

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review of the Department of Commerce, Community, and Economic Development, Real Estate Commission, July 3, 2007

### PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Real Estate Commission (REC or commission). As required by state law, the legislative committees of reference shall consider this report during the legislative oversight process to determine whether the commission should be reestablished. Currently, AS 08.03.010(c)(19) states that the commission will terminate on June 30, 2008, and will have one year from that date to conclude its administrative operations.

### REPORT CONCLUSIONS

In our opinion, the Real Estate Commission is serving a public purpose and has demonstrated an ability to operate in a satisfactory manner. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. The commission carries out its responsibilities to educate both the public and licensees in a professional, competent, and efficient manner. Additionally, active investigation of complaints and licensure actions, when appropriate, provides assurance that licensed professionals are competent and ethical.

In accordance with AS 08.03.010(c)(19), REC is scheduled to terminate on June 30, 2008. Under AS 08.03.020, the commission has one year after its termination date to administratively conclude its affairs. We recommend the legislature extend the commission's termination date to June 30, 2016.

### FINDINGS AND RECOMMENDATIONS

#### Prior Audit Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund (RESF) to provide more complete, effective, and efficient consumer protection to claimants.

In the prior sunset review we recommended: 1) the maximum claim limit for individual and aggregate claims reimbursed by the RESF be increased; 2) modify the appeal notification

requirements of licensees involved in a claim from a “need to locate and notify” to “making a good faith effort to locate” the licensee; and 3) mobile home transactions be subject to RESF claims when licensed real estate professionals are involved.

This recommendation was partially implemented. Individual claims for reimbursement were raised from \$10,000 to \$15,000 and the appeal notification standard, for licensees involved in RESF claims, has been changed to making a good faith effort to locate.

We recommend that the legislature consider raising the maximum aggregate claim amount as well as making mobile home transactions subject to RESF claims when licensed real estate professionals are involved.

### Recommendation No. 2

The director of Boards and Commissions, Office of the Governor, should verify board members satisfy all statutory requirements prior to being appointed.

During 2007, a board member was appointed to the commission without meeting the professional experience requirements outlined in statute. Alaska Statute 08.88.041(a) requires brokers and associate brokers to be licensed in Alaska for at least three years before being appointed to the commission. This board member was an associate broker for less than two years prior to his appointment.

### Recommendation No. 3

The division should increase licensing fees to eliminate the commission’s current operating deficit.

As of May 31, 2007, the commission had an operating deficit of \$147,211. The deficit is caused by revenues not covering all of the commission’s expenditures for a two-year licensing period. Alaska Statute 08.01.065(c) requires fees, for an occupation, be set at a level to approximate the related regulatory costs.

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July 10, 2007

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Real Estate Commission and the attached report is submitted for your review.

### DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT REAL ESTATE COMMISSION SUNSET REVIEW

July 3, 2007

Audit Control Number

08-20051-07

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(a) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, AS 08.03.010(c)(19) states the commission will terminate on June 30, 2008 and will have one year from that date to conclude its administrative operations.

In our opinion, the termination date for the Real Estate Commission should be extended. The licensing of qualified realtors benefits the public's safety and welfare. We recommend the legislature extend the termination date of the Real Estate Commission to June 30, 2016.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson, CPA  
Legislative Auditor



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# OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (AS), we have reviewed the activities of the Real Estate Commission (REC or commission). Under AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process in determining if REC should be reestablished. Currently, AS 08.03.010(c)(19) requires REC to terminate on June 30, 2008. If the legislature takes no action to extend the termination date, the commission will have one year from that date to conclude its operations.

## Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the commission should be extended.
2. To determine if the commission is operating in the public interest.
3. To determine if the commission has exercised appropriate regulatory oversight of real estate licensees.

## Scope

Our audit reviews the operation and activities of the commission for the period July 1, 2003 through June 30, 2007. Alaska Statute 44.66.050(c) sets out the criteria we used to determine if there is a demonstrated public need for the commission.

## Methodology

To accomplish the audit objectives, the following documents were reviewed:

- Applicable statutes and regulations
- Commission annual reports, meeting minutes, newsletters, and publications
- Licensing staff's correspondence files
- Attorney General opinions
- Newspaper articles
- Commission member résumés

- Current legislation (bills and testimony)
- Licensing files, exam files, investigation files, surety fund claim files
- REC and surety fund financial information
- Civil judgments from the Alaska Court System

We reviewed information from the following databases:

- REC licensing database
- Division of Corporations, Business, and Professional Licensing (DCBPL) investigations database
- State Accounting System (AKSAS)

We interviewed the following individuals:

- Staff of the DCBPL, Department of Commerce, Community, and Economic Development (DCCED)
- Chairperson of REC
- Staff of the Division of Insurance, DCCED
- Chief Administrative Law Judge, Office of Administrative Hearings, Department of Administration
- Private insurance companies that provide errors and omissions (E&O) insurance and surety bonds
- Realtor licensing staff and websites of 11 western states
- Director of Boards and Commissions, Office of the Governor

We also requested complaints from the Commission for Human Rights, the Office of Victim's Rights, the Attorney General, Division of Corporations, Business, and Professional Licensing, the Ombudsman, and the Office of the Governor's Boards and Commission. However, no relevant complaints had been filed.

# ORGANIZATION AND FUNCTION

## Commission Membership

Alaska Statute 08.88.011 establishes the Real Estate Commission (REC or commission). REC consists of five real estate brokers or associate brokers and two public members.

By statute, the five professional members must be licensed in Alaska for at least three years prior to appointment. The statute further specifies the five members should be from each of the four Judicial Districts, and one from the state at large. However, if no licensed real estate broker or associate broker is eligible or available from the Second Judicial District for appointment, then two licensed brokers or associate brokers shall be appointed from the state at large. Currently, the commission has two REC members from the state at large because of the unavailability of a candidate from the Second Judicial District.

### **Exhibit 1**

#### **Members of the Real Estate Commission As of June 30, 2007**

##### Professional Members

Gene DuVal, 4th Judicial District, Chair  
David Somers, Broker at Large, Vice Chair  
Brad Cole, 3<sup>rd</sup> Judicial District  
Roger Stone, 1<sup>st</sup> Judicial District  
Rita Wilson, Broker at Large

##### Public Members

Tim Worthen – Public Member  
Floyd Lee Sherman – Public Member

The two public members cannot be engaged in the real estate profession, have a legal contract with a real estate licensee other than as a consumer, or have a direct financial interest in the real estate profession.

## Statutory Duties of the Commission

Under Alaska Statute 08.88.071, REC must perform the following duties:

1. Determine whether applicants met requirements for licenses under this chapter and issue licenses to those who qualify.
2. Prepare and grade examinations.
3. After a hearing, REC has the authority to suspend or revoke the license of a licensee – or impose other disciplinary sanctions authorized under AS 08.01.075 on a licensee – who violates real estate statutes and regulations.
4. Prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations adopted under this chapter.

5. Release for publication in a newspaper of general circulation, in the locale of the offending person's principal office registered with the commission, a notice of disciplinary action taken by the commission against a person licensed under this chapter.
6. Issue a temporary permit to the personal representative of the estate of a deceased or legally incompetent real estate broker or to another person designated by the commission with the approval of the personal representative of the estate, in order to secure proper administration in concluding the affairs of the decedent broker's real estate business or temporarily managing the real estate business of the broker, respectively.
7. Establish and periodically revise the form of the seller's property disclosure statement required by AS 34.70.010.
8. Have the authority to levy civil fines as established in this chapter.
9. Revoke the license of a broker or associate broker who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or a felony involving moral turpitude committed while licensed under this chapter. Notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven years have elapsed since the person completed the sentence imposed for the conviction.

### Commission License Requirements

REC licenses real estate salespersons, associate brokers, and brokers. In order to obtain initial licensure, a real estate salesperson must pass an examination, be at least 19 years old, must not be under indictment for any felony involving moral turpitude, or if convicted for an offense, the person must have completed the imposed sentence, and be employed by a licensed real estate broker. The salesperson must also complete 20 hours of pre-licensing education.

Real estate brokers and associate brokers must pass an examination and have a minimum of 24 months of active and continuous experience as a real estate licensee. A broker differs from an associate broker in that a broker must be an owner of a real estate business or must be employed as a broker by a corporation or partnership. Brokers and associate brokers must complete 15 hours of pre-licensing education.

All initial licensees must also complete 20 hours of post-licensing education within the first year of receiving their license.

Real estate licensees are renewed biennially. The next biennial renewal date is January 31, 2008. In order to renew their license, real estate licensees must complete a renewal application, remit a license fee, and complete 20 hours of education.

## Real Estate Surety Fund

The Real Estate Surety Fund (RESF or fund) operates under Article 4 of AS 08.88. REC administers the fund and sets the surety fee paid by all licensees. The fund was established in 1974, serving as a substitute for the previously required corporate surety bonds, to fund the education of licensees and the public.

By law, the fund is to be used for reimbursement of losses suffered as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of any real estate licensee. Claims for reimbursement require a \$250 filing fee and claim payments are limited to \$15,000 per transaction, up to a maximum of \$50,000 per licensee. The statutes grant REC the following authority when considering a claim for payment from RESF:

1. Take and hear evidence pertaining to the claim.
2. Administer oaths and affirmations.
3. Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the claim.
4. Engage the services of an investigator, accountant, or other expert necessary to process the claim.

However, the commission currently exercises its option under AS 08.88.472(c) to contract the above legal services under AS 36.30 (State Procurement Code). Currently, REC contracts with the Office of Administrative Hearings for these services.

## Duties of the Department of Commerce, Community, and Economic Development – Division of Corporations, Business, and Professional Licensing (division)

The division provides administrative and investigative assistance to REC. This includes budgetary services and administrative functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of meetings.

On its own initiative, the division may conduct an investigation if it appears an individual has engaged, or is about to engage, in a prohibited professional practice. The division can bring an action in Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and documents.

In order to facilitate the management of RESF and its fee setting process, the division is also required by statute to provide the commission, every three months, with a financial statement that includes the following information regarding RESF:

- The activities of the fund
- The balances of the fund
- Interest earned
- Interest returned to the fund

## **REPORT CONCLUSIONS**

In our opinion, the Real Estate Commission (REC or commission) is serving a public purpose and has demonstrated an ability to operate in a satisfactory manner. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. REC carries out its responsibilities to educate both the public and licensees in a professional, competent, and efficient manner. Additionally, active investigation of complaints and licensure actions, when appropriate, provides assurance that licensed professionals are competent and ethical.

In accordance with AS 08.03.010(c)(19), REC is scheduled to terminate on June 30, 2008. Under AS 08.03.020, the commission has one year after its termination date to administratively conclude its affairs. We recommend the legislature extend REC's termination date to June 30, 2016.

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# FINDINGS AND RECOMMENDATIONS

## Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

### Prior Finding

Alaska Statutes regulate the dollar amount of limits that can be made on Real Estate Surety Fund (RESF) claims, the notification process of claim awards, and the nature of the claim that can be filed. Specifically, the previous recommendation included these findings:

1. When RESF was originally established by statute in 1974, the individual claim limit was set at \$10,000 and the aggregate claim limit was restricted at \$50,000. At the time of the last audit, in 2003, these claim limits remained at the original amounts. The audit found that each of the last five successful claim payments had alleged losses exceeding the \$10,000 limit. Also, Alaska's claim and aggregate fund limits for the surety fund were low compared to other states, where the average individual claim limit was just over \$21,000 and the average aggregate limit was just under \$70,000. As a result, the recommendation suggested increasing RESF claim limits to \$20,000 for individual claims and \$100,000 for aggregate claims per licensee.
2. Claims against RESF are administered under the state's Administrative Procedures Act (APA). Under APA, a respondent has the right to appeal a RESF decision, a claim payment is not paid from the fund until an appeal is filed and considered, or the respondent waives their appeal rights. The last audit found that this procedure resulted in a situation where a successful claimant was waiting over nine months to receive their claim payment because the Division of Corporations, Professional, and Business Licensing (division) was not able to locate or notify the respondent of their rights to appeal. Thus, the recommendation suggested permitting the Real Estate Commission (REC or commission) to disburse RESF claim awards after they have made a good faith effort to locate the respondent.
3. State law specifies that RESF can be used to reimburse an individual for a loss "*suffered in a real estate transaction as a result of fraud, misrepresentation, deceit.*" During the last audit, two instances were identified where respondents attempted to have claims dismissed because the transaction involved purchasing a mobile home. The respondents argued that since mobile homes are considered personal property, rather than real property, the sale does not represent a "*real estate transaction.*" The hearing officer disallowed these arguments because the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of licensees. Despite the hearing officer

rulings, these administrative hearing decisions do not have any value in establishing recognized precedence. Consequently, the recommendation suggested amending statutes to specify mobile home transactions as subject to RESF claims.

### Legislative Audit's Current Status

The current status of the recommendation is as follows:

1. This issue is partially resolved. The legislature increased the individual claim limits to \$15,000; however, the prior aggregate claim limit of \$50,000 remains unchanged. During our current review period, the \$15,000 individual limit did not hinder awards to claimants from the fund. Conversely, the \$50,000 aggregate limit restricted at least one award provided to claimants. In this instance, the hearing officer awarded \$10,850 more than the \$50,000 aggregate limit. REC could not disburse the entire award due to the statutory limit.
2. This issue is resolved. The legislature modified statutes to allow proof of notice to satisfy due process requirements for RESF actions.
3. This issue is not resolved. The RESF statutes have not been modified to permit mobile home transactions as being subject to RESF claims. During our period of review, we did not identify any RESF claims for mobile home transactions.

Based on the current status of these issues, we recommend the legislature reconsider making some increase to RESF aggregate claim limits, as well as making mobile home transactions eligible under RESF claims.

### Recommendation No. 2

The director of Boards and Commissions, Office of the Governor, should verify board members satisfy all statutory requirements prior to being appointed.

During 2007, a board member was appointed to the commission without meeting the professional experience requirements outlined in statute. Alaska Statute 08.88.041(a) requires brokers and associate brokers to be licensed in Alaska for at least three years before being appointed to the commission. This board member was an associate broker for less than two years prior to his appointment.

Boards and Commissions' staff overlooked this board member's lack of professional experience when appointing the member to the commission. This appointment could result in commission decisions not being supported by adequate professional experience. We recommend the director of Boards and Commissions verify that potential board members satisfy all statutory requirements prior to being appointed.

Recommendation No. 3

The division should increase licensing fees to eliminate the commission's current operating deficit.

As of May 31, 2007 the commission had an operating deficit of \$147,211. The deficit is caused by revenues not covering all of the commission's expenditures for a two-year licensing period. Alaska Statute 08.01.065(c) requires fees, for an occupation, be set at a level to approximate the related regulatory costs.

Accordingly, we recommend the division review the regulatory costs and licensing fees to ensure fees collected are sufficient to eliminate the deficit and meet annual operating costs of the commission.

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# ANALYSIS OF PUBLIC NEED

The following analyses of commission activities relate to the public-need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

***Determine the extent to which the board, commission, or program has operated in the public interest.***

The Real Estate Commission (REC or commission) has provided the public with qualified realtors through the regulation and licensing of qualified salespeople, associate brokers, and brokers. As of June 30, 2007 the commission licensed 2,581 real estate professionals.

The commission also managed the Real Estate Surety Fund (RESF) claims for any members of the public with complaints against licensees. Exhibit 2 summarizes RESF activity during FY 07 through May 31, 2007.

<b>Exhibit 2</b>		
<b>Real Estate Surety Fund Claims</b>		
<b>As of May 31, 2007</b>		
Year	Number of Claims Filed	Amount of Claims Paid
FY 04	8	\$ 43,658
FY 05	10	63,946
FY 06	15	1,986
FY 07	11	20,659

During our review period, RESF claims were processed in accordance with statute. Additionally, at the beginning of FY 05, the Office of Administrative Hearings was created.<sup>1</sup> The creation of this office allowed RESF cases to be heard and resolved in a more efficient manner.

***Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.***

State law requires “*that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation.*”<sup>2</sup> The division, with input from the commission, sets fees based on a two-year cycle, with the majority of the revenue collected in even-numbered fiscal years. The Schedule of License Revenue and Expenditures for the Real Estate Commission (Exhibit 3 on the next page), summarizes the operating costs and revenues for REC for the period FY 04 through May 31, 2007.

<sup>1</sup> AS 44.64.010, effective July 26, 2004.

<sup>2</sup> AS 08.01.065(c)

Exhibit 3, below, shows a large deficit towards the end of FY 07. Revenues generated over the sunset period have not been sufficient to fund commission costs for the same period. The division should increase licensing fees to eliminate the commission's continuing, operating deficit. See Recommendation No. 3.

<b>Exhibit 3</b>				
<b>Real Estate Commission</b>				
<b>Schedule of License Revenue and Expenditures</b>				
<b>As of May 31, 2007</b>				
<b>(Unaudited)</b>				
	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY 07</u>
<b>Revenues</b>	\$ 524,900	\$ 208,400	\$ 524,300	\$ 187,402
<b>Direct Expenditures</b>				
Personal Services	160,800	162,600	182,700	160,377
Travel	17,700	19,200	25,300	18,136
Contractual	111,300	102,900	103,400	7,394
Supplies	<u>1,600</u>	<u>5,500</u>	<u>2,500</u>	<u>3,503</u>
<b>Total Direct Expenditures</b>	291,400	290,200	313,900	189,410
Administrative Indirect Costs	<u>115,300</u>	<u>115,800</u>	<u>112,100</u>	<u>163,303</u>
<b>Total Expenditures</b>	<u>406,700</u>	<u>406,000</u>	<u>426,000</u>	<u>352,713</u>
Annual surplus or deficit	<u>118,200</u>	<u>(197,600)</u>	<u>98,300</u>	<u>(165,311)</u>
<b>Cumulative Surplus (Deficit)</b>	<u>\$ 117,400</u>	<u>\$ (80,200)</u>	<u>\$ 18,100</u>	<u>\$ (147,211)</u>

REC also operates RESF whose funds are accounted for separately from the commission. The Real Estate Surety Fund Schedule of Revenues and Expenditures (Exhibit 4), on the next page, summarizes revenues and operating costs for the period FY 04 through May 31, 2007. Alaska statutes require that the annual balance of the fund be at least \$250,000, but not more than \$500,000. As illustrated in Exhibit 4, RESF's balance is in compliance with statutory requirements.

**Exhibit 4**

**Real Estate Surety Fund  
Schedule of Revenues and Expenditures  
As of May 31, 2007  
(Unaudited)**

	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY 07</u>
<b>Revenues</b>				
License Fees, Claim Filing Fees, and Claim Reimbursements	\$ 83,056	\$ 20,321	\$ 72,035	\$ 29,598
Interest Earned	<u>3,982</u>	<u>12,218</u>	<u>12,045</u>	<u>17,761</u>
<b>Total Revenues</b>	<u>87,038</u>	<u>32,539</u>	<u>84,080</u>	<u>47,359</u>
<b>Expenditures</b>				
Personal Services	55,905	44,992	69,747	19,598
Travel	-	182	931	-
Contractual	8,890	10,865	1,772	-
Commodities	2,552	2,432	-	-
Equipment	3,114	-	-	-
Claim Expenditures:				
Hearing and Legal	4,226	11,488	13,866	2,952
Claim settlements	<u>43,658</u>	<u>63,946</u>	<u>1,986</u>	<u>20,659</u>
<b>Total Expenditures</b>	<u>118,345</u>	<u>133,905</u>	<u>88,302</u>	<u>43,209</u>
<b>Net Change in Fund Balance</b>	<u>(31,307)</u>	<u>(101,366)</u>	<u>(4,222)</u>	<u>4,150</u>
Fund Balance, beginning of year	<u>467,204</u>	<u>435,897</u>	<u>334,531</u>	<u>330,309</u>
<b>Fund Balance, end of year</b>	<u>\$435,897</u>	<u>\$334,531</u>	<u>\$330,309</u>	<u>\$334,459</u>

***Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.***

During the past four years, REC has supported numerous statutory changes that are of benefit to the public interest. The commission supported creation of new post-licensing requirements for all licensees and modifications of licensing requirements for brokers and associate brokers. The commission also supported the creation of a new section defining licensee relationships and duties, as well as a clarification on disclosing conflicts of interest. REC also supported an increase in RESF individual claim limits from \$10,000 to \$15,000.

***Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.***

Draft regulations developed by REC were properly advertised to the public for a reasonable amount of time. Public notices of commission meetings were published on the commission's website and the online public notice system. The commission accepted public comment at the meetings.

***Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.***

The public received notice of all REC meetings and proposed regulation changes. A public comment period had been set aside in the agenda for each commission meeting.

Interested parties can attend meetings in person, or by teleconference. In addition to accepting public comment at the meetings, REC frequently discussed correspondence from various licensees, agencies, and other interested parties.

***Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.***

#### Complaints Regarding REC Activity

During the period of our review: no complaints were filed with the Department of Commerce, Community, and Economic Development; Offices of Victim's Rights; Ombudsman; and Attorney General; or the Office of the Governor's Boards and Commissions concerning REC or their staff.

#### Department Investigations

For the period July 2003 to April 2007, the division opened 173 cases. Another 43 complaints were filed but were not investigated further due to lack of jurisdiction or incomplete information.

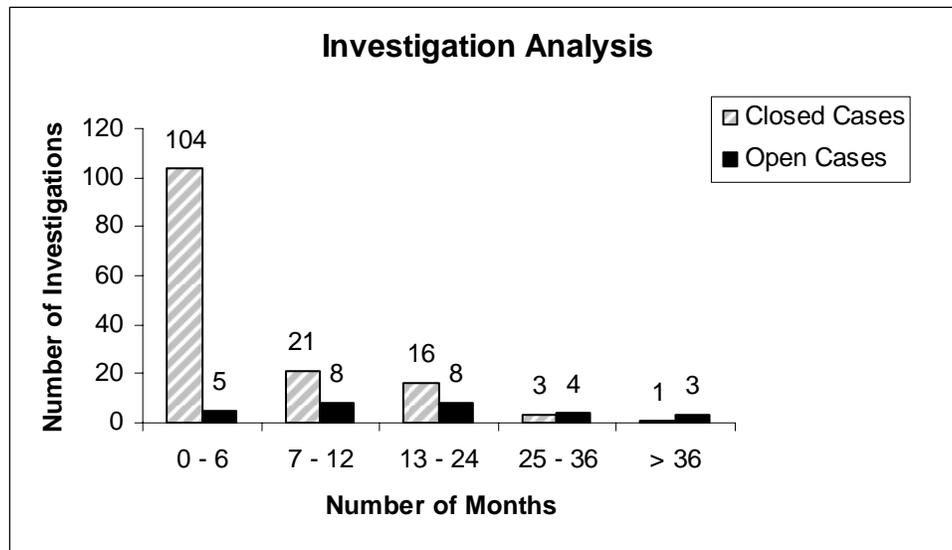
Approximately 40 percent of the investigations were generated from complaints made by the public, and 34 percent were generated from investigations opened by the division.

The types of investigations filed included, but were not limited to:

- Fraud/Misrepresentation (53)
- Licensing Applications Problems/Falsifications (30)
- Unlicensed Practice Activity (19)
- Violating Professional Ethics (15)
- Supervision (14)

As of our review date, 145 out of 173 investigations had been closed and 28 remained open. The cases are graphically depicted below:

**Exhibit 5**



Review of the nature and extent of complaints and investigations filed, involving REC licenses, shows that the division (in conjunction with the commission) has proceeded in an effective and efficient manner to resolve complaints and investigations.

***Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.***

The application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lenient. The new licenses issued by the commission during FY 04 through FY 07 are summarized in Exhibit 6, on the following page:

**Exhibit 6****Real Estate Commission Licensees  
As of June 30, 2007**

License Type	FY 04	FY 05	FY 06	FY 07	Total New Licensees	Total Number of Licensees
Salesperson	302	390	405	295	1,392	1,665
Associate Broker	26	22	57	34	139	428
Broker	<u>4</u>	<u>10</u>	<u>7</u>	<u>14</u>	<u>35</u>	<u>488</u>
Total	332	422	469	343	1,566	2,581

Each applicant is required to satisfy the requirements for licensing. To obtain a license, the candidate must submit a fee and application, pass an examination, and complete 15-20 pre-licensing education hours.<sup>3</sup> A candidate, who was previously licensed in another state, must also demonstrate prior real estate experience.

Continuing real estate education is required and adequately monitored by the commission to maintain quality performance and help ensure the integrity of the profession.

A new post-licensing education requirement was established beginning January 1, 2006. This new statute requires new licensees to complete an additional 20 hours of education within 12 months of licensure.<sup>4</sup>

***Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.***

No evidence indicated a lack of compliance with state personnel practices, including affirmative action, in qualifying applicants or hiring staff. Each time the commission has denied an applicant's certification, the decision has been based on statutory requirements – not on the personal attributes of the applicants.

<sup>3</sup> Salespeople are required to obtain 20 hours of pre-licensing education [AS 08.88.091(b)], and associate brokers and brokers are required to obtain 15 hours of pre-licensing education [AS 08.88.091(c)]. Also, see pre-licensing education discussion on the following page.

<sup>4</sup> AS 08.88.095(a)

***Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.***

### Pre-licensing Education

Currently, new salesperson licensees must complete 20 hours of pre-licensing education and new associate brokers and brokers must complete 15 hours of pre-licensing education. Additionally, all new initial licensees must complete 20 hours of post-licensing education within 12 months of licensure.<sup>5</sup>

During the 2007 legislative session, the legislature passed new requirements that would increase pre-licensing education hours for new salespeople to 40 hours and post-licensing education hours for all license types to 30 hours, effective February 1, 2008. The pre-licensing hours for associate brokers and brokers would remain unchanged.

Pre-licensing education requirements for all 50 states, District of Columbia, and Guam, compared to the proposed increase in pre-licensing education for salespeople in Alaska, shows that the increase is reasonable considering the national average.

Additionally, the national average for brokers pre-licensing education is 100 hours, while Alaska's requirement is 15 hours. However, increases in pre-licensing education hours for associate brokers and brokers were not considered by REC or the legislature.

### Real Estate Surety Fund

As discussed in the Findings and Recommendations section, the legislature should consider amending statutes to increase the aggregate limit on RESF claims in order to enhance public protection. See Recommendation No. 1.

### Adherence to AS 08.88.041 for Board Members

As discussed in the Findings and Recommendations section, a board member was appointed to REC this year without meeting the professional experience requirements established in statute. The Office of the Governor should verify potential board members meet statutory requirements prior to appointment. See Recommendation No. 2.

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<sup>5</sup> AS 08.88.095(a) is required for all license types.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

Commission objectives are identified in AS 08.88.071 and are defined in the Organization and Function section of the report. REC has effectively and efficiently obtained its objectives and purposes. Evidence suggests the commission establishes and meets its operational objectives annually.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

RESF is an option the commission provides to the public in order to reclaim any funds that may have been lost due to a licensee performing activities that involve fraud, deceit, misrepresentation, or a conversion of trust funds. Currently, licensees contribute \$30 to the fund every two years for this service, and Alaska statute stipulates that this fee cannot exceed \$125.<sup>6</sup>

A RESF claimant has the choice to pursue any of the other following options in addition to, or as an alternative to RESF:

- Small claims suits through the Alaska Court System
- Civil suits through the Alaska Court System
- Surety bond insurance coverage through a private insurance carrier
- Errors and omissions (E&O) insurance coverage through a private insurance carrier

The Alaska Court System provides RESF claimants with the option to file small claims and civil suits. These options are a potential alternative to RESF. However, currently these options are judicial remedies for the public and licensees to protect against REC decisions that could be overturned by the Alaska Court System.

Private insurance companies offer surety bonds and E&O insurance. The annual premiums on these policies can range from \$500-\$5,000 for coverage equal to or more than the coverage provided by RESF. These premiums are more than 30 times the current costs of RESF's fee.

Currently, licensed realtors are not required by law to have professional liability insurance in addition to RESF. This is comparable to a survey of 11 western states, where seven of 11 states had surety funds and did not require professional liability insurance. Another two states did not have surety funds nor required professional liability insurance. The remaining two states did not have surety funds but did require professional liability insurance.

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<sup>6</sup> AS 08.88.455(a)

Although there are potential alternatives to RESF services, the fund is a reasonable activity of the commission. All licensees are required to contribute to RESF which in turn protects the public. RESF does not pose a significant financial burden on licensees, and the public and licensees have the option to pursue judicial remedies as a balance to RESF decisions.

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SARAH PALIN  
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

August 1, 2007

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Ms. Pat Davidson, CPA  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

RECEIVED  
AUG 03 2007  
LEGISLATIVE AUDIT

Dear Ms. Davidson:

I received your preliminary audit report regarding statutory professional requirements for associate brokers that serve on the Real Estate Commission. Recommendation No. 2: The director of Boards and Commissions, Governor's Office, should verify board members satisfy all statutory requirements prior to being appointed, is appropriate and may ensure that current Alaska statutory requirements are met.

I appreciate your bringing this to my attention; I concur with your recommendation. In the future, I will verify that potential board members satisfy all statutory requirements prior to being appointed.

Sincerely,

A handwritten signature in black ink, appearing to read "Ivy Frye".

Ivy Frye

Director of Boards and Commissions

cc: Mike Tibbles, Chief of Staff, Office of the Governor  
Linda Perez, Director of Administrative Services, Office of the Governor

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STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Office of the Commissioner

*Sarah Palin, Governor*  
*Emil Notti, Commissioner*

RECEIVED

JUL 30 2007

LEGISLATIVE AUDIT

July 20, 2007

Ms. Pat Davidson  
Legislative Auditor  
Alaska State Legislature  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, Alaska 99811-3300

Dear Ms. Davidson:

Thank you for the opportunity to respond to the Preliminary Audit on the Real Estate Commission Sunset Review dated July 3, 2007.

We concur with the audit findings and offer the following comments to the recommendations.

Recommendation No. 1: The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

The department supports an increase to the aggregate claim limit allowed by the Real Estate Surety Fund.

The department remains neutral on the discussion of whether mobile homes are eligible for claims under the Real Estate Surety Fund. We understand and appreciate the audit findings that the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of licensees; however, the Real Estate Commission has taken a position that mobile homes are considered personal property, rather than real property and therefore, does not represent a real estate transaction. This is a topic best addressed by the Legislature.

Recommendation No. 2: The director of Boards and Commissions, Office of the Governor, should verify board members satisfy all statutory requirements prior to being appointed.

The department fully supports this recommendation. We cannot agree more that professional members who have the responsibility and authority to govern a profession in Alaska hold the credentials established by statute which they are being tasked to govern.

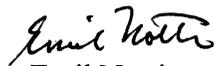
The one individual on the Real Estate Commission identified by the audit as not meeting statutory requirements to serve as a Commission member continues to hold the professional position on the Commission. The individual's continued participation on the Real Estate Commission has a real potential to place Commission's voting decisions in jeopardy should a decision be challenged at any time.

Recommendation #3: The division should increase licensing fees to eliminate the commission's current operating deficit.

The department concurs with this recommendation and will be conducting a fee analysis to resolve this issue.

Again, we appreciate the opportunity to comment on your audit report findings.

Sincerely,

  
Emil Notti  
Commissioner

Gene DuVal  
529 5<sup>th</sup> Avenue, Suite 200  
Fairbanks, Alaska 99701

July 31, 2007

Pat Davidson  
Alaska State Legislature  
Division of Legislative Audit  
PO Box 113300  
Juneau, Alaska 99811-3300

**RECEIVED**  
**AUG 02 2007**  
**LEGISLATIVE AUDIT**

Dear Ms. Davidson,

Thank you for your letter dated July 10, 2007, and for the copy of the legislative audit report regarding the Alaska Real Estate Commission. We appreciate your time and efforts to try to make this system better.

Regarding recommendation number one, I support increasing the surety fund limits, and other measures, to provide more complete, effective and efficient consumer protection to claimants.

Regarding mobile home transactions: the commission is on record that the sale of a mobile home without real estate is not a transaction for which a license is required. It is clearly stated in AS 08.88.900 (20) that a license is not required for sales of mobile homes. If a mobile home was included into being a licensed activity, then why not a cabin kit, or modular pieces that assemble into a home, or if you want to stretch it, building materials, or a motor home? But if a mobile home, a pre-manufactured home, or a modular home, is part of a transaction involving real estate, then a license is required. Real estate must be involved in some form.

Recommendation number two involves the office of the Boards and Commissions and should be also brought to their attention, which I am sure you have done. I support recommendation number two.

I also support recommendation number three: increasing licensing fees so the Alaska Real Estate Commission is not operating showing a large deficit.

Thank you for the time and thoughtfulness that was put into this audit. If I can be of further assistance, please call me.

Best wishes,



Gene DuVal  
Chairman  
Alaska Real Estate Commission

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