

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 134

(Senator Conway)

Education, Health, and Environmental Affairs

Economic Matters

State Real Estate Commission - Sunset Extension and Program Evaluation

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

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: Special fund revenues and expenditures for the State Real Estate Commission are maintained beyond FY 2012. The FY 2013 budget assumes continuation of the commission and includes \$1,913,766 for commission operations. However, special fund revenues 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. Reporting requirements can be handled with existing budgeted resources.

Local Effect: None.

Small Business Effect: Potential minimal.

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 increases, from \$3,500 to \$5,000, the amount a consumer may recover from the fund *without* a hearing before the commission.

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 or electronic 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 the standard fee for dishonored checks at other State agencies.

Reporting Requirements

The bill requires, by October 1, 2013, 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 that the commission believes should be reimbursable;
- 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.

Background:

If not reauthorized during the 2012 legislative session, the commission, licensing of real estate professionals, and other protections afforded consumers through the Real Estate Guaranty Fund terminate on July 1, 2012.

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. A copy of the DLS sunset report on the State Real Estate Commission can be found at <http://dls.state.md.us/Content.aspx?page=104>.

The sunset review process begins with a preliminary evaluation conducted by DLS on behalf of the Legislative Policy Committee (LPC). LPC decides whether to waive an entity for further (or full) evaluation. If waived, legislation to reauthorize the entity typically is enacted. Otherwise a full evaluation usually is undertaken the following year.

During the 2010 interim, DLS conducted a full evaluation of the commission under the Act. Legislation to reauthorize the commission was introduced during the 2011 legislative session but did not pass. This bill primarily implements the statutory recommendations developed by DLS during the evaluation. DLS also 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, 2013, regarding these issues.

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. As noted in the 2010 sunset review, the fund paid 19 claims in fiscal 2010; three of those claims reached the \$25,000 cap, and only six claims had reached the cap in the last five years. The number and total amount of Guaranty Fund awards for fiscal 2006 through 2010 are included in **Exhibit 1**.

Exhibit 1 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 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
Ending Fund Balance	\$1,770,910	\$2,025,901	\$2,209,690	\$2,339,061	\$2,296,501

Source: Department of Labor, Licensing, and Regulation

Of the six \$25,000 awards from fiscal 2006 through 2010, 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 otherwise eligible for reimbursement under the current statutory structure, it is likely that claimants could have received 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. There were 41,465 licensees in June 2011, which is a significant reduction from the 54,460 individuals licensed with the commission in June 2008.

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. The commission’s operating surplus fell in fiscal 2011 from its 2010 peak as total revenue declined to \$2.8 million, while expenditures increased to \$2.6 million. **Exhibit 2** displays the commission’s revenues, expenditures, and fund balances between fiscal 2007 and 2011.

Exhibit 2
Commission Revenues, Expenditures, and Fund Balances
Fiscal 2007-2011

	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Total Revenues	\$2,130,650	\$2,022,188	\$2,128,098	\$3,142,251	\$2,796,056
Total Expenditures	\$1,861,920	\$1,909,797	\$2,196,257	\$2,304,893	\$2,623,727
Fund Balance	\$268,730	\$381,121	\$312,962	\$1,150,320	\$1,322,649

Source: Department of Labor, Licensing, and Regulation

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 accruing to the State Real Estate Commission Fund 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. Further, allowing a consumer to recover up to \$5,000 from the Guaranty Fund without a hearing before the commission is not expected to increase expenditures from the Guaranty Fund; it may, however, expedite payment to consumers and facilitate the claims workload for the commission.

Additional Information

Prior Introductions: SB 234 and HB 357 of 2011 passed both houses with amendments, but a conference committee could not resolve differences between the two versions.

Cross File: None.

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

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