

THE OPINION OF THE COLLEGE ON

Indirect Licensing of Appraisers

Initiation, Chair responsibility,
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Introduction

One aspect of the trend over the last several decades toward greater governmental regulation of private economic activity is the enormous increase in occupational licensing. A 1969 study by the U.S. Department of Labor revealed that 7 million persons were, at that time, employed in licensed occupations, ranging from artificial inseminators and manicurists to doctors, lawyers, and real estate brokers.

Licensing began as early as the 19th century, when medical societies and similar groups first became interested in raising standards and establishing codes for ethical behavior.

The explosion of licensing in the past few years is largely the result of the desire of government and practitioners to define the proper relationship among practitioners and between themselves and consumers of their skill or product. Where an occupation may substantially affect the public health, safety, or welfare, the federal and state governments have enacted standards of competency, moral character, education, and/or experience that must be met before one may lawfully engage in that profession. This action has been taken either as a prophylactic measure or in response to instances of proven abuse. Unfortunately, in certain instances, the frenzy of legislation in this area has resulted in licensing laws that are neither protective of the consumers nor fair to members of the regulated group.

Oftentimes practitioners in occupations that are only remotely related to the public welfare seek legislation requiring licensure merely to enhance their prestige or to restrict competition by limiting entry into the field.

Occupations may be licensed even though the average consumer is completely qualified to judge the competency of that occupation's practitioners.

Occasionally, licensing standards are vague and overbroad, thereby permitting their arbitrary application. Finally, occupational licensing may be required of a very broad occupational group that contains within itself a smaller occupational group whose activities and range of skills extend far beyond those held by the

other members of the larger regulated category. In this situation, it may be more appropriate for the smaller group to be regulated under an entirely different set of standards, that is, standards that may be unrelated to the activities of the majority of practitioners in the broader category. A portion of the appraisal profession, realty appraisal, is licensed and regulated in several states under standards promulgated for real estate brokers. As a result, an individual who appraises realty to any extent in those states is regulated by real estate brokerage standards that may be largely irrelevant to pure real estate appraisal, and wholly irrelevant to the other forms of appraisal that may constitute the majority of that individual's practice. Moreover, individuals practicing other forms of appraisal in such valuation disciplines as personal property, machinery/equipment, utilities, and business enterprise valuation who deal with properties of enormous value and whose relationship to their clients is identical to that of realty appraisers go unregulated. This sort of inartful regulation, which ignores the distinction between the multi-disciplinary profession of appraising and the real estate business, disserves both groups and the public.

Regulatory Categories Affecting Appraisers

A review of appraisal licensing regulations in the several states reveals three major regulatory categories: direct licensing, indirect licensing, exclusionary regulation. It must be emphasized that real estate appraising is the issue; neither the federal nor the state governments license other major appraisal specialties such as personal property, machinery and equipment, business enterprises, and so forth.

(a) Direct Licensing

Jurisdictions that directly license appraisers of real estate include Nebraska, Oregon, Puerto Rico, and South Dakota.

A statute illustrative of direct licensing is that of the state of South Dakota: SDCL Chapter 20:56:18, "Real Estate Brokers and Salesmen," defines "real estate appraising," lists ten categories of persons who are exempt from the provisions (salaried employees of the federal and state governments, banks, savings and loans, trust companies, Federal Land Bank, public utilities, etc.); provides a grandfather clause (any person who has conducted at least seven real estate appraisals prior to 11-1-78 and who applied for a license before 10-31-78); exempts certified members of ten appraisal societies; provides minimum criteria for examinations; and specifies that "unprofessional conduct" criteria relating to real estate brokers shall apply to appraisers.

(b) Indirect Licensing

Jurisdictions that indirectly license appraisers include Delaware, Florida, Indiana, Michigan, Missouri, Mississippi, New Mexico, Pennsylvania, Rhode Island, South Carolina, Texas, Virgin Islands, West Virginia, and Wisconsin.

The principal characteristic of indirect licensing is the establishment by statute of regulations that govern all practitioners in a specific profession or business (such as real estate brokerage) and the inclusion of another business or profession (such

as real estate appraising) as an incidental subfunction, totally subordinate to the concepts, procedure, and practice of the larger group.

A statute illustrative of indirect licensing is that of the state of Mississippi: "Real Estate Brokers License Act of 1954 as Amended," Sec. 73-35-1-35 makes it unlawful to carry on the business of a real estate broker without first obtaining a license as a broker. The term *broker* is defined to include those who list, sell, purchase, exchange, rent, lease, auction, or appraise real estate for a fee.

Exempt from the Mississippi statute are oil, gas lease, and mineral rights appraisers, plus life insurance representatives, bank and savings and loan representatives, and mortgagees approved by the U.S. Federal Housing Authority and the Veteran's Administration. A real estate commission of five persons is created. Educational requirements specify a "minimum of one (1), three (3) semester hour course in real estate" or applicant "shall have successfully completed a minimum of thirty (30) hours of real estate education as approved by the Realtors Institute of the National Association of Realtors, Incorporated."

The statute requires that brokers from another state may "cooperate with a licensed broker of this state provided that any commission or fee resulting from such cooperative negotiation shall be divided so that an amount not to exceed fifty percent (50%) shall accrue to the nonresident broker." Further, provision is made for supervision/revocation of license and for fines and imprisonment for violation of the statute.

(c) Exclusionary Regulation

Tangential to the categories of "direct" and "indirect" licensing, but a major factor in the professional practice of appraising real estate, is the regulation of appraisers by federal, state, or other governmental body fiat, which does not fall into the usual, formal licensing parameters.

In these instances, a law is enacted, or a regulation issued, that permits acceptance of appraisal services from only one or two specifically named private appraisal societies. Representatives of other professional appraisal societies are totally precluded from employment. An illustration of each follows (1981 data):

1. Federal—Small Business Administration, "Standard Operating Procedures Manual," Chapter 6, Sec. 26(a)(2), specifies use of one private appraisal society membership only.
2. State—State of Washington, Sec. II, Chapter 177, Laws of 1980, and Section II, Chapter 97, Laws of 1979, restricts acceptance of appraisals to two private appraisal societies only.

Similar exclusionary regulations are currently in force in other states, e.g., Kentucky (Kentucky Housing Corporation, Mortgage Loan Purchase Program); Missouri ("Mortgage Loans as Admissible Deposits," Regulation 190-11.040, Sec. 4-C); Maryland (Dept. of Econ. & Comm. Development, "Industrial and Commercial Redevelopment Fund Guidelines for Appraisals").

There is, in this area of exclusionary regulation, scant facade of competitive opportunity and little pretense of equitable administration through recognition of professional qualification. Elimination of competition is accomplished, and restraint of professional appraisal practice achieved, without the apparatus of licensure.

Indirect Licensing: A Special Analysis

Of the three regulatory categories affecting real estate appraisers (direct licensing, indirect licensing, and exclusionary regulation), it is the practice/procedure of indirect licensing that is of chief concern in this Opinion.

A review of this specific (indirect licensing) issue reveals no policy statement issued by the major appraisal societies on the serious implications of licensure by indirection.

Despite the fact that over 25 percent of the states already employ the technique of controlling appraisers via broker/salesmen licensure criteria and commissions; despite the fact that, in an additional approximate 20 percent of the states, similar proposals re licensure have been placed before the legislature, there has been virtual silence from the appraisal profession.

It is imperative, therefore, that the issue of regulatory control of real estate appraisers through the mechanism of indirect licensing be discussed and that the implications—for the public, for the real estate industry, for the appraisal profession—be reviewed.

- a. The proper exercise of the appraisal function is chiefly characterized by the objectivity of its practitioners. To allow appraisers to be completely dominated—in legal, administrative, regulatory matters—by real estate brokerage norms that are singularly motivated by buy-sell mechanisms acting in a caveat emptor atmosphere is to encourage a subservience to the latter's pressures and practices, which may weaken the appraisal process and tend to destroy the objective, impartial nature of appraisal judgment.
- b. The general practice among the indirect licensing statutes of granting total authority to a real estate commission composed entirely of brokers, not only to draft rules and regulations for the conduct of examinations but also to prepare the subject matter of examinations, appears to be a capricious method of attempting to assure competence among appraisal practitioners. In at least one state (Illinois), the conferral and exercise of this type or power, unbridled by any statutory provision as to the scope or content of the examinations, has been deemed violative of the 14th amendment.
- c. Subordination of a total body of professional practitioners, such as appraisers of realty, to a "trade" or "industry" such as real estate brokerage, appears unnecessary, impractical, and of highly questionable value to the general public.
- d. The incorporation of professional appraisers in statutory regulations established for real estate brokerage and sales has unfortunate implications that may lead to public misunderstanding. A law, such as that in the State of Florida, establishes a license to appraise that is by definition conferred upon brokers/salesmen as well as the professional appraiser. The result: more than 142,000 real estate people "qualified" under the Florida Real Estate License Law to make appraisals of real estate.

(In contradistinction, there are fewer than 1,500 professional appraisers in the state of Florida who have been tested/designated by the major professional appraisal societies and who are certified to be competent in appraisal of real estate.)

- e. Establishment by statute of an enforced relationship between real estate brokerage and appraising in which the appraisal function is subsidiary and incidental tends to remove the characteristics of objective, impartial evaluation from the appraiser. Indeed, the imposition of identical qualifying, educative, and examining requirements may tend to blur the distinction between broker and appraiser, to the great disservice of the real estate industry and the ultimate disservice of the public.
- f. While it is conceded that professional appraisers "should know many of the things real estate brokers know," there is no merit in extending this thinking into the realm of licensing. Attorneys must know many things about real estate brokerage; bankers and accountants must be equally knowledgeable.

There is no indirect licensing of these professionals under a real estate brokerage statute. Conversely, professional appraisers must know many things about construction, plumbing, heating, and roofing; about titles and easements; and about zoning and city planning. It is imprudent and illogical to single out one area of knowledge, brokerage, and impose its norms on the individual who specializes in the appraisal of real estate.

- g. In a nation that has focused much attention upon misfeasance, malfeasance, and nonfeasance of professions such as law and medicine and such businesses as real estate brokerage, there is relatively minuscule evidence of substantial complaints against the tested/designated members of the major professional appraisal societies.

Enforced regulation of professional appraisers through contrived, indirect licensing structures is not produced of necessity to protect the public but generated by lesser motives.

There is a current adage: "If something's not broken, don't fix it." It is applicable to attempts to license, indirectly, professional appraisers.

Summary

In light of the factors reviewed, it is the Opinion of this College that indirect licensing of professional appraisers is an imprudent mechanism by which to attempt to serve and protect the public.

The implications of indirect licensing statutes reflect unfavorably upon all concerned: the real estate industry, the appraisal profession, and the general public.

The real estate industry is poorly served by awkward attempts to superimpose its criteria upon appraisers. The appraisal profession is weakened by domination exercised by a group whose goals are not identical to those incorporated in the appraisal process. The public gains no protection from a legislative device that confuses the practice of brokerage with the very different practice of appraisal. Indirect licensing of professional appraisers is inimical to the best interests of the American economic community.