

The logo for the Texas Sunset Advisory Commission is a semi-circular emblem with a thick black border. Inside the semi-circle, the words "Texas", "Sunset", "Advisory", and "Commission" are stacked vertically in a bold, white, serif font.

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

Texas Real Estate Commission

**A Staff Report
to the
Sunset Advisory Commission**



TEXAS SUNSET ADVISORY COMMISSION

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TEXAS REAL ESTATE COMMISSION

November 1990

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SUMMARY

Summary

The Texas Real Estate Commission (TREC) is subject to the Sunset Act and will be automatically abolished unless statutorily continued by the 72nd Legislature in 1991. The agency was initially reviewed under the sunset process in 1979 and continued for a 12-year period.

The review of the commission included an assessment of the need for continued regulation; benefits that could be gained through transfer of all or part of the agency's functions to another existing agency; and changes needed if the agency is to be continued using its current organizational structure. The results are summarized below.

Assessment of Need for Agency Functions

The review concluded that the enabling statute of the Texas Real Estate Commission should be continued. Regulation of the real estate industry assures the public of the professional competence of real estate brokers, salesmen, inspectors and appraisers. Regulation of residential service companies and timeshare properties assures the public that these business ventures comply with state standards and are operated soundly. Abolishing the agency and its regulatory functions would greatly increase the risk of economic harm to the consumer and could result in incompetent practitioners.

Assessment of Organizational Alternatives

If the agency and its regulatory functions are continued, the review identified two organizational alternatives to the current regulatory structure. The alternatives proposed are to transfer the regulation of real estate appraisers and inspectors from the TREC to the Texas Department of Licensing and Regulation (TDLR). The TREC's current regulatory program for appraisers conflicts with federal guidelines and could jeopardize the ability of Texas financial institutions to make federally related transactions. Transferring the program to the TDLR would ensure that it meets these federal guidelines. Transferring the TREC's regulation of inspectors to the TDLR will ensure that the regulation of inspectors, who represent the buyer, is separate from the regulation of brokers and salesmen, who usually represent the seller in a transaction.

Recommendations if Agency is Continued

- The composition of the commission should be changed by:
 - including a salesman on the commission; and
 - authorizing the governor to designate the chairman.
- The operation of the agency's programs should be improved by:
 - authorizing the commission to use administrative penalties to discipline its licensees;

- removing statutory restrictions on the authority of the commission staff to investigate complaints;
- modifying the statutory requirements for regulating real estate appraisers to comply with federal requirements;
- requiring consumer information about the availability of the two recovery funds;
- increasing the claim limits of both recovery funds to better address the losses of claimants;
- modifying the statutory requirements for the Real Estate Inspector Recovery Fund to allow excessive balances to be appropriated for the operation of the program;
- authorizing an inactive status for brokers similar to that authorized for real estate salesmen;
- modifying the agency statute to conform with the sunset Across-the-Board recommendations; and
- making non-substantive minor modifications to the statute to make it more workable.

Fiscal Impact

The recommendations in this report will result in both cost savings and cost increases. Overall, the changes proposed will result in an estimated cost savings of approximately \$139,000 a year.

BACKGROUND

Creation and Powers

The real estate profession was first regulated in Texas in 1939, when the 46th Legislature passed the Texas Real Estate Dealer's License Act (now the Texas Real Estate License Act). This practice act required real estate brokers and their salesmen to be licensed by the Texas Secretary of State. In 1949, the legislature created the Texas Real Estate Commission (TREC) and moved regulation of brokers and salesmen to the agency.

The law governing the regulation of brokers and salesmen has gone through many changes over the years that have strengthened the licensing requirements. For the first time in 1955, applicants for a broker's license were required to pass an examination. Beginning in 1963, broker's license applicants had to meet either educational or experience requirements, and as of 1967, they were required to meet both. In 1975, the Real Estate Recovery Fund was established to reimburse people for losses due to dishonest or negligent acts of brokers and salesmen. As a result of the first sunset review in 1979, public members were added to the commission and standard complaint procedures were established.

In addition to licensing real estate salesmen and brokers, the commission regulates four other real estate-related services. Two regulatory programs were added in 1979. The Texas Residential Service Company Act was enacted to license companies that provide service warranties to buyers of existing homes. Also, real estate inspectors, who advise prospective home buyers of the condition of the house, were required to register with the commission. In 1985, the legislature expanded the inspector registration requirement to a full licensing program and passed the Texas Timeshare Act requiring all timeshare properties sold in Texas to be registered with the commission regardless of their location. In 1989, the legislature authorized the commission to certify real estate appraisers in an effort to meet new federal requirements to reform the nation's savings and loan industry.

The TREC has a variety of powers and duties that relate to its licensing function. These include issuing and renewing licenses; writing, administering and grading examinations for licensee applicants; approving real estate education providers and courses; investigating complaints and disciplining licensees; maintaining the agency's two recovery funds and processing claims on those funds; and auditing residential service companies.

The legislature established the Texas Real Estate Center in 1971. The center, located at Texas A&M University, is an independent research organization that provides information on real estate issues to the commission, educational institutions and the general public. The center is primarily funded with a portion of the license renewal fees paid by real estate brokers and salesmen. Its operation is overseen by an advisory committee that makes recommendations on the center's activities to the Texas A&M Board of Regents. The chairman of the Texas Real Estate Commission serves as an ex officio member of the committee.

Policy-making Body

The policy-making body of the Texas Real Estate Commission consists of nine members who are appointed by the governor and confirmed by the senate to six-year staggered terms. Six members of the commission must be real estate brokers who have been licensed for at least five years prior to appointment. The remaining three seats are held by members of the general public. Commission members must be Texas residents and registered voters and must post a \$10,000 bond with the governor's office to ensure "faithful performance" while serving their terms. Officers, including the chairman, are elected by the commission members each year.

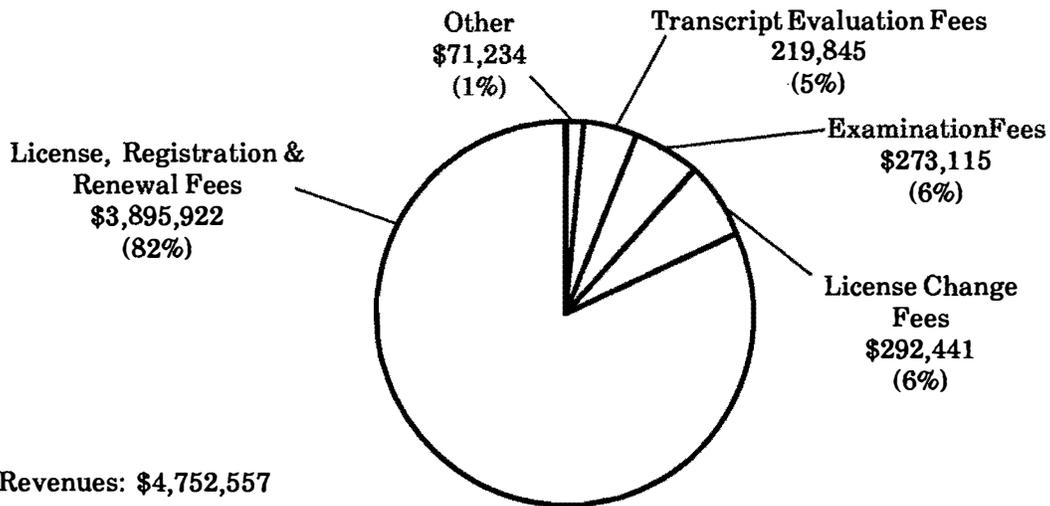
The commission met 13 times during fiscal year 1990. Three of those meetings were held outside of Austin. The commission has a standing committee of two members that makes recommendations on the investment of the agency's recovery funds.

The commission is authorized to hire an administrator and other agency employees, approve the agency's biennial budget, establish regulatory policies as rules, oversee the agency's implementation of those policies, hear appeals involving disciplinary actions against licensees, award payment of claims against the recovery funds, and promulgate standard legal contract forms for real estate transactions.

Funding and Organization

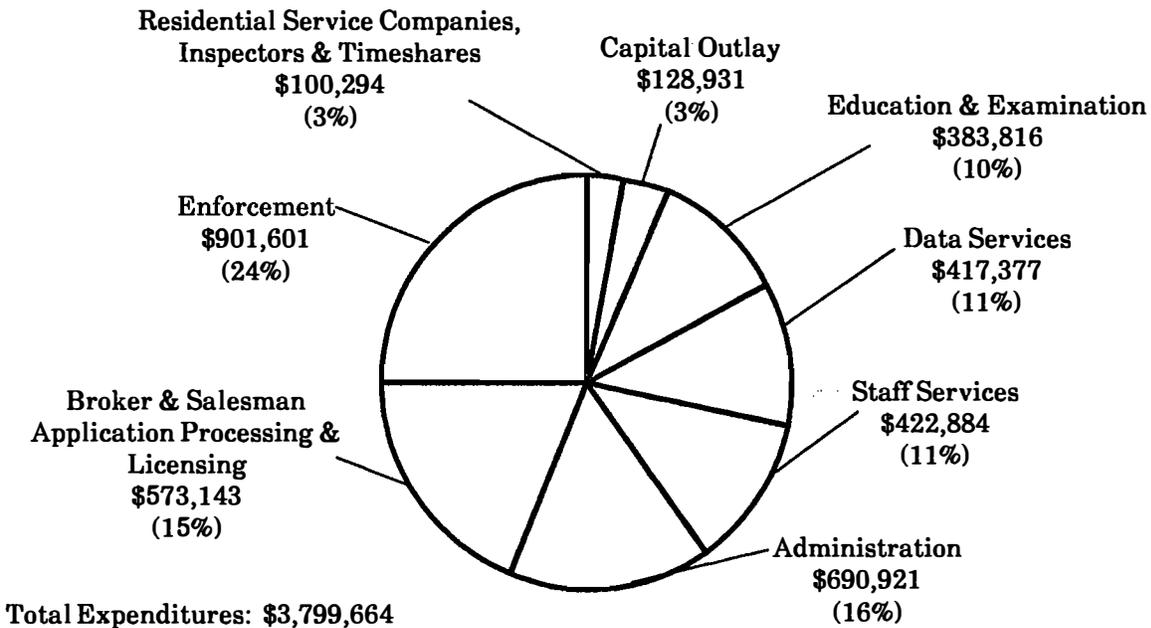
In fiscal year 1990, the agency collected nearly \$4.8 million in revenues in its regulation of five programs: brokers, salesmen, inspectors, residential service companies and timeshare properties. These revenues are deposited into three operating funds in the state treasury and include fees related to licensing, registration and the sale of publications. Exhibit A shows the agency's revenues by source in fiscal year 1990.

Exhibit A
Revenues by Source
Fiscal Year 1990



The agency's fiscal year 1990 expenditures totaled nearly \$3.8 million. Exhibit B shows a breakdown of expenditures by program for fiscal year 1990. In addition to these expenditures, state law requires the commission to send \$15 from every broker's license renewal fee and \$7.50 from every salesman's license renewal fee to the Texas Real Estate Center. These funds are appropriated to the center by the legislature and are maintained in a special fund in the state treasury until they are transferred to the center once each year. The center received more than \$1.5 million from the real estate license renewal fees in fiscal year 1990.

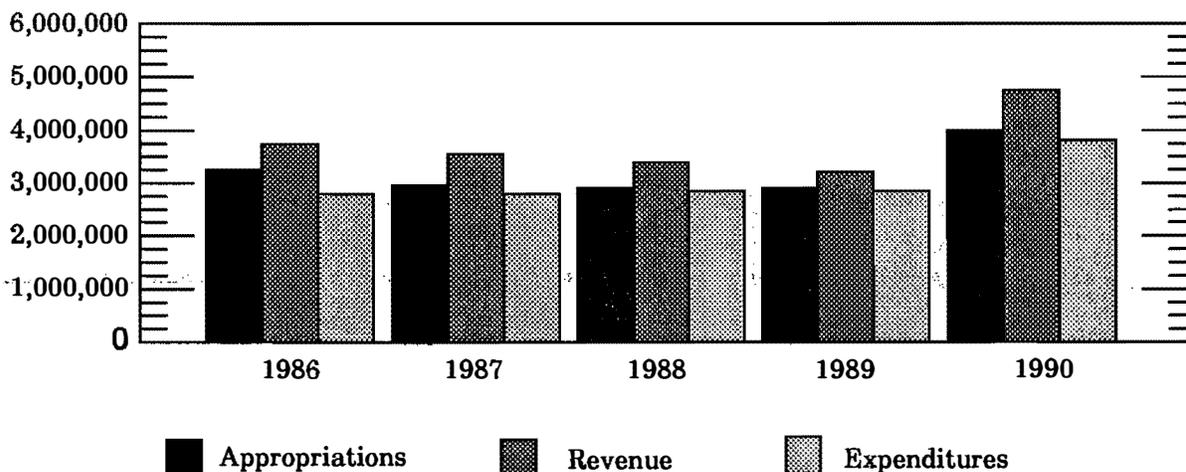
Exhibit B
Expenditures by Program
Fiscal Year 1990



In addition to the three operating funds, the agency maintains two recovery funds to pay claims for dishonest or negligent actions of licensees. The Real Estate Recovery Fund pays claims against brokers and salesmen and the Real Estate Inspector Recovery Fund pays claims against inspectors. Revenues for the recovery funds come from three sources: fees paid by new licensees; interest earned on investment of the funds; and reimbursements paid to the fund by licensees who have had claims paid against them. At the end of fiscal year 1990, the Real Estate Recovery Fund had a balance of \$3,106,492 and the Real Estate Inspector Recovery Fund had a balance of \$791,343. The commission paid \$579,468 in claims from the Real Estate Recovery Fund in fiscal year 1990. The Real Estate Inspector Recovery Fund, established in 1985, recently authorized payment of its first claim of \$1,170.

Exhibit C compares the agency's revenues, expenditures and legislative appropriations from fiscal years 1986 through 1990.

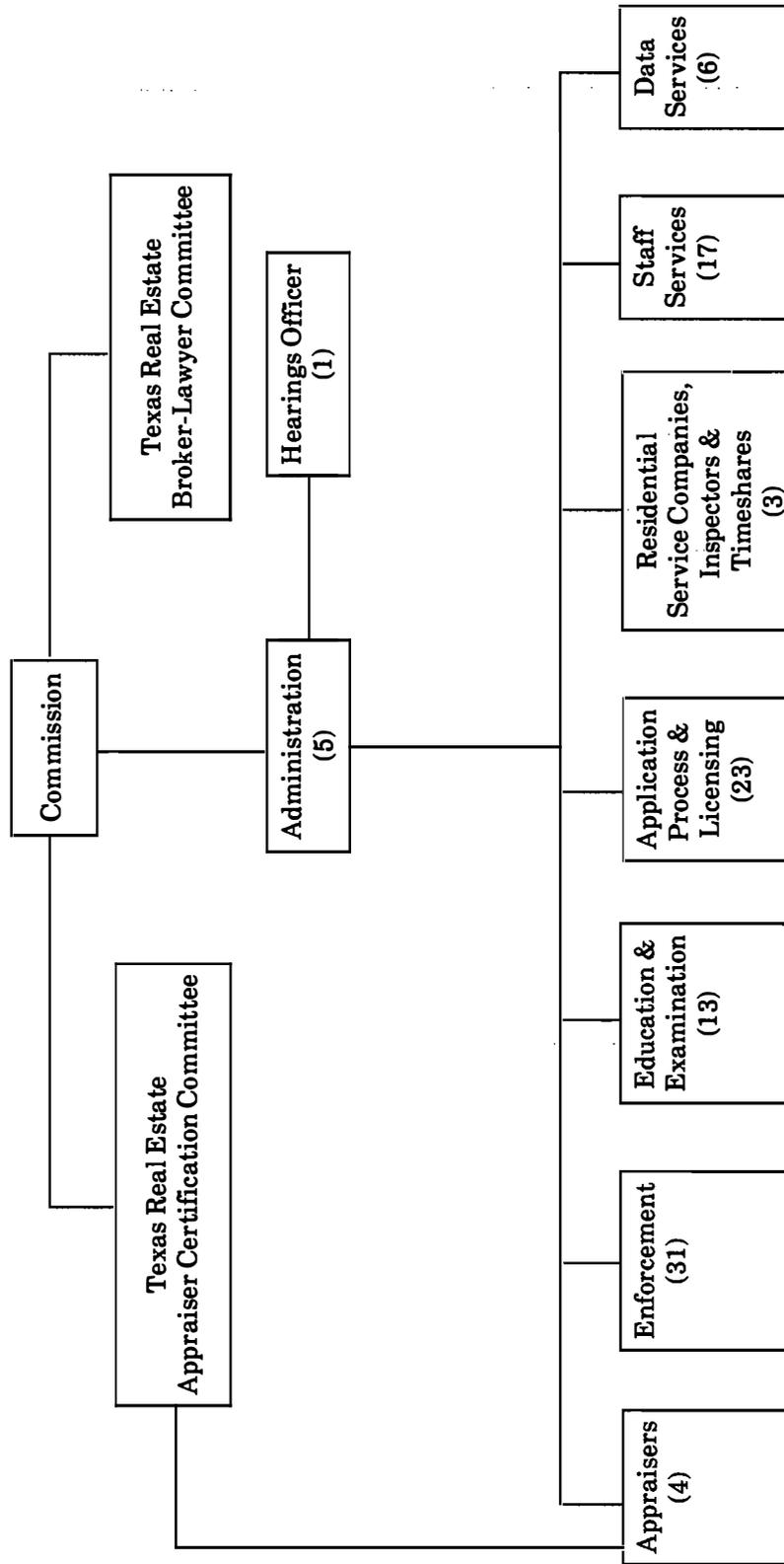
Exhibit C
Appropriations, Revenues and Expenditures
Fiscal Years 1986 - 1990



The TREC has five special funds in the state treasury. These include the Real Estate License Fund, which is the largest fund and contains revenues from licensing fees of brokers, salesmen, inspectors and education providers; the Residential Service Company Fund, which is a separate fund for the license fee revenues from these companies; the Real Estate Fee Trust Account Fund, which holds the portion of the license renewal fee that is transferred to the Texas Real Estate Center once a year; and the agency's two recovery funds.

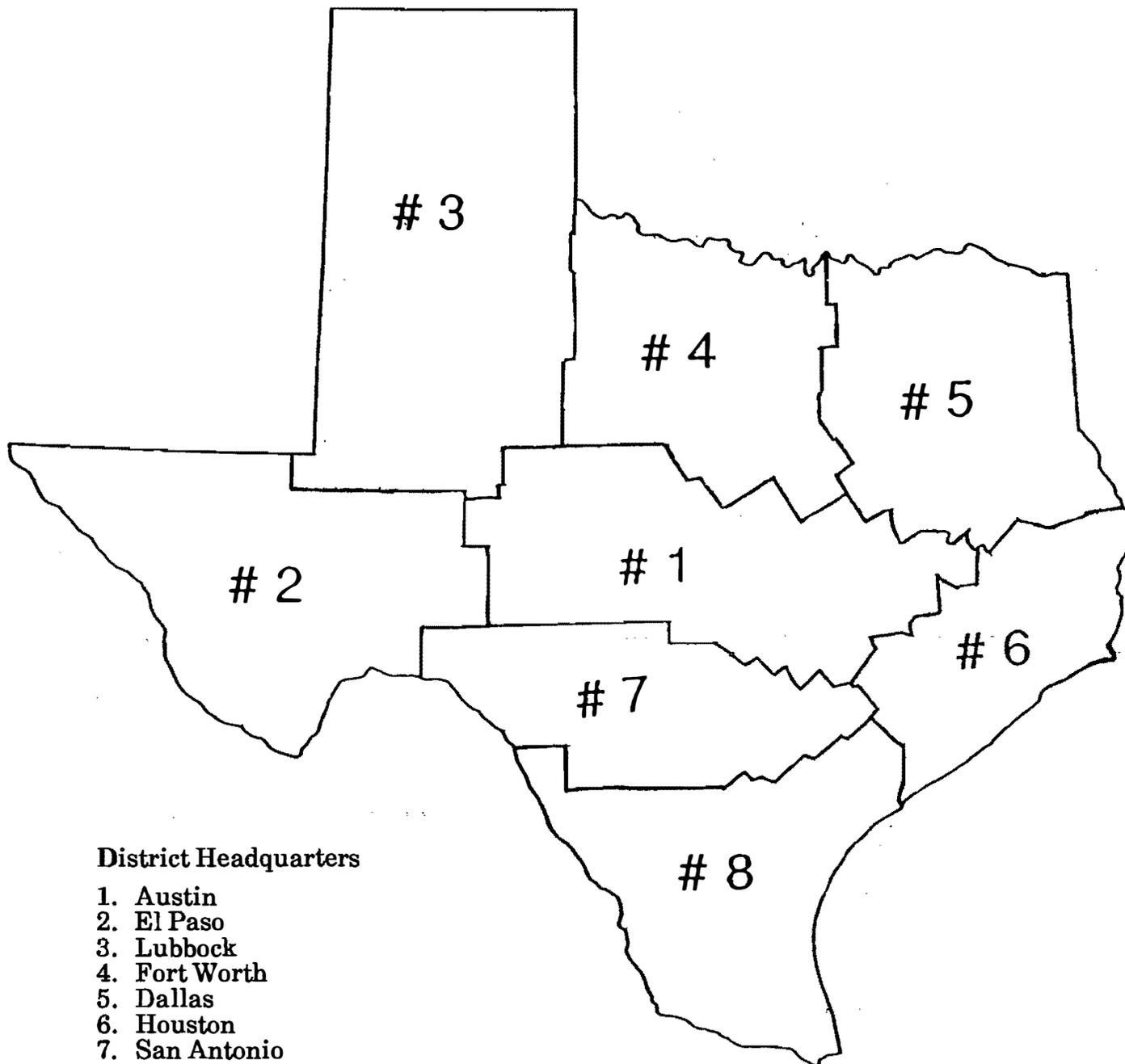
The TREC has a total of 103 full-time or part-time employees. Exhibit D shows the organizational divisions of the agency's employees. Of these, 87 are located in Austin, while the remaining 16 employees work in the agency's seven field offices. Four of the field offices are located in Corpus Christi, El Paso, Lubbock and San Antonio and operate out of an employee's home. The agency leases office space for the remaining three field offices, which are located in Dallas, Fort Worth and Houston. Exhibit E shows the territories covered by each of the field offices, including the Austin office located at the agency's headquarters.

Exhibit D
Texas Real Estate Commission
Organization Chart*



* as of 8-24-90

Exhibit E
Texas Real Estate Commission
Field Office Districts and Headquarters



District Headquarters

- 1. Austin
- 2. El Paso
- 3. Lubbock
- 4. Fort Worth
- 5. Dallas
- 6. Houston
- 7. San Antonio
- 8. Corpus Christi

Exhibit F depicts the agency's workforce by category of employment and how this workforce has changed over a five-year period. Since the state Appropriations Act establishes minority employment goals for these categories, the agency's minority employment is also depicted by category over this time period. This analysis includes only full-time employees.

Exhibit F

Percentage of Minorities in Agency's Workforce

Job Category	1986 Total Workforce 88		1990 Total Workforce 93		1990-1991 Appropriations Act Statewide Goal for Minority Workforce Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	10	10%	15	6.6%	14%
Professionals	26	3.8%	30	13.3%	18%
Technicians	2	50%	1	0%	23%
Para-Professionals	5	20%	3	33.3%	25%
Administrative Support	45	24.4%	44	38.6%	25%

Programs and Functions

The Texas Real Estate Commission is authorized to regulate six real estate professions and types of businesses. One of these programs, the regulation of real estate appraisers, was authorized in September 1989 and is still being developed by the agency. Exhibit G shows the total number of licensees in each of the five active regulatory categories for fiscal years 1985 through 1990. The agency's licensing functions are carried out by eight divisions, which are described below.

Application Processing and Licensing Division

This division has a variety of duties concerning the licensing of real estate brokers and salesmen. The division processes applications, issues licenses and maintains license records. The division also handles all information requests regarding the licensing of brokers and salesmen. There are six sections and 23 employees in the division.

To qualify for a broker's license, an applicant must be at least 18 years of age, a U.S. citizen or lawfully admitted alien, a Texas resident for at least 60 days, and able to demonstrate honesty, integrity, trustworthiness and competency. In addition, applicants for a broker's license must have completed 900 classroom hours of real estate-related education, pass an examination, and have two years of experience as a broker or salesman in Texas. The division received 2,558 new applications and issued 1,987 new broker licenses in fiscal year 1990.

Exhibit G
Total Number of Licenses Issued by
the Texas Real Estate Commission
Fiscal Years 1985-1990

License Category	1985	1986	1987	1988	1989	1990
Brokers	68,490	70,221	70,982	67,810	64,415	64,491
Salesmen (active)	84,538	84,590	79,158	71,327	68,232	65,516
Salesmen (inactive)	19,998	22,916	25,848	27,229	28,442	28,389
Inspectors	694	735	1,236	1,493	1,724	2,020
Timeshares	*	39	48	60	69	75
Residential Service Companies	10	8	6	8	8	12
TOTAL	173,730	178,509	177,278	167,927	162,890	160,503

* Timeshare properties were not required to register with the commission until 1986.

The requirements for a salesman's license are almost identical, with three exceptions. Salesmen must be sponsored by a licensed broker before filing an application. They must pass an examination, have 180 classroom hours of real estate-related education for initial licensure, and take a total of 270 hours by the third license renewal period. No experience is required for a salesman's license. The division received 10,043 new applications and issued 7,566 new salesman's licenses in fiscal year 1990.

The division also renews broker and salesman licenses. The licenses expire every two years and the renewal dates are staggered to even out the section's workload. All salesmen and brokers must file a renewal application 45 days before their license expires to ensure that they receive a renewed license before the old one expires. Licensees who file after the 45-day deadline are required to submit a new license application with the appropriate fees. The division received 31,278 timely renewal applications and 3,330 late renewal applications from brokers and 44,917 timely renewal applications and 7,147 late renewal applications from salesmen in fiscal year 1990. A total of 34,758 broker's licenses and 52,223 salesman's licenses were renewed in fiscal year 1990.

Licensed brokers and salesmen are required by law to report a change of address to the commission. In addition, salesmen who move from one broker's sponsorship to another must notify the commission. The division processed 11,673 change-of-address notices, 15,224 change-of-sponsorship notices and 14,367 termination-of-sponsorship notices in fiscal year 1990.

Education and Examination Division

This division administers and grades the real estate licensing exam for brokers and salesmen, evaluates transcripts from license applicants, and monitors approved education providers. In addition, the division oversees the mandatory continuing education program. There are four sections with a total of 13 employees in the division.

The division examines the transcripts of applicants to determine if the applicant has met the education requirements that are defined in the statute. For initial licensure, broker's license applicants must have 900 classroom hours in basic real estate courses and salesman's license applicants must have 180 classroom hours for initial licensure. The commission accepts college and university coursework and courses offered by approved trade associations and proprietary real estate schools. The division evaluated 53,367 transcripts in fiscal year 1990.

The division also reviews new applications from proprietary schools and trade associations and makes recommendations to the commission on the approval of the applicant and the proposed courses. Approved education providers offer the core courses required for licensure by the commission. The schools are monitored on a regular basis. There were 25 approved proprietary schools and 11 approved trade associations in fiscal year 1990.

The division writes, distributes, administers and grades examinations for broker and salesman licensing. The division also prepares study materials for exam candidates. Examinations are held at about 18 sites across the state each month, usually in donated rooms at local colleges or universities. Exams were given to 2,492 broker license applicants and 12,821 salesman license applicants in fiscal year 1990.

Mandatory continuing education requirements for brokers and salesmen go into effect on August 31, 1991. Each broker and active salesman who has completed the basic educational requirements will be required to take 15 hours of approved continuing education courses every two years for license renewal. The division is responsible for reviewing applications for approval as a continuing education provider and applications for approval of individual courses and instructors. Thirteen continuing education providers filed applications in fiscal year 1990.

Enforcement Division

The enforcement division responds to complaints against brokers, salesmen, inspectors, appraisers, residential service companies, and timeshare developers, owners and management firms. The division also processes claims against the agency's two recovery funds. There are 31 employees in the division, 16 of whom work in field offices around the state. The division had 303 pending investigations, opened 845 new investigations, and resolved 745 cases in fiscal year 1990. Exhibit H breaks down the agency's disciplinary actions by license category.

Exhibit H
Resolution of Complaint Investigations
Fiscal Year 1990

	Dropped/ Dismissed*	Advisory Letters	Reprimanded	Suspended	Revoked	Referred to Prosecutor	Total
Brokers/Salesmen	449	101	10	46	56	0	662
Inspectors	14	2	0	0	0	0	16
Timeshares	4	1	0	0	1	0	6
Residential Service Companies	0	0	0	0	0	0	0
Unlicensed Activity	33	26	0	0	0	2	61
Total	500	130	10	46	57	2	745

*These investigations were dropped due to no violation, no jurisdiction, insufficient evidence or settlement with complainant.

Complaints against licensees must either be notarized by the complainant or approved by the commission before the division can begin an investigation. The division's field staff members investigate complaints and report their findings to the staff attorneys in Austin, who then recommend a course of action on the complaint. Staff attorneys are authorized to reach an informal disciplinary agreement with a licensee. If an agreement cannot be reached, then a hearings officer will hear the case and issue a decision. The commission does not affirm informal agreements or decisions rendered by a hearings officer, but licensees may appeal the hearings officer's decision to the commission before seeking action in district court.

Real Estate Appraisers Division

This division was created in January 1990 to establish a certification program for real estate appraisers. The legislature authorized the commission to certify real estate appraisers in an effort to meet new federal efforts to reform the nation's savings and loan industry. Under the new requirements, each state must certify real estate appraisers who will appraise property for federally-related transactions. As of July 1991, every state must have a certification process in place for real estate appraisers.

The division is responsible for all aspects of the certification process, including processing applications, approving education providers and required courses, and writing and administering exams. The division plans to give its first appraisal certification exam in January 1991 and begin issuing certificates before the July 1991 deadline. The division has four employees.

The agency is authorized to issue two types of appraisal certifications. Certified residential appraisers are authorized to appraise residential real estate, while certified general appraisers are authorized to appraise all types of real estate. Applicants for both certificates must have a broker's license or a salesman's license that was issued before June 1, 1989. Applicants for residential certification must have 80 classroom hours in appraisal-related courses, while applicants for general

certification must have 150 classroom hours. Applicants for both certifications may satisfy the educational requirement with a college degree. Applicants for both types of certification must also complete 15 classroom hours in the standards of professional appraisal practice and ethics. Certified general appraisers are required to have three years of appraisal experience, while residential appraisers must have only two years of experience.

Residential Service Company Licensing, Inspector Licensing, and Timeshare Registration Division

This division is responsible for three of the agency's six regulatory programs: licensing of real estate inspectors, licensing of residential service companies and registration of timeshare properties. The division has three employees who are responsible for all aspects of regulation except complaint investigations, which are carried out by the enforcement division.

In fiscal year 1990, the division licensed 12 residential service companies, which sold more than 45,000 service warranty contracts valued at \$16 million, to buyers of existing homes in Texas. The division evaluates each license applicant's ability to assure that the warranty services will be provided in a responsible and timely manner. This is determined by examining the company's organizational and financial soundness. Once a company has been licensed, the division must approve major organizational changes and changes in contract forms and service fees. Licensed companies must also submit an annual financial report to the commission, which is subject to audit by the commission at the company's expense. The division audited eight residential service companies in fiscal year 1990. Each company is audited every two years.

Texas is the only state that regulates real estate inspectors. To qualify for a license, an applicant must be at least 18 years of age, a U.S. citizen or lawfully admitted alien, a Texas resident for at least 60 days, and able to demonstrate honesty, integrity, trustworthiness and competency. In addition, applicants must pass an examination and complete 90 classroom hours of approved inspector-related educational courses. The division issued new licenses to 515 inspectors and renewed 1,577 inspector licenses in fiscal year 1990. The division also held 64 exam sessions, about one a week, for inspector applicants in Austin during fiscal year 1990.

The division maintained registration of 75 timeshare properties in fiscal year 1990. Timeshare developers and owners who sell properties to buyers in Texas, even if the property is located elsewhere, must file certain documents with the commission for each timeshare project. These documents include a disclosure statement with a detailed description of the company and its officers, the property management company and the timeshare property. Timeshare registrations are not renewed, but timeshare developers and owners are required to report any changes to the original application on file with the commission.

Administration Division

The administration division supports the nine-member commission, administers the commission's policies, sets agency goals, measures the agency's performance, and publishes six newsletters annually for brokers and inspectors. The division also maintains communications with other state and federal agencies and private organizations. The division has six employees, including the agency administrator,

the general counsel, and the hearings officer, who presides over disciplinary hearings against licensees.

Staff Services Division

The staff services division is responsible for performing agency personnel and accounting functions, managing the agency's two recovery funds with the supervision of the commission, and preparing the biennial budget request and annual report documents. The division also supports activities in other agency divisions, such as mail distribution, cashier services, records maintenance, purchasing, and inventory control. The division has 17 employees.

Data Services Division

The data services division provides data processing services and support to the agency. The agency recently acquired a new mainframe computer to better meet the agency's growing data processing needs. The division has six employees.

RESULTS OF REVIEW

Overall Approach to the Review

Overall Approach to the Review

Prior Sunset Review

The Texas Real Estate Commission (TREC) was previously reviewed by the Sunset Commission in 1979. As part of the 1991 review, the Sunset Commission staff examined the previous staff report, the recommendations adopted by the Sunset Commission, and the resulting statutory changes made to the Texas Real Estate License Act in 1979.

The previous staff report on the TREC determined that there was a public need for the regulation of the real estate industry and recommended that the functions of the agency be continued. The staff recommended several other operational changes that were adopted by the Sunset Commission. These included:

- requiring staggered renewal of licenses;
- providing one-third public membership on the TREC;
- establishing additional conflict-of-interest provisions for commission members and staff;
- increasing the maximum for claims against the Real Estate Recovery Fund and increasing accessibility to the fund;
- requiring that parties to real estate transactions be provided with information regarding the obligations of licensees and the flexibility of their rates;
- requiring the agency to provide information on complaint procedures;
- allowing license applicants to take the examination without a licensee's sponsorship; and
- limiting educational requirements to 15 semester hours.

Legislation enacted by the 66th Legislature continued the agency and its functions. The bill included most of the recommendations made by the Sunset Commission, with the following exceptions:

- staggered license renewal remained available to the agency but was not required;
- conflict-of-interest provisions were added to the statute for commission members but not for commission staff;
- the requirement for license applicants to be sponsored by a licensee to take the exam was not repealed; and
- the education requirements were not limited to 15 hours.

In addition, the legislation contained two additional provisions. The first provision required that TREC real estate contract forms include a notice that information on coastal natural hazards is available. The second provision allowed the commission to license lawfully admitted aliens and licensees from other states without a reciprocal agreement. The changes made as a result of the 1979 sunset review are still in place.

Approach to Current Review

The current sunset review of the Texas Real Estate Commission covered all aspects of the agency's activities. In accordance with the Texas Sunset Act, the review focused on an assessment of: 1) whether there is a continuing public need for the regulation of real estate professionals and businesses; 2) whether there are alternative organizational approaches for carrying out the commission's functions more effectively; and 3) whether changes could be made to improve the efficiency and effectiveness of the commission if it is continued in its present structure.

A number of activities were undertaken by the sunset staff to assess the need for the current regulatory structure and to gain a better understanding of the commission's current approach to this area of regulation in Texas. These activities included:

- interviews with the executive director and various staff of the agency;
- observation of several commission meetings and committee meetings;
- review of various agency documents and records, the agency's self-evaluation report, previous management studies on the agency, legislative and budget documents, federal regulations, and literature concerning the regulation of real estate professionals;
- review of the staff recommendations and statutory changes made as a result of the previous sunset review conducted in 1979;
- comparison of Texas' approach to regulation with that of other states;
- phone interviews with officials from other similar regulatory programs in Texas, officials who regulate real estate professionals in other states, and officials with the federal government; and
- meetings with various interest groups and individuals affected by the activities of the agency.

The results of the review are addressed in the three following sections: 1) Assessment of Need to Regulate; 2) Assessment of Organizational Alternatives; and 3) Recommendations if Agency is Continued.

Assessment of Need for Agency Functions

ISSUE 1: The state should continue the regulation of real estate brokers, salesmen, inspectors, appraisers, residential service companies, and timeshare properties.

BACKGROUND

Government regulation of an occupation or business is not justified unless three conditions are met. First, unlicensed practice should pose a serious risk to the public's health, safety, or economic well-being. Second, the benefits of regulation to the public should clearly outweigh any potential effects, such as a decrease in the availability of the service. Finally, the regulated practices should be of a complexity that consumers cannot properly evaluate the quality of the service performed and the capabilities of the practitioners or businesses.

To assess whether the above conditions exist to an extent that would justify continued regulation, the 1979 sunset staff report on the Texas Real Estate Commission (TREC) was reviewed and the commission's current regulatory responsibilities were evaluated. At the time of the previous report, the commission regulated only real estate brokers and salesmen. The 1979 staff review of the TREC concluded that:

- ▶ **The regulation of real estate brokers and salesmen should be continued because the public relies on qualified brokers and salesmen to assist in the sale and purchase of real property in Texas. The absence of such regulation could result in serious economic harm to the buying and selling public.**
- ▶ **Texas' approach to the regulation of real estate brokers and salesmen was not overly restrictive in comparison to other states.**
- ▶ **The potential for consolidation with other regulatory programs was minimal because the functions of the commission require both professional and technical expertise regarding real estate. There were no agencies with overlapping programs or populations.**

The current evaluation of the need to continue the regulatory programs at the TREC included a review of the regulation of real estate brokers and salesmen as well as the regulation of real estate inspectors, appraisers, residential service companies, and timeshare properties. This review determined that:

- ▶ **The basic conditions on which the need for the regulation of real estate brokers and salesmen was based in 1979 are still present today. Continued regulation is warranted to protect the public from the economic harm that might result from incompetent or substandard assistance and advice in the selling or purchase of real property.**

- The practice of real estate brokerage is too technical for most consumers to make a sound, qualitative evaluation of the services offered. Regulation assures the consumer of the competence of brokers and salesmen.
- All 50 states regulate real estate brokers and salesmen. Texas' approach is generally consistent with other states' requirements, although the educational requirement in Texas has been significantly higher than that of other states for many years. Licensees must meet minimum education and experience qualifications and pass a state examination and must complete continuing education to maintain licensure.
- ▶ **The regulation of real estate appraisers should be continued because the federal government requires state regulation of appraisers for federally-related transactions including federally insured loan transactions. Unregulated practice could pose serious economic harm to the public. The complexity of appraising property makes it difficult for most consumers to judge the quality of an appraisal.**
- ▶ **The regulation of real estate inspectors should be continued because home buyers rely on qualified inspectors to examine property they are considering purchasing and to advise them of any major repairs that are needed. This type of inspection involves a complex evaluation of the property that most prospective buyers would not have the skill to perform. As a result, consumers would have difficulty evaluating the appropriateness of the service and the qualification of the inspector without regulation.**
- ▶ **The regulation of residential service companies should be continued because it is difficult for consumers to judge the long-term capability of such businesses to provide the services they sell and unregulated practice could pose an economic risk to consumers. These companies offer maintenance agreements on the structural components and appliances in older homes.**
- ▶ **The regulation of timeshare properties should be continued because of the serious economic risk presented by the unregulated operation of these business interests. Ownership rights are different in timeshare properties than other types of properties and most consumers are not able to evaluate the appropriateness of the contractual provisions and the capabilities of the timeshare management over the life of the contract.**

Based on these factors, the review concluded that there is a continuing need to regulate all professions and businesses currently regulated by the Texas Real Estate Commission.

RECOMMENDATION

- **The state should continue the regulation of real estate brokers, salesmen, inspectors, appraisers, residential service companies, and timeshare properties.**

Continuing the regulation would provide assurance to the public of the competence of real estate brokers, salesmen, appraisers, and inspectors. Continued regulation of residential service companies and timeshare properties would provide assurance to the public that these business ventures are operated soundly and comply with state standards.

FISCAL IMPACT

If the regulation of real estate brokers, salesmen, appraisers, inspectors, residential service companies and timeshare properties is continued using the existing regulatory structure, the commission's annual appropriation of approximately \$3.8 million would need to be continued. Since the commission's expenditures are fully supported by fees collected from licensees and deposited to the Real Estate License Fund and Residential Service Company Fee Fund, there would be no fiscal impact the general revenue fund.

Assessment of Organizational Alternatives

ISSUE 2: Regulation of real estate appraisers should be transferred to the Texas Department of Licensing and Regulation to ensure compliance with federal requirements.

BACKGROUND

In May 1989, the 71st Legislature adopted legislation creating a separate category of licensing for real estate appraisers under the Texas Real Estate Commission. Prior to this time, only licensed brokers and salesmen could appraise property in Texas. In anticipation of the passage of pending federal requirements for state certified appraisers, the legislature established a specialty appraiser certification that TREC can issue to brokers and salesmen. The additional certification requires the appraiser to either have a college degree or complete specialized appraisal training, demonstrate appraisal experience and pass an examination.

In August of 1989, Congress passed the pending appraisal requirements as part of the federal Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). This act is the federal government's response to the recent problems with the failure of federally insured banks and savings and loans. One initiative in the reform focuses on strengthening the regulation of appraisers who certify the value of property placed as collateral for federally insured loans. Federally insured savings and loans in Texas issued loans valued at \$3.2 billion in 1989. All federally-related transactions will eventually require the services of a state certified or licensed appraiser. Some estimate that as much as 90 percent of all appraisal work is federally-related.

The FIRREA requires that, after July 1991, all federally-related transactions be subject to appraisal by a state regulated appraiser whose credentials meet federal requirements. The act sets out specific requirements for the state regulatory program and establishes the Federal Financial Institutions Examination Council to oversee implementation of FIRREA.

A comparison of appraiser regulation in Texas to the requirements set out in federal law indicated the following:

- ▶ **Non-compliance with federal requirements for appraiser regulation could jeopardize the availability of federally insured loans and the ability of Texas appraisers to certify most appraisals needed.**
- The federal law requires that after July 1, 1991, all federally-related property transactions will be contingent on an appraisal by an appraiser who is regulated by a state program that meets federal requirements. Some estimate that as much as 90 percent of appraisal work is federally related. Non-compliance in this area could jeopardize federally insured transactions in Texas and the

ability of Texas appraisers to certify appraisals for financial institutions.

▶ **Federal regulations require that decision-making for appraiser regulation be separate from broker regulation.**

- The federal guidelines for implementing the act state that "Decisions as to whether or not to license and certify, or to discipline or de-license or de-certify appraisers should not be made by the same state officials whose responsibilities include licensing realtors or engaging in real estate promotion activities, or financing real estate development. (Such decisions) should be final administrative actions subject only to judicial review."
 - In Texas, decision-making authority for appraiser regulation is vested with the TREC policy body. While an appraiser advisory committee recommends policies for appraiser regulation, the TREC commission has final authority in rule-making and disciplinary actions.
 - The federal agency charged with determining whether a state program complies with federal requirements has reviewed the Texas program and found that vesting the authority to regulate appraisers with the TREC commission does not meet federal requirements.
 - The TREC appraiser advisory committee has been developing draft legislation to bring state law into compliance with federal requirements. However, the committee's proposal would not transfer the program to TDLR. Instead, the advisory committee would be given independent rule making and sanction authority, the committee members would be appointed by the governor, and the program would be administered by TREC staff.
- ▶ **Keeping the regulation in the TREC would require increased costs and would not provide clear separation of regulatory functions.**
- Federal directives state that if both professions are regulated by one agency, "adequate safeguards must be established to ensure that conflicts of interest are avoided (and) if such safeguards are not adequate, state licensed or certified appraisers should not be approved for federal purposes."
 - To be completely sure that there is adequate separation, an independent policy body would have to be created with a staff that is independent of the TREC. Adequate safeguards would include the establishment of an independent rule-making board with enforcement powers and an independent staff, especially in the areas of enforcement and applicant eligibility determination. Essentially, a new state agency would have to be created with separate and duplicative overhead costs.

- The TREC estimates that its additional cost to fully implement new federal directives will approach \$148,000 bringing its total appraiser regulation costs to \$585,500 a year.
- ▶ **Transferring regulation to the Texas Department of Licensing and Regulation (TDLR) would provide clear separation from the regulation of real estate professionals and allow the program to share centralized licensing functions.**
- The Texas Department of Licensing and Regulation (TDLR) provides a centralized licensing structure and has no involvement in regulating real estate brokers or salesmen.
- The TDLR commission is composed solely of public members. The federal guidelines for appraiser regulation state "as a matter of sound public policy, state appraisal boards or commissions should adequately represent the broad public interest and (have) meaningful public representation. In this regard, domination or majority control of appraisal boards by representatives of the real estate sales/brokerage, promotion, development, or financing industries -- or by their licensing or regulatory agencies -- would not be appropriate or consistent with the principles outlined in (the federal requirements)."
- The TDLR's structure allows many smaller licensing programs to share administrative activities such as collecting fees and processing renewals more efficiently. Also, the smaller programs can take advantage of the TDLR's existing enforcement structure, which includes a legal staff, regional offices and enforcement personnel.
- The TDLR estimates that regulating appraisers through that agency will cost approximately \$390,000 a year.

PROBLEM

The Texas law regulating appraisers was adopted last session to ensure Texas could comply with pending federal requirements. However, due to unexpected changes to the federal legislation before final adoption, Texas law is not consistent with federal requirements to separate decision-making for appraiser and broker regulation. Non-compliance in this area could jeopardize federally insured loans in Texas and the ability of Texas appraisers to do work for financial institutions.

RECOMMENDATION

- **The function of regulating appraisers should be transferred to the Texas Department of Licensing and Regulation. In addition, the statute should provide for:**
 - **the appraiser advisory committee to develop and recommend rules to the TDLR commission;**

- the staff of the TDLR to investigate and develop enforcement cases and make recommendations to the TDLR commission for final action; and
- a maximum one year phase-in of the transfer.

These changes ensure compliance with federal requirements that policy-making and enforcement decisions for state appraisal regulation are made by a commission that is not involved in the regulation of real estate brokers and salesmen. The responsibility for the program would be transferred to the Texas Department of Licensing and Regulation. The program's statutory advisory committee would be recreated to provide the TDLR commission with advice from the appraisal community. The one year phase-in will allow both agencies to work out an orderly transfer of personnel, equipment, and regulatory authority needed to carry out the program. Issue 8 discussed later in this report, restructures the advisory committee and makes other changes to the appraiser regulation program.

FISCAL IMPACT

According to estimates provided by both agencies, transferring the program to the Texas Department of Licensing and Regulation will reduce expected program costs by approximately \$195,500 a year.

Transferring the program to the TDLR allows the program to operate more efficiently by using many of the TDLR's centralized regulatory and administrative functions. Because of federal concerns about the conflict of interest in having the TREC administer the program, additional independent enforcement and eligibility determination staff will be needed if it is not transferred.

ISSUE 3: The real estate inspector licensing program should be transferred to the Texas Department of Licensing and Regulation.

BACKGROUND

Licensed real estate inspectors are authorized to inspect a home and advise the prospective buyer on the condition of its structure, appliances, and systems (such as electrical, plumbing, and septic systems). An inspector plays an important role in protecting the buyer in the purchase of a home. Once a buyer chooses a house to buy, he generally offers a deposit, or "earnest money," to hold the house until financing can be arranged. This earnest money contract allows the buyer to specify that either the house is acceptable "as is" once financing is arranged, or that the buyer and seller agree to have certain features of the house inspected before finalizing the sale. Defects or problems with the structure of a house are often not visible and require specialized inspection to detect. If major repairs are identified in the inspection that the seller is not willing to make, the buyer can withdraw from the contract and recover the full earnest money deposit.

Inspectors were first regulated in Texas in 1981. The Texas Real Estate Commission was authorized to register inspectors who posted a \$25,000 bond. Unlicensed acts were made subject to a class B misdemeanor and dishonest actions of inspectors were made subject to penalties under the Deceptive Trade Practices Act. In 1985, the registration approach was replaced with a licensing program and the bond requirement was replaced with a recovery fund.

An examination of real estate inspector regulation and its placement with the Texas Real Estate Commission indicated the following:

- ▶ **The current structure for regulating inspectors is not oriented toward their interests.**
 - The policy body of the TREC consists of six brokers and three public members and has all regulatory decision-making authority for state regulation of inspectors.
 - The vast majority of the work of the Texas Real Estate Commission focuses on the regulation of real estate salesmen and brokers. The TREC licenses approximately 158,000 brokers and salesmen compared to 2,020 real estate inspectors. About 94 percent of the commission's \$3.8 million annual budget is funded by fees paid by brokers and salesmen.
 - Although brokers and salesmen are interested in a fair deal for all parties in a transaction, in the absence of an alternative agreement the broker represents the interests of the seller. A real estate inspector on the other hand represents the interests of the buyer.

- ▶ **The current structure has not provided an adequate forum for the development of a strong program to regulate the inspectors and their "buyer protection" function.**
 - Inspector license fees are high and not based on the current cost of regulation. Inspectors paid license fees totaling \$220,500 in fiscal year 1990, while TREC's cost to regulate inspectors that year was approximately \$134,000.
 - Licensed inspectors complain about the lack of rules clarifying the standards of practice and professional development requirements under the current structure.
 - Representatives of the statewide and several local associations of real estate inspectors in Texas have adopted a resolution calling for the program to be established as a separate agency or transferred to the Texas Department of Licensing and Regulation.

- ▶ **The regulation of inspectors can be separated and carried out by the Texas Department of Licensing and Regulation.**
 - Inspector regulation can be transferred from the TREC with very limited disruption because the program operates independently of most other regulatory functions within the agency. With the exception of enforcement duties, the separate inspector program staff handles all regulatory functions including approving courses, reviewing transcripts and applications, administering tests, and collecting fees.
 - The Texas Department of Licensing and Regulation is structured as a centralized licensing agency. It has a full complement of regulatory powers to ensure consistent enforcement of professional standards.
 - Transferring regulation to TDLR would reduce costs. The TDLR estimates that regulating inspectors through that agency would cost approximately \$71,000 annually compared to the current operating costs through the TREC of \$134,000. Many smaller licensing programs at the TDLR share administrative activities such as administering tests, collecting fees and processing renewals.
 - The independence of the regulatory program would be enhanced. The all public member commission at the TDLR would ensure that this home buyer protection function is regulated apart from and separate of the interest of the home seller.
 - An inspector advisory committee would be needed to implement and carry out the program. The TDLR commission currently uses advisory committees to obtain advice in the regulation of boilers, air conditioning and refrigeration contractors, and makers of industrialized housing and buildings.

PROBLEM

The real estate inspector's function is to protect the home buyer from unknowingly purchasing a house in need of extensive repair. In contrast, the real estate broker and salesman represent the seller in the transaction. Most of the TREC's work focuses on the regulation of brokers and salesmen and its commission is composed predominantly of brokers. The regulation of real estate inspectors by a commission focused primarily on the representation of the seller does not ensure that inspectors are provided an adequate forum for the development of a strong program to regulate their important "buyer protection" function.

RECOMMENDATION

- **The authority for the regulation of real estate inspectors should be transferred to the Texas Department of Licensing and Regulation. The specific changes would:**
 - **transfer rule-making and sanction authority for real estate inspector licensing to the TDLR;**
 - **establish an inspector advisory committee, composed of six inspectors and three public members, to advise the TDLR board; and**
 - **provide for a maximum one year phase-in of the transfer.**

This change will transfer the responsibility for regulation of real estate inspectors from the TREC to the Texas Department of Licensing and Regulation. The department has an all public member commission that will have decision-making authority for rule development and sanctions. Placing inspector regulation under the authority of the TDLR extends its regulatory authority to also cover this program. Therefore, inspectors will also be subject to a range of disciplinary sanctions, including administrative penalties not to exceed \$1,000 for each violation. The TDLR commission would be required to appoint an inspector advisory committee to advise the commission on the implementation of the program. Along with regulation of inspectors, management of the Real Estate Inspector Recovery Fund would also be transferred to the TDLR. A special fund would be established in the state treasury for the operation of the inspector regulation program. The one year phase-in will allow both agencies to work out an orderly transfer of personnel, equipment, and regulatory authority needed to carry out the program.

FISCAL IMPACT

This change is estimated to save approximately \$63,000 a year or 47 percent of current operating costs. The Texas Department of Licensing and Regulation estimates that regulating inspectors through the TDLR would cost approximately \$71,000 annually. Current program costs through the TREC total \$134,000 annually. All program costs are currently supported through licensing fees that are deposited to the Real Estate License Fund.

Recommendations if Agency is Continued

ISSUE 4: The statute should be changed to require the appointment of a licensed salesman to the commission.

BACKGROUND

The policy body of the Texas Real Estate Commission is composed of nine members. State law requires that six members are brokers who have been licensed for at least five years prior to appointment. The remaining three members represent the public. All commission members are appointed by the governor to six-year terms. The commission's regulatory powers include establishing licensing policies by rule and hearing appeals involving disciplinary actions against licensees.

The licensing relationship between real estate brokers and salesmen is unique among professional regulatory schemes. Even though a salesman is authorized to conduct essentially the same professional activities as a broker, a salesman cannot practice unless he is sponsored by a broker, who actually holds the salesman's license. The broker is legally responsible for the actions of salesmen under his sponsorship and all commission correspondence with the salesman is sent through the broker. However, a salesman is not an apprentice to the broker but is considered to be in a distinct profession, and often salesmen will choose to retain their license rather than become a broker.

The general qualifications for becoming licensed as a salesman or broker are nearly identical. An applicant must be at least 18 years of age; a U.S. citizen or lawfully admitted alien; a Texas resident for at least 60 days; able to demonstrate honesty, integrity, trustworthiness and competency; and able to pass a written examination. Applicants for both licenses must have a minimum number of educational courses, but the educational requirement for brokers is much higher than for salesmen. Applicants for a broker's license must have two years of experience as a salesman in Texas, while salesmen do not have experience requirements.

A review of the policy-making structure for the regulation of real estate salesmen and brokers in Texas and other states indicated that:

- ▶ **Real estate salesmen are the largest group of licensees overseen by the agency and contribute a significant portion of the agency's revenues.**
 - Fifty-nine percent of the 162,890 professionals regulated by the commission in fiscal year 1989 were salesmen, compared to 40 percent who were brokers. The remaining one percent were inspectors, timeshare properties and residential service companies.
 - In fiscal year 1989, brokers and salesmen paid \$2 million in license application and renewal fees. Salesmen paid an average of 52 percent of this amount, compared to 48 percent paid by brokers.

During that time, salesmen also paid about \$156,000 in fees for changing broker sponsorship.

- ▶ **Licensed salesmen do not have any form of direct representation within the commission's regulatory structure.**
 - Salesmen are not currently represented on the policy body of the commission, which is composed of three public members and six brokers who have been licensed for at least five years prior to appointment.
 - Policy decisions made by the commission directly affect the practice of more than 96,000 licensed salesmen, but their expertise is not directly available to help shape those decisions.
- ▶ **Many other states provide representation for salesmen on their real estate policy body.**
 - All 50 states have similar general regulatory programs for brokers and salesmen and require sponsorship of salesmen by brokers.
 - The statutes of 26 states allow the appointment of salesmen to the state's real estate policy body. Another six states require the appointment of one salesman to the policy body, and three of these states require the removal of an appointed salesman from the policy body if he becomes a licensed broker.
- ▶ **Many of the policy bodies in Texas that regulate more than one profession provide representation for each major licensing category.**
 - Many agencies that regulate more than one professional license category have at least one member from each of the major licensed groups on the agency's policy body. These include the Texas Board of Architectural Examiners, the State Board of Barber Examiners, the Texas Cosmetology Commission, the Texas Board of Professional Land Surveying and the Texas State Board of Plumbing Examiners.
 - The Texas State Board of Examiners of Psychologists is similar to the Texas Real Estate Commission in that the board also regulates two main professions, one of which works under the supervision of the other. Psychological associates assist psychologists and must be under their supervision but are not apprentices. The statute requires the appointment of one psychological associate to the board.

PROBLEM

Although real estate salesmen are the largest group of licensees regulated by the agency, they are not represented on the commission's policy body and have no direct method to shape policy decisions that affect their practice.

RECOMMENDATION

- **The statute should be changed to require one licensed real estate salesman, five licensed real estate brokers and three public members on the commission.**

This recommendation would provide representation for licensed salesmen by decreasing the number of brokers from six to five and adding one licensed salesman. Public member representation would remain the same. The appointed salesman cannot be sponsored by an appointed broker. The statute would also require that a salesman commission member who becomes a licensed broker be removed from the commission and replaced by another licensed salesman. This change would be phased in so that it would not affect current commission members. A licensed salesman would be appointed to the first commission seat vacated by a broker.

FISCAL IMPACT

No fiscal impact is expected to result from this recommendation.

ISSUE 5: The statute should require that the governor designate the chairman of the commission.

BACKGROUND

The chairman of the commission is currently elected by the members of the commission. The method of selection of the commission and its chair should provide for accountability between the policy body and the governor and legislature. Having the governor designate the chair is one way to strengthen this accountability. The Sunset Commission has routinely recommended that the governor appoint the chair for the purpose of improving accountability between state boards and the chief executive. The review found that the governor already selects the chair of 42 other state agencies, including the State Board of Insurance, the State Board of Education, the Alcoholic Beverage Commission, and the State Highway and Public Transportation Commission. The majority of the agencies reviewed for the 71st Legislature had this provision in their statutes. Where it was not in statute, it was added as a result of sunset action.

PROBLEM

The election of the chairman by the commission members does not provide the most direct method of ensuring continuity of policy or accountability to the state's chief executive officer.

RECOMMENDATION

- **The statute should be changed so the governor designates the chair of the Texas Real Estate Commission.**

The person appointed as chair would continue to serve in the position at the pleasure of the governor. In the event the governor decided to remove the person from the chairmanship, the person would continue to serve his appointed term on the commission and the governor would choose another chairman from the membership of the commission. This change will promote accountability of the commission to the governor.

FISCAL IMPACT

No fiscal impact would occur as a result of the recommendation.

ISSUE 6: The commission should be statutorily authorized to use administrative penalties to discipline its licensees.

BACKGROUND

The commission has a variety of enforcement powers to ensure that licensees comply with state real estate laws and commission rules. These enforcement tools include the power to reprimand a licensee, refuse to issue a license, and probate, suspend or revoke a license. Suspension or revocation of a broker's license automatically inactivates the licenses of any real estate salesmen under his sponsorship. The commission also has the authority to pursue criminal and civil penalties through the courts.

Another disciplinary sanction that is common among licensing agencies is the use of administrative penalties. Administrative penalties are fines that are levied by a regulatory agency against its licensees and can increase the effectiveness of the agency's enforcement program. The penalties are stronger than a reprimand but less restrictive than suspension or revocation of a license. Administrative fines can also be combined with other disciplinary sanctions to enhance the range of penalties available to the agency.

A comparison of the commission's current disciplinary options with the use of administrative penalties by regulatory agencies in Texas and other states showed that:

- ▶ **The commission's enforcement program would be enhanced by authorizing the agency to use administrative penalties to regulate its licensees.**
 - Unlike suspension or revocation, the commission could use administrative penalties to discipline a broker without affecting the licenses of salesmen under the broker's sponsorship.
 - The commission has indicated that some of the more common violations committed by real estate licensees include negligence, commingling of funds and failure to cooperate during an investigation. These kinds of problems can be directly addressed through the imposition of fines to deter further noncompliance with the commission's statute and rules.
 - The commission has the authority to pursue civil and criminal remedies through the courts by filing a complaint with the state attorney general's office or with a district attorney's office. This authority has seldom, if ever, been used.
- ▶ **Other states have indicated that administrative penalties are useful in regulating real estate licensees.**

- A review of the 49 other states' real estate statutes showed that 25 states authorize the use of administrative penalties against real estate licensees.
- The National Association of Real Estate License Law Officials conducted a survey of effective enforcement tools used by real estate commissions and boards in all 50 states. Twenty-one of the agencies responded that administrative penalties are an effective means of enforcing state law and agency rules.
- ▶ **Many regulatory agencies in Texas have the power to use administrative penalties.**
 - Several professional licensing agencies in Texas have the statutory authority to issue administrative penalties, including the Texas Board of Architectural Examiners, the Texas State Board of Dental Examiners, the Texas Structural Pest Control Board, the Texas Funeral Services Commission and the Texas State Board of Pharmacy.
 - The Texas Department of Licensing and Regulation has the statutory authority to issue administrative penalties for each of the 11 licensing programs under its regulation.
- ▶ **Maximum administrative penalties of \$1,000 per violation are common in professional regulatory statutes in Texas and other states.**
 - Sixteen of the 25 states with administrative penalties have maximum fines in statute, and eight of those states set the maximum fine at \$1,000 per violation.
 - In Texas, the most common maximum administrative penalty found in the statutes of professional licensing agencies is \$1,000.

PROBLEM

The commission does not have the authority to assess administrative penalties. This disciplinary tool has proven beneficial to other agencies in enforcing their regulatory acts. In addition, the commission's two most serious sanctions, suspension or revocation of a license, cannot be applied to a broker without inactivating the licenses of salesmen under his sponsorship.

RECOMMENDATION

- **The commission should be statutorily authorized to assess administrative penalties up to \$1,000 per violation as an additional tool to ensure compliance with the law.**
-

This recommendation would provide the commission with an additional enforcement penalty that can be adjusted as needed, depending on the seriousness of the violation. It would also provide an effective means of disciplining a licensed broker without affecting the licenses of salesmen under his sponsorship. This recommendation would apply to all professions regulated by the commission except for timeshare properties, which are registered rather than licensed. The process for levying the fine would be set in statute in a manner similar to the process established for other regulatory agencies. This process includes specific factors to consider when determining the amount of a penalty, the right of the licensee to an appeal, and a requirement that all penalties be deposited to the general revenue fund.

FISCAL IMPACT

The authority to levy administrative penalties would result in increased revenue to the general revenue fund. The exact amount cannot be estimated at this time due to a lack of information on how often and in what amounts the commission would levy such penalties. There may be some fiscal impact on the operations of the commission depending on how these provisions are implemented but it cannot be estimated at this time.

ISSUE 7: Statutory restrictions on the authority of the commission staff to investigate complaints should be lifted.

BACKGROUND

The Texas Real Estate Commission is required by law to discipline licensees who violate state real estate laws and commission rules. Real estate licensees who violate the law can cause a great deal of harm to the public since they participate in transactions involving large sums of other people's money. These transactions include holding escrow money, handling the sale or rental of valuable property, appraising property, and finalizing legal contracts with clients without the oversight of an attorney.

The statute limits the staff to investigations of "verified" written complaints. To comply with this limitation, the commission requires that all complaints be notarized. The statute also requires commission approval for investigation of potential violations discovered through other means, such as media reports, court records and unnotarized complaints. The requirement for either verification or commission approval of complaints was added to the statute in 1981. Before then, the staff was authorized to initiate investigations of potential violations regardless of the source or form of the information. Any written complaint as well as any potential violation that was discovered in media reports or in court documents could have been investigated by the staff.

Currently, upon receipt of an unnotarized complaint, the staff sends a form letter to the complainant requesting that the complaint be notarized and returned to the agency. If the complaint is not returned, or if a potential violation is discovered through other means, such as a newspaper article, then the staff must request commission approval before proceeding with an investigation. Approval for investigation of an unverified complaint is requested during the commission's monthly public meetings. The staff is required by statute to notify licensees of receipt of verified and unverified complaints and of investigations approved by the commission.

A comparison of the statutory requirements for investigating complaints against real estate licensees with the legal requirements in place for other Texas professional licensing agencies indicated that:

- ▶ **The commission's ability to effectively enforce the state's real estate laws and protect the public is hampered by the statutory limitations on investigation procedures.**
- Requiring the staff to verify the reliability of a complaint prior to investigation is inconsistent with the purpose of having an enforcement program. The agency's method of dealing with this requirement is reasonable but has significantly limited the staff's ability to deal with alleged licensee misconduct.

- Agency records indicate that during the past three years, 1,724 complaints, or 39 percent of the total complaints received by the agency, have not been investigated because of the verification requirement. Most of these complaints were received in the form of written, signed letters, but the complainants did not respond to the agency's request for notarization of the complaint.
- The enforcement division has requested permission from the commission to investigate nine unverified complaints during the past three years. These complaints originated from reports of criminal wrongdoing or noncompliance with a previous disciplinary action taken by the commission. Although the commission granted each request, the staff's investigations were delayed since the commission only meets once a month.
- ▶ **A survey of 30 professional licensing agencies in Texas showed that most agencies are allowed to initiate investigations against licensees without a notarized complaint or specific authorization from their board or commission.**
 - Twenty-six of the 30 agencies surveyed do not require notarization of complaints against licensees, including the Texas State Bar, the Texas State Board of Public Accountancy, the Texas State Board of Registration for Professional Engineers, the Texas State Board of Medical Examiners and the Texas Structural Pest Control Board.
 - None of the agencies are required to request board approval to investigate potential violations that were discovered through other means, such as media reports or court documents.
 - In contrast to the Texas Real Estate Commission, the Texas State Board of Medical Examiners subscribes to a clipping service that sends newspaper articles about licensees to the board. The staff uses these articles to initiate investigations against licensees who may have violated the law. The board is not required to approve each investigation.

PROBLEM

Requiring complaints to be verified inhibits the ability of the enforcement staff to initiate timely investigations and has discouraged the public and other licensees from filing complaints with the commission. Other licensing agencies' statutes do not require the policy-making body to approve investigations of unverified complaints. These statutory requirements inappropriately prolong the agency's investigation process and limit its ability to effectively deal with the misconduct of its licensees.

RECOMMENDATION

- **The requirement that complaints against real estate licensees be either verified or approved by the commission before an investigation may begin should be removed from the statute.**

This recommendation would remove the requirement that complaints be either notarized or approved by the commission before being investigated. This would allow the staff to investigate unnotarized complaints and potential violations discovered through other means, such as media reports and court records. The statute would still require that complaints be submitted in writing and that the staff have "reasonable cause" before an investigation could proceed. The staff would still be required to notify licensees that a complaint has been filed against them.

FISCAL IMPACT

The TREC estimates that the enforcement division's workload would increase by minimum of 200 investigations a year. The commission estimates that three additional staff members would be needed to handle the workload at an annual cost of \$77,500.

ISSUE 8: The statutory requirements for real estate appraiser certification should be modified to comply with federal requirements.

BACKGROUND

State law has required a person to obtain a real estate broker or salesman license to appraise property in Texas since 1939. However, the national savings and loan crisis spurred the federal government to begin taking steps to require state certified appraisers for federally insured loans. During the 1989 regular session, the legislature anticipated the federal changes and authorized the regulation of appraisers through the Texas Real Estate Commission. Appraiser certification was authorized as a specialty certification for brokers and salesmen requiring specialized training (or a college degree), experience, and completion of an appraisal exam.

Congress passed the anticipated appraisal requirements in August 1989, only three months after the Texas law was adopted. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) was adopted as the federal government's response to the recent failure of federally insured banks and savings and loans. One focus of the reform requires financial institutions to have a state regulated appraiser certify the value of property placed as collateral with federally insured financial institutions. Certified appraisers will eventually be required on all transactions that are federally-related (meaning any transaction that a federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates). The FIRREA requires that, after July 1991, all federally-related transactions involve an appraisal by a state regulated appraiser. The act sets out specific requirements for the state regulatory program and establishes the Federal Financial Institutions Examination Council to oversee implementation and determine state compliance.

Since the effective date of the Texas appraiser certification law, the TREC has been active in setting up the program. The commission has appointed the statutory advisory committee and hired staff to develop the program. The advisory committee is composed of nine professional appraisers who meet monthly. The committee was created to recommend to the TREC education, experience, and continuing education requirements for appraisers; standards for the licensing exams; and a code of professional ethics. In addition, the committee has been reviewing federal directives and state law in an attempt to develop draft legislation to bring state law in compliance.

A comparison of the federal requirements against current state appraisal law and practice indicated the following:

- ▶ **Specific provisions in state law are not in compliance with federal requirements. The federal agency charged with determining each state's compliance with federal requirements has analyzed**

the current Texas law and identified the following specific problems.

- Federal guidelines specify that no state may require that an appraiser hold another professional license. Texas requires that appraisers also hold a real estate broker or salesman license.
 - Federal law requires two categories of regulated appraisers: "state licensed appraiser" and "state certified appraiser." The law distinguishes appraisal authority for the two by the dollar size of the transaction (more or less than \$1 million). Texas has two categories of regulation, but instead designates them as "certified residential appraiser" and "certified general appraiser" and determines appraisal authority by the type of property involved rather than its value.
 - To ensure an adequate availability of approved appraisers in all states, federal law requires states to provide a temporary license status for appraisers who are regulated by other federally approved state programs. There is no such provision for temporary practice in Texas law.
 - Federal law requires states to supply the federal government with a roster of licensed and certified appraisers. It requires states to collect an annual registry fee from each appraiser of \$25 to \$50 and transmit the fee along with the roster. The fee is intended to offset federal administrative costs. Texas law does not authorize the program to collect and forward this fee.
 - Federal guidelines require specific appraisal education as a condition of licensure. Texas law allows substitution of a college degree for appraisal education.
 - The federal agency has informed the TREC that the current statutory requirement that eight of the nine members of the appraisal advisory committee be members of nationally recognized appraisal associations may discriminate against appraisers who are not members of such associations.
- ▶ **If state law is not changed, the ability of Texas financial institutions to make federally insured loans will be jeopardized, as will the ability of Texas appraisers to provide the appraisals for federally insured loans.**
- Some estimate that as much as 90 percent of the appraisal work done in Texas is federally related. In 1989, approximately \$3.2 billion in loans were made by federally insured savings and loans in Texas.
 - The FIRREA provides that, after July 1, 1991, issuing or selling federally insured real estate loans will be contingent on a written appraisal by a state certified or state licensed appraiser.

- If the federal oversight agency determines that the Texas program is not in compliance with FIRREA, appraisers regulated by the Texas program will not be eligible to certify appraisals. Since federal law requires states to allow federally approved out-of-state appraisers to practice temporarily, appraisers from approved states would assume the work currently performed by Texas appraisers.
- ▶ **The longstanding license requirements for appraising property in Texas present special problems in implementing the changes required by federal law.**
 - Trainees are prohibited under state law from getting the required appraisal experience without first obtaining a real estate license. Texas law requires either a broker or salesman license to appraise real property. Provisions are needed to allow non-brokers to get the required experience under the direct supervision of a state licensed or certified appraiser.

PROBLEM

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires financial institutions to use state regulated appraisers on federally-related transactions (including federally insured loans) after July 1991 and sets out requirements for state regulation. The federal agency charged with implementing the requirements has reviewed the Texas program and determined that specific changes are needed for compliance. Related changes are also needed in Texas law due to the history of appraisal regulation in Texas.

RECOMMENDATION

- **State law concerning appraiser certification should be modified to meet federal requirements. Specific changes would:**
 - **remove the requirement that appraisers have a broker or salesman license;**
 - **allow registration of appraiser trainees who may conduct appraisals under the supervision of a regulated appraiser without a broker or salesman license;**
 - **change the "certified residential appraiser" category of regulation to "state licensed appraiser" and remove the provision that could limit their authority to conducting only residential appraisals;**
 - **authorize the program to collect and forward licensees' federal registry fees and establish a special fund in the state treasury to hold the fees;**

- authorize temporary registration for out-of-state appraisers to practice in Texas if they are regulated by other states that comply with FIRREA;
- delete the current provision allowing a college degree to be substituted for appraisal courses;
- modify the composition of the advisory committee to include three licensed appraisers, four certified appraisers, and two public members and delete the current requirement that appraiser members be affiliated with nationally recognized appraisal associations; and
- maintain the current authority of brokers and salesmen to appraise non-federally related property.

These changes would modify specific provisions in Texas law to comply with federal requirements. These changes are needed regardless of whether the program is transferred from the TREC to the Texas Department of Licensing and Regulation, which is proposed in another recommendation in this report. Federal requirements emphasize the importance of separating the regulation of appraisers from the regulation of real estate brokers and salesmen.

Brokers and salesmen would still be authorized to appraise property for transactions that do not require a licensed or certified appraiser. Regulated appraisers and their trainees would be exempt from the requirement to hold a real estate broker or salesman license to appraise property. Appraiser trainee registration is recommended to control the use of this exemption and to track trainee experience. A cost recovery fee for trainee registration would also be authorized. The composition of the advisory committee is modified to ensure both licensed and certified appraisers are represented as well as the general public. The current restriction that most of the appraisers on the committee be members of national appraisal organizations would also be removed from statute at the suggestion of the federal government. This change will provide greater flexibility in the selection of people to serve as members of the committee.

The conceptual changes recommended here are all addressed in the draft legislation being developed by the TREC appraiser advisory committee except that the committee is recommending an independent board composed of six certified general appraisers and three public members administratively attached to the TREC.

FISCAL IMPACT

A cost increase will be associated with establishing a registration program for appraiser trainees but cost recovery fees are authorized. The TREC estimates an additional annual cost of \$42,000 to register 2,500 trainees.

ISSUE 9: The statute should require notice to consumers about the availability of the Real Estate Recovery Fund and the Real Estate Inspector Recovery Fund.

BACKGROUND

The Real Estate Recovery Fund was established in 1975 to reimburse consumers who suffer losses due to negligent or dishonest acts of licensed brokers and salesmen. The commission is authorized to pay claims up to \$20,000 for each transaction and \$50,000 for each licensee. Claims may only be paid after a court awards damages and determines that the licensee does not have adequate resources to pay. Consumers may be reimbursed for actual damages, attorney fees, and costs as determined by the courts. The Texas Real Estate Commission (TREC) manages the investment of the fund and pays claims on the fund. Licensees who are the subject of a claim may have their license revoked and cannot renew their license until the claim is repaid.

The Real Estate Inspector Fund was established in 1985. This fund was modeled after the Real Estate Recovery Fund but covers the actions of inspectors. The statutory requirements are similar to those of the Real Estate Recovery Fund except that the claim limits are lower, with a maximum of \$7,500 for each transaction and \$15,000 for each licensee.

The operation of the two funds was examined to determine whether adequate information about the availability of the funds is provided to those who may need access to the funds. The examination indicated the following:

- ▶ **The commission's effort to ensure that the public is aware of the availability of both funds is limited.**
 - There is no specific statutory requirement to ensure that consumers are notified of the availability of the funds.
 - The commission does not have any written consumer information about the availability and use of either fund. Enforcement staff often tell consumers about the availability of the fund when they call with a complaint.
 - The commission promulgates standard contract forms for brokers and salesmen to use. However, none of the forms include information about the availability of the funds.
 - State law requires that contracts for inspectors and residential service companies include a notice that the transaction is subject to the requirements of the Deceptive Trade Practices Act and information concerning how to file a complaint. There is no similar requirement that consumers be informed of the availability of the recovery funds.

PROBLEM

The recovery funds were established to reimburse the public for damages caused by licensees. However, the agency has no formal effort to ensure that consumers are aware of the availability of the funds.

RECOMMENDATION

- **The statutes for the Real Estate Recovery Fund and the Real Estate Inspector Recovery Fund should be changed to require efforts to notify consumers of their availability. Specific changes include:**
 - **requiring a brief notice about the funds in the contract forms promulgated by the TREC for broker and salesman use; and**
 - **requiring that written information be provided to complainants concerning the availability of the recovery funds and the procedures required to use the funds.**

These changes will ensure that consumers are provided information about the existence and use of the two recovery funds. The TREC is required to promulgate standard contract forms used by brokers and salesmen in real property transactions that do not involve lawyers. Including a brief notice on the contract forms is an efficient and effective way to inform consumers about the availability of the fund. The commission would also be required to provide more detailed information to complainants about the funds and how to use them.

FISCAL IMPACT

Minimal cost for developing and printing material will be incurred but would be funded through current license fees.

ISSUE 10: The claim limits for the Real Estate Recovery Fund and the Real Estate Inspector Recovery Fund should be increased to better address the losses of claimants.

BACKGROUND

The purpose of both recovery funds managed by the TREC, as set out in state law, is "for reimbursing aggrieved persons who suffer actual damages by reasons of (dishonest or negligent) actions committed by (licensees)." Claims on each fund are limited to protect the fund from being depleted by any one claim. Claims are further limited to those court judgements in which the court also finds that the defendant cannot pay the judgement and thereby orders payment from the recovery fund.

The review examined the effect that the claim limits have on the ability of the funds to reimburse damages of licensees. This examination indicated the following:

- ▶ **Statutory limits prevent the Real Estate Recovery Fund from reimbursing the full court judgement.**
 - State law limits claims from the Real Estate Recovery Fund to \$20,000 for any one transaction and \$50,000 for any one licensee. These limits are consistent with the limits on similar funds established in state law.
 - Unlike similar recovery funds, a small number of claims submitted to the Real Estate Recovery Fund exceed the claim limits and are therefore only partially paid. In the past three fiscal years, 34 of the 115 claims paid involved judgements that exceeded the claim limits. The highest claim totaled \$599,000 in reimbursable damages and costs, but due to the statutory claim limits the person only received \$20,000 from the fund. Reimbursable court judgements for all claims in fiscal year 1989 totaled approximately \$1.4 million, but the limits reduced the payments to \$642,519, which is approximately 46 percent of the total.
 - Raising the limits to \$50,000 for each transaction and \$100,000 for each licensee would have allowed full reimbursement of half of the 34 claims that were only partially paid due to the limits over the past three years. Had such limits been in place in fiscal year 1989, the TREC would have been able to reimburse approximately \$190,000 in additional damages or approximately 60 percent of the total amount of reimbursable claims.
- ▶ **The unusually low claim limits on the Real Estate Inspector Recovery fund may be discouraging claims on the fund.**

- State law limits claims from the Real Estate Inspector Recovery Fund to \$7,500 for any one incident and \$15,000 for any one licensee. These limits include actual damages, costs, and attorney fees and other costs.
 - Court judgements against inspectors could exceed the current limits. Courts have held that an inspector is liable for the cost of a needed repair that was not identified in the inspection. The actual cost to repair a foundation or replace a roof, and the attorney fees needed to get a court judgement, could exceed the current limit.
 - Only one claim has been paid from the fund since it was established in 1985. Three applications for claims have been filed but two were withdrawn before payment was made. One application was approved for payment in October 1990 for \$1,170.
 - No other recovery fund established in state law has such low claim limits. Besides the Real Estate Recovery Fund, state law authorizes the Produce Recovery Fund and the Manufactured Housing Recovery Fund. Claim limits for both of these funds are set at \$20,000 for each incident and \$50,000 for each licensee.
- ▶ **Higher claim limits would not jeopardize the financial stability of either fund.**
- The balance in the Real Estate Recovery Fund has grown consistently during its 16 years of operation. The current fund balance is \$3.1 million. Claim payments totaled \$643,519 in fiscal year 1989. Revenue to the fund, which includes first-time licensee fees, interest, and repayments, totaled \$449,597 that same year. Had the proposed claim limits been in effect in 1989, the fund balance at the end of the year would have been \$2.9 million. The TREC can assess an additional \$10 fee to all licensees if the fund balance falls below \$300,000. This threshold should be increased to \$1 million to ensure an adequate balance at all times. Although the TREC has never assessed the additional fee, a \$10 assessment on all brokers and salesmen would yield a \$1.6 million deposit to the fund.
 - The balance in the Real Estate Inspector Recovery Fund has also been growing consistently during five years of operation. The current fund balance is \$791,343. There has only been one claim authorized for payment from the fund in the amount of \$1,170. Annual revenue to the fund consists of interest earnings and fees and totals approximately \$175,000. Under the proposed claim limits, approximately 40 maximum claims could be paid fully from the fund. The TREC can assess an additional fee to all licensees if the fund balance falls below \$75,000. However, this threshold is too low for the higher claim limits and should be raised to the \$300,000 threshold used for other funds. Issue 11 proposes reducing the recovery fund fee to \$75. A \$75 assessment on all inspectors would yield a \$151,500 deposit to the fund.

PROBLEM

The statute currently limits claims on the Real Estate Recovery Fund to \$20,000 for any one transaction and \$50,000 for any one licensee. Claim limits on the Real Estate Inspector Recovery Fund are \$7,500 for each transaction and \$15,000 for each licensee. These limits reduce the ability of the fund to reimburse damages caused by licensees and may discourage claims.

RECOMMENDATION

- **The statutory limits on claims from both recovery funds should be modified to reimburse a larger proportion of damages. Specific changes would:**
 - **increase the limit on claims from the Real Estate Recovery Fund to \$50,000 for any one transaction and \$100,000 for any one licensee and increase the minimum balance in the fund to \$1 million; and**
 - **increase the limit on claims from the Real Estate Inspector Recovery Fund to \$20,000 for any one transaction and \$50,000 for any one licensee and increase the minimum balance in the fund to \$300,000.**

These changes will allow both funds to reimburse larger claims. While the standard limits used in similar funds are recommended for the Real Estate Inspector Fund, higher limits are recommended for the Real Estate Recovery Fund due to its history of larger claims. The increased levels recommended will not significantly impact the stability of either fund because of the small number of claims that will be affected and the substantial balance in both funds. Claims that are received prior to the limit increase will be subject to the previous limits. The minimum balance set for additional fee assessment is also raised to ensure an adequate balance in each fund. Both fund balances are well above the proposed minimums.

FISCAL IMPACT

These changes are likely to increase claim payments from both recovery funds. Both are special funds supported through fees from licensees. Neither fund is supported through the General Revenue Fund. Due to the large fund balances, additional recovery fund fees would not be assessed in the foreseeable future. As an example, if the proposed limits had been in place during fiscal year 1989, the Real Estate Recovery Fund would have reimbursed \$190,000 more on claims for a total of \$833,519 ended the year with a \$2.9 million balance, well above the trigger for additional fee assessment. Twenty-four claims for the maximum amount proposed could be made from the inspector fund before an additional fee assessment would be triggered.

ISSUE 11: The statute should be changed to reduce excessive balances in the Real Estate Inspector Recovery Fund.

BACKGROUND

State regulation of real estate inspectors is funded through license fees paid into a special fund in the treasury. Inspectors pay initial license application fees and annual renewal fees to support the operation of the program. In addition, each new licensee is required to contribute to the Real Estate Inspector Recovery Fund. This fund is a special fund in the state treasury designed to reimburse consumer losses due to negligent or dishonest acts of licensed inspectors.

The review of the Real Estate Inspector Recovery Fund examined the use of the fund in comparison to other funds. The review indicated the following:

- ▶ **The Real Estate Inspector Recovery Fund balance is unnecessarily high.**
 - The fund has a current balance of \$791,343. In fiscal year 1990, fee and interest earnings on the fund totaled \$177,269.
 - Only one claim has been approved for payment from the fund. That claim was for \$1,170 and was approved in October 1990.
 - Demand on the fund is not likely to increase dramatically because of the few licensees participating in the recovery fund and the small number of disciplinary actions against inspectors. While approximately 158,000 brokers and salesmen are covered by the comparatively active Real Estate Recovery Fund, only 2,020 inspectors are covered by the Real Estate Inspector Recovery Fund. The agency took no disciplinary actions against inspectors in 1990.
- ▶ **Because there is no statutory ceiling on the fund, unneeded balances will continue to accumulate.**
 - Upon initial licensure, each inspector contributes \$250 to the Real Estate Inspector Recovery Fund. In fiscal year 1990, the 515 new licensees paid fees to the fund totaling \$128,750. In addition, the fund earned \$48,500 in interest that same year.
 - If the fund balance continues to grow at the rate it has for the past five years, the balance will grow from the current level of \$791,343 to a total of \$2 million by 1995.

PROBLEM

The Real Estate Inspector Recovery Fund balance is unnecessarily high. Only one claim has been approved for payment from the fund in five years of operation. The statute currently has no provision to adjust or modify the balances that continue to accumulate.

RECOMMENDATION

- **The statutory provisions for the Real Estate Inspector Recovery Fund should be changed to allow extra funds to be used for the operating costs of the inspector regulatory program. The changes would:**
 - **allow any balance over \$600,000 to be appropriated for the operating expenses of inspector regulation; and**
 - **reduce the recovery fund fee from \$250 to \$75 for each licensee.**

The change will allow excess balances in the Real Estate Inspector Recovery Fund to be used for the operation of the program. This change will allow the agency to reduce inspector license fees since program operating costs could be supported with the excess balance instead of fee revenue. The initial and additional recovery fund fees are also decreased substantially to prevent excessive fund build up in the future and make the fees more reasonable. Recommendation 10 proposes to increase the minimum balance in the fund to \$300,000. Such a change will allow the agency to assess an additional \$75 fee to all inspectors to replenish the fund balance if it falls below \$300,000.

FISCAL IMPACT

Although inspector fees will be reduced, there will be no cost to implement this change. Approximately \$340,000 will be freed up for operating the program thereby reducing the need for licensing fee revenues. If the agency eliminates renewal fees altogether, the program could operate for four years before fee revenue would be needed to keep the fund above the \$600,000 ceiling.

ISSUE 12: The statute should be changed to provide an inactive license status for real estate brokers similar to that authorized for licensed real estate salesmen.

BACKGROUND

Licensed real estate salesmen are allowed by statute to voluntarily place their license on inactive status for an indefinite length of time. A salesman who places his license on inactive status is no longer required to have a sponsoring broker and is exempt from meeting continuing education requirements. However, he must continue to pay the license renewal fee. To reactivate the license, a salesman must obtain the 15 hours of continuing education required for the previous license renewal period. In addition, the salesman must find a sponsoring broker. The statute does not provide an inactive licensing status for real estate brokers.

A review of inactive license policies at other states' real estate agencies and at other Texas licensing agencies indicated that:

- ▶ **Authorizing an inactive licensing status for brokers would provide a useful and less restrictive licensing mechanism that is similar to the one already in place for licensed salesmen.**
 - As the Texas economy and real estate markets have steadily declined since 1984, the number of salesmen on inactive status has increased accordingly. In fiscal year 1984, 19 percent of all licensed salesmen were on inactive status, compared to 30 percent in 1990. An average of 24 percent of all licensed salesmen have been on inactive status each year since 1984.
 - A real estate salesman who places his license on inactive status is not required to meet the continuing education requirements until he decides to reactivate his license. To reactivate the license, he does not have to requalify on any of the initial licensing requirements.
 - Since brokers do not have an inactive status, they must either maintain their license or let it expire. A broker whose license has expired for less than one year must file a new license application with the commission and must go through a process similar to that required for new license applicants, with the exception of taking the examination. A broker is required to take the licensing exam again if his license has been expired for more than one year and may only apply for licensure as a salesman.
- ▶ **Other states that have an inactive status for real estate salesmen also provide an inactive license status for real estate brokers.**
 - A survey of other states' statutes indicated that 23 of them allow brokers and salesmen to place their license in inactive status. Two

additional states have an inactive status that applies only to brokers and salesmen who are on active military duty.

- None of the other states authorized an inactive status for only one of the two licensing categories.
- ▶ A survey of 30 Texas professional licensing agencies showed that 11 of them have an inactive status for all their licensees. Another eight agencies have an inactive status only for licensees who are retired or on active military duty.

PROBLEM

The Texas Real Estate Commission's statute currently provides an inactive licensing status for salesmen but not for brokers. Many other states provide an inactive status for both brokers and salesmen. In addition, other Texas licensing agencies are authorized by statute to provide an inactive status for their licensees.

RECOMMENDATION

- The statute should be changed to provide an inactive license status for real estate brokers similar to that provided for real estate salesmen.

This recommendation would provide real estate brokers with a licensing option that is already available to real estate salesmen, to real estate brokers in other states, and to other licensed professions in Texas. Brokers who place their license on inactive status would be prohibited from practicing real estate. As with salesmen, inactive brokers should be required to pay the two-year license renewal fee to maintain their license. In addition, brokers who wish to go on inactive status should be required to give a 30-day notice to salesmen who are licensed under them. Brokers who reactivate their license would only have to obtain the continuing education that is required for standard license renewal, which is currently set at 15 hours.

FISCAL IMPACT

No fiscal impact is anticipated because brokers whose licenses are on inactive status would continue to pay the license renewal fee.

ACROSS-THE-BOARD RECOMMENDATIONS

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies is denoted in abbreviated chart form.

Texas Real Estate Commission

Applied	Modified	Not Applied	Across-the-Board Recommendations
			A. GENERAL
**			1. Require public membership on boards and commissions.
**			2. Require specific provisions relating to conflicts of interest.
**			3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
**			4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
**			5. Specify grounds for removal of a board member.
**			6. Require the board to make annual written reports to the governor, the auditor, and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
**			8. Require a system of merit pay based on documented employee performance.
**			9. Provide for notification and information to the public concerning board activities.
		*	10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
**			11. Require files to be maintained on complaints.
**			12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			13. Require development of an E.E.O. policy.
X			14. Require the agency to provide information on standards of conduct to board members and employees.
**			15. Provide for public testimony at agency meetings.
**			16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
X			17. Require development of accessibility plan.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

Texas Real Estate Commission
(cont.)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			B. LICENSING of SALESMEN and BROKERS
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
**			2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
**			3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		* X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
**			6. Authorize the staggered renewal of licenses.
**			7. Authorize agencies to use a full range of penalties.
**			8. Specify board hearing requirements.
X			9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

*Already in law -- no statutory change needed.

**Already in law -- requires updating to reflect standard ATB language.

Texas Real Estate Commission

(cont.)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			C. LICENSING of INSPECTORS
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
X			3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X		X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
X			6. Authorize the staggered renewal of licenses.
X			7. Authorize agencies to use a full range of penalties.
X			8. Specify board hearing requirements.
X			9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			10. Authorize the board to adopt a system of voluntary continuing education.

*Already in law -- no statutory change needed.

**Already in law -- requires updating to reflect standard ATB language.

Texas Real Estate Commission
(cont.)

Applied	Modified	Not Applied	Across-the-Board Recommendations
			D. LICENSING of APPRAISERS
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
X			2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
X			3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
X		X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
X			6. Authorize the staggered renewal of licenses.
X			7. Authorize agencies to use a full range of penalties.
X			8. Specify board hearing requirements.
X			9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			10. Authorize the board to adopt a system of voluntary continuing education.

*Already in law -- no statutory change needed.

**Already in law -- requires updating to reflect standard ATB language.

MINOR STATUTORY MODIFICATIONS

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

Minor Modifications to the Texas Real Estate License Act

Change	Reason	Location in Statute
1. Change "real estate agent," which is not defined in statute, to "real estate broker."	Clarify meaning of the language.	Section 1(b)
2. Update statute by replacing archaic term "next" with "immediately"	Replace outdated language.	Section 5(c)
3. Remove language allowing legislative committees to supersede or appeal the commission's rules.	Remove old ATB language.	Section 5(h)
4. Remove language referring to the agency administrator as the "executive secretary."	Remove outdated reference to the agency administrator.	Section 5(i)
5. Update reference to the Texas Open Meetings Act.	Update statutory citation.	Section 5(o)
6. Remove language that conflicts with education requirements for licensure as a broker or salesman.	Clarifies that all core courses are not required for initial licensure as a broker or salesman.	Section 7(a)
7. Remove "Real Estate" and lowercase "Commission."	Standardize statutory references to the agency.	Section 15(a)(7)
8. Renumber subsections in Section 15B.	Remove duplicate subsection numbering.	Section 15B
9. Renumber subsections in Section 15C.	Remove duplicate subsection numbering.	Section 15C
10. Change "Texas Real Estate Commission" to "commission" throughout the section.	Standardize statutory references to the agency.	Section 16
11. Replace language that defines hearing process with language clarifying that the process is governed by APTRA.	Delete obsolete language (language granting licensees the right to a change of venue will remain in the statute).	Section 17
12. Change subsection (z-1) to (aa).	Standardize subsections within the statute.	Section 18C(z-1)
13. Remove expired section from the statute.	Remove outdated language.	Section 21

Texas Real Estate Commission

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