

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 728 (Chairman, Economic Matters Committee)
(By Request – Departmental – Labor, Licensing and Regulation)
Economic Matters Education, Health, and Environmental
Affairs

State Real Estate Commission - Complaints - Judicial Appeal

This departmental bill repeals an individual's right to a judicial review of a decision of the Real Estate Commission regarding a complaint against a licensee if the commission decides to dismiss the complaint, thereby making the decision of the commission final. The bill requires a three-member panel of the Real Estate Commission to review specified dismissals of complaints.

Fiscal Summary

State Effect: None. The bill codifies prior practice.

Local Effect: None.

Small Business Effect: The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: An individual who files a complaint against a real estate licensee is permitted a judicial review of a decision of the Real Estate Commission's decision to dismiss the complaint before or after investigation.

Background: The Real Estate Commission has taken the position that appeals regarding disciplinary actions should not be allowed to be appealed to the circuit court because such matters are not a contested case as defined by the State Government Article, as cited in the appeals section of real estate licensing law. This interpretation and application is consistent with the statute governing all other DLLR licensing boards which do not allow a complainant to appeal the board's decision not to bring charges. It is also consistent with criminal law which does not allow a complaining witness to appeal the prosecutor's or grand jury's decision not to bring charges.

However, the Court of Special Appeals ruled, on June 24, 2004, in the case of *Kaufman v. Maryland Real Estate Commission* (unreported opinion, Docket No. 1715/03), that the complainant could take an appeal to the circuit court. The decision was based on a reading of statute as written.

The bill would put the Real Estate Commission in the same posture as other occupational and professional licensing boards and commissions within DLLR with regards to appeals of disciplinary decisions.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 21, 2005
n/ljm

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