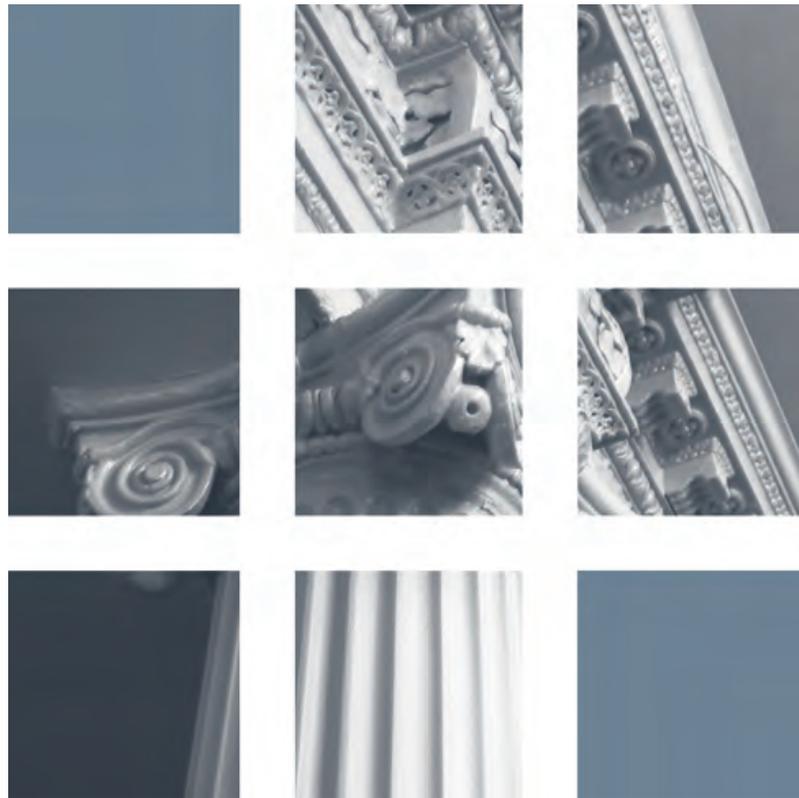


# SUNSET REVIEW: EVALUATION OF THE STATE REAL ESTATE COMMISSION



DEPARTMENT OF LEGISLATIVE SERVICES  
OCTOBER 2010

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

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

**October 2010**

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Executive Director

**DEPARTMENT OF LEGISLATIVE SERVICES**  
**OFFICE OF POLICY ANALYSIS**  
**MARYLAND GENERAL ASSEMBLY**

**Warren G. Deschenaux**  
Director

October 29, 2010

The Honorable Thomas V. Mike Miller, Jr.  
The Honorable Michael E. Busch  
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the State Real Estate Commission as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as “sunset review” because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. This report was prepared to assist the committees designated to review the commission – the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee – in making their recommendations to the full General Assembly. The commission is scheduled to terminate on July 1, 2012.

DLS finds that there is a continued need for regulation of the real estate industry and that the commission generally complies with its statutory and regulatory mandate. Since taking over the position, the executive director has taken many steps to improve commission efficiency and implement suggestions made by the 2000 full evaluation. DLS recognizes the positive changes implemented to date; however, several areas could benefit from additional improvements, particularly training of new commissioners, automated tracking of continuing education credits, and restitution for consumers from the Guaranty Fund.

To address ongoing concerns regarding new commissioner training raised by previous evaluations, we recommend the Department of Labor, Licensing, and Regulation provide the names of potential consumer members, if the information is available, to the executive director of the commission so that the executive director can provide pre-appointment information to the candidates. In addition, we recommend the commission put a greater emphasis on training new consumer members immediately following their appointment and we suggest that the department expand its role in the training of all commission and board members.

To better serve licensees, we recommend the commission continue its progress toward developing a system for tracking continuing education credits online and provide training to both

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licensees and to continuing education providers on proper use of the tracking system that is implemented.

This evaluation identified specific issues that limit consumer restitution from the Guaranty Fund. Consequently, we make a series of recommendations to improve consumer access to this compensation, including increasing the maximum award payable for each complaint; requiring the commission to maintain records of awards that reach the statutory award cap, the amount claimed in each such case, and the damages that would have been reimbursable if there were no cap; and asking the commission to study the types of claims that are not eligible for restitution and recommend a list of claim types that should be made eligible for reimbursement to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee.

In total, DLS offers six recommendations, including recommending that the commission's termination date be extended by 10 years to July 1, 2022. Draft legislation to implement the recommended statutory changes is included as an appendix to the report.

We would like to acknowledge the cooperation and assistance provided by the commission, its staff, and many licensees and stakeholders throughout the review process. The commission was provided a draft copy of the report for factual review and comment prior to its publication; its written comments are included as an appendix to this report.

Sincerely,

Warren G. Deschenaux  
Director

WGD/LAE/mlm

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# Executive Summary

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Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the State Real Estate Commission, which is scheduled to terminate July 1, 2012. DLS finds that there is a continued need for regulation of the real estate industry by the State but has identified areas in which the commission could improve its service to real estate licensees and the public.

While the commission has worked to update many of its services to improve efficiency and better serve both licensees and consumers, there are still areas for advancement, and the recommended changes may put a strain on the commission's budget. DLS makes the following recommendations based on its findings.

**Recommendation 1: 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 and House Economic Matter Committees, on or before October 1, 2012, regarding the implementation of recommendations made by the Department of Legislative Services that are adopted by the committees.**

Service on the commission requires a significant time commitment from its members. In addition to monthly full commission meetings, members attend review panel meetings and panel hearings and prepare for these meetings by independently reviewing consumer

complaints. Previous evaluations have raised the issue of training commission members and consumer member absenteeism and turnover. Though the commission staff has made efforts to develop more comprehensive orientation and training, some members still do not feel adequately prepared for their commission duties, which is reflected in the high level of turnover among consumer members.

**Recommendation 2: 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.**

The commission does not currently have a means of verifying the completion of continuing education credits during online renewal, but instead uses a random auditing system to enforce compliance. The 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:** 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.

The Guaranty Fund is a special fund administered by the commission to compensate consumers suffering financial loss as a result of licensee misconduct. In 1984, State law limited claims to the first \$25,000 of actual loss. There have been six \$25,000 awards in the past five fiscal years, though a total of \$443,000 was claimed in the six cases.

State law requires that the Guaranty Fund maintain a minimum balance of \$250,000. Since fiscal 2007, however, the Guaranty Fund's ending balance has not fallen below \$2 million. 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 to include damages that are not currently recoverable.

**Recommendation 4:** Legislation to continue the State Real Estate Commission and extend its termination date 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. 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.

Chapter 399 of 2005 made the commission a special funded entity and granted it fee-setting authority. Though the recent recession has resulted in a decrease in

the number of licensees, fee increases approved by the commission resulted in a significant increase in commission revenue for fiscal 2010. In addition to increased revenue, the commission expects increased expenditures over the next few years.

**Recommendation 5: 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 Matter Committee, on or before October 1, 2012, updating the committees on the commission's fiscal situation, including information on licensing trends and operating expenses.**

In statute, a person who tenders a check to the commission that is dishonored is required to pay a \$25 fee to the commission for the cost of collection. Elsewhere in statute, the standard collection fee for dishonored checks is set at \$35 for other State entities. Also, the commission would like to charge a fee for each new license issued as a result of a broker's address change and for a licensee who transfers from one branch office of a broker to another branch.

**Recommendation 6: Legislation to continue the State Real Estate Commission and extend its termination date 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.**



# Chapter 1. Introduction

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## 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 State Real Estate Commission last underwent a full evaluation as part of sunset review in 2000. Chapter 143 of 2001 extended the commission’s termination date by 10 years to July 1, 2012. In advance of the July 1, 2012 termination date, a preliminary sunset evaluation was conducted to assist LPC in its decision whether to waive the commission from a full evaluation. The 2009 preliminary sunset evaluation determined that issues relating to the commission were significant enough to require a full evaluation in 2010. Specifically, the preliminary evaluation raised as issues for further study the commission’s fiscal condition, the training of commission members, the tracking of continuing education credits, the adequacy of Guaranty Fund awards, and the timeframe for complaint resolution.

## 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.

Maryland requires real estate professionals to obtain a license before engaging in practice. 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:

- that deals 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 salespersons may work only under affiliation with a real estate broker and maintain a fiduciary tie to the broker for whom they work. A salesperson cannot work for more than one broker at one time.

According to the Maryland Association of Realtors (MAR), sales of homes dropped in three of the past four calendar years and are on track to see a significant decrease in 2010 as well. For example, 52,591 homes were sold by the close of 2009, for an average price of \$301,270. These figures represent a 17% decrease in home sales and a 17% decrease in average home price as compared to 2007. Between 2005 and 2009, the number of homes sold declined 47%. A listing of housing sales statistics since 2000 is provided in **Appendix 1**. With a decline in the number of real estate transactions, fewer licensees are needed to serve consumers.

## **State Real Estate Commission**

The State Real Estate Commission was established by Chapter 351 of 1939. 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;
- requires an examination for all original licensees and continuing education for existing licensees to ensure that only qualified and competent individuals are licensed;
- processes complaints against licensees; and

- administers the Real Estate Guaranty Fund, which provides limited restitution to consumers who have filed valid claims against licensees.

## **State Real Estate Commission Should Be Continued**

For most people, buying or selling a home represents their single largest financial transaction. Because real property transactions are complex and time consuming, most people employ real estate professionals to manage the necessary legal, financial, and administrative aspects of the transaction. During this process, there are many opportunities for the dishonest and opportunistic to exploit someone who is untrained in the intricacies of buying or selling real property. As countless stories from the recession of the past two years have illustrated, it is possible for the average citizen to sustain considerable financial loss or even financial ruin due to misconduct associated with real estate transactions.

Although scheduled to terminate on July 1, 2012, the General Assembly has given the commission the authority to regulate the real estate industry. State licensure is designed not only to ensure that consumers are dealing with competent professionals, but also to ensure that consumers are adequately informed and protected in real estate dealings. This function continues to be of great importance in serving the residents of the State.

**Recommendation 1: 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 Matter 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.**

## **Research Activities**

In evaluating the State Real Estate Commission, staff of DLS completed the following activities:

- reviewed documents and statistical information from the commission regarding licensure, complaints, Guaranty Fund claims and awards, and finances;
- reviewed the commission's statutes and regulations;
- visited the commission's offices and examined files;
- attended commission meetings and reviewed meeting minutes;
- reviewed other states' statutes and web pages related to real estate regulatory activities;

- interviewed staff from real estate regulatory organizations in other states;
- interviewed officials of associations representing real estate licensees;
- interviewed representatives of organizations providing real estate continuing education in Maryland;
- interviewed the commission's executive director and staff; and
- interviewed the commission chair and other members of the commission.

## **Report Organization**

**Chapter 2** provides an overview of real estate licensing in Maryland. **Chapter 3** outlines the structure and function of the commission. **Chapter 4** discusses consumer complaints and restitution from the Guaranty Fund. **Chapter 5** examines the commission's finances. The findings and recommendations of the Department of Legislative Services can be found throughout this report. **Appendix 8** is the draft legislation to implement the statutory recommendations made by DLS. The commission has reviewed a draft of this evaluation, and its response is contained in **Appendix 9**. Appropriate factual corrections and clarifications have been made throughout the document. Therefore, references in commission comments may not reflect this published version of the report.

## Chapter 2. State Real Estate Commission

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### Placement and Composition of the Commission

The State Real Estate Commission is 1 of 22 occupational and professional licensing boards within the Department of Labor, Licensing, and Regulation (DLLR). Laws governing the commission are found in Title 17 of the Business Occupations and Professions Article of the Annotated Code of Maryland. The commission consists of nine members appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation. 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. Although the commissioners do not receive a salary, they receive expense reimbursement, including travel. The current membership of the commission is listed in **Appendix 2**.

The nine members include five industry representatives and four consumers. The members' terms are staggered, and the number of consecutive terms each member may serve is unrestricted. The five professional members must be residents, respectively, of the nine counties of the Eastern Shore, the five counties of Southern Maryland, the four counties of Central Maryland, the five counties of Western Maryland, and Baltimore City. The four consumer members are appointed from the State at large. Each commissioner must have been a citizen and resident of the particular area for which the commissioner is appointed for not less than five years preceding appointment. Each member of the commission, with the exception of the consumer members, must have been licensed as a real estate broker, an associate broker, or salesperson for at least 10 years preceding appointment. The consumer members may not be engaged directly or indirectly in the business of real estate.

Two standing committees of the State Real Estate Commission are devoted to legislative and educational matters. Other committees are formed to advise the commission on an *ad hoc* basis. These advisory committees help the commission respond to emerging concerns. The standing committees report to the full commission at its monthly business meetings. Current standing committee membership is listed in **Appendix 3**.

The commission is authorized to establish a Real Estate Hearing Board with the approval of the Secretary. Although State law authorizes the establishment of one hearing board, the commission has established two panels that operate as Real Estate Hearing Boards. Each panel consists of three members and meets once a month to review cases and hold hearings. One of the members must be a consumer member, and one must be an industry member. Current hearing panel assignments are listed in **Appendix 4**.

The State Real Estate Commission has 17 authorized staff positions to support its operations. The executive director, whose position was established in 1978, manages the staff. The current executive director has held the position since 2006. 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 five investigators. The auditor and investigators work largely from their homes. There is also one vacant investigator position that the commission has requested to be reclassified to an Office Secretary III position, but which has not yet been granted. The executive director expressed that the Office Secretary III position would become more important as the commission begins to automate its systems.

## **Recent Legislation Affecting the Commission**

There have been a number of significant laws passed governing real estate in Maryland. In the past 10 years, legislation has made the commission a special funded entity and authorized it to set certain fees, expanded the commission's disciplinary authority, and expanded the continuing education requirements for licensees. A complete listing of the significant changes in the laws governing the commission or real estate industry since the 2000 full evaluation is shown in **Exhibit 2.1**.

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### **Exhibit 2.1**

#### **Major Legislative Changes Since the 2000 Sunset Evaluation**

| <b><u>Year</u></b> | <b><u>Chapter</u></b> | <b><u>Change</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2001               | 143                   | 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; and 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. |
| 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; and 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                                                                                                                                                                                                                                                                                                                                            |

| <u>Year</u> | <u>Chapter</u> | <u>Change</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             |                | 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; and 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.                                                                                              |
| 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; and specifies that a fee may not be increased annually by more than 12.5% of the existing and corresponding fee. |
| 2006        | 200            | 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; authorizes the commission to issue a reciprocal license to a person under certain circumstances; and grants personal jurisdiction to the commission and the courts of the State over a holder of a reciprocal licensee in certain transactions.                                                |
| 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                                                                                                                                                                                                                                                                        |

| <u>Year</u> | <u>Chapter</u> | <u>Change</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2008        | 282            | after the conviction or release from incarceration.<br>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.                                                                                                                                                                                                                                                                                           |
| 2010        | 386            | Changes the continuing education requirements for licensees beginning January 1, 2012: all licensees seeking licensure renewal must take a three-clock-hour course on the principles of agency and agency disclosure prior to their subsequent two-year license renewal and then every four years after that; other changes affect real estate broker licensees designated as a branch office manager or team leader, as well as licensees who possess graduate degrees in law or real estate but are not designated as branch office managers or team leaders; and requires course providers to pay a \$25 continuing education course application fee. |
| 2010        | 670            | Requires a team of licensed real estate brokers and licensed real estate salespersons that provides real estate brokerage services to designate a team leader who is either a licensed associate real estate broker or a licensed real estate salesperson who has at least three years of experience; authorizes the designation of intracompany agents for the seller and the buyer in the same transaction under certain circumstances; and regulates the contents of advertising and the location at which brokerage services may be provided.                                                                                                        |

Source: Laws of Maryland

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## **Time Commitment for Commissioners Is Intensive**

Service on the commission requires a significant time commitment from its members. State law requires commissioners to attend at least half of the full commission meetings to remain active. In addition, commission members attend review panel meetings and panel hearings and prepare for these meetings by independently reviewing consumer complaints. Some members have found these commitments to be beyond their initial expectations. In the past two years, at least two members resigned because they were unable to fulfill their commission obligations. During the preliminary evaluation, commission staff raised the issues of consumer member absenteeism and turnover. Commission staff expressed concern that consumer members, with little prior experience related to the commission, may be surprised by the level of commitment required to serve.

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). ARELLO sponsors the Commissioner College, a two-day training for members of state real estate commissions that a number of current commission members and the executive director have attended. Attendees have given the program high praise.

The most recent additions to the commission are two consumer members who were appointed in spring 2010. While statute specifies that commissioners are appointed by the Governor with the advice and consent of the Secretary of Labor, Licensing, and Regulation, it seems that in practice many consumer members seek out appointment themselves. Orientation and training of new members comes after a commissioner's appointment and is performed exclusively by the executive director. While potential commissioners are invited to attend commission meetings prior to their appointment, there is no discussion of the time commitments or responsibilities involved until after the members are appointed.

Based on interviews with commission members, it is clear that the commission staff has made efforts to develop more comprehensive orientation and training, but despite these efforts some members still do not feel adequately prepared for their commission duties. The information and resources provided to new members could be improved to more effectively prepare members for their roles on the commission.

The 2000 full evaluation also raised the issue of training commission members and reported that DLLR was developing a program for training commission and board members, which was expected to be in place by the end of the first quarter of calendar 2001. Currently, DLLR relies on individual executive directors to do an orientation and training of new members upon appointment. DLLR has developed a training manual that is disseminated and used with full commission and board training sessions. The training is provided on a priority basis, based on overall member turnover and on an assessment of which boards or commissions may need or benefit from formal training. The State Real Estate Commission has not received this training.

**Recommendation 2: 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.**

## **Commission Envisions Expanded Role for Technology**

Ten years ago, technological progress for the commission came in the form of individual computers for each staff member and a website devoted to the commission that provided information to licensees and allowed licenses to be renewed online. Since that time, these

advancements have been honed to provide an electronic means of serving the public and licensees, and to improve efficiency for commission staff.

The commission maintains a website as part of the larger DLLR page. The commission website includes information about the commission and news and information for consumers and the public. Website 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 websites in the newsletter. In addition to its posting on the website, the newsletter is sent to every licensee with a current email address on file.

With recent upgrades to the website, prospective licensees can find information on license requirements and on taking the required exam, including a link to the examiner's website. The public can use the website 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 vast majority of licensees now take advantage of the ability to renew their licenses online. Licensees have also begun to embrace the opportunity to complete continuing education courses online, which is discussed in **Chapter 3** under "License Renewal Requires Continuing Education."

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 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 keep informed of changes and react quickly if there is an error in the assignment.

## Chapter 3. Real Estate Licensing

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The State Real Estate Commission grants licenses to qualified real estate brokers, associate brokers, and salespersons. As **Exhibit 3.1** shows, the vast majority of licensees are salespersons, with much smaller numbers of brokers and associate brokers. During the 2000 full evaluation, the Department of Legislative Services (DLS) noted a considerable decrease in total licensees, from 51,487 in 1990 to 30,245 in 2000, which was attributed to a consolidated industry dominated by fewer but larger firms. Today, the downturn in the residential real estate market has resulted in another, if less sizable, decrease in the number of licensees over the past few years, especially among new salesperson licensees. The total license count for June 2010 was reported at 44,541, down significantly from the 54,460 licensees reported two years prior in June 2008. While the total number of licensees continues to decrease, fiscal 2010 has seen a less dramatic drop in the total number of licensees, which may indicate an end to the downward trend. The number of real estate licensees in surrounding states is listed in **Appendix 5**.

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**Exhibit 3.1**  
**Licenses Awarded by License Type**  
**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</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>  |

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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## Licensing Requirements

To obtain a real estate broker's license, an applicant must successfully complete 135 classroom hours of prelicensing broker courses, pass the examination required for a broker license, and have been a licensed salesperson for at least three years. The biennial licensing fee for a real estate broker's license is \$190 for both new and renewal licenses.

An associate broker must fulfill the same licensing requirements as a broker, but rather than operating an independent business, chooses instead to work for a broker. In addition to completing 135 classroom hours of prelicensing broker courses, passing the broker examination, and having been a licensed salesperson for at least three years, an applicant for an associate broker license 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. Because the licensing requirements are the same, if a licensed associate broker chooses to obtain a broker license, the associate broker must only pay the higher broker license fee to obtain the new license. The biennial licensing fee for an associate broker is \$130 for both new and renewal licenses.

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 pass the examination required for a salesperson license and 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 for both new and renewal licenses.

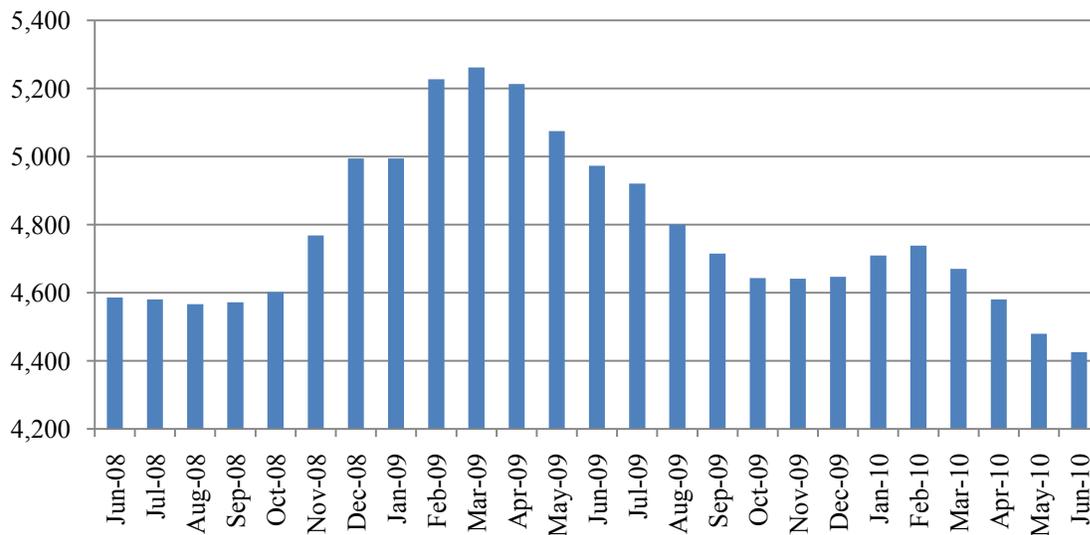
All applicants for initial licensure must pay a one-time \$20 fee that is paid into the Guaranty Fund, which is discussed further in **Chapter 4**. Licensing coursework is provided by a variety of real estate education providers approved by the commission. The examinations are administered by a private service under contract to provide testing services to the State. The commission recently renegotiated its contract with the examination service and was able to obtain a \$12 reduction in the examination fee.

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.

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 rose dramatically beginning in October 2008, but began a steady decrease in March 2009, with another brief increase and decline in early 2010. As shown in **Exhibit 3.2**, the total number of inactive licensees is currently at its lowest point in two years. Just as the total number of licensees declined, the temporary rise in inactive licensees may be explained by the collapse of the residential real estate market. Commission staff anecdotally explained the number of inactive licenses as a result of an increased interest in real estate sales when the real property market was at its peak. During the economic downturn less seasoned licensees shifted to inactive status and finally let the license expire when the licensee found it uneconomical to stay in the profession.

**Exhibit 3.2**  
**Inactive Licensees Held**  
**June 2008 – June 2010**



Source: State Real Estate Commission

A licensee whose license certificate or pocket card, a smaller version of the license carried by the licensee, is lost or destroyed must submit an affidavit stating that the license certificate has been lost or destroyed and pay a fee for a replacement. The fee is \$25 for replacement of a lost or destroyed license or pocket card. A licensee must also pay a fee to reissue a license upon a change

of name or address, or to transfer to another broker. A complete list of the commission's fees appears in **Appendix 6**; fees charged in surrounding states are shown in **Appendix 7**.

## **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 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; and
- a 3-clock-hour ethics course that includes the Maryland Code of Ethics and a discussion of the practices of flipping and predatory lending.

Chapter 386 of 2010 will change the continuing education requirements for licensees beginning January 1, 2012. All licensees will be required to take a three-clock-hour course on the principles of agency and agency disclosure prior to their subsequent two-year license renewal and then every four years after that. In addition, a real estate broker, a licensee designated as a branch office manager, or a team leader must complete a three-clock-hour course on the requirements of broker supervision prior to the licensee's subsequent two-year license renewal and then every four years after that. Licensees who possess graduate degrees in law or real estate but are not brokers, associate brokers, or salespersons designated as branch office managers or team leaders must complete required courses on the principles of agency and agency disclosure and on real estate regulatory changes in alternate licensing periods. The statute also requires course providers to pay a \$25 continuing education course application fee to cover the commission's administrative costs involved in reviewing and approving courses.

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. According to the executive director, the commission expects Internet courses will be slow to develop because 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 preliminary evaluation raised the issue of tracking continuing education credits when online license renewal is used. Because the commission does not currently have a means of verifying the completion of these credits during online renewal, licensees must follow an “honor system” when stating that they have completed the requirements to renew. The commission then uses a random auditing system to enforce compliance whereby licensees who cannot provide proof of their continuing education course completion are fined \$1,500 and charged a \$100 administrative reinstatement fee for the cost of reinstating the expired license. The licensee is required to complete the missing courses, in addition to finishing the continuing education requirements for the current license cycle.

The 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. The types of systems used vary widely among states that have implemented such programs. The commission has yet to seek bids for the project but expects to have a system running within the next two years.

Other states that use an online system for tracking continuing education credits cited training of education providers and of licensees as an important step in the earliest stages of implementation. A sample of education providers in Maryland stated that the commission could provide training on how to use the new tracking system and provide any necessary software to create a smooth transition. Mirroring the experience of other states, the providers expressed that, despite additional responsibilities that might be involved with a new tracking system, they would embrace moving into the use of new technology to make tracking continuing education easier. They also suggested that it might actually increase course attendance.

**Recommendation 3: 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.**



## Chapter 4. Consumer Complaints and Guaranty Fund Awards

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### Process for Complaint Investigations and Hearings

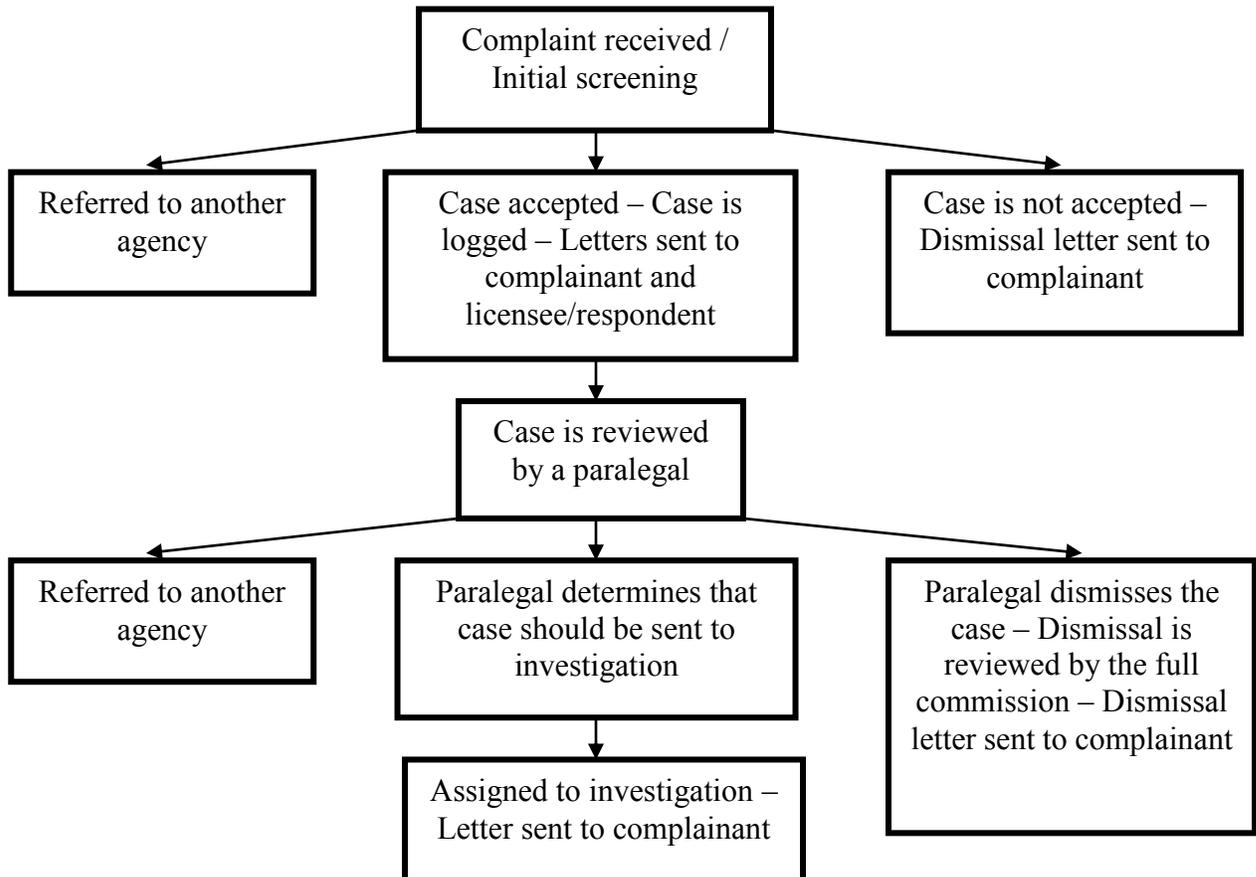
The commission may deny, reprimand, suspend, or revoke a license or impose a civil penalty for violations of the real estate broker statute and other acts and behaviors specified in the statute. From the time a consumer discovers, or by the exercise of ordinary diligence should have discovered, loss or damage due to a violation by a licensee, the consumer has three years to file a complaint with the commission. **Exhibits 4.1** through **4.3** show the process of resolving a complaint received by the commission. Complaints are received by the complaint intake coordinator. The complaint intake coordinator makes an initial determination as to whether the commission has jurisdiction, or appears to have jurisdiction, over the complaint. If the commission lacks jurisdiction, the coordinator sends a letter returning the complaint to the complainant and may suggest a referral to another agency.

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 response within 20 days. As shown in Exhibit 4.1, 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 paralegal finds that 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. Cases that are not accepted by the commission are not logged.

If a case is accepted by the commission, it is sent to the investigative phase as shown in Exhibit 4.2, and a second letter is sent to the complainant indicating the transfer to investigation and providing contact information for the investigator assigned to the case. 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 reasons for a prolonged investigation being difficulty locating witnesses, the limited memories of witnesses, and problems producing adequate records.

### Exhibit 4.1 Complaint Resolution Process

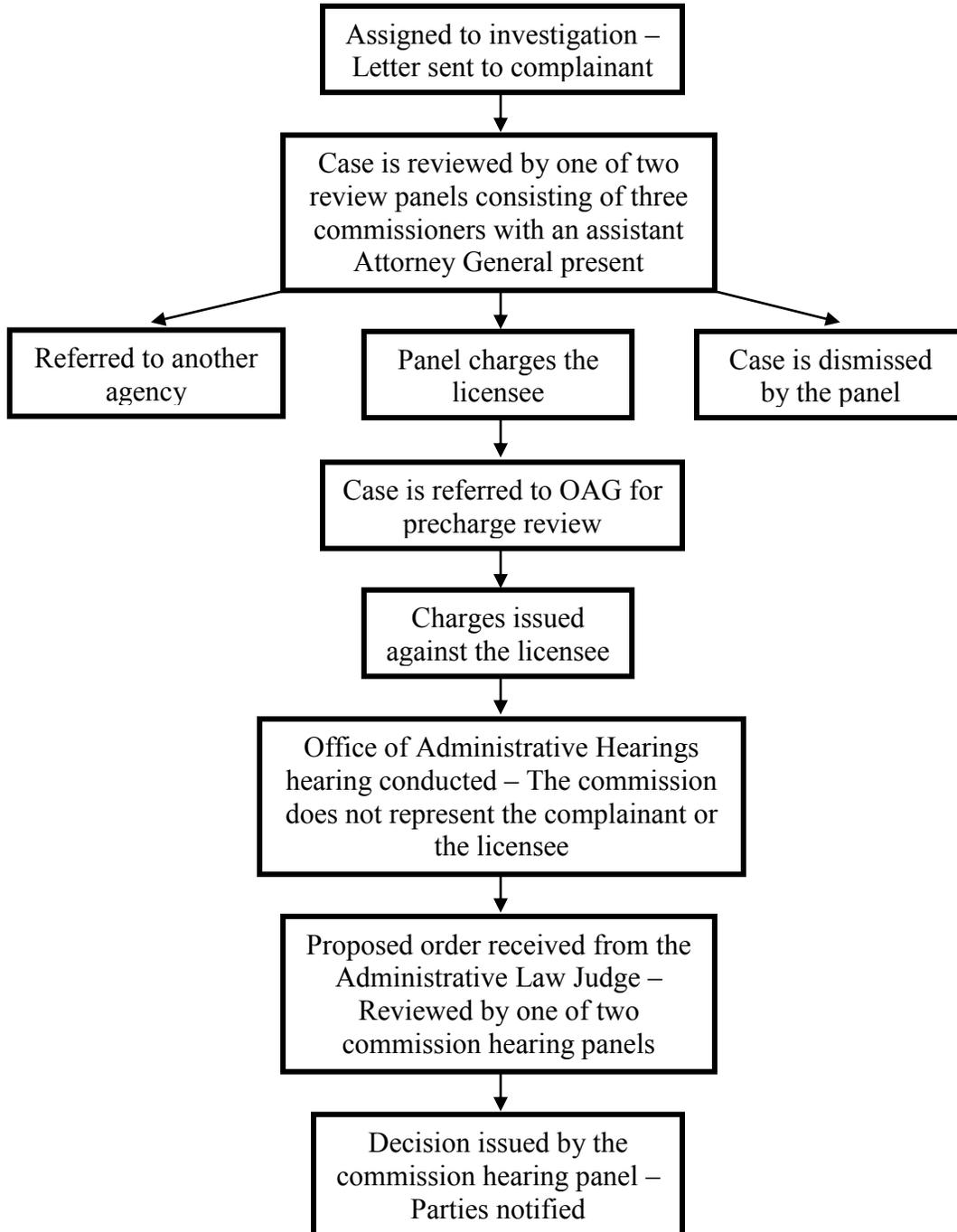
#### Intake



Source: State Real Estate Commission; Department of Legislative Services

Once the investigator has completed a case report, the case is directed to one of the commission's two review panels. If the review panel decides to issue charges, the complaint is referred to the Office of the Attorney General (OAG) for precharge review and then moves to the Office of Administrative Hearings (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.

**Exhibit 4.2  
Investigation and Adjudication**

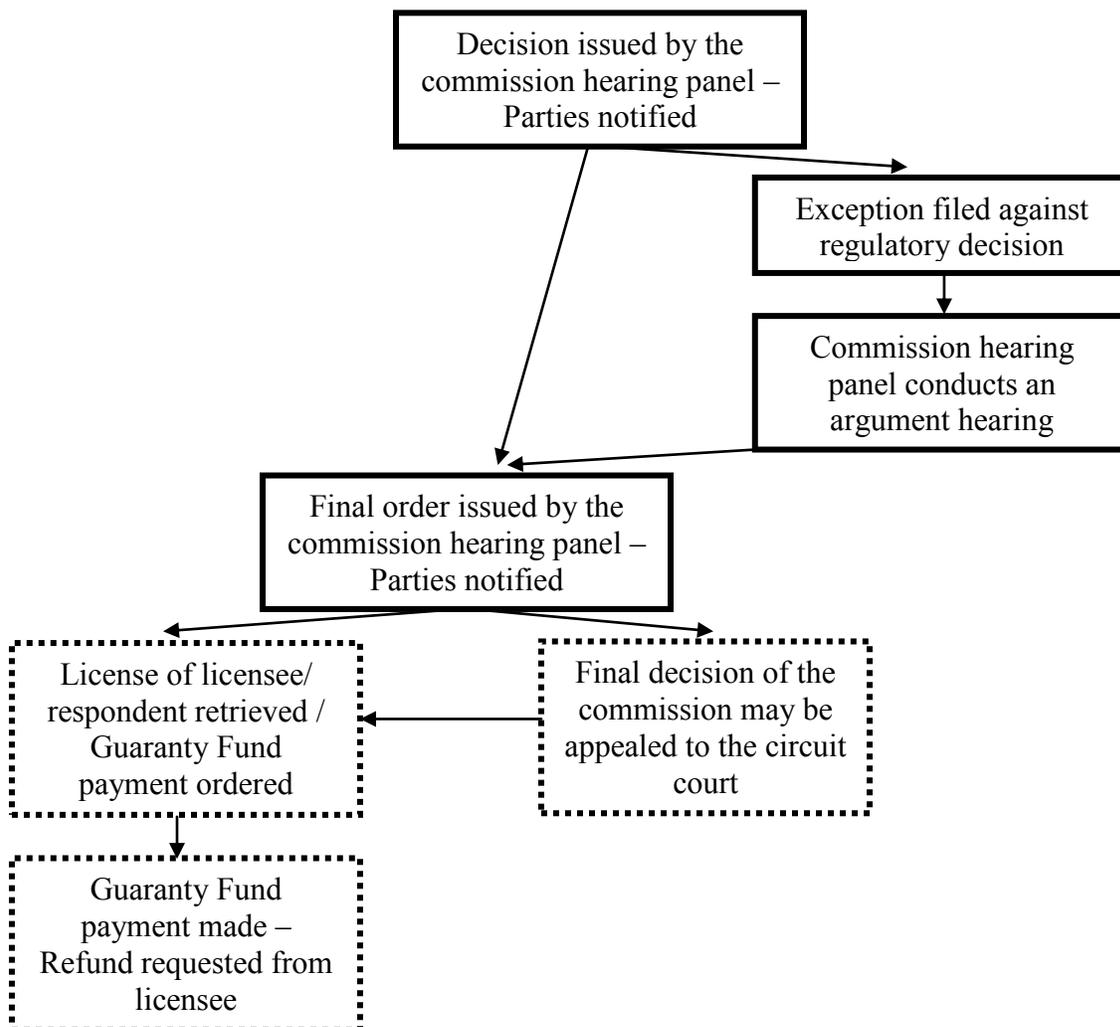


Source: State Real Estate Commission; Department of Legislative Services

However, as shown in Exhibit 4.3, exceptions may be filed against regulatory decisions. If 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 for consumer damages 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 website.

### Exhibit 4.3 Post-decision



Source: State Real Estate Commission; Department of Legislative Services

## Complaint Activity Has Stabilized

In fiscal 2010, the commission received 534 complaints. As of September 30, 2010, the commission had received 124 complaints, putting it on track to receive approximately 500 complaints in fiscal 2011. Thus, the volume of complaints may have stabilized after the spike in fiscal 2007 and 2008. Staff of the commission speculates that the decrease may be a result of the overall decrease in the number of real estate transactions in recent years. The number of complaints for the previous five years is listed in **Exhibit 4.4**. The numbers for fiscal 2010 also show a significant decrease in the number of investigations and the number of hearings held. The executive director of the commission suggested that this decrease is due to the commission staff clearing a backlog in consumer complaints and a result of an increase in the number of filled investigator positions in 2007. Now that the backlog has been reduced, the number of investigations and hearings should stabilize near the numbers reported for the last fiscal year. If there is an increase in the number of licensees or home sales, however, the commission may see a corresponding increase in the number of complaints. If this occurs, the commission may need to add staff to avoid creating a complaint backlog.

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**Exhibit 4.4**  
**Complaint Data for the State Real Estate Commission**  
**Fiscal 2006-2010**

|                             | <u>FY 2006</u> | <u>FY 2007</u> | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> |
|-----------------------------|----------------|----------------|----------------|----------------|----------------|
| Total Complaints Received   | 407            | 777            | 892            | 585            | 534            |
| Investigations              | 128            | 102            | 206            | 256            | 153            |
| Hearings Held by Commission | 47             | 52             | 53             | 62             | 35             |

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

Source: State Real Estate Commission

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## Timeline for Processing Has Improved but Is Still Lengthy

The complaint process is inherently lengthy due to the many steps involved and opportunities for appeal. Depending upon the existing workload at the various agencies that must review and process the claim, it may take more than a year for a complaint to be processed and closed.

According to the commission as well as a review of commission complaint files, the initial stage of investigation prior to precharge review by the assistant Attorney General may take several months. While the commission has worked to expedite the initial stages of complaint processing, factors outside of commission control such as time spent waiting for responses or tracking down interested parties may prolong these early steps. Following precharge review by the assistant Attorney General, the case is forwarded to OAH for a hearing. Depending on its caseload, OAH may be able to hear the case within a few weeks, but it may take several months before a hearing takes place.

Despite these factors, the commission has significantly reduced the average time a case is open. The commission was able to fill several vacant investigator positions in fiscal 2007, which led to a sizable decline in the average length of time between opening and closing a case, as shown in **Exhibit 4.5**. The figures shown below include the time a case spends outside of direct commission control, as when it is with OAG or OAH. The executive director believes the slight uptick in complaint processing time between fiscal 2008 and 2009 was due to time spent waiting for hearing dates.

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**Exhibit 4.5**  
**Average Length of Complaint Processing**  
**Fiscal 2006-2010**

|                                                                   | <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 date and close date (in days) | 380            | 413            | 179            | 212            | 229            |

Source: State Real Estate Commission

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### **Claims Against Guaranty Fund Limited to \$25,000**

Created by Chapter 649 of 1971, the Guaranty Fund is a special fund administered by the commission to compensate consumers suffering financial loss as a result of licensee misconduct. The fund may be used to pay consumer claims 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. All new licensees pay a fee of \$20 toward the Guaranty Fund. In 1976 (Chapter 309), claims were limited to actual loss of the complainant. In 1984 (Chapter 589), claims were further limited to the first \$25,000 of actual loss.

In fiscal 2010, the fund paid 19 claims. Only three claims reached the \$25,000 cap in the last fiscal year, and only six total in the last five years. The number and total amount of Guaranty Fund awards for the past five years are included in **Exhibit 4.6**.

Several restrictions limit access to the Guaranty Fund. A claim may not be brought against the fund after three years from the date the complainant discovered, or should have discovered, the loss or damage caused by the licensee. The fund cannot pay for attorney fees, personal injury, court costs, interest, consequential damages, or punitive damages. Also, no action can be taken on a Guaranty Fund claim in which there is a pending civil lawsuit until a final judgment has been issued. Similarly, a claim involving a contract that contains a mandatory arbitration clause cannot be paid until the dispute has been submitted to arbitration and there is a final arbitration award. The burden of proof for all Guaranty Fund claims is on the complainant. A person may not recover from the Guaranty Fund for any loss that relates to (1) the purchase of interest in a limited partnership formed to invest in real estate; (2) a joint venture promoted by a licensee for investment in real estate; or (3) the purchase of commercial paper secured by real estate. See the inset for sample claims against the Guaranty Fund.

**Exhibit 4.6**  
**Guaranty Fund Data**  
**Fiscal 2006-2010**

|                                                             | <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          |
| 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                  |
| <b>Guaranty Fund Balance at the End of Each Fiscal Year</b> | <b>\$1,770,910</b> | <b>\$2,025,901</b> | <b>\$2,209,690</b> | <b>\$2,339,061</b> | <b>\$2,296,501</b> |

Source: Department of Labor, Licensing, and Regulation

Of the six \$25,000 awards in the last five fiscal years, only two of the claims were for just \$25,000. The remaining four claims were for \$35,000, \$38,000, \$150,000, and \$170,000, reflecting a total of \$293,000 of claimed damages that were not eligible for compensation. While these figures do not reflect whether the uncompensated amounts would have merited reimbursement under the current statutory structure, it is likely that at least some portion of this amount would have been reimbursable if not for the statutory cap. If the statutory cap had been \$50,000, and the claims were fully reimbursable, an additional \$73,000 may have been paid from

the Guaranty Fund to compensate these complainants. If legislation is enacted to expand access to the Guaranty Fund, discussed further in the next section, these additional damages may also be uncompensated because of the award cap.

## The Guaranty Fund Balance Remains High

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. Should fund reserves fall below this figure, the commission may assess each licensee a fee to restore the minimum balance. Since fiscal 2007, however, the Guaranty Fund's ending balance has not fallen below \$2 million. The balance of the Guaranty Fund for each of the past five fiscal years is shown above in Exhibit 4.6.

The figures shown in Exhibit 4.6 also demonstrate that the total amount claimed against the Guaranty Fund each year far exceeds the amount paid. Few awards are paid from the Guaranty Fund each year, and the size of the awards remains low. Often, consumers claim money damages for punitive damages or emotional distress, neither of which can be paid from the fund. As shown in the second sample case in the inset, the fund also cannot reimburse complainants for lost wages, application fees, interpreters, or bank inquiry fees. At a recent commission meeting, the commissioners discussed pursuing legislation to expand the eligibility of claims against the Guaranty Fund to include damages that are not currently recoverable. The commission concluded that members should begin keeping track of claims so that suggestions can be made for legislation to be submitted during the 2012 session.

**Recommendation 4: Legislation to continue the State Real Estate Commission and extend its termination date 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.**

### Sample Guaranty Fund Claim

A complaint was made on September 17, 2008, that a licensee left a property that was being shown, taking the key to the property and leaving the lock box open. The complainant reported that the licensee was rude when the complainant called to tell him that he had taken the key. The complainant was concerned that the lock box combination was potentially exposed to strangers, so the complainant replaced the locks to the property and replaced the lock box. The complainant sought \$232 from the Guaranty Fund for these costs. The licensee responded that he had inadvertently taken the key and tried to call to set up a time to return the key but could not reach anyone and did not receive return calls. The key was returned a week later, after the complaint had been filed with the commission.

The complaint was sent to investigation and then to panel review. The panel advised allowing regulatory charges but not the Guaranty Fund claim. The assistant Attorney General filed charges but dismissed the Guaranty Fund claim because there was no evidence that the complainant suffered "actual loss" as defined in statute. A hearing was held at the Office of Administrative Hearings and the administrative law judge recommended a fine of \$500 for each of two violations, for a total of \$1,000. The proposed order was reviewed by a commission panel on March 5, 2010. The panel increased the fines to \$1,000 for each violation, for a total of \$2,000.

**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. 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.**

### **Many Guaranty Fund Awards Are Not Reimbursed by the Licensee at Fault**

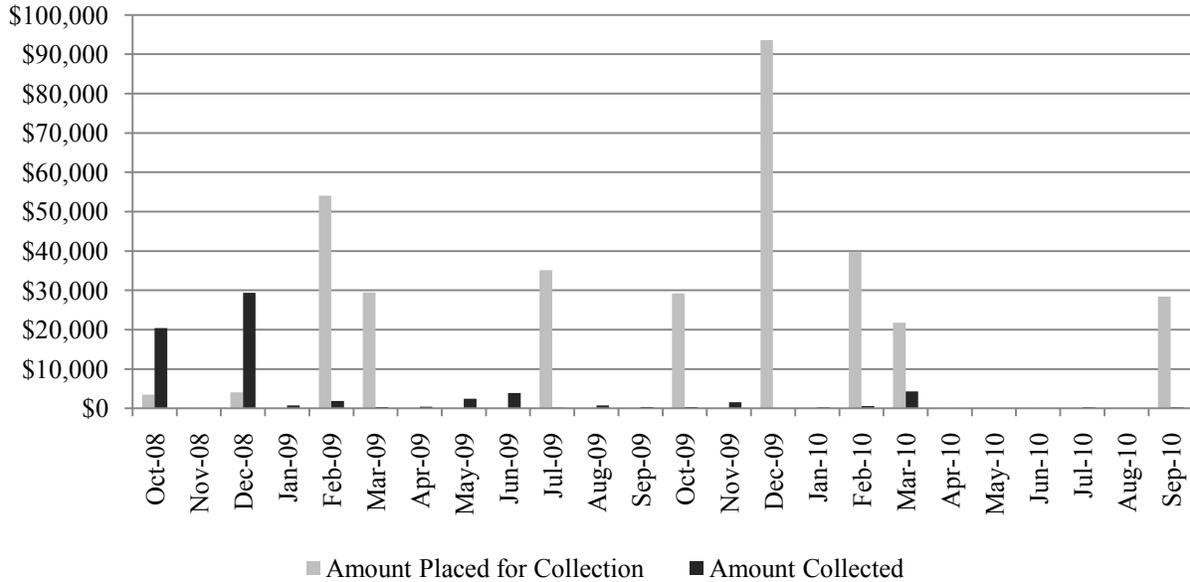
Individuals licensed by the State Real Estate Commission who have claims awarded against them from the Guaranty Fund are required to reimburse the fund for the claims made. A licensee whose actions are responsible for any payment from the fund is automatically suspended. The license may be reinstated when the fund is fully reimbursed, plus 12% interest. If the licensee fails to reimburse the fund after 30 days, in full and with interest, the matter is referred to the Central Collection Unit (CCU) of the Department of Budget and Management, which attempts to collect the fund payout, interest for the commission, and an additional 17% fee for the cost of collection. If the license expires before the licensee reimburses the fund, the license maintains a suspension “flag” so that it cannot be renewed online. The majority of cases resulting in a Guaranty Fund award are referred to CCU for collection, but the payouts still are not repaid by the licensee at fault. Commission staff explained that many licensees who receive a Guaranty Fund judgment against them prefer to not repay the fund and lose their license, rather than repay the fund and attempt to continue practicing with a tarnished reputation. The amount of money placed for collection with CCU and amount of money collected each month for the last 24 months are shown in **Exhibit 4.7**.

#### **Sample Guaranty Fund Claim**

A complaint was made on June 25, 2007, alleging that the complainant (one half of a divorced couple) made a short sale of real property to the licensee and the licensee recorded the deed to the property but did not transfer the mortgage. The complainant alleged that the licensee did not make payments on the mortgage and the property went into foreclosure, forcing the complainant into debt. The complaint was sent to investigation, and the investigator found that the licensee never notified his broker of the transaction and failed to put much of the agreement into writing.

The commission panel reviewed the complaint and recommended filing regulatory charges and allowing a Guaranty Fund claim. The assistant Attorney General filed charges against the licensee and a hearing was held at the Office of Administrative Hearings. The licensee did not appear at the hearing. The administrative law judge found a total loss of \$87,225, half of which was owed to the complainant, and recommended the maximum Guaranty Fund payout. The commission panel reviewed the proposed order on March 5, 2010. The panel awarded the complainant \$25,000, the maximum Guaranty Fund award, imposed a civil penalty against the licensee of \$45,000, and revoked the licensee’s license.

**Exhibit 4.7**  
**Central Collection Unit Guaranty Fund Payment Collection Statistics**  
**October 2008 – September 2010**



Source: State Real Estate Commission

In 24 months, \$339,014 was placed for collection by CCU, but only \$69,166 was collected from licensees. With a 20% collection rate, though meager, repayment helps to maintain the balance of the Guaranty Fund. In addition, because licensees who do not repay the fund cannot renew their license, consumers are protected by preventing licensees who have not paid restitution for their prior offenses from working in real estate.

## Chapter 5. Commission Finances

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### The Commission Is Now Special Funded

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 licensing and other fee 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. Money received from Guaranty Fund assessments and licensee reimbursements is paid into the Guaranty Fund, rather than the State Real Estate Commission Fund. Chapter 399 also repealed fees specified in statute and authorized 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. In initially setting licensing fees following the enactment of Chapter 399, the commission raised many fees by at least 100% above what had been set in statute, as reflected in **Exhibit 5.1**. These fee increases were effective beginning in March 2009.

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#### Exhibit 5.1 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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### Commission Revenues Exceed Expenditures

The continued decrease in the number of licensees resulted in expenditures exceeding revenues in fiscal 2009, as shown in **Exhibit 5.2**. The fee increases approved by the commission, however, resulted in a significant increase in commission revenue for fiscal 2010. In fiscal 2010, both the commission's operating surplus and year-end fund balance were significantly higher than the prior year. Though costs exceeded estimates as well, revenues exceeded estimates by a wider margin. The actual revenue exceeded the 2010 estimates reported in the preliminary evaluation by more than \$500,000. If the number of licensees rebounds to levels similar to those existing between fiscal 2005 and 2008, the commission's revenues should continue to increase.

**Exhibit 5.2**  
**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</u>     |
|---------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| <b>Total Revenues</b>     | <b>\$1,987,096</b> | <b>\$2,142,510</b> | <b>\$2,130,650</b> | <b>\$2,022,188</b> | <b>\$2,128,098</b> | <b>\$3,142,251</b> |
| Direct Expenditures       | 1,095,480          | 830,422            | 1,150,823          | 1,127,702          | 1,429,026          | 1,837,735          |
| Direct Legal Expenditures | 0                  | 0                  | 299,376            | 297,346            | 297,995            | 321,523            |
| O&P Cost Allocation       | 304,144            | 246,183            | 309,438            | 375,741            | 308,770            | –                  |
| DLLR Indirect Costs       | 120,657            | 130,173            | 102,283            | 109,008            | 160,466            | 145,635            |
| <b>Total Expenditures</b> | <b>\$1,520,281</b> | <b>\$1,206,778</b> | <b>\$1,861,920</b> | <b>\$1,909,797</b> | <b>\$2,196,257</b> | <b>\$2,304,893</b> |
| Operating Surplus         | \$466,815          | \$935,732          | \$268,730          | \$112,391          | (\$68,159)         | \$837,358          |
| <b>Fund Balance</b>       | <b>N/A</b>         | <b>N/A</b>         | <b>\$268,730</b>   | <b>\$381,121</b>   | <b>\$312,962</b>   | <b>\$1,150,320</b> |

Notes: The State Real Estate Commission became a special funded entity effective July 1, 2006. Legal expenditures are not calculated for general funded boards, so do not appear prior to fiscal 2007. 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. 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.

The fiscal 2010 revenues include \$56,097 which was mistakenly posted as commission revenue rather than to the general fund. This money will be deducted from the commission special fund, but it is unclear whether that correction will be reflected as a change to the official fiscal 2010 revenue numbers. The fiscal 2010 direct expenditures include a \$352,002 administrative allocation previously reported as divisional indirect costs in the O&P Cost Allocation row.

Source: Department of Labor, Licensing, and Regulation

The commission is expecting increased expenditures over the next few years. While the commission does not yet have an estimate of the cost of introducing an online system for tracking continuing education, the majority of the expense involved in the project would be the front-end cost of purchasing the system from the distributor. This significant expenditure is expected to occur within the next two years. A second upcoming expenditure increase may result from the commission's work to clear the extensive complaint backlog. The assessment made by the Office of Administrative Hearings (OAH) is a projected figure based on prior years' usage. Though the number of hearings has dropped in the most recent fiscal year (discussed in **Chapter 4** under "Complaint Activity Has Stabilized"), the commission expects payments to OAH may

increase in the next few years due to the significant uptick in the number of hearings held in fiscal 2009 to clear its backlog. The large OAH caseload has also been responsible for the increase in direct legal expenditures in fiscal 2010, which may continue to rise in fiscal 2011.

As a result of a recent OAH audit, it is possible that the commission's OAH charges may decrease. In fiscal 2010, OAH estimated the commission's percentage of total OAH time allocation at 1.7%, based on an estimated 720 total case hours (an estimated 30 cases at an average of 24 hours per case). The audit concluded, however, that these estimates were overstated and, despite an increase to an estimated 69 commission cases, OAH's revised projections for fiscal 2011 estimate that the commission's 1,321 total case hours will be only 1.51% of OAH's total time allocation. This percentage decrease should result in a slight decrease in OAH costs, despite the significant increase in the number of cases and the amount of case time.

**Recommendation 5: 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 Matter Committee, on or before October 1, 2012, updating the committees on the commission's fiscal situation, including information on licensing trends and operating expenses.**

In repealing the statutory fees and authorizing the commission to set most of its own fees, 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 for other State entities. Though the commission controls most of its fees, it does not have the authority to make the collection charge consistent with the statewide fee.

The commission would like to change two additional fees, 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. A fee that is not currently allowed by the Real Estate Brokers Act would apply to a licensee who 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 make the fee for this “in-house transfer” consistent with the fee charged to licensees for a transfer from one broker to another because the same service is provided by the commission for each transaction. Though the commission does not have specific figures on the amount of revenue that would be generated by changing the fees, the executive director believes it is not a significant amount, so pursuing legislation on this issue is not a current priority for the commission.

**Recommendation 6: Legislation to continue the State Real Estate Commission and extend its termination date 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.**

## Appendix 1. Housing Statistics in Maryland

|                      | <u>Units Sold</u> | <u>Units Sold in<br/>Prior Year</u> | <u>% Change</u> | <u>Average<br/>Price</u> | <u>Average<br/>Price in<br/>Prior Year</u> | <u>% Change</u> |
|----------------------|-------------------|-------------------------------------|-----------------|--------------------------|--------------------------------------------|-----------------|
| <b>July<br/>2010</b> | 4,337             | 5,231                               | - 17.09%        | \$314,933                | \$317,076                                  | - 0.70%         |
| <b>2009</b>          | 52,591            | 46,834                              | 12.29%          | \$301,270                | \$341,173                                  | - 11.70%        |
| <b>2008</b>          | 46,834            | 63,381                              | - 26.11%        | \$341,173                | \$362,304                                  | - 5.83%         |
| <b>2007</b>          | 63,381            | 82,787                              | - 23.44%        | \$362,304                | \$357,674                                  | 1.29%           |
| <b>2006</b>          | 82,787            | 98,858                              | - 16.26%        | \$357,674                | \$341,006                                  | 4.89%           |
| <b>2005</b>          | 98,858            | 98,242                              | 0.63%           | \$341,006                | \$286,554                                  | 19.00%          |
| <b>2004</b>          | 98,242            | 89,409                              | 9.88%           | \$286,554                | \$241,025                                  | 18.89%          |
| <b>2003</b>          | 89,409            | 84,976                              | 5.22%           | \$241,025                | \$210,015                                  | 14.77%          |
| <b>2002</b>          | 84,976            | 80,207                              | 5.95%           | \$210,015                | \$184,953                                  | 13.55%          |
| <b>2001</b>          | 80,207            | 61,836                              | 29.71%          | \$184,953                | \$182,167                                  | 1.53%           |
| <b>2000</b>          | 61,836            | 57,814                              | 6.96%           | \$182,167                | \$162,018                                  | 12.44%          |

Note: To calculate the weighted average unit price for the entire State, the Maryland Association of Realtors weights the average price for all 24 Maryland jurisdictions by the number of homes sold.

Source: Maryland Association of Realtors, as reported by Metropolitan Regional Information Systems, Inc. and the Coastal Association of Realtors



## **Appendix 2. Membership of the State Real Estate Commission**

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### **Industry Representatives**

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

### **Consumer Representatives**

Juan Munoz  
Robin L. Pirtle  
Jeff Thaler  
Colette P. Youngblood



## **Appendix 3. Committees of the State Real Estate Commission**

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### **Education Committee**

Georgiana S. Tyler, Chair

Anne S. Cooke

Colette P. Youngblood

### **Legislative Committee**

J. Nicholas D'Ambrosia, Chair

Marla S. Johnson



## Appendix 4. Hearing Board Assignments

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### **Board 1**

J. Nicholas D'Ambrosia

Marla Johnson

Colette P. Youngblood

### **Board 2**

Anne S. Cooke

Robin L. Pirtle

Georgiana S. Tyler



## Appendix 5. Licensing Statistics in Selected States

| State | Count as of | Individual Licensees                                                                       |                                     |                                |                         | Offices |             |       | Other Licenses                                                             |                                 |                          |             | Population of State |
|-------|-------------|--------------------------------------------------------------------------------------------|-------------------------------------|--------------------------------|-------------------------|---------|-------------|-------|----------------------------------------------------------------------------|---------------------------------|--------------------------|-------------|---------------------|
|       |             | Brokers Active (Inactive)                                                                  | Associate Brokers Active (Inactive) | Salespersons Active (Inactive) | Total Active (Inactive) | Main    | Branch      | Total | Category                                                                   | Number                          | Category                 | Number      |                     |
| DC    | Spring 2010 | 2,362                                                                                      |                                     | 6,670                          | 9,032                   | 29      |             | 29    | Property manager                                                           | 274                             | Broker Companies         | 1,005       | 599,657             |
| DE    | Aug 2010    | 692 (43)                                                                                   |                                     | 3,386 (538)                    | 4,078 (581)             | 200     | 60          | 260   | Nonresident Brokers                                                        | 314 (15)                        | Nonresident Salespersons | 618 (45)    | 885,122             |
| MD    | June 2010   | 4,783                                                                                      | 3,151                               | 35,840                         | 43,774 (4,425)          |         | 551         | 551   | Reciprocal Broker<br>Reciprocal Associate Broker<br>Reciprocal Salesperson | 59<br>14<br>139                 | Time share               | 4           | 5,699,478           |
| PA    | April 2010  | Sole – 1,530 (10,070) / LLC Partnership – 3,287 (6,493)<br>Multi-Licensee – 3,219 (11,218) | 4,371 (12,448)                      | 39,374 (165,210)               | 51,781 (205,439)        |         | 901 (6,599) | 7,500 | Reciprocal Broker<br>Reciprocal Associate Broker<br>Reciprocal Salesperson | 75 (41)<br>55 (23)<br>497 (295) | Time share               | 218 (2,062) | 12,604,767          |
| VA    | Aug 2010    | 4,492                                                                                      | 5,858                               | 36,131                         | 46,481                  |         |             |       | Sole proprietor                                                            | 1,714                           |                          |             | 7,882,590           |

Note: Pennsylvania requires licensing as a cemetery broker, associate broker, or salesperson to work within the limited field or branch of business that applies to cemetery lots, plots, and mausoleum spaces or openings (PA Code, § 35.201, *et al*). These licenses are not included in the license counts listed above.

Source: District of Columbia Real Estate Commission; Delaware Real Estate Commission; Maryland State Real Estate Commission; Pennsylvania Department of State Bureau of Professional and Occupational Affairs; Virginia Real Estate Board; *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2009*, United States Census Bureau



## Appendix 6. State Real Estate Commission Fees

| <u>Fee Type</u>                                         | <u>Broker</u> | <u>Associate Broker</u> | <u>Salesperson</u> |
|---------------------------------------------------------|---------------|-------------------------|--------------------|
| Initial Application                                     | \$190         | \$130                   | \$90               |
| Examination                                             | 66            | 66                      | 66                 |
| 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                              | N/A           | 25                      | 25                 |
| Certificate of License History                          |               |                         |                    |
| 5-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.  
 Guaranty Fund Assessments are one-time-only at the time of the initial application.

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



## Appendix 7. License and Miscellaneous Fees in Selected States

| State     | License Fees (\$) |            |           |                 |            |           | Term<br>License<br>(in<br>years) | Miscellaneous Fees (\$) |    |                          |    |                     |    |                         |    |        |                            |    |        |
|-----------|-------------------|------------|-----------|-----------------|------------|-----------|----------------------------------|-------------------------|----|--------------------------|----|---------------------|----|-------------------------|----|--------|----------------------------|----|--------|
|           | Original License  |            |           | License Renewal |            |           |                                  | License Transfer        |    | Cert. of License History |    | Change License Name |    | Change of Business Name |    |        | Change of Business Address |    |        |
|           | B                 | SP         | F/AB*     | B               | SP         | F/AB*     |                                  | B                       | SP | B                        | SP | B                   | SP | B                       | SP | F/AB** | B                          | SP | F/AB** |
| DC        | 210               | 130        | 210       | 170             | 130        | 170       | 2                                | 30                      | 30 | 30                       | 30 |                     |    |                         |    |        |                            |    |        |
| DE        | 148               | 77         | 112       |                 |            |           | 2                                | 20                      | 20 | 30                       | 30 |                     |    |                         |    |        |                            |    |        |
| <b>MD</b> | <b>190</b>        | <b>130</b> | <b>90</b> | <b>190</b>      | <b>130</b> | <b>90</b> | 2                                |                         | 25 | 75                       | 75 | 25                  | 25 | 25                      | 25 | 25     |                            |    |        |
| PA        | 126               | 96         | 96        | 126             | 96         | 96        | 2                                |                         |    | 40                       | 40 | 75                  | 20 | 75                      | 20 | 20     | 75                         | 20 | 20     |
| VA        | 210               | 170        | 270       | 90              | 65         | 160       | 2                                | 60                      | 60 | 35                       | 35 | 0                   | 0  | 0                       | 0  | 0      | 0                          | 0  | 0      |

B = Broker  
 SP = Salesperson  
 F/AB = Firm or Associate Broker

\*Virginia does not offer associate broker licenses, but requires separate licensure of real estate firms.

Note: Maryland requires a one-time \$20 Guaranty Fund assessment paid at the time of initial licensure in addition to the license fee. The District of Columbia requires an additional \$60 Guaranty Fund assessment payable every two years or a \$30 assessment paid for one year.

Source: District of Columbia Department of Consumer and Regulatory Affairs; Delaware Real Estate Commission; Pennsylvania Code § 35.203; Virginia Real Estate Board; Maryland State Real Estate Commission



**Appendix 8. Draft Legislation  
to Implement Statutory Recommendations**

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Bill No.: \_\_\_\_\_  
Requested: \_\_\_\_\_  
Committee: \_\_\_\_\_

Drafted by: Eastwood  
Typed by: Elizabeth  
Stored –  
Proofread by \_\_\_\_\_  
Checked by  \_\_\_\_\_

By: **Chair, Education, Health, and Environmental Affairs Committee**

A BILL ENTITLED

1 AN ACT concerning

2 **State Real Estate Commission – Sunset Extension and Program Evaluation**

3 FOR the purpose of continuing the State Real Estate Commission in accordance with  
4 the provisions of the Maryland Program Evaluation Act (sunset law) by  
5 extending to a certain date the termination provisions relating to certain  
6 statutory and regulatory authority of the Commission; requiring the  
7 Commission to include certain information in its annual report to the Secretary  
8 of Labor, Licensing, and Regulation; increasing the amount that a person may  
9 recover for each claim against the Real Estate Guaranty Fund; requiring the  
10 licensee to submit notice of the change, certain documentation, and a certain fee  
11 to the Commission if the address of the affiliated brokerage of a licensed  
12 associate real estate broker or a licensed real estate salesperson changes;  
13 increasing a certain fee for collection of a dishonored check; requiring the  
14 Commission to submit a certain report on or before a certain date; and generally  
15 relating to the State Real Estate Commission.

16 BY repealing and reenacting, with amendments,  
17 Article – Business Occupations and Professions  
18 Section 17–210, 17–404(b), 17–520, 17–521(a), and 17–702  
19 Annotated Code of Maryland  
20 (2010 Replacement Volume)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,  
2 Article – State Government  
3 Section 8–403(a)  
4 Annotated Code of Maryland  
5 (2009 Replacement Volume and 2010 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – State Government  
8 Section 8–403(b)(60)  
9 Annotated Code of Maryland  
10 (2009 Replacement Volume and 2010 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – Business Occupations and Professions**

14 17–210.

15 The Commission shall submit to the Secretary an annual report of the activities  
16 of the Commission that includes:

- 17 (1) a statement of the total receipts from license fees;
- 18 (2) a statement of the total expenditures of the Commission;
- 19 (3) the number of real estate broker licenses, associate real estate  
20 broker licenses, and real estate salesperson licenses issued in each county;
- 21 (4) the number of hearings held;
- 22 (5) the number of complaints received;
- 23 (6) the number of investigations made;
- 24 (7) the number of applications for licenses denied;
- 25 (8) the total number of licenses suspended or revoked;

1           (9)    the number of cases resolved within the schedule adopted under §  
2 17-208(b) of this subtitle; [and]

3           **(10) THE NUMBER OF GUARANTY FUND AWARDS MADE THAT**  
4 **REACH THE STATUTORY CAP AT THE TIME THE AWARD IS MADE, THE**  
5 **CORRESPONDING AMOUNTS CLAIMED BY THE COMPLAINANT IN EACH CASE,**  
6 **AND THE AMOUNT OF DAMAGES THAT WOULD HAVE BEEN REIMBURSABLE TO**  
7 **THE COMPLAINANT IF THE STATUTORY CAP DID NOT EXIST; AND**

8           [(10)] (11) any other information that reflects the work of the  
9 Commission.

10 17-404.

11           (b)    The amount recovered for any claim against the Guaranty Fund may not  
12 exceed [\$25,000] **\$50,000** for each claim.

13 17-520.

14           (a)    Within the time set by the Commission, a real estate broker shall submit  
15 to the Commission:

16                   (1)    written notice of any change in the address of the principal office of  
17 the broker on the form that the Commission provides;

18                   (2)    the license certificate and pocket card of the broker; and

19                   (3)    a fee for issuance of a new license certificate and pocket card of \$5.

20           (b)    On receipt of the notice, fee, license certificate, and pocket card, the  
21 Commission shall issue a new license certificate and pocket card to the real estate  
22 broker for the unexpired period of the broker's license.

23           (c)    Within the time set by the Commission, a real estate broker shall submit  
24 to the Commission:

1 (1) written notice of any change in the address of a branch office of the  
2 broker on the form that the Commission provides;

3 (2) the branch office certificate; and

4 (3) a fee for the issuance of a new branch office certificate of \$5.

5 (d) On receipt of the notice, fee, and branch office certificate, the Commission  
6 shall issue a new branch office certificate to the real estate broker for the unexpired  
7 period of the branch office certificate.

8 (e) If a real estate broker changes the address of the principal office or a  
9 branch office of the broker and fails to submit the required notice, the license of the  
10 broker shall be suspended automatically until the broker submits the required notice.

11 **(F) IF THE ADDRESS OF THE AFFILIATED BROKERAGE OF A LICENSED**  
12 **ASSOCIATE REAL ESTATE BROKER OR A LICENSED REAL ESTATE SALESPERSON**  
13 **CHANGES, WITHIN THE TIME SET BY THE COMMISSION, THE LICENSEE SHALL**  
14 **SUBMIT TO THE COMMISSION:**

15 **(1) WRITTEN NOTICE OF ANY CHANGE IN THE ADDRESS OF THE**  
16 **BROKERAGE;**

17 **(2) THE LICENSE CERTIFICATE AND POCKET CARD OF THE**  
18 **LICENSEE; AND**

19 **(3) A FEE FOR THE ISSUANCE OF A NEW LICENSE CERTIFICATE**  
20 **AND POCKET CARD OF \$5.**

21 17-521.

22 (a) If a person tenders a check to the Commission in payment of a fee and the  
23 check is dishonored, the person shall pay to the Commission an additional fee for cost  
24 of collection of ~~[\$25]~~ **\$35** for each dishonored check.

25 17-702.

1 Subject to the evaluation and reestablishment provisions of the Maryland  
2 Program Evaluation Act, this title and all regulations adopted under this title shall  
3 terminate and be of no effect after July 1, [2012] **2022**.

4 **Article – State Government**

5 8–403.

6 (a) On or before December 15 of the 2nd year before the evaluation date of a  
7 governmental activity or unit, the Legislative Policy Committee, based on a  
8 preliminary evaluation, may waive as unnecessary the evaluation required under this  
9 section.

10 (b) Except as otherwise provided in subsection (a) of this section, on or before  
11 the evaluation date for the following governmental activities or units, an evaluation  
12 shall be made of the following governmental activities or units and the statutes and  
13 regulations that relate to the governmental activities or units:

14 (60) Real Estate Commission, State (§ 17–201 of the Business  
15 Occupations and Professions Article: July 1, [2011] **2021**);

16 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before October 1,  
17 2012, the State Real Estate Commission shall report to the Senate Education, Health,  
18 and Environmental Affairs Committee and the House Economic Matters Committee,  
19 in accordance with § 2–1246 of the State Government Article, on:

20 (1) the implementation of recommendations of the Department of  
21 Legislative Services contained in the sunset evaluation report dated October 2010;

22 (2) any types of consumer claims that are not currently eligible for  
23 restitution from the Real Estate Guaranty Fund, established under § 17–402 of the  
24 Business Occupations and Professions Article, that the Commission believes should be  
25 reimbursable under statute;

26 (3) if the Commission concludes that there is no need to expand the  
27 types of claims eligible for restitution, whether the Commission recommends reducing,  
28 suspending, or eliminating the Real Estate Guaranty Fund assessment; and

1                   (4) the Commission's fiscal situation, including information on  
2 licensing trends and operating expenses.

3                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 June 1, 2011.

## **Appendix 9. Written Comments of the State Real Estate Commission**

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COMMENTS OF  
THE DEPARTMENT OF LABOR, LICENSING AND REGULATION AND  
THE REAL ESTATE COMMISSION OF MARYLAND  
REGARDING THE SUNSET EVALUATION OF  
THE COMMISSION BY THE DEPARTMENT OF LEGISLATIVE SERVICES  
OCTOBER 2010

**Recommendation 1: 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, unmodified language should be adopted requiring the commission to report to the Senate Education, Health, and Environmental Affairs and House Economic Matter Committees, on or before October 1, 2012, on the implementation status of recommendations made by the Department of Legislative Services that are adopted by the committees.**

The Department of Labor, Licensing and Regulation and the Real Estate Commission concur with this recommendation and will report as requested on the implementation status of DLS recommendations that are adopted by the committees.

**Recommendation 2: 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.**

The DLLR Office of the Secretary now provides the commission with the names of potential consumer members prior to their appointment. The Executive Director contacts these possible nominees and meets with them to explain the workings of the real estate commission, the range of duties and committee assignments and the time commitments that are involved when serving on the commission. In addition, the Real Estate Commission invites prospective candidates to come and “shadow” a Commissioner through their duties on the monthly meeting day. This includes panel reviews, the business meeting and scheduled application or exception hearings. An additional possibility, as travel policy permits, is to send new Commissioners to “Commissioner College” held annually by the Association of Real Estate Licensing Law Officials. Several of our present and past commissioners have attended the program and found it to be thorough and informative.

DLLR will forward its written training manual to new members and look to increase commission and board member training opportunities as recommended.

**Recommendation 3: 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.**

The commission is currently investigating the various programs and systems that are available to track continuing education hours and are capable of merging the collected data with the current licensing database and electronic licensing system used by the Division of Occupational and Professional Licensing. The goal is to have a continuing education collection system in place within two years. The project is relatively complex in nature, but several states have already put such a system in place, which will be of great assistance in accomplishing the project in Maryland. The department has placed this project in its technology master plan and the division has ranked it as a priority item

**Recommendation 4: Legislation to continue the State Real Estate Commission and extend its termination date should include provisions to raise the Guaranty Fund award cap from \$25,000 to \$50,000. The State Real Estate Commission should maintain records to reflect 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 there continues to be Guaranty Fund awards that 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. The commission should study the types of claims that are not currently eligible for restitution from the Guaranty Fund and create a list of claims that should be reimbursable under the statute and report its findings in its 2012 report to the committees. The commission should submit legislation to expand claim eligibility through the Department of Labor, Licensing, and Regulation during or before the 2013 legislative session. If the commission decides not to expand the types of claims that are eligible for restitution, the commission should consider reducing or eliminating the Guaranty Fund fee to reduce the excess fund balance.**

The commission and the department agree that consideration of an increase in the guaranty fund cap is merited, especially in light of the number of years that the current cap has been in place. The commission will record the requested data with respect to claims that reach the cap and related amounts exceeding the cap requested by the consumer. It has been observed by the commission, that many times consumers do not provide a break down of what they are claiming, send no documents to support their claims and often include items such as punitive damages, mileage, rent, etc that would not be covered under even an expanded range of coverage. The commission believes that it would likely be of greater efficacy to increase the cap in concert with legislation to expand claims eligibility. The

commission will thoroughly consider claims eligibility and appropriate changes to the current restrictive standards and report to the Committees as requested and submit draft legislation to the department no later than the 2013 Session of the General Assembly.

**Recommendation 5: 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 and House Economic Matter Committees, on or before October 1, 2012, updating the committees on the commission’s fiscal situation, including information on licensing trends and operating expenses.**

The overarching issue with respect to Real Estate Special Fund balance is the overall condition of the real estate market. The commission recognized that there could be a significant decline in the number of real estate licensees as a result of the housing market’s rapid deterioration. It established its base fee under special funding at a level in part to generate a sufficient balance to compensate for declining revenues. From 2008 to 2010, the roster of licensed real estate professionals has declined by nearly 14,000 to a total of 43,000. The decline continues and could well bottom out at fewer than 30,000 licensees. In addition, the commission expects a significant increase in the current year for the cost of legal services as a result a large increase in cases moving through the hearing process. Significant cost increases are expected in the next two years for administrative hearing costs, again related to the referenced volume of cases. The Fund would be the source to cover these costs. In addition the cost of developing and implementing the continuing education tracking system discussed in recommendation 3 would be borne by the Fund. The commission and the Department will monitor this fund very carefully and report to the Committees on or before October 1, 2012 as requested regarding the overall fiscal condition, licensing trends, operating expenses and all other pertinent matters

The department has counseled all boards and commissions that operate under a continuing and non lapsing special fund regarding the management of fund balances and the appropriateness of fee reductions to assist in maintaining such balances at prudent levels. The five design boards reduced their core license fee in this context. After a thorough analysis, the Department would have no concerns regarding a choice by the Commission to consider a fee reduction.

**Recommendation 6: Legislation to continue the State Real Estate Commission and extend its termination date 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**

The commission and the department support this recommendation.

