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May 10, 2011

The Honorable Martin O'Malley  
Governor of Maryland  
State House  
100 State Circle  
Annapolis, Maryland 21401-1991

*Re: Senate Bill 285*

Dear Governor O'Malley:

We write to address two issues raised by Senate Bill 285, "State Real Estate Commission - Reinstatement of Licenses and Inactive Status," which was form approved on April 18, 2011. Specifically, we address the meaning of Section 2 of the bill, which provides:

AND BE IT FURTHER ENACTED, That this Act applies only to licensees whose license is placed on inactive status on or after October 1, 2011.

It is our view that the word "only" in this provision means that the only licensees on inactive status who are affected by the bill are those whose license is placed on inactive status on or after October 1, 2011. We have also examined whether the three-year termination may be applied to a licensee whose license is expired for more than three, but less than four years at the time that the bill takes effect, and have concluded that it may.

The body of Senate Bill 285 amends Business Occupations and Professions Article ("BO"), § 17-314(g) to require that a licensee under the Real Estate Brokers Title whose license has expired have the license reinstated within three years of the time it expired to avoid having to retake the examination. It also amends BO § 17-316(c) to provide that a license on inactive status expires three years after the date it is placed on inactive status. Under current law, both limitations are 4 years.

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In interpreting a statute, it is necessary to read the statute "so that no word, phrase, clause, or sentence is rendered meaningless." *Shenker v. Laureate Education*, 411 Md. 317, 348 (2009). If Section 2 of Senate Bill 285 is read to limit the coverage of the bill to licensees who go on inactive status after the effective date of the bill, and only licensees who go on inactive status after the effective date of the bill, the amendments to BO § 17-314(g) are rendered meaningless. Moreover, excluding licensees whose license was placed on inactive status prior to the effective date from the three year requirement makes sense in light of the purpose of the bill, because licensees on inactive status have been issued an inactive license that expired in four years. Licensees whose license has expired have no such claim.<sup>1</sup> Therefore, it is our view that the bill applies to licensees whose licenses have expired as well as to licensees whose license is placed on inactive status on or after October 1, 2011.

The second question is whether the bill can be applied to licensees whose licenses will have expired more than three years ago, but less than four years ago, when the bill takes effect. It is our view that it may. There is no absolute prohibition against retroactive application of a statute. *Grasslands Plantation, Inc. v. Frizz-King Enters., LLC*, 410 Md. 191, 218 (2009).<sup>2</sup> A statute may be given retroactive effect that affects a non-vested right or mere expectancy, if there is a demonstrated legislative intent to that end. *McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 160 (2010). It is well-established, however, that a statute may not be given retroactive application if to do so would impair vested rights. *Prince George's County v. Longtin*, \_\_\_ Md. \_\_\_ (No. 35, September Term 2010, April 25, 2011), *slip op.* at 33.

A vested right is one that is "so fixed that it is not dependent on any future act, contingency or decision to make it more secure." *McComas v. Criminal Injuries Compensation Bd.*, 88 Md. App. 143, 149-150 (1991). It must be more than "a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand." *Id.* at 150. It is our view that the mere fact a person who allowed a license to lapse would previously have had four years in which to reinstate the license without having to retake

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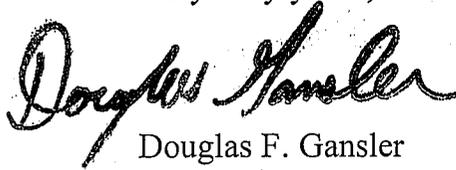
<sup>1</sup> The addition of this provision may also reflect a reaction to the Fiscal and Policy Note on the Senate Third Reader, which stated that "Legislative Services assumes that the bill applies to licensees who have already transitioned to inactive or expired status, rather than licensees who transition on or after the bill's October 1, 2011 effective date."

<sup>2</sup> A retroactive statute is one that seeks to give legal significance to acts that occurred prior to its effective date. *State Ethics Commission v. Evans*, 382 Md. 370, \_\_\_ (2004).

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the exam under the law in effect at the time of the lapse does not create a vested right to reinstate the license under those provisions. *Cf., Oltman v. Maryland State Bd. of Physicians*, 182 Md. App. 65 (2008) (no property right in revoked professional certification). Therefore, it is our view that the bill may be given retroactive effect to persons who have failed to renew their license, even if the effect is to cut off their ability to reinstate their license without examination on the effective date of the bill.<sup>3</sup>

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/KMR/kk

cc: The Honorable Joan Carter Conway  
The Honorable John P. McDonough  
Joseph Bryce  
Karl Aro

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<sup>3</sup> Persons in this position have from now until the effective date of the bill, October 1, 2011, to reinstate their license and avoid this effect.