

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 234

(Chair, Education, Health, and Environmental Affairs  
Committee)

Education, Health, and Environmental Affairs

Economic Matters

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**State Real Estate Commission - Sunset Extension and Program Evaluation**

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This bill extends the termination date of the State Real Estate Commission by 10 years to July 1, 2022, and requires evaluation of the commission by July 1, 2021. The bill changes various statutory provisions related to the regulation of real estate professionals and includes two reporting requirements.

The bill takes effect July 1, 2011.

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**Fiscal Summary**

**State Effect:** Special fund revenues and expenditures for the State Real Estate Commission Fund are maintained beyond FY 2013. The Governor's proposed FY 2012 budget includes \$1,962,715 for commission operations. However, special fund revenues for the State Real Estate Commission Fund may increase minimally due to the establishment of new fees and the increase in the dishonored check fee. Potential minimal increase in nonbudgeted expenditures by the Real Estate Guaranty Fund within the Department of Labor, Licensing, and Regulation (DLLR), due to the increased statutory award cap for claims against the fund. Potential significant operational and fiscal impact for DLLR to compile data regarding the number of real estate transactions in which commission licensees have participated that ultimately resulted in foreclosure.

**Local Effect:** None.

**Small Business Effect:** Potential minimal.

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## Analysis

### **Bill Summary/Current Law:**

#### *Real Estate Guaranty Fund Claims*

The bill increases the amount a consumer may recover from the Real Estate Guaranty Fund from \$25,000 to \$50,000. Created by Chapter 649 of 1971, the Guaranty Fund is 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.

The bill also requires the commission to submit additional information in its annual report to the Secretary of Labor, Licensing, and Regulation regarding various issues related to the payment of Guaranty Fund claims. In particular, the commission must report the number of awards that reach the statutory cap, the total amount included in the claim by the consumer, and the amount of potential damages owed to the consumer if the cap did not exist.

#### *Requirements Related to Relocation of a Licensee's Office*

The bill specifies that, if the address of an affiliated brokerage for a licensed associate broker or real estate salesperson changes, the licensee must report the change to the commission within a specified time. The bill requires licensees to submit to the commission (1) written notice of any change in the address of the brokerage; (2) the license certificate and pocket card of the licensee; and (3) \$5 to pay for the issuance of a new license certificate and pocket card.

#### *Dishonored Checks*

The additional fee associated with a dishonored check is increased to \$35, consistent with standard fee for dishonored checks at other State agencies.

#### *Reporting Requirements*

The bill requires, by October 1, 2012, that the commission submit a report to specified committees of the General Assembly. The report must include information regarding:

- the implementation of recommendations of the Department of Legislative Services (DLS) contained in the October 2010 "sunset review" evaluation report;

- any types of consumer claims that are not currently eligible for restitution from the Real Estate Guaranty Fund;
- whether the commission recommends reducing, suspending, or eliminating the Guaranty Fund assessment; and
- the commission's fiscal situation, including information on licensing trends and operating expenses.

By October 1, 2013, the commission, in conjunction with the Office of Financial Regulation, must submit an additional report to specified committees of the General Assembly. The report must include information regarding:

- the number of foreclosures resulting from a real estate transaction in which each licensee of the commission participated;
- recommendations on how the commission and the office can incorporate a licensee's foreclosure statistics into the requirements for license renewal; and
- recommendations for legislation regulating licensee activity to reduce the number of property foreclosures.

## **Background:**

### *Maryland Program Evaluation Act*

The State Real Estate Commission is 1 of approximately 70 regulatory entities and activities currently subject to periodic evaluation under the Maryland Program Evaluation Act. The Act establishes a process better known as "sunset review" as most entities evaluated are also subject to termination, including the commission, which is scheduled to terminate July 1, 2012. During the 2010 interim, DLS conducted a full evaluation of the commission under the Act. The bill includes the statutory recommendations developed by DLS during the evaluation.

### *Real Estate Guaranty Fund*

All new licensees pay a fee of \$20 toward the Guaranty Fund. Prior to 1984, claims were limited to the actual loss of the complainant. However, Chapter 589 of 1984 specified that consumers were only entitled to the first \$25,000 of actual loss. In fiscal 2010, the fund paid 19 claims. Three of those claims reached the \$25,000 cap, and only six claims have reached the cap in the last five years. The number and total amount of Guaranty Fund awards for the past five years are included in **Exhibit 1**.

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**Exhibit 1**  
**Guaranty Fund Data**  
**Fiscal 2006-2010**

	<u><b>FY 2006</b></u>	<u><b>FY 2007</b></u>	<u><b>FY 2008</b></u>	<u><b>FY 2009</b></u>	<u><b>FY 2010</b></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 Awards	14	8	9	9	19
<i>For Less than \$3,000</i>	4	4	4	2	8
<i>Between \$3,000 and \$24,999</i>	9	3	5	6	8
<i>For \$25,000</i>	1	1	0	1	3
<b>Ending Fund Balance</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

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Of the six \$25,000 awards in the last five fiscal years, two of the claims were for \$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 it is unknown whether these figures reflect uncompensated amounts eligible for reimbursement under the current statutory structure, it is likely that claimants could have received at some additional restitution were the statutory cap not in place.

*Number of Licensees Has Declined in Recent Years*

The State Real Estate Commission grants licenses to qualified real estate brokers, associate brokers, and salespersons. The downturn in the residential real estate market resulted in a decrease in the number of licensees over the past several years; the decrease was especially marked among new salesperson licensees. In June 2010, there were 44,540 total licensees, which is a significant reduction from the 54,460 individuals licensed with the commission in June 2008. While the total number of licensees continues to decrease, the decrease in fiscal 2010 was less dramatic than previous years, which may indicate an end to the downward trend.

*Commission Revenues Exceed Expenditures*

Chapter 399 of 2005 established the commission as a special fund agency; all revenue collected by the commission is deposited in the State Real Estate Commission Fund to cover the actual documented direct and indirect costs of the commission. The continued decrease in the number of licensees resulted in expenditures exceeding revenues in

fiscal 2009. However, subsequent fee increases approved by the commission 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 fiscal 2009. 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 2** displays the commission's revenues, expenditures, and fund balances between fiscal 2007 and 2010.

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**Exhibit 2**  
**Commission Revenues, Expenditures, and Fund Balances**  
**Fiscal 2007-2010**

	<b><u>FY 2007</u></b>	<b><u>FY 2008</u></b>	<b><u>FY 2009</u></b>	<b><u>FY 2010</u></b>
Total Revenues	\$2,130,650	\$2,022,188	\$2,128,098	\$3,142,251
Total Expenditures	\$1,861,920	\$1,909,797	\$2,196,257	\$2,304,893
Fund Balance	\$268,730	\$381,121	\$312,962	\$1,150,320

Source: Department of Labor, Licensing, and Regulation

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*Nonstatutory Recommendations Included in the Sunset Review*

In its October 2010 "sunset review" evaluation report, DLS recommended that the commission address several nonstatutory issues, including (1) the development of a more sophisticated system of tracking the continuing education credits of licensees; (2) increasing outreach and training for potential commission members; and (3) whether a fee reduction is warranted based on the balance of the State Real Estate Commission Fund. The commission must report to specified committees of the General Assembly by October 1, 2012, regarding these issues.

**State Revenues:** The bill increases the fee, from \$25 to \$35, charged by the commission for dishonored checks. The bill also establishes a \$5 fee for the issuance of a new license or certificate and pocket card to reflect a licensee's change of address. Thus, special fund revenues increase minimally as it is expected that the new fees will be assessed in a limited number of cases.

**State Expenditures:** The bill raises the statutory cap on Guaranty Fund claims from \$25,000 to \$50,000. As depicted in Exhibit 1, DLLR advises that the number of claims that have reached the maximum statutory cap of the Guaranty Fund is very low. To the

extent that claims may be paid up to \$50,000 under the bill, nonbudgeted expenditures from the Real Estate Guaranty Fund increase as some claims total an amount higher than allowable under current law. Assuming (1) a continued balance of over \$2 million in the Guaranty Fund; and (2) no major increase in the number of claims or the amount included in the average claim, DLS advises that the impact on the Guaranty Fund is minimal.

There is currently no requirement that the commission collect the transaction information of its licensees. Thus, the commission does not maintain any internal database that may be used to determine how many transactions a licensee may have participated in that ultimately – for one reason or another – resulted in a foreclosure. Further, DLLR advises that neither the commission, nor the department, can identify any other public database that tracks how often a commission licensee may have been involved in such a transaction. Relevant information may be available, to some extent, in a private proprietary database such as the Metropolitan Regional Information Systems (MRIS) database. However, the records included may not be complete or comprehensive. Roughly one-third of the commission's licensees are not realtors and are not included in MRIS. The commission has about 44,500 licensees who have been involved in hundreds of thousands of transactions. Thus, the bill's requirement that the commission compile data on the number of foreclosures resulting from a real estate transaction in which a licensee participated is a significant operational, and possibly fiscal, burden on DLLR. To the extent the data necessary for the report is not available, or is not available at a reasonable cost, the mandated report may not be feasible.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 357 (Chair, Economic Matters Committee) - Economic Matters.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Department of Legislative Services

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