

# The Effect of Agency Reform on Real Estate Service Quality

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## Abstract

This study examines the impact of recent state real estate agency reforms on real estate service quality. The analysis expands prior literature by examining licensing law effects on service quality using state adjudicated disciplinary action decisions as a measure of quality, adding recent state law developments as explanatory variables, and including state licensing board staffing and funding variables to hold licensing administrative efforts constant. The results indicate that certain state real estate agency reform efforts, as well as other licensing laws and the administration of licensing laws, do have an effect on variation in state licensee disciplinary actions. These results have policy implications for increasing real estate service quality.

## Introduction

State real estate licensing laws serve numerous objectives, arguably both to benefit consumers and industry. The primary stated goal is consumer protection, accomplished by laws that serve to increase the level of brokerage services (and some contend restrict entry into the profession). Perhaps secondary, driven by increasing litigation and evidenced by recent licensing legislation, is the goal of limiting transactional legal liability of real estate licensees. Over the past decade and a half, different states have approached these goals with waves of agency law revisions, including agency disclosure, agency representation restructuring, property condition disclosure and other regulatory initiatives. Do any of these licensing law changes have the effect of increasing the level of real estate service to the public?

This study extends the work of prior literature that has estimated the effect of real estate occupational licensing on real estate professionals and consumers. This research is the first to include the impact of recent state real estate agency reforms. The last study to empirically investigate the effect of licensing law factors on real estate service quality was published in 1988, before many of the agency reforms were enacted and even discussed. The literature, therefore, is clearly out of date with respect to current agency practices.

This study also advances the measurement of real estate service quality, by using disciplinary action rulings as a proxy for quality.<sup>1</sup> Disciplinary action is the penalty associated with a state real estate licensing board adjudicated finding of licensee misconduct.<sup>2</sup> Previous literature has predominantly used complaints as a measure of quality. Disciplinary action is different than complaints, in that a complaint alleges that a licensee has violated the licensing laws, but is not proof of wrongdoing. The filing of a complaint leads to an investigation of the claim, after which the licensing board may dismiss the complaint if there are no grounds to proceed or conduct an administrative hearing (similar to a court proceeding) if there are grounds to

proceed. At the conclusion of a hearing, the board finds that the licensee either is or is not guilty of the alleged licensing law violations. If a violation of the licensing law is found, the board has the authority to take disciplinary action by reprimanding the licensee, suspending or revoking the licensee's license, and/or assessing a civil monetary penalty.

Neither complaints nor disciplinary action are a perfect measure of real estate service quality because (1) not all licensing law violations are reported, (2) not all reported complaints amount to wrongdoing and (3) some boards are more aggressive in their prosecution of complaints than others. Disciplinary action is used in this study as it controls for the second factor, and with the appropriate independent variables, the third can be controlled for effectively. As to the second factor, the volume of disciplinary action is a better measure of quality than the number of complaints filed because it captures actual adjudicated wrongdoing by licensees rather than perhaps a state's litigious climate.<sup>3</sup> As to the third factor, taking a complaint through the investigation and hearing procedures to a finding of licensee misconduct involves effective state licensing board administration and enforcement. Therefore, state staffing and funding variables are included as an indication of state licensing board administrative efforts, to hold them constant and to separate the effects of the administration of licensing laws from the laws themselves.

The findings suggest that certain state real estate agency reforms and other licensing laws do have an effect on the variation in state board findings of real estate licensee misconduct. Potentially then, the level of real estate service provided to the public can be increased and licensee liability can be decreased by an optimal mix of laws. The findings also indicate that the variation in state disciplinary action is also related to the effective administration of licensing laws, in addition to the laws themselves.

The organization of the paper is as follows: the next section discusses recent trends in real estate agency, including mandatory disclosures and new agency representation arrangements. The third section reviews prior literature on real estate service quality. The fourth section presents the data, predominantly taken from ARELLO statistics. The fifth section develops a regression model to empirically analyze the factors that influence findings of licensee misconduct. The final section summarizes the findings and suggests policy implications for real estate licensing boards.

### **Recent Trends in Real Estate Agency**

In the last decade and half, there have been significant changes to state agency laws and regulations. There has been a shift from consumer confusion regarding agency representation to mandatory disclosure of agency representation, and from laws allowing for only seller representation to laws encouraging both seller and buyer representation and in some cases no representation. Dual client representation has led to dual agency and designated agency relationships. The practice of caveat emptor is giving way to mandatory seller and broker disclosure, and in some instances, broker investigation and disclosure.

In the traditional model of real estate agency, the seller listed a home for sale with a listing broker, and the buyer worked with a selling broker to identify homes for sale. Both the listing broker (and all salespersons working for the listing broker) and the selling broker (and all salespersons working for the selling broker) represented the seller through the concept of

seller subagency. Confusion ensued because buyers believed that they were represented in the real estate transaction, when in fact they were not. This led to the first wave of legislation beginning in the late 1980s, requiring disclosure of agency representation. Pancak, Miceli and Sirmans (1997) provide a 50-state examination of those changes. Today, all but one state legally requires some form of agency relationship disclosure and all provide agency disclosure in practice.<sup>4</sup>

Once buyers became aware of and then disturbed by their lack of representation, there was a second wave of legislation beginning in the 1990s promoting buyer brokerage and restricting seller sub-agency. Miceli, Pancak and Sirmans (2000) evaluated initial legislative efforts to reform and redefine agency relationships. The widespread acceptance of buyer brokerage has led to ripples of legislation on related issues. Representation of both buyers and sellers has created a dilemma when both parties were represented by the same firm—a conflict of interest known as dual agency. While the common law prohibits dual agency without informed consent of both parties, states have enacted laws to mirror or supplement the common law that expressly permit dual agency.

When a broker enters into an agency relationship with a client, all salespersons working for the broker represent the client also, so that dual agency is theoretically present even when a buyer and seller are working with different salespersons in the same brokerage office. Many states have taken agency one step farther, removing dual agency from this scenario by allowing brokerage firms to designate one salesperson to represent the seller's interest and another to represent the buyer's interest, without the inherent conflict presented by dual agency. This practice is known as designated agency.

There is now an effort in some states to limit agency-related liability altogether by taking agency out of brokerage and creating non-agency relationships. In this framework, licensees—typically referred to as transaction brokers—do not represent any party and therefore owe no fiduciary duties. The licensee assists one or both of the parties in a transaction without being an advocate.

Traditional state licensing law sets up a two-tier system for licensing of brokers and salespersons. Brokers require more experience and education. A salesperson's license must be held by a broker and the broker must supervise the real estate activities of the salesperson. The more industry experience and education a licensee has should naturally translate into a better understanding of real estate brokerage responsibilities, practices and laws. A handful of states have addressed this experience and education issue by eliminating the category of salesperson and the traditional two-tier structure, requiring that all licensees obtain broker licenses.<sup>5</sup>

Currently, then, there are myriad state agency regulatory models that incorporate some or all of the above. Olazabal (2003) has reviewed all fifty states' licensing laws, and provides a classification system for many of the current agency regulation schemes discussed above.

In addition to agency reform, there have also been other efforts to promote the welfare of real estate consumers and to limit the liability of real estate brokerage professionals. In particular, as the legal system moved away from a "caveat emptor" posture on disclosure, many real estate professionals found themselves intertwined in misrepresentation and non-disclosure lawsuits. This led to a push for seller disclosure laws. Pancak, Miceli and Sirmans

(1996) examined this evolution and provide a fifty state disclosure legislation summary as of 1996, and Olazabal (2003) provides more recent state-specific information. Presently, some form of property condition disclosure is mandated in thirty-four states.<sup>6</sup>

Do any of these recent state real estate agency legislative reforms serve to increase real estate service quality and decrease licensee liability? Given the intense state legislative and industry efforts to reform agency, this paper examines what type of reform, if any, has an impact.

### Prior Literature

Measuring such a subjective factor as real estate service quality has always posed an interesting practical question. Carroll and Gaston (1979) defined quality as the average time that a house is on the market. They found quality to be positively related to the percentage of brokers in the population, so that fewer relative brokers in a state meant that houses remained on the market for a shorter period of time. As noted by Guntermann and Smith (1988), however, time on the market is not the best proxy for quality as numerous non-brokerage-related factors could influence the amount of time it takes for a house to sell.

Shilling and Sirmans (1988) defined quality as the number of complaints against real estate agents per state. They found that variations in complaints between states could be explained by the composition of the real estate licensing board, the level of the state guarantee fund, whether the state requires that deposits be held in escrow and the percentage of state licensees that are members of the National Association of REALTORS<sup>®</sup>, Inc. They had mixed results with educational variables, finding that continuing education requirements per se were not significant, but exemption from continuing education for existing licensees was; they also found the state licensing exam pass rates to influence the number of complaints.

Johnson and Loucks (1986)<sup>7</sup> defined quality as the complaint rate per transactions. They found that complaints decreased when there were fewer licensees per capita. Like Shilling and Sirmans (1988), they did not find continuing education requirements to be significant in determining complaints, but unlike that study, they did not find the pass rate for prelicensing exams determinative.

Guntermann and Smith (1988) defined real estate quality as complaints per number of active licensees. Their study specifically looked at the effect of state board licensing law compliance and enforcement efforts on the level of complaints. They provided anecdotal evidence that greater spending on enforcement reduced the number of complaints, but that greater administration spending overall did not. To test their hypothesis empirically, they used the percentage of total complaints resulting in disciplinary action as a proxy for enforcement and compliance spending, reasoning that a higher percentage of complaints that resulted in disciplinary action signified a state policy emphasizing enforcement, and a state policy emphasizing enforcement encouraged licensee compliance with laws. Their primary finding was that the variation in enforcement efforts across states was a significant factor in explaining state complaint levels, in that the increased percentage of complaints that resulted in disciplinary action led to a lower level of complaints. They found an insignificant relationship between complaint levels and prelicensing education requirements, pass rates and state board industry composition.

According to Guntermann and Smith (1988), a greater threat of disciplinary action encourages licensees to abide by licensing laws and will then result in a lower level of complaints. This basic premise that enforcement of licensing laws should lower complaints is logical; however, it is unclear whether the reverse is also true and possibly driving the statistics. Does a higher state discipline percentage bring about a low state complaint rate, or does a low state complaint rate bring about the higher state discipline percentage? Perhaps a lower level of complaints means that state licensing board staff can more effectively process the number of complaints, leading to a higher percentage of complaints actually resulting in disciplinary action. Given this possibility, the current paper takes a different approach by using disciplinary action as a measure of quality and the dependent variable, and adds staffing and resource variables as independent variables to measure the level of administrative efforts, including enforcement.

Zumpano and Johnson (2003) examined factors determining licensee liability, a variable comparable to the definition of quality used here. They used claims against errors and omissions insurance as a measure of liability. Looking at both cross-sectional and time-series data, their primary finding was that mandatory property condition disclosure laws appeared to reduce errors and omissions claims against licensees. They also found that there was no impact of differing agency practices on claims, but surmised that there may be a relationship between prelicensing education of brokers and claims. This study is limited in that only five regional states were examined and no empirical modeling was conducted. The current study expands this research by conducting a regression analysis including the effect of property condition disclosure on real estate service quality using national data.

Another line of research has used survey data on real estate consumer satisfaction to measure real estate brokerage service quality.<sup>8</sup> These studies are sufficiently different from the course of inquiry presented here in that they deal with consumer satisfaction rather than violation of licensing laws as a measure of quality.

To summarize, this study improves and expands the previous literature as follows. First, new independent variables that are related to recent trends in agency are examined to attempt to explain state variations in quality: property condition disclosure requirements, designated agency rules, non-agency rules and licensee experience. Second, a new dependent variable is used to measure quality: state licensing board disciplinary action as a percentage of state residential sales. This variable captures actual adjudicated licensing law violations by licensees in relation to state real estate activity. Third, the effects of administrative efforts on disciplinary action is controlled for by including independent variables related to administration and enforcement of the state licensing board: funding source and staffing levels.<sup>9</sup>

## Data

The data used in this study consist primarily of 2003 statistics taken from the 2004 edition of the *Digest of Real Estate Licensing Laws and Current Issues* compiled by the Association of Real Estate Licensing Law Officials (ARELLO).<sup>10</sup> While disciplinary action statistics were available for thirty-six states, data availability for the independent variables limited the sample size to twenty-seven states.<sup>11</sup>

The extent of state real estate board disciplinary action varies widely, from no action in North Dakota to 1,037 disciplinary actions rendered against licensees in California. To control for differing state sizes and real estate sales activity, the number of disciplinary actions per state is examined<sup>12</sup> as a percentage of the number of residential sales in the state.<sup>13</sup> While disciplinary action may be the consequence of non-transactional activity, such as licensing application fraud, residential real estate sales is still a good a measure of state real estate activity.

On average, there is one real estate board case of disciplinary action for every five hundred transactions. While this number may appear relatively small at first glance, there is quite a bit of variation between the states and it is the variation, not the actual number, which this study is attempting to explain. For example, in North Dakota there was no reported disciplinary action, as opposed to Idaho where there were almost 10 findings of misconduct for every five hundred transactions.

Institutional influences on disciplinary action can be categorized into two areas: those driven by state-specific real estate licensing laws, and those driven by administration of the state real estate licensing laws by the state board. The variables examined in this study are listed and defined in Exhibit 1. Summary statistics for these variables are listed in Exhibit 2.

It is anticipated that both the licensing laws and the administration of licensing laws will have an effect on disciplinary action. An increase in disciplinary action due to a licensing law variable signals greater misconduct due to the variable and thus a decrease in quality. The same is not true for the administrative variables, as an increase in disciplinary action due to

### Exhibit 1. Independent Variables

Variable	Definition
<b>Panel A: Licensing Laws</b>	
<i>PRELICENSING</i>	Number of hours required to sit for real estate salespersons licensing examination. <sup>16</sup>
<i>PROPCONDISCLOSURE</i>	Binary variable indicating whether a state has some type of mandatory seller property condition disclosure requirement or not. <sup>17</sup>
<i>DESIGNATEDAGENCY</i>	Binary variable indicating whether a state allows for designated agency or not. <sup>18</sup>
<i>NONAGENCY</i>	Binary variable indicating whether a state allows non-agency or not. <sup>19</sup>
<i>EXPERIENCE</i>	Variable attempting to identify the level of state licensee real estate industry experience. The percentage of active brokers to total active licensees is used, <sup>20</sup> assuming that the greater the percentage of brokers to licensees, the greater state experience level.
<b>Panel B: Administration of Licensing Laws</b>	
<i>CONSUMERFUND</i>	Maximum consumer protection fund liability payout against a broker (in thousands of dollars). <sup>21</sup>
<i>FUNDINGSOURCE</i>	Binary variable indicating whether licensing fees go to the state general fund or are dedicated (at least partially) to support licensing activities. <sup>22</sup>
<i>STAFF BOARD</i>	Number of state licensing board staff for every million state residents. <sup>23</sup>
<i>BOARD</i>	Percentage of real estate industry members on the state licensing board. <sup>24</sup>
<i>NAR</i>	State National Association of REALTORS <sup>®</sup> , Inc. membership <sup>25</sup> as a percentage of active state licensees. <sup>26</sup>


**Exhibit 2. Summary Statistics**

<b>Variable</b>	<b>Range</b>	<b>Mean</b>	<b>Std. Dev.</b>
<i>DISCIPLINARY ACTION</i>	0–1.9%	0.21%	0.36%
<i>PRELICENSING</i>	30–120 hours	61.41	19.72
<i>PROPCOND</i> <i>DISCLOSURE</i>	0 (no); 1 (yes)	62.96%	49.21%
<i>DESIGNATED AGENCY</i>	0 (no); 1 (yes)	66.67%	48.04%
<i>NONAGENCY</i>	0 (no); 1 (yes)	55.56%	50.64%
<i>EXPERIENCE</i>	15.04–79.10% (brokers)	40.29%	16.04%
<i>CONSUMERFUND</i> (000)	\$0–\$100 <sup>27</sup>	\$43.48	\$35.99
<i>FUNDINGSOURCE</i>	0 (no); 1 (yes)	93%	26.68%
<i>STAFF</i> <sup>a</sup>	0.65–12.62 employees	5.26	2.53
<i>BOARD</i>	22.22–100% industry members	69.95%	18.96%
<i>NAR</i>	34.72–216.92% <sup>28</sup> NAR members	67.08%	32.18%

Note:

<sup>a</sup>Per million state residents.

an administrative variable signals greater enforcement of licensing law violations and thus a potential increase in quality.

As for the licensing laws, most states require some type of prelicensing educational course prior to sitting for the a state salesperson licensing exam. The greater the number of educational hours required for prelicensing should not only better prepare an applicant for the licensing exam, but should also better prepare an applicant for a career in real estate. Therefore, the prelicensing hour requirement is expected to be inversely related to misconduct and thus disciplinary action, although previous studies have not found education variables to be significant.

As outlined in the preceding section, many states have embraced mandatory disclosure requirements in the past decade and a half. As for agency disclosure, practically all states now require some form of agency disclosure: therefore, it was not included in the model. In addition, some form of mandatory seller property condition disclosure has been adopted in the majority of states. Given that one purpose of seller property condition disclosure is to decrease real estate agent liability for non-disclosure, one would surmise that those states with some form of seller disclosure will have fewer instances of nondisclosure and thus fewer transaction grievances. This is in keeping with Zumpano and Johnson's (2003) findings that mandatory property condition disclosure reduces errors and omissions insurance claims. However, mandatory written property condition disclosure forms may also increase the percentage of non-disclosure cases that result in a finding of wrongdoing, in that having a written form makes it much easier to factually prove what was and was not disclosed in a transaction. So, while mandatory written disclosure may reduce the incidents of non-disclosure, it may also increase the percentage of conflicts that result in a finding of misconduct.

Also as outlined in the preceding section, many states have legislatively made changes to real estate agency law in the past decade. While dual agency is allowed by the common law if informed consent is provided, designated agency is a new legislative concept that attempts

to give a buyer and seller single agency service while still providing for the same firm to represent both. Many real estate professionals see designated agency then as a positive, since it theoretically provides an in-house solution to dual agency conflict of interest for salespersons involved in the transaction. If this is the case, then allowing for designated agency should reduce undisclosed dual agency problems and thus findings of misconduct in a state.

Non-agency has been embraced by a handful of states attempting to relieve licensees' from any fiduciary duties to a buyer or seller. While non-agency advocates would disagree, it is expected that any law eliminating consumer representation altogether is going to cause confusion and conflict, thus allowing for non-agency will increase findings of misconduct. When looking at both non-agency and designated agency, it is interesting to note that Zumpano and Johnson (2003) found no relationship between differing agency practices and errors and omissions insurance claims.

Licensee industry experience is included as a variable to examine the percentage of brokers, with presumed higher levels of experience than salespersons, to total licensees.<sup>14</sup> Greater experience may prevent intentional and unintentional wrong doing on the part of licensees, and therefore decrease findings of misconduct. This variable also captures the trend toward broker-only licensure, as broker-only states will have a very high percentage of brokers to total licensees. The variable as constructed may also be serving as an additional measure of the effects of education on conduct, as broker prelicensing typically involves twice as much coursework as salesperson prelicensing.<sup>15</sup>

As for the administration of the licensing laws within a state, many states have a consumer protection fund that serves to compensate a consumer that is unable to collect a monetary judgment against a licensee. The dollar amount limit varies by state. While a higher dollar limit might encourage complaints against licensees as previous studies have found, the opposite is expected to be true here because the independent variable is not complaints but rather state licensing board disciplinary action due to misconduct. Board findings of misconduct are expected to be lower, the higher the limit, given that boards may fear depleting funds if they are too aggressive in finding licensee wrongdoing.

It is assumed here that when licensing fees are dedicated for the support of licensing activities, the state licensing board has more funds at their disposal to actively administer the licensing laws, including pursuing education and enforcement initiatives. Following Guntermann and Smith's (1988) reasoning, greater enforcement should result in fewer complaints. One would think that fewer complaints would then translate into lower levels of disciplinary action. However, at the same time, greater enforcement efforts should logically result in higher levels of disciplinary action, so it is not entirely clear whether greater administrative efforts would increase or decrease disciplinary action. Also, given that no clear distinction can be made between education and enforcement funding, the question is whether dedicated funding would increase disciplinary action because there would be more resources for reactive investigation and enforcement of the licensing laws, or whether dedicated funding would decrease disciplinary action because there would be more resources for proactive licensee awareness and education of the licensing laws. The same argument holds true for increased staff; it is unclear whether to expect an increase or decrease in disciplinary action. As theory cannot necessarily put a predictive sign on this variable, the data will indicate the effect of dedicated funding and increased staffing.

Shilling and Sirmans (1988) found both NAR membership and the make-up of the state licensing board to be important determinants of the level of complaints against licensees. Following their research, these variables have been included to test their effects. It is expected that industry members on the state licensing board will have tougher enforcement standards than non-industry members; therefore, as the percentage of industry members on the board increases, a greater percentage of disciplinary action should be seen. Given that NAR members must abide by the professional organization's code of ethics as well as state licensing law, an increase in the percentage of state NAR membership should equate to a decrease in percentage of state disciplinary action.

### Regression Analysis

Taking into account both state-specific real estate licensing law and administration of licensing law variables, a regression model is estimated with disciplinary action per transactions as the dependent variable and the various independent variables as listed in Exhibit 2.

The ordinary least squares estimates are presented in Exhibit 3. Fifty percent of the variance in state disciplinary action is explained by the independent variables presented. Most of the independent variables have the predicted influences on the dependent variable.

As for licensing law variables, the main finding is that state mandatory seller property condition disclosure laws and non-agency laws do have a significant effect on disciplinary action. Allowing for non-agency increases disciplinary action, which is consistent with the expectation. Interestingly, property condition disclosure laws increase disciplinary action, which is in keeping with the theory that written disclosure requirements aids in proving non-disclosure. Obviously the possible concurrent effect of written disclosure requirements decreasing complaints needs to be studied more fully.

As the percentage of brokers compared to total licensees increases, disciplinary action decreases. These results show that increased levels of licensee experience have a significant

**Exhibit 3. State Disciplinary Action/Transactions**

Variable	Estimate	Std. Error	Prob. > t
INTERCEPT	(0.8455)	.3968	.0490
PRELICENSING	0.0054	.0033	.1188
PROPCONDISCLOSURE	0.2931	.1078	.0152
DESIGNATED AGENCY	0.0163	.1431	.9108
NONAGENCY	0.3180	.1161	.0145
EXPERIENCE	(1.6237)	.5646	.0110
CONSUMERFUND	(0.0045)	.0022	.0553
FUNDING	0.7116	.3384	.0516
STAFF	0.1146	.0295	.0013
BOARD	(0.2991)	.4401	.5064
NAR	0.2268	.2118	.3002

Notes: Adj.  $R^2 = .5048$ ; Prob. > F = .01051; Number of Observations = 27.

effect on reducing disciplinary action. Intuitively this makes a great deal of sense and supports the scheme that some states are moving towards of broker-only real estate licensure. Additionally, given that brokers require a greater level of education than salespersons, this variable may also be a proxy variable for education, showing that a higher level of education of licensees overall results in decreased disciplinary action. So perhaps education is significant after all. As states search for answers to reducing licensee liability, the findings for non-agency and higher levels of experience tend to indicate that moving towards broker-only licensure has a more positive impact on real estate service quality than moving towards non-agency status.

The estimates indicate that prelicensing education, designated agency, board composition and NAR membership have no explanatory power for the variation in disciplinary action between the states. Prelicensing education may not fully explain all the education a salesperson receives before beginning to work in the field, as brokerage firms have various education programs for new employees. If data were available on disciplinary action and education per brokerage firm, a stronger relationship may be seen. As pointed out with the experience variable, there is other evidence that level of education is significant and is positively related to service quality.

As for the administration variables, the main finding is that state dedicated board funding and staffing levels have a significant influence on the variation of disciplinary action between the states. States with dedicated funding have an increase in disciplinary action; an increase in state staffing also results in an increase in disciplinary action. These two variables imply greater resources for investigation and enforcement, which is most likely why the positive relationship is seen. More research is needed here to understand if increased resources could be more efficiently used to educate and encourage licensee compliance with laws, in which case an inverse relationship would be seen between the resource variables and disciplinary action.

The level of state consumer protection fund payout is marginally significant and the sign is as expected, so an increase in the allowable state payout decreases the rate of disciplinary action. In an era of tight state budgets, perhaps this is a subconscious effort on the part of state licensing board to preserve their funds.

## Conclusion

This paper examines the institutional influences on real estate service quality. It differs from previous literature because it estimates the effects of recent state agency reform efforts. It is also the first to use state real estate board disciplinary action as a measure of quality. Staffing and funding variables are included in the model to control for state licensing board administrative efforts. The results indicate that variation in licensing laws and administration of licensing laws have an impact on the extent of state board disciplinary action.

In particular, laws encouraging a greater percentage of brokers have a positive impact on real estate service quality. In the future, there is a need for further analysis as to whether this means broker-only licensure or higher levels of experience and education for licensees. Laws advocating non-agency, or transaction-brokerage, have a negative effect on real estate service quality. Mandatory property condition disclosure laws' negative effect on quality may at first

seem counter-intuitive. However, further analysis is needed to separate the effects of disclosure on the level of complaints of non-disclosure as opposed to the percentage of complaints that actually result in disciplinary action.

As for the administration of licensing laws, dedicated funds and larger staffs result in increased disciplinary action. This indicates that the primary role of the state real estate boards has been one of enforcement. More research is needed to determine whether these administrative variables also have a relationship to proactive activities that may serve to reduce the need for disciplinary action.

### Endnotes

- <sup>1</sup> Any conduct in violation of specific state licensing law is subject to disciplinary action. Violations can include more serious misconduct such as misrepresentation, fraud, misappropriation of funds and lack of required licensing that are obviously related to real estate service quality. However, disciplinary action can also be taken for less serious technical violations of state licensing law, such as failure to repay a student loan or to include exact required language in a document. While we have no way of breaking down the violations resulting in the disciplinary statistics (short of searching through volumes of state commission minutes), we assume that the majority of state disciplinary action is taken for more serious misconduct that does effect real estate service quality.
- <sup>2</sup> Primary disciplinary action available to state real estate commissions include fines, license probation, license revocation, license suspension, restitution, additional education, censure, and denial of future license, downgrade of license, reprimand and voluntary surrender of license. See ARELLO (2004, page 158, "COMPLAINTS—PART THREE" heading, for a table outlining available state action.
- <sup>3</sup> Although a convincing argument can be made that just the fact that a consumer would bring a complaint or lawsuit (lawsuit leading to E&O insurance claim) indicates that the consumer was unhappy with the quality of services; what it does not indicate, however, is that the quality of services necessarily fell below a legally set duty.
- <sup>4</sup> Olazabal (2000) found that Arizona is the only state that does not have an agency disclosure law. However, this may not be determinative given that the Arizona Association of REALTORS® encourages use of a Real Estate Agency Disclosure and Election form, which discloses agency relationships to clients.
- <sup>5</sup> See "The Trend of Broker-only State Licensure" Blanche Evans, Realty Times, published May 9, 2002, [http://realtytimes.com/rtapages/20020509\\_licensure.htm](http://realtytimes.com/rtapages/20020509_licensure.htm).
- <sup>6</sup> See Endnote 12.
- <sup>7</sup> Johnson and Loucks (1988) referenced a working draft of Shilling and Sirmans (1988), so while it was published before Shilling and Sirmans, we refer to the literature in the reverse order.
- <sup>8</sup> For example, Johnson, Dotson and Dunlop (1988), using questionnaires completed by both buyers and agents, found that buyers and agents agreed on real estate service expectations but disagreed as to whether those expected services were delivered. McDaniel and Louargand (1994), using a questionnaire completed by both buyers and agents, found that buyers did not feel they were receiving quality services from agents although agents thought they were providing quality services. Seiler, Webb and Whipple (2000), using an in-house brokerage survey, found that there was a relationship between quality of services provided by an agent and buyer referrals of future transactions.
- <sup>9</sup> As a reviewer noted, the ease of filing a complaint with a state commission and the expected time to resolution are likely important administrative variables influencing the level of

complaints filed in a state and thus the amount of disciplinary action. However, we currently know of no source or straight-forward way to measure these variables on a state-by-state basis and therefore did not include them.

- <sup>10</sup> ARELLO state data reporting periods do not necessarily coincide, which is a potential weakness in this study. Also, the use of time-series data in addition to cross-sectional data, if effective dates of all the reform legislation in all sample jurisdictions were readily available, would obviously strengthen of the study.
- <sup>11</sup> ARELLO (2004) collects U.S. data for all fifty states, District of Columbia and the U.S. territories. However, the various jurisdictions do not necessarily report on all queried information. Therefore the sample size is limited to the twenty-seven jurisdictions (which we will refer to as states even though District of Columbia is included) that reported on the information we were analyzing. Those jurisdictions are Alabama, Arizona, Arkansas, California, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Wyoming.
- <sup>12</sup> ARELLO (2004), page 156, “ACTION: Disciplinary action after investigation” heading.
- <sup>13</sup> Data on number of total sales of single-family, apartment condo and co-op sales by state from National Association of REALTORS®, Inc. report on 2003 transactions.
- <sup>14</sup> Brokers must have anywhere from zero to eight additional years. ARELLO (2004), page 177, “ADDITIONAL ED./EXP.” heading.
- <sup>15</sup> ARELLO (2004), page 177, “ADDITIONAL ED./EXP.” heading.
- <sup>16</sup> ARELLO (2004), page 177, “HOURS PRE-” heading.
- <sup>17</sup> National Association of REALTORS® website article “Seller Disclosure”, <http://www.realtor.org/PublicAffairsWeb.nsf/Pages/TPSellerDisclosure?OpenDocument>, last updated April 28, 2004. While this data for property condition disclosure requirement was published in 2004, a review of Pancak, Miceli and Sirmans (1996) and various state licensing laws confirms that the states in the sample that have mandatory property condition disclosure laws enacted them prior to 2003.
- <sup>18</sup> ARELLO (2004), page 49, “DESIG. AGENCY” heading.
- <sup>19</sup> ARELLO (2004), page 49, “NON-AGENCY POSITION” heading.
- <sup>20</sup> ARELLO (2004), page 3, “SALESPERSONS: Active Salespersons” and “BROKERS: Active Brokers” plus “BROKERS: Active Associate Brokers.”
- <sup>21</sup> ARELLO (2004), pages 161-163, “MAX. FUND Liability: Broker” heading.
- <sup>22</sup> ARELLO (2004), page 17, “SOURCES: Licensees” heading. If state receives any portion of its operating budget from licensing fees, it was assigned a dummy variable of 1; if none of the operating budget was paid from licensing fees, a dummy variable of 0 was assigned.
- <sup>23</sup> ARELLO (2004), page 11, “TOTAL Real Estate Emp.” heading. Data on state population from Digest of Real Estate License Laws and Current Issues, 2004 edition, Association of Real Estate Licensing Law Officials, page 3, “POP.: TOTAL Jurisdiction Population” heading.
- <sup>24</sup> ARELLO (2004), page 12, “# members” heading and “# Industry Members” heading.
- <sup>25</sup> Data on NAR membership from the NAR monthly membership report for the year ending December 31, 2003.
- <sup>26</sup> ARELLO (2004), page 3, “SALESPERSONS: Active Salespersons” and “BROKERS: Active Brokers” plus “BROKERS: Active Associate Brokers.”
- <sup>27</sup> District of Columbia is the only jurisdiction that has no payout maximum limit. For purposes of this study, it was assigned the uppermost number in this state variable range.
- <sup>28</sup> This variable as constructed is looking at NAR membership as a percentage of active licensees. Some states allow for both inactive and active licensee categories, which explain why membership as a percentage of active licensees may be greater than one hundred.


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