

VERMONT SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION

Sunrise Application Review

Home Inspectors
Preliminary Assessment on Request for Licensure
Summary of Testimony and Evidence

Background

The Vermont Association of Professional Home Inspectors (hereinafter referred to as “VAPHI”) submitted an Application for Preliminary Sunrise Review Assessment (hereinafter referred to as the “Application”) asking that the State of Vermont regulate through licensure all home inspectors in the state. The request to regulate home inspectors does not come from members of the public or any governmental entity.

State Policy on Regulation of Professions

Chapter 57 of Title 26 of the Vermont Statutes states in pertinent part:

It is the policy of the state of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The legislature believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the state to protect the interests of the public by restricting entry into the profession or occupation. If such a need is identified, the form of regulation adopted by the state shall be the least restrictive form of regulation necessary to protect the public interest.

26 V.S.A. § 3101.

Pursuant to 26 V.S.A. §3105(a), a profession or occupation shall be regulated by the state only when:

- (1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly

harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;
(2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
(3) the public cannot be effectively protected by other means.

The Legislature delegates responsibility for a preliminary assessment of requests for regulation to the Office of Professional Regulation (“OPR”). “Prior to review under this chapter and consideration by the Legislature of any bill to regulate a profession or occupation, the office of professional regulation shall make, in writing, a preliminary assessment of whether any particular request for regulation meets the criteria set forth in subsection (a) of this section. The office shall report its preliminary assessment to the appropriate house or senate committee on government operations.” 26 V.S.A. § 3105(d). Pursuant to that mandate, OPR has reviewed the Application.

Regulation Sought

The Application includes three distinct proposed statutes that call for the licensing of individuals who provide home inspection services: (1) S.145, a 2012 bill as introduced by Vermont Senator Vincent Illuzzi; (2) the American Society of Home Inspectors, Inc. (ASHI) Model Home Inspector Licensing Legislation; and (3) the National Association of Home Inspectors, Inc. (NAHI) Model Licensing Act .

All three proposed statutes would bar those not licensed from conducting or seeking to conduct home inspections in Vermont.

To be eligible for licensure under S.145 an applicant must provide evidence that he/she has satisfied the supervised experience requirements established by a proposed state regulatory board pursuant to rule. The bill also states that the board shall offer examinations at least twice a year “if applications for licensure by examination are pending.” It is not clear to OPR whether the bill’s intent would be to require licensure by examination.

To be eligible for licensure under the ASHI Model Home Inspector Licensing Legislation an applicant must:

- (1) be of good moral character;
- (2) have successfully completed high school or its equivalent;
- (3) have completed a course of study of no less than 80 hours that covers all of the

following components of a residential building of four units or less: heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof covering, exterior and interior components and site aspects as they affect the building;

(4) have acquired the required training and experience requirements as established by the Board; and

(5) have passed a valid, reliable examination designed to test competence in home inspection practice, developed pursuant to accepted psychometric standards promulgated by the American Educational Research Association's "Standards for Educational and Psychological Testing;" the Equal Employment Opportunity Commission's "Uniform Guidelines for Employee Selection Procedures;" the Civil Rights Act of 1991; the Americans with Disabilities Act of 1990; and similar applicable standards. The examination may have been passed before the effective date of this Act.

To be eligible for licensure under the NAHI Model Licensing Act an applicant must:

(1) provide evidence that he/she has successfully completed all educational requirements established by a proposed state regulatory board pursuant to rule; and

(2) provide evidence that he/she is a member in good standing of a nationally recognized home inspection association.

All three proposed statutes leave to the proposed state regulatory agency the task of designating by rule the specific criteria for education, if any, training, experience, and examinations.

OPR Process and Outreach

In response to the Application, OPR attempted to locate and contact each practicing home inspector who might be affected by this legislative proposal. Prior to making and filing this assessment, OPR sent notices and requests for comment to all members of VAPHI as well as those non-members who advertise as home inspectors in this State through the internet and by other means. OPR posted a copy of the Application on its web site along with a link permitting easy comment. In addition, OPR sent a letter to all home inspectors and interested parties, including the Vermont Association of Realtors, summarizing the Application and directing them specifically to OPR's web site to review and comment. Finally, OPR noticed and held two public hearings to receive comments on the Application. Although only one person attended and commented on the Application at the first public hearing, the "pro-regulation" side appeared mobilized and was well represented at the second hearing. Also attending the second hearing in support of regulation was a representative from the Vermont Association of Realtors as well as numerous real estate brokers licensed in Vermont.

Overview of the Profession

Prospective purchasers of residential property are the primary consumers of home inspection services. According to the Application, home inspectors "identify visible defects and/or conditions that, in the judgment of the inspector, adversely affect the function and/or integrity" of the physical structure and systems of the home. The purpose of the inspection is to alert clients of any potential defects or problems with the property.

Inspectors are independent businesspeople, almost always conducting inspections without supervision or oversight by any government agency. According to the Application, the applicant is uncertain as to the total number of home inspectors in the Vermont. There are no minimum qualifications for home inspectors conducting business in Vermont. Inspectors currently have a wide variety of backgrounds and experience. Many inspectors have experience in the construction industry. At least one has an engineering background. According to the testimony at the second public hearing, it is possible that some individuals currently providing home inspection services in the state have no prior education or experience in the construction or inspection field.

The amount of time to conduct a typical inspection of a single-family residence depends entirely on the inspector. Inspectors generally provide clients with a written evaluation of the home's heating, ventilation, and air conditioning (HVAC) system, plumbing and electrical systems, roof, attic, walls, ceiling, floors, windows and doors, foundation, basement and exterior. However, the form of the written evaluation is, due to a lack of oversight, not standardized and vastly different and again depends entirely on the inspector. The written evaluation may include a recommendation for an evaluation by a specific professional if a component of the home shows evidence of a problem. Some inspectors include a referral after every inspection for certain components, such as the integrity of the main chimney.

There are two major nationally recognized private organizations that provide certification for home inspectors, the American Society of Home Inspectors, Inc (ASHI), and the National Association of Home Inspectors (NAHI). Both of these organizations provide education, a code of ethics, practice standards, a credentialing examination, and certification for their members. To be certified, an applicant must perform a specified number of inspections for a fee. Copies of the inspection reports are submitted to the accrediting body for evaluation. If the inspection reports demonstrate a satisfactory level of competence, the applicant is allowed to take the credentialing body's examination. The examination evaluates knowledge in several key areas including residential heating, ventilation, air conditioning, plumbing, electrical, roof, attic, walls, ceiling, floors, windows and doors, foundation, basement and exterior.

Once a satisfactory score on the examination is achieved, an applicant may begin using the credential of the private credentialing organization. Both national credentialing organizations require continuing education in the inspection field to maintain their certification.

Analysis

The first sunrise criterion asks:

whether it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

In the case of home inspectors, the evidence of public harm is in the form of expressed concerns and frustrations by real estate brokers and their clients about the absence of required qualifications for home inspectors and the lack of standards and uniformity for the inspection report itself. These concerns fall under the category of public welfare in terms of the statutory criteria.¹ Although the concerns may at first seem minor in terms of harm to the public, when one considers that *a home inspection has become an essential element in most residential real estate transactions in Vermont*, and that the home buying public is relying on the inspection before making a decision on the largest single investment most families will make in their lives, the potential for harm is recognizable and not remote.

No state laws require a prospective purchaser to obtain a home inspection prior to purchasing a property. However, the standard Purchase and Sale Contract (attached to this report as Appendix A) which is approved by the Vermont Association of Realtors is used in almost all residential real estate transactions in Vermont. The standard contract contains a significant provision relevant to the home inspector profession.

Paragraph 8, the Property Inspection Contingency allows the buyer to choose whether or not the buyer's obligation to close will be subject to an inspection of the residential property. If so, then the Contract requires a Property Inspection Contingency Addendum to be executed and made a part the Contract. Although some real estate brokers and consumers use their own home inspection addendums, there are three separate addendums approved by the Vermont Association of Realtors. Generally speaking, however, if the results of the inspection of the structural or mechanical systems are not satisfactory to the buyer, the buyer has the option to terminate the Contract and receive back any deposit money. In some circumstances, upon proper notice to the seller, the seller may make requested repairs, or terminate the contract. It appears from the evidence received during the hearing process that most prospective purchasers of residential

¹ Although the applicant claims that the harm to the public from unregulated practice of the profession is in the form of health and safety, OPR received no evidence that consumers who rely on home inspection information have been misled into believing major systems are in good working order only to discover later that they are not. OPR also received no evidence that consumers who rely on home inspection information have been misled into believing major systems are in good working order only to be required to make expensive repairs after purchasing the home. Thus, the economic harm to buyers is also speculative *at this point*.

property in Vermont elect to have their obligation to close subject to a satisfactory home inspection. The exception is for the purchase of new homes and those where investors are purchasing distressed properties with known or obvious defects.

Once buyers choose to close subject to a satisfactory home inspection, they are confronted by a marketplace with two fundamental problems.

First, in Vermont anyone can provide inspection services regardless of experience or qualifications. Since there are no minimum standards for home inspector qualifications, the quality of inspections necessarily varies. The harm is that consumers utilizing the services of a home inspector find it difficult to check references and qualifications before contracting for services. Unless a broker makes a professional referral² or the prospective buyer finds a competent inspector through word of mouth, the consumer, in a situation where time is of the essence, must jump into a confusing marketplace where it appears some inspectors do not have the necessary expertise to effectively evaluate some systems or components of the house. The real estate brokers themselves contacted for this review expressed concerns about the qualifications of inspectors.

Second, these brokers expressed frustration at the lack of consistency of written inspection reports. Some are vague or confusing. Charges of vagueness result from reports that include recommendations to consult with other construction professionals. The home inspectors, on the other hand, view these referrals as necessary for some systems and in some limited circumstances. For instance, an inspection may reveal that a problem may exist but does not reveal enough evidence to support a definitive conclusion. In a case where a furnace may indicate a problem, the inspector may recommend contacting a plumbing contractor. Another example, cracks in the basement or crawlspace could be an indication of possible expansive soils. The inspector may recommend contacting a geologist to investigate this possibility. Brokers also expressed frustration that the written inspection reports sometime contain information the brokers consider to be insignificant. Insignificant information included in inspection reports may be information such as "screen in master bedroom has a hole in it" or "missing tile in shower enclosure." Some brokers view these types of observations as frivolous and unnecessary. They are concerned that these truthful remarks make it more difficult to conclude sales.

The second sunrise criterion asks:

whether the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability;

² A competent buyer broker will make sure a competent inspector performs the home inspection. However, in most transactions, the buyer is not represented by a broker and the seller's broker will necessarily have a conflict in advising the buyer as to whether or not an inspection should be performed and, if so, by whom. An attorney representing the buyer may fill this gap, but not always.

A licensing program would limit home inspections to those who have demonstrated competency established in the licensing standards. Consumers then utilizing the services of a home inspector would be assured of minimum qualifications before contracting for services. With Legislative authority, a licensing program could also adopt requirements for a written report and its contents, making the review of the same by a professional broker and his or her client more useful.

The third sunrise criterion asks:

whether the public can be effectively protected by other means.

The evidence of actual harm presented to OPR does not include the type of harm that can be addressed through small claims or civil court actions to be made whole. And, of course, most licensing programs do not serve to compensate the public for damages. A licensing program may establish a statute, regulations and professional standards. A licensing program may also take disciplinary action against a licensee for violating a statute, regulation or perhaps a professional standard. Although there are exceptions to this regulatory standard, the consumer, to recover economic damages, must generally seek a judgment in a court of law.

In the case of home inspectors, because the public harm arises from the absence of required qualifications and the lack of standards and uniformity for the inspection report itself, only a licensing program that establishes professional standards will prevent the harm.

Form of Regulation

The sunrise criteria require the least amount of regulation necessary to meet the public protection need. This minimal regulation could be accomplished through registration, certification, or licensure. The sunrise statute defines each of these at 26 V.S.A. § 3101a as follows:

"Registration" means a process which requires that, prior to rendering services, all practitioners formally notify a regulatory entity of their intent to engage in the profession or occupation. Notification may include the name and address of the practitioner, the location of the activity to be performed, and a description of the service to be provided.

"Certification" means a voluntary process by which a statutory regulatory entity grants to an individual, who has met certain prerequisite qualifications, the right to assume or to use the title of the profession or occupation, or the right to assume or use the term "certified" in conjunction with the title. Use of the title or the term "certified," as the case may be, by a person who is not certified is

unlawful.

"Licensing" and "licensure" mean a process by which a statutory regulatory entity grants to an individual, who has met certain prerequisite qualifications, the right to perform prescribed professional and occupational tasks and to use the title of the profession or occupation. Practice without a license is unlawful.

Due to the limited amount of public feedback given to OPR in its public hearings and public comment period, it is unclear to what extent the profession should be regulated. The OPR did not hear from any members of the public on actual harm caused by the unregulated practice of home inspection although anecdotal evidence certainly exists. Nor did OPR hear from existing home inspectors opposed to regulation, although they are certain to be heard from if they learn they do not meet the requirements advanced by the proponents of regulation.

The profession could be regulated through certification (ex: only ASHI certified home inspectors may hold themselves out as “certified home inspectors” – this is title protection only and would not bar “uncertified” practitioners from performing inspections). The profession could also be regulated through licensure (ex: only licensed home inspectors may perform home inspections; all others are barred by statute).

Certification essentially exists in the marketplace today, with certain home inspectors obtaining ASHI certification, but that does not seem to be an effective tool for the consumers who choose home inspectors. Licensure may be more appropriate if the objective is to eliminate substandard unqualified inspectors and substandard inspections. With licensure, a period of “grandfathering” would be appropriate for existing home inspectors who would not meet the licensing criteria to give them a fair opportunity to become qualified.

Conclusions

Following the criteria of 26 V.S.A. § 3105, we conclude:

- (1) The evidence demonstrates that the unregulated practice of home inspection harms welfare of the public. The potential for the harm is not remote and speculative.
- (2) There has been a showing that the public requires a State approved assurance of initial and continuing professional ability.
- (3) The best regulator of this profession is not the marketplace.

The statutory criteria for regulation of home inspectors have been met.

Recommendation

A home purchase is likely to be the largest and most important single financial transaction anyone makes in his or her life. A home inspection has become an essential element in most residential real estate transactions in Vermont today. Because of the necessary and significant role home inspectors and their reports play in these transactions, the Office of Professional Regulation recommends that home inspectors be subject to licensure in Vermont.

Under the sunrise criteria, harm to the public must be real and recognizable, and preventable by regulation. The proponents of regulation have demonstrated harm or a need to protect the public if the profession remains unregulated. They have demonstrated that the public will benefit from regulation. Other legal protections and market forces are not sufficient to protect the public. Therefore, licensure is appropriate.

Again, due to the limited amount of public feedback given to OPR in its public hearings and public comment period, it is unclear to what extent or how the profession should be regulated. The OPR does regulate real estate brokers and salespeople, so regulation by OPR may seem intuitively correct. However, The Department of Public Safety's Division of Fire Safety already regulates similar professions with high levels of technical knowledge around homes, building and fire codes, and safety with licensing programs for plumbers, electricians, and fire alarm inspectors. It would seem that home inspectors are a closer match with these professions and would fit within the existing regulatory framework in the Division of Fire Safety.

The Office of Professional Regulation recommends that Home Inspectors be subject to professional regulation in the State of Vermont.

Respectfully submitted:

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