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NAR's real estate licensing reciprocity and portability study

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I am providing this study so that our members will have a reference when and if they venture forth to do business outside of New Hampshire. All 54 jurisdictions surveyed have addressed some aspects of nonresident real estate licensing for many years. The statutes and regulations are frequently revised, but most revisions simply make technical or conforming amendments, reorganize statutory schemes, or incorporate minor changes. Only a small minority of the surveyed jurisdictions have had significant, substantive changes to their reciprocity or nonresident licensing provisions during the past five years.

Not all states have statutory or regulatory provisions that provide for "pure" reciprocity by granting licenses to licensees of certain other states with minimal additional requirements. No jurisdiction's statutes or regulations, except for the District of Columbia, specifically identify the states with which it has reciprocity. However, that information is frequently available on a state's real estate department website. Only 63% of the surveyed jurisdictions have reciprocity provisions that are fairly "pure," but even several of those states require additional, state-specific educational requirements. Many of those waiver provisions also contain reciprocity terms providing that the jurisdiction will waive the education or experience requirement only if the nonresident's jurisdiction does the same. However, of those states without pure reciprocity or reciprocity by agreement, an additional eight states waive all or part of their education requirements, and 10 jurisdictions waive all or part of their experience requirements for nonresident applicants who are licensed in other jurisdictions. Only 33% of the states clearly and explicitly address different requirements for applicants from jurisdictions with which the state has pure reciprocity and those with which it does not. Statutes or regulations specifically permit the state commission to enter into reciprocity agreements with other states in only 17 of the jurisdictions, but many other jurisdictions discuss the requirements for reciprocity without explicitly granting the commission such a right.

Most states treat reciprocity for salespersons and brokers in a very similar manner, generally awarding the applicant a nonresident license of the same type as the home-state license. However, approximately 14% of the jurisdictions set forth significantly different requirements for broker or salesperson applicants. Interestingly, in 2003 New Mexico repealed its statute that addressed applications for a real estate license from nonresident broker applicants, but added back similar provisions effective January 1, 2006.

Over the past 12 months, 10 surveyed jurisdictions revised their broker-license reciprocity provisions and 7 jurisdictions revised their salesperson-license provisions, but only the following changes were significant:

Alabama added a required 6-hour course and state exam;

- * Kentucky revised its nonresident licensing requirements and no longer offers reciprocal licensing;
- * Montana no longer requires the required license verification to be certified;

* New Mexico and South Dakota revised their nonresident licensing requirements; and

* according to a memo to real estate licensees, Wyoming has terminated all reciprocity agreements. A vast majority (84%) of the surveyed jurisdictions do not require a nonresident licensee to affiliate with a resident broker. Of the approximately 20% of the jurisdictions that require some degree of affiliation with an in-state broker, most requirements apply only to nonresident salespersons. Fourteen percent of the states also set forth detailed provisions allowing co-broker agreements, whereby a nonresident broker without a local license may work with a resident broker on a single transaction. Fifty-five percent of the jurisdictions generally provide that a resident broker may split fees with a nonresident broker who is not licensed in the state, provided certain conditions are met. In the past 12 months, only 5 states revised their affiliation-requirement provisions, and all of those changes were either minor or not specifically relevant to this survey, except

* Missouri added affiliation requirements related to a broker employing an out-of-state broker for commercial real estate transactions; and

* New Mexico added a provision requiring a transaction-specific written agreement.

Only 14% of the surveyed jurisdictions require a nonresident licensee to maintain an in-state office. The other 86 percent do not require an in-state office for individual applicants, provided specified requirements are met. The most common requirement, which does not exist in only 4% of the jurisdictions, is that the applicant must agree that service of process on the state's commission or other specified in-state party constitutes proper service of process for a license-related action brought in the state against the nonresident licensee. Over the past year, only 5 states changed their laws related to in-state offices, and all of those changes were either minor or not specifically related to the topics covered by this survey.

All jurisdictions generally require a nonresident corporation to obtain a certificate of authority or similar registration before it may conduct business in the jurisdiction. Only 5 jurisdictions revised their provisions related to qualifications to do business. The most significant change was in Alabama, which, effective January 1, 2011, requires a foreign entity to be registered with the Secretary of State, instead of obtaining a certificate of authority.

Confused? Before entering a state with the intent of practicing real estate, call their department of real estate to answer any questions you may have.

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