

September 2018

## HOT TOPIC ALERT

### Home Inspector Licensing



As of April 2018, 36 of the 54 surveyed jurisdictions<sup>1</sup> had enacted laws governing home inspectors and/or home inspections, leaving 18 jurisdictions<sup>2</sup> without home inspection regulatory laws. Four of the 36 jurisdictions<sup>3</sup> with laws do not require licensing, while 25 states set forth specific requirements for the actual home inspection service. Only five states<sup>4</sup> address third-party liability, while 10 states<sup>5</sup> address liability limitations related to home inspectors.

The various requirements for obtaining a home inspector license are similar to one another. Most states require a high school education, some practical or educational home inspection program, exam passage, and license fee payment. Some states also require insurance coverage, good moral character, and a minimum age, and others bar applicants with certain criminal records.

The performance standards adopted by state home inspector regulatory agencies generally are based on the [American Society of Home Inspectors \(ASHI\) Standards of Practice and Code of Ethics](#), with minor modifications. These standards require inspection of specified systems and components unless excluded from the inspection by the client and list items that need not be inspected. Ethical code provisions govern the inspector-client relationship and the inspector's interactions with third parties.

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<sup>1</sup> Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia and Wisconsin.

<sup>2</sup> Colorado, District of Columbia, Guam, Hawaii, Idaho, Iowa, Kansas, Nebraska, Michigan, Minnesota, Missouri, Nebraska, New Mexico, Ohio, Puerto Rico, Utah, Virgin Islands and Wyoming.

<sup>3</sup> California, Georgia, Montana and Pennsylvania.

<sup>4</sup> Alaska, Arkansas, Indiana, Kentucky and Wisconsin.

<sup>5</sup> Alaska, California, Kentucky, Maryland, Massachusetts, Missouri, Mississippi, Pennsylvania, Rhode Island and Wisconsin.

## DEBATE OVER HOME INSPECTOR LICENSING

Regulating home inspectors may seem obvious. After all, home inspectors have access to a person's home and provide information that a homebuyer relies on to make what is frequently the largest purchase of his or her life. However, whether home inspectors should be licensed has been [debated for years](#).

Legislation pending in Ohio, [House Bill 211](#), is revealing both sides of the argument. While many real estate licensees and experienced inspectors support the bill, [some opponents](#) call the bill the "Real Estate Agent Protection Act," arguing that it will increase inspectors' costs without stopping an inspector from downplaying deficiencies so he or she can get more referrals from real estate licensees. Other objections in Ohio are less focused—the Ohio chapter of Americans for Prosperity [has argued](#) that all occupational licenses are simply a "permission slip from the government in order to provide for themselves and their families."

Home inspectors in other states also [criticize existing licensing laws](#). Some assert that several current statutes formalize inadequate inspection standards, cheapen the profession, fail to protect consumers, and allow inexperienced inspectors to take a share of the market by lowering entry barriers. Of course, other inspectors, real estate licensees, and consumers strongly disagree.

Legislation proposed in New Hampshire in 2007 was met with similar criticism. In that case, several [home inspectors strongly opposed a bill](#) that did not require testing, education, or training, instead leaving everything up to a government board. Those home inspectors formed a coalition of independent inspectors and members of numerous home inspector associations that succeeded in getting a more stringent version of the bill passed in 2008. The American Society of Home Inspectors has voiced similar [objections to the legislation Florida passed](#) in 2010, citing the lack of experience requirements, limited education requirements, and other weaknesses in that law.

An [analysis of the discussions](#) in states that have passed or failed to pass a home inspection licensing law reveals other concerns that are frequently expressed by seasoned home inspectors. Some criticize the laws because inspector licensing allows [new and inexperienced home inspectors to act as professionals](#) by highlighting their licenses, while downplaying their lack of experience. They also assert that licensing actually results in more new, inexperienced home inspectors who will conduct inspections cheaply, decreasing experienced inspectors' competitive advantage. This, in turn, allegedly lowers the level at which an inspector is expected to perform throughout the profession.

In [Colorado](#), one senator who opposed a 2010 bill asserted that licensure would not safeguard home owners from bad inspectors, and that a profession is protected by "the good faith of the people who are in it." Another Colorado senator who opposed the bill believed that a free market should continue to regulate home inspectors. That bill was ultimately defeated in committee.

Many objections are fueled by the administrative costs involved with license laws. The legislation that authorized regulation of home inspectors in Kansas expired on July 1, 2013, after only five years. A bill that would have extended the regulation passed both the House and the Senate, but the standing governor at the time [vetoed it](#), stating, "I see little evidence of large numbers of Kansas citizens being economically harmed by home inspectors. In fact, even the proponents believe the vast majority of Kansans who provide this service are honest people. Therefore it appears the legislation passed in 2008 may simply add unnecessary fees and regulations to law abiding citizens." The governor also noted that he believed the volunteer home inspectors board lacked the resources and expertise to regulate home inspectors, and that the Kansas Attorney General's office was better prepared to investigate complaints related to home inspectors.

Some of the legislators who voted against extending the Kansas law agreed. [One senator noted](#) that a homeowner seeking a financial remedy against an

inspector could obtain a remedy in court. He also appeared to suspect ulterior motives behind the home inspectors that lobbied for extending the law, noting, “Anybody from within an industry loves licensure because you are limiting competition.”

Budgetary issues are also frequently mentioned. Although the Kansas board members were volunteers, most states set up regulatory bodies. [In Rhode Island](#), the General Assembly passed a home inspector licensing law in 2000, but it did not provide funding for it. As a result, despite the regulatory law being on the books for years, no state agency was enforcing it as late as 2013, and the Rhode Island Contractors Registration Board was not adjudicating complaints against home inspectors.

## ACTIVITY IN STATES WITHOUT REGULATIONS

### *New Mexico*

Home inspector licensing is a recurring topic in the New Mexico legislature. In 2011, the Senate signed [a memorial](#) that presented numerous reasons for exploring the licensure of home inspectors. Among the noted reasons was the importance of an inspection, the current lack of training, the number of complaints resulting in litigation, and the need for consumer protection. Since that memorial, the legislature has visited the topic many times. For example, in 2015 the House introduced [H.B. 551](#), which would have required home inspector licensing, but did not pass. A similar bill, [H.B. 166](#), did not pass in 2016, and another licensing bill, [H.B. 362](#), failed to pass in 2017.

The New Mexico Association of REALTORS® asserts that licensing home inspectors is one way to ensure more professionalism in the real estate industry. Although New Mexico’s 2018 legislative session adjourned on February 15 without addressing the topic, the numerous recent attempts to pass licensing legislation most likely indicate that future legislatures will revisit it.

### *Ohio*

No laws currently require home inspectors to be licensed in Ohio. However, [House Bill 211](#), which would require the licensing of home inspectors, passed the House on June 27, 2018, by a wide margin of [87 to 7](#) and is currently before the Senate. The House Bill [not only requires the licensure of home inspectors](#), but also establishes criminal penalties for performing home inspections without a license, creates an Ohio Home Inspector Board to regulate the licensing and performance of home inspectors, requires a written contract between the home inspector and his or her client, a submission of a written report of the inspection results to the client and requires real estate licensees who recommend home inspectors to provide a list of inspectors, among other requirements.

House Bill 211 is the “[top legislative priority](#)” of the Ohio Association of REALTORS®. The Ohio REALTORS® [view the bipartisan vote](#) in the House to be “a tremendous step forward in bringing much-needed oversight to one of the last remaining unregulated aspects of the home buying process—one that will provide consumers with another layer of protection when making what is likely the largest financial transaction they will make in a lifetime.”

### *Nebraska*

Unlike some other states without home inspector licensing laws, there has been no recent legislative action on the topic in Nebraska. However, the National Association of REALTORS® reports that the Nebraska Association of REALTORS® state board of directors passed a motion to create a task force to explore whether home inspectors should be licensed. Their concern is that inspectors affect a transaction, but REALTORS®, not the unlicensed inspectors, are on the hook for the transaction since no governing body exists to hold the inspectors accountable. Seventy-one percent of the Nebraska REALTOR® members believe home inspectors should be licensed, and “early input” from home inspectors on the task force indicates that they also believe they should be licensed. The results from this task force could encourage lawmakers to address licensing in the state.

*Hawaii*

[S.B. 2403](#) was introduced in Hawaii on January 19, 2018, but the Senate Committee on Housing [deferred the measure](#), and it did not make it out of the committee. In Hawaii, anyone can call himself or herself a home inspector. Established home inspectors in the state have noted a number of problems have arisen from unscrupulous or inexperienced inspectors. In one case a new inspector flooded a house by filling a bathtub that should not have been filled. Many saw passing a regulatory bill in the state as an uphill battle as even some existing home inspectors objected to licensing, claiming that they were happy with the way things were and that most of Hawaii's home inspectors already met national standards, such as the [American Society of Home Inspectors \(ASHI\) Standards of Practice and Code of Ethics](#) or the [Home Inspection Standards of Practice and International Code of Ethics for Home Inspectors](#) established by the International Association of Certified Home Inspectors (InterNACHI).

*Others states*

Other state legislatures have recently considered or revised laws that would regulate home inspectors. For example, in 2017 Michigan introduced [S.B.255](#) and [H.B. 4086](#), which would have regulated home inspectors, but the bills did not pass into law. Also, a bill that would require licensing, H.B. 1001, is pending in Pennsylvania, where it has been stalled in the Appropriations Committee since June 4, 2018.

**LIABILITY LAWS**

The states with third-party liability laws vary in their approaches. In [Alaska](#), a person may not bring a legal action against a registered home inspector for damages arising from an act or omission relating to a home inspection unless the person was a party to the real estate transaction, received the home inspection report with the written consent of the party for whom the inspection was originally performed, or inherited the property from a person who could have brought an action.

Arkansas law provides that the transfer of an inspection report to any third party absolves the inspector and his or her client of any liability for claims or adverse actions arising from the inspection's use. Similarly, in [Indiana](#) a licensed home inspector is not liable to persons who are not parties to the home inspection contract for damages that arise from an act or omission related to the home inspection. [Wisconsin](#) has a similar provision.

[Kentucky](#) law provides that a home inspector is not liable for any damages caused by (a) the acts or omissions of a person other than the home inspector or his or her agent or employee, or (b) any construction defect disclosed to a claimant before his or her purchase of the home, if the disclosure was provided in writing in understandable language and was signed by the claimant.

Although Missouri does not specifically address home inspector liability, a [real estate licensee is immune](#) from liability for statements made by home inspectors or other home inspection experts, unless specified conditions are met. Those conditions generally relate to either the relationship between the licensee and the inspector or the licensee's knowledge before closing that a statement was false. Similarly, in [South Carolina](#), no action may be brought against a real estate brokerage firm or licensee by a party for information contained in reports or opinions prepared by a home inspector or other similar reports.

The availability of home inspection reports may also affect a licensee's property-condition disclosure obligations. For instance, in [Kansas](#) a seller's agent is not required to disclose to a client or customer information relating to the physical condition of the property if a written report regarding the property's physical condition has been prepared by a qualified third party and provided to the client or customer, however the agent must disclose any facts actually known by the licensee that were omitted from or contradict any information included in the report.



## ADDITIONAL RESOURCES

### *Consumers*

Consumers should take [several precautions](#) when hiring a home inspector. A potential homebuyer should check an inspector's training, education, and other qualifications. If the state regulates home inspectors, the consumer should verify that the inspector is certified and has complied with any statutory requirements. If the state does not require licenses or certifications, [membership](#) in an organization like the American Society of Home Inspectors can give some assurance. A consumer should also interview a potential inspector before hiring and verify what will be included in the inspection and in the result. A buyer may also want to check whether he or she can be present during the inspection. It is better to hire a home inspector who [offers only inspections](#) and does not do repairs, and although state law may not require a home inspector to be bonded or insured, it is best to hire one that is. NAR provides a list of [questions to ask home inspectors](#).

### *Real estate licensees*

Opinions on whether a real estate licensee should attend a home inspection vary. [Some commentators](#) assert that both the buyer's and the seller's agents should be present. The reasoning is that the home inspection is a vital part of the process, so it makes sense to be present. They contend that the real estate licensee can help the client understand what needs to be repaired, which issues will affect the home's price, and how any inspection issues compare to similar homes in the area.

Opinions on [whether a buyer's real estate licensee should attend](#) a home inspection also [fall into two camps](#). Some believe the buyer's agent only gets in the way during an inspection and can wrongly influence their client's opinion. They may also believe that a buyer's agent attending a home inspection may encourage arguments or extend the length of the inspection.

[Other real estate licensees](#) argue that the buyer's agent should be present to be an intermediary between the buyer and the home inspector. A buyer's agent attending an inspection may ask for clarification from the home inspector and explain any issues to the buyer. Some agents insist on attending the inspection, believing attending the inspections provides information about problems with the home, allowing the agent to serve his or her clients better. Also, a buyer's agent who attends an inspection is better able either to allay a buyer's concerns or to point out on-site why the home's defects are too costly or extensive to make the purchase worthwhile.

One proposed middle ground is for the buyer's agent to attend the inspection as only an observer. Others believe in being available during the home inspection, but not the entire process, and some buyer's agents appear only near the end of the inspection and during the presentation of the home inspection report.

A significant number of real estate agents do not attend their buyer's home inspections because they believe [it increases their liability](#). Although some commentators assert that in order [to limit liability](#), a real estate licensee should not go through a house with an inspector, an increasingly popular opinion appears to be that [liability is not an excuse](#) for not attending an inspection. Many believe that liability is an issue only if the real estate licensee behaves recklessly at the inspection, especially if he or she inserts comments that are outside of his or her area of expertise or tries to supervise the inspector. A licensee's mere presence at a home inspection should not create liability. An increased risk of liability can be reduced if the real estate licensee simply observes the home inspection and [does not comment or attempt to display expertise](#).

Ultimately, whether to attend a home inspection is up to the buyer's agent, the home inspector, and the buyer. Although there are conflicting opinions, "REALTORS® need to take caution as your presence raises the level of potential liability for you, your firm, and your client" according to Lynn Madison, an instructor for the Accredited Buyer's Representative ABR® Designation. It seems obvious but in any circumstance a real estate licensee should never attempt to influence an inspector or try to do a home inspector's job.

## CONCLUSION

Home inspectors are one of the last remaining unregulated aspects of the home buying process in some states. Licensing home inspectors can provide consumers with another layer of protection when making what is likely the largest financial transaction in their lifetimes. The [results of a home inspection](#) frequently influence whether a deal closes—in fact, a 2018 survey of more than 4,500 real estate licensees reported by the REALTORS® Confidence Index showed that inspection results were the second leading cause for failure to close. Buyers want to know all they can about their potential homes before making their final decisions, and using a qualified home inspector can provide extra assurance. The safety, comfort, and financial well-being of the buyer and his or her family are ultimately at stake. ■

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## ADDITIONAL STATE & LOCAL RESOURCES

**State Issues Tracker:** Database with over thirty real estate related issues and state laws. Examples include: Transfer Taxes, Seller Disclosures, Broker Lien Laws, Foreclosure Procedures, Sales Tax on Services, Licensing Requirements & Maintenance, etc.

**White Papers:** Comprehensive reports prepared for NAR on issues directly impacting the real estate industry. Examples include: Rental Restrictions, Land Banks, Sales Tax on Services, State & Local Taxation, Building Codes, Hydraulic Fracturing, Foreclosure Property Maintenance, Climate Change, Private Transfer Fees.

**Growth Management Fact Book:** Analysis of issues related to land use and modern growth management topics include: density—rate of growth, public facilities and infrastructure, protection of natural resources, preservation of community character, and affordable housing.

All available at [REALTOR® Party](#)