

EXECUTIVE SUMMARY

Texas Real Estate Commission

Texas Appraiser Licensing and Certification Board

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Full Staff Report
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As anyone who lives in Texas knows, the real estate market has been hot for almost a decade. With Texas' strong economy and low unemployment rate, the state's housing sector has grown faster than in other parts of the country, and a similar trend can be seen in the commercial real estate market.¹ According to experts, Texas has been experiencing a fundamental shift toward becoming a center for growth for years to come.² This boom has contributed to a steady increase in applications to work in the real estate industry in Texas. From fiscal year 2013 to 2017, the number of Texas Real Estate Commission licensees increased from approximately 147,000 to 183,000. However, despite clear industry trends, the Sunset review found the Real Estate Commission failed to adjust quickly and decisively to the growth in the industry and the demands on the agency, ultimately to the detriment of license holders.

Rather than improving operations to meet growing industry demands, the agency put more than \$12 million into its building reserves.

The Real Estate Commission and Texas Appraiser Licensing and Certification Board had the ability to respond successfully to the economy's significant impact on the real estate and appraisal industries. In 2011, to enable the agency to meet growing industry demands, the Legislature granted the agency self-directed semi-independent (SDSI) status, one of the most significant and somewhat rare tools available to state agencies.³ However, with this tool came great responsibility. Obtaining SDSI status effectively removed the agency from the appropriations process, giving the agency full authority and flexibility to manage its own budget and operations. This change in status also largely removed legislative oversight of the agency, placing it instead primarily in the hands of the agency's governing bodies — in this case, the commission and the board.

Beginning in 2014, rather than using its budget flexibility to improve operations to meet increasing license holder demands, the Real Estate Commission and Appraiser Board took advantage of SDSI provisions that allowed the agency to set aside funds for a building. The commission and board began putting significant amounts of excess revenue into their respective building reserve funds instead of using it for agency operations. By 2017, customer service problems had inundated and overwhelmed the agency while \$12.5 million sat in its building reserves.

At the beginning of the Sunset review in 2018, customer service problems had reached crisis proportions. Average call wait times exceeded 18 minutes, and at one point, 68 percent of callers were giving up and abandoning their calls. During the review, Sunset received numerous complaints regarding agency hold times ranging from 45 minutes to an hour, unanswered emails, a difficult-to-navigate website, and a slow licensing process. Ultimately, the review concluded the Real Estate Commission and Appraiser Board had failed to adequately assume and fulfill the critical oversight role the Legislature delegated to them under SDSI, continuing to allocate funds to the building reserves instead of addressing the agency's snowballing customer service problems. Meanwhile, license holders struggled to get the services from the agency that they had paid for with their licensing fees.

In light of these findings, Sunset staff recommends continuing the agency for only six years instead of the standard 12 years. Though the agency has recently taken steps to address some of its problems, the commission and board need increased oversight to ensure these efforts are long-lasting and effective. A six-year Sunset date would allow the Legislature to more quickly assess whether the Real Estate Commission, Appraiser Board, and agency staff have made necessary changes to get their house in order, restoring the trust of legislators, license holders, and the public. The report's recommendations would also increase oversight of the agency to better monitor its flexibility as an SDSI agency. Finally, these recommendations would require the commission and board to establish a more responsible budget and adopt licensing and enforcement best practices to reduce burdens on licensees and staff. A summary follows of the Sunset staff recommendations on the Real Estate Commission and Appraiser Board.

Issues and Recommendations

Issue 1

Texas Should Continue Regulating the Real Estate and Appraisal Industries, but the Agency Has Not Used Its SDSI Status to Meet the Needs of License Holders and the Public.

Texas has a continuing need to regulate the real estate and appraisal industries. Licensees advise clients on buying and selling homes, one of the largest financial commitments a consumer will make. Improper activities, such as defrauding the client, inappropriately disclosing the client's financial or personal information, failing to disclose property defects, or providing services in a negligent manner, could harm the consumer. Appraisers provide an impartial valuation of the property to a lender to ensure the property is worth the agreed upon purchase price, which is also an important role in the process.

However, the Real Estate Commission and Appraiser Board have not adequately monitored their budgets or performance of the agency's essential functions, a role the Legislature principally delegated to them when it gave the agency SDSI status in 2011. For several years, the commission and board put large amounts of excess revenue into building reserves instead of spending it on needed agency operations, such as staffing and improved technology, resulting in a customer service crisis. While the agency has begun to address these problems, placing it under the SDSI Act with a shorter, six-year continue date would allow the Legislature to evaluate whether the agency has made sufficient changes and compare it to other SDSI Act agencies that track five-year performance trend data to determine if further changes are needed.

Key Recommendations

- Continue the Real Estate Commission and Appraiser Board for six years and place them under the SDSI Act.
- Direct the agency to evaluate and update its key performance measures.
- Direct the agency to develop a budget policy that fosters more realistic, straightforward budgeting and fee setting.
- Direct the agency to update its fund balance policy to limit growth.

Issue 2

Key Elements of the Real Estate Commission’s and Appraiser Board’s Licensing Functions Do Not Conform to Common Licensing Standards.

The Real Estate Commission’s and Appraiser Board’s licensing processes do not match model standards or common practices observed through Sunset staff’s experience reviewing regulatory agencies. Specifically, unnecessary regulation over education instructors and branch offices burdens licensees and staff without enhancing consumer protection. Additionally, certain pre-licensing requirements, such as home inspectors’ redundant education requirements, serve as barriers to entry and do not help ensure new licensees can competently serve the public. The commission and board also lack standard authority to deny license renewals based on noncompliance with commission and board orders, which undermines their enforcement efforts and places consumers at risk. Aligning the commission’s and board’s statutes, rules, and procedures with best practices would help protect consumers and the public, reduce burden on licensees, and match the level of regulation with the level of risk posed to the public.

Key Recommendations

- Eliminate instructor approval authority.
- Eliminate the branch office license.
- Direct the Real Estate Commission to review and streamline its inspector pre-licensing education requirements.
- Authorize the Real Estate Commission and Appraiser Board to deny license renewal applications for noncompliant applicants.

Issue 3

The Real Estate Commission’s and Appraiser Board’s Enforcement Processes Cannot Fully Ensure Fair Treatment of Licensees and Complainants.

A regulatory agency should have clear procedures and rules in place for conducting investigations that address consumer protection concerns, promote fair treatment, and ensure timely compliance from regulated entities. The review found the Appraiser Board does not formally prioritize complaints based on risk or resolve investigations as quickly as comparable Texas agencies. The board also lacks authority to order refunds, which can help make consumers whole again after they are defrauded. Both the board and Real Estate Commission do not follow the standard enforcement practice of protecting complainants’

identities to the extent possible. Finally, the commission lacks clear policies for handling each phase of the complaint process. Updating investigative processes and adopting best enforcement practices would help ensure the commission and board address complaints fairly, consistently, and in a timely manner.

Key Recommendations

- Direct the Appraiser Board to prioritize complaint investigations based on the risk each complaint poses to the public.
- Direct the Appraiser Board to develop a plan to improve its investigative process and reduce complaint resolution timeframes.
- Authorize the Appraiser Board to order refunds to consumers.
- Require the Real Estate Commission and Appraiser Board to maintain complainants' confidentiality when possible.
- Direct the Real Estate Commission to develop standard rules and procedures for handling each phase of the complaint process.

Issue 4

The Real Estate Commission's and Appraiser Board's Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Among the elements considered in a Sunset review, the Sunset Commission adopts across-the-board recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. The Appraiser Board's statute does not contain several of these provisions, and others for the Real Estate Commission and board should be updated. In addition, the Sunset Act directs the Sunset Commission to evaluate the need for an agency's advisory committees. Sunset staff found a board advisory committee is about to expire, so the board would benefit from having authority to establish this and other advisory committees in rule.

Key Recommendations

- Update and apply standard across-the-board recommendations to the Real Estate Commission and Appraiser Board.
- Authorize the Appraiser Board to establish advisory committees in rule as needed.

Fiscal Implication Summary

Overall, these recommendations would result in an \$89,750 gain to the General Revenue Fund and a \$1,136,250 decrease in revenue to the Real Estate Commission over the next five fiscal years. Since fees assessed to the licensees must cover the costs of regulation due to the agency's SDSI status, the recommendations in this report would decrease costs to the license holders by an estimated \$1,046,500 over the next five fiscal years. The fiscal implication of each recommendation is summarized below.

Issue 1 — The recommendation to place the commission and Appraiser Board under the SDSI Act and remit the board’s administrative penalties to the General Revenue Fund would result in a gain to general revenue of approximately \$17,950 per year beginning in fiscal year 2020 and an offsetting decrease in revenue to the agency.

Issue 2 — The recommendation to eliminate the approval process for real estate and inspector instructors would decrease costs to the license holders and thereby revenue to the commission by \$174,750 per year, and the recommendation to eliminate the branch office license would decrease costs to the license holders and thereby revenue to the commission by \$34,550 per year. These decreases in revenue would be offset by a corresponding decrease in costs to administer each license type.

Real Estate Commission and Appraiser Board

Fiscal Year	Gain to the General Revenue Fund	Decrease in Revenue to the Agency
2020	\$17,950	\$227,250
2021	\$17,950	\$227,250
2022	\$17,950	\$227,250
2023	\$17,950	\$227,250
2024	\$17,950	\$227,250

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¹ Steve Brown, “Texas topped the country in commercial real estate development in 2017,” *Dallas Morning News*, March 19, 2018, <https://www.dallasnews.com/business/real-estate/2018/03/19/texas-topped-country-commercial-real-estate-development-2017>.

² Patrick Sisson, “Will hot housing markets in Texas ever cool down?: The state’s winning streak may be a fundamental shift, not a temporary boom,” *Curbed*, August 15, 2017, <https://www.curbed.com/2017/8/15/16150480/texas-real-estate-housing-moving>.

³ In this report, “agency” refers to the Real Estate Commission and Appraiser Board as a combined entity with shared staff.