



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunrise Review

Home Inspectors



October 15, 2019



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**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

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 General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Since that time, Colorado's sunrise process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104.1, Colorado Revised Statutes, directs the Department of Regulatory Agencies to conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed its evaluation of the sunrise application for the regulation of home inspectors and is pleased to submit this written report.

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

Sincerely,

Patty Salazar
Executive Director



Table of Contents

- Background 1
 - Licensure 1
 - Certification 2
 - Registration 2
 - Title Protection 2
 - Regulation of Businesses 3
 - Sunrise Process 3
 - Methodology 4
- Profile of the Profession 5
 - Home inspector Certification..... 5
 - American Society of Home Inspectors 6
 - International Association of Certified Home Inspectors 7
 - North American Association of Home Inspectors 8
- Proposal for Regulation 9
- Summary of Current Regulation 10
 - Federal Laws and Regulations 10
 - The Colorado Regulatory Environment..... 10
 - Regulation in Other States 11
- Analysis and Recommendations..... 13
 - Public Harm 13
 - Need for Regulation 19
 - Alternatives to Regulation 19
 - Collateral Consequences 20
 - Conclusion..... 20
 - Recommendation - Do not regulate home inspectors..... 21

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's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) 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
- (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.

¹ § 24-34-104.1(4)(b), C.R.S.

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

During the sunrise review process, COPRRR staff performed a literature search; contacted and interviewed the sunrise applicant, the American Society of Home Inspectors, and the International Association of Certified Home Inspectors; reviewed organizational codes of ethics and standards of practice; reviewed license laws in other states; and interviewed home inspectors and consumers. To determine the number and types of complaints filed against home inspectors in Colorado, COPRRR staff contacted the Office of the Colorado Attorney General, Consumer Protection Section; the Colorado Division of Real Estate within the Department of Regulatory Agencies; and the Better Business Bureau serving Greater Denver and Central Colorado.

Profile of the Profession

In Colorado's five most populous counties, during 2018, there were more than 43,000 single-family homes sold.²

A home inspector provides customers with an examination of a home. A home inspection is a way to learn about the underlying general condition of a home. Typically, the inspection is performed prior to the sale and the inspector is commissioned by the party purchasing the property.

In Colorado, there is an inspection period allowed under the standard *Contract to Buy and Sell Real Estate (Residential)* promulgated by the Colorado Real Estate Commission. Whether or not that inspection is performed by a professional inspector is left to the discretion of the homebuyer.

The typical home inspection report covers the heating, central air conditioning, and the interior plumbing and electrical systems; the roof, attic (including visible insulation), walls, ceilings, floors, windows, and doors; and the foundation, basement and other structural elements.³ The purpose of a pre-purchase home inspection is to note irregularities and areas of concern for the homebuyer, not to recommend remedies.

In addition to these general home inspections, some buyers may also obtain more specific inspections to test for termites, radon, or asbestos. These specialized inspections require singular skills and most home inspectors do not perform them. The subject of this review is the general examination of a residence's systems and condition.

The Better Business Bureau serving Greater Denver and Central Colorado (BBB) reported that as of February 2019, there were 52 BBB-accredited home inspection businesses in its region and 255 known non-accredited home inspection businesses in its region. The BBB is a membership organization as well as a consumer protection organization. To become an accredited member, a business must comply with and adhere to eight principles it determined are necessary to operate a trustworthy business.⁴

Home inspector Certification

Multiple organizations offer home inspection certification to those individuals who wish to have a credential. Organizations such as these exist to promote home inspections as an industry and competency among their membership. The organizations listed here are not Colorado specific and one is international in scope.

² Total compiled from the Colorado Association of Realtors local market updates for Denver, El Paso, Arapahoe, Jefferson, and Adams counties. Colorado Association of Realtors. *Housing Market Sortable Statistics - Single Family*. Retrieved September 23, 2019, from <https://www.coloradorealtors.com/market-trends/regional-and-statewide-statistics/>

³ American Society of Home Inspectors. *Find Your Answers to Home Inspection Cost and Home Inspection Service Questions*. Retrieved January 14, 2019, from <https://www.homeinspector.org/FAQs-on-Inspection#2>

⁴ Better Business Bureau. *BBB Accreditation Standards*. Retrieved June 27, 2019, from <https://www.bbb.org/bbb-accreditation-standards>

American Society of Home Inspectors

There are three levels of inspector qualification offered by the American Society of Home Inspectors (ASHI): associate inspector, ASHI inspector, and ASHI certified inspector.

To become an associate inspector, the organization requires:⁵

- Passing ASHI's Standard of Practice and Code of Ethics module,
- Agreeing to follow ASHI's Standard of Practice and Code of Ethics, and
- Completing 20 hours of continuing education annually.

To become an ASHI inspector, the organization requires:⁶

- Passing the National Home Inspector Examination or a valid state examination approved by the Membership Committee,
- Passing ASHI's Standard of Practice and Code of Ethics module,
- Successful inspection report verification for compliance with ASHI's Standard of Practice,
- Performing 75 fee-paid home inspections that meet or exceed ASHI's Standard of Practice,
- Agreeing to follow ASHI's Standard of Practice and Code of Ethics, and
- Completing 20 hours of continuing education annually.

To reach the highest level, certified, the organization requires:

- Passing the National Home Inspector Examination,
- Passing ASHI's Standard of Practice and Code of Ethics education module,
- Successful inspection report verification for compliance with ASHI's Standard of Practice,
- Performing 250 fee-paid home inspections that meet or exceed the ASHI Standard of Practice,
- Agreeing to follow the ASHI Standard of Practice and Code of Ethics, and
- Completing 20 hours of continuing education annually.

ASHI offers continuing education classes online and approves classes that individual state chapters may present to members. As of July 2019, there were 289 ASHI members in Colorado.

⁵ American Society of Home Inspectors. *ASHI membership categories and requirements*. Retrieved January 14, 2019, from <https://www.homeinspector.org/ASHI-membership-categories-and-requirements>

⁶ *ibid.*

International Association of Certified Home Inspectors

Another certifying organization, the International Association of Certified Home Inspectors (InterNACHI), offers a qualification as a certified professional inspector. To attain the qualification, the organization requires:⁷

- Joining the organization,
- Passing an examination,
- Completing a code of ethics course,
- Completing a standards of practice course,
- Submitting four simulated inspection reports, and
- Signing an enrollment agreement.

To maintain the certified professional inspector qualification requires completing an additional 12 courses within 12 months of enrolling. Those courses are generally specific to a section of an inspection such as electrical or plumbing systems.

Continued certification is based on:⁸

- Maintaining continual membership,
- Substantially adhering to the standards of practice,
- Following the Code of Ethics,
- Completing 24 hours of continuing education annually,
- Maintaining an education log, and
- Passing the inspector examination every three years with a minimum score of 80 percent.

InterNACHI offers all classes and examinations online. Additionally, anything believed to be inspection-related can qualify for continuing education credits. This includes credits earned from other inspection associations, training classes provided by schools other than InterNACHI, construction seminars, and code enforcement training.⁹ As of July 2019, there were 1,207 InterNachi members in Colorado.¹⁰

⁷ International Association of Certified Home Inspectors. *Home Inspector Certification Requirements*. Retrieved January 14, 2019, from <https://www.nachi.org/cpi-requirements.htm>

⁸ International Association of Certified Home Inspectors. *Home Inspector Certification Requirements*. Retrieved January 14, 2019, from <https://www.nachi.org/cpi-requirements.htm>

⁹ International Association of Certified Home Inspectors. *Continuing Education Policy*. Retrieved July 30, 2019, from https://www.nachi.org/cont_education.htm

¹⁰ International Association of Certified Home Inspectors. *InterNACHI Membership Stats*. Retrieved July 24, 2019, from <https://www.nachi.org/membership-stats.htm>

North American Association of Home Inspectors

A third organization that certifies inspectors is the North American Association of Home Inspectors (NAAHI). A membership in NAAHI requires:¹¹

- Completing 90 hours of accredited home inspector education or a minimum of 25 paid inspections,
- Passing the NAAHI examination or an equivalent examination,
- Completing any state licensure requirements, and
- Adhering to NAAHI Standards of Practice and Code of Ethics.

Continued membership requires completing six hours of continuing education annually. NAAHI accredits education providers rather than directly providing training. Among the accredited organizations are ASHI and InterNACHI. The Colorado Office of Policy, Research, and Regulatory Reform was unable to ascertain the number of NAAHI members in Colorado.

The required common elements among these certifying organizations are completion of an educational component, passing an examination, and adhering to defined standards and scopes of practice.

¹¹ North American Association of Home Inspectors. *Membership Requirements*. Retrieved January 22, 2019, from <https://www.nshi.org/requirements.php>

Proposal for Regulation

In accordance with section 24-34-104.1, Colorado Revised Statutes (C.R.S.), a sunrise application was submitted by a licensed Colorado real estate broker in conjunction with the Colorado Association of Realtors. The sunrise process places the onus on the applicant to illustrate the need for regulation by illustrating that:¹² the unregulated practice of the occupation or profession clearly harms or endangers the public, and that the harm is easily recognizable; and the public needs and will benefit from the state's assurance of initial and continuing competence.

The applicant claims that licensing is needed for home inspectors, also called residential building inspectors. The applicant posits that guaranteeing competency through an examination, passing a criminal background check, and requiring pre-license education and post-license mandatory continuing education (MCE) will provide consumers with layers of protection that do not exist today. Increased consumer protection through greater professionalism, uniform education, uniform standards of practice, verifiable background checks and insurance coverage will protect everyone involved in the transaction.¹³

The applicant also submitted an MCE application in conjunction with the sunrise application which as is required under section 24-34-901, C.R.S.

The applicant suggests that the proposed licensure and continuing education requirements will increase consumer protection when completing what could very likely be one of the largest and most emotional business transactions of a consumer's lifetime. Background checks, education and training, and bonding or insurance will provide necessary protections when problems arise.

The application also states that:

Unlicensed home inspectors ultimately judge and certify the quality of work product of licensed trade professionals. The work product of home inspectors dramatically impacts consumers, as well as licensed mortgage originators, real estate licensees, appraisers and settlement service providers. Home inspectors are the only entity in the real estate transaction settlement process that are not subject to licensure, testing standards and continuing education and training requirements.¹⁴

¹² § 24-34-104.1(4)(b), C.R.S.

¹³ Home Inspector Sunrise Application. P.4.

¹⁴ Home Inspector Sunrise Application. P.3.

Summary of Current Regulation

Federal Laws and Regulations

At this time there are no federal laws or regulations regarding home inspections or home inspectors. However, the Environmental Protection Agency recommends that a home be tested for radon when buying or selling.¹⁵

The Colorado Regulatory Environment

In Colorado, the Department of Regulatory Agencies (DORA), through the Division of Professions and Occupations, licenses multiple construction professionals including plumbers and electricians as well as plumbing and electrical contractors.¹⁶ General contractors are licensed at the municipal level, if they are licensed at all. The state does not regulate general contractors in any capacity. DORA also regulates, through the Division of Real Estate: real estate brokers, real estate appraisers, and mortgage loan originators. These are all professions that work with residential real estate transactions at some level.

The *Contract To Buy And Sell Real Estate (Residential)* which is approved by the Colorado Real Estate Commission, has a provision for inspection(s):

Inspection. Unless otherwise provided in this Contract, 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 Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) 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, in Buyer's sole subjective discretion, [terminate the contract or negotiate new terms].¹⁷

The provision allows a buyer time to perform due diligence concerning the condition of a home and its systems.

¹⁵ Environmental Protection Agency. *Home Buyer's and Seller's Guide to Radon*. Retrieved March 11, 2019, from <https://www.epa.gov/sites/production/files/2015-05/documents/hmbugud.pdf>

¹⁶ §§ 12-155-101 *et seq.* and 12-115-101 *et seq.*, C.R.S.

¹⁷ § 10.3 *Contract to Buy and Sell Real Estate(Residential)*. DORA. *Division of Real Estate Contract and Forms*. Retrieved March 11, 2019, from <https://drive.google.com/drive/u/1/folders/0B1VD36mBqe1EfnJaMGI3MVBxX0Zva3RVbEY2amVuc1Y45Fh2X3JDZTVHeGxUUVRzaGdDMVU>

Regulation in Other States

According to information submitted by the applicant, there are 16 states, roughly one-third of all states, including Colorado, that do not regulate home inspectors. Table 1 lists each state and whether it regulates home inspectors.

Table 1
State Home Inspector Regulation

State	Regulation	
	Yes	No
Alabama	X	
Alaska	X	
Arizona	X	
Arkansas	X	
California		X
Colorado		X
Connecticut	X	
Delaware	X	
Florida	X	
Georgia		X
Hawaii		X
Idaho		X
Illinois	X	
Indiana	X	
Iowa		X
Kansas		X
Kentucky	X	
Louisiana	X	
Maine		X
Maryland	X	
Massachusetts	X	
Michigan		X
Minnesota		X
Mississippi	X	
Missouri		X
Montana		X
Nebraska		X
Nevada	X	
New Hampshire	X	
New Jersey	X	
New Mexico		X
New York	X	
North Carolina	X	
North Dakota		X
Ohio	X	
Oklahoma	X	

State	Regulation	
	Yes	No
Oregon	X	
Pennsylvania	X	
Rhode Island	X	
South Carolina	X	
South Dakota	X	
Tennessee	X	
Texas	X	
Utah		X
Vermont	X	
Virginia	X	
Washington	X	
West Virginia	X	
Wisconsin	X	
Wyoming	X	

The level and type of regulation varies by state. Notwithstanding, there are some elements that appear in different combinations among the states that regulate home inspectors including education and training, apprenticeship, examination, insurance, and background checks. For example, Washington requires 40 hours of field training and 120 hours of classroom training, 24 hours of continuing education every two years, and passing a validated examination;¹⁸ Florida does not require field experience, but does require 120 hours of pre-license education, and 14 hours of continuing education biennially;¹⁹ and Pennsylvania requires 100 home inspections, no pre-license education or examination, and no continuing education.²⁰

¹⁸ American Society of Home Inspectors. *Home Inspection Requirements for Washington*. Retrieved June 27, 2019, from <https://www.homeinspector.org/StateLicensingRequirements/State/Washington>

¹⁹ American Society of Home Inspectors. *Home Inspection Requirements for Florida*. Retrieved June 27, 2019, from <https://www.homeinspector.org/StateLicensingRequirements/State/Florida>

²⁰ American Society of Home Inspectors. *Home Inspection Requirements for Pennsylvania*. Retrieved June 27, 2019, from <https://www.homeinspector.org/StateLicensingRequirements/State/Pennsylvania>

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.

In conjunction with the sunrise application, the applicant provided examples of harm that it maintains occurred due to home inspectors not being licensed in Colorado.

Example(s) 1

The initial set of examples of harm submitted by the applicant were on a printout from a Denver Channel 4 newscast entitled “Consumers, Industry Calling For State Licensing Of Home Inspectors.”²¹ The first subject highlighted in the report recalled a woman having an inspection on her home. The inspector made a recommendation regarding how to repair an issue that he had noticed with the roof. His advice was followed and the roof was repaired as he suggested. After the sale of the house closed, the new owner found that the home could not be insured based on the condition of the repaired roof. The consumer was then forced to make an additional repair of the roof which cost an additional \$11,000.

ANALYSIS

The home inspector did note that there was an issue with the roof and informed the client. However, the home inspector should not have given advice concerning the repair of the roof other than to recommend that a qualified professional be called. When that did not occur and when advice by the home inspector was given to the client, the client was harmed. A scope of practice specifically establishing practice boundaries could have prohibited the home inspector from harming the client. If a home inspector chooses to do so post-licensure, he or she risks discipline.

A second party highlighted in the news report also had a presale home inspection performed. The inspection report showed some minor problems, but did not notice a gas leak in the basement. For some reason the consumer had another home inspection performed, which not only discovered the gas leak, but several other defects and the consumer did not buy the house.

²¹ 4 CBS Denver. *Consumers, Industry Calling For State Licensing Of Home Inspectors*. Retrieved March 14, 2019, from <https://denver.cbslocal.com/2016/06/09/consumers-industry-state-licensing-home-inspectors/>

ANALYSIS

While licensing may not ensure total competence, it does ensure that licensees have minimal competence. It is unlikely that a competent home inspector would miss “several other defects.” If a licensee did miss several defects or issues, it is possible that he or she could be disciplined if a regulatory program were in place.

The third subject of the newscast concerned a criminal complaint in the Arapahoe County Sheriff’s Office. The complaint alleges a home inspector sexually assaulted a minor in a property that was being inspected. This example was also highlighted in the 2014 Sunrise Review of Home Inspectors conducted by The Colorado Office of Policy, Research, and Regulatory Reform (COPRRR).²²

ANALYSIS

This case illustrates harm caused by a home inspector. However, the harm was not related to the competency of the individual, which is the focus of a licensing program. Additionally, since this example of harm was analyzed in the 2014 sunrise review of home inspectors, COPRRR has not become aware of a similar issue in the ensuing five years. While this crime is horrendous, it is an outlier and not an ongoing condition that demands regulation to correct.

Example(s) 2

A second set of examples of harm was submitted by the applicant.

In an inspection report, an inspector noted that a furnace was non-functional and recommended that a qualified professional be called. Subsequently, a heating, ventilation, and air conditioning contractor inspected the furnace and found no issue.

ANALYSIS

In this case, there appears to be no harm effected by the home inspector. The home inspector noted an issue on an inspection report to the party who contractually engaged the inspection service. The fact that during a later, more in-depth examination nothing was found to be wrong with the appliance is not an issue between the home inspector and the client. In fact, the inspector acted appropriately. If the home inspector had not noted an issue and something was wrong with an inspected appliance, that could possibly constitute harm.

²² DORA. 2014 Sunrise Review: Home Inspectors, P.16.

A home inspector turned off a furnace in a vacant home after testing the water lines. After the sale was completed, the heat was turned back on and frozen water lines burst. The water from the pipes flooded three levels of the home. As per the contract, the homeowner could only obtain a refund of the cost of the inspection rather than damages.

ANALYSIS

The client was harmed by the negligence of the home inspector. If it were not for the actions of the home inspector, then the pipes would not have burst. There is no guarantee that a licensed inspector would not have turned off the heat in the home. However, if there was some type of surety in place as a condition of licensure, then the harmed party may have had the ability to recover the monetary damages and a regulator could take disciplinary action.

A home inspector pulled out an electrical receptacle and then claimed it was previously damaged but the homeowner said it was not. Moreover, when the inspector left the home, after an 8:00 a.m. inspection, it was left unlocked and remained so until the seller returned home after midnight.

ANALYSIS

This case illustrates two types of harm that may occur when a person engages a home inspector. First, if an inspector was licensed and that inspector damaged an electrical receptacle, he or she could be disciplined for violating standards of practice. Additionally, if a licensee was required to hold surety of some type, it is possible that the consumer may have been able to recover some of the money needed to repair the damaged property and a regulator could take disciplinary action.

The second issue is potentially much more harmful.

There is a very high level of trust that goes with selling a home and permitting a stranger to enter it. In this case nothing did go wrong. If harm had occurred, a licensed home inspector may have been disciplined for not securing the property upon leaving. However, potential harm is, at best, a tenuous reason to regulate an entire profession.

Example 3

A homebuyer in Eagle County had a home inspected prior to purchase. The report did not identify any issues. After closing, the buyer found that the house had synthetic stucco, an exterior insulation and finish system (EIFS). EIFS has caused some problems around the country when installed incorrectly. The new

homeowner found that it cost several thousand dollars to remove and replace the EIFS.

ANALYSIS

If a Colorado seller is aware of the existence of EIFS on a home, the seller is required to disclose it on the Seller's Property Disclosure form promulgated by the Colorado Real Estate Commission.²³ It seems reasonable that because a home inspector performs a visual inspection of a residence's exterior, he or she should inspect for its presence and note whether it exists on a home for sale after inspecting the building exterior. However, because the house has EIFS does not necessarily mean that the product was installed incorrectly and needed to be replaced.

If there was mandatory licensing of home inspectors it is possible this would be a violation of practice standards.

Example 4

An inspector did not inspect an attic space in a home. It was later discovered that the home had mold in the attic, when the buyers started demolition for a remodel after closing. Mold was then discovered throughout the home behind the drywall. The buyers incurred extreme expense because the mold was missed by the inspector prior to the purchase. The buyers specifically asked for an air quality test, which would have detected mold, but were told one was not necessary.

ANALYSIS

Issues and concerns regarding habitability continue to evolve. There is also new technology to test for some of those issues and concerns. The inspector should have inspected the attic and noted the presence of mold and recommended further testing. Additional training may have made the inspector aware that an air quality test may have uncovered the presence of mold. Moreover, if regulation were in place, the inspector could have been disciplined.

Example 5

A home inspector told the buyers that he heard running water behind a basement wall and the inspector concluded there had to be an active leak which would cause major damage. A licensed plumber was called. The plumber verified that there was no running water nor were there any pipes in that portion of the basement.

²³ Seller's Property Disclosure (Residential). Colorado Real Estate Commission. Retrieved September 20, 2019, from https://drive.google.com/file/d/14GP-S-lvlqu-TkXrSO98KO_ve5CIFYSD/view

ANALYSIS

The inspector was correct in letting the purchaser know that he heard running water and that a plumber should be called. The inspector erred by insisting there was an active leak that would cause major damage to the home. The home inspector could possibly be disciplined for practicing beyond his or her expertise, but no actual harm occurred due to inspector incompetence.

Example 6

When an inspector made his report to the buyer, he noted some minor problems with the house. At that time, he also informed the buyer that his sons owned a construction company and they could easily remedy the situations.

ANALYSIS

There was no actual harm experienced by the consumer. Nonetheless, if licensing was required, it is likely that there would be standards of practice that would prohibit conflicts of interest such as recommending a specific contractor to fix noted issues.

Example 7

An inspector said there were active repairs being made on a roof because there was a metal bar in place. The bar was installed for an antenna that had long been removed. The bar remained so the removal would not cause damage to the house. A roofer verified that the roof was in perfect condition and there was no need to remove the bar and no work was being done.

ANALYSIS

There is no harm in this case. The inspector noted an irregularity that needed attention. A professional roofer verified that the irregularity was not an issue. If an inspector had not noted the bar on the roof and it had resulted in a problem, then he or she could be disciplined for not noticing a major irregularity in the roof system.

Example 8

During the winter, a home inspector left the front of the furnace and the heat off in a home. The inspection company had to return in the evening to turn the heat back on in the home.

ANALYSIS

No actual harm was experienced because the company returned to remedy the situation. If licensing were in place, it is doubtful that the inspector would have been disciplined for not reclosing the furnace and turning the heat on before leaving the residence.

The applicant also supplied other, similar, instances of what it considered to be consumer harm resulting from home inspectors not being regulated. While COPRRR considered every case, because they did not add anything new to the discussion of harm, the analysis does not appear herein.

COPRRR also looked beyond the materials supplied by the applicant to find instances of harm. This search included the Better Business Bureau serving Greater Denver and Central Colorado (BBB) and the Colorado Division of Real Estate.

The Colorado Division of Real Estate reported that it receives complaints concerning home inspections and home inspectors, often in conjunction with a complaint concerning a licensed real estate broker. However, the division does not keep track of those complaints because home inspectors and home inspections are not regulated.

The BBB reported that, from February 2016 through February 2019, in its region, it had record of 29 total complaints filed against BBB-accredited home inspection businesses and 19 complaints filed against non-accredited businesses. Of the 48 total complaints, slightly more than half, 52 percent, were based on customer service or professional service issues. Still, one must consider that during that time, in that region, there were several thousand real estate transactions completed.

The Office of the Colorado Attorney General reported that it has no record of a home inspector as an investigative target.

Statute directs that analysis consider consumer harm and, “whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.”

The examples make it clear that all issues cannot be cured through licensing and that some harm is subjective rather than objective in nature. The analysis shows that training, clear professional standards, and a well-defined scope of practice may have prevented some of the harm but those conditions may be satisfied through membership in one of multiple professional organizations.

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 directs analysis to consider if consumers could realistically benefit if training and an examination were a condition of licensure. In this circumstance, in conjunction with the sunrise application, the applicant also submitted an application for mandatory continuing education (MCE).

During the course of this sunrise review, COPRRR analyzed examples of harm which illustrated that some home inspectors do not possess adequate skills, education, or competence to practice capably.

The need for education and codified standards of practice is unclear when considering the manner in which harm occurs. The home inspector is squeezed by two opposing sides. He or she is hired by a prospective buyer who wants everything noted so any issues can be repaired or used as bargaining tools. These people are more likely to be disgruntled if something is missed during and inspection. The other side is trying to sell a house and wants a report to come back without any issues noted on it. These are the people that are likely to be upset when a report comes back with an issue that requires further examination or repair by a specialized tradesperson. They claim that it is an example of incompetent practice to point out something that may, or may not, be an issue. Training in ethics and practice standards may help stop problems due to such tensions from occurring, but government intervention is not justified.

It is not the task of government to interfere in business transactions to decide winners and losers. It cannot be overstated that several thousand of these transactions occur in Colorado every year without incident.

Alternatives to Regulation

The third sunrise criterion asks:

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

In the “Profile of the Profession” section of this sunrise report, three organizations were highlighted as groups that certify that their members are ethical and competent: the American Society of Home Inspectors, the International Association of Certified Home Inspectors, and the North American Association of Home Inspectors. Often when organizations of this nature exist there is no need for additional qualification through

a governmental program. Private certification often ensures that members are adequately trained and can instill consumer confidence that certificate holders will perform their duties satisfactorily. However, in this case there is no single, standard certification to which mainstream consumers can point or rely upon. That is not to say that any of the organizations are subpar or deficient in any way. COPRRR has no way of making such an evaluation.

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 Applicant recommends that every home inspector undergo a criminal history check to improve public safety:

Currently, convicted felons with no experience can present themselves as a professional home inspector. The consumer has no ability or resource to gauge the qualifications of a home inspector.²⁴

Home inspectors are often in a home alone with access to personal property. Performing a pre-license criminal history check could provide increased public protection by prohibiting home inspectors with a criminal history from practicing in Colorado.

The applicant did not specifically speak to the types of crimes that would disqualify a person from obtaining a license. Notwithstanding, criminal conduct is not widespread among the examples of harm examined for this review.

Conclusion

The sunrise application suggests that licensing is the appropriate level of regulation for home inspectors. A license is the most restrictive type of regulation and generally includes specific requirements that must be satisfied by an applicant such as training and passing an examination. Further, the sunrise application, among other things, states that licensure will provide increased consumer protection.

The primary reason to regulate a profession is to protect Colorado's consumers from harm. As was noted in the "Profile of the Profession" of this report, in Colorado's five most populous counties, during 2018, there were more than 43,000 single family homes

²⁴ Home Inspector Sunrise Application. P.4.

sold and more than 100,000 residential dwellings sold statewide.²⁵ Because a home inspector may be employed in the majority of residential real estate transactions, there is opportunity for consumers to be harmed. A home inspector plays a large role in both the price negotiations of a property and the peace of mind of a purchaser. Yet, harm is rare and real estate closings averaged more than 300 per day in 2018 in Colorado. Analysis of the profession shows that harm does occur, however, the possibility for a consumer to be harmed is remote. Consequently, the argument for regulation is tenuous.

Recommendation - Do not regulate home inspectors.

²⁵ Total compiled from the Colorado Association of Realtors local market updates for Denver, El Paso, Arapahoe, Jefferson, and Adams counties. Colorado Association of Realtors. *Housing Market Sortable Statistics - Single Family*. Retrieved September 23, 2019, from <https://www.coloradorealtors.com/market-trends/regional-and-statewide-statistics/>