

## **Regulatory Board Evaluation**

---

### **Real Estate Commission**

---

**The Real Estate Commission Is Necessary  
To Protect The Public**

**The Real Estate Commission's Complaint  
Process Lacks Appropriate Internal Controls  
and Is Inconvenient and Inaccessible to  
the Public**

**The Real Estate Commission Should Consider  
Conducting Criminal Background Checks on  
Applicants for New Real Estate Licenses and  
Existing Licensees as Their Licenses Become  
Due for Renewal**

**A Recent License Fee Increase Approved By the  
Legislature Has Assisted the Commission's Financial  
Self-Sufficiency**



**JOINT COMMITTEE ON GOVERNMENT OPERATIONS**

**Senate**

**Edwin J. Bowman**  
*Chair*

**Billy Wayne Bailey, Jr.**  
*Vice Chair*

**Walt Helmick**

**Donna J. Boley**

**Sarah M. Minear**

**House Of Delegates**

**J.D. Beane**  
*Chair*

**Timothy R. Ennis**  
*Vice Chair*

**Joe Talbott**

**Craig P. Blair**

**Otis Leggett**

**Scott G. Varner, Ex  
Officio Non-Voting  
Member**

**Citizen Members**

**Dwight Calhoun**

**John Canfield**

**James Willison**

**W. Joseph McCoy**

*(Vacancy)*



---

**OFFICE OF THE LEGISLATIVE AUDITOR**

**Aaron Allred**  
*Legislative Auditor*

**John Sylvia**  
*Director*

**Russell Kitchen**  
*Research Manager*

**Donald E. Robinson**  
*Research Analyst*

**Performance Evaluation and Research Division**

*Building 1, Room W-314*

*State Capitol Complex*

*Charleston, West Virginia 25305*

*(304) 347-4890*

---

**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

June 12, 2005

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable J.D. Beane  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Regulatory Board Evaluation on the *Real Estate Commission*, which will be presented to the Joint Committee on Government Operations on Sunday, June 12, 2005. The issues covered herein are "The Real Estate Commission Is Necessary To Protect The Public;" "The Real Estate Commission's Complaint Process Lacks Appropriate Internal Controls and Is Inconvenient and Inaccessible to the Public;" "The Real Estate Commission Should Consider Conducting Criminal Background Checks on Applicants for New Real Estate Licenses and Existing Licensees as Their Licenses Become Due for Renewal;" and "A Recent License Fee Increase Approved By the Legislature Has Assisted the Commission's Financial Self-Sufficiency."

We transmitted a draft copy of the report to the Real Estate Commission on May 26, 2005. We held an exit conference with the Commission on June 2, 2005. We received the agency response on June 7, 2005.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

JS/wsc

---

*Joint Committee on Government and Finance*

---



# Contents

---

<b>Executive Summary</b> .....	5
<b>Review Objective, Scope and Methodology</b> .....	11
<b>Issue 1:</b> The Real Estate Commission Is Necessary To Protect The Public.....	13
<b>Issue 2:</b> The Real Estate Commission’s Complaint Process Lacks Appropriate Internal Controls and Is Inconvenient and Inaccessible to the Public.....	15
<b>Issue 3:</b> The Real Estate Commission Should Consider Conducting Criminal Background Checks on Applicants for New Real Estate Licenses and Existing Licensees as Their Licenses Become Due for Renewal.....	27
<b>Issue 4:</b> A Recent License Fee Increase Approved By the Legislature Has Assisted the Commission’s Financial Self-Sufficiency.....	35
 <b>List Of Tables</b>	
<b>Table 1:</b> States With A Similar Number of Licensees (Number of Complaints in Parentheses).....	18
<b>Table 2:</b> The Availability Of Online Complaint Forms And The Notarization Requirement In Each State.....	20
<b>Table 3:</b> Number of Days Taken to Close Complaint Files: CY 2000 to 2004.....	22
<b>Table 4:</b> Disposition of Complaints and Source of Complaints.....	23
<b>Table 5:</b> Annual Compliance Audits Conducted By the Investigator.....	25
<b>Table 6:</b> Number of States Requiring Background Checks.....	31
<b>Table 7:</b> Real Estate License and Exam Schedule of Fees.....	36
<b>Table 8:</b> Real Estate Commission Revenues and Disbursements.....	37
 <b>List Of Appendices</b>	
<b>Appendix A:</b> Transmittal Letter to Agency.....	39
<b>Appendix B:</b> Complaints Data from Each State: FY 2000 to 2004.....	41
<b>Appendix C:</b> ARELLO Data on License and Exam Fees.....	57
<b>Appendix D:</b> ARELLO Data on Background Checks Performed in Each State.....	61
<b>Appendix E:</b> Agency Response.....	65



# Executive Summary

---

## **Issue 1: The Real Estate Commission Is Necessary To Protect The Public**

The West Virginia Real Estate Commission, created in 1937, has the principal purpose of protecting the public against unscrupulous practices of real estate agents. In the absence of a licensing agency, the public would not be protected against unethical real estate agents. All 50 states and the District of Columbia require the licensure of real estate professionals. Because of the Real Estate Commission's important functions with respect to licensing and regulating real estate brokers and agents, the Legislative Auditor recommends that the Legislature continue the Real Estate Commission.

---

*Because of the Real Estate Commission's important functions with respect to licensing and regulating real estate brokers and agents, the Legislative Auditor recommends that the Legislature continue the Real Estate Commission.*

---

## **Issue 2 The Real Estate Commission's Complaint Process Lacks Appropriate Internal Controls and Is Inconvenient and Inaccessible to the Public.**

The Commission averages less than 20 complaints filed per year. The Commission averaged 2.3 complaints per 1,000 licensees from FY 2000 to 2004, which was the smallest number of complaints per 1,000 licensees for any state during the five-year period. While the Performance Evaluation and Research Division's May 2000 report recognized the Commission's proactive use of field compliance audits of real estate agencies as having a possible effect on the number of formal complaints, the report also recommended that the Commission make complaint forms more accessible to the public by providing a printable on-line complaint form. The Commission has continued the practice of restricting complaint forms to complaints that have passed a telephone screening process. Members of the public can file a complaint against a real estate broker or salesperson only after calling the Commission and explaining the reason for the complaint. The Executive Director, the Assistant Deputy of Investigations or the Investigator discusses the complaint with the citizen. During the conversation, the Director/Assistant Deputy/Investigator decides if the complaint is credible and within the jurisdiction of the Commission. The Commission sends official complaint forms to members of the public who request one. The Commission still follows this procedure because it is concerned that without the telephone screening process, people would file complaints related to issues outside of the Commission's jurisdiction to investigate. The Commission would, therefore, expend time and resources investigating and considering these types of complaints.

---

*Members of the public can file a complaint against a real estate broker or salesperson only after calling the Commission and explaining the reason for the complaint.*

---

---

The Commission does not keep records of each complainant who calls to receive the official complaint form. **The Legislative Auditor’s primary concern with the telephone screening of complaints is the complete lack of documentation for those complaints received over the telephone.** The Commission has no record of who called to complain, against whom the complaint is filed, when the Commission received the call, or the nature of the complaint. The Commission does not record the number of complaints screened in this manner either. This process does not document the manner in which the Commission’s staff members decide if a complaint is valid. The Commission cannot review the decisions of its staff members due to the complete lack of documentation. Any personal bias or inaccurate decisions made will likely go undetected by the Commission. The lack of records on complaints screened over the telephone does not allow the Commission to track the number of complaints against individual real estate agents or brokers. Problems with individual licensees may not come to the Commission’s attention, as a result. The Legislative Auditor recommends that the Commission receive all complaints through complaint forms, regardless of the complaint, in order to establish proper internal controls, and for public convenience and accessibility.

---

*All but six states and the District of Columbia offer complaint forms on-line, and two of those six states accept letters of complaint instead of actual forms. It is clear that most states have complaint forms that are more accessible to the public.*

---

The Legislative Auditor’s staff conducted research on complaint procedures followed by real estate regulatory agencies in each of the 50 states and the District of Columbia. All but six states and the District of Columbia offer complaint forms on-line, and two of those six states accept letters of complaint instead of actual forms. It is clear that most states have complaint forms that are more accessible to the public.

Also, the Legislature requires the “verification” of all official complaint forms, using language found in *WVC* §30-40-20(a) requiring that all complaints be “verified,” which the Commission interprets to mean notarized. Notarization could be another factor limiting the public’s ability to easily file complaints. Nineteen (19) states require notarized real estate complaints, indicating that licensing agencies across the country are nearly split on this issue. The Legislative Auditor is not taking issue with the Legislature’s decision to require the notarization of complaint forms, given that many other states also have this requirement. However, since many states do not require verification, and for public convenience, the Legislature may want to reconsider the need for the verification requirement. In order for the Commission to have proper internal controls, it should allow all complaints to be submitted on a complaint form. Requiring verification for certain types of complaints may not be necessary.

---

*A significant portion of complaint cases remained open for over six months during most years.*

---

There are no criteria set by statute, rule or agency policy specifying the time frame in which the Commission must resolve complaint cases. The median length of time the Commission took to close complaint cases from



---

calendar years 2000 through 2003 was 72.3 days. The only year in which the Commission resolved the majority of complaint cases within 60 days was CY 2002. The Commission accepted no more than 22 complaint cases during any year from CY 2000 to 2004. Five (5) or 6 cases during 3 of these years were open for over 180 days, therefore, a significant proportion of complaint cases remained open for over 6 months during most years.

**Issue 3: The Real Estate Commission Should Consider Conducting Criminal Background Checks on Applicants for New Real Estate Licenses and Existing Licensees as Their Licenses Become Due for Renewal.**

---

*A substantial portion of complaint cases each year do not involve consumer complaints at all, but rather deal with disputes between licensees, or were initiated by the Commission.*

---

The Real Estate Commission asks applicants for new licenses to disclose any history of criminal convictions. After admitting to a criminal conviction, applicants must submit another form to the Commission providing details of the conviction. Applicants admitting to a criminal conviction on the application for a real estate license must obtain a records check from the West Virginia Division of Public Safety (State Police). This situation is the only one in which a person would currently need to undergo a criminal background check to secure a real estate license in West Virginia. In the case of an applicant who is dishonest regarding his/her criminal past, the only source of information currently available to the Commission is other licensees and their personal knowledge of the applicant. A licensee who is new to an area, who knows no other licensees, could conceal his/her past.

A criminal background check through the State Police database costs \$20. The fees for a Federal Bureau of Investigation (FBI) criminal background check range from \$16 to \$22. The Commission's licensing fees are low compared to other states (see Appendix C). Currently, the Commission charges \$50 for a new salesperson applicant's license fee. Of the states for which the Legislative Auditor's staff had data, only North Carolina and Ohio have lower fees. A salesperson's exam fee is \$25 in West Virginia, which is the second lowest fee of this type. Adding \$36 to \$42 to each new real estate license or license renewal fee would not represent an unreasonable increase, certainly when compared to the fees charged by other states and the benefits of criminal background checks. The FBI criminal background check uses nationwide data and records, while the West Virginia State Police version utilizes records collected in West Virginia only. The FBI criminal background check provides nationwide data regarding felony and occupation-related convictions. The State Police criminal background check shows all violations of the law in West Virginia. The Legislative Auditor recommends both the State Police and the

---

FBI criminal background checks for applicants for new licenses and existing licensees upon license renewal. This background check would occur one time only.

---

*Adding \$36 to \$42 to each new real estate license or license renewal fee would not represent an unreasonable increase, certainly when compared to the fees charged by other states and the benefits of criminal background checks.*

---

Examination of the Commission's complaint files demonstrates that some licensees have displayed unprofessional conduct and the potential for more serious offenses exists. The number of licensees who travel from other states to West Virginia and file false applications is unknown. To ensure public safety in the future, the Commission should conduct criminal background checks for its new applicants and its current licensees, upon renewal, in order to protect members of the public. Public Law 92-544 asserts that no state may access the FBI's criminal history database in the absence of statutory authority. **Because of the potential for individuals to provide false information on license applications, the Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Real Estate Commission to conduct criminal background checks, through the Federal Bureau of Investigation, on all applicants for new real estate licenses and existing licenses at the time of license renewal.**

The Legislative Auditor's staff identified licensing agencies in 30 states that conduct background checks on real estate license applicants, either through state police, the FBI, or the ARELLO disciplinary database. This approach was intended to reduce the chance of future real estate-related crimes. Ten states passed statutes authorizing the use of fingerprint identification as a means of conducting criminal background checks, utilizing the FBI database, as specified in U. S. Public Law 92-544. Table 6 provides data on the use of background checks by real estate licensing agencies nationwide. Of the states performing criminal background checks of applicants, 4 states perform the FBI criminal background check only. Three (3) states utilize the state police background check only. Twelve (12) other states and the District of Columbia conduct a background check of nationwide disciplinary action data collected by ARELLO only. Eleven states use two or more criminal history checks. The Commission does submit disciplinary data to ARELLO, but does not conduct checks of its licensees through the database.

---

*The Legislative Auditor's staff identified licensing agencies in 30 states that conduct background checks on real estate license applicants, either through state police, the FBI, or the ARELLO disciplinary database.*

---

The Real Estate Commission could begin contacting ARELLO in order to determine if a license applicant has been the subject of disciplinary actions in other states. The Commission could do this even in the absence of legislation permitting criminal background checks using fingerprints. The ARELLO charges licensing agencies \$0.50 cents per search or a flat rate per year, for nationwide disciplinary data. The flat annual rate is based on the number of licensees and would amount to \$750 for 5,001 to 10,000 licensees. The Commission could consider doing this, although it would require another amendment of its legislative rules in order to pass on the cost to licensees through

---

an additional fee or an increase to an existing fee.

**Issue 4: A Recent License Fee Increase Approved By the Legislature Has Assisted the Commission's Financial Self-Sufficiency.**

---

*As a result of the fee increase and a stable number of licensees, the Commission's account balance stands at nearly \$800,000.*

---

The declining revenues noted in the 2000 Preliminary Performance Review of the Commission were offset by a recent fee schedule increase, which has helped to ensure the Commission's continued financial self-sufficiency. The steady decline in the number of licensees from the previous report has ended. Over the last five fiscal years, the number of licensees decreased only by 81, compared to the prior five-year span when the Commission lost 834 licensees. As a result of the fee increase and a stable number of licensees, the Commission's account balance stands at nearly \$800,000.

**Recommendations**

1. *The Legislative Auditor recommends that the Legislature continue the Real Estate Commission.*
2. *The Real Estate Commission should comply with the Legislative Auditor's earlier recommendation and add a printable version of the complaint form to its website.*
3. *The Legislature should consider discontinuing the verification requirement found in WVC §30-40-20(a).*
4. *The Legislative Auditor recommends the Real Estate Commission consider creating an additional investigator position.*
5. *The Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Real Estate Commission to conduct criminal background checks, through the Federal Bureau of Investigation on all applicants for new real estate licenses and existing licensees at the time of license renewal.*

---

6. *The Legislative Auditor recommends that the Commission should perform criminal background checks through the State Police on all applicants for new real estate licenses and existing licensees at the time of license renewal.*

7. *The Real Estate Commission should consider conducting searches of nationwide disciplinary data maintained by the Association of Real Estate License Law Officials as a means to screen license applicants and existing licensees.*

# Review Objectives, Scope and Methodology

---

## Objective

The Regulatory Board Evaluation of the Real Estate Commission has four basic objectives:

1. Determine the Commission's compliance with the general provisions of Chapter 30 of the West Virginia *Code*;
2. Determine the need for accessibility of the Commission to members of the public wishing to file complaints with the Commission;
3. To determine the Commission's activity level with respect to disciplining its licensees;
4. To determine the adequacy of the Commission's current process for screening license applicants and its ability to identify those with criminal backgrounds;
5. To determine if the Commission's current financial condition permits its continued financial self-sufficiency.

## Scope

The time period of this evaluation covers calendar years 2000 through 2004.

## Methodology

The Commission provided much of the information used by the Legislative Auditor's staff to complete this report, including complaint files, disciplinary data, application and licensing procedures, annual reports, meeting minutes, compliance audit records, and interviews conducted with Commission staff. The Legislative Auditor's staff also obtained survey data on licensing agencies in other states and from the Association of Real Estate License Law Officials (ARELLO). Data from ARELLO were organized by fiscal year. The Legislative Auditor's staff surveyed other states' real estate licensing agencies and gathered information from agency web sites to provide information on the use of on-line complaint forms and notarized complaints. This evaluation complied with Generally Accepted Government Auditing Standards.



# Issue 1

---

## **The Real Estate Commission is Necessary to Protect the Public.**

*All 50 states and the District of Columbia require the licensure of real estate professionals.*

---

The West Virginia Real Estate Commission, created in 1937, has the principal purpose of protecting the public against unscrupulous practices of real estate agents. In the absence of a licensing agency, the public would not be protected against unethical real estate agents. All 50 states and the District of Columbia require the licensure of real estate professionals. Because of the Real Estate Commission's important functions with respect to licensing and regulating real estate brokers and agents, the Legislative Auditor recommends that the Legislature continue the Real Estate Commission.

## **Overview of the Commission's Functions**

The Commission's program can be generally classified into administration and enforcement, and includes the following functions:

- Process and qualify applications for licenses;
- Investigate and test applicants;
- Issue licenses to qualified applicants;
- Inspect licensed agents for conformance with the Real Estate Licensing Act;
- Investigate complaints;
- Investigate unlicensed activity;
- Conduct hearings for possible suspension or revocation of license;
- Renew licenses annually; and
- Regulate and accredit schools and instructors offering real estate courses to applicants for real estate license.

## **The Commission Complies With Basic Requirements of Chapter 30 of the West Virginia Code**

The Real Estate Commission has satisfactorily complied with some applicable state laws and rules. These laws and rules, primarily found within the Commission's own enabling statute and in the general provisions of Chapter 30, are important in the effective operation of a licensing agency. The Commission has complied with the following requirements:

- A Commission representative attended the orientation session provided by the State Auditor's Office in the required two year time frame (§30-1-2(a));

- 
- The Commission meets at least once annually (§30-1-5(a));
  - The Commission follows due process in its investigation and resolution of complaints (§30-1-5(b));
  - The Commission has set fees by rule (§30-1-6(c));
  - The Commission has developed continuing education criteria, which includes course content, course approval, hours required and reporting periods (§30-1-7a(a));
  - The Commission has procedural rules that outline the procedures for investigation and resolution of complaints (§30-1-8(h));
  - The Commission maintains a record of its proceedings (§30-1-12(a)); and
  - The Commission has a listing in the state government section of the Charleston area telephone book (§30-1-12(c)).
  - The Commission has submitted annual reports to the Governor and Legislature describing transactions for the preceding two years and budget data (§30-1-12(b)).

---

*However, the Legislative Auditor finds that the Legislature should continue the Commission.*

---

The Legislative Auditor has concerns relating to the Commission's complaint process. However, the Legislative Auditor finds that the Legislature should continue the Commission.

## **Recommendation**

1. *The Legislative Auditor recommends that the Legislature continue the Real Estate Commission.*



# Issue 2

---

## **The Real Estate Commission’s Complaint Process Lacks Appropriate Internal Controls and Is Inconvenient and Inaccessible to the Public.**

---

*The Commission receives significantly fewer complaints filed against licensees each fiscal year than states with similar numbers of licensees.*

---

### **Issue Summary**

The Commission receives significantly fewer complaints filed against licensees each fiscal year than states with similar numbers of licensees. The Legislative Auditor acknowledges that complaints may be relatively low because the Commission has a proactive procedure by which it conducts annual compliance audits of most real estate agencies in the state annually. However, the Legislative Auditor finds that the complaint process is restrictive and inadequate for several reasons. First, if citizens have complaints, they must call the Commission and verbally explain the nature of the complaint. A staff person screens the complaint by determining over the telephone if the complaint falls within the jurisdiction of the Commission. A Commission staff member discusses the issue with the citizen and sends an official complaint form if requested. The complaint form that the Commission sends must also be notarized. The public cannot access these complaint forms any other way. **The Legislative Auditor’s primary concern with respect to the telephone screening of complaints concerns the complete lack of documentation for those complaints that the Commission screens out.** This process does not document the number of complaints screened out, who called, who was the complaint against, what was the nature of the complaint discussed, what decision was made, or what basis did the Commission’s staff member decide if the complaint was valid. The lack of records on complaints screened over the telephone does not allow the Commission to track the number of complaints against individual real estate agents or brokers. Problems with individual licensees may not come to the Commission’s attention, as a result. The Commission, therefore, has no internal controls to review the decisions of its staff members and determine if the decisions made over the telephone were accurate or proper.

Although the Commission’s complaint process may be efficient in the sense that ultimately it will investigate only complaints that have been predetermined worthy of investigation, it may be inconvenient for some citizens to have to make a telephone call to discuss their complaint. There may also be reluctance if the citizen has to pay long distance charges for the telephone call. The legal requirement to have the complaint form notarized is also restrictive. The Commission should consider providing public access to complaint forms through the Commission’s website and allowing the public to submit complaints at their convenience. The Legislature should also give

---

consideration to removing the verification (notarization) requirement as well.

## **The Telephone Screening Process Lacks Internal Controls and May not Be Convenient for the Public**

---

*The Commission averaged 2.3 complaints per 1,000 licensees from FY 2000 to 2004, which was the smallest number of complaints per 1,000 licensees for any state during the five-year period.*

---

The Commission averages less than 20 complaints filed per year. The Commission averaged 2.3 complaints per 1,000 licensees from FY 2000 to 2004, which was the smallest number of complaints per 1,000 licensees for any state during the five-year period. Issue 1 of the Performance Evaluation and Research Division's (PERD) May 2000 Preliminary Performance Review of the Real Estate Commission stated:

*The Commission's proactive enforcement by its full-time investigator appears to decrease disciplinary activity when compared to surrounding states' real estate licensure agencies.*

---

*Members of the public can file a complaint against a real estate broker or salesperson only after calling the Commission and explaining the reason for the complaint.*

---

While the May 2000 report recognized the Commission's proactive use of field compliance audits of real estate agencies as having a possible effect on the number of formal complaints, the report also recommended that the Commission make complaint forms more accessible to the public by providing a printable on-line complaint form. The Commission has continued the practice of restricting complaint forms to complaints that have passed the telephone screening process. Members of the public can file a complaint against a real estate broker or salesperson only after calling the Commission and explaining the reason for the complaint. The Executive Director, the Assistant Deputy of Investigations or the Investigator discusses the complaint with the citizen. During the conversation, the Director/Assistant Deputy/Investigator decides if the complaint is credible and within the jurisdiction of the Commission. Certain types of disputes are beyond the jurisdiction of the Commission's authority, such as enforcing, modifying, rescinding or cancelling listing agreements, purchase and sale agreements or any other contract, or to order the return of earnest money, award damages, settle real estate commission fee disputes or otherwise settle claims. The Commission sends official complaint forms to members of the public who request one, after a staff member determines if their complaints lie within the Commission's jurisdiction. If a complaint is outside of the Commission's jurisdiction, the Director/Deputy/Investigator will send a complaint form to the citizen, if requested to do so. The Commission still follows this procedure because it is concerned that without the telephone screening process, people would file complaints related to issues outside of the Commission's jurisdiction to investigate. The Commission would, therefore, expend time and resources investigating and considering these types of complaints.

---

The Commission does not keep records of each complainant who calls to receive the official complaint form. **The Legislative Auditor's primary concern with the telephone screening of complaints is the complete lack of documentation for those complaints received over the telephone.** The Commission has no record of who called to complain, against whom the complaint is filed, when the Commission received the call, or the nature of the complaint. The Commission does not record the number of complaints screened in this manner either. This process does not document the manner in which the Commission's staff members decide if a complaint is valid and, therefore, decide whether or not to send the complainant a complaint form. The Commission cannot review the decisions of its staff members due to the complete lack of documentation. Any personal bias or inaccurate decisions made will likely go undetected by the Commission. The lack of records on complaints screened over the telephone does not allow the Commission to track the number of complaints against individual real estate agents or brokers. Problems with individual licensees may not come to the Commission's attention, as a result.

---

*The Commission should consider providing public access to complaint forms through the Commission's website, and allowing the public to submit complaints at its convenience.*

---

Furthermore, it may be inconvenient for some citizens to have to make a telephone call to discuss their complaint. There may also be reluctance if the citizen has to pay long distance charges for the telephone call. To improve accessibility, the public should be able to file a complaint at its convenience. The Commission should consider providing public access to complaint forms through the Commission's website, and allowing the public to submit complaints at its convenience. The Legislature should give consideration to removing the notarization requirement as well.

### **The Real Estate Commission Receives Few Complaints Compared to Other States Due to the Telephone Screening of Complaints**

The 2000 Preliminary Performance Review of the Real Estate Commission showed that there was an average of 2.7 complaints per 1,000 licensees each calendar year from 1996 to 1999 in West Virginia. Data from the Association of Real Estate License Law Officials (ARELLO) show that the Real Estate Commission has one of the lowest occurrences of complaints nationwide for the period from FY 2000 to 2004 (see Appendix B). The Commission averaged 2.3 complaints per 1,000 licensees from FY 2000 to 2004, which was the smallest number of complaints per 1,000 licensees for any state during the five-year period. The national average of complaints per 1,000 licensees during the same period was 15.6. The number of licensees is once again starting to rise, but the number of complaints is not.

Five states had a similar number of licensees compared to West Virginia, as shown in Table 1. For every fiscal year from 2000 to 2004, each state had more than double the number of complaints that West Virginia had. This was even true of Delaware, which had nearly half of the Commission's total number of licensees.

	Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004
Maine	7,845 (96)	7,674 (87)	7,548 (90)	8,254 (130)	8,439 (151)
New Mexico	9,570 (81)	9,411 (100)	9,221 (67)	9,824 (155)	9,967 (73)
Nebraska	6,992 (54)	7,451 (52)	6,925 (43)	7,184 (66)	7,426 (71)
Idaho	6,584 (278)	6,721 (181)	7,074 (250)	7,463 (339)	8,110 (474)
Delaware	4,254 (43)	4,130 (45)	4,425 (43)	4,600 (63)	5,143 (54)
<b>West Virginia</b>	<b>8,387 (21)</b>	<b>7,561 (20)</b>	<b>8,157 (17)</b>	<b>8,000 (15)</b>	<b>8,306 (19)</b>
National Median	22,500 (222)	22,348 (194)	23,981 (222)	23,547 (300)	24,539 (156)

*Source: Association of Real Estate Law License Officials (ARELLO), Montgomery, Alabama.*

*If the number of complaints that the Commission screens out were added to the number of complaints that were accepted, it is likely that the Commission's total number of complaints would be comparable to these other states.*

If the number of complaints that the Commission screens out were added to the number of complaints that were accepted, it is likely that the Commission's total number of complaints would be comparable to these other states. The Legislative Auditor recommends that the Commission receive all complaints through complaint forms, regardless of the complaint, in order to establish proper internal controls and for public convenience and accessibility.

### **Requiring Notarized Complaint Forms May Discourage Complaints**

*It is clear that most states have complaint forms that are more accessible to the public.*

The Legislative Auditor's staff conducted research on complaint procedures followed by real estate regulatory agencies in each of the 50 states and the District of Columbia (see Table 2). All but six states and the District of Columbia offer complaint forms on-line, and two of those six states accept letters of complaint instead of actual forms. It is clear that most states have complaint forms that are more accessible to the public.

---

*Requiring verification for certain types of complaints may not be necessary.*

Also, the Legislature requires the “verification” of all official complaint forms, using language found in *WVC* §30-40-20(a) requiring that all complaints be “verified,” which the Commission interprets to mean notarized. Notarization could be another factor limiting the public’s ability to easily file complaints. Nineteen (19) states require notarized real estate complaints, indicating that licensing agencies across the country are nearly split on this issue. The Legislative Auditor is not taking issue with the Legislature’s decision to require the notarization of complaint forms, given that many states also have this requirement. However, since many states do not require verification, and for public convenience, the Legislature may want to reconsider the need for the verification requirement. In order for the Commission to have proper internal controls, it should allow all complaints to be submitted on a complaint form. Requiring verification for certain types of complaints may not be necessary.

**Table 2  
The Availability Of Online Complaint Forms  
And The Notarization Requirement In Each State**

<b>State</b>	<b>On-line Complaint Form</b>	<b>Requires Notarization</b>
Alabama	No (letters accepted)	No
Alaska	No	Yes
Arizona	Yes	No
Arkansas	Yes	Yes
California	Yes	No
Colorado	Yes	No
Connecticut	Yes	Yes
Delaware	Yes	No
District of Columbia	No	No
Florida	Yes	No
Georgia	Yes	Yes
Hawaii	Yes	No
Idaho	Yes	Yes
Illinois	Yes	No
Indiana	Yes	No
Iowa	Yes	No
Kansas	No (letters accepted)	No
Kentucky	Yes	Yes
Louisiana	Yes	No
Maine	Yes (fill-in form)	No
Maryland	Yes	No
Massachusetts	Yes	No
Michigan	Yes	No
Minnesota	Yes	No
Mississippi	Yes	Yes
Missouri	Yes	Yes
Montana	Yes	Yes
Nebraska	Yes	Yes
Nevada	Yes	No
New Hampshire	No	Yes
New Jersey	Yes	No
New Mexico	Yes	Yes
New York	Yes	No
North Carolina	Yes	Yes
North Dakota	No	Yes

State	On-line Complaint Form	Requires Notarization
Ohio	Yes	No
Oklahoma	Yes	Yes
Oregon	Yes	No
Pennsylvania	Yes (printable and fill-in form)	No
Rhode Island	Yes	Yes
South Carolina	Yes	No
South Dakota	Yes	No
Tennessee	Yes	Yes
Texas	Yes	No
Utah	Yes	No
Vermont	Yes	No
Virginia	Yes	No
Washington	Yes	No
West Virginia	No	Yes
Wisconsin	Yes	No
Wyoming	Yes	Yes

*Source: Survey of Real Estate Commissions in each state and their web site by the West Virginia Legislative Auditor's Office.*

### **The Commission Took A Median of 72.3 Days To Resolve Complaints From Calendar Years 2000 through 2003**

*In the case of trust fund accounts, the Commission first ensures the safety of the public's funds, then takes any appropriate disciplinary actions regarding the licensee.*

The complaint process normally has four steps. The Commission sends a letter to the defendant after receiving the complaint. The defendant has 20 days to respond to the complaint. After receiving the response from the defendant, the Commission conducts an investigation into the matter. The Commission discusses the complaint at its next monthly meeting after concluding its investigation. As the result of civil action, a real estate agent may have to return earnest money deposited by a buyer with a real estate agency. If the real estate agency fails to return earnest money after receiving a court order, the licensee would face disciplinary action. In the case of trust fund accounts, the Commission first ensures the safety of the public's funds, then takes any appropriate disciplinary actions regarding the licensee. A case remains open until the Commission sends a letter to all involved parties describing its final decision. There are no criteria set by statute, rule, or agency policy specifying the time frame in which the Commission must resolve complaint cases.

Table 3 summarizes complaint case data based on the calendar year in which the Commission received the complaint. Table 3 shows the number of days the Commission took to resolve complaint files, in addition to the median



*During the years with no pending cases, the Commission's median complaint file was open for 72.3 days.*

number of days cases were open each year. During the years with no pending cases, the Commission's median complaint file was open for 72.3 days. The only year in which the Commission resolved the majority of complaint cases within 60 days was CY 2002. The Commission accepted no more than 22 complaint cases during any year from CY 2000 to 2004. Five (5) or 6 cases during 3 of these years were open for over 180 days, therefore, a significant proportion of complaint cases remained open for over 6 months during most years. At the time of this report, 4 cases were still pending from calendar year 2004. The Legislative Auditor's staff calculated the number of days the 4 outstanding cases had been open as of May 23, 2005. At that date, two of the pending cases were open for 238 and 256 days, respectively. The other two pending cases had been open for 159 days each. The median number of days that complaint files were open during calendar year 2004, including the 4 pending cases, was 64.5.

<b>Calendar Year</b>	<b>1-30</b>	<b>31-60</b>	<b>61-90</b>	<b>91-180</b>	<b>180+</b>	<b>Pending</b>	<b>Median</b>
<b>2000</b>	3	6	3	2	6	0	75.5
<b>2001</b>	4	5	5	2	5	0	69
<b>2002</b>	1	9	0	3	3	0	51.5
<b>2003</b>	1	6	1	5	5	0	106
<b>2004</b>	0	9	3	3	3	0	64.5*

*Source: Legislative Auditor's staff analysis of Real Estate Commission Complaint Files for Calendar Years 2000 to 2004.*

*\*Median includes four pending cases based on the number of days the complaint was unresolved as of May 23, 2005. Two of the pending cases are included in the 91-180 category and two are included in the 180+ category.*

Table 4 provides data on the complaints listed in Table 3, indicating the manner in which the Commission resolved them. The complaint allegations ranged from misrepresentation and misappropriation of funds to forgery and non-disclosure. The punishments for the licensees can take the form of license suspension, censure, cease and desist order, consent decree, fines, and license revocation. In all cases where licensees misappropriated funds, the Commission took action to obtain the return of any funds invested in the transaction. Misappropriation of funds in all cases referred to the failure to deposit trust funds into the proper bank account, rather than the actual embezzlement of funds. Usually, one-fourth to one-third of complaint cases result in some type



*A substantial portion of complaint cases do not involve consumer complaints at all, but rather deal with disputes between licensees, or were initiated by the Commission.*

of disciplinary action on the part of the Commission. Actual disciplinary actions taken by the Commission included one license revocation during CY 2003, with another revocation during CY 2004. The Commission suspended one licensee for 5 years during CY 2001, with one licensee suspended for one year during each of the calendar years 2000, 2002 and 2003. The Commission suspended another licensee for 30 days during CY 2003. The Commission issued 7 reprimands or cease and desist orders during calendar years 2001 through 2004. The Commission did not issue fines to any of its licensees during the period examined in this report.

A substantial portion of complaint cases do not involve consumer complaints at all, but rather deal with disputes between licensees, or were initiated by the Commission. During calendar years 2002 and 2003 most complaints were not filed by consumers, as Table 4 illustrates.

Calendar Year	Complaint Outcome		Plaintiff vs. Defendant In Each Complaint		Total Complaints
	Number Dismissed	Disciplinary Action	Consumer vs. Licensee	Licensee vs. Licensee*	
2000	15	5	15	5	20
2001	16	5	14	7	21
2002	11	6	9	8	16
2003	12	6	11	7	18
2004	13	1	11	3	14**

*Source: Legislative Auditor's staff analysis of Real Estate Commission complaints filed from CY 2000 to CY 2004.*

*\*Includes 9 complaints filed by the Commission itself against licensees. The Commission will file complaints against licensees in certain situations, for example, if in the course of an investigation, the Commission discovers that another party has committed acts of misconduct but was not the defendant in the original complaint; or if a licensee pays the Commission with a bad check.*

*\*\*Total does not include 4 complaint cases still open at the time of this report.*

---

The Commission was unable to provide the Legislative Auditor's staff with data on the number of licensees disciplined for failure to complete continuing education requirements, because the Commission does not consider this subject to a disciplinary process. If an existing licensee sends the Commission a license renewal form and fails to include proper documentation of continuing education, the Commission processes the form and considers the licensee as being on inactive status. It is the responsibility of the employing broker to ensure that no working salespersons are inactive. The Commission requires that all brokers' and salespersons' licenses are displayed in their real estate offices. The Commission's compliance audits review this requirement.

---

*During this review, the Commission's Executive Director conveyed the Commission's wish to hire an additional investigator.*

---

### **The Commission Would Like to Hire an Additional Investigator**

The Commission employs one Investigator. The Investigator performs research into complaints, testifies at hearings, and executes compliance audits. During this review, the Commission's Executive Director conveyed the Commission's wish to hire an additional Investigator:

*...I indicated that it was my desire to add another Investigator/Auditor to the staff in order to enhance the efficiency and effectiveness of that function. We now employ one person in that position who covers the entire State of West Virginia. The duties require the Investigator to spend approximately 70% of the time conducting compliance audits and the remaining 30% performing investigations. The Commission licenses approximately 900 offices and around 8,500 agents. I was the Investigator for a period of thirteen years, and know firsthand, that the amount of work required cannot be handled in an efficient and effective manner by one person. I believe the addition of an additional Investigator to the Commission staff will help to more effectively carry out the mission of the Real Estate Commission.*

---

*Over the last five calendar years, the Investigator has performed an average of 17 compliance audits of real estate agencies per month.*

---

The Investigator travels to an average of 210 real estate offices in West Virginia annually. During compliance audits, the Investigator arrives at real estate offices unannounced. He examines several items for statutory compliance, including trust fund accounts, advertisements, and license displays. Over the last five calendar years, the Investigator has performed an average of 17 compliance audits of real estate agencies per month. Table 5 shows the number of compliance audits performed in each calendar year plus the average number of audits completed each month. The length of time spent on each audit ranges from hours to several days, depending on

the size of each business. Variations in the number of audits performed each year resulted from such considerations as time spent on the investigation of complaints, business size, travel time, illnesses, vacations, holidays, and the need for the Investigator to attend hearings.

Calendar Year	Number of Compliance Audits Performed	Average Compliance Audits Per Month
2000	287	23.9
2001	265	22.1
2002	173	14.4
2003	107	8.9
2004	216	18.0

*Source: Legislative Auditor's staff analysis of information from the Real Estate Commission.*

*Since the investigator's duties include both compliance audits and the investigation of complaints, both duties could be performed more efficiently with the addition of another investigator.*

The Commission is of the opinion that the employment of another investigator would expedite the complaint process. Since the investigator's duties include both compliance audits and the investigation of complaints, both duties could be performed more efficiently with the addition of another investigator. One investigator could conduct research into complaints, while the other performs compliance audits. One activity would not interfere with the other if two investigators were available. **The Legislative Auditor recommends that the Real Estate Commission consider creating a second investigator position.**

## Conclusion

The Commission's use of telephone screening creates a lack of any documentation on citizens' concerns or on the decision made by Commission staff. This process provides no internal controls to safe guard against inaccurate or unethical decisions made by staff. Also, it may be inconvenient for some citizens to have to make a telephone call to discuss their complaint. There may also be reluctance if the citizen has to pay long distance charges for the telephone call. The legal requirement to have the complaint form notarized is also restrictive. The Commission should consider providing public access to complaint forms through the Commission's website, which would allow the

---

public to submit complaints at their convenience. The Legislature should also give consideration to removing the verification requirement.

If a citizen's complaint makes it through the process mentioned above, it takes the Commission a median of 72.3 days to resolve a complaint. The addition of one investigator should expedite the complaint process by allowing one investigator to focus mainly on researching complaints, while the other performs compliance audits of real estate businesses.

---

*If a citizen's complaint makes it through the process mentioned above, it takes the Commission a median of 72.3 days to resolve a complaint.*

## **Recommendations**

2. *The Real Estate Commission should comply with the Legislative Auditor's earlier recommendation and add a printable version of the complaint form to its website.*
3. *The Legislature should consider discontinuing the verification requirement found in WVC §30-40-20(a).*
4. *The Legislative Auditor recommends the Real Estate Commission consider creating an additional investigator position.*

# Issue 3

## The Real Estate Commission Should Consider Conducting Criminal Background Checks on Applicants for New Real Estate Licenses and Existing Licensees as Their Licenses Become Due for Renewal.

### Issue Summary

*As a proactive step to prevent fraud among licensees, the Commission should consider conducting criminal background checks on license applicants and existing licensees upon license renewal.*

*Thirty (30) states perform background checks of their licensees.*

The Legislative Auditor's staff examined all complaint files from CY 2000 to 2004. Some licensees committed acts of unprofessional conduct, and this highlights the possible danger to the public resulting from dishonest agents. As a proactive step to prevent fraud among licensees, the Commission should consider conducting criminal background checks on license applicants and existing licensees upon license renewal. The two versions of the criminal background check are those conducted by the State Police and the check of the FBI's criminal history database. A check of ARELLO's database provides data on disciplinary actions taken by real estate licensing agencies nationwide. All three are recommended because each background check reports on limited types of information. The cost of a criminal background checks would not be expensive and could be passed on to applicants. The Commission would be able to review each candidate for a license more thoroughly and better protect the public by using criminal background checks. U.S. Public Law 92-544 says that each state must have statutory authority to use fingerprint identification as a means of performing criminal background checks through the FBI's criminal history database. Thirty (30) states perform background checks of their licensees. Three (3) states utilize the state police background check only. Four (4) states perform the FBI criminal background check only. Twelve (12) states and the District of Columbia conduct a background check of nationwide disciplinary action data collected by ARELLO only. Eleven (11) states perform two or more criminal history checks. The Commission does submit disciplinary data to ARELLO, but does not conduct checks of its licensees through the database.

Number of States Requiring Background Checks				
State Police Only	FBI Only	ARELLO Only	Two or More Background Checks	Total Number
3	4	12	11	30

*Source: Association of Real Estate Law License Officials (ARELLO), Montgomery, Alabama.*

---

## The Importance of Honest Real Estate Licensees

Real estate is a profession based on trust. Potential buyers give time and money to agents for the purpose of finding them homes and/or property. These people trust the real estate agent to serve the buyer's best interests. The real estate agent also assists sellers. Property owners rely on agents to sell property at fair market value. Conducting criminal background checks is one way to screen applicants for licensure to minimize the danger to the public caused by dishonest agents. The following statement provided by the Executive Director of the Nebraska Real Estate Commission summarizes why some real estate licensing agencies choose to conduct criminal background checks:

*Conducting criminal background checks is one way to screen applicants for licensure to minimize the danger to the public caused by dishonest agents.*

*We operate in an industry where the number of licensees is growing. We live in a society where movement between states is common and licensees frequently hold licenses in several states. By statute, the Commission is to grant licenses only to persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of a real estate licensee in a manner as to safeguard the interest of the public. In an effort to meet the statutory obligations and make a determination that licenses are granted only to persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of a real estate licensee in a manner as to safeguard the interest of the public, the requirement for the state and national criminal history check was added to the License Act.*

## Current Methods Available to the Commission to Screen Applicants

The Real Estate Commission asks applicants for new licenses to disclose any history of criminal convictions. The question on the application is as follows:

*Have you ever been convicted of any criminal offense or is there any criminal charge now pending against you or any member or officer of your partnership, association, or corporation? (If yes, contact the Commission prior to submitting your application.)*

---

After admitting to a criminal conviction, applicants must submit another form to the Commission. The Commission requires the following five items:

1. *A letter from the broker you wish to be employed by stating that he/she is aware of the incident(s) resulting in your conviction(s).*
2. *You must obtain a “Records Check” from the West Virginia Department of Public Safety. Enclosed are the necessary forms to have this performed.*
3. *A copy of the original charge(s) filed against you and the judgement order of the court, including your sentencing information, for each offense.*
4. *A copy of the correspondence releasing you from probation/parole if applicable.*
5. *You may supply letters of recommendation from individuals of your choosing.*

---

*Applicants admitting to a criminal conviction on the application for a real estate license must obtain a records check from the West Virginia Division of Public Safety (State Police).*

---

---

*Adding \$36 to \$42 to each new real estate license or license renewal fee would not represent an unreasonable increase, certainly when compared to the fees charged by other states and the benefits of criminal background checks.*

---

In the case of an applicant who is dishonest regarding his/her criminal past, the only source of information currently available to the Commission is other licensees and their personal knowledge of the applicant. Applicants admitting to a criminal conviction on the application for a real estate license must obtain a records check from the West Virginia Division of Public Safety (State Police). This situation is the only one in which a person would currently need to undergo a criminal background check to secure a real estate license in West Virginia. A licensee who is new to an area, who knows no other licensees, could conceal his/her past.

### **The Real Estate Commission Cannot Utilize the State Police or FBI in Order to Conduct Criminal Background Checks, Which Would Minimally Increase License Fees**

A criminal background check through the State Police database costs \$20. The fees for a Federal Bureau of Investigation (FBI) criminal background check range from \$16 to \$22. The Commission’s licensing fees are low compared to other states (see Appendix C). Currently, the Commission charges \$50 for a new salesperson applicant’s license fee. Of the states for which the Legislative Auditor’s staff had data, only North Carolina and Ohio have lower fees. A salesperson’s exam fee is \$25 in West Virginia, which is the second



---

lowest fee of this type. Adding \$36 to \$42 to each new real estate license or license renewal fee would not represent an unreasonable increase, certainly when compared to the fees charged by other states and the benefits of criminal background checks. The FBI criminal background check uses nationwide data and records, while the West Virginia State Police version utilizes records collected in West Virginia only. The FBI criminal background check provides nationwide data regarding felony and occupation-related convictions. The State Police criminal background check shows all violations of the law in West Virginia. The FBI check yields results within 24 hours with 99% accuracy. The average response time for this procedure is 2 hours. The State Police background check takes approximately 10 to 14 days to complete. The Legislative Auditor recommends both the State Police and the FBI criminal background checks for applicants for new licenses and existing licensees upon license renewal. This background check would occur one time only.

---

*Public Law 92-544 asserts that no state may access the FBI's criminal history database in the absence of an enabling statute.*

---

Examination of the Commission's complaint files demonstrates that some licensees have displayed unprofessional conduct and the potential for more serious offenses exists. The number of licensees who travel from other states to West Virginia and file false applications is unknown. To ensure public safety in the future, the Commission should conduct criminal background checks for its new applicants and its current licensees, upon renewal, in order to protect members of the public. Public Law 92-544 asserts that no state may access the FBI's criminal history database in the absence of an enabling statute. **Because of the potential for individuals to provide false information on license applications, the Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Real Estate Commission to conduct criminal background checks, through the Federal Bureau of Investigation, on all applicants for new real estate licenses and existing licenses at the time of license renewal.**

---

*The staff of the Legislative Auditor's Office identified licensing agencies in 30 states that conduct background checks on real estate license applicants (Appendix D), either through the state police, the FBI or ARELLO's database of disciplinary actions taken by real estate licensing agencies in each state.*

---

### **Thirty States Perform Background Checks of Licensees Either Through the State Police, FBI, ARELLO, or a Combination of More Than One**

The staff of the Legislative Auditor's Office identified licensing agencies in 30 states that conduct background checks on real estate license applicants (Appendix D), either through the state police, the FBI or ARELLO's database of disciplinary actions taken by real estate licensing agencies in each state. This approach was intended to reduce the chance of future real estate-related crimes. Ten states passed statutes authorizing the use of fingerprint identification as a means of conducting criminal background checks, utilizing the FBI database, as specified in U. S. Public Law 92-544. Table 6



provides data on the use of background checks by real estate licensing agencies nationwide. Of the states performing criminal background checks of applicants, 4 states perform the FBI criminal background check only. Three (3) states utilize the state police background check only. Twelve (12) other states and the District of Columbia conduct a background check of nationwide disciplinary action data collected by ARELLO only. Eleven states use two or more criminal history checks. The Commission does submit disciplinary data to ARELLO, but does not conduct checks of its licensees through the database.

State Police Only	FBI Only	ARELLO Only	Two or More Background Checks	Total Number
3	4	12	11	30
<i>Source: Association of Real Estate Law License Officials (ARELLO), Montgomery, Alabama.</i>				

---

*The Commission does submit disciplinary data to ARELLO, but does not conduct checks of its licensees through the database.*

---

Public Law 92-544 declares that in order for states to access FBI criminal history information, the state must have legislation in place authorizing criminal background checks through the FBI. To comply with Public Law 92-544, state statutes must satisfy the following criteria:

1. *A state statute must exist as a result of a legislative enactment;*
2. *The state statute must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;*
3. *The state statute must expressly (“submit to the FBI”) or by implication (“submit for a national check”), authorize the use of FBI records for the screening of applicants;*
4. *The state statute must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth;*
5. *The state statute must not be against public policy;*
6. *The state statute may not authorize receipt of criminal history information by a private entity.*

The Real Estate Commission could begin contacting ARELLO in order to determine if a license applicant has been the subject of disciplinary

---

actions in other states. The Commission could do this even in the absence of legislation permitting criminal background checks using fingerprints. The ARELLO charges licensing agencies \$0.50 cents per search or a flat rate per year, for nationwide disciplinary data. The flat annual rate is based on the number of licensees and would amount to \$750 for 5,001 to 10,000 licensees. The Commission could consider doing this, although it would require another amendment of its legislative rules in order to pass on the cost to licensees through an additional fee or an increase to an existing fee.

---

*Currently, the West Virginia Code does not allow the Real Estate Commission to use fingerprinting as a means of conducting criminal background through the FBI.*

---

## Conclusion

Thirty states perform background checks of their licensees through the state police, FBI, or the ARELLO disciplinary database. Currently, the West Virginia Code does not allow the Real Estate Commission to use fingerprinting as a means of conducting criminal background through the FBI. Public Law 92-544 declares that a statute must authorize criminal background checks in order to utilize the FBI for the retrieval of criminal background data from fingerprint records. Currently, 10 states have passed legislation that permits criminal background checks using fingerprint identification, through the FBI. According to the West Virginia Real Estate Commission, a “records check” must be obtained from the West Virginia Division of Public Safety only after an applicant has admitted to a criminal conviction on his/her application for a license. Failing to use the State Police, FBI, or ARELLO for the purpose of conducting background checks may permit dishonest licensees to practice in the state. The Legislative Auditor recommends that the Legislature should consider amending the West Virginia Code to enable the Real Estate Commission to use fingerprint identification as a means of conducting background checks through the FBI’s database. The Legislative Auditor also recommends the Commission should perform criminal history checks of licensees through the State Police.

---

*The Legislative Auditor recommends that the Legislature should consider amending the West Virginia Code to enable the Real Estate Commission to use fingerprint identification as a means of conducting background checks through the FBI’s database.*

---

ARELLO’s database maintains disciplinary data from all reporting states. Twelve (12) states and the District of Columbia conduct a background check of nationwide disciplinary data through ARELLO’s database only. The Commission reports disciplinary data to ARELLO, but does not conduct background checks of licensees through ARELLO. By accessing this database, the Commission could determine if a license applicant has a history of disciplinary actions in other states. The Commission could do this even in the absence of statutory authority to conduct criminal background checks. The Legislative Auditor recommends that the Commission consider conducting searches of the ARELLO disciplinary database as a means to screen license applicants and existing licensees.

---

## Recommendations

5. *The Legislative Auditor recommends that the Legislature consider amending the West Virginia Code to enable the Real Estate Commission to conduct criminal background checks, through the Federal Bureau of Investigation on all applicants for new real estate licenses and existing licensees at the time of license renewal.*
  
6. *The Legislative Auditor recommends that the Commission should perform criminal background checks through the State Police on all applicants for new real estate licenses and existing licensees at the time of license renewal.*
  
7. *The Real Estate Commission should consider conducting searches of nationwide disciplinary data maintained by the Association of Real Estate License Law Officials as a means to screen license applicants and existing licensees.*



# Issue 4

---

## **A Recent License Fee Increase Approved By the Legislature Has Assisted the Commission's Financial Self-Sufficiency.**

### **Issue Summary**

---

*Over the last five fiscal years, the number of licensees decreased only by 81, compared to the prior five-year span when the Commission lost 834 licensees.*

---

The declining revenues noted in the 2000 Preliminary Performance Review of the Commission were offset by a recent fee schedule increase. The steady decline in the number of licensees from the previous report has ended. Over the last five fiscal years, the number of licensees decreased only by 81, compared to the prior five-year span when the Commission lost 834 licensees. As a result of the fee increase and a stable number of licensees, the Commission's account balance stands at nearly \$800,000.

### **The Commission's Schedule of Fees Increased During 2003**

Recommendation 1 of PERD's 2000 report stated:

*The Commission should take measures to limit the growth of future expenditure levels in response to falling revenues.*

---

*As a result of the fee increase and a stable number of licensees, the Commission's account balance stands at nearly \$800,000.*

---

The Commission amended CSR §174-2-2 in 2003 to permit a fee schedule increase. On November 1, 2003, the Real Estate Commission's new fee schedule went into effect. Table 7 lists the fee schedule as amended in 2003, along with the old schedule.

<b>Fee Type</b>	<b>Old Fees</b>	<b>New Fees</b>
Broker/Associate broker License	80	100
Salesperson License	40	50
Broker/Associate Broker License Renewal	80	100
Salesperson License Renewal	40	50
Investigation Fee	10	25
Reexamination Fee	0	25
Branch Office License	80	100
Branch Office License Renewal	80	100

*Source: Real Estate Commission Legislative Rules CSR §174-3-2 and West Virginia Code §47-12-9 (current as of 2001).*

**The Commission’s Account Balance Has Remained High and the Number of Licensees Has Stabilized, Although Expenditures Are Normally A Little Higher Than Total Revenues**

*This represented a one percent decrease over the last five years versus an almost nine percent decrease during the previous five year period.*

The rate of decline in the number of licensees since the time of the 2000 Preliminary Performance Review of the Real Estate Commission has slowed. From FY 1995 to FY 1999, the number of licensees decreased by 834, to a total of 8,533 in FY 1999, as mentioned in the last report. During the 5-year span from FY 2000 through FY 2004, a loss of only 81 licensees occurred. The FY 2000 total number of licensees was 8,387 (see Table 8). The number of licensees in FY 2004 was 8,306. This represented a one percent decrease over the last five years versus an almost nine percent decrease during the previous five year period. While the total number of licensees has fallen by over 1,000 since 1995, the recent fee increase has largely offset this.

The fee increase provided additional revenue, as did the stabilization in the number of licensees. The last report stated that the Commission’s FY 1999 revenues totaled \$435,225. Total revenues are currently around \$500,000. The Commission’s account balance with the Treasurer’s Office at the time of this report was \$788,509. This represents a decline from the nearly \$955,000 it had in its account at the end of calendar year 1999, but is still an adequate

reserve in case of budgetary needs. The average revenue minus disbursements for the past five years was -\$37,181. While the Commission's expenditures have slightly outpaced revenues, it maintains an adequate reserve in its account.

<b>Fiscal Year</b>	<b>Number of Licensees</b>	<b>Total Revenues</b>	<b>Total Disbursements</b>	<b>Revenues Minus Disbursements</b>
<b>2000</b>	8,387	\$427,735	\$432,940	(\$5,205)
<b>2001</b>	8,157	\$414,055	\$433,855	(\$19,800)
<b>2002</b>	8,040	\$411,087	\$439,442	(\$28,275)
<b>2003</b>	8,110	\$420,360	\$507,147	(\$86,787)
<b>2004</b>	8,306	\$448,285	\$494,123	(\$45,838)

*Source: Real Estate Commission Annual Reports.*

### **Conclusion**

*The Commission's overall financial standing should not be of concern for the near future, as their account balance is nearly \$800,000*

The decline in the number of licensees that occurred from FY 1995 to FY1999 has slowed. From FY 1995 to FY1999, the number of licensees declined 8.9 percent. Over the last five years, the number of licensees declined by only one percent (1%). The Legislature amended CSR §174-2-2 in 2003 to permit a fee schedule increase. The Real Estate Commission's self sufficiency was greatly aided by this, coupled with the stabilization in the number of licensees. The Commission's overall financial standing should not be of concern for the near future, as their account balance is nearly \$800,000.





# Appendix A: Transmittal Letter

---

## WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610  
(304) 347-4890  
(304) 347-4939 FAX



John Sylvia  
Director

May 26, 2005

Real Estate Commission  
300 Capitol Street, Suite 400  
Charleston, WV 25301

Dear Executive Director Strader:

This is to transmit a draft copy of the Preliminary Performance Review of the Real Estate Commission. This report is scheduled to be presented during the June 12, 2005 interim meeting of the Joint Committee on Government Operations. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting on June 1, 2005. Please notify us to schedule an exact time. In addition, we need your written response by noon on June 6, 2005 in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, June 9, 2005 to make arrangements.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.  
John Sylvia

Enclosure

\_\_\_\_\_ *Joint Committee on Government and Finance* \_\_\_\_\_



## Appendix B: Complaints Data from Each State: FY 2000 to 2004

Complaints Per 1,000 Licensees						
Fiscal Year 2000	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Alabama	25,384	5,022	4,400	60	1.2%	197.8
Idaho	6,584	278	67	136	48.9%	42.2
New Jersey	81,225	2,992	1,412	580	19.4%	36.8
Vermont	2,016	66	49	14	21.2%	32.7
Florida	150,685	4,918	2,963	454	9.2%	32.6
Georgia	63,292	1,846	551	158	8.6%	29.2
Texas	113,257	3,200	470	195	6.1%	28.3
Oregon	18,984	437	86	89	20.4%	23.0
Colorado	38,411	870	843	195	22.4%	22.7
Alaska	1,885	41	37	8	19.5%	21.8
Wyoming	2,906	61	21	5	8.2%	21.0
Michigan	61,335	1,072	66	N/A	N/A	17.5
Arkansas	11,548	195	158	16	8.2%	16.9
Washington	48,801	775	601	70	9.0%	15.9
Virginia	52,236	821	488	269	32.8%	15.7
Utah	16,330	248	22	102	41.1%	15.2
Mississippi	11,704	169	67	76	45.0%	14.4

Fiscal Year 2000	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Illinois	86,865	1,099	N/A	N/A	N/A	12.7
California	307,051	3,859	2,931	944	24.5%	12.6
Maryland	30,245	375	N/A	N/A	N/A	12.4
South Carolina	31,722	387	299	56	14.5%	12.2
Maine	7,845	96	42	30	31.3%	12.2
Iowa	13,920	161	97	17	10.6%	11.6
Delaware	4,254	43	10	2	4.7%	10.1
North Carolina	83,267	827	855	97	11.7%	9.9
Arizona	51,029	501	200	200	39.9%	9.8
New Mexico	9,570	81	37	29	35.8%	8.5
Hawaii	14,500	116	28	4	3.4%	8.0
Nebraska	6,992	54	36	12	22.2%	7.7
Tennessee	28,729	212	132	88	41.5%	7.4
South Dakota	3,681	27	13	8	29.6%	7.3
Nevada	17,919	113	70	23	20.4%	6.3
Rhode Island	5,034	31	10	3	9.7%	6.2
Louisiana	19,531	120	112	8	6.7%	6.1
Missouri	38,576	232	128	0	0.0%	6.0

Fiscal Year 2000	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Massachusetts	76,881	364	321	16	4.4%	4.7
Kentucky	25,128	117	37	15	12.8%	4.7
Wisconsin	33,569	126	49	27	21.4%	3.8
North Dakota	1,880	7	5	2	28.6%	3.7
Oklahoma	21,500	73	N/A	N/A	N/A	3.4
West Virginia	8,387	21	13	4	19.0%	2.5
Pennsylvania	227,133	508	N/A	51	10.0%	2.2
Kansas	12,916	N/A	N/A	N/A	N/A	N/A
Connecticut	18,488	N/A	N/A	N/A	N/A	N/A
Minnesota	23,500	N/A	N/A	N/A	N/A	N/A
Montana	4,568	N/A	N/A	N/A	N/A	N/A
New Hampshire	12,142	N/A	13	0	N/A	N/A
New York	102,435	N/A	N/A	N/A	N/A	N/A
Ohio	40,999	N/A	N/A	N/A	N/A	N/A
Indiana	37,412	N/A	N/A	N/A	N/A	N/A
<b>Average Number of Complaints Per 1,000 Licensees In Each State</b>						<b>18.5</b>

Source: Association of Real Estate License Law Officials (ARELLO) Digest

Complaints Per 1,000 Licensees							
Fiscal Year 2001	Licensees	Complaints Received	Number Dismissed	Results In Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees	
Alabama	27,465	901	4	51	5.7%	32.8	
Vermont	2,172	66	49	24	36.4%	30.4	
Florida	157,391	4,658	2,681	1,977	42.4%	29.6	
Idaho	6,721	181	45	100	55.2%	26.9	
Georgia	64,652	1,707	599	209	12.2%	26.4	
Texas	115,139	3,035	365	154	5.1%	26.4	
New Jersey	78,314	1,963	1,178	786	40.0%	25.1	
Hawaii	13,577	329	55	18	5.5%	24.2	
Oregon	18,882	417	241	179	42.9%	22.1	
Colorado	38,320	750	733	176	23.5%	19.6	
Wyoming	2,963	57	28	12	21.1%	19.2	
Michigan	61,266	1,145	N/A	N/A	N/A	18.7	
Washington	40,864	722	551	33	4.6%	17.7	
Utah	16,740	248	22	102	41.1%	14.8	
Nevada	18,426	269	101	54	20.1%	14.6	
Arkansas	11,401	144	85	14	9.7%	12.6	
Illinois	74,370	911	N/A	N/A	N/A	12.3	

Fiscal Year 2001	Licenses	Complaints Received	Number Dismissed	Results In Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Maine	7,674	87	45	32	36.8%	11.3
California	311,990	3,400	2,268	883	26.0%	10.9
Delaware	4,130	45	32	3	6.7%	10.9
North Carolina	78,851	845	771	74	8.8%	10.7
New Mexico	9,411	100	45	17	17.0%	10.6
Maryland	31,476	328	148	21	6.4%	10.4
South Carolina	32,600	309	244	31	10.0%	9.5
South Dakota	3,705	31	10	10	32.3%	8.4
Nebraska	7,451	52	36	0	0.0%	7.0
Arizona	52,357	354	N/A	N/A	N/A	6.8
Louisiana	19,277	127	70	7	5.5%	6.6
Iowa	13,537	85	56	10	11.8%	6.3
Connecticut	18,495	103	13	0	0.0%	5.6
Tennessee	37,608	207	131	5	2.4%	5.5
Missouri	45,226	235	108	36	15.3%	5.2
Wisconsin	25,030	117	N/A	48+	41.0%	4.7
Kansas	13,585	59	52	12	20.3%	4.3
Rhode Island	5,651	23	10	N/A	N/A	4.1
Kentucky	24,716	99	28	35	35.4%	4.0

Fiscal Year 2001	Licenses	Complaints Received	Number Dismissed	Results In Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Oklahoma	21,195	78	50	N/A	N/A	3.7
New Hampshire	11,841	34	18	0	0.0%	2.9
West Virginia	7,561	20	11	5	25.0%	2.6
Pennsylvania	230,511	569	170	154	27.1%	2.5
North Dakota	1,838	0	8	3	0.0%	0.0
Minnesota	23,500	N/A	N/A	N/A	N/A	N/A
Indiana	226,553	N/A	N/A	N/A	N/A	N/A
Mississippi	11,704	N/A	N/A	N/A	N/A	N/A
Montana	5,516	N/A	N/A	N/A	N/A	N/A
New York	102,435	N/A	N/A	N/A	N/A	N/A
Ohio	40,999	N/A	N/A	N/A	N/A	N/A
Alaska	1,885	N/A	N/A	N/A	N/A	N/A
Massachusetts	72,607	N/A	N/A	N/A	N/A	N/A
Virginia	52,839	N/A	553	43	N/A	N/A
<b>Average Number of Complaints Per 1,000 Licensees In Each State</b>						<b>12.9</b>

Source: Association of Real Estate License Law Officials (ARELLO) Digest



Complaints Per 1,000 Licensees							
Fiscal Year 2002	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees	
Alabama	25,000	4,669	3	46	1.0%	186.8	
Montana	4,727	198	N/A	114	57.6%	41.9	
Idaho	7,074	250	89	171	68.4%	35.3	
Texas	121,060	3,129	1,200	180	5.8%	25.8	
New Jersey	84,148	2,116	1,786	307	14.5%	25.1	
Oregon	19,830	480	113	125	26.0%	24.2	
Georgia	67,522	1,630	440	225	13.8%	24.1	
Vermont	2,012	44	47	16	36.4%	21.9	
Nevada	20,519	420	106	23	5.5%	20.5	
Alaska	2,021	37	1	10	27.0%	18.3	
Colorado	39,621	721	648	122	16.9%	18.2	
Florida	244,037	4,246	2,374	N/A	N/A	17.4	
Hawaii	15,175	259	265	24	9.3%	17.1	
Illinois	76,049	1,286	218	38	3.0%	16.9	
Washington	41,609	681	358	35	5.1%	16.4	
Michigan	64,230	1,011	N/A	77	7.6%	15.7	
California	327,712	5,095	2,842	1,406	27.6%	15.5	

Fiscal Year 2002	Licenses	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Mississippi	11,393	171	35	52	30.4%	15.0
Missouri	42,868	565	368	36	6.4%	13.2
Wyoming	2,997	37	15	8	21.6%	12.3
Arizona	58,334	713	N/A	39	5.5%	12.2
Connecticut	17,296	207	N/A	N/A	N/A	12.0
Maine	7,548	90	43	36	40.0%	11.9
Arkansas	11,322	122	70	13	10.7%	10.8
Maryland	33,683	351	141	26	7.4%	10.4
North Carolina	84,790	853	768	85	10.0%	10.1
Delaware	4,425	43	27	0	0.0%	9.7
South Carolina	31,733	292	244	45	15.4%	9.2
Utah	25,754	237	200	94	39.7%	9.2
Louisiana	19,191	145	95	22	15.2%	7.6
New Mexico	9,221	67	23	32	47.8%	7.3
Iowa	13,537	98	N/A	N/A	N/A	7.2
South Dakota	3,463	24	17	11	45.8%	6.9
Kansas	12,684	84	59	25	29.8%	6.6
Nebraska	6,925	43	31	10	23.3%	6.2
Massachusetts	61,579	321	N/A	44	13.7%	5.2

Fiscal Year 2002	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Oklahoma	20,524	107	58	N/A	N/A	5.2
Kentucky	24,462	124	32	16	12.9%	5.1
Tennessee	41,185	196	100	8	4.1%	4.8
Rhode Island	5,339	25	N/A	N/A	N/A	4.7
North Dakota	1,984	8	3	0	0.0%	4.0
Ohio	43,992	145	73	60	41.4%	3.3
Pennsylvania	238,503	498	500+	424+	85.1%	2.1
West Virginia	8,157	17	17	5	29.4%	2.1
Virginia	53,555	N/A	490	60	N/A	N/A
New York	110,290	N/A	N/A	N/A	N/A	N/A
Minnesota	23,500	N/A	N/A	N/A	N/A	N/A
Indiana	30,000	N/A	N/A	N/A	N/A	N/A
New Hampshire	10,219	N/A	N/A	N/A	N/A	N/A
Wisconsin	27,505	N/A	N/A	N/A	N/A	N/A
<b>Average Number of Complaints Per 1,000 Licensees In Each State</b>						<b>17.2</b>

Source: Association of Real Estate License Law Officials (ARELLO) Digest

Complaints Per 1,000 Licensees							
Fiscal Year 2003	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees	
Alabama	29,759	4,622	4	67	1.5%	155.3	
Idaho	7,463	339	66	268	79.1%	45.4	
Georgia	73,022	2,515	1,499	272	10.8%	34.4	
Texas	121,662	3,602	377	215	6.0%	29.6	
Vermont	2,251	55	43	11	20.0%	24.4	
New Jersey	88,403	1,840	1,471	268	14.6%	20.8	
Michigan	67,852	1,320	N/A	57	4.3%	19.5	
Florida	273,578	5,258	3,729	429	8.2%	19.2	
California	360,477	6,345	3,440	1,037	16.3%	17.6	
Washington	44,200	716	370	58	8.1%	16.2	
Maine	8,254	130	57	58	44.6%	15.8	
New Mexico	9,824	155	92	63	40.6%	15.8	
Oregon	22,652	312	N/A	138	44.2%	13.8	
Delaware	4,600	63	11	N/A	0.0%	13.7	
Wyoming	3,159	42	32	5	11.9%	13.3	
Ohio	45,099	574	182	97	16.9%	12.7	
Mississippi	11,679	139	35	29	20.9%	11.9	

Fiscal Year 2003	Licenses	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
South Dakota	3,576	40	20	10	25.0%	11.2
North Carolina	86,123	925	795	95	10.3%	10.7
Maryland	33,683	351	141	26	7.4%	10.4
Arkansas	11,850	120	92	14	11.7%	10.1
Arizona	57,839	554	N/A	200	36.1%	9.6
Tennessee	40,500	384	73	5	1.3%	9.5
Nebraska	7,184	66	46	11	16.7%	9.2
Louisiana	19,488	173	140	19	11.0%	8.9
South Carolina	34,143	300	233	3	1.0%	8.8
Kansas	14,000	114	58	35	30.7%	8.1
North Dakota	2,006	15	9	0	0.0%	7.5
Missouri	44,620	295	115	57	19.3%	6.6
Oklahoma	20,290	118	56	N/A	N/A	5.8
Massachusetts	61,579	321	N/A	44	13.7%	5.2
Kentucky	24,462	124	32	16	12.9%	5.1
Illinois	79,985	398	262	15	3.8%	5.0
Hawaii	14,801	66	38	36	54.5%	4.5
Pennsylvania	245,768	515	242	N/A	N/A	2.1
New Hampshire	11,811	22	26	0	0.0%	1.9

Fiscal Year 2003	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
West Virginia	8,000	15	10	4	26.7%	1.9
Connecticut	21,701	N/A	N/A	N/A	N/A	N/A
Colorado	39,621	N/A	N/A	N/A	N/A	N/A
Indiana	29,999	N/A	N/A	N/A	N/A	N/A
Iowa	13,537	N/A	N/A	N/A	N/A	N/A
Minnesota	26,012	N/A	N/A	N/A	N/A	N/A
Montana	4,727	N/A	N/A	N/A	N/A	N/A
Nevada	22,141	N/A	N/A	N/A	N/A	N/A
New York	120,649	N/A	N/A	N/A	N/A	N/A
Alaska	2,275	N/A	N/A	N/A	N/A	N/A
Rhode Island	5,339	N/A	N/A	N/A	N/A	N/A
Utah	16,223	N/A	N/A	N/A	N/A	N/A
Virginia	56,035	N/A	N/A	N/A	N/A	N/A
Wisconsin	27,505	N/A	N/A	N/A	N/A	N/A
<b>Average Number of Complaints Per 1,000 Licensees In Each State</b>						<b>16.8</b>

Source: Association of Real Estate License Law Officials (ARELLO) Digest

Complaints Per 1,000 Licensees							
Fiscal Year 2004	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees	
Idaho	8,110	474	64	371	78.3%	58.4	
Texas	132,039	4,331	554	270	6.2%	32.8	
Georgia	78,550	2,507	1,695	273	10.9%	31.9	
Florida	275,154	6,627	2,461	328	4.9%	24.1	
Vermont	2,629	56	29	13	23.2%	21.3	
Nevada	25,626	491	248	84	17.1%	19.2	
Maine	8,439	151	100	61	40.4%	17.9	
New Jersey	92,769	1,617	1,076	1,063	65.7%	17.4	
Colorado	42,212	677	507	61	9.0%	16.0	
Virginia	56,462	898	684	50	5.6%	15.9	
California	402,184	6,206	4,540	1,778	28.7%	15.4	
Michigan	68,372	928	N/A	77	8.3%	13.6	
Arizona	73,716	989	N/A	N/A	N/A	13.4	
Oregon	23,909	316	114	118	37.3%	13.2	
North Carolina	89,043	1,144	961	126	11.0%	12.8	
Alabama	28,840	327	300	37	11.3%	11.3	
Arkansas	12,540	135	123	N/A	N/A	10.8	

Fiscal Year 2004	Licensees	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
Mississippi	11,984	129	30	37	28.7%	10.8
Illinois	80,031	843	467	247	29.3%	10.5
Delaware	5,143	54	34	8	14.8%	10.5
Wyoming	3,317	32	23	5	15.6%	9.6
Nebraska	7,426	71	55	18	25.4%	9.6
South Carolina	37,085	310	196	33	10.6%	8.4
South Dakota	3,395	28	18	13	46.4%	8.2
Washington	51,531	420	314	43	10.2%	8.2
Louisiana	20,030	162	130	11	6.8%	8.1
Kentucky	25,169	196	77	101	51.5%	7.8
Iowa	16,611	127	73	19	15.0%	7.6
Kansas	15,500	116	55	27	23.3%	7.5
New Mexico	9,967	73	N/A	17	23.3%	7.3
Connecticut	22,365	150	N/A	N/A	N/A	6.7
Oklahoma	20,217	110	68	N/A	N/A	5.4
Pennsylvania	249,109	1,000	450	N/A	N/A	4.0
Hawaii	17,302	67	30	2	3.0%	3.9
Tennessee	40,000	147	57	17	11.6%	3.7



Fiscal Year 2004	Licenses	Complaints Received	Number Dismissed	Results in Disciplinary Action	Percentage of Actions/ Total Complaints	Complaints Per 1000 Licensees
New Hampshire	11,807	41	6	N/A	N/A	3.5
North Dakota	1,954	6	3	1	16.7%	3.1
West Virginia	8,306	19	16	3	15.8%	2.3
Ohio	45,099	97	112	74	76.3%	2.2
New York	131,764	80	N/A	N/A	N/A	0.6
Minnesota	26,012	N/A	N/A	N/A	N/A	N/A
Montana	5,552	N/A	N/A	N/A	N/A	N/A
Missouri	44,620	N/A	N/A	N/A	N/A	N/A
Alaska	2,275	N/A	N/A	N/A	N/A	N/A
Indiana	30,001	N/A	N/A	N/A	N/A	N/A
Maryland	33,683	N/A	N/A	N/A	N/A	N/A
Massachusetts	59,043	N/A	N/A	N/A	N/A	N/A
Rhode Island	5,339	N/A	N/A	N/A	N/A	N/A
Utah	20,177	N/A	N/A	N/A	N/A	N/A
Wisconsin	23,326	N/A	N/A	N/A	N/A	N/A
<b>Average Number of Complaints Per 1,000 Licensees In Each State</b>						<b>12.4</b>

Source: Association of Real Estate License Law Officials (ARELLO) Digest



## Appendix C: ARELLO Data on License and Exam Fees

Initial License, Renewal, and Exam Fees For Each State									
	Original License		Renewal		Exam				
	Broker	Salesperson	Broker	Salesperson	Broker		Salesperson		
					1 <sup>st</sup>	2 <sup>nd</sup>	1 <sup>st</sup>	2 <sup>nd</sup>	
Connecticut	\$450.00	\$225.00	\$300.00	\$225.00	\$65.00	\$65.00	\$65.00	\$65.00	\$65.00
Texas	\$300.00	\$69.50	\$507.00	\$98.00	\$59.00	\$59.00	\$59.00	\$59.00	\$59.00
District of Columbia	\$295.00	\$295.00	\$170.00	\$130.00	\$61.00	\$61.00	\$61.00	\$61.00	\$61.00
New Jersey	\$288.00	\$178.00	\$200.00	\$100.00	\$60.00	\$60.00	\$60.00	\$60.00	\$60.00
Hawaii	\$255.00	\$255.00	\$180.00	\$180.00	\$68.00	\$68.00	\$68.00	\$68.00	\$68.00
New Mexico	\$240.00	\$240.00	\$240.00	\$240.00	\$95.00	\$95.00	\$95.00	\$95.00	\$95.00
Oregon	\$230.00	N/A	\$230.00	N/A	\$75.00	\$75.00	N/A	N/A	N/A
South Dakota	\$225.00	\$225.00	\$125.00	\$125.00	\$130.00	\$130.00	N/A	N/A	N/A
Oklahoma	\$225.00	\$165.00	\$225.00	\$165.00	\$75.00	\$75.00	\$60.00	\$60.00	\$60.00
Washington	\$210.00	\$146.25	\$210.00	\$146.25	\$138.25	\$138.25	\$138.25	\$138.25	\$138.25
Montana	\$200.00	\$175.00	\$200.00	\$175.00	\$105.00	\$105.00	\$105.00	\$105.00	\$105.00
Colorado	\$190.00	N/A	\$134.00	N/A	\$74.00	\$74.00	N/A	N/A	N/A
Virginia	\$190.00	\$150.00	\$80.00	\$65.00	\$60.50	\$60.50	\$60.50	\$60.50	\$60.50
Idaho	\$180.00	\$180.00	\$180.00	\$180.00	\$60.00	\$60.00	\$60.00	\$60.00	\$60.00
Massachusetts	\$172.00	\$120.00	\$127.00	\$93.00	\$125.00	\$107.00	\$65.00	\$65.00	\$65.00
Georgia	\$170.00	\$170.00	\$125.00	\$125.00	\$91.00	\$91.00	\$91.00	\$91.00	\$91.00

**Initial License, Renewal, and Exam Fees For Each State**

	Original License			Renewal			Exam		
	Broker	Salesperson	Salesperson	Broker	Salesperson	Broker		Salesperson	
						1 <sup>st</sup>	2 <sup>nd</sup>		
Iowa	\$170.00	\$125.00	\$125.00	\$170.00	\$125.00	\$92.00	\$92.00	\$92.00	\$92.00
Louisiana	\$165.00	\$90.00	\$90.00	\$90.00	\$55.00	N/A	N/A	N/A	N/A
California	\$165.00	\$120.00	\$120.00	\$165.00	\$120.00	\$50.00	\$50.00	\$25.00	\$25.00
Florida	\$162.00	\$152.00	\$152.00	\$72.50	\$65.00	N/A	N/A	N/A	N/A
Mississippi	\$150.00	\$120.00	\$120.00	\$150.00	\$120.00	\$150.00	\$120.00	N/A	N/A
Alabama	\$150.00	\$170.00	\$170.00	\$195.00	\$175.00	\$67.00	\$67.00	\$67.00	\$67.00
Michigan	\$143.00	\$88.00	\$88.00	\$108.00	\$78.00	\$46.00	\$46.00	\$46.00	\$46.00
Arizona	\$125.00	\$60.00	\$60.00	\$125.00	\$60.00	\$115.00	\$115.00	\$90.00	\$90.00
Illinois	\$125.00	\$125.00	\$125.00	\$150.00	\$100.00	\$45.00	\$45.00	\$45.00	\$45.00
Rhode Island	\$120.00	\$80.00	\$80.00	\$120.00	\$80.00	\$70.00	\$70.00	\$70.00	\$70.00
North Dakota	\$120.00	\$100.00	\$100.00	\$120.00	\$100.00	\$130.00	\$130.00	\$130.00	\$130.00
Utah	\$118.00	\$151.00	\$151.00	\$70.00	\$64.00	\$68.00	\$68.00	\$68.00	\$68.00
Maryland	\$115.00	\$65.00	\$65.00	\$95.00	\$45.00	\$60.00	\$60.00	\$60.00	\$60.00
Delaware	\$113.00	\$58.00	\$58.00	\$113.00	\$58.00	\$85.00	\$85.00	\$85.00	\$85.00
Nevada	\$105.00	\$85.00	\$85.00	\$180.00	\$140.00	\$100.00	\$100.00	\$100.00	\$100.00
West Virginia	\$100.00	\$50.00	\$50.00	\$100.00	\$50.00	\$25.00	\$25.00	\$25.00	\$25.00
Tennessee	\$100.00	\$100.00	\$100.00	\$80.00	\$80.00	\$55.00	\$55.00	\$55.00	\$55.00

**Initial License, Renewal, and Exam Fees For Each State**

	Original License			Renewal		Exam		
	Broker	Salesperson	Broker	Salesperson	Broker		Salesperson	
					1 <sup>st</sup>	2 <sup>nd</sup>		
Maine	\$100.00	\$100.00	\$100.00	N/A	\$85.00	\$85.00	\$85.00	\$85.00
New Hampshire	\$90.00	\$70.00	\$90.00	\$70.00	\$100.00	\$100.00	\$100.00	\$100.00
Nebraska	\$90.00	\$65.00	\$90.00	\$65.00	\$115.00	\$115.00	\$115.00	\$115.00
Pennsylvania	\$89.00	\$99.00	\$84.00	\$64.00	\$45.00	\$45.00	\$45.00	\$45.00
Wyoming	\$75.00	\$75.00	\$170.00	\$170.00	\$95.00	\$95.00	\$95.00	\$95.00
Arkansas	\$70.00	\$50.00	\$70.00	\$50.00	\$75.00	\$75.00	\$75.00	\$75.00
Kentucky	\$55.00	\$55.00	\$55.00	\$50.00	\$75.00	\$75.00	\$75.00	\$75.00
Vermont	\$50.00	\$50.00	\$175.00	\$175.00	\$55.00	\$55.00	\$55.00	\$55.00
Ohio	\$49.00	\$39.00	\$49.00	\$39.00	\$69.00	\$69.00	\$49.00	\$49.00
North Carolina	\$30.00	\$30.00	\$40.00	\$40.00	\$66.00	\$66.00	\$66.00	\$66.00
Alaska	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Indiana	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Kansas	N/A	N/A	\$150.00	\$100.00	\$75.00	\$75.00	\$75.00	\$75.00
Minnesota	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
New York	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
South Carolina	N/A	\$50.00	N/A	\$60.00	\$63.00	\$63.00	\$63.00	\$63.00

Source: Association of Real Estate License Law Officials (ARELLO) Digest



# Appendix D: Data on Background Checks Performed in Each State

Types of Fingerprinting and Criminal History Check Performed By States																
	L.P.	TYPE OF FINGERPRINTING REQUIRED						TYPE OF CRIMINAL HISTORY REQUIRED						D.B		
		None	State	Regional	FBI	Royal Canadian Mounted Police	Other	None	State	Regional	FBI	Royal Canadian Mounted Police	Other			
Alabama	N	X						X								Y
Arizona	N				X				X							N
Arkansas	N	X						X								Y
California	Y		X		X			X			X					N
Colorado	N		X		X								X			Y
Connecticut	N	X								X						N
Delaware	N	X											X			Y
District of Columbia	N	X								X						Y
Florida	N										X					
Georgia	N				X						X					Y
Guam	Y	X						X								N
Hawaii	N	X														Y
Idaho	N		X		X									X		N
Illinois	Y	X								X						N
Indiana																
Iowa	N	X												X		Y

	L.P.	TYPE OF FINGERPRINTING REQUIRED						TYPE OF CRIMINAL HISTORY REQUIRED						D.B.
		None	State	Regional	FBI	Royal Canadian Mounted Police	Other	None	State	Regional	FBI	Royal Canadian Mounted Police	Other	
	Proof of Legal Presence Required													Check of ARELLO
Kansas	Y	X						X						Y
Kentucky	Y				X						X			N
Louisiana	N	X										X		Y
Maine	N	X								X				Y
Maryland														
Massachusetts	N	X						X						N
Michigan	Y	X										X		N
Minnesota														
Mississippi	N	X						X						Y
Missouri														
Montana	N	X						X						Y
Nebraska	N		X		X				X		X			Y
Nevada	N		X		X				X		X			N
New Hampshire	N	X										X		N
New Jersey	Y		X								X			N
New Mexico	N	X						X				X		Y
New York		X												N
North Carolina	N	X							X				X	Y



	L.P.	TYPE OF FINGERPRINTING REQUIRED						TYPE OF CRIMINAL HISTORY REQUIRED						D.B
		None	State	Regional	FBI	Royal Canadian Mounted Police	Other	None	State	Regional	FBI	Royal Canadian Mounted Police	Other	
	Proof of Legal Presence Required													Check of ARELLO
North Dakota	N	X							X					N
Ohio	N						X					X		N
Oklahoma	Y	X						X				X		Y
Oregon	N		X	X	X				X	X	X			Y
Pennsylvania	N	X										X		Y
Puerto Rico	N	X												
Rhode Island														
South Carolina	N	X						X						N
South Dakota	N	X						X						N
Tennessee	N	X						X						Y
Texas	N	X							X					N
Utah											X		X	N
Vermont	N	X						X						N
Virginia	N	X						X						N
Virgin Islands		X							X					
Washington	N	X						X						N
West Virginia	N	X						X						N
Wyoming	Y		X										X	N

L.P.	TYPE OF FINGERPRINTING REQUIRED	TYPE OF CRIMINAL HISTORY REQUIRED	D.B
Proof of Legal Presence Required	None	None	Check of ARELLO
	State	State	
	Regional	Regional	
	FBI	FBI	
	Royal Canadian Mounted Police	Royal Canadian Mounted Police	
	Other	Other	

Source: Association of Real Estate License Law Officials (ARELLO)

# Appendix E: Agency Response

---



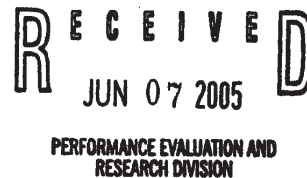
VAUGHN L. KIGER, CHAIRMAN  
MORGANTOWN  
  
JOHN H. REED, III, VICE CHAIRMAN  
HURRICANE  
  
CAROL H. PUGH, SECRETARY  
BECKLEY

**State of West Virginia**  
**REAL ESTATE COMMISSION**  
300 Capitol Street, Suite 400  
Charleston, WV 25301  
(304) 558-3555  
FAX (304) 558-6442  
<[www.wvrec.org](http://www.wvrec.org)>

ROBERT R. VITELLO  
CHARLESTON  
  
JERRY D. ZAFERATOS  
BECKLEY  
  
RICHARD E. STRADER, CPA  
EXECUTIVE DIRECTOR

June 7, 2005

John Sylvia, Director  
Performance Evaluation and Research Division  
West Virginia Legislative Auditor  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610



Dear Mr. Sylvia:

Thank you for affording me with the opportunity to offer my comments in regard to the Preliminary Performance Review of the Real Estate Commission, which is scheduled to be presented to the Joint Committee on Government Operations on June 12, 2005.

As you know, the Real Estate Commission has not held a meeting since receipt of the report, so therefor, the Commission has not had an opportunity to review the draft copy of the Preliminary Performance Review during its regular monthly meeting. The next meeting of the Real Estate Commission is scheduled to be held on June 15, 2005, and the report will be discussed at that meeting.

I have taken the following actions since receipt of your report:

In regard to the recommendation that a printable complaint form be added to the Commission's web site, I have directed that the form be posted on our web site. Effective June 7, 2005, the form is available on our web site.

I have contacted the Association of Real Estate License Law Officials (ARELLO) to determine the steps that need to be completed in order to obtain access to the Disciplinary Action Data Base.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Richard E. Strader  
Executive Director

