the professional standards prerequisite to licensure.

6. How does your board monitor bias among board members toward a particular licensee, an applicant, or a respondent (to unlicensed practice)? How does your board monitor bias toward a particular profession/occupation, if more than one profession or occupation is licensed by the board?

The members of the board monitor each other for bias by conducting themselves in a respectful and courteous manner for all business brought before the board. The Board also understands that public scrutiny is the guarantee of governmental propriety and necessary to the protection of all public rights. Therefore, official business is always done in an open meeting format unless the meeting must be closed to protect the privacy of an individual. All meetings of the board are noticed to the public and are conducted with a majority of members present as well as departmental staff such as legal counsel or other support staff. The openness of board meetings helps to assure that the board is accountable to the public and also ensures that a particular member cannot dominate the decisions or promote their own agenda. Board orientation also helps to show that bias is not helpful to decision making. Education of board members on board work and processes is always ongoing to make sure there is a culture where all board members feel free to speak and participate and where the public may observe and participate as allowed by law. The make-up of the Board is also helpful with representation of brokers, property managers as well as public members. Likewise, the public and licensees are encouraged to attend all meetings. Licensees are even given continuing education credit simply for attending board meetings. Board members also know that they must recuse themselves if they have a personal relationship with a licensee or person appearing before the board or if they have some other interest in the matter being discussed. Further, an independent hearing examiner is used in all contested cases to ensure fairness of the process.

7. Does the profession or occupation have one or more associations that could provide oversight without the need for a license board? Why not use the association as the oversight board?

No. There is a private association called the Montana Association of Realtors (MAR). However, membership in MAR is voluntary so not every licensee is represented. Also, the board perceives that MAR is not interested in regulating the entire profession.

While the board works closely MAR, the mission of the association is to promote the profession and advocate for the industry in order to help its members become more profitable and successful. On the other hand, the mission of the Board of Realty Regulation is to protect the public through the licensure and regulation of all licensees - brokers, salespeople and property managers. Furthermore, it is believed that the current licensure mechanism is the most practical, efficient, and unbiased approach to meeting this requirement. An association does not have the legal authority to investigate complaints or discipline professionals especially of licensees who are not members of MAR. If the association regulated the profession, the association's responsibility to support its membership could be in conflict with its duty to take action against unprofessional conduct by members of the association. Moreover, there is the potential for both perceived and actual conflict should MAR also be charged with regulating non-MAR members.

8. Is a licensing board needed in order for the practitioner to bill to receive insurance (for example, health insurance)? If so, is there an alternative method for billing that may be recognized rather than having a license or being regulated by a licensing board?

No. Typically, insurance issues arise in the context of health care. Insurance billing issues are not a consideration in the practice of real estate and do not impact insurance claims.

9. What are the benefits of a board being part of the licensing and discipline process instead of the department handling one or both?

The board has the expertise of the five licensee members who understand the technical aspects of the profession and two public members to represent the consumer view. Both aspects are essential to effective regulation of the profession, and neither would be available to the department without the use of a board.

10. Is there an optimum ratio between licensees, board size, or public representation?

There seems to be an appropriate ratio between the number of licensees, board size and public representation. The board is composed of five practitioners and two public members. While the public member perspective is vital, a public member often does not have the knowledge and background to determine if a licensee has violated a statute or rule. With approximately 5,500 licensees, that equates to one board member for every 785 licensees. Experience has shown that a board smaller in size to the current board causes excess workload for volunteer board members and can make it difficult to convene a quorum to conduct business (if, for example, one or more members must recuse themselves or is unable to attend a meeting due to sickness or other reasons). A board larger than the current board would increase inefficiency and could delay decision making.

11. If a board's purpose includes protecting public welfare, would that consumer protection be handled better by the Attorney General's office than by a board? (In other words, is there a value in a disinterested third party? If yes, why? If not, why not?) Who should be responsible for monitoring fraud within the profession or occupation?

No. A disinterested third party would spend significant time and money either learning the profession or hiring consulting real estate professionals in various areas of the profession to address practice

conduct issues. This would result in higher costs and cause delays in resolving important consumer issues. The real estate regulatory boards in the U.S. have developed an extensive network of information sharing amongst themselves. Monitoring fraud in the profession is achieved through this collaboration. Additionally, as is currently required by law, all board legal representation is already being conducted by Special Assistant Attorney Generals.

12. If boards have overlapping scope of practice, should there be a third-party to determine whether there is intrusion into the other's practices? If so, who should be the judge? If not, why not? Should each be allowed to operate on the other's turf without repercussions?

No. This board is unique from all other boards. There is no overlapping scope of practice with other boards or professions.

13. Should any board have the ability to limit use of certain terminology to only a licensee?

Because of the public trust in the real estate profession, and to prevent consumers from believing they are dealing with a licensed person when in fact the person is unlicensed, the use of the terms 'real estate broker', 'real estate salesperson', or 'property manager' should be limited to those holding a real estate license.