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# **Sunset Review: Evaluation of the State Real Estate Commission**

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**Presentation to the  
House Economic Matters Committee**

**Department of Legislative Services  
Office of Policy Analysis  
Annapolis, Maryland**

**January 20, 2011**

# Presentation Overview

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- Sunset review process
- The commission and its members
- Real estate licensing
  - Licensing trends
  - Continuing education requirements
- Consumer complaints and Guaranty Fund awards
- Commission finances and fee authority
- Conclusion

# Duties of the State Real Estate Commission

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- The commission is responsible for:
  - licensing all real estate brokers, associate brokers, and salespersons
  - requiring an examination for all original licensees and continuing education for existing licensees to ensure that only qualified and competent individuals are licensed
  - processing complaints against licensees, including issuing final decisions in three-member hearing boards
  - administering the Real Estate Guaranty Fund, which provides limited restitution to consumers who have filed valid claims against licensees
- The commission consists of nine members:
  - five industry members and four consumer members
  - each hearing board consists of three members, at least one of whom must be a consumer member

# Recommendation 1: Commission Should Be Continued

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- Transactions are complex and time consuming
- Opportunities for consumers to be exploited
- Licensure ensures consumers are dealing with competent professionals, and protects consumers in real estate dealings
- The commission works hard to serve both real estate licensees and Maryland residents as consumers and there are no significant problems facing the commission

**Recommendation 1 (pg. 3): Legislation should be enacted to continue the State Real Estate Commission and to extend its termination date by 10 years to July 1, 2022. Additionally, uncodified language should be adopted requiring the commission to report to the Senate Education, Health, and Environmental Affairs Committee and House Economic Matters Committee, on or before October 1, 2012, regarding the implementation of recommendations made by the Department of Legislative Services that are adopted by the committees.**

# Time Commitment for Commissioners Is Significant

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- Each month, commissioners attend:
  - a full commission meeting
  - review panel meetings
  - meetings of hearing boards
- This often adds up to a full day spent at the commission offices
- Commissioners spend hours reviewing consumer complaints in preparation for these meetings

# **Recommendation 2: Training of Commissioners**

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**Recommendation 2 (pg. 9):** In instances when the names of nominees are available, the Secretary of Labor, Licensing, and Regulation should submit the names of potential consumer members to the executive director of the commission so that the executive director can provide pre-appointment information regarding the required time commitment. The commission should put a greater emphasis on training new consumer members immediately following appointment to prepare the members for their duties on the commission. The Department of Labor, Licensing, and Regulation should disseminate written training material to new commission and board members and consider increasing the frequency of commission- and board-wide training.

# Licensing Requirements

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<u>License</u>	<u>Exam</u>	<u>Course Hours</u>	<u>Experience</u>	<u>Fee</u>	<u>Other</u>
Broker	Broker exam	135	3 years as a salesperson	\$190	
Associate Broker	Broker exam	135	3 years as a salesperson	\$130	Commitment to be affiliated with a broker
Salesperson	Salesperson exam	Basic course including 3 hours on real estate ethics	None	\$90	Commitment to be affiliated with a broker

# Number of Licensees Is Declining

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	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
<b>Broker</b>						
New	385	593	479	500	357	327
Renewal	2,000	2,041	2,095	2,117	2,126	2,133
<b>Associate Broker</b>						
New	303	488	414	357	294	228
Renewal	1,224	1,338	1,272	1,404	1,318	1,406
<b>Salesperson</b>						
New	9,098	9,392	6,734	4,631	2,361	2,380
Renewal	13,295	15,038	17,094	17,352	16,194	15,689
<b>Total</b>	<b>26,305</b>	<b>28,890</b>	<b>28,088</b>	<b>26,361</b>	<b>22,650</b>	<b>22,163</b>

# Continuing Education Ensures Licensees Are Updated on Real Estate Issues

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- Every two years, each licensee must complete 15 hours of continuing education, including at least:
  - a 3-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
  - a 3-clock-hour ethics course that includes the Maryland Code of Ethics and a discussion of the practices of flipping and predatory lending

# Tracking of Continuing Education Credits Ensures Licensee Compliance

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- During online renewal, licensees must follow an “honor system” when stating that they have completed the continuing education requirements to renew the license
- Commission uses a random auditing system to enforce compliance
- Commission plans to implement a system of tracking continuing education course credits online that would be integrated with the renewal system so that a license cannot be renewed unless the licensee has completed the continuing education requirements

# **Recommendation 3: Tracking Continuing Education**

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**Recommendation 3 (pg. 15): The commission should develop a system for tracking continuing education credits online that (1) requires continuing education providers to submit data on course attendance to the commission in a timely manner; (2) allows licensees to monitor their progress in completing the continuing education credits on an ongoing basis; and (3) is integrated with the online license renewal system so that a license may not be renewed if the licensee has not completed his or her continuing education requirements. The commission should provide training to licensees and to the continuing education providers on proper use of the tracking system that is implemented.**

# Complaint Process Is Long and Involved

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- Receipt and preliminary review
- If accepted, logged and sent to a paralegal for detailed review
  - Accepted → sent to investigation
  - Dismissed → reviewed and approved by full commission
- Case and investigation report reviewed by three-person review panel
- Panel charges → case sent to the Office of the Attorney General for precharge review
- Charged → sent to the Office of Administrative Hearings
- Proposed order from an administrative law judge reviewed by three-person hearing board
- Final decision issued by the hearing board

# Average Time to Process Complaints Has Been Reduced

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- The commission has worked to reduce the average time a case is open, but certain elements of processing are outside commission control

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Average length of time between open and close (in days)	380	413	179	212	229

# Quick Facts About the Real Estate Guaranty Fund

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- Created in 1971
- Compensates consumers for financial loss from licensee misconduct
- Pays for losses resulting from acts or omissions that occur in the provision of real estate brokerage services by a licensed broker, associate broker, salesperson, or an unlicensed employee of a licensed broker
- New licensees pay a \$20 fee toward the Guaranty Fund
- In 1976, claims were limited to the actual loss of the claimant (Ch. 309)
- In 1984, claims were limited to the first \$25,000 of actual loss (Ch. 589)

# Limits on Access to the Guaranty Fund

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- Claims must be filed within three years
- The fund cannot pay for attorney fees, personal injury, court costs, interest, consequential damages, or punitive damages
- No action if there is a pending civil lawsuit until final judgment
- If the claim involves a contract with a mandatory arbitration clause, no action until there is a final arbitration award
- Certain types of claims are excluded by statute

# Few Guaranty Fund Awards Are Made

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	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Total Number of Awards	14	8	9	9	19
Awards for Less Than \$3,000	4	4	4	2	8
Awards Between \$3,000 and \$24,999	9	3	5	6	8
Awards for \$25,000	1	1	0	1	3

# Guaranty Fund Balance Is High

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- State law requires that the Guaranty Fund maintain a minimum balance of \$250,000
- This minimum balance has not been increased since the fund was established in 1971
- Commission is authorized to assess each licensee a fee to restore the balance if it falls below the minimum
- Since fiscal 2007, the Guaranty Fund's ending balance has not fallen below \$2 million

# Guaranty Fund Payouts Are Low

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- Few awards are paid from the Guaranty Fund each year, and the size of the awards remains low
- The commission has discussed pursuing legislation to expand the eligibility of claims against the Guaranty Fund

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Total Amount Claimed	\$3,779,518	\$6,332,117	\$10,898,007	\$9,310,964	\$5,340,800
Amount Paid	\$110,163	\$58,766	\$42,942	\$114,839	\$153,388

# **Recommendation 4: Guaranty Fund Awards and the Statutory Cap**

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## **Recommendation 4 (pp. 24-25):**

- Legislation should include provisions to raise the Guaranty Fund award cap from \$25,000 to \$50,000. The State Real Estate Commission should maintain records on, and include in its annual report to the Secretary, the number of Guaranty Fund awards that reach the statutory cap at the time an award is made, the corresponding amounts claimed by the complainant in each case, and the amount of damages that would have been reimbursable to the complainant if the statutory cap did not exist.**
- If Guaranty Fund awards continue to reach the statutory cap but fail to fully compensate the complainant, the Department of Labor, Licensing, and Regulation should consider further raising the cap through the legislative process to adequately compensate complainants for damages.**

## **Recommendation 4 (Cont.)**

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- **The commission should study the types of claims that are not currently eligible for restitution from the Guaranty Fund.**
- **If the commission concludes additional types of claims should be eligible for restitution from the Guaranty Fund, the commission should report its findings in its 2012 report to the committees and submit legislation through the Department of Labor, Licensing, and Regulation, during or before the 2013 legislative session, to expand claim eligibility.**
- **If the commission decides not to expand the types of claims that are eligible for restitution, the commission should consider introducing legislation to suspend, reduce, or eliminate the Guaranty Fund fee to reduce the excess fund balance.**

# Commission Finances Are Healthy

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- Financed by revenues from licensing fees and other fees charged for services provided, set by the commission by regulation
- Prior to fiscal 2007, all licensing and other fee revenue collected by the commission was paid into the general fund
- Chapter 399 of 2005 made the commission special funded

# Revenues Generally Exceed Expenditures

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- Commission revenues have generally exceeded expenditures

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>
Total Revenues	\$2,143,000	\$2,131,000	\$2,022,000	\$2,128,000	\$3,142,000
Total Expenditures	\$1,207,000	\$1,862,000	\$1,910,000	\$2,196,000	\$2,305,000
Operating Surplus	\$936,000	\$269,000	\$112,000	(\$68,000)	\$837,000
Fund Balance	N/A	\$269,000	\$381,000	\$313,000	\$1,150,000

Note: Figures rounded to the nearest \$1,000.

# **Recommendation 5: Report on Fiscal Trends**

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**Recommendation 5 (pg. 29): If the commission's operating surplus continues to expand, the commission should consider a fee reduction in the future. In considering a fee reduction, the commission should take note of future expenditures and incorporate estimates of these costs when projecting future years' budgets. In five of the past six fiscal years, commission revenues have exceeded expenditures, and in fiscal 2010 revenues exceeded expenditures by a wider margin than original estimates. Fiscal 2011 estimates should be adjusted upward to reflect this trend. If the number of licensees increases, the gap between revenues and expenditures should continue to widen. The commission should submit a report to the Senate Education, Health, and Environmental Affairs Committee and House Economic Matters Committee, on or before October 1, 2012, updating the committees on the commission's fiscal situation, including information on licensing trends and operating expenses.**

# Commission Authority Over Fees

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- The evaluation identified three fees that could be changed:
  1. Chapter 399 of 2005 made no change to the \$25 dishonored check fee charged by the commission though other State entities may charge \$35
  2. Commission would like to charge a fee for each new license issued as a result of a broker's address change
  3. Commission would also like to charge an "in-house transfer" fee to a licensee who transfers from one branch office of a broker to another branch

# **Recommendation 6: Authority Over Fees**

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**Recommendation 6 (pg. 30): Legislation should include provisions to grant authority to the commission over the following fees to make the fees consistent for the services provided: (1) the dishonored check fee; (2) the fee for a broker address change; and (3) the “in-house transfer” fee.**

# Conclusion

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- The State Real Estate Commission is a vital asset to both real estate professionals and to consumers
- Commission staff have worked hard to improve the efficiency and effectiveness of the services they provide
- The recommendations proposed today will help the commission to better serve Maryland residents for the next 10 years