



CO L O R A D O

**Department of
Regulatory Agencies**

**2014 Sunrise Review:
Home Inspectors**

*Office of Policy, Research and Regulatory Reform
October 15, 2014*



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2014

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunrise reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed its evaluation of the sunrise application for regulation of home inspectors and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, which provides that DORA shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, whether the public can be adequately protected by other means in a more cost-effective manner and whether the imposition of any disqualifications for regulation based on criminal history serves public safety or consumer protection interests.

Sincerely,

A handwritten signature in cursive script that reads 'Barbara J. Kelley'.

Barbara J. Kelley
Executive Director



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- Recommendation - Require all home inspectors in Colorado to obtain a license prior to providing home inspector services. Licensed home inspectors should be required to pass both an examination and a fingerprint-based criminal history background check prior to obtaining a license. A seven-member home inspector board should be created to provide regulatory oversight of home inspectors. Licensed home inspectors should be required to complete continuing education. 22

Background

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;

(III) Whether the public can be adequately protected by other means in a more cost-effective manner; and

¹ § 24-34-104.1(4)(b), C.R.S.

(IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

DORA has completed its evaluation of the proposal for regulation of home inspectors. During the sunrise review process, DORA performed a literature search; contacted and interviewed the applicant; reviewed licensure laws in other states and conducted interviews of administrators of those programs; and interviewed members of the American Society of Home Inspectors, the National Association of Home Inspectors and the International Association of Certified Home Inspectors. In order to determine the number and types of complaints filed against home inspectors in Colorado, DORA contacted representatives of the Office of the Attorney General, Consumer Protection Section, the Denver/Boulder Better Business Bureau and administrative staff to the Colorado Electrical Board and the State Plumbing Board.

Profile of the Profession

For most people, buying a home represents the single largest purchase they will make in their lifetimes.² In 2013, more than 96,000 homes (single-family dwellings and townhouses/condominiums) were sold by licensed real estate professionals in Colorado, which was an increase of 15.5 percent from the previous year.³

Homes that are for sale typically receive a home inspection prior to finalization of the sale. In fact, the American Society of Home Inspectors (ASHI) estimates that 77 percent of the homes sold in the United States and Canada receive a home inspection prior to purchase.⁴

The number of home inspections (as a percentage) is higher for people who secure Federal Housing Administration (FHA)-insured mortgages. The United States General Accounting Office surveyed home buyers who utilized FHA-insured mortgages, and of those surveyed, 86 percent received a home inspection prior to the purchase of their home.⁵

Generally, a home inspection is a visual examination of a residential dwelling, performed for a fee, which is designed to identify observed material defects within specific components of a dwelling.⁶ The purpose of a home inspection is to assist in the evaluation of the overall condition of the dwelling.⁷

Components inspected during a home inspection include, but are not limited to:⁸

- Roof;
- Heating;
- Cooling;
- Basement, foundation, crawlspace and structure;
- Plumbing; and
- Electrical.

² The Franchise Handbook. *Home Inspectors Provide Savings, Peace of Mind to Homebuyers*. Retrieved April 17, 2014, from <http://www.npiweb.com/images/pdf/CoverStoryReprint.pdf>

³ Colorado Association of Realtors. *Quarterly Indicators 2013*. Retrieved April 18, 2014, from <http://www.coloradorealtors.com/wp-content/uploads/2014/01/Statewide-Q41.pdf>

⁴ American Society of Home Inspectors. *Become An ASHI Home Inspector*. Retrieved April 21, 2014, from <http://www.ashi.org/inspectors/become.asp>

⁵ U.S. General Accounting Office. *Home Inspections: Many Buyers Benefit From Inspections, But Mandating Their Use is Questionable*. Retrieved April 21, 2014, from <http://www.gao.gov/products/GAO-04-462>

⁶ International Association of Certified Home Inspectors. *InterNACHI - Standards of Practice*. Retrieved April 18, 2014, from <https://www.nachi.org/sop.htm>

⁷ International Association of Certified Home Inspectors. *InterNACHI - Standards of Practice*. Retrieved April 18, 2014, from <https://www.nachi.org/sop.htm>

⁸ International Association of Certified Home Inspectors. *InterNACHI - Standards of Practice*. Retrieved April 18, 2014, from <https://www.nachi.org/sop.htm>

Additionally, ASHI, the National Association of Home Inspectors (NAHI) and the International Association of Certified Home Inspectors (InterNACHI) offer various levels of home inspector membership (certifications).

American Society of Home Inspectors

ASHI offers three designations of professional home inspector membership: ASHI certified inspector, ASHI inspector and ASHI associate.⁹

In order to become an ASHI certified inspector (the highest level), a candidate must pass the National Home Inspector Examination (NHIE) and ASHI's standards and ethics module. The NHIE is administered by Professional Service Industries (PSI), and there are six test locations (Centennial, Colorado Springs, Durango, Fort Collins, Grand Junction and Pueblo) in Colorado.¹⁰ The fee to take, and retake the NHIE is \$225.¹¹

The NHIE examination is a comprehensive examination consisting of 200 questions and tests knowledge in a variety of areas, including but not limited to:

- Exterior components (e.g., doors, windows and roof drainage systems);
- Structural elements (e.g., roof and ceiling structures);
- Electrical system elements (e.g., wiring systems); and
- Plumbing systems.

The ASHI standards and ethics module is an on-line test offered through the ASHI website.

An ASHI certified inspector candidate must also submit valid proof that he/she performed at least 250 fee-paid home inspections that meet or exceed ASHI's standards of practice.¹²

An ASHI certified inspector candidate is required to have inspection reports successfully verified for compliance with ASHI's Standards of Practice.¹³ Verification is completed by retired ASHI members.

The next category is an ASHI inspector. To become an ASHI inspector, a candidate is required to pass the NHIE examination and ASHI's standards and ethics module.¹⁴

⁹ American Society of Home Inspectors. *ASHI Membership Categories and Requirements*. Retrieved April 29, 2014, from <https://www.homeinspector.org/join/categoryreqs.aspx#>

¹⁰ PSI Exams Online. *Test Centers*. Retrieved April 29, 2014, from <http://cert.psiexams.com/locateall.html#/?address=Colorado%20North%20America&radius=322000>

¹¹ PSI Exams Online. *National Home Inspector Examination*. Retrieved April 29, 2014, from https://candidate.psiexams.com/catalog/fti_agency_license_details.jsp?fromwhere=findtest&testid=2596

¹² American Society of Home Inspectors. *ASHI Membership Categories and Requirements*. Retrieved April 29, 2014, from <https://www.homeinspector.org/join/categoryreqs.aspx#>

¹³ American Society of Home Inspectors. *ASHI Membership Categories and Requirements*. Retrieved April 29, 2014, from <https://www.homeinspector.org/join/categoryreqs.aspx#>

In order to become an ASHI inspector, a candidate must complete 75 fee-paid inspections in substantial compliance with the ASHI standards of practice.¹⁵

An ASHI inspector candidate must also have his/her inspection reports successfully verified for compliance with ASHI's standards of practice.¹⁶

The lowest level of membership is classified as ASHI associates. This category is reserved for inspectors who recently joined ASHI and may be new to the home inspector profession.¹⁷ ASHI associates must complete a background check and send five inspection reports to ASHI to review.

National Association of Home Inspectors

Similar to ASHI, NAHI has three levels of membership for home inspectors, including NAHI certified real estate inspector, regular membership and associate membership. Membership in any of the aforementioned NAHI levels requires completion of 16 continuing education units each calendar year.

The NAHI certified real estate inspector (CRI) membership, which is the highest level, requires the passage of the NAHI certified home inspector examination. The examination is a 140-question examination and is administered by PSI. The fee to take the examination is \$175 and the fee to re-take the examination is \$100.¹⁸

The examination covers areas such as:¹⁹

- Site, exterior, roof, garage, attic;
- Structural and foundation;
- Electrical; and
- Plumbing.

A candidate for the NAHI CRI must also complete 250 fee-paid inspections.²⁰

¹⁴ American Society of Home Inspectors. *ASHI Membership Categories and Requirements*. Retrieved April 29, 2014, from <https://www.homeinspector.org/join/categoryreqs.aspx#>

¹⁵ American Society of Home Inspectors. *ASHI Membership Categories and Requirements*. Retrieved April 29, 2014, from <https://www.homeinspector.org/join/categoryreqs.aspx#>

¹⁶ American Society of Home Inspectors. *ASHI Membership Categories and Requirements*. Retrieved April 29, 2014, from <https://www.homeinspector.org/join/categoryreqs.aspx#>

¹⁷ American Society of Home Inspectors. *ASHI Membership Categories and Requirements*. Retrieved April 29, 2014, from <https://www.homeinspector.org/join/categoryreqs.aspx#>

¹⁸ National Association of Home Inspectors. *Certified Real Estate Inspector (CRI) Program Information*. Retrieved April 30, 2014, from <http://www.nahi.org/membership/certified-real-estate-inspector-program-information/take-the-exam/>

¹⁹ National Association of Home Inspectors. *Certified Real Estate Inspector (CRI) Program Information*. Retrieved April 30, 2014, from <http://www.nahi.org/membership/certified-real-estate-inspector-program-information/take-the-exam/>

²⁰ National Association of Home Inspectors. *Certified Real Estate Inspector (CRI) Program Information*. Retrieved April 30, 2014, from <http://www.nahi.org/membership/certified-real-estate-inspector-program-information/take-the-exam/>

Minimum requirements for obtaining a regular membership include the passage of the NAHI CRI examination, the NHIE or the state real estate inspector examination (SREI).²¹ The SREI was designed to test the technical competency of a home inspector.²²

Candidates for the regular membership must also complete a minimum of 100 hours of fee-paid home inspections.²³

The NAHI associate membership requires a candidate to complete a 40-hour comprehensive home inspection training program or complete a minimum of 20 fee-paid home inspections.²⁴

International Association of Certified Home Inspectors

InterNACHI offers two certifications: certified master inspector and certified professional inspector.

To become a certified master inspector, a candidate is required to:²⁵

- Have completed 1,000 fee-paid inspections and/or hours of education (combined);
- Have been in the inspection business for at least three years;
- Agree to abide by the code of ethics;
- Agree to periodic criminal background checks; and
- Submit the application and one-time fee (\$2,500).

In order to become a certified professional inspector, a candidate is required to pass the InterNACHI online inspector examination and pass both the online code of ethics and standards of practice courses.²⁶

Additionally, candidates who have never completed fee-paid inspections are required to submit four mock inspection reports to InterNACHI's Report Review Committee.²⁷

Certified professional inspectors, among other things, are required to complete 24 continuing education units per year.

²¹ The National Association of Home Inspectors. *Levels of Membership*. Retrieved April 14, 2014, from <http://www.nahi.org/membership/levels-of-membership/>

²² The National Association of Home Inspectors. *Real Estate Home Inspector Examination*. Retrieved May 14, 2014, from <http://www.nahi.org/education/state-real-estate-inspector-examination/>

²³ The National Association of Home Inspectors. *Levels of Membership*. Retrieved April 14, 2014, from <http://www.nahi.org/membership/levels-of-membership/>

²⁴ The National Association of Home Inspectors. *Levels of Membership*. Retrieved April 14, 2014, from <http://www.nahi.org/membership/levels-of-membership/>

²⁵ Certified Master Inspector. *Become a CMI*. Retrieved May 14, 2014, from <http://certifiedmasterinspector.org/become-a-cmi/>

²⁶ InterNACHI. *How to Become a Certified Inspector*. Retrieved May 14, 2014, from <http://www.nachi.org/membership.htm>

²⁷ InterNACHI. *How to Become a Certified Inspector*. Retrieved May 14, 2014, from <http://www.nachi.org/membership.htm>

Proposal for Regulation

Two Coloradans (Applicant) submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state licensure of home inspectors as the appropriate level of regulation to protect the public.

The sunrise application states that licensure of home inspectors will provide for increased consumer protection, a higher degree of professionalism, background checking, uniformity of education and fiduciary responsibility through bonding and insurance.

The Application also asserts that licensing home inspectors would enhance consumer protection by:²⁸

- Protecting consumers from potential unnecessary financial burdens;
- Ensuring that all components or participants of the real estate settlement process adhere to a minimum level of qualifications expertise and licensure;
- Avoiding the potential conflict of having an unlicensed individual evaluating the work product of a member of a licensed trade;
- Providing an additional revenue stream for the State of Colorado; and
- Bringing Colorado in line with a growing trend that other states have put in place to help protect practitioners of the trades as well as the consumer.

Additionally, the Applicant provided a mandatory continuing education application to DORA, in accordance with section 24-34-906, C.R.S., which requests continuing education of home inspectors. The application states that continuing education is necessary because the knowledge base related to higher efficiency components related to home building and repair (appliances, mechanical systems, insulation, glass, and the like) is continually changing. Therefore, requiring continuing education for home inspectors could enhance consumer protection.

The Applicant stated that once licensed, home inspectors should be required to complete 24 hours of continuing education every three years.

²⁸ 2014 Home Inspector Sunrise Application. Home Inspector Licensing: Opening Statement.

Summary of Current Regulation

The Colorado Regulatory Environment

Currently, home inspectors are an unregulated profession in Colorado, and as such, there are no laws that specifically provide regulatory oversight. However, the City of Boulder requires residential rental properties to receive an inspection prior to being eligible for rent to consumers. The initial baseline home inspection consists of four parts:²⁹

- General (exterior and interior structure);
- Plumbing facilities and fixtures (plumbing systems and water systems);
- Mechanical and electrical (water heaters and general electrical); and
- Fire safety (smoke and carbon monoxide alarms).

Additionally, Colorado's contract to buy and sell residential real estate (contract), which was approved by the Colorado Real Estate Commission, references home inspections. Specifically, item 10.2 in the contract states,

A buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the property and inclusions (inspection), at the buyer's expense. If the physical condition of the property, including, but not limited to, the roof, walls, structural integrity of the property; the electrical, plumbing, heating ventilation and air conditioning (HVAC) or other mechanical systems of the property; physical inclusions (e.g., light fixtures); service to the property (including utilities and communication services); systems or components of the property (e.g., heating and plumbing); any proposed or existing transportation project, road, street or highway; or any other activity, odor or noise (whether on or off the property) and its effect or expected effect on the property or its occupants is unsatisfactory, the buyer may provide a notice to terminate the sale, or submit an inspection objection, which is a written description of any deficiencies that the buyer wants the seller to fix.

²⁹ City of Boulder. *SMARTREGS Guidebook + The Rental License Handbook*. Retrieved April 29, 2014, from https://www-static.bouldercolorado.gov/docs/PDS/forms/340_Rental_License_Handbook.pdf#page=38

Regulation in Other States

According to the sunrise application, there are 32 states that regulate home inspectors. In order to determine the number of home inspectors, and in some instances entities, regulated in the other states, the Department of Regulatory Agencies (DORA) staff surveyed a random sample of states. The states that responded to DORA's request for information include: Alaska, Delaware, Illinois, Kentucky, Maryland and Texas. All of the states require licensure of individuals (home inspectors), while Illinois also requires home inspector entities to obtain a license.

The total number of licensees varies from 73 licensed home inspectors in Alaska to approximately 3,000 licensees in Texas.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

Before moving forward in the analysis of harm concerning home inspectors, it is important to identify what constitutes harm to the public. The improper actions of home inspectors could result in financial, psychological/emotional or physical harm. For example, incorrectly identifying a potential faulty element of a house could result in the cancelation of a sale or purchase of a home (single family or townhouse/condominium). Doing so could result in financial and psychological/emotional harm to consumers.

Also, failing to identify dangerous, or potentially dangerous, elements of a home may result in physical harm to consumers.

In order to determine whether regulation of home inspectors is necessary, the Department of Regulatory Agencies (DORA) requested that the sunrise applicant provide specific examples of harm to the public. Each example of harm included in the sunrise application is summarized below along with DORA's analysis.

Example 1

A real estate professional had a bad experience with a home inspector. The home inspector was referenced on a popular consumer website, and on separate occasions, the home inspector completed inspections for the real estate professional's buyers. The home inspector referred to himself as the "Deal Killer." Both times he told the buyers what to ask for on their inspections.

During one inspection, he stated that the roof was in bad shape and the buyer should ask the seller to repair or replace the roof. He also said there was possible mold in the crawl space and told the buyer to have a company that served as one of his contractors to come and put in a new vapor barrier to seal the possible mold, mildew or radon. Not only did he tell the buyer to ask the seller for these items, but he stated that he had already contacted two businesses for which he provides contract work to come out and give a bid for these items. The real estate professional expressed concerns that the inspector's actions were inappropriate, given the fact that he utilizes the businesses for his contract work.

Analysis

The information provided in this example highlights that during a home inspection, the home inspector appears to accurately identify issues with the home's roof and possible mold in the house. However, the home inspector attempts to obtain work for the contractors he utilizes regularly to fix the issues identified.

This case illustrates a possible code of ethics violation because it is a conflict of interest to attempt to obtain work for the contractor he utilizes. If state regulation were implemented in Colorado, this home inspector may have been subject to formal discipline.

Example 2

In 2002, a real estate professional lost a contract due to a home inspector who provided inaccurate information to consumers concerning insulation.

The home inspector stated that the insulation in the attic was upside-down and needed to be turned around.

The home inspector was incorrect in his assessment of the insulation. In fact, a home improvement business sent a report to him stating that indeed the insulation was correctly installed.

The real estate professional ultimately lost the listing and the house was sold two months later with another real estate broker and the same insulation.

Analysis

This example illustrates an instance where the home inspector did not possess the appropriate skills (competency) to accurately and effectively complete an evaluation of the house's insulation. As a result, the seller missed an opportunity to sell the home to the prospective buyer. In this example, the seller clearly sustained emotional, and perhaps financial harm due to the errant information provided by the home inspector.

The emotional harm was sustained due to the fact that the home did not sell in a timely fashion because of the erroneous information provided by the home inspector.

It is unclear, however, whether the home sold at full price, or a discounted price. As such, in this example, it is possible that the home owner sustained financial harm.

Example 3

A home inspector provided incorrect information that a hot water heater was not installed properly. The inspector had never seen one like it before and assumed it was wrong. This incorrect information caused undue stress during the real estate transaction.

Analysis

This example highlights an instance where the home inspector lacked the knowledge to correctly evaluate the hot water heater. As a result, the individuals involved in this real estate transaction experienced undue emotional harm.

Regulation, with the requirement that home inspectors must pass an examination prior to practicing, may address this competency issue.

Also, if regulation were to be implemented, this practitioner may have been subject to formal discipline.

Example 4

A buyer's real estate professional hired a home inspector to complete a home inspection. The home inspector, although not a certified mold inspector, advised the buyer that there was a serious mold problem with the house and he estimated that it would take up to \$50,000 to make repairs and correct the problem. Needless to say, the buyers walked. However, a new buyer with a real estate broker who understood inspections and home inspectors ordered an inspection from a certified mold inspector and found that there was a mold problem, but the fix was going to be \$2,500. The problem was fixed and the sale was completed.

Analysis

This example states that the home inspector, who was not a certified mold inspector, identified potential mold during an inspection. In this example, it appears that the home inspector was accurate in his assessment that there was mold in the house. However, the total cost of the services to remove the mold from the house is the main concern.

Due to the inaccurate assertion of the home inspector related to cost of mold mitigation, the seller did not sell the home to the first buyer. As a result, the seller incurred potential financial and emotional harm because of the home inspector's assertions.

Example 5

During a home inspection, an inspector identified some minor settling of the house. The buyer's home inspector created a furor by stating the home had major deficiencies which would require tens of thousands of dollars to correct. A structural engineer was retained to evaluate the home. The amount required for repairs was less than \$500. The engineer wrote a letter of reprimand to the home inspector's company for exceeding his skill and expertise and practicing without a license.

Analysis

This example asserts that the home inspector believed that the home had settled a bit after it was built. Further, the home inspector believed that the settling of the home was a major deficiency that could cost a great deal of money to mitigate. However, the repairs were much less than estimated by the home inspector.

In the example, the analysis of the home inspector that there were settling issues associated with the home was not in dispute. Instead, the fee associated with the mitigation of the settling is the concern. The example illustrates an instance where a home inspector caused undue emotional stress during a home inspection based on inaccurate information.

Example 6

A listing was evaluated by a buyer's home inspector who indicated there was mold in the crawlspace. His determination was that costs to mitigate would be in excess of \$10,000. The buyer subsequently canceled the contract. The home was evaluated by a mold mitigation company. Mold spore levels were found to be slightly higher than normal but within an acceptable range. The seller mitigated the issue at a cost of \$4,000.

Analysis

This example states that the home inspector reported that there was mold in the crawlspace, which was an accurate assertion. The total cost to mitigate the mold appears to be the main cause for concern. However, the inaccurate information provided by the home inspection related to the cost to mitigate the mold caused the cancellation of the sale contract, which resulted in financial and emotional harm to the seller of the home.

Additionally, DORA worked beyond the sunrise application to find examples of harm. This search included other states, law enforcement, the Attorney General's Office and the Colorado State Electrical Board.

To identify the number and types of complaints and disciplinary actions imposed on regulated home inspectors in other states, DORA staff attempted to contact a variety of states (Alaska, Delaware, Illinois, Kentucky, Maryland, Rhode Island, Texas and Washington). The states that responded to DORA's request for information highlighted various complaints/disciplinary actions both for non-practice and practice related issues. For instance, the state of Illinois reported one non-practice related disciplinary action due to a licensee failing to pay child support.

There were also some states that reported complaints/disciplinary actions for practice related issues (standards of practice). For instance, the state of Texas, which has more than 2,900 licensed home inspectors, received 58 complaints and imposed 22 disciplinary actions on practitioners for issues related to standards of practice.

As highlighted above, other states that regulate home inspectors did, in fact, receive complaints concerning home inspectors. These states, when necessary, imposed discipline on practitioners for violations of the respective states' laws and applicable rules. As such, it is reasonable to conclude that state regulation in these states has contributed to the enhanced protection of consumers.

Additionally, DORA obtained a 2014 police report from the Arapahoe County Sheriff's Office highlighting an instance where a home inspector harmed a juvenile. In this case, a real estate broker scheduled a home inspection. The home inspector stated that he needed to inspect the water pipes, so he separated the three individuals in the house, where one person was sent to the basement, one person stayed on the main floor and one person (the juvenile) went upstairs.

The home inspector went upstairs, and while the juvenile was on a ladder peering into the attic, she was sexually assaulted. The home inspector also showed the juvenile pornographic pictures he had with him.

Clearly, this case illustrates harm (both mental and physical) to the consumer caused by the unregulated home inspector. If state regulation were in place (i.e., licensure), the scenario presented above could have been prevented. For example, as a condition to licensure, home inspectors could be required to complete a background check and fingerprinting. Doing so could prevent sexual predators who have been convicted of sexual crimes in the past from practicing as a licensed home inspector.

Further, implementing state regulatory oversight could prevent a sexual predator from continuing to practice in the future if convicted of a crime. This could enhance consumer protection by eliminating a home inspector who has been convicted of a crime such as a sexual offense from practicing.

In an attempt to identify additional harm to consumers, DORA also contacted the Colorado Office of the Attorney General, Consumer Protection Section. Since 2010, the Consumer Protection Section has received complaints against home inspectors concerning instances where home inspectors' negligence was reported.

Specifically, the Consumer Protection Section reported the following instances of home inspector negligence:

- Failed to discover defective furnace and water heater;
- Failed to notice mold, cracks in foundation and air conditioning not working; and
- Failed to reset circuit breakers after inspection, resulting in the spoiling of food.

The first two bullets highlighted above indicate that the home inspector in each case could have been deficient in his/her competency in executing a proper home inspection.

The third complaint, perhaps, is related to the carelessness of the home inspector to reset the circuit breaker rather than a deficiency in competency.

The first two complaints appear to identify issues related to competency. As such, state regulation may be appropriate to ensure that home inspectors possess the necessary training/education to practice effectively and minimize harm to consumers.

Additionally, the Denver/Boulder Better Business Bureau provided a number of complaints that were filed against home inspectors from 2011 to present. The most complaints filed (36) during this period were for service-related issues. Some of the complaints alleged that various home inspectors failed to identify issues with homes they inspected, including, but not limited to:

- Electrical;
- Plumbing;
- Mold;
- Roof; and
- Furnace.

These complaints address issues associated with competency concerning home inspectors. More specifically, the complaints highlight issues where home inspectors failed to accurately identify issues with a home, which could have caused consumers to incur financial, emotional and, in some instances, physical harm.

Since these complaints detail instances where consumer harm occurred, state regulation may serve to mitigate the number of instances, or at least provide an avenue for the state to pursue formal disciplinary action against a practitioner.

The Colorado State Electrical Board staff also provided a sample of complaints they received in the recent past concerning home inspectors. For example, one complaint referenced a home inspector's comments that a house he inspected was wired with aluminum wire and it must be replaced as it is no longer allowed by the electrical code. The information provided by the home inspector was inaccurate and could have prevented, or at least delayed, the sale of the home.

Further, the Colorado State Electrical Board staff received a complaint about a home inspector's assertions during a home inspection related to ground fault circuit interrupters (GFCIs). Specifically, the home inspector stated that a home did not have the required number of GFCIs as highlighted in the electrical code. However, this home was old, and often old homes did not have any (or a limited number) of GFCIs, but they are still code-compliant.

Both of the examples above highlight instances where the home inspectors were erroneous in their assertions concerning electrical components. These examples illustrate, once again, instances where home inspectors lack the proper competency levels to provide accurate information to consumers. As such, state regulation may help to mitigate harm to consumers, or at least provide an avenue for formal discipline for incompetent home inspections.

The examples of harm to consumers provided for this sunrise review, as well as the examples DORA identified during its research, highlight many examples where state regulation (licensure) may be appropriate. Although regulation may not prevent all of the aforementioned complaints, it could prevent a practitioner from harming consumers in the future through formal discipline, including revocation of their license.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

This criterion addresses the proposition of whether the state should require a certain level of education and/or impose a requirement that home inspectors pass an examination before being licensed in Colorado.

During this sunrise review, there was evidence presented via examples of harm in the sunrise application, and identified in various sources, that certain home inspectors do not possess adequate skills, education or competence to practice safely. As a result, the implementation of minimum requirements, such as the passage of an examination, to practice as a home inspector in Colorado may be necessary.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

Public protection for consumers who utilize home inspectors could potentially be realized in a cost-effective manner by requiring certification in the American Society of Home Inspectors (ASHI), the National Association of Home Inspectors (NAHI) or the International Association of Certified Home Inspectors (InterNACHI). These organizations provide various levels of home inspector certifications.

Generally, to obtain a certification in ASHI, NAHI or InterNACHI, candidates are required to pass an examination, provide proof of completing home inspections and complete annual continuing education.

Obtaining a certification from one of these organizations ensures that home inspectors are uniquely qualified to practice as home inspectors. As such, the certifications offered by ASHI, NAHI and InterNACHI appear to insulate consumers from incompetent practitioners.

The certifications offered by ASHI, NAHI and InterNACHI are utilized by many practitioners throughout the country, including Colorado. Consequently, certification by one of the aforementioned organizations may be a viable option and alternative to state regulation.

Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

The sunrise application proposes using an applicant's criminal history as a disqualifier for home inspector licensure, which could serve to enhance public safety. During this sunrise review, there was an instance where a sexual assault on a juvenile by a home inspector occurred. The implementation of a criminal history background check could serve to provide increased public protection by prohibiting home inspectors with a criminal history from practicing in Colorado.

Conclusion

The sunrise application requested licensure (the most restrictive type of regulation) of home inspectors. Further, the sunrise application, among other things, states that licensure will provide increased consumer protection.

The vast majority of residential real estate transactions utilize a home inspector to ensure, among other things, that the home is in good shape prior to its sale. As a result, home inspectors wield a tremendous amount of influence as to whether a residential property will sell. The lack of regulation in Colorado has left both buyers and sellers vulnerable to the mistakes, through lack of competency, of home inspectors. Harm to the public was identified from a number of sources, including but not limited to:

- The sunrise application;
- Arapahoe County Sheriff's Office;
- Office of the Attorney General, Consumer Protection Section;
- Denver/Boulder Better Business Bureau; and
- Colorado State Electrical Board staff.

Importantly, it is unclear whether the home inspectors who demonstrated a lack of competency, and in some instances, harmed consumers were certified by ASHI, NAHI or InterNACHI.

In order to ensure that all home inspectors meet minimum competency requirements and to attempt to mitigate harm to consumers, there are a number of safeguards the State of Colorado should require in order to provide protection to consumers. The safeguards are as follows:

- Home inspectors should pass a home inspector examination;
- Home inspectors should complete a fingerprint-based criminal history background check;
- Home inspectors should obtain a license from the State of Colorado;
- Home Inspectors should be regulated by a home inspector board; and
- Home inspectors should complete continuing education training.

In order to become a licensed home inspector in Colorado, a candidate should be required to take, and pass, an examination. The examination should be psychometrically valid and test the candidate on a wide variety of elements related to home inspections. Doing so will ensure that home inspectors have obtained a minimum level of competency to provide accurate and thorough home inspections. Also, requiring an examination would address the majority of complaints against home inspectors identified in this sunrise review, which were issues related to competency.

Once a candidate has passed the home inspector examination, he/she should also submit to a fingerprint-based criminal background check. This sunrise review identified an issue where a juvenile was sexually assaulted by a home inspector. A fingerprint-based criminal background check could serve as a barrier to enter the home inspector profession if issues such as sexual assault were identified.

Additionally, the absence of the background check requirement leaves consumers vulnerable to harm by individuals who may have a criminal history. Home inspectors operate in situations where home owners (as highlighted in the sexual assault example) are sometimes in an isolated environment with a home inspector. In these situations, there is, at least, the potential that home inspectors could physically harm consumers. As such, the background check would serve to eliminate individuals who have been convicted of crimes from practicing as home inspectors, which, in turn, could increase consumer protection.

Upon successful completion of the examination and background check requirements, a home inspector candidate may be issued a license. Licensing home inspectors would accomplish two goals. First, it would ensure that practitioners have met a minimum threshold in order to practice in Colorado. And second, licensing home inspectors would allow practitioners to be formally disciplined for violations of the practice act. This would ensure that if/when consumers are harmed by licensed home inspectors, there is an avenue to formally discipline practitioners.

Additionally, the creation of a home inspector board should be implemented. Doing so would enable the board to utilize its expertise in home inspections in establishing a new regulatory program, including the creation of rules and standards of practice and, when necessary, imposing discipline.

The home inspector profession requires knowledge of a variety of components within a home, including, but not limited to: structural, electrical, plumbing, roof and furnace. This knowledge base is complex, and would necessitate a board to effectively regulate the profession. As such, a home inspector board, which would consist of a majority of licensed home inspectors, should be created. Specifically, the board should consist of seven members, five members from the profession and two members of the public (non-home inspectors). This configuration is common among boards that regulate professions in Colorado. It ensures that there is enough expertise on the board, while also enabling members of the public to ensure that the board works in the public's interest.

The creation of a board is a low-cost way to effectively regulate professions in Colorado. Typically, the cost to administer a board is associated with personal services (professional staff) to assist the board and to reimburse board members for things such as travel and meals.

Once licensed by the State of Colorado, home inspectors should be required to fulfill continuing education requirements. Doing so would ensure that practitioners are up-to-date on new technologies such as higher efficiency components of home building and repair (appliances, mechanical systems, insulation, glass, solar panels) for homes as well as any enhancements to the home inspection process.

In sum, the evidence of harm identified during the course of research for this sunrise review demonstrates financial, emotional and physical harm to consumers in Colorado. As such, the State of Colorado should implement several regulatory processes, as outlined above, in an attempt to mitigate the harm identified. The aforementioned regulatory recommendations would increase public protection in the least restrictive manner without imposing unnecessary regulation.

Regulation of home inspectors in Colorado would also provide an avenue to impose discipline on practitioners who harm consumers. Doing so further insulates consumers from harm.

Recommendation – Require all home inspectors in Colorado to obtain a license prior to providing home inspector services. Licensed home inspectors should be required to pass both an examination and a fingerprint-based criminal history background check prior to obtaining a license. A seven-member home inspector board should be created to provide regulatory oversight of home inspectors. Licensed home inspectors should be required to complete continuing education.