

Economic Impact Statement

LSA Document #12-609

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

The Indiana Real Estate Commission (Commission) has determined that this proposed rule will impose minimal requirements or costs on small businesses.

Estimated Number of Small Businesses Subject to this Rule:

Small businesses subject to this rule would include all licensed real estate broker companies, of which there are currently 2,305. Also included would be any individual real estate principal broker who does not operate a licensed company. 4,967 real estate principal brokers fall into this category of sole practitioner brokers.

Estimated Average Annual Administrative Costs That Small Businesses Will Incur:

Small businesses will incur no additional annual reporting, record keeping, or other administrative costs as a result of this proposed rule.

Estimated Total Annual Economic Impact on Small Businesses:

The total annual economic impact is dependent on the number of small businesses under investigation by the Office of the Attorney General of Indiana (OAG). In 2011, consumer complaints against 345 total real estate licensees were investigated. Of this number, a total of 34 administrative complaints were filed with the Commission. Ten of the administrative complaints filed involved a licensee that would be considered small business or a small business owner. Extrapolating from this data, one can estimate that of the total complaints seen by the OAG, approximately 100 were against small businesses or the owners of a small business.

The impact on these small businesses would be the cost of responding to a request for information or documentation, which can vary greatly depending upon the circumstances and facts of a given complaint. The cost of providing requested documents and statements (at \$0.10 a page by copy) could average anywhere from \$2 to \$10 per small business based on exhibits presented at previous disciplinary hearings, giving an estimated total annual impact on small businesses between \$200 and \$1,000 per year. This calculation includes the majority of licensees who already comply with requests for a response and for documentation, but does provide a total estimated impact.

The above cost could be eliminated entirely where small businesses are able to submit documentation electronically, either by fax or e-mail.

Justification, Supporting Data, Studies, and Analyses:

The cost imposed by this proposed rule is justified for three reasons. First, the Commission is tasked with protection of consumers in the real estate industry partly through the imposition of disciplinary sanctions upon licensees. These sanctions are appropriate where a finding of violation of law is made after hearing before the Commission. If a licensee chooses to fail to respond to a request for information relevant to an investigation, he or she may currently choose to do so with relative impunity. This could result in no action against the licensee where there is no clear violation, even if a consumer has clearly suffered harm. This proposed rule closes this "loophole" and requires that all licensees who are subject to investigation cooperate with the OAG.

Second, this proposed rule will result in more efficient use of state resources. Investigations can be prolonged indefinitely due to licensees' failure to respond to requests for information. This proposed rule would remove the ability for licensees to delay resolution in a matter without cause.

Finally, this proposed rule results in a minimal cost, and one for which there is no reasonable objection. The requirement of producing documents or providing a written statement will impose a slight cost upon a small group of small businesses.

There are no supporting data, studies, or analyses.

Regulatory Flexibility Analysis of Alternative Methods:

The Commission is unable to determine a feasible alternative method for accomplishing the purpose of this proposed rule. Any possible alternative for small businesses that would allow for less stringent compliance or reporting requirements, less stringent schedules or deadlines for compliance or reporting requirements, establishment of performance standards instead of design or operational standards, and exemption from part or all of the requirements or costs imposed by the proposed rule would all completely undermine the purpose of the proposed rule and render the resulting rule utterly impotent. Similarly, an alternative that would consolidate or simplify compliance or reporting requirements for small businesses is not possible.

Explanation of Preliminary Determination:

This rule would create a new requirement on all real estate companies in the state, but the total impact is minimal when considering the number of affected small businesses and the actual cost involved. Because the requirement is placed upon all real estate licensees, the number of affected businesses depends on the number of investigations performed by the OAG.

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