

January 14, 2013

The Honorable Joan Carter Conway, Chair  
Senate Education, Health, and Environmental Affairs Committee  
Miller Senate Office Building, 2 East Wing  
11 Bladen St.  
Annapolis, MD 21401

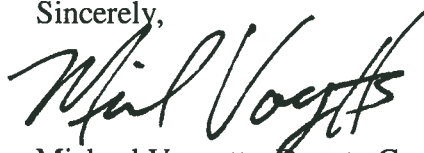
The Honorable Dereck E. Davis, Chairman  
House Economic Matters Committee  
House Office Building, Room 231  
6 Bladen St.  
Annapolis, MD 21401

Dear Chair Conway and Chairman Davis:

I herewith transmit on behalf of the Department of Labor, Licensing and Regulation and the State Real Estate Commission, the follow-up report required by Chapter 34 of 2012.

Should you or any of your committee members have follow-up questions or concerns regarding the report, please do not hesitate to contact me directly. I can be reached by telephone at (410) 230-6225 or by e-mail at [mvorgetts@dllr.state.md.us](mailto:mvorgetts@dllr.state.md.us).

Sincerely,



Michael Vorgetts, Deputy Commissioner

cc: Leonard J. Howie III, Secretary  
John Nicholas D'Ambrosia, Chair  
Katherine Connelly, Executive Director  
Jill Porter, Legislative Director  
Sara Fidler, Committee Counsel  
Laura Atas, Committee Counsel

## **FOLLOW-UP REPORT TO THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE AND THE HOUSE ECONOMIC MATTERS COMMITTEE**

Uncodified language included in Chapter 34 of 2012 requires the State Real Estate Commission, in conjunction with the Department of Labor, Licensing and Regulation (DLLR), to submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by December 1, 2012, to address several issues. Specifically, Chapter 34 required the Commission and DLLR to submit a report regarding:

1. what electronically available information could be collected and tied to the license profiles of individuals licensed by the Commission;
2. whether various electronically available information collected could be used as an indicator of the advisability of renewal of a license or to provide a real estate marketplace where consumers have better access to information; and
3. whether and to what extent electronically available information should be made publicly available.

DLLR and the Commission have submitted the following comments regarding the issues raised in the 2010 sunset evaluation.

### **1. Collecting electronically available information and tying such information to license profiles.**

#### ***Overview of Real Estate Practice and Role of Commission***

Maryland requires real estate professionals to obtain a license before engaging in practice. As defined by statute, providing real estate brokerage services in Maryland includes providing any of the following services for another person in exchange for compensation:

- selling, buying, exchanging, or leasing any real estate;
- collecting rent for the use of real estate; or
- assisting a person in locating or obtaining real estate for purchase or lease.

Providing real estate brokerage services also includes engaging in a business:

- that deals in real estate or leases or options on real estate;
- whose primary purpose is promoting the sale of real estate through a listing service; or
- that subdivides land that is located in any state and sells the divided lots.

Licensed real estate professionals arrange the transfer of property from seller to buyer. Licensees commonly take on tasks of listing available properties, establishing clear title, mediating price negotiations, meeting all legal requirements, and suggesting sources of financing, among other things. Aside from participating in this aspect of the property market, licensees may rent and manage properties. They may also be involved in commercial, industrial, or agricultural real estate transactions.

The State Real Estate Commission was established in 1939 to protect the health, safety, and welfare of the public through its examination, licensing, and regulatory activities in regard to real estate. Specifically, the commission:

- licenses all real estate brokers, associate brokers, and salespersons;
- requires an examination for all original licensees and continuing education for existing licensees to ensure that only qualified and competent individuals are licensed;
- processes complaints against licensees; and
- administers the Real Estate Guaranty Fund, which provides limited restitution to consumers who have filed valid claims against licensees.

#### ***Consumer Protection Activities and Availability of New Data for Public Awareness***

The Commission monitors the activities of its licensees in various ways in effort to protect consumers. As noted above, the Commission pursues administrative enforcement actions against individuals – licensed or unlicensed – who are accused of violating the Maryland Real Estate Brokers Act. Since achieving special funding status, the Commission has addressed and resolved consumer complaints quickly and thoroughly.

There have been discussions within the Division of Occupational and Professional Licensing about how to provide additional consumer protection in the State's real estate industry and generally among the industries regulated by the Division. The Division and the Commission members and staff have reviewed the issue of what additional electronically available information may be used vis-à-vis license renewal conditions, licensee profiles, or consumer awareness.

One idea has been to identify a real estate licensee's transaction history and evaluate that history to determine the number or frequency of foreclosures associated with a licensee. While it would be greatly beneficial to develop a reliable measure that could predict the future success rate of real estate transactions, the Commission advises that the data and the methodology are not available or reliable to make such a determination viable. Moreover, the Commission has deep concerns about the equity of sharing any such information for three reasons: (1) because the reliability of the information is questionable; (2) because the long-term outcome of real estate transactions are affected by many factors unrelated to the fitness or character of a real estate licensee; and (3) such an evaluation would be outside the scope of the Real Estate Brokers Act.

Nevertheless, the Commission collects personal information from each licensee, including date-of-birth, social security number, home address, phone numbers, and email addresses. In addition, the Commission also tracks broker affiliation. The Commission is committed to strong effective regulation of the real estate industry as set forth in the Real Estate Brokers Act. Further, the Commission will continue discuss matters that would enhance regulation and enforcement and in effort to ensure the highest level of consumer protection in the State.

**2. Should electronically available information be used to determine fitness for licensure or to improve consumer awareness.**

At this time, the Commission recommends that additional outside data should not be used (1) as an indicator of an individual's fitness to practice or whether a license should be renewed; or (2) to provide additional consumer awareness. This recommendation is based on the fact that there is a dearth of reliable data upon which to make fair judgments about a licensee's fitness. The Division and the Commission are concerned about creating a situation where the Commission appears to be endorsing a licensee or discouraging consumers from working with a licensee based on data or other factors that are outside the Commission's purview. For example, if the Commission were to consider foreclosure statistics related to a licensee, it could unduly, unfairly, or inappropriately impact that individual's livelihood because a foreclosure may arise as a result of changes in a homeowner's personal financial situation, economic factors, or the misdeeds or incompetence of individuals who are not regulated by the Commission.

Nevertheless, the Commission keeps a disciplinary actions database which encompasses a 20-year case history of licensees who were fined, suspended, reprimanded, revoked or were assessed a Guaranty Fund claim payout. Currently, the Commission website allows consumers to ascertain whether an individual offering real estate services holds a license in good standing with the Commission.

**3. Whether and to what extent electronically available information should be made public.**

The Commission advises that the information that is currently accessible on its website assists and advises consumers prior to entering into a real estate transactions. Consumers may also call the Commission directly to learn of an individual's licensure status and disciplinary history. The Commission has no means of gathering additional information about its licensees other than that information the Commission is statutorily required to collect and notifications from other State agencies.