

**STATE OF NEW HAMPSHIRE
OFFICE OF LEGISLATIVE BUDGET ASSISTANT - AUDIT DIVISION**

**PROPOSED SCOPE STATEMENT
PERFORMANCE AUDIT OF REAL ESTATE COMMISSION**

In May 2016, the Fiscal Committee approved a joint Legislative Performance Audit and Oversight Committee recommendation to conduct a performance audit of the Real Estate Commission. We held an entrance conference in December 2016.

Background

Regulation of the real estate industry began in 1947 when brokers and salespersons were allowed to voluntarily register with the Insurance Commissioner, and in 1959, when real estate agents were required to be licensed. In 1967, the Legislature created a separate Real Estate Board consisting of five directors and an executive director. It was re-established as the Real Estate Commission (Commission) in 1969 with expanded powers to issue, refuse, suspend, or revoke licenses. It was re-codified in its current form in 1993 to regulate real estate brokers and salespersons and ensure they meet and maintain minimum standards for promoting public understanding and confidence in real estate transactions.

The Commission is comprised of five Commissioners appointed by the Governor and Council to five-year terms. Commission members include two licensed real estate brokers, one licensed real estate salesperson, one attorney, and one public member who have the authority to set fees, issue licenses, hold hearings, issue orders and subpoenas, and initiate rulemaking. To assist it in administering real estate laws, prior to November 2015, the Commission had the power to appoint an Executive Director to oversee Commission staff which consisted of an administrative assistant, investigator, licensing clerk, account technician, counter clerk, and a vacant program assistant position. In November 2015, the Commission was consolidated into the Office of Professional Licensure and Certification (OPLC) and Commission staff were placed under the supervision of the OPLC Executive Director. As part of the consolidation, the OPLC Executive Director became responsible for all duties previously assigned to the Commission's Executive Director.

The Commission must establish fees to generate 125 percent of its operating costs and is authorized to establish fees, in administrative rules, for: licensing, renewals, late renewal, examinations, continuing education course accreditation, and other fees. According to OPLC staff, in SFY 2016, the Commission collected approximately \$1.1 million in revenue, approximately \$400,000 of which was restricted for administering the licensing exam. According to the OPLC, expenses allocated to the Commission are estimated at approximately \$406,000 in SFY 2016, approximately \$128,000 of which was paid to the Commission's licensing exam vendor.

Licensing

State law prohibits anyone from acting as a real estate broker or salesperson without a license. Licensed real estate brokers can list, negotiate, sell, purchase, rent, or lease real estate on behalf of themselves or another person. Licensed salespersons can perform the same functions, but must work under the supervision of a licensed broker. Candidates applying for an original real estate salesperson license must be at least 18 years old, pass a two-part licensing exam, complete 40 hours of pre-licensing study, demonstrate no record of unprofessional conduct, and comply with

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a criminal record check. Applicants for a broker license must comply with the above conditions but are required to complete 60 hours of pre-licensing study. Additionally, broker applicants must show evidence of at least six separate real estate transactions for which they were compensated; obtain a surety bond; and have been employed full-time by a licensed broker for at least one year, worked at least 2,000 hours as a licensed real estate salesperson, or show equivalent experience.

Licenses expire two years from the date of issue. To renew a license, licensees must certify they have completed at least 15 hours of continuing education. Licensees who want to preserve their license but do not want to engage in real estate activities may request their license be placed in inactive status. Licensees with inactive licenses are still required to renew the license every two years; however, they do not need to fulfill all of the continuing education requirements for an active license, maintain a place of business, or maintain a surety bond, if a broker. Inactive licensees can petition to have their license placed back in active status by complying with the requirements for active licensees. As shown in Table 1, as of January 26, 2017 the Commission had over 12,300 active and inactive licensees.

Table 1

**Real Estate Commission Licensees,
As of January 26, 2017**

	Active	Inactive	Total¹
Salesperson	4,681	1,883	6,564
Broker	3,338	511	3,849
Firm	1,087	46	1,133
Trade Name	785	3	785
Total	9,891	2,443	12,334
Note: ¹ An additional 570 licenses were expired but could be reinstated within a six-month grace period.			
Source: LBA analysis of unaudited REC licensing data.			

Continuing Education Accreditation

Continuing education instructors are required to have their course accredited by the Commission prior to offering them. To approve a course, the Commission must assess the content to ensure it enhances licensees' knowledge, skills, and competence. Courses must be directly related to real estate practice in New Hampshire and must be designed to keep licensees abreast of changing laws, rules, and practices affecting the interest of their clients or customers. As of February 2017, the Commission had over 400 accredited continuing education courses.

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Complaints Against Licensees

State law allows the Commission to investigate the actions of anyone engaging in the activities of, or acting as, a real estate agent and impose sanctions, if appropriate. When the Commission receives a complaint, State law requires it be investigated. The Commission employs one investigator responsible for all complaints filed against real estate agents. Once the investigation is completed, the complaint file is forwarded to a Commissioner who evaluates it, presents it to the rest of the Commission, and makes a written recommendation on whether to hold a hearing to consider disciplinary action. If the Commission votes to schedule a disciplinary hearing, the evaluating member is prohibited from participating in the hearing panel which must consist of at least three Commissioners. If the licensee is found in violation, State law allows the Commission to suspend, revoke, or deny the renewal of a license; levy fines; or require additional education courses. During SFY 2016, the Commission received 43 complaints, 17 of which resulted in no action, three resulted in a hearing, three resulted in a settlement agreement, and two resulted in other types of disciplinary action. An additional 18 complaints filed in SFY 2016 were still being investigated or pending Commission evaluation. In the first six months of SFY 2017, 46 complaints had been filed with the Commission.

Audit Scope

This performance audit will focus on the following question: ***Did the Real Estate Commission operate efficiently and effectively between July 1, 2013 and December 31, 2016?*** Specifically, we will determine whether the Commission:

- *efficiently and effectively processed licenses, complaints, examination registrations, and continuing education accreditations;*
- *maintained adequate controls over its administrative operations; and*
- *efficiently and effectively regulated the real estate industry in New Hampshire.*

To address these objectives, we plan to:

- review relevant State laws, administrative rules, policies, procedures, and guidelines;
- interview Commission and OPLC personnel, staff, and external stakeholders;
- survey Commission licensees;
- review audits, evaluations, and guidance from other states;
- review and analyze Commission complaint, licensing, continuing education provider, and financial data and records; and
- compare Commission practices to relevant guidelines and accepted practices.

We anticipate completing this audit and presenting the final report to the Fiscal Committee in the Summer of 2017.