

# Preliminary Evaluation of the State Real Estate Commission

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**Recommendation: Full Evaluation**

## The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 et seq. of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The commission last underwent a full evaluation as part of sunset review during 2000. Chapter 143 of 2001 extended the commission’s termination date by 10 years to July 1, 2012. In conducting this evaluation, DLS staff reviewed relevant State statutes and regulations, commission meeting minutes, and prior sunset evaluations; interviewed commission members and staff; analyzed licensing, financial, and complaint data provided by the commission; and attended one commission meeting.

The commission reviewed a draft of this preliminary evaluation and provided the written comments attached as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in commission comments may not reflect the final version of the report.

## The Real Estate Industry in Maryland

Licensed real estate professionals arrange the transfer of property from seller to buyer. Licensees commonly take on tasks of listing available properties, establishing clear title, mediating price negotiations, meeting all legal requirements, and suggesting sources of financing, among other things. Aside from participating in this aspect of the property market, licensees may rent and manage properties. They may also be involved in commercial, industrial, or agricultural real estate transactions.

As defined by statute, providing real estate brokerage services in Maryland includes providing any of the following services for another person in exchange for compensation:

- selling, buying, exchanging, or leasing any real estate;
- collecting rent for the use of real estate; or
- assisting a person in locating or obtaining real estate for purchase or lease.

Providing real estate brokerage services also includes engaging in a business:

- dealing in real estate or leases or options on real estate;
- whose primary purpose is promoting the sale of real estate through a listing service; or
- that subdivides land that is located in any state and sells the divided lots.

Like most states, Maryland uses a tiered licensing structure. Real estate brokers serve as the fiduciary agent of record in real estate transactions for which they or their firm acts as intermediary. Associate brokers have the option of working as independent brokers but have chosen instead to work for a licensed broker. Real estate salespeople may work only under affiliation with a real estate broker and maintain a fiduciary tie to the broker for whom they work. Brokers actually retain the licenses for salespeople who work for them so they cannot work for more than one broker at any time.

## **State Real Estate Commission**

The State Real Estate Commission was formed in 1939 (Chapter 351 of 1939). Laws regulating the commission are found in Title 17 of the Business Occupations and Professions Article of the Annotated Code. The commission was created to protect the health, safety, and welfare of the public through its examination, licensing, and regulatory activities in regard to real estate. Specifically, the commission:

- licenses all real estate brokers, associate brokers, and salespersons;
- processes complaints against licensees; and
- administers the Real Estate Guaranty Fund, which provides limited restitution to consumers who have filed valid claims against licensees.

## **Composition of the Commission**

The commission is one of 22 occupational and professional licensing boards housed within the Department of Labor, Licensing, and Regulation (DLLR). The commission consists of nine members appointed by the Governor with the advice of the Secretary. The Governor may remove a commission member for incompetence or misconduct. The chairman is elected by

members of the commission but serves at the pleasure of the Secretary. The members' terms are staggered, and there is no limit to the number of consecutive terms each member may serve. Although the commissioners do not receive a salary, they receive reimbursements for expenses, including travel.

According to statute, the nine members should include five industry representatives and four consumer members, but the commission currently has a vacancy for one consumer member. Current commission members are listed in **Appendix 2**. The commission has had difficulty both retaining consumer members and in enforcing the attendance of consumer members at monthly commission meetings. Over the past year, the commission has lost two consumer representatives and one industry representative. A new industry representative and one new consumer member were appointed in March 2009. At this time, no one has expressed interest in filling the remaining vacant consumer position.

Commission staff expressed concern that consumer members, with little professional interest in the activities of the commission, may not be prepared for the level of commitment required to serve, which includes attendance at monthly full-commission meetings, hearing panel meetings, and individual preparation to hear complaint cases in panel review. Some members found these commitments to be beyond their initial expectations. The State requires commission members to attend at least half of full meetings to remain active as a member. Meetings are rescheduled at times to accommodate the members' calendars. Recently, two members resigned because they were unable to fulfill their commission obligations.

Of the eight current commission members, six have been on the commission for at least four years. When all positions have been filled, new commission members will receive training in hearing procedures, interviewing procedures, and real estate law to assist in deciding complaint cases. Training of commission members has come both from internal commission orientation and from training programs offered by the Association of Real Estate License Law Officials (ARELLO). A training program offered by ARELLO is the Commissioner College, a two-day training for members of state real estate commissions that a number of current commission members, including the chair and the executive director, have attended. Attendees have given the program high praise.

### **Standing Committees, Hearing Boards, and Staff**

The State Real Estate Commission has two standing committees devoted to legislative and educational matters. Other committees are formed to advise the commission on emerging concerns on an *ad hoc* basis. The standing committees report to the full commission at the monthly business meetings.

The commission is authorized to establish one or more real estate hearing boards with the approval of the Secretary. The commission has established two hearing boards. Each hearing board consists of three members and meets once a month to hold exception or application

hearings. Each hearing board must have at least one public member and one industry member. Current hearing board assignments are listed in **Appendix 3**. The commission has also created hearing panels to review cases that have been investigated to determine if the case should be referred to the Office of the Attorney General to file charges or be dismissed.

The State Real Estate Commission has 17 authorized staff members to support its operations. The executive director manages the staff. In addition to the executive director, the staff consists of an assistant executive director; an education administrator; a licensing supervisor; a person who works on education, complaints, and Guaranty Fund claims; a complaint intake coordinator; two paralegals; a licensing secretary; a receptionist; an auditor; and four investigators. The other two authorized investigator positions became vacant in fall 2009. The auditor and four investigators work largely from their homes. The executive director position was instituted in 1978. The current executive director has held the position since 2006.

### **Guaranty Fund**

The Guaranty Fund is administered by the commission to compensate consumers suffering financial loss as a result of licensee misconduct. The fund covers an act or omission that occurs in the provision of real estate brokerage services by a licensed broker, associate broker, salesperson, or unlicensed employee of a licensed broker. A claim must be based on an act or omission in which money or property is obtained by a licensee by fraud, theft, embezzlement, false pretenses, or forgery. A complainant must prove actual loss to receive damages. All new licensees pay a fee of \$20 toward the Guaranty Fund; no Guaranty Fund fee is assessed for license renewals.

By law, the Guaranty Fund must maintain a minimum balance of \$250,000. Should fund resources go below this figure, each licensee is assessed a one-time fee to restore the minimum balance. Individuals licensed by the commission who have claims awarded against them from the Guaranty Fund are required to reimburse the fund for the claims made. If the licensee fails to reimburse the fund in full with interest within 30 days, the licensee is suspended and the matter is referred to the State's Central Collection Unit. The licensee may be reinstated when the fund is fully reimbursed, plus 10% interest.

### **License Requirements and Fees Reflect Tiered Structure**

The State Real Estate Commission grants licenses to qualified real estate brokers, associate brokers, and salespersons. To become licensed, an applicant must complete the necessary training, successfully pass the examination required for the license, submit the required application with all requested information, pay a \$20 Guaranty Fund assessment, and pay a licensing fee that varies by license type.

To become licensed as a real estate salesperson, an individual must successfully complete a basic course in real estate, or, if approved by the commission, college-level courses in real estate subjects. The basic course must include a three-clock-hour course in real estate ethics approved by the commission. In addition, an applicant must obtain a commitment from a

licensed real estate broker that the applicant will become affiliated with the broker after receiving a real estate salesperson license. The biennial licensing fee for a salesperson is \$90.

To be licensed as an associate broker, an individual must successfully complete 135 classroom hours of pre-licensing broker courses and have been a licensed salesperson for at least three years. In addition, an applicant must obtain a commitment from a licensed real estate broker that the applicant will become affiliated with the broker after receiving an associate real estate broker license. The biennial licensing fee for an associate broker is \$130.

To obtain a real estate broker's license, an applicant must successfully complete 135 classroom hours of pre-licensing broker courses and have been a licensed salesperson for at least three years. The biennial licensing fee for a real estate broker's license is \$190.

### **Drop in Number of Licensees Reflects Downturn in Real Estate Sales**

As **Exhibit 1** shows, the vast majority of licensees are salespersons, with much smaller numbers of brokers and associate brokers. According to commission staff and members, the downturn in the residential real estate market has resulted in the total number of licensees significantly decreasing over the past few years, which is also reflected in Exhibit 1. According to the Maryland Association of Realtors, year-over-year sales of existing homes dropped by about 50% between 2006 and 2009. For example, 2,209 existing homes sold in January 2009, compared with 4,675 in January 2006, almost a 53% drop. With a decline in the number of real estate transactions, fewer licensees are needed to serve consumers. A more complete listing of licensing activity is provided in **Appendix 4**.

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**Exhibit 1**  
**Licensees by License Type**  
**Fiscal 2005-2009**

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
<b>Broker</b>					
New	385	593	479	500	357
Renewal	2,000	2,041	2,095	2,117	2,126
<b>Associate Broker</b>					
New	303	488	414	357	294
Renewal	1,224	1,338	1,272	1,404	1,318
<b>Salesperson</b>					
New	9,098	9,392	6,734	4,631	2,361
Renewal	13,295	15,038	17,094	17,352	16,194
<b>Total</b>	<b>26,305</b>	<b>28,890</b>	<b>28,088</b>	<b>26,361</b>	<b>22,650</b>

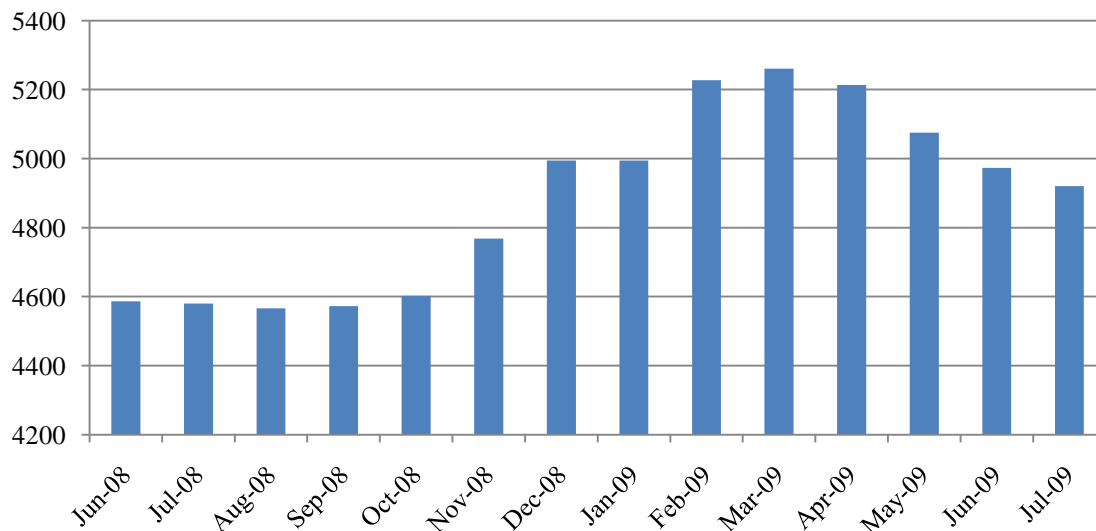
Note: License renewal is biennial; renewal numbers do not reflect existing licensees that were not due for renewal in a given fiscal year.

Source: State Real Estate Commission

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A license holder may apply for inactive status with the commission, provided the applicant qualifies for an active license and continues to pay the biennial license renewal. Unless a license on inactive status is reactivated, the license expires four years after the date it is placed on inactive status. To reactivate a license, a licensee must apply, meet all active licensing requirements, and pay a reissuance fee, currently set by the commission in regulation at \$50. The number of inactive licensees began rising in October 2008, but tapered off beginning in April 2009, as shown in **Exhibit 2**. Just as the total number of licensees is in decline, the rise in inactive licensees may be explained by the decrease in real estate activity.

**Exhibit 2**  
**Inactive Licensees**



Source: State Real Estate Commission

The commission uses staggered expiration dates to distribute staff time spent on licensing work. A licensee may reinstate an expired license without re-examination if the licensee:

- applies to the commission for reinstatement within four years after the license expires;
- meets the requirements of good character and reputation;
- complies with the applicable continuing education requirement for the period during which the individual was not licensed; and
- pays to the commission a reinstatement fee, currently set in regulation at \$150.

## **License Renewal Requires Continuing Education**

Licenses expire two years from issuance and may be renewed for all applicants who meet the statutory requirements and pay the renewal fee. Renewal is contingent upon successful completion of at least 15 clock hours of continuing education instruction. Every two years, each licensee must complete at least:

- a three-clock-hour course that outlines relevant changes that have occurred in federal, State, or local laws and regulations;
- a 1.5-clock-hour course that outlines federal, State, and local fair housing laws and regulations; and
- a three-clock-hour ethics course that includes the Maryland Code of Ethics and a discussion of the practices of flipping and predatory lending.

The commission has adopted regulations that provide for the conduct of continuing education instruction courses by remote access satellite, closed-circuit video, transmission over the Internet, home study, and any other approved delivery system. Internet courses are popular amongst licensees for their convenience both in terms of location and scheduling but are limited by the number of courses offered by continuing education providers. Providers find these courses more expensive and time consuming to create than traditional courses.

Courses must be approved by the commission to meet the continuing education requirement. The commission processes these requests within 30 days of receipt. Providers may submit a course for approval online. The course is approved for two years, with automatic renewal unless the commission indicates otherwise.

The 1999 preliminary sunset evaluation raised the issue of performance measures for continuing education courses, such as testing of licensees at the conclusion of a course, to ensure that the licensee is gaining the full benefit of the continuing education instruction. The commission has not implemented any formal performance measures for continuing education. Most online courses, however, include a final test as a component of the coursework. The commission is not alone, however. The lack of performance measures is an issue for a number of regulatory boards that may warrant further study across industries.

## **Statutory Changes Affecting the Commission**

As a result of the 2000 full evaluation, the commission's termination date was extended for 10 years to July 1, 2012. Significant changes in the laws governing the commission since that evaluation are shown in **Exhibit 3**.

**Exhibit 3**  
**Major Legislative Changes Since the 2000 Sunset Evaluation**

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2001	143	<p>Extends the termination date of the commission by 10 years to July 1, 2012; adds the study of relevant changes to regulations to the list of subject matter of continuing education courses that the commission approves.</p> <p>Requires the commission to adopt regulations that provide for the conduct of continuing education instruction courses by remote access satellite, closed circuit video, computer and Internet transmission, home study, and any other delivery system approved by the commission.</p>
2001	228	Requires a real estate broker to deposit trust money in a trust account maintained by the real estate broker within seven business days, increased from the previous three-day requirement, after the acceptance of a contract of sale by both parties.
2002	583	Prohibits licensed real estate salespersons and licensed associate real estate brokers from advertising unless certain requirements regarding the display of their names or trade names are met; authorizes a salesperson or associate broker to provide brokerage services under a trade name approved by the commission.
2004	541	Requires an applicant for licensure as a real estate salesperson, associate real estate broker, or real estate broker to take a course in real estate ethics; alters the continuing education requirements for a licensee to renew a license; authorizes a licensee holding a license from another state to substitute clock hours of continuing education instruction earned in another state under certain circumstances; expands the continuing education subject matter that may be approved by the commission to include coursework that assists a licensee in providing real estate brokerage services to the public in a more efficient manner.
2005	377	Authorizes one or more licensed real estate salespersons and licensed associate real estate brokers who are affiliated with a licensed real estate broker, with the consent of the licensed real estate broker, to form a limited liability company (LLC) under the Maryland Limited Liability Company Act and to direct that any commission due the salesperson or associate broker be paid to the LLC.



<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2005	399	Establishes the State Real Estate Commission Fund as a special, nonlapsing fund in the Department of Labor, Licensing, and Regulation to cover the actual documented direct and indirect costs of fulfilling the commission's duties. Repeals licensing fees specified in statute and authorizes the commission to set certain fees based on calculations provided by the Secretary. A fee may not be increased annually by more than 12.5% of the existing and corresponding fee.
2006	200	<p>Authorizes the commission to deny, suspend, or revoke a license, or reprimand a licensee, if the applicant or licensee has been disciplined under a real estate licensing law of another jurisdiction.</p> <p>Authorizes the commission to issue a reciprocal license to a person under certain circumstances; grants personal jurisdiction to the commission and the courts of the State over a holder of a reciprocal licensee in certain transactions.</p>
2008	450	Requires all real estate licensees to keep and provide access to transaction records for five years, and authorizes a licensee to keep an electronic record of the information under certain circumstances.
2008	151	Includes instruction provided by: remote access satellite, closed-circuit video, computer and Internet transmission, home study, and any other delivery system approved by the commission, as satisfying basic education requirements for licensure as a real estate salesperson.
2008	154	Authorizes the commission to summarily suspend a license if the licensee has been convicted of a felony or if the licensee fails to disclose to the commission that the licensee has been convicted of a felony within 10 days after the conviction or release from incarceration.
2008	282	Increases the maximum penalty that may be imposed for certain subsequent violations of the Maryland Real Estate Business Act from a \$5,000 fine and imprisonment of one year to a \$25,000 fine and imprisonment of three years and extends the applicability of the penalties to additional offenses.

Source: Laws of Maryland

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## The Commission Is Now Special Funded

As noted above, Chapter 399 of 2005 converted the State Real Estate Commission to a special funded entity and granted fee-setting authority to the commission. Prior to fiscal 2007, the commission operated by using State general funds, and all revenue collected by the commission was paid into the general fund. Revenues for the commission include licensing fees and other fees charged for services provided, which previously had been set in statute. Following the enactment of Chapter 399, the commission raised many fees by at least 100%, as reflected in **Exhibit 4**. The services provided by the commission and corresponding fees charged are shown in **Appendix 5**.

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### Exhibit 4 Licensing Fee Increases Approved by the Commission

	<u>Broker</u>	<u>Associate Broker</u>	<u>Salesperson</u>
Current Fee	\$190	\$130	\$90
Previous Fee	\$95	\$65	\$45

Source: State Real Estate Commission, Department of Legislative Services

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Despite the recent decrease in the number of licensees, the fee increases approved by the commission resulted in a continued increase in commission revenue. The commission's revenue continues to exceed total expenditures, though by a smaller margin, as shown in **Exhibit 5**.

In repealing the statutory fees and authorizing the commission to set most of its own fees, however, Chapter 399 made no change to § 17-521 of the Business Occupations and Professions Article, which requires a person who tenders a check to the commission that is dishonored to pay a \$25 fee to the commission for the cost of collection. Section 15-802 of the Commercial Law Article sets the standard collection fee for dishonored checks at \$35. Though the commission controls most of its fees, it does not have the authority to change the collection fee.

There are two additional fees that the commission would like to change, but it lacks the authority to do so. The fee to issue a new license to a broker for an address change is set in statute at \$5. When a broker changes addresses, however, the commission may be required to print up to several hundred new licenses for the licensees that move to the new address with the broker. The commission would like to charge a fee for each new license issued as a result of a broker's address change.

**Exhibit 5**  
**Revenues and Expenditures of the State Real Estate Commission**  
**Fiscal 2005-2010**

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010 (est.)</u>
<b>Total Revenues</b>	<b>\$1,987,096</b>	<b>\$2,142,510</b>	<b>\$1,728,989</b>	<b>\$2,022,188</b>	<b>\$2,283,699</b>	<b>\$2,600,000</b>
Direct Expenditures	1,095,480	830,422	767,223	1,128,950	1,396,747	1,578,487
Direct Legal Expenditures	0	0	299,376	297,346	297,995	--
O & P Cost Allocation	304,144	246,183	309,382	375,741	308,770	397,649
DLLR Indirect Costs	120,657	130,173	98,211	118,266	160,466	--
<b>Total Expenditures</b>	<b>1,520,281</b>	<b>1,206,778</b>	<b>1,474,192</b>	<b>1,920,303</b>	<b>2,163,978</b>	<b>--</b>
<b>Operating Surplus</b>	<b>466,815</b>	<b>935,732</b>	<b>254,797</b>	<b>101,885</b>	<b>119,721</b>	<b>NA</b>
<b>Fund Balance</b>	<b>NA</b>	<b>NA</b>	<b>\$269,978</b>	<b>\$381,121</b>	<b>\$345,240</b>	

Notes: The State Real Estate Commission became a special funded entity effective July 1, 2006. DLLR indirect costs were first uniformly calculated in 2005, so do not appear for fiscal 2004. Legal expenditures are not calculated for generally funded boards, so do not appear prior to fiscal 2007. DLLR indirect costs are allocations for activities and services provided at the departmental level such as Budget, Personnel, General Services, and Office of the Secretary. O&P Allocation represents services provided to boards and commissions by the Division of Occupational and Professional Licensing such as central licensing, telephone center, Commissioner's Office, and IT costs.

Fiscal 2010 figures represent an estimate of the State Real Estate Commission's revenues and certain expenditures. Indirect costs, direct legal expenditures, and total expenditures are omitted from the 2010 estimates. DLLR does not predict indirect costs because they are based on a federal cost allocation formula, which varies from year to year, and the percentage has not yet been determined for 2010. Direct legal expenditures are derived from the budget of the legal services division, and 2010 estimates cannot yet be calculated by DLLR. Total expenditures cannot be estimated without calculations of indirect costs and direct legal expenditures.

Source: Department of Labor, Licensing, and Regulation

A fee that is not currently allowed by the Real Estate Brokers Act would apply to a licensee that transfers from one branch office of a broker to another branch. This "in-house transfer" is not considered a brokerage transfer, but a new license must be issued to reflect the address change. There is no statutory fee for this transfer; therefore, there is no signal to the

commission's computer system to generate a new license. Often, these new licenses are not created until a complaint comes from a licensee months later. The commission would like to charge the same fee for this "in-house transfer" that is charged to licensees for a transfer from one company to another because the same service is provided by the commission for each transaction.

## **Technological Advances Benefit the Commission**

Ten years ago, technological progress for the commission came in the form of individual computers for each staff member and a web site devoted to the commission that provided information to licensees and allowed licenses to be renewed online. More recently, these advancements have been honed to provide an electronic means of serving the public and licensees, and to improve efficiency for commission staff. The executive director reported that between 80 and 95% of licenses are now renewed online.

The commission maintains a web site as part of the larger DLLR page. The commission web site includes information about the commission and news and information for consumers and the public. Web site visitors can access information on educational requirements, out-of-state licenses, reciprocity, and a quarterly online newsletter. The executive director has worked to include links to other important web sites in the newsletter. In addition to its posting on the web site, the newsletter is sent to every licensee with a current email address on file.

With recent upgrades to the web site, prospective licensees can find information on license requirements and on taking the required exam, including a link to the examiner's web site. The public can use the web site to download a complaint form and search for active licensees practicing in the State. The commission also maintains the outcomes of disciplinary proceedings for the prior 10 years on its web page. The commission would prefer its own "homepage" to provide greater services to licensees and consumers, such as a searchable database of licensees including each licensee's address, disciplinary record, and continuing education status.

The commission has worked to increase automatic electronic communication with licensees. Licensees receive an email 60 days before their license expires, notifying them of the impending deadline and the continuing education requirements they must fulfill. A second email is generated three days before the license is terminated if it still has not been renewed. A representative of the Maryland Association of Realtors (MAR)<sup>1</sup> reported that licensees have found this to be a particularly helpful use of new technology. When a licensee changes his or her broker affiliation, an automatic email is generated and sent to the licensee and to both the new and former broker affiliations. This has helped licensees and brokers to be notified of changes and react quickly if there is an error in the assignment.

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<sup>1</sup> A list of real estate professional associations, including MAR, is included in **Appendix 6**.

The commission staff currently uses the AS/400 server for data warehousing, email, and project sharing. None of the staff have received formal training to use the AS/400 program, and the executive director believes the staff is not taking advantage of all of its features.

Licensees have begun to take advantage of the opportunity to take continuing education courses online, discussed previously under “Continuing Education.”

## **Consumer Complaints**

From the time a consumer discovers, or by the exercise of ordinary diligence should have discovered, loss or damage due to a violation by a licensee, the consumer has three years to file a complaint with the commission. Complaints received by the commission are initially received by the complaint intake coordinator. The complaint intake coordinator makes an initial determination as to whether the commission has jurisdiction over the complaint. If the commission lacks jurisdiction, the coordinator sends a letter returning the complaint to the complainant. If the case is accepted, it is assigned a case number, and a letter is sent to the complainant acknowledging receipt of the complaint. A copy of the complaint is sent to the licensee requesting a timely response. The case is then reviewed by commission staff to determine if the issue is appropriate for commission review. This review is conducted by paralegals trained to recognize legal issues surrounding real estate transactions. If the complaint is not under the jurisdiction of the commission or lacks merit, the paralegal dismisses the case or redirects it to the appropriate agency. The paralegal must include justification for the decision to dismiss a case or send it to investigation. The commission attempts to process new complaints at this initial stage within 30 days of receipt. The full commission must approve the administrative dismissal of cases recommended to it by the paralegals. Beginning in 2007, all accepted cases, including those that are dismissed or transferred, are logged in the commission’s complaint database.

If a case has merit and is within the jurisdiction of the commission, it is sent to the investigative phase and a second letter is sent to the complainant indicating the transition and providing contact information of the investigator assigned to the case. Investigators are trained using sample investigations during an orientation phase at the beginning of employment, and attend ARELLO programs throughout their employment. The investigators also receive mediation training through the Office of Administrative Hearings (OAH). Investigators actively investigate 20 cases at a time. An investigator reported that she begins by requesting supporting documents from each side and, on average, begins investigating a case several months after it is assigned to her, upon receipt of the requested documents. A complaint may take several months to investigate, with the most common problems prolonging investigation being difficulty locating witnesses, the limited memories of witnesses, and problems producing adequate records.

Once the investigator has completed a case report, the case is directed to one of two review panels. If the review panel decides to issue charges, the complaint is referred to the

Office of the Attorney General for precharge review and then moves to OAH. At the hearing phase, the commission acts independently, and does not represent either the complainant or the licensee. Both the complainant and the licensee may bring private counsel, but few exercise this right. After the recommendation of OAH is reviewed by one of two commission hearing panels, the affected parties are advised of the decision. Exceptions may be filed against regulatory decisions. If such an exception is filed, the hearing panel conducts an argument hearing to make a final decision, which may be appealed to the circuit court.

Disciplinary actions against licensees for regulatory violations may include a fine, suspension, or revocation of a license. Decisions that involve a Guaranty Fund payout are always accompanied by either suspension or revocation of a license. The commission does not keep statistics on the number of disciplinary actions by outcome type, but a list of disciplinary actions by year is available on the commission web site.

In fiscal 2009, the commission received 585 complaints. This represents a significant decrease in the number of complaints from fiscal 2008. Members of the commission have speculated that this is because of the decrease in the number of real estate transactions. The number of complaints for the previous five years is listed in **Exhibit 6**.

The data reflects a significant jump in the number of complaints between fiscal 2005 and 2006 and again between fiscal 2006 and 2007, with a corresponding drop in the number of investigations. This can be explained by the fact that complaints typically lag the market by a year or more. The rise in complaints in fiscal 2006 reflects the real estate market boom that occurred in 2005. At that time, the commission had several vacant investigator positions and could not begin a search to fill the vacancies until after the special funding went into effect in July 2006. Filling the positions took almost a year. Once the investigators were hired, each required six to nine months of training before taking on official investigations. One of these new investigators left the position for health reasons. One of the two investigators employed in April 2006 was promoted to assistant director in August 2006. This shortage led to the drop in investigations performed in fiscal 2006 and 2007, and subsequent significant increase in investigations when the commission became fully staffed in 2008.

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**Exhibit 6**  
**Complaint Data for the State Real Estate Commission**

	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Total Complaints Received	124	407	777	892	585
Investigations	148	128	102	206	256
Hearings Held by Commission	69	47	52	53	62

Note: During fiscal 2005 and 2006, cases that were dismissed or returned to the complainant were not tracked. Beginning in 2007, all cases were given a case number and tracked, regardless of whether they were dismissed or returned to the complainant. An investigation may originate from a complaint placed the previous fiscal year.

Source: State Real Estate Commission

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## Guaranty Fund Balance Remains High

As shown in **Exhibit 7**, the Guaranty Fund balance has been in excess of \$1.75 million for the past four years, well in excess of the statutory minimum balance of \$250,000. The \$250,000 minimum balance has not been increased since the Guaranty Fund was established by Chapter 648 of 1971. House Bill 68 of 2008 would have increased the Guaranty Fund level to \$500,000 by 2012. When the full sunset evaluation of 2000 was conducted, the fund balance had been in excess of \$1.2 million for eight years.

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### Exhibit 7 Guaranty Fund Data

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>
Guaranty Fund Balance at the End of Each Fiscal Year	\$1,770,910	\$2,025,901	\$2,209,690	\$2,339,061
Amount Claimed	\$3,779,518	\$6,332,117	\$10,898,007	\$9,310,964
Amount Paid	\$110,163	\$58,766	\$42,942	\$114,839
Total Number of Awards	14	8	9	9
Awards for Less than \$3,000	4	4	4	2
Awards Between \$3,000 to \$24,999	9	3	5	6
Awards for \$25,000	1	1	0	1

Source: State Real Estate Commission

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Consumer complaints involving a claim against the Guaranty Fund far exceed the amount paid from the fund each year. The total amount claimed and total amount paid for each of the previous five fiscal years is also shown in Exhibit 7. Often, consumers claim money damages for punitive damages or emotional distress, neither of which can be paid from the fund. Consumers may also request real damages above the statutory cap of \$25,000 instituted by Chapter 586 of 1984. The commission does not track the total amount of claims actually eligible for payment from the fund as opposed to the total amount requested by claimants, so a comparison between eligible claims and payments made is not possible. The decision as to eligibility of a claim for reimbursement is made by the administrative law judge at the Guaranty Fund hearing.

The \$25,000 payout cap has not been increased since it was first instituted in 1984. There were 40 cases resulting in Guaranty Fund payouts between fiscal 2006 and 2009. Of these, only three cases had a payout of \$25,000. The number of Guaranty Fund awards by amount awarded is included above in Exhibit 7. During the period covered by the 2000 sunset evaluation, however, awards of \$25,000 were more common, with between two and five such

awards each year from fiscal 1996 to 2000, totaling 16 awards of \$25,000 over that five-year span.

## **Recommendation**

The commission is meeting its statutory obligations. However, several issues merit additional attention and should be studied further. The commission identified several of these issues and is exploring ways to resolve problems. **Nevertheless, the Department of Legislative Services recommends that the State Real Estate Commission undergo full evaluation.** The justification for, and issues to be addressed in, a full evaluation are discussed below.

### **Fewer Licensees May Lead to Funding Problems**

The commission is currently operating at a budget surplus. Though the number of annual license transactions has decreased by more than 5,000 over the past two years, this drop in revenue is more than compensated by the significant increases in fees. The commission slightly increased its operating surplus from approximately \$102,000 in fiscal 2008 to approximately \$120,000 in fiscal 2009. The fiscal 2010 surplus cannot yet be projected. In the future, however, fees may only be increased by 12.5% annually. A full evaluation should examine whether the current or a potential future drop in the number of licenses may lead to budgetary deficits, or whether these issues may be overcome by further increasing licensing fees. A full evaluation should also examine whether the cap on fee increases is warranted.

Additional commission projects may require greater funding than the current funding level allows, putting further strain on commission resources. For example, the lack of a stand-alone web site devoted to commission functions was raised in the last evaluation, and remains a concern of the commission. The commission web page is housed with other occupational and professional licensing commissions, but the commission would prefer its own homepage to give it greater flexibility to provide additional online services. A full evaluation should study the costs and feasibility of adding online services to the commission web site, including those associated with establishing a training program for staff on the use of technology available to them.

### **Guaranty Fund Balances and Payouts Should Be Examined**

Since fiscal 2006, the Guaranty Fund's ending balance has not fallen below \$1.75 million. The fund's minimum balance requirement has not been increased in nearly 40 years, and it is unclear whether the fund balance should be maintained at such a high level. A full evaluation should determine whether the \$20 Guaranty Fund fee is too high.

One factor accounting for the high fund balance may be the low level of payouts. Payments from the Guaranty Fund are limited to a maximum of \$25,000 – a figure that has not been increased since 1984. Ten years ago, 16 payments of \$25,000 had been made in the years



prior to the full evaluation, but today only 3 such payments have been made in recent years. Representatives of the commission believe this low number of \$25,000 awards demonstrates that a larger cap is not required. It seems counterintuitive, however, that damages would not rise with home prices. Though only 7.5% of claims in the past four fiscal years have exceeded the award cap, some claimants may suffer genuine losses beyond this amount. A full evaluation should examine whether the \$25,000 award cap is adequate to meet the needs of claimants in today's market, whether the rules governing payouts are appropriate, and whether homebuyers are sufficiently aware of the Guaranty Fund.

The majority of Guaranty Fund payouts are not repaid by the licensee at fault. Commission staff explained that many licensees who have a Guaranty Fund judgment against them often prefer to not repay the fund and therefore suffer the loss of their license, rather than repay the fund and attempt to continue practicing with a tarnished reputation. A full evaluation should study statistics on complaint processing, fund payouts, and licensee repayment rates to determine if the Guaranty Fund is being used effectively to redress complainant grievances.

### **Information on Disposition of Complaints Is Incomplete**

As noted earlier, the commission does not track the disposition of complaints against licensees, and it is not clear from the data provided by the commission whether all complaints are processed and resolved in a timely manner. Available information indicates that the commission was not able to investigate all complaints in fiscal 2005 and 2006 due to vacant investigator positions, which may have generated a backlog. Indeed, commission staff reports that investigations sometimes do not begin in earnest for several months after a complaint is received, indicating that a substantial backlog may exist. A full evaluation should determine whether a backlog of complaints exists, the causes of the backlog, and potential strategies for alleviating any delays in processing complaints.

### **The Commission's Authority Over Certain Fees Should Be Reviewed**

Control over licensing fees has largely been transferred to the commission but, as discussed earlier, there are several fees that remain outside the commission's authority. A full evaluation should consider whether the commission should be given authority to institute or raise those fees.

### **Continuing Education Is Not Tracked**

Licensees are expected to complete continuing education courses throughout their real estate careers so that the licensees remain qualified to engage in the activities for which they are licensed. Completion of the required number of continuing education course hours is mandatory for license renewal. Prior to online license renewal, licensees would submit records of continuing education course completion with the application for license renewal. The current online renewal process, however, relies on the honesty of the licensee accurately representing

that they have completed the required courses. An online continuing education tracking system, however, could replace this “honor system” with an efficient means for both the commission and licensees to ensure that the requirements are being met. A full evaluation should study the feasibility of introducing a program that would allow for online tracking of course credits.

### **Potential Commission Members May Need Pre-appointment Training**

The 2000 full evaluation recommended implementing a program to improve the training of new and existing commission members on their respective duties as industry regulators. While the commission has taken steps to improve training for members after their appointment to the commission, there is no orientation for members before their appointment. Consumer members, in particular, may be unaware of the time commitment expected of them, and some have failed to meet their commission obligations. A full evaluation should examine the feasibility of implementing a pre-appointment education program targeted toward potential commission members, to the extent that the commission is aware of candidates to fill vacant positions.

## **Appendix 1. Written Comments of the State Real Estate Commission**

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December 1, 2009

Mr. Michael C. Rubenstein  
Principal Policy Analyst  
Department of Legislative Services  
90 State Circle  
Annapolis, MD 21401-1991

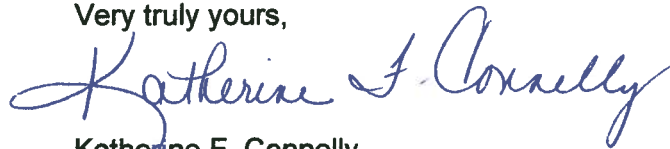
Dear Mr. Rubenstein:

On behalf of the Maryland Real Estate Commission I wish to acknowledge receipt of the draft Preliminary Evaluation of the Maryland Real Estate Commission.

Under separate cover I have provided your Legislative Analyst, Lindsay Eastwood with factual corrections to the report. I would like to express my appreciation to the Department of Legislative Services for the professionalism shown by Ms. Eastwood while gathering the information necessary for the compilation of this evaluation.

The Real Estate Commission agrees with many of the recommendations made in the Preliminary Evaluation and believes that they are currently on the right track to overcome some of the issues mentioned. Although we believe there has been some misunderstanding of our complex processes, we look forward to discussing these recommendation and any others that are noted during the recommended full evaluation.

Very truly yours,



Katherine F. Connelly  
Executive Director

KFC/slf

cc: Alexander M. Sanchez, Secretary  
Stanley J. Botts, Commissioner  
Harry Loleas, Deputy Commissioner  
John Nicholas D'Ambrosia, Chair, Maryland Real Estate Commission  
Ms. Lindsay Eastwood, Legislative Analyst.





## **Appendix 2. Commission Membership**

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### **Industry Representatives**

J. Nicholas D'Ambrosia, Chair  
Nancy Simperts, Vice Chair  
Anne S. Cooke  
Marla S. Johnson  
Georgiana S. Tyler

### **Consumer Representatives**

Surina A. Jordan  
Robin L. Pirtle  
Colette P. Youngblood  
(Vacant since 9/17/08)





## Appendix 3. Hearing Board Assignments

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### **Board 1**

J. Nicholas D'Ambrosia  
Surina Jordan  
Marla Johnson

### **Board 2**

Anne S. Cooke  
Robin L. Pirtle  
Georgiana S. Tyler



## Appendix 4. Licensing Activity

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	<u>FY2005</u>	<u>FY2006</u>	<u>FY2007</u>	<u>FY2008</u>	<u>FY2009</u>
Broker License (Initial)	385	593	479	500	357
Broker License (Renewal)	2,000	2,041	2,095	2,117	2,126
Reciprocal Broker (Initial)	0	0	6	37	20
Reciprocal Broker (Renewal)	0	0	0	0	0
Associate Broker (Initial)	303	488	414	357	294
Associate Broker (Renewal)	1,224	1,338	1,272	1,404	1,318
Reciprocal Associate Broker (Initial)	0	0	1	13	4
Reciprocal Associate Broker (Renewal)	0	0	0	0	0
Salesperson License (Initial)	9,098	9,392	6,734	4,631	2,361
Salesperson License (Renewal)	13,295	15,038	17,094	17,352	16,194
Reciprocal Salesperson (Initial)	0	0	9	141	57
Reciprocal Salesperson (Renewal)	0	0	0	0	0
License Transfers	7,028	8,202	9,403	9,195	8,323
Total License Transactions	33,333	37,092	37,507	35,747	31,054

Note: Total does not reflect licensees that were not due for bi-annual renewal in a given fiscal year.

Source: State Real Estate Commission



## Appendix 5. Commission Fees

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<u>Fee Type</u>	<u>Broker</u>	<u>Associate Broker</u>	<u>Salesperson</u>
Initial Application	\$190	\$130	\$90
Examination	\$78	\$78	\$78
Guaranty Fund Assessment	\$20	\$20	\$20
License Renewal	\$190	\$130	\$90
Exchange of License	\$190	\$130	\$90
Replacement of Lost or Destroyed License	\$25	\$25	\$25
Replacement of Lost or Destroyed Pocket Card	\$25	\$25	\$25
Reissuance from Inactive Plus \$25 Transfer Fee	\$50	\$50	\$50
Reinstatement / Late Fee	\$150	\$150	\$150
Initial or Renewal Branch Office Certificate	\$25	\$25	\$25
Licensee Name Change	\$25	\$25	\$25
Change Firm Name (Plus Each Licensee Under Broker Name)	\$25	\$25	\$25
Transfer to Another Broker	\$25	\$25	\$25
Certificate of License History			
Five-Year History	\$25	\$25	\$25
Full History	\$75	\$75	\$75

Note: \$10 of the examination fee is paid to the commission; the balance is paid to the examination contractor; license renewals are for two-year terms

Source: State Real Estate Commission; Code of Maryland Regulations (COMAR) 09.11.09.02



## **Appendix 6. Real Estate Professional Associations**

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Association of Real Estate License Law Officials (ARELLO)  
8361 S. Sangre de Cristo Road  
Suite 250  
Littleton, Colorado 80127

Maryland Association of Realtors  
200 Harry S. Truman Parkway  
Suite 200  
Annapolis, Maryland 21401

Maryland Real Estate Educators Association  
William Frost, President of the Maryland Real Estate Educators Association  
c/o Chesapeake Real Estate Referral  
304 Railroad Avenue  
St. Michaels, Maryland 21663