Consumer Federation of America

STATE REAL ESTATE COMMISSIONS: DO THEY SERVE THE CONSUMER INTEREST?[1]

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[1] This CFA report updates and expands an earlier CFA report on state real estate commissions and boards: Patrick Woodall and Stephen Brobeck, State Real Estate Regulation: Industry Dominance and Consumer Costs (Consumer Federation of America, 2006).

Introduction

In almost all states, real estate commissions (sometimes called boards) regulate the residential real estate industry – agents, brokers, and their firms.[2] These commissions, as an authoritative report by the Federal Trade Commission put it, "generally are granted the principal enforcement and rulemaking authority over brokerage practices."[3] The agencies administer state licensing statutes that define licensing regulations, specify prohibited practices including deception and fraud, establish standards of practice, and enforce violations of prohibited practices

Effective regulation is much-needed by home sellers and buyers. Each year, consumers buy and sell around $2 trillion worth of residential property costing some $100 billion in broker commissions.[4] Around two million people are licensed to sell this property, and over 1.5 million are realtors with access to local multiple listing services. As in any occupation or profession, a number of practitioners cut corners while some commit deception or fraud. Not all sharp or illegal practices are detected by home sellers and buyers, most of whom lack experience and knowledge of this marketplace. Yet, home buyers and sellers are not always satisfied with the services of their real estate agents. Only three-quarters say they would definitely use their agent again and recommend them to someone else.[5] Moreover, the number of recent home buyers and sellers who express dissatisfaction with agents at complaint and consumer rating sites is relatively large.[6]

Accordingly, it is not surprising that in December 2018, only 25 percent of Americans polled by Gallup gave high or very high ratings to real estate agents for their honesty and professional ethics. (Nineteen percent gave low or very low ratings.)[7] While most home sellers and buyers are satisfied with their agents, the fact that hundreds of thousands each year apparently are not, coupled with the fact that so much is at stake, makes effective regulation of brokerage practices important to consumers.

This report evaluates the extent to which state real estate commissions serve the consumer interest in terms of providing specific services.[8] It does not address issues related to

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[2] Commissions do not exist in two states – California and Minnesota – and they explicitly have only an advisory role in one – Illinois. In these three states there exists a government department or office that regulates real estate agents, brokers, and their firms.

[3] Federal Trade Commission, The Residential Real Estate Brokerage Industry: A Staff Report (1983), p. 16.

[4] Noah Buhayer, "Real Estate Agents Target Record $100 Billion as Sales Boom," Bloomberg Wealth (July 9, 2021).

[5] National Association of Realtors, 2020 Profile of Home Buyers and Sellers (2020), Tables 4-22 and 7-12.

[6] A small minority of consumers with complaints voice them to third party agencies of all types, including complaint and rating sites. Yet, from January 2020 to August 2021, for example, roughly the same number of consumers voiced complaints to the Consumers Affairs rating site about Coldwell Banker (14) and Remax (28) as about Ford Motor Co. (20) though the latter served far more customers.

[7] Gallup, Honesty/Ethics in Professions, poll in December 2018. These numbers had improved, though, over a half-century. In its July 1977 poll, Gallup found that only 15 percent gave real estate agents high ratings for honesty and ethics while 31 percent gave agents low ratings.

[8] There is a large scholarly literature on whether state licensing boards serve the consumer and public interest. Defenders argue that the boards protect consumers by setting and enforcing minimum standards, which keep out bad actors and discourage licensees from engaging in bad practices. Critics emphasize that industry dominance of most

agent fees or industry structure, including bans on buyer rebates, which CFA has addressed in other reports.[9] The study:

- describes these state commissions in terms of their structure and composition;
- discusses their consumer performance – the extent to which commissions make available important consumer information, enforce regulations such as required consumer disclosures, and deal effectively with consumer complaints;
- examines the relationship between the composition and consumer performance of commissions; and
- makes recommendations to help ensure that commissions better serve the consumer interest.

Commission Structure and Composition

Real estate commissions were originally created mainly to relieve the industry of the burden of regulating themselves. However, the industry, which has always wielded great influence in state capitals, ensured that it would exercise much influence and control over this regulation.[10] By law, almost all commissions are required to have a majority of industry members. And in practice, that is the case. Only 11 states specify that commissions include more than two non-industry members, and four states specify that all commissioners be from the industry. New York is the only state with a commission that has a majority of non-industry members.[11] Overall, there are 378 commission seats, 277-279 of which are specified to be held by industry members (74%).[12]

Table 1: State Real Estate Commission Seats Specified for Non-Industry Members

State	Total Number of Seats	Non-Industry Seats
Alabama	7	1

boards restricts entry, inhibits price competition, and discourages board commitment to pursuing and penalizing consumer deception and fraud. The literature also reveals that there are large differences among and within states as to how they regulate different occupations and professions. See especially: Katherine Barrett and Richard Greene, "America's 1,800 Licensing Boards and Their Countless Problems," GOV: The Future (February 26, 2018). Aaron Edlin and Rebecca Haw, "Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny?" University of Pennsylvania Law Review, v. 162 (2014), p. 1093ff. Rebecca Haw Allensworth, "Foxes at the Henhouse: Occupational Licensing Boards Up Close," California Law Review, v. 105, n. 6 (December 2017), p. 1567ff. However, no research of which we are aware, other than our earlier report, focuses specifically on state real estate commissions.

[9] Stephen Brobeck, Hidden Real Estate Commissions: Consumer Costs and Improved Transparency (Ocotber 2019). Amicus Brief filed by Consumer Federation of America and Oregon PIRG in the Portland Division of the Oregon District Court, March 16, 2021.

[10] FTC, Residential Real Estate Brokerage Industry, loc. cit., especially Chapter IV: Analysis of Industry Structures and Practices and within that chapter, the section on State Law and Agencies, pp. 101-106.

[11] The New York commission includes the Secretary of State, the Superintendent of the Department of Financial Services, 5-7 real estate brokers, and 6-8 public members.

[12] The primary source of this information was the websites of each state commission. When the website information was ambiguous, we consulted the state statute.

Alaska	7	2
Arizona	10	3
Arkansas	5	2
California (no commission)		
Colorado	5	2
Connecticut	7	2
Delaware	9	4
District of Columbia	9	2
Florida	7	2
Georgia	6	1
Hawaii	9	2
Idaho	5	1
Illinois (advisory)	15	3
Indiana	12	2
Iowa	7	2
Kansas	5	1
Kentucky	7	1
Louisiana	11	0
Maine	6	2
Maryland	9	4
Massachusetts	5	2
Michigan	9	3
Minnesota (no commission)		
Mississippi	5	0
Missouri	7	1
Montana	7	2
Nebraska	7	2
Nevada	5	0
New Hampshire	4	2
New Jersey	8	3
New Mexico	5	1
New York	15	10-Aug
North Carolina	7	3
North Dakota	5	0
Ohio	5	1
Oklahoma	7	2
Oregon	9	2
Pennsylvania	11	5

Rhode Island	9	2
South Carolina	10	2
South Dakota	5	2
Tennessee	9	2
Texas	9	4
Utah	5	1
Vermont	7	3
Virginia	9	2
Washington	6	1
West Virginia	7	1
Wisconsin	7	2
Wyoming	5	1
Totals	**378**	**99-101**

Yet, holding nearly three-quarters of the commission seats is not the extent of the industry's dominance of these commissions. Forty-four of the 99-101 non-industry seats are either vacant or held either by representatives of allied businesses or by realtors themselves (AZ, AR, IN, MD, MA, RI, WV), as the table below shows. That reduces the number of commissioner seats with no identifiable industry ties to 55-57 members (15%).

Table 2: Non-Industry Seats Vacant or Held by Industry Members or Those From Allied Businesses

State	Number	Affiliation
Alabama	1	Banker
Arizona	1	Realtor/educator
Arkansas	2	Realtor; Real estate investor
Colorado	1	Banker
Delaware	1	Vacancy
Florida	2	Real estate attorney (2)
Hawaii	1	Real estate attorney
Illinois	3	Vacancy (2); Real estate trusts
Indiana	1	Realtor
Iowa	2	Vacancy; Banker
Kentucky	1	Banker
Maryland	1	Realtor
Massachusetts	1	Realtor
Michigan	2	Real estate attorney; Builder
New Hampshire	1	Real estate attorney
New Jersey	1	Real estate attorney
New Mexico	1	Banker

North Carolina	3	Real estate attorney (3)
Oklahoma	2	Real estate educator; Banker
Oregon	2	Real estate attorney; Title co.
Pennsylvania	3	Vacancy (2); Real estate attorney
Rhode Island	2	Realtor; Banker
South Carolina	1	Vacancy
South Dakota	1	Title co. (ret.)
Tennessee	1	Insurer
Utah	1	Title co.
Vermont	1	Property manager
Virginia	1	Real estate attorney
West Virginia	1	Realtor
Wisconsin	1	Vacancy
Wyoming	1	Banker
Totals	**44**	

Governors appoint real estate commissioners but usually follow the recommendations of the commission and its administrator. This raises questions: Do these non-industry members understand the residential real estate marketplace, licensing laws, and related issues well enough to make their voices meaningfully heard? And, if they are selected by industry members, do they have the interest and will to ever challenge these members?

This issue challenges many state licensing boards. Some states have addressed the issue by requiring that government officials participate on the real estate commission. For example, Pennsylvania specifies that members include representatives from the state attorney-general and department of licensing; Rhode Island requires that the state attorney-general have representation; and Nebraska, New Hampshire, and New York require the participation of the secretary of state or their representative. The thinking here is that government officials are familiar with state government processes and are less likely to be cronies of industry leaders than are non-industry members recommended by the commission.[13] The table below identifies these commission members.

Table 3: Public Members of State Real Estate Commissions

State	Number	Position
Delaware	1	Government appraiser
Kansas	1	City attorney
Michigan	1	City commissioner
Nebraska	1	Secretary of state

[13] See Elizabeth Graddy and Michael B. Nichol, "Public Members on Occupational Licensing Boards: Effects on Legislative Regulatory Reforms," Southern Economic Journal, v. 55, n. 3 (January 1989), pp. 610-625.

New Hampshire	1	Secretary of state
New York	2	Secretary of state; Superintendent of Financial Services
Pennsylvania	2	Attorney-general rep; Commissioner, BPOA
Rhode Island	1	Attorney-general rep
South Dakota	1	Town manager
Texas	1	FBI agent
Vermont	1	State housing commissioner

Another approach to this issue is to recruit independent experts or consumer advocates. Law professors may be especially qualified to provide a knowledgeable, independent voice on commissions. Consumer and housing advocates would evaluate issues from the perspective of home sellers and buyers. No-one from either of these two groups, our research found, currently serves on a real estate commission. The Maryland commission, though, wisely recruited a retired member of the state ethics board.

A real estate commission dominated by industry members does not always ignore the consumer interest. Some industry members, as members of a public body, may feel a strong sense of obligation to serve the public interest. Some members may view industry and consumer interests to be closely aligned. And the presence of at least one non-industry member on a commission can moderate any tendency of industry members to ignore the public and consumer interests. Nevertheless, a commission dominated by industry members is predisposed to view issues thorough an industry lens, make decisions that favor the industry over consumers, and sometimes forget that its mandate is to serve consumers as well as the industry. This industry bias is evident in the consumer performance of most commissions, the subject of the next two sections.

Commission Performance: Consumer Information

One performance indicator is whether real estate commissions provide useful information to home sellers and buyers. There are two useful ways to measure performance in this area – whether commissions include good consumer information on their websites, and whether commissions ensure that real estate agents adequately disclose their representation to customers.

Website Information: In February 2021, the Consumer Federation of America released a report on the information that state real estate commissions make available to consumers on their websites.[14] The study established criteria for evaluation including not only types of information but also how the information was presented, including a home page menu listing. The substantive information included whether an agent was licensed, when an agent had been

[14] Stephen Brobeck, The Availability of Consumer Information from State Real Estate Commissions (Consumer Federation of America, February 2021).

disciplined, how agents represented consumers, existing consumer rights and protections, and how to complain about unfair practices.

The report concluded that only 11 state commission websites provided adequate consumer information and that 21 of the agency websites ignored home buyers and sellers.[15] The latter websites appeared to consider only the needs of the industry. The home page menu contained no mention of consumers nor was there a separate consumer page. The report also concluded that no websites could be considered excellent because none included a description of important consumer protections, adequate explanation of the sales process, and useful advice to consumers about how to receive good value from agent services.

Agency Disclosures: Real estate commissions have a responsibility not just to make consumer information available on their websites but also to ensure that real estate agents provide mandated information about agency to customers. This information is important: A 2018 national survey commissioned by the Consumer Federation of America found that two-thirds of respondents mistakenly thought that real estate agents "always" or "almost always" were required to represent the interests of the home buyer or seller with whom they were working.[16] Yet, many consumers end up working with a dual agent, a transaction broker, or an agent representing the other party in the sale. Not working with an agent with fiduciary responsibility exposes these consumers to conflict of interest risks, including the disclosure of personal information that could harm their financial interests.[17]

Annual surveys by the National Association of Realtors repeatedly show that many home buyers say they were not aware of agency disclosures. The 2020 NAR survey reported that 41 percent of all buyers, and 46 percent of first-time home buyers, said they did not sign, or did not know if they signed, an agency disclosure statement. Furthermore, only 26 percent of all surveyed buyers indicated that they received the disclosure at the first meeting with the agent.[18]

These percentages have worsened over time. For example, the 2006 NAR survey revealed that 36 percent of all buyers, and 39 percent of first-time home buyers, said they did not sign, or did not know if they signed, an agency disclosure. Moreover, 30 percent of all buyers said they received the disclosure at the first meeting.[19]

State real estate commissions are responsible not only to enforce state disclosure requirements about agency, but also to ensure that the requirements themselves effectively communicate agency. A 2020 report from the Consumer Federation of America concluded that state agency disclosures "are often complex and legalistic, lack important information, are not

[15] The states with "good" ratings were AL, AR, CT, HI, ID, MD, NE, NY, NC, SD, TX.
[16] National survey undertaken by ORCI for Consumer Federation of America on the weekend of October 20, 2018 by cell phone and landline.
[17] Stephen Brobeck, The Agency Mess: Home Buyer and Seller Confusion and Costs Related to Diverse and Poorly Enforced State Laws about the Role and Responsibility of Real Estate Agents (Consumer Federation of America, January 2019), pp. 5-7.
[18] National Association of Realtors, 2020 Profile of Home Buyers and Sellers (2020), Table 4-5.
[19] National Association of Realtors, 2006 Profile of Home Buyers and Sellers (2006), Table 4-5.

timely, and are not understood by many home sellers and buyers."[20] For example, only 16 states required disclosure at the "first contact" or "first substantive contact" while eight states allowed disclosure late in the sales process.[21] Regardless, many agents do not appear to take the disclosures seriously. One industry member noted that most agents "simply tell the Buyer and Seller [the agency disclosure] is a required document they must sign before they assist them in a transaction. The client or consumer signs this form without the slightest idea of what 'Agency' means."[22]

Commission Performance: Complaints and Disciplinary Actions

State real estate commissions have a mandated responsibility to receive, investigate, and dispose of complaints against licensed real estate agents. However, they do not have the authority to make restitution to consumers, only to discipline agents through citations, fines, license suspensions, or license revocations.[23] This limited authority allows sanctions on agents but does not provide redress to complainants. That may be one reason that only one-third (33%) of a representative group of 1,003 Americans, surveyed online recently by Ipsos, said that if they sold or bought a home using a real estate agent and had a serious complaint about that agent, they would complain to their state real estate commission rather than to the Federal Trade Commission (2%), state attorney-general's consumer protection unit (11%), Better Business Bureau (13%), private attorney (12%), or none of the above (28%).[24]

Many states do maintain "recovery funds" to allow aggrieved consumers to seek restitution, but complainants only qualify for compensation if they have obtained a favorable court or mediation decision.[25] Some state commissions will refer cases involving deception or fraud to their state attorney-general. Other states recommend that consumers seek private redress. For example, Georgia recommends that aggrieved consumers "consult an attorney or small claims court."

Most states do not provide informative data about complaints and disciplinary actions that are accessible to the public. Only 14 state commissions make at least some of this information available to the public, usually through annual reports to the governor. Because of their willingness to disclose this information, these states may take agent complaints and discipline more seriously than non-disclosing states. However, none of the states differentiate consumer complaints from agent complaints or from complaints originating from the commission's own investigations.

[20] Stephen Brobeck, Why Required Real Estate Agent Disclosures about Representation Fail and How They Can Be Improved (Consumer Federation of America, January 2020).
[21] States requiring early agency disclosure were MD, OR, TX, MN, NY, NC, ND, SC, ID, KS, MI, IN, ME, NJ, PA, VT.
[22] Drew Sergeant, "Arizona Real Estate Agency Disclosure: Why Is It Important to Buyers and Sellers?" arizonahomesbydrew.com (2019).
[23] FTC, Residential Real Estate, loc. cit., p. 101-02. Also, see state commission websites.
[24] Ipsos online survey of 1,003 representative adult Americans undertaken September 9-10, 2021 for the Consumer Federation of America.
[25] Bob Hunt, "Real Estate Recovery Account Is Useful, Though Limited," Realty Times (July 24, 2017). The California Department of Real Estate reports that since 1964, it has received 4,000 claims and paid half of them in part or in full.

The available data on complaints and discipline suggest three general characteristics about how states deal with these issues. First, a large majority of complaints do not lead to disciplinary actions. For example, in its 2019-20 fiscal year, Florida reported 3,767complaints but only 277 disciplinary actions (7.4%). In its 2020 fiscal year, Georgia opened 1,682 investigations yet issued only 116 disciplinary orders (7.0%). In its 2019 fiscal year, Montana received 73 new complaints but issued no suspensions and only four sanctions (5.5%) while dismissing 61 of the complaints. In its 2019 fiscal year, North Carolina received 1,409 "official complaints" but took only 111 disciplinary actions (7.9%). It is noteworthy that in all four states, the ratio of disciplinary actions to complaints received was less than ten percent.

The Florida data provides some insight, but not a complete explanation, as to why this ratio is so low. Of the 3767 complaints, only 1,249 were deemed legally sufficient while in only 299 of the 1,249 was there a finding of "probable cause" – some evidence to indicate a violation of a state law or rule. Were many complaints unreasonable? Did many involve misunderstandings that were corrected with the assistance of the commission? Did consumers submit insufficient proof of violations? Was the law too limited to recognize unfair treatment of consumers? Did commissions controlled by industry members too often give the subjects of complaints the benefit of the doubt? Given the fact that there is no specific public information about the dismissed complaints, it is difficult to say.

Second, a very high percentage of disciplinary actions were related either to a criminal conviction (or in some instances, a charge) or to lack of a real estate license. On inspection of disciplinary cases in the few states that included detailed orders, we found that these two factors often represented the majority of a recent sample of consecutive state orders: 13 of 21 actions in Arizona (61.9%), 18 of 30 actions in Hawaii (60.0%), 24 of 38 actions in Illinois (63.2%), 18 of 30 actions in West Virginia (60%), and 21 of 31 actions in Texas 67.7%). The percentages for all five of these states are remarkably similar. Also, in some states a large number of disciplinary actions related to complaints involving mismanagement of rentals, such as failure to return a security deposit or the deposit of funds in a personal account.

Thus, a high percentage of disciplinary actions are often related not to complaints from home buyers or sellers, but to the commission's own investigation of an agent's criminal status, submission of appropriate paperwork for license renewal, or rental issues. In states with available records, there were relatively few disciplinary actions related to the mistreatment of home buyers and sellers.

Third, with one exception, disciplinary actions usually involved a fine, ranging from $500 to several thousand dollars, and sometimes a requirement that the agent take a class, often in professional ethics. For example:

- In Hawaii between July 2019 and February 2020, there were 31 disciplinary actions. These actions included one license suspension, one license revocation, and 28 fines. Twenty consecutive recent decisions by the hearing office included ten fines of $500 or $1,000 for driving under the influence, eight fines of $500 or $1,000 for an expired license, one $1,000 fine related to property mismanagement, and one license revocation for an agent who lied about citizenship and was deported.

- In South Carolina between August 2020 and August 2021, there were 28 disciplinary orders. Seven of these orders involved criminal misconduct in which agents "relinquished" their licenses. Twelve of the orders involved property mismanagement, including three failures to return a security deposit resulting in one license revocation and a $10,000 fine, one license suspension, and one reprimand and $1,500 fine. The remaining orders related to a variety of issues including interference with the listing of another agent ($1,000 fine), signing an inspection report for the client (probation and a $6,000 fine), sending a lock box code to a potential buyer (license revocation and a $3,000 fine), not including a promised parcel in a sale (reprimand, a $1,000 fine, and education), increasing square footage with no proof (reprimand, $1,500 fine, and education), and not giving a seller earnest money (reprimand, $500 fine, and education).
- The New Hampshire commission issued 26 orders and settlement agreements from 2019 to August 2021. Seven imposed fines of $5,000-$8,000, usually for "professional misconduct" for a variety of offenses including unlicensed practice or course instruction, violation of fiduciary duties, and improper listing and advertising of a property on the MLS. Seven orders imposed fines of lesser amounts and often included an education requirement. And seven suspended, revoked, or accepted surrender of licenses, which included three orders related to criminal charges.

The exception is license revocations related to the decision of agents to leave the profession. In some states, it appears that a large number of license revocations are related to the decisions of agents not to renew their licenses. These decisions are not surprising given the fact, reported by the National Association of Realtors in its 2021 member survey, that 21 percent of respondents were not "very certain" that they would remain active in the real estate industry for the next two years.[26]

Relationship Between Commission Composition and Consumer Performance

One could expect that there would be some relationship between commission composition and consumer performance. One would think that those commissions with active non-industry participants would provide better service to consumers. Unfortunately, it is difficult to test this prediction. Most importantly, we could identify no leaders of nonprofit consumer or housing groups who were commissioners. One would not expect non-industry members from allied businesses to focus attention on improved consumer information or complaint handling. In addition, it is not easy to divide the states into groups where any differences in performance can be observed. The subsample of states with no non-industry members is too small (4) to undertake meaningful statistical tests. And, differences in the consumer interest of individual non-industry participants could be far more important than the number of non-industry members on a commission.

Recognizing these limitations, it is interesting to explore this relationship by correlating the number of non-industry participants on a commission with states that provide good information to consumers on their websites and to states that require early disclosure of agency

[26] National Association of Realtors, 2021 Member Survey (2021), Exhibit 1-12.

relationships, most importantly, whether the agent informs customers that they are not clients until they sign an agent agreement.[27] The table below correlates having at least two non-industry members with both good consumer information on a website and early agency disclosures.

Table 4: Non-Industry Members (NIMs) and Consumer Performance for States

	Two or More NIMs (n=33)	Zero or One NIMs (n=16)
Good consumer info	9 (27%)	2 (13%)
Fair/poor consumer info	24 (73%)	14 (88%)
Early agency disclosures	12 (36%)	3 (19%)
Later agency disclosures	21 (64%)	13 (81%)

The table suggests that having at least two non-industry members on a commission, rather than none or one non-industry member, is related to good consumer information and early agency disclosures, but the two relationships are not strong (i.e., not statistically significant at the 0.05 level).

One might also predict, though, that the relationship would be stronger if commissions with at least one active public member – typically from government or the citizenry – were compared to those without such a member. The following table takes into account vacancies and business allies in its tabulations.

Table 5: Public Members and Consumer Performance for States

	At least One Public Member (n=32)	No Public Members (n=17)
Good consumer info	7 (22%)	4 (24%)
Fair/poor consumer info	25 (78%)	13 (76%)
Early agency disclosure	12 (38%)	3 (18%)
Later agency disclosure	20 (62%)	14 (82%)

As for non-industry members, public members make it somewhat more likely that the state requires early agency disclosure. But again, the relationship is not statistically significant, and there is no statistical relationship between the participation of a public member and good consumer information.

[27] These variables have their own limitations. Most importantly, while commissions control their websites and have responsibility for enforcing disclosure laws, the latter are enacted by state legislatures.

These findings suggest a weak relationship between non-industry member participation in commissions and their consumer performance. They may also reflect previously noted limitations to the analysis, especially the fact that there are no (identifiable) consumer or housing advocates who hold seats on commissions. It can be challenging for a public member who does not understand the industry or does not have experience standing up for consumers, to influence the decisions of an industry-dominated commission.[28]

Regardless, it is important to keep in mind that only a minority of real estate commissions provided good consumer information, required early agency disclosure (with only five states prominently stating that the consumer was a customer, not a client, until an agreement was signed), made available useful information about complaints and related disciplinary actions, and took reported actions related to consumer complaints.[29] It seems likely to us that the presence of nonprofit consumer and housing leaders on commissions would improve consumer performance. At present, judging from their websites, many commissions apparently do not recognize consumers as an important constituency to serve.

Recommendations for Improved Consumer Performance

There is much that state governments and real estate commissions can do to improve the services that the commissions offer to home buyers and sellers. These improvements include:

- Improving the quality and accessibility of information that commissions make available to consumers on their websites. This information should include whether an agent is licensed, whether they have been disciplined, and how consumers can complain. It should also summarize consumer rights and protections, explain the home sales process, and provide useful advice to consumers about receiving good value from agent services
- Working to make required disclosures about representation more effective and widely enforced. States, for example, could survey recent home buyers about their agency disclosures. They could also conduct shopper surveys of compliance with disclosure requirements.
- Focusing more attention on consumer complaints, including referring cases involving consumer deception and fraud to an agency -- the state attorney-general or consumer protection agency -- that can seek restitution for complainants.
- Making far greater information available to the public about the consumer performance of the commission. That information should include data on the number of complaints filed by consumers, the types of complaints registered, and how the commission disposed of the complaints with details about any disciplinary actions.

The most important reform that state governments could adopt to improve commission services to consumers, though, is shifting authority from the commissions to state officials and

[28] Allensworth (Foxes at the Henhouse, loc. cit. p. 1605) discusses the importance of having public members of licensing boards who understand economics and have "at least some experience advocating for consumer rights."
[29] The five states are Idaho, Maine, New Hampshire, South Carolina, and Vermont. Brobeck, Real Estate Disclosures, loc. cit., p. 10.

ensuring effective consumer representation on the commissions themselves, which should serve only as advisory bodies. The Consumer Federation of America holds the position that members of any industry should not have statutory authority to regulate that industry. We have also maintained that government officials with this authority can benefit from consulting with advisory committees that include representation from all important stakeholders, especially industry and consumers.

Certainly many industry members of state real estate commissions feel a sense of public responsibility when they are acting as commissioners. And industry members may also believe that monitoring and disciplining agents, brokers, and firms advances the long-term interests of the industry. That is probably why a number of industry commissioners support improved consumer information and disciplinary actions. However, these commission members also bring an industry point of view and interest to their commission decisions, not the perspective of home buyers or sellers. The views of industry members would have greater credibility if consumer and housing leaders also served on commissions.

Accordingly, government officials, not real estate commissions dominated by industry, should exercise all statutory authority over real estate agents, brokers, and firms. Attaining this goal should be the long-term objective of reformers. Politically, however, this goal is not realistic in the foreseeable future. However, there are steps that could be taken to shift authority to state officials and give consumers a greater voice in regulatory decision-making.

- States now have the ability to review commission decisions but few do so regularly. State officials should be required to review all important decisions made by commissions.
- Real estate commissions should have strong public and consumer representation. Recently, the Consumer Federation of America commissioned an online survey from Ipsos of 1,003 representative Americans about the make-up of state real estate commissions.[30] In response to a question about participation of industry and non-industry members on these commissions, 29 percent said that state commissions should continue to include more industry members than non-industry members, 43 percent said that there should be equal numbers of industry and non-industry members, 20 percent said that there should be more non-industry members than industry members, and 8 percent said that there should be no industry members on the commissions. Having equal numbers of industry and public members on commissions – the median view of consumers -- would help ensure that commission decisions were made more independently.
- The professions of the non-industry members are important. Earlier in this report, we suggested that government officials, consumer and housing leaders, and independent experts such as law professors would be the most likely non-industry members to contribute useful perspectives to commission decisions. These groups are most apt to combine expertise with independence from the industry. Members of allied businesses such as banking and building, as well as real estate attorneys, are likely to have expertise but also face potential conflicts of interest. It is in the interest of these industries for home sales to grow rapidly, and their practitioners are likely to have

[30] Ipsos online survey, loc. cit.

close working relationships, and friendships, with real estate brokers and firms. To ensure a combination of independence and expertise in non-industry members, governors or other state officials should independently select them. These officials should not rubber-stamp recommendations from industry-dominated commissions or other industry members.

Conclusion

This report has emphasized the industry dominance of state real estate commissions and their shortcomings in consumer performance related to providing useful information to consumers on their websites, to working toward effective disclosure laws, to enforcing existing disclosure laws, to addressing consumer grievances more effectively.[31] However, the agencies still seem to confer value to home sellers and buyers. Even if consumers usually cannot obtain restitution for justified grievances, the fact that commissions can license and then penalize agents for a wide variety of offenses, including consumer deception and fraud, certainly deters agents from committing these offenses. Furthermore, as noted earlier some commissions are explicitly making an effort to provide services to consumers.

However, real estate commissions would be far more likely to recognize and act on their obligation to home sellers and buyers if there were strong public and nonprofit leaders who also held commission seats. It would be difficult, for example, for industry members to defend the position that the commission should not provide useful information to consumers on their website or fail to enforce agency disclosure laws. Moreover, there is research that public members on state licensing boards increase the seriousness with which commissions address complaints and take disciplinary actions.[32] As shown in this report, state commissions discipline relatively few agents because of complaints filed by consumers.

Finally, and this is an issue not explored by this research, "public member reform may have the desired effect of increasing consumer representation in legislative decisions about licensure reform."[33] CFA's 2006 report documented the support by some state real estate commissions of anti-consumer public policies such as minimum service laws and anti-rebate statutes. While there is little evidence that commissions have recently supported these state laws, CFA could find no evidence that they have opposed existing state laws that have been criticized by the U.S. Department of Justice as anti-competitive and anti-consumer.[34]

[31] While state real estate commissions may be constrained by inadequate state laws, especially those relating to agency disclosure, as CFA's 2006 report and other sources indicate, commissions had substantial input into these state statutes.
[32] Elizabeth Graddy and Michael B. Nichol, "Structural Reforms and Licensing Board Performance," American Politics Research (July 1, 1990).
[33] Graddy and Nichol, "Public Members on Occupational Licensing Boards," loc. cit., p. 623.
[34] In its online questions and answers on Competition in Real Estate dated October, 20, 2020, the U.S. Department of Justice stated: "Rebate bans artificially inflate the cost of real estate services. Consumers are forced to pay thousands of dollars more to buy a home than they would if rebates were allowed." DOJ also wrote: Minimum service provisions harm home buyers by "forcing consumers to purchase real estate services they may not want" and by leading some brokers to "add more services and charge higher prices."