



Consumer Federation of America

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STATE REAL ESTATE REGULATION: INDUSTRY DOMINANCE AND ITS CONSUMER COSTS

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Summary

Increasingly there is a pressing need for effective regulation of residential real estate brokerage services. Consumer spending on, distrust for, and complaints about these services is significant and growing. Moreover, required disclosures to home buyers and sellers are not being enforced, and traditional brokers are restricting service options and prices offered by nontraditional brokers.

These real estate brokerage services are ostensibly regulated by state real estate commissions or boards. But these regulatory bodies are dominated by practicing real estate brokers. In fact, in some states commissioners have acted to restrict competition and consumer choice, and in most they have failed to adequately inform, educate, and protect home sellers and buyers who use the brokerage services.

Practicing real estate brokers should be prohibited from serving in any regulatory capacity. Instead, like state insurance commissioners and public utility commissioners, regulators should be appointed (or popularly elected) from a pool of non-industry candidates and should be charged first and foremost with the protection of consumers, not brokers.

Need for Independent Regulation

There is a growing need for effective, independent regulation of residential real estate brokerage services, for many reasons:

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First, there are an increasing number of licensed real estate agents, about 2.5 million, and many of these agents are inadequately trained and inexperienced. Rising home prices over the past several years have helped persuade hundreds of thousands of individuals to undergo typically less than one month of training to receive their license.

Second, a large number of consumers utilize these services and pay substantial commissions. In the past five years, more than 30 million houses and condos have been sold, a large majority (more than 80% according to industry estimates) with the assistance of real estate brokers. And last year, consumers spent more than \$60 billion on these brokerage services. Today, it is not at all unusual for commissions on the sale of individual houses to exceed \$20,000, more than the price of many new cars or expensive medical procedures.

Third, consumers trust the advice of real estate brokers much less than that of most other service professionals. According to a May 2006 Harris Poll survey, 50% of Americans trust doctors completely and only 4% do not trust them at all; 18% trust lawyers completely and 14% not at all; but only 7% trust real estate agents completely while 20% trust them not at all. Among 13 types of professionals, only stockbroker advice was trusted less than that of real estate agents.¹

Fourth, consumer complaints against real estate brokers are increasing rapidly. For example, in California, consumer complaints to its Department of Real Estate grew 29% in the twelve months ending June 30, 2004, to more than 10,000.² In Arizona, complaints in the first eight months of the 2005-06 fiscal year grew at an annual rate of more than 50% from the previous fiscal year, to well over 1,500.³

Fifth, existing consumer protections are not being enforced adequately. According to a recent National Association of Realtors report, the number of homebuyers who received a disclosure statement of listing agent representation has declined for the past five years. Between 2000 and 2005, the proportion of these buyers who never received a disclosure rose from 19% to 22%, and the proportion who received it at the proper time (the first meeting with the agent) declined from 38% to 30%.⁴

Sixth, consumer choice about service and price options has been restricted by formal and informal anti-competitive practices for which influential traditional brokers are responsible. For example, realtor-backed anti-rebate and minimum service laws in a number of states clearly discriminate against Internet-based brokers and fee-only brokers, many of which have attempted to provide services more efficiently and less expensively.⁵

¹ HarrisInteractive, "Doctors, Dentists and Nurses Most Trusted Professionals to Give Advice, According to Harris Poll of U.S Adults," *The Harris Poll #37*, May 10, 2006.

² Perkins, Broderick, "Real Estate Agent Complaints Rise," *RealtyTimes*, December 8, 2004.

³ Barrios, Joseph, "Gripes vs. Realty Agents Escalate," *Arizona Daily Star*, March 9, 2006.

⁴ Evans, Blanche, "Agent Disclosure Worse than Ever," *Realty Times*, January 24, 2006.

⁵ Brobeck, Stephen and Patrick Woodall, Consumer Federation of America, "How the Real Estate Cartel Harms Consumers and How Consumers Can Protect Themselves," June 19, 2006.

Absence of Independent Regulation

All 50 states and the District of Columbia require real estate brokers and salespersons to be licensed. All state licensure laws include requirements and proscriptions concerning the business practices of licensees. Requirements in most states include disclosure of important information about price, services, and representation.⁶

The licensure laws of every state establish a regulatory agency, usually called a real estate commission or board. These agencies, with few exceptions, are granted broad and exclusive rulemaking and enforcement powers by the licensure statutes.

A large majority of states have part-time real estate commissions with extensive participation by practicing real estate brokers. California, Illinois, and Minnesota, however, have professional regulators who work full-time to oversee the real estate brokerage marketplace.

In Illinois, for example, real estate regulation is overseen by the Commissioner of Banks and Real Estate, who hires a Director and Deputy Director of Real Estate.⁷ These public officials are advised by a Real Estate Administration Disciplinary Board. But none of these officials or Board members are permitted to be licensed as real estate agents. To serve as an official or Board member, practicing brokers must surrender their license for the duration of their public service.

This separation of real estate regulation and brokerage services, however, is unusual. Across all states, more than two-thirds (68%) of real estate commissioners are required by statute to be active real estate salespeople, brokers, or licensees.⁸ In most states, agent commission members are required to have current licenses.

Four states – Idaho, Louisiana, Mississippi, and Nevada – require that all commissioners be real estate brokers or salespeople. An additional eleven states – Colorado, Kentucky, New Mexico,

⁶ Olazábal, Ann Morales, “Redefining Realtor Relationships and Responsibilities: The Failure of State Regulatory Responses,” *Harvard Journal on Legislation*, Vol. 40, 2003; Federal Trade Commission, “The Residential Real Estate Brokerage Industry: Los Angeles Regional Office Staff Report,” December 1983 at 101-102.

⁷ Illinois Real Estate License Act of 2000, 225 ILCS 454, especially Article 25, Administration of Licenses.

⁸ Consumer Federation of America examined the regulations which establish real estate commissions in the 47 states that have real estate commissions and analyzed their composition requirements. Nationally, the states mandate a total of 326 real estate commission positions (when CFA examined the composition of the commissions in March and April 2006, 310 of those commission positions were filled). The median sized commission had 7 members, 5 of whom are real estate professionals and 2 of whom are representatives of the public. The commission sizes ranged from 4 (Idaho) to 12 (Indiana). CFA considered requirements for brokers and salespeople (both current and former) to be equivalent for the purposes of the share of real estate members of state commissions. If the state has a minimum required real estate licensees, CFA considered the smallest number that could be on the commission for the purposes of the national calculation. Public members include designated public, consumer or non-licensees for the purposes of CFA’s analysis but did not include members that were public officials.

Ohio, Utah, West Virginia, Georgia, Indiana, Missouri, Oklahoma, and Washington – require at least four-fifths of commissioners to hold real estate licenses. Only two states – Rhode Island and Pennsylvania – prohibit real estate licensees from constituting a majority of commissioners.

Thus, state law requires or allows extensive participation by real estate licensees on real estate commissions and board. But the actual participation is even more extensive. In our study of current commissioners using an array of Internet sources including real estate commission websites, as the exhibit below shows, we found that nearly four-fifths (79.2%) of all commissioners earn a living through real estate transactions.⁹ Of the commissioners for whom CFA could identify an affiliation, 84.5% earned their living through real estate transactions. Seventy percent (70.8%) of commissioners are real estate brokers or salespeople. Another 8.5% are affiliated with businesses – developers, appraisers, title agents, and real estate attorneys – with direct ties to the real estate industry. Only 12.2% of commissioners appear to have no close ties with the industry. (And for 8.3% of commissioners, we could not identify any affiliation.)

State ¹⁰	Composition of Real Estate Commission
Alabama	8 Real Estate Licensees, 1 Financial Services (Public)
Alaska	5 Real Estate Licensees, 1 Financial Service (Public), 1 Non-Industry (Public)
Arizona	5 Real Estate Licensees, 2 Home Builders, 1 Title Agent (Public), 1 Non-Real Estate Lawyer (Public)
Arkansas	3 Real Estate Licensees, 1 Former Licensee (Public), 1 Ex-Officio, 1 Public
Colorado	4 Real Estate Licensees
Connecticut	4 Real Estate Licensees, 2 Unknown Public
Delaware	4 Real Estate Licensees, 4 Unknown Public
Florida	4 Real Estate Licensees, 1 Real Estate Lawyer (Public), 1 Title Agent (Public), 1 Unknown
Georgia	5 Real Estate Licensees, 1 Real Estate Lawyer (Public)
Hawaii	6 Real Estate Licensees, 2 Real Estate Lawyers (Public)
Idaho	4 Real Estate Licensees
Indiana	9 Real Estate Licensees, 1 Real Estate Lawyer (Public), 2 Unknown (Public)
Iowa	5 Real Estate Licensees, 1 Real Estate Attorney (Public), 1 County Assessor
Kansas	4 Real Estate Licensees, 1 Real Estate Attorney
Kentucky	4 Real Estate Licensees, 1 Non-Real Estate Lawyer (Public)
Louisiana	9 Real Estate Licensees

⁹ The affiliation of commissioners was determined by visiting the commissions on the internet in the spring and early summer of 2006, determining the current memberships of the commissions and rigorously searching for the business associations of affiliations of the members. Some of the commissions provide affiliations in their materials. Additionally, gubernatorial press releases announcing appointments often made reference to the affiliation of appointee. In other cases, the commissioner’s business website was found, the commissioner was found on real estate directories, the commissioner was listed as an active member of the state real estate association, or the commissioner was identified in news accounts.

¹⁰ California, Illinois and Minnesota have regulatory structures instead of real estate boards or commissions. Arizona has a commission with active real estate salespeople which provides guidance to the state Department of Real Estate. Nevada, Ohio and Oregon have mixed control of regulatory oversight between a commission or board and a licensing regulatory structure.

Maine	3 Real Estate Licensees, 1 Real Estate Lawyer (Public)
Maryland	4 Real Estate Licensees, 3 Non-Industry (Public), 1 Non-Real Estate Lawyer (Public), 1 Unknown
Massachusetts	3 Real Estate Licensees, 1 Assessor, 1 Public
Michigan	4 Real Estate Licensees, 1 Non-Industry (Public), 1 Banker (Public), 1 Unknown Public
Missouri	6 Real Estate Licensees
Mississippi	3 Real Estate Licensees, 2 Unknown (Mississippi requires all five be active licensees)
Montana	3 Real Estate Licensees, 1 Title Agent (Public), 1 Public
Nebraska	4 Real Estate Licensees, 1 Non-Industry Public
Nevada	5 Real Estate Licensees
New Hampshire	3 Real Estate Licensees, 1 Non-Real Estate Lawyer, 1 Banker (Public)
New Jersey	3 Real Estate Licensees, 1 Appraiser, 1 Financial Services, 3 Unknown
New Mexico	4 Real Estate Licensees, 1 Title Agent (Public)
New York	7 Real Estate Licensees, 2 Ex-Officio, 1 Real Estate Lawyer (public), 2 Non-Industry Public
North Carolina	7 Real Estate Licensees, 1 Real Estate Attorney, 1 Non-Industry Public
North Dakota	4 Real Estate Licensees, 1 Unknown
Ohio	4 Real Estate Licensees, 1 Real Estate Lawyer
Oklahoma	6 Real Estate Licensees, 1 Real Estate Lawyer (Public)
Oregon	6 Real Estate Licensees, 1 Real Estate Lawyer, 1 Ex-Officio
Pennsylvania	4 Real Estate Licensees, 2 Ex-Officio, 4 Unknown Public
Rhode Island	3 Real Estate Licensees, 1 Real Estate Lawyer, 1 Bank (Public), 2 Non-Industry Public, 2 Regulators
South Carolina	5 Real Estate Licensees, 1 Appraiser, 1 Title Agent
South Dakota	3 Real Estate Licensees, 1 Non-Industry, 1 Unknown
Tennessee	6 Real Estate Licensees, 1 Home Builder, 1 Carpenter Union, 1 Unknown
Texas	6 Real Estate Licensees, 1 Real Estate Lawyer (Public), 2 Non-Industry Public
Utah	5 Real Estate Licensees
Vermont	5 Real Estate Licensees, 1 Non-Industry, 1 Unknown
Virginia	7 Real Estate Licensees, 1 Non-Industry, 1 Unknown
Washington	5 Real Estate Licensees, 1 Developer, 1 Regulator
West Virginia	4 Real Estate Licensees, 1 Non-Real Estate Lawyer
Wisconsin	4 Real Estate Licensees, 1 Developer (Public), 1 Ex-Officio, 1 Non-Industry Public
Wyoming	4 Real Estate Licensees, 1 Land Conservation (Public)

Commissioners Disproportionately From Large Firms

More than one-fourth (25.7%) of all broker commissioners work for one of the four largest national residential real estate brokerage firms. Fourteen percent of these commissioners are affiliated with Cendant/NRT, which offers services through brand names including Coldwell Banker, ERA, Century 21, and Sotheby's. Six percent work for REMAX, four percent work for Prudential and one percent work for GMAC. These 56 broker commissioners represent 17.9% of all real estate commissioners.

About one-tenth (8.7%) of all broker commissioners work for large regional firms that often dominate local markets. These brokers work for firms such as Long & Foster (mid-Atlantic), Howard Hanna (western Pennsylvania and Ohio), Keller Williams (South and Southwest), and Realty Executives (many markets). All of these brokers serve as commissioners in states where their firms are influential and often dominant.

Many states require some commissioners to be “public members,” but even many of these regulators are active in the real estate business. About one in five (18.0%) are real estate attorneys while about one in twenty (6.6%) are title agents.

Industry Dominance of Regulation Harms Consumers

The dominance of state real estate commissions harms consumers both through omission – what they fail to do – and commission – their initiatives that harm consumers.

Failure to Act: Because of dominance by brokers and other industry members, real estate commissions tend to neglect consumer interests.

For instance, some states apparently make little effort to publicize any complaint-handling services. In Texas in 2005, more than one-half million homes were sold, yet the Real Estate Commission reported only 86 complaints in its newsletters that year.¹¹

Other states publicize the availability of complaint-handling services but do not provide adequate resources to the commission to deal effectively with these grievances. For instance, in California as the number of complaints has grown the staff of the Department of Real Estate shrunk by three workers. Not surprisingly, then, between 2000 and 2004, the backlog of cases had doubled to 3,663.

Furthermore, as noted earlier, few states rigorously enforce required disclosure laws. In 2005, according to an NAR report, more than one-half of recent homebuyers surveyed said that they either did not receive any written disclosure or did not receive it at the proper time.

Finally, most real estate commissions make little if any effort to prevent, or discipline, discrimination by traditional agents against nontraditional agents offering varied service and price options. This discrimination, according to numerous reports, features boycotting and steering. As a 2005 *Wall Street Journal* editorial noted, no realtor has been sanctioned by their state real estate commission for such anti-competitive, anti-consumer behavior.¹²

¹¹ See Texas Real Estate Commission, *TRECA* Advisor, Disciplinary Actions, Consumer Complaints, Vol. 16, Nos. 1-6, January, March, May, July, September, November.

¹² *Wall Street Journal* editorial, “Some States Now Limit Price Rebates to Borrowers,” August 12, 2005.

Support for Anti-Competitive Minimum Service Laws: However, real estate commission support of discrimination against nontraditional agents sometimes goes well beyond neglect – in some instances, commissions actively support this discrimination. The most recent example of favoritism to traditional brokers relates to state minimum services laws – statutes that are designed to severely limit services offered by many nontraditional brokers. Some of these laws, for example, require brokers to maintain offices in the areas they serve, which severely constrains the work of many Internet-based brokers, or require brokers working with buyers to accompany clients on house visits, which restricts not only Internet brokers but also those offering limited services at lower prices. Additionally, some of the laws prohibit or make it more difficult for home sellers to use For-Sale-by-Owner service providers that list their homes on the local multiple listing services and provide lawn signs but provide few other services.

There are many connections between these laws and brokers serving as real estate commissioners. For example, Michigan minimum service legislation was proposed by a State Representative who previously served on the State Board of Real Estate Brokers and Salespersons and, as a lawyer, “handled a fair share of real estate transaction.” And in Louisiana, one-third of the members of the Real Estate Committee also serve on the 2006 Louisiana Association of Realtors State Legislative Team.

In addition, some real estate commissions have endorsed and even actively supported minimum services legislation. When Missouri minimum services legislation was signed, the Governor noted that the support of the Missouri Real Estate Commission was important to the final enactment of the legislation. In Florida, shortly before minimum services legislation was approved in 2005, the Florida Association of Realtors (FAR) made a presentation to the Florida Real Estate Commission “to solicit inputs ... on how FAR may assist the Florida Real Estate Commission in passing certain items through the Legislature,” according to Commission meeting minutes.

In the four instances described below, the support of real estate commissions contributed significantly to the passage of regulatory or statutory changes establishing discriminatory minimum services.

Iowa: In Iowa, the state realtor association executed a textbook lobbying effort to pass the minimum service legislation. The legislation was presented to the state real estate commission at a 2004 public meeting, when the Iowa Association of Realtors (IAR) reminded the commissioners of the date of the annual golf outing and the legislative priority the association put on minimum service legislation.¹³ In 2005, IAR re-submitted the proposal to the Commission and the “Commissioners went on record as supporting the passage of the legislation,” according to the Commission’s general counsel.¹⁴ The enacted legislation is

¹³ Iowa Real Estate Commission, Commission Minutes, July 22, 2004.

¹⁴ Roberts, Jr., Glenn, “Discount Brokerage Bills Spread Through Nation,” *Inman News*, May 4, 2005.

virtually identical to the IAR proposal – there is only one grammatical change that puts the four provisions into parallel structures.¹⁵

Kentucky: The Kentucky Real Estate Commission (KREC) has been amongst the most aggressive in promoting policies that would protect the interests of full-service real estate interests. In March 2005, the Department of Justice (DOJ) filed suit against the KREC for implementing rules prohibiting rebating sales commissions to consumers as violating antitrust laws.¹⁶ Soon after, the KREC settled the case by eliminating the anti-rebate regulations.¹⁷ In 2005, KREC also launched a series of radio advertisements suggesting that using non-full service real estate agents would hurt sales prices. The advertisements emphasized that 3 percent of the selling price can be lost by not working with a Kentucky licensee who is a “trained negotiator.” The advertising campaign was estimated to cost \$20,000.¹⁸ One advertisement concludes “It’s time to get real, get a licensed real estate agent. A message from the Kentucky Real Estate Commission.”¹⁹

In 2006, the KREC proposed a bill that would direct the KREC to establish minimum services regulations in order to enter into a written listing or brokerage agreement.²⁰ The Kentucky legislature attempted to pass the legislation which declared that “failing to provide minimum services constitutes gross negligence subject to discipline.”²¹ After the DOJ opposed the Kentucky minimum services language, the Kentucky Senate stripped the language out of the bill before the real estate brokerage bill passed unanimously.²²

New Mexico: The New Mexico Real Estate Commission has moved brazenly to change its regulations to impose minimum service requirements over the objections of local homeowners, non-traditional real estate brokerages, consumer groups and the Department of Justice. The *New Mexico Business Weekly* reported that there had been a “spurt” of for-sale-by-owner and limited service listings and some FSBO websites were getting more than a thousand visitors a day.²³ In 2005, the New Mexico Real Estate Commission moved to change its regulations to prohibit limited service brokerages. The change would have required real estate agents to provide sales negotiations and closing procedures and would make it more difficult for FSBO and other

¹⁵ See www.iowarealtors.com/legislative/2005summary.htm, accessed May 2, 2006; Iowa House Bill HF 375, A Bill for and Act Relating to the Duties Imposed on a Real Estate Broker by a Brokerage Agreement, Signed by Governor April 19, 2005, available at <http://coolice.legis.state.ia.us>.

¹⁶ Mullaney, Timothy J., “Real Estate’s Turf War Heats Up,” *Business Week*, April 18, 2005.

¹⁷ Roberts Jr., Glenn, “Real Estate Regulator’s Radio Campaign Still Reverberates,” *Inman News*, April 5, 2006.

¹⁸ Roberts Jr., Glenn, “Real Estate Regulator’s Radio Campaign Still Reverberates,” *Inman News*, April 5, 2006.

¹⁹ The advertisements were posted on the Kentucky Real Estate Commission’s website as Advertisement 1, available at <http://krec.ky.gov>, accessed May 4, 2006.

²⁰ Roberts Jr., Glenn, “Kentucky Shoots Down Real Estate Minimum-Service Proposal,” *Inman News*, February 17, 2006.

²¹ Kentucky Legislature, Senate Bill 43, 2006 Session, available at www.lrc.ky.gov/record/06RS/SB43.htm.

²² Roberts Jr., Glenn, “Kentucky Shoots Down Real Estate Minimum-Service Proposal,” *Inman News*, February 17, 2006.

²³ Opdahl, Cristina, “Selling the Homestead, Without an Agent,” *New Mexico Business Weekly*, February 13, 2006.

limited service companies from operating.²⁴ After DOJ objected, the New Mexico Real Estate Commission delayed consideration of the controversial rule change.²⁵

In 2006, the commission revisited minimum service requirements, but to avoid the public scrutiny it received the previous year, it moved the public hearing from the commission's headquarters in Albuquerque to Las Cruces.²⁶ The New Mexico Association of Realtors promoted the rule change and asked the NAR to send a legal representative to attend the hearing.²⁷ The meeting was about 230 miles from the Commission's Albuquerque headquarters in the office of the president of the commission's business office, one of the largest real estate agents in southern New Mexico.²⁸ At the hearing some consumers objected to the change, one noted that "This is for the benefit of the big boys of real estate. This rule will take away my right as a consumer to hire, to pay with my money, a real estate licensee to do for me what I want done, as I want it done."²⁹ In mid-July 2006, the New Mexico Real Estate Commission unanimously voted to rescind the controversial minimum service rules before they went into effect and to establish a task force to address the minimum services issue.³⁰

Texas: In 2002, Texas Real Estate Commission (TREC) adopted a minimum service rule which was withdrawn a year later while it remained mired in a legal battle with a Texan limited service broker that prevented the minimum service rules from going into effect.³¹ When the minimum service rules were proposed again in 2005, the DOJ opposed the regulatory change and suggested that it would bring an anti-trust enforcement action against the state unless the regulatory provision was withdrawn.³² The Texas Association of Realtors reintroduced a proposed change to the state real estate rules that would have prevented discount brokers from offering limited services at a lower price in 2005.³³ The push for a state legislative rather than regulatory minimum services proposal avoided federal entanglement from DOJ, which has no anti-trust jurisdiction over state laws.³⁴ The rules were designed to prevent for-sale-by-owner sellers from accessing local multiple listing services (MLSs).³⁵ The minimum services bill (Senate Bill 810) was known by the industry as the "TREC Housekeeping Bill," suggesting that

²⁴ Opdahl, Cristina, "Selling the Homestead, Without an Agent," *New Mexico Business Weekly*, February 13, 2006.

²⁵ Roberts Jr., Glenn, "New Mexico Considers Minimum-Service Rule Change," *Inman News*, February 20, 2006.

²⁶ Realtors Association of New Mexico, *RANM Online News*, February 17, 2006, Vol. 9, Ed. 6.

²⁷ Roberts Jr., Glenn, "Real Estate Commission Approves Minimum-Service Measure Despite DOJ Opposition," *Inman News*, February 27, 2006.

²⁸ Roberts Jr., Glenn, "New Mexico Considers Minimum-Service Rule Change," *Inman News*, February 20, 2006.

²⁹ Stockberger, Brook, "Real Estate Commission to Vote on Rules," *Las Cruces Sun-News*, February 23, 2006.

³⁰ "New Mexico Rescinds Controversial Real Estate Rules," *Inman News*, July 17, 2006.

³¹ Roberts, Jr., Glenn, "Texas Passes Limited-Service Real Estate Law," *Inman News*, June 21, 2005.

³² U.S. Department of Justice and Federal Trade Commission letter to the Texas Real Estate Commission, Re: Proposed Amendments to 33 Tex. Admin. Code §535.2, April 20, 2005.

³³ Robertson, Jenny, "Real Estate Groups Battling Over Future of Discount Brokers," *Austin Business Journal*, May 9, 2005.

³⁴ Roberts, Jr., Glenn, "Texas Passes Limited-Service Real Estate Law," *Inman News*, June 21, 2005.

³⁵ Evans, Blanche, "DOJ Tells Texas Realtors to Back Off Limited Service Rule," *Realty Times*, April 21, 2005.

state laws that prohibit competition in the real estate industry are minor conforming changes to state law rather than significant market barriers for new entrants.³⁶

Needed Reforms

It makes no sense at all for practicing real estate brokers to serve as regulators with authority over services purchased by consumers from licensed brokers and salespeople. In consumer markets in free market economies, regulators are supposed to advance the consumer interest by ensuring that consumers have an adequate choice of services and that consumers have adequate information about these services and are protected against related seller abuses. That is why, for example, state insurance commissioners or public utility commissioners are independent regulators usually appointed by governors. It would be a scandal worthy of front-page treatment in newspapers for an active insurance or utility executive to, at the same time, serve as a regulator of his or her industry.

Accordingly, states should prohibit practicing real estate brokers and salespeople from serving on real estate commissions or boards. One approach can be found in Illinois where members of the board are required to give up their real estate licenses during their term of service. Another approach is to create stakeholder advisory committees with no formal regulatory authority. As well as including traditional brokers, these advisory committees should include nontraditional brokers, other service providers, and legitimate consumer representatives.

A transition to real estate regulation by people who are not licensed agents can be accomplished quickly simply by imposing Illinois-type requirements. But over the long run, it is desirable for residential real estate brokerage services to be regulated by knowledgeable career professionals, not by brokers who simply give up their practices during their terms of office. In comparable state regulatory bodies, leaders are typically attorneys who have either spent a career working in government or have worked, at various times, for government and for the industry. While concern remains about “revolving doors” between government and regulated industries, these concerns can be minimized by prohibiting former regulators from working for the industry for a period of one to two years.

³⁶ Lehman, Mark, “Legislative Recap,” *Texas Realtor*, July 2005, at 41.