

# Report Highlights

## Why DLA Performed This Audit

The purpose of this audit was to determine if there is a need for the commission's continued existence and whether its termination date should be extended. The commission is set to sunset on June 30, 2016, and will have one year from that date to conclude its administrative operations.

## What DLA Recommends

1. The commission's chair and the Department of Commerce, Community, and Economic Development, Division of Administrative Services director should work together to procure a master errors and omissions insurance policy for real estate licensees.
2. The Division of Corporations, Business and Professional Licensing's chief investigator should take action to ensure cases are actively investigated and completed timely.

# A Sunset Review of the Department of Commerce, Community, and Economic Development, Real Estate Commission

July 24, 2015

Audit Control Number 08-20091-15

## REPORT CONCLUSIONS

Overall, the audit concluded that the Real Estate Commission is serving the public's interest by effectively licensing real estate brokers, associate brokers, and salespersons. The commission has worked to improve operations and industry practices by modifying and adopting regulations. We conditionally recommend the commission's termination date be extended six years to June 30, 2022. If the commission does not obtain a master errors and omissions insurance policy by January 2016, we recommend an extension of no more than four years. The lack of a master policy essentially removes the insurance requirement from all real estate licensees, thereby exposing consumers to financial losses suffered as a result of errors and omissions in real estate transactions.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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August 28, 2015

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 24, 2015

Audit Control Number  
08-20091-15

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Per AS 08.03.010(c)(19), the Real Estate Commission is scheduled to terminate on June 30, 2016. We conditionally recommend the termination date be extended to June 30, 2022. If the commission does not obtain a master errors and omissions insurance policy by January 2016, we recommend an extension of no more than four years.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology section.

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA  
Legislative Auditor

## ABBREVIATIONS

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ACN	Audit Control Number
AS	Alaska Statute
CISA	Certified Information Systems Auditor
commission	Real Estate Commission
CPA	Certified Public Accountant
DAS	Division of Administrative Services
DCBPL	Division of Corporations, Business and Professional Licensing
DCCED	Department of Commerce, Community, and Economic Development
DLA	Division of Legislative Audit
fund	Real Estate Recovery Fund
FY	Fiscal Year
REC	Real Estate Commission
SLA	Session Laws of Alaska
U.S.	United States

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# ORGANIZATION AND FUNCTION

## Real Estate Commission (REC or commission)

Alaska Statute 08.88.011 establishes the commission. Its self-defined mission is:

*To protect the public interest by licensing practitioners and enforcing the established standards, to promote professional excellence in the real estate industry, and to support and encourage licensees.*

As shown in Exhibit 1, the commission is composed of five real estate brokers or associate brokers and two public members. By statute, commission members who are real estate brokers or associate brokers must be licensed in Alaska for at least three years prior to appointment. The statute further requires one broker or associate broker be appointed from each of the four Judicial Districts, and one from the state at large. A total of two licensed real estate brokers or associate brokers may be appointed from the state at large if no licensed real estate broker or associate broker is eligible or available for appointment from the Second Judicial District.<sup>1</sup> The two public members cannot be engaged in the real estate profession, be associated by legal contract with a real estate licensee other than as a consumer, or have a direct financial interest in the real estate profession.

### Exhibit 1

#### Real Estate Commission Members March 2015

Nancy Davis, Chair  
*Broker, First Judicial District*

Traci A. Barickman  
*Broker, Third Judicial District*

Eric M. Bushnell  
*Broker, Member at Large*

Marianne Burke  
*Public Member*

Cynthia L. Cartledge  
*Public Member*

Stacy Harvill  
*Associate Broker, Fourth Judicial District*

Peggy Ann McConnochie  
*Broker, Member at Large*

Source: Office of the Governor, Boards and Commission's website.

Exhibit 2 reports REC's duties and powers as outlined in AS 08.88.071. The commission is staffed with an executive administrator and project assistant.

<sup>1</sup>The Second Judicial District includes the cities of Barrow, Kotzebue, Nome, and Unalakleet.

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**Exhibit 2**

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**Duties and Powers of the Real Estate Commission  
AS 08.88.071**

1. Determine whether applicants meet licensing requirements under real estate statutes and issue licenses to those who qualify.
2. Prepare and grade examinations.
3. After hearing, have 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 real estate statutes or regulations.
5. Publish notice of disciplinary action taken by the commission against a real estate licensee.
6. Issue a temporary permit to the personal representative of the estate of a deceased 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.
7. Issue a temporary permit to a licensee designated by the commission for the purpose of securing proper administration, temporarily managing, or concluding the affairs of the real estate business of a broker if an investigation produces substantial evidence that the broker has misappropriated trust funds, the real estate license of the broker is suspended, or the broker is incapacitated because of a traumatic event or medical condition, as defined in regulations adopted by the commission.
8. Issue a temporary permit to the personal representative of a legally incompetent real estate broker or to another person designated by the commission with the approval of the personal representative of the broker in order to secure proper administration in temporarily managing the real estate business of the broker.
9. Establish and periodically revise the seller's property disclosure form.
10. Have the authority to levy civil fines as established in real estate statutes.
11. Revoke the license of a broker, associate broker, or real estate salesperson who is convicted of a felony or other crime committed while licensed that, in the judgment of the commission, affects the ability of that person to practice as a broker, associate broker, or real estate salesperson competently and safely or who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud. Notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified to obtain or renew a license under AS 08.88.171(a) - (c) until seven years have elapsed since the person completed the sentence imposed for the conviction.

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**Department of Commerce,  
Community, and  
Economic Development,  
Division of Corporations,  
Business and Professional  
Licensing (DCBPL)**

DCBPL provides administrative and investigative assistance to the commission. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, issuing and receiving application forms, and publishing meeting notices. DCBPL may initiate an investigation if an individual appears to have engaged in or is about to engage in an act or practice in violation of REC statutes and regulations. Additionally, investigative assistance is available upon request by the commission.

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## BACKGROUND INFORMATION

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### Real Estate Recovery Fund (fund)

The fund is established by AS 08.88.450 to reimburse consumers for real estate transaction losses suffered as a result of fraud, intentional wrongful acts, deceit, the conversion of trust funds, or the conversion of community association accounts. Statutes limit claim awards to \$15,000 per transaction with no more than \$50,000 per real estate licensee.

Prior to March 2010, the fund was named the Real Estate Surety Fund. In 2008, the legislature<sup>2</sup> renamed the fund and amended the procedures and criteria used by the commission to make awards. The new process eliminated the need for the commission to take and hear evidence pertaining to claims; administer oaths and affirmations; issue subpoenas to compel attendance of witnesses and production of books, papers, and documents pertaining to claims; or engage the services of experts necessary to process claims.

A person seeking to make a claim against the fund must now obtain a final court judgment, a final arbitration award, or a settlement agreement with a licensee. A claimant must also submit a claim form to the commission within two years after the date the judgment, award, or agreement is no longer subject to appeal, and an affidavit describing collection efforts and stating the judgment, award, or agreement is uncollectible using reasonable efforts. A claimant must pay a \$250 filing fee, which shall be refunded if the commission awards the claim or if the claimant withdraws the claim.

The commission, in collaboration with the Division of Corporations, Business and Professional Licensing, administers the fund and sets the related fee paid by licensees. Statute requires the fee be adjusted so that the average fund balance is maintained between \$250,000 and \$500,000.

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<sup>2</sup>Chapter 113, SLA 2008 (House Bill 357) effective March 1, 2010.

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## **Errors and Omissions Insurance Policy**

The legislation that renamed the fund and revised procedures also required real estate licensees to carry and maintain errors and omissions insurance effective March 1, 2010. Errors and omissions insurance is a form of professional liability insurance that protects real estate licensees and public consumers from financial losses due to claims resulting from errors, omissions, negligence, and other mistakes made in the course of performing licensed real estate activities. A licensee may acquire an insurance policy made available by the commission or independently obtain one that complies with regulations.

The commission may suspend or revoke the license of a real estate licensee who fails to secure errors and omissions insurance. However, if the commission is unable to secure a master insurance policy, real estate licensees are not subject to the insurance requirement.

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# REPORT CONCLUSIONS

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In developing our conclusions regarding whether the Real Estate Commission's (REC or commission) termination date should be extended, its operations were evaluated using the 11 sunset criteria set out in AS 44.66.050. Under the State's "sunset" law, these factors are to be used in assessing whether a commission has demonstrated a public need for continuing operations.

Overall, the audit concluded REC is serving the public's interest by effectively licensing real estate brokers, associate brokers, and salespersons. REC has worked to improve operations and industry practices by modifying and adopting regulations. However, the commission has not met its statutory requirement to secure a master errors and omissions insurance policy (see Recommendation 1) and the Division of Corporations, Business and Professional Licensing has not consistently conducted investigations in a timely manner (see Recommendation 2).

In accordance with AS 08.03.010(c)(19), REC is scheduled to terminate June 30, 2016. We conditionally recommend REC's termination date be extended six years to June 30, 2022. If REC does not obtain a master errors and omissions insurance policy by January 2016, we recommend an extension of no more than four years. REC's inability to secure a master policy essentially removes the insurance requirement from all real estate licensees, thereby exposing consumers to financial losses suffered as a result of errors and omissions in real estate transactions.

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## FINDINGS AND RECOMMENDATIONS

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The Real Estate Commission's (REC or commission) 2007 sunset audit<sup>3</sup> included three recommendations. The audit recommended the legislature consider amending the Real Estate Surety [Recovery] Fund (fund) statutes to provide more complete, effective, and efficient consumer protection to claimants. This recommendation was also reported in the 2003 sunset audit.<sup>4</sup> In 2008, legislation was passed that significantly limited consumers' access to the fund, thereby decreasing its impact. However, the legislation also required errors and omissions insurance as a condition of real estate licensure. The new insurance requirement has not successfully protected the public because the commission has not obtained a master policy and licensees have continued to practice without this important consumer protection in place. Current audit Recommendation 1 addresses the lack of errors and omissions insurance.

The prior sunset audit also recommended the Boards and Commissions staff within the Office of the Governor verify that board members satisfy all statutory requirements prior to appointment. No action was taken subsequent to the audit recommendation, and an ineligible member continued to serve on the commission. However, commission members as of March 2015 satisfied all statutory requirements prior to appointment. Therefore, the prior recommendation is considered resolved.

Finally, the prior audit recommended the Division of Corporations, Business and Professional Licensing (DCBPL) staff increase licensing fees to eliminate REC's deficit. This recommendation is considered resolved. As of March 2015, REC did not have a deficit. According to DCBPL management, licensing fees were adequate to cover the REC's operational costs for the remainder of FY 15.

Two recommendations were made as a result of the current sunset audit.

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<sup>3</sup>*Department of Commerce, Community, and Economic Development; Real Estate Commission, July 3, 2007, Audit Control Number 08-20051-07.*

<sup>4</sup>*Department of Commerce, Community, and Economic Development; Real Estate Commission, October 16, 2003, Audit Control Number 08-20023-03.*

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**Recommendation 1:  
The commission’s chair  
and the Department of  
Commerce, Community,  
and Economic  
Development, Division of  
Administrative Services  
(DAS) director should  
work together to procure  
a master errors and  
omissions insurance  
policy for real estate  
licensees.**

The commission has not obtained a master insurance policy for licensees as required by statute. Law passed by the legislature in 2008 (AS 08.88.172) effective March 1, 2010, requires persons licensed as a real estate broker, associate broker, or salesperson to carry and maintain errors and omissions insurance. The department established the terms and conditions of the required insurance in December 2011, and REC established regulations in October 2014. However, the commission has not obtained a master insurance policy as of July 2015.

According to DCBPL and DAS management, the policy has not been obtained due to the overall complexity of the project, lack of insurance expertise, and length of time the commission involved the Department of Law in drafting the REC regulations. As of the date of this report, a policy had not been procured. By not obtaining a master insurance policy for real estate licensees, the commission is failing to protect public consumers from financial losses due to errors, omissions, negligence, and mistakes on the part of licensees.

We recommend the commission’s chair and DAS director work together to procure a master errors and omissions insurance policy for real estate licensees as required by statute.

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**Recommendation 2:  
DCBPL’s chief investigator  
should take action  
to ensure cases are  
actively investigated and  
completed timely.**

Thirty-six of 235 investigative cases open or opened from July 2010 through March 2015 were examined as part of this audit. Of the cases reviewed, 29 showed significant periods of inactivity in completing investigations. Periods of inactivity ranged from 124 total days to 1,669 total days. Of the 29 cases, 11 were closed and not pursued “due to the age of the matter” or because the related license had lapsed.

The duty to investigate occupational licensing complaints is statutorily assigned to DCBPL. The efficiency with which complaints are investigated is one of the sunset evaluation criteria used in the legislative oversight process. Alaska Statute 44.66.050(c)(6) specifies the sunset review must evaluate:

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*The efficiency with which public inquiries or complaints regarding the activities of the board or commission 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.*

Excessive time lags were due to inadequate monitoring and insufficient oversight to ensure investigations were completed timely. Consequently, consumers may not have been adequately protected from incompetent or unlawful licensees.

We recommend the DCBPL chief investigator take action to ensure cases are actively investigated and completed timely.

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# ANALYSIS OF PUBLIC NEED

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The following analysis of Real Estate Commission (REC or commission) activities relates to the public need factors defined in AS 44.66.050(c). This analysis is not intended to be comprehensive, but addresses only those areas we were able to cover within the scope of our review.

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## Sunset Criteria No. 1

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

The commission operated in the public's interest by licensing qualified individuals, modifying and adopting regulations to improve operations and industry practices, and holding meetings, as required by statute. The commission adopted, repealed, and revised several REC regulations during the audit period. Significant regulation changes included:

- Changes to the Real Estate Recovery Fund fee and name;
- Errors and omissions insurance requirements;
- Documentation of education requirements; and
- License renewal notices.

From July 2010 through March 2015, the commission held 20 regular meetings and 16 teleconferences. These exceed the one annual meeting required by law. The audit found that all seven commission members as of March 2015 met eligibility requirements.

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## Sunset Criteria No. 2

### **Determine the extent to which the operation of the board or commission 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.**

REC operations have been enhanced by appropriate fee-setting.

Alaska Statute 08.01.065(c) states the Department of Commerce, Community, and Economic Development (DCCED) shall establish fees “so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation.” Licensing fees were last increased in FY 14 and were adequate to cover REC’s operational costs. Exhibit 3 presents a schedule of revenues and expenditures from FY 11 through March 2015. REC had an operating surplus of \$147,601 as of March 2015.

**Exhibit 3**

<b>Real Estate Commission</b> <b>Schedule of Revenues and Expenditures</b> <b>FY 11 through March 2015</b> (Unaudited)					
	FY 11	FY 12	FY 13	FY 14	July 2014 - March 2015
Licensing Revenues	\$ 105,790	\$ 879,380	\$ 168,797	\$1,139,844	\$ 233,260
Direct Expenditures					
Personal Services	392,394	430,112	303,555	297,814	144,514
Travel	15,682	10,638	6,087	12,096	10,206
Contractual	197,088	73,113	47,616	95,127	67,467
Supplies	555	775	295	925	569
Total Direct Expenditures	<u>605,719</u>	<u>514,638</u>	<u>357,553</u>	<u>405,962</u>	<u>222,756</u>
Administrative Indirect Expenditures	<u>114,436</u>	<u>124,647</u>	<u>158,590</u>	<u>180,127</u>	<u>137,887</u>
Total Expenditures	<u>720,155</u>	<u>639,285</u>	<u>516,143</u>	<u>586,089</u>	<u>360,643</u>
Annual Surplus (Deficit)	<u>(614,365)</u>	<u>240,095</u>	<u>(347,346)</u>	<u>553,755</u>	<u>(127,383)</u>
Beginning Cumulative Surplus (Deficit)	<u>442,845</u>	<u>(171,520)</u>	<u>68,575</u>	<u>(278,771)</u>	<u>274,984</u>
Ending Cumulative Surplus (Deficit)	<u>\$ (171,520)</u>	<u>\$ 68,575</u>	<u>\$(278,771)</u>	<u>\$ 274,984</u>	<u>\$ 274,984</u>

Source: DCCED, Division of Administrative Services staff.

The commission, in collaboration with the Division of Corporations, Business and Professional Licensing (DCBPL), administers the Real Estate Recovery Fund (fund) and is required to adjust the fund's fee so that the average balance for the two-year licensing cycle is maintained between \$250,000 and \$500,000. Exhibit 4 presents the fund's schedule of revenues and expenditures from FY 11 through March 2015. The audit found the average fund balance for the licensing cycle ending January 2014 met statutory requirements, and the fee per licensee decreased from \$125 to \$30. During the audit period, five claims totaling \$37,259 were paid out of the fund.

**Exhibit 4**

<b>Real Estate Recovery Fund</b>					
<b>Schedule of Revenues and Expenditures</b>					
<b>FY 11 through March 2015</b>					
<b>(Unaudited)</b>					
	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY 14</b>	<b>July 2014 - March 2015</b>
Revenues					
Fees	\$31,330	\$ 332,385	\$ 60,890	\$ 132,155	\$ 26,830
Interest	3,118	3,866	1,567	2,812	1,267
<b>Total Revenues</b>	<b>34,448</b>	<b>336,251</b>	<b>62,457</b>	<b>134,967</b>	<b>28,097</b>
Expenditures					
Personal Services	32,207	37,346	55,963	73,511	83,637
Travel	-	610	-	-	-
Services - Non-claims	213	-	-	598	147
Services - Claims and Associated Legal Costs	-	-	32,601	6,816	-
<b>Total Expenditures</b>	<b>32,420</b>	<b>37,956</b>	<b>88,564</b>	<b>80,925</b>	<b>83,784</b>
<b>Annual Surplus (Deficit)</b>	<b>2,028</b>	<b>298,295</b>	<b>(26,107)</b>	<b>54,042</b>	<b>(55,687)</b>
Beginning Cumulative Surplus (Deficit)	199,293	201,321	499,616	473,509	527,551
Ending Cumulative Surplus (Deficit)	<u>\$ 201,321</u>	<u>\$499,616</u>	<u>\$ 473,509</u>	<u>\$527,551</u>	<u>\$ 471,864</u>

Source: DCCED, Division of Administrative Services staff.

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REC's operational efficiency has been enhanced by staffing changes. In April 2014, REC's licensing examiner position was eliminated. At the same time, the part-time project assistant began supporting REC operations full time and the executive administrator absorbed the licensing activities. DCBPL management reported these changes contributed to savings in personnel costs and have not impeded operations.

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### Sunset Criteria No. 3

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

Although there were statutory changes during the audit period regarding licensed assistants, the issuance of temporary permits, and payments to unlicensed persons, the audit found no indication that the commission supported these changes through testimonies or letters of support. Additionally, no recommendations to change statutes were made by the commission in its last four annual reports.

During a meeting, REC discussed adding a general subsection to AS 08.88.171(a)(3) to give the commission authority to suspend or revoke the license of a licensee or impose other disciplinary sanctions on a licensee who *"has failed to comply with a provision of this chapter [AS 08.88], a regulation adopted under this chapter [AS 08.88], or an order of the commission."* According to the executive administrator, the commission members did not pursue this statutory change due to lack of sponsorship.

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### Sunset Criteria No. 4

**Determine the extent to which the board or commission 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.**

The commission encourages interested persons to participate in its

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decision process by appropriately publishing notices of meeting dates and allowing time for public comment.

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### Sunset Criteria No. 5

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

The commission has monitored and revised regulations to comply with statutory changes and administrative needs on an ongoing basis. The commission consistently published proposed regulatory changes on the State's Online Public Notice System at least 30 days before the adoption of the regulations as statutorily required. Furthermore, the commission encouraged public participation by providing the opportunity to submit written comments on proposed regulatory changes and accepting public comment at meetings.

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### Sunset Criteria No. 6

**Determine the efficiency with which public inquiries or complaints regarding the activities of the board or commission 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.**

From July 2010 through January 2015, two REC-related complaints were filed with DCCED and nine were filed with the Office of the Ombudsman. The complaints were resolved and closed timely. No REC-related complaints were filed with the Office of Victims' Rights or the Governor's Boards and Commissions office.

From July 2010 through March 2015, 235 investigations were

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either open or opened.<sup>5</sup> Ten remained open as of March 2015. The audit found DCBPL did not efficiently process and resolve 29 of 36 investigative cases examined as part of this audit. Of this number, 11 cases were closed “due to the age of the matter.” (See Recommendation 2.)

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### Sunset Criteria No. 7

**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.**

REC, through its executive administrator, issues licenses for real estate brokers, associate brokers, and salespersons. As of March 2015, there were 2,468 active real estate licensees. Of this number, 434 are brokers, 380 are associate brokers, and 1,654 are salespersons.<sup>6</sup> Testing of 25 applications concluded that real estate licenses were issued in accordance with statutes and regulations.

Real estate licenses expire on January 31 of even-numbered years. In order to renew, real estate licensees must submit a renewal application, complete 20 hours of continuing education, and remit a license fee. Ten percent of license renewals are subject to continuing education audits by REC staff each biennial licensing cycle. The audit found that REC staff conducted continuing education audits in accordance with licensing regulations.

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### Sunset Criteria No. 8

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

The audit found no indication that hiring practices or current

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<sup>5</sup>During the audit period, 678 complaints were open or opened. Of this number, 186 were not investigated further due to lack of jurisdiction or incomplete information, 112 were addressed without opening an investigation, 135 were opened to track license applications or continuing education problems as well as monitor license probations, and 10 were pending review for validity of alleged violations. The remaining 235 represent cases opened to further investigate complaints supported by evidence.

<sup>6</sup>There was an 11 percent decrease in active licenses for brokers and associate brokers since the 2007 sunset audit. The number of salespersons remained generally the same.

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commission appointments were contrary to state personnel practices. One REC-related complaint was filed with the Department of Administration's Division of Personnel and Labor Relations from July 2010 through January 2015. This complaint was resolved and closed. No REC-related complaints were filed with the Alaska State Commission for Human Rights or the U.S. Equal Employment Opportunity Commission.

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## Sunset Criteria No. 9

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

The audit identified two operational changes that would allow REC to better serve the public's interests. The first change involves obtaining a master insurance policy for errors and omissions. As of July 2015, a master insurance policy has not been obtained in accordance with legislation passed in 2008. A master insurance policy protects public consumers from financial losses due to errors, omissions, negligence, and mistakes on the part of licensees. (See Recommendation 1.)

The second area for improvement involves taking action to ensure cases are actively investigated and completed timely. Examination of investigative files noted significant periods of inactivity in completing investigations. Actively monitoring cases will increase DCBPL's and the commission's abilities to enforce real estate laws and protect the public's interest. (See Recommendation 2.)

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**Sunset Criteria No. 10**

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

The commission achieved its goals of issuing regulations for errors and omissions insurance; helping reduce the backlog of investigations by working with DCBPL investigators in reviewing the cases; and continuing to update its website by posting meeting minutes, disciplinary actions, and proposed regulations. However, the commission did not meet its goals to issue a solicitation to obtain a master insurance policy for errors and omissions (see Recommendation 1) and complete audits of trust accounts. The audits of trust accounts are not specifically required by law and were not completed due to competing priorities and resource constraints.

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**Sunset Criteria No. 11**

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

REC does not duplicate the activities of another governmental or private sector agency, as it is the only entity responsible for licensing, regulating, and disciplining licensed real estate brokers, associate brokers, and salespersons in the state.

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# OBJECTIVES, SCOPE, AND METHODOLOGY

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In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Real Estate Commission (REC or commission) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the commission should be reestablished. Currently, under AS 08.03.010(c)(19), the commission will terminate on June 30, 2016, and have one year from that date to conclude its administrative operations.

## Objectives

The four central audit objectives were:

1. Determine whether the commission's termination date should be extended.
2. Determine whether the commission is operating in the public's interest.
3. Determine whether the commission has exercised appropriate regulatory oversight of licensed real estate brokers, associate brokers, and salespersons.
4. Evaluate the status of recommendations made in the prior sunset audit.

## Scope and Methodology

The assessment of commission operations and performance was based on the criteria established in AS 44.66.050(c). Under the State's sunset law, these criteria are to be used in assessing whether an agency has demonstrated a public need for its continuing operations.

The audit reviewed commission operations and activities from July 2010 through March 2015.

During the course of the audit, the following were reviewed and evaluated:

- 
- Applicable statutes and regulations to identify commission functions and responsibilities, determine whether changes enhanced or impeded REC activities, and help ascertain if the commission operated in the public's interest.
  - Commission member applications and résumés filed with the Governor's Office of Boards and Commissions to verify that members and commission composition met statutory requirements.
  - Commission meeting minutes and annual reports to understand commission proceedings and activities, goals and objectives, as well as to determine the nature and extent of public input.
  - REC and Real Estate Recovery Fund schedules of revenues and expenditures from July 2010 through March 2015, and financial activity from the Alaska State Accounting System to gain an understanding of the commission's operations. The schedules were prepared by the Department of Commerce, Community, and Economic Development, Division of Administrative Services (DAS) staff and used to evaluate compliance with statutory requirements.
  - Public notice documentation to determine whether public notices for commission meetings and regulatory changes were published as required by Alaska Statutes.
  - The prior sunset audit report (audit control number 08-20051-07) to identify issues affecting REC and report on the status of prior audit recommendations.

REC staff; various commission members; management and staff from Division of Corporations, Business and Professional Licensing (DCBPL) and DAS were interviewed to gain an understanding of REC's activities and help determine if REC duplicates the activities of another governmental or private sector agency.

During the course of the audit, the following samples were selected:

- A random sample of 25 initial and renewal licensing files

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was selected from 3,452 licenses that were active between July 2010 and March 2015 and assessed for statutory and regulatory compliance. The sample size was selected based on low control and inherent risks. The testing results were projected to the population.

- A random sample of 25 of 678 complaints open or opened by DCBPL between July 2010 and March 2015 was selected to assess the efficiency of the complaint process. The sample size was selected based on low control and inherent risks. The testing results were projected to the population.

Of the 678 complaints, 235 represent cases opened to further investigate complaints. Ten investigative cases from the complaint random sample and an additional 26 investigations were judgmentally selected for review to assess the efficiency of the investigative process.

- A random sample of 10 commission meetings was selected from 20 meetings held between July 2010 and March 2015, and assessed for compliance with public noticing requirements and evaluated for commission actions. A sample of 50 percent was considered necessary as results of testing were significant to evaluating commission operations. The testing results were projected to the population.

Inquiries regarding any REC-related complaints were made of the following organizations:

- Department of Commerce, Community, and Economic Development's Office of the Commissioner;
- Office of the Ombudsman;
- Alaska State Commission for Human Rights;
- United States Equal Employment Opportunity Commission;
- Department of Administration's Division of Personnel and Labor Relations;

- 
- Office of Victims' Rights; and
  - Governor's Office of Boards and Commissions.

A survey of real estate brokers, associate brokers, and salespersons was conducted to obtain opinions on various aspects of the commission's activities, including whether the commission operated in the public's interest. The survey was sent to a population of over 2,400 real estate licensees and less than 20 percent responded. The low response rate did not provide a reasonable representation of the population and the survey results were not used as evidence or presented in the report.

# Agency Response from the Department of Commerce, Community, and Economic Development



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

## Department of Commerce, Community, and Economic Development

OFFICE OF THE COMMISSIONER

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October 1, 2015

Ms. Kris Curtis, CPA, CISA  
Legislative Auditor  
Alaska State Legislature  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

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LEGISLATIVE AUDIT

RE: Department of Commerce, Community, and Economic Development, Real Estate  
Commission (REC), July 24, 2015

Dear Ms. Curtis:

Thank you for the September 10, 2015, preliminary audit report regarding sunset audit findings and recommendations concerning the Real Estate Commission sunset audit. I appreciate your review and the opportunity to provide a response to the Report Conclusions and the Findings and Recommendations. In general, the department concurs with the report conclusion and recommendations; our comments are provided below.

### Report Conclusion

DCCED agrees with the report conclusion and has begun implementing a plan to immediately address Recommendation No. 1. The department agrees with the report conclusion and has implemented significant improvements to the investigation section addressed in Recommendation No. 2.

### Recommendation No. 1

DCCED concurs that the department should rapidly complete the procurement process for a master errors and omissions insurance policy for real estate licensees. DCCED requests that Recommendation 1 be reworded to reflect the entities that have the authority and responsibility to conduct the procurement now that regulations have been adopted. The suggested wording is, "The DCCED Division of Administrative Services (DAS) director and the Division of Corporations, Business and Professional Licensing (CBPL) director should work together to procure a master errors and omissions insurance policy for real estate licensees."

In August, 2015, the directors of ASD and CBPL held a successful procurement planning meeting and created a timeline that will complete the process before January, 2016. The meeting included

the ASD Procurement Officer, CBPL Division Operations Manager, and the CBPL Real Estate Executive Administrator.

Recommendation No.2

DCCED concurs that the director of the Division of Corporations, Business and Professional Licensing (CBPL) should make certain that *“the chief investigator takes action to ensure cases are actively investigated and completed timely.”* The division has taken several significant steps to improve case management over the time frame of this audit:

In 2013, the investigators for the Real Estate Commission were reassigned and deliberate efforts made to address the caseload in a more efficient and effective manner.

In the fall of 2014, the Director and new Chief Investigator took immediate efforts to address the bottleneck of case review by restructuring the investigative unit to provide more effective supervision of both personnel and investigative actions:

- In December 2014, two PCNs were revised creating mid-level managers (Senior Investigators) in order to decrease the supervisor to subordinate ratio to 7:1.
- Each Senior Investigator supervises seven subordinate investigators creating the conditions for hands on and effective supervisory guidance.
- In addition the Chief Investigator now has the ability to focus on organizational goals and refine processes to speed the pace of investigative efforts.
- The case load for the Real Estate Commission Investigator is currently under 35 investigative actions and is manageable.

Since hired in September 2014, the Chief Investigator has implemented the following strategies to ensure cases are investigated and completed timely:

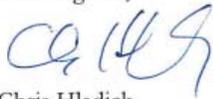
- The investigative unit has the goal of decreasing unexplained investigative gaps to no more than 60 days. This is a primary goal on each employee’s performance evaluation and is a measurable objective individually, as well as collectively.
- Additionally, the individual investigator assigned to support the Real Estate Commission program has bi-weekly meetings with Reviewing Board Member(s) to quickly evaluate allegations and determine where violations are present, as well as triaging the most serious matters to the forefront of investigative pursuits. This serves to rapidly resolve complaints in which there is no violation of licensing law and allows more time and energy to be devoted to complex, egregious complaints impacting public or consumer safety.
- All supervisory personnel employ the use of a database management “tickler” tool, which reports actions with no investigative activity within thirty (30) calendar days, allowing for supervisory intervention prior to cases exceeding the unit’s goal for investigative activity.
- Supervisory investigators review investigative actions of all team members on a quarterly basis to reenergize any stalled investigative action and to ensure that we are achieving unit goals of no unexplained investigative gaps of greater than sixty (60) calendar days.

Kris Curtis, CPA, CISA – Legislative Budget & Audit  
October 1, 2015  
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- The Chief Investigator enacted Standard Operating Procedures for the monitoring of matters referred to the Department of Law for litigation, requiring investigators to monitor and document every 60 days the status of those actions. This will provide valuable insight into the reason behind some periods of inactivity.

Again, thank you for the opportunity for the DCCED to provide a response on this matter. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-465-2500.

Best Regards,



Chris Hladick,  
Commissioner

cc: Janey Hovenden, Director, Division of Corporations, Business and Professional Licensing  
Catherine Reardon, Director, Division of Administrative Services

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# Agency Response from the Real Estate Commission

September 20, 2015

Alaska State Legislature

Legislative Budget and audit committee

Recommendation #1

The real estate commission has worked hard to get the the E & O insurance through the commission, with the correct wording. The Division of Admin Services and the department of law took years in getting the statue written and having the commission approve the wording.

As discussed previously not many other commissions have E & O insurance. Our intent is to provide both legal services to the licensee and funds to the injured party if that is the court's decision. We also have a recovery fund that allows a buyer or seller to receive funds up to \$15,000 if they are found to have been injured by a licensee. I not sure any other commissions have the type of fund to assist the public in the case of being wronged by a licensee.

We did not have to do this, but were being proactive to protect both licensee and the public.

At the last meeting the commission submitted the RFP to the correct department for receiving bids for the insurance. We were slower than we should have been, but that is corrected now.

Recommendation #2

We had for many years investigators that were not doing their job in a timely manner. We have no control over who is hired and assigned to our commission. We have a new investigator that is doing extremely well to get the old cased moved forward and dismissed.

The commission feels like this issue is resolved.

Sunset Criteria No. 1

The auditor has found all the commissioners all met eligibility requirements.

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Sunset Criteria No. 2

The auditor found no issues with the commission.

Sunset Criteria No. 3

We have never had funds to travel to Juneau to testify. The Alaska Association of Realtors has always gone to Juneau to testify. The REC and the AARC both have the same interests and do work together. A member of the AARC always attending our meetings.

We will send letters to the legislature on any statutory changes if the audit committee feels it should be done.

Sunset Criteria No 4

Per the auditor, the commission has encouraged interested person to participate in its decision process by publishing notices of meeting and always allow time for public comment.

Sunset Criteria No 5.

The auditor has stated that we have performed this criteria.

Sunset No 6

Per my information at the beginning in recommendation 2 we have a new investigator that has reduced the number of cases and continues to be very dedicated to get as many cases closed as possible.

Sunset Criteria No 7

The audit found that the REC staff conducted continuing education audits in accordance with the licensing regulations.

Sunset Criteria No 8

The auditor found no issue with this category.

Sunset Criteria No 9

The commission has completed and submitted the RFP to the correct department for bids.

Sunset Criteria No 10

This was addressed in previous comments.

Sunset Criteria No 11

REC does not duplicate the activities of another government agency or private sector.

The commission is interested in doing business according to requirements. I appreciate the investigation the auditor has completed.

I do disagree that the commission only be renewed for 6 years instead of 8.

We had very few issues of which we have corrected.

Submitted by:



Nancy Davis, Chair of the Real Estate Commission.

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