

Remarks by Bill Brady, Chair
Home Inspector Licensing Working Group
Mortgage Finance Authority Act Oversight Committee
Wednesday, November 9, 2011

Madame Chair and members of the committee, my name is Bill Brady and I'm the chairman of the Home Inspector Licensing Working Group.

The working group was formed as a result of Senate Memorial 2 sponsored by Senator Tim Eichenberg during the 2011 legislative session.

The memorial called for the establishment of a working group to study and make recommendations to the legislature about state licensing of home inspectors.

Senate Memorial 2 was the result of discussions that began in August 2010 between the Regulation and Licensing Department, the Real Estate Commission, and the Realtors Association of New Mexico about the need for licensing.

The focus of those discussions was how minimum education, training, and experience standards for home inspectors could be put in place so that consumers and home inspectors could be protected without imposing undue regulatory burdens.

Efforts to license home inspectors date to 2003 when former Senator Joseph Fidel introduced a bill in the State Senate very similar to the draft legislation before you today. We don't have any institutional memory to help us understand why that bill didn't pass or why the issue lay dormant until now.

However, the issues that were important in 2003 are equally important today.

A home inspection is an important part of a residential real estate purchase. An inspection provides a consumer with important information about the condition of a home they are considering purchasing and helps the consumer make informed decisions.

Consumers deserve the same degree of protection for home inspections that exist for virtually every other component of a real estate purchase.

New Mexico is one of only sixteen states that do not license home inspectors. As a result, there are no minimum training, experience, or continuing education requirements for a person to represent themselves as a home inspector or to engage in the home inspection business. The intent of this bill is to provide the criteria that homebuyers and inspectors must have for the understanding of the scope of inspection services and the limitations of specific inspections.

Although the Real Estate Commission does not investigate complaints against home inspectors, it does receive and investigate complaints related to property condition issues to the extent that real estate brokers might have been aware of and failed to disclose such issues to prospective buyers.

A good, thorough inspection by a qualified inspector helps consumers make informed decisions and enhances the credibility and reputation of the home inspection profession.

A thorough inspection by a qualified inspector allows a real estate broker to do a better job for their customers by helping them identify and deal with property condition issues before a sale is finalized instead of afterwards when costly litigation is often the only recourse a consumer has.

Recognizing that licensing of home inspectors will become a reality only if there is broad-based support from home inspectors and professionals in related fields, the working group, which consists of six home inspectors and a real estate broker, has been meeting regularly since April and has conducted public meetings in Las Cruces, Santa Fe, and Albuquerque.

The purpose of the meetings was to hear the concerns and gather input from home inspectors and real estate brokers in order to present this committee with findings and recommendations for proposed legislation.

The draft legislation before you today is modeled after other New Mexico licensing laws and laws from some of the 34 states that currently license home inspectors.

The draft legislation provides for a five member Home Inspector Licensing Board appointed by the Governor and administratively attached to the Regulation and Licensing Department.

The board would have the authority to promulgate rules, collect licensing fees, and establish pre-licensing and continuing education requirements, including criminal background checks, and discipline licensees pursuant to the Uniform Licensing Act.

The draft legislation defines “home inspection” as a noninvasive, nondestructive inspection for the purpose of providing a professional written opinion of the condition of a building, its carports and garages, and reasonably accessible installed components and building systems. I have abbreviated the definition somewhat, but the detailed definition can be found in the draft legislation.

Applicants for licensure as home inspectors would be required to have reached the age of majority, be a legal resident of the United States, submit to a criminal background check, have completed forty hours of field training and eighty hours of classroom instruction, pass a proctored national examination, and maintain an errors and omissions insurance policy.

Licenses would be issued for three years, and a licensee would be required to complete 30 hours of continuing education every three years as a condition of license renewal.

The licensing board would have the authority to waive pre-licensing training requirements if an applicant had been active as a home inspector for at least three years prior to the effective date of the act, had passed a proctored national exam, or is licensed as a home inspector in another state.

In the interest of not stepping into the territories of other professionals whose work might involve the structural or functional aspects of homes, the draft legislation would exempt from home inspector licensing a variety of other professionals, including contractors, engineers, architects, electricians, plumbers, air conditioning technicians, appraisers, code enforcement officials, energy auditors, and others, acting within the scope of their professional license.

Among the findings of the working group that went in to drafting this legislation are:

- Although the approximately 45 people who attended the public meetings—a combination of home inspectors, real estate brokers, and other interested parties-- had concerns about how licensing might increase the cost of doing business, there was general support for licensing provided that licensing costs can be contained and bureaucratic requirements can be minimized.
- There were concerns expressed that licensing could negatively affect inspectors in smaller markets, areas served by part-time inspectors. In the face of licensing requirements, such inspectors might either cease operations or continue operating without a license. If this legislation were to become law, there would have to be a concerted effort by the new board through the rule making process to minimize the adverse impacts on inspectors serving smaller markets.
- In response to concerns about the potential for increasing the costs of doing business, specifically, the cost of insurance, the working group amended the draft legislation to provide that licensees would have to have only errors and omissions insurance, and not both errors and omissions and general liability insurance as originally proposed.
- Although there was concern among home inspectors attending the meetings that being attached to another board would overshadow or even consume the home inspector licensing board, we believe that concern was somewhat alleviated by the fact that the board as proposed in the draft legislation would be independently appointed by the Governor, and the fact that attachment to another board would be a way of keeping administrative overhead costs and licensing fees down.
- Another concern was that the requirement for fingerprinting of home inspector licensees is overkill. That concern was offset by the acknowledgement that home inspectors sometimes have unsupervised access to people's homes and it is important for consumers to have some level of assurance that inspectors have been subject to a background check.

- Some working group members were of the opinion that a self-regulating certification act would be less costly and easier to administer than a licensing act and would still provide consumer protection by setting standards for certification, provide consumer access to registration information via a public web site, require minimum general liability insurance and a surety bond, and provide for a criminal penalty for violation of the act. Unresolved complaints regarding certified home inspectors would be directed to the Consumer Protection Division of the Attorney General's Office for resolution. The certification act proposal did not provide for any Regulation and Licensing Department oversight of home inspectors.
- However, at the last meeting of the working group on October 14, members voted unanimously to bring to the committee the draft legislation that is before you today.
- It has been difficult to determine the exact number of potential home inspector licensees. The number is somewhere between 110 and 160.
- Given the relatively small number of licensees, a Home Inspector Licensing Board cannot generate enough revenues through licensing fees to be entirely self-supporting.
- The board would have to be administratively attached to another licensing board within the Regulation and Licensing Department, such as the Real Estate Commission, in order to be able to share administrative overhead costs so that licensing costs would not be prohibitive to potential home inspector licensees.
- The working group recommends that the Act have a delayed implementation date of at least one year to allow for rule making, budget planning, board appointments, and other administrative details necessary to get the board functioning.

Madame Chair and members of the committee, this concludes my formal presentation. I would be happy to try to answer any questions you may have, and would request that Mr. Ciddio, the Executive Secretary of the Real Estate Commission, be allowed to assist me as an expert witness in answering your questions.

I would also like to introduce and thank the members of the working group. They are home inspectors Paul Norris, Charles Smith, William Richardson, Doug Ramsey, and Ron Givens, real estate broker Duane Jokinen, Mary Martinek, Director of Governmental Affairs for the Realtors Association of New Mexico, and Mr. Ciddio.

Thank you.

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