

TEXAS REAL ESTATE COMMISSION

Staff Report  
to the  
Sunset Advisory Commission  
July 28, 1978

Legislative Budget Board  
Program Evaluation  
704 Sam Houston Bldg.  
Austin, Texas 78701  
(512) 475-6565

## TABLE OF CONTENTS

	<u>Page</u>
Introduction . . . . .	1
Background . . . . .	2
Review of Operations . . . . .	8
Criterion 1 - Efficiency . . . . .	8
Criterion 2 - Effectiveness . . . . .	36
Criterion 3 - Less Restrictive or Alternative . . . . .	52
Criterion 4 - Overlap and Duplication . . . . .	63
Criterion 5 - Statutory Changes . . . . .	75
Criterion 6 - Complaints . . . . .	83
Criterion 7 - Public Participation . . . . .	91
Criterion 8 - Equal Employment/Privacy . . . . .	94
Criterion 9 - Conflict of Interest . . . . .	100
Criterion 10 - Open Records/Open Meetings . . . . .	105
Criterion 11 - Federal Impact . . . . .	110
Conclusions . . . . .	112

## INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection 3 of the Texas Sunset Act and contains a review of the operations of the Texas Real Estate Commission. Termination of the Texas Real Estate Commission has been scheduled for September 1, 1979 unless it is continued by law.

The material contained in the report is divided into three major sections: Background, Review of Operations and Conclusions. The Background section contains a brief history of legislative intent and a discussion of the original need for the Texas Real Estate Commission. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified, and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the legislature will be provided.

BACKGROUND

## HISTORICAL BACKGROUND

The Era of Industrialization in the United States brought with it urbanization. Growth of the cities in the 1860's, sustained in the 1870's and intensified in the 1880's and 90's, created new real estate values. Out of this growth developed a need for a new understanding of real estate value, financing, management and marketing. The result was the development of businesses specializing in the management and sale of the properties of many owners--real estate dealers. According to the U.S. Census, by 1900 there were 2,498 persons actively engaged in the real estate business in Texas; by 1930 there were 10,070. The concept of licensing persons in the real estate business began in the early 1900's. The first states to establish licensing laws for this occupation were California and Michigan in 1919.

Initial regulation of the real estate occupation in Texas came in the form of the Real Estate Dealers License Act, passed by the Forty-sixth Legislature in 1939. The act sought to regulate "real estate dealers" and the salesmen employed by them. In 1939, real estate licensure required a fee of \$3 and three character references. At first, there was no requirement of examination for licensure. The examination requirement was not established until 1955. Early state records of the real estate licensing process in Texas indicate that by August 1944, 10,177 dealers and 1,396 salesmen had been licensed. Requirements for licensure have been increased from time to time, with current law imposing education and residency requirements as well as an examination. In fiscal year 1977, the Texas Real Estate Commission licensed 111,537 persons to conduct real estate business in Texas.

### Administration

The Securities Commissioner, Office of the Secretary of State, was

designated as the Administrator under the 1939 Act. In the first years, as director of the Real Estate Division, the commissioner employed a stenographer and a file clerk to carry out the functions of that division. In addition to the office staff, the Real Estate Division shared, with the Securities Division, six field investigators situated in Fort Worth, San Antonio, Houston, San Angelo, Lubbock and Tyler. By 1945 the two divisions shared full home office staff as well as investigative staff.

In 1949, the Fifty-first Legislature created an independent commission to regulate the real estate occupation and provided that administration of the real estate licensing function would be removed from the jurisdiction of the Secretary of State and placed under the auspices of an independent, six-member commission.

Under current law, members of the Real Estate Commission are appointed by the governor, with the advice and consent of the senate, to serve six year terms. Commission members receive as compensation \$50 per diem and actual and necessary expenses associated with attendance at commission meetings. A commission member must be actively engaged in the real estate brokerage business as a real estate broker. A member's major occupation for at least five years preceding the appointment must be as a broker. Each member must furnish a bond in the sum of \$10,000, conditional on faithful performance of duties. The statute requires that the commission meet in October of each year. The commission is empowered to select an administrator, to serve as executive secretary, and other subordinate officers and employees to administer the Act. The statute directs that all rights, powers and duties conferred upon the commission must be exercised by the administrator unless the commission instructs otherwise.

Major activities of the commission are policymaking and general oversight of all staff functions. The commission is actively involved with the review of all staff reports and the budget. Final approval for accreditation of real estate proprietary

schools as well as new courses of study in those schools already accredited is also a function retained by the commission. Other functions of the commission include approval and promulgation of standard forms developed by the Real Estate Broker-Lawyer Joint Committee, recommendations to the governor for appointments to the Real Estate Research Advisory Committee, and protection of the Real Estate Recovery Fund against unjust claims.

The commission employs an administrator to serve as executive secretary of the commission. The present administrator has served in that capacity since 1963. From 1950 to 1963 he served as assistant administrator.

The agency currently has a staff of 78 persons, organized in four divisions under the general supervision of the administrator and assistant administrator. The Application Processing Division consists of 23 employees who have the basic responsibilities of processing original applications for licensure, issuing licenses, notifying licensees of renewal requirements, and processing renewals and license changes.

The Education Division has a staff of seven persons. Responsibilities of this Division include examination, review of education credits of persons applying for licensure, and review of real estate schools applying for accreditation.

The Enforcement Division employs 27 persons, 13 of whom are field representatives. Field offices are situated in Richardson, Fort Worth, Austin, San Antonio, Houston, Corpus Christi, El Paso and Lubbock.

The Staff Services Division employs 21 persons. This division conducts all accounting and bookkeeping activities including data processing.

#### Responsibilities

The Texas Real Estate Commission is responsible for regulation of the real



estate industry. This regulation includes not only persons in the business of selling real estate for others, but also other occupations related to transactions involving real estate. Specifically, the Act defines persons responsible to the commission as follows:

(2) "Real estate broker" means a person who, for another person and for a fee, commission, or other valuable consideration, or with the intention or in the expectation or on the promise of receiving or collecting a fee, commission, or other valuable consideration from another person:

(A) sells, exchanges, purchases, rents, or leases real estate;

(B) offers to sell, exchange, purchase, rent, or lease real estate;

(C) negotiates or attempts to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate;

(D) lists or offers or attempts or agrees to list real estate for sale, rental, lease, exchange, or trade;

(E) appraises or offers or attempts or agrees to appraise real estate;

(F) auctions, or offers or attempts or agrees to auction, real estate;

(G) buys or sells or offers to buy or sell, or otherwise deals in options on real estate;

(H) aids, attempts, or offers to aid in locating or obtaining for purchase, rent, or lease any real estate;

(I) procures or assists in the procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate; or

(J) procures or assists in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate.

(3) "Broker" also includes a person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell the real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes a person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract whereby he undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning the real estate to brokers, or both.

(4) "Real estate salesman" means a person associated with a Texas licensed real estate broker for the purposes of performing acts or transactions comprehended by the definition of "real estate broker" as defined in this Act.

The Real Estate Commission presently issues two types of licenses: the broker's license and the salesman's license. The 1975 amendments to the Real Estate License Act provide that after 1985, licenses will be issued in a single category. Licenses are issued in each category upon satisfying all requirements specified in the law including passing an examination for each license. Present law contains a schedule of increased educational prerequisites for licensure.

The enforcement authority of the commission includes the alternatives of suspension or revocation of a license. Hearings are held after staff investigation indicates violation of the law and the administrator or assistant administrator presides at these hearings. Subpoenas for the attendance of witnesses and the production of records or documents may be issued. The commission is further authorized to initiate both civil and criminal proceedings.

#### Funding

Fees for examinations, licenses and renewals are deposited in the Real Estate License Fund in the State Treasury. The fee structure is specified in the law, with some flexibility left to the commission in setting the fees in some categories. Generally, license fees must accompany applications and are deposited in a suspense account until the applicant has met all licensing requirements. A portion of the filing fee is then placed in the Real Estate License Fund and a portion to the Real Estate Research Center Fund. Examination fees are placed in the Real Estate License Fund. Any payments designated for the Recovery Fund are placed in this fund upon completion of licensing requirements.

At the end of each fiscal year, any unused funds in the Real Estate License Fund in excess of appropriated funds revert to the general revenue fund. Under this directive, funds were reverted to the general revenue fund in 1976 and 1977 in

the amounts of \$650,000 and \$1.1 million respectively. All expenditures from the Real Estate License Fund may only be made when authorized through appropriations by the legislature and may only be utilized for administration of the Real Estate License Act. In the first fiscal year of operation (1950), the TREC collected approximately \$207,400 in revenues and expended \$86,800. For fiscal 1977, revenues totaled a little over \$2,738,000 and expenditures were \$1,204,000.

Fifteen dollars of each real estate broker's annual fee and \$7.50 of each real estate salesman's annual fee is deposited to the Real Estate Research Center Fund to be transmitted to Texas A&M University for the support and maintenance of the Texas Real Estate Research Center in College Station. In fiscal year 1976, funds transferred to this account amounted to \$845,000; and in fiscal year 1977 \$924,097.50 was transferred.

In 1975, the Sixty-fourth Legislature established the Real Estate Recovery Fund. The purpose of this fund is to reimburse aggrieved persons who suffer monetary damages due to the acts of persons licensed by the Real Estate Commission. Each real estate broker and salesman licensed by the state is assessed \$10 which is deposited in the Recovery Fund. The Real Estate Recovery Fund is held "in trust" by the commission and may be invested and reinvested in the same manner as funds of the Texas State Employees Retirement System. Balances in this fund as of May 5, 1977 were \$1,294,022.26

### Criterion 1

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operations could be achieved.

Information developed under this criterion is presented in two major divisions. The first deals with the administrative efficiency of the agency, while the second part covers the general topic of funding efficiency.

#### Administration

The review of the administrative functions of the Texas Real Estate Commission is directed at two levels of activity: 1) the administrative operations of the six member commission; and 2) the administrative activities of the agency's staff. For purposes of this review, each of these levels of activity is examined separately.

Commission Administration. The Texas Real Estate Commission is composed of six members appointed by the governor with the advice and consent of the senate. The members serve six-year terms, with two terms expiring October 5 of each odd-numbered year. Commission members must be Texas residents and qualified voters and must have been actively engaged in the real estate business as brokers on a full-time basis for the five years preceding their date of appointment. Exhibit I-1 indicates the present commission membership, each member's term of office and the attendance record of each member for fiscal years 1975 through

1977. Sixteen of the 32 meetings reported in Exhibit I-1 were held in Austin, with the remaining 16 held in various home cities of members of the commission. The length of meetings, according to the minutes, ranged from 15 minutes to two hours and 48 minutes and averaged 2.00 hours, for fiscal years 1975 through 1978.

Review of commission minutes indicate that commission actions are primarily directed at: 1) consideration of rule changes; 2) receipt and approval of staff reports; 3) consideration of applications for school accreditation and changes in school programs; 4) recovery fund investments and payments; 5) consideration of budget and salary matters; and 6) appointments to the Real Estate Research Advisory Committee and the Real Estate Broker-Lawyer Joint Committee.

The Real Estate License Act, Section 5(g), provides that:

When in this Act a power, right, or duty is conferred on the commission, the power, right, or duty shall be exercised by the administrator or by the assistant administrator, unless the commission directs otherwise by an order entered in the minutes of a commission meeting; and in such case, the power, right, or duty shall rest in or on the commission.

Under this provision, the commission appears to have chosen to exercise its authority in only selected areas of the duties and responsibilities assigned in the Real Estate License Act. Therefore, the commission does not involve itself in the hearing or disposition of any complaints against licensees. Moreover, the commission appears to view the processing of applications and examinations and issuance of licenses as an administrative duty of the agency which requires little or no involvement on the part of the commission members. While the commission does act to formally approve applications of new schools and program changes, actions contrary to staff recommendations are rare.

EXHIBIT I-1

Commission Members Attendance  
Fiscal Years 1975-1977  
Texas Real Estate Commission

<u>Current Commission Members</u>	<u>Term of Office</u>	<u>Attendance at Meetings</u>		
		<u>1975</u> <u>(10)</u>	<u>1976</u> <u>(10)</u>	<u>1977</u> <u>(11)</u>
Forrest C. Allen	Dec. 1973 to Oct. 1979	8	9	11
William C. Miller	Dec. 1973 to Oct. 1979	8	10	11
Robert C. Jones	Oct. 1976 to Oct. 1981		8	11
Franklin A. Jeffers	Oct. 1976 to Oct 1981		9	10
Bill Senter	June 1978 to Oct. 1983			
Sam Felbt	June 1978 to Oct. 1983			
<hr/> <u>Past Members</u> <hr/>				
Harry O. Rearick	Jan. 1972 to Oct. 1977	10	10	11
Edwin J. Terry	Jan. 1972 to Oct. 1977	9	10	8
Harold Chapman	Nov. 1969 to Oct. 1975	10	1	
Joe W. Farmer	Nov. 1969 Oct. 1975	10	1	

From reviewing the minutes, the extent to which the commission has given direction to the staff concerning the overall activities in licensing and enforcement could not be adequately determined; however, it appears from these sources and interviews with agency staff that the commission has not significantly exercised its authority in directing staff activities, but rather has acquiesced to the delegation of authority contained in the statute.

Staff Administration. The TREC staff performs administrative functions relative to general office operations and its major functions of licensing, enforcement and accreditation. Administrative processes associated with these operations are discussed below.

1. General Office Operations. Basic administrative functions within this grouping include accounting, data processing, personnel, mail room operations, and report preparation. These functions are the responsibility of the staff services division which consists of 18 employees, supervised by the chief accountant.

With regard to accounting, the agency receives examination fees, filing fees and recovery fund deposits from applicants and renewal fees and record change fees from licensees. Receipts also include revenues from the sale of publications and other agency documents (e.g., listings of licensees). Filing and other fees are generally deposited into a suspense fund until all requirements have been met for disposition of the funds to the agency's operating fund, the Real Estate Research Center Trust Fund or the Real Estate Recovery Fund. Accounting for all receipts and disbursements involving these funds is the responsibility of the staff services division.

Recommended internal control procedures for any accounting system includes a cash receipts process which will: 1) safeguard cash receipts; and 2) provide for

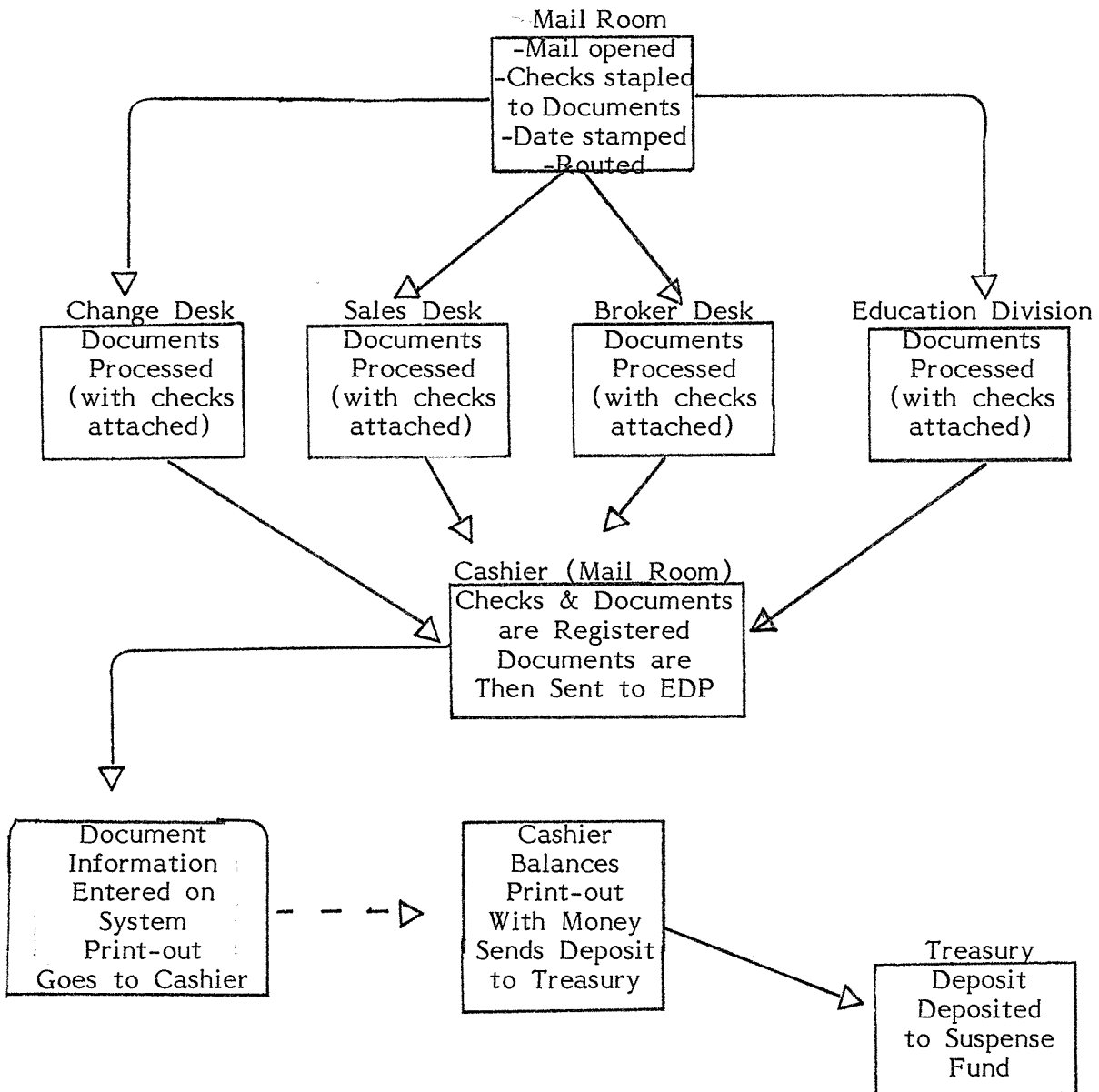
timely deposits of all revenue received. The agency's present cash receipts system, as shown in Exhibit I-2, does not appear to satisfy these two basic requirements. Upon initial receipt, checks are stapled to the documents accompanying them. These documents include original applications for licensure, annual renewals and requests for various record changes. Subsequent to receipt, the documents, with checks attached, are routed to various departments. Processing of the documents can be a lengthy process and frequently involves circulation through two or more departments. The checks do not enter the accounting system until all processing is complete. On May 24, 1978, deposits were almost three months behind with a total of \$335,546 in checks and currency being held at the agency pending disposition, according to agency estimates. Agency staff indicated that this was caused by the difficulties encountered during the 1978 renewal period and was not a usual situation. However, if it were agency practice to remove all checks and currency upon receipt to be deposited in the Treasury, such backlogs could be prevented. Moreover, the possibility of an inadvertent loss or of destruction could be precluded. Furthermore, the withholding of such large sums of money from the Treasury causes a loss of interest paid to the state for these amounts and impedes efficient cash flow management.

The underlying reason for the present cash receipts process appears to be agency policy concerning refunds of payments received. While mechanisms do exist to allow refunds out of the agency's suspense fund in the Treasury, agency policy has been to return fees at various points during the licensing process if the accompanying documentation (i.e. application form) is incomplete. The Real Estate License Act requires fees "for the filing of an original application" for licensure as a real estate salesman or broker, thus these fees would not appear to be refundable.



EXHIBIT I-2

Cash Receipts Process Summary  
Texas Real Estate Commission



A review was conducted of the management letters issued for the past five fiscal years by the State Auditor's office. Many of the suggestions contained within the management letters pertained to updating and improving bookkeeping procedures and have apparently been implemented. The cash receipts process and the agency's difficulties with returned checks recurred from year to year.

Returned checks for the past three fiscal years averaged \$4,428. Thus far in fiscal year 1978, returned checks have amounted to \$14,035. While returned checks do not ordinarily represent a large amount of the total revenue received by the agency, they do represent substantial amounts of processing time because of the large number of checks involved. This problem could be eliminated by accepting only cashier's checks and money orders for all fee payments and making deposits in a timely manner.

The review of the agency's accounting system included an examination of accounting records. In general, the records appeared to be accessible. However, posting of some records, notably the general ledger, was not current. Moreover, complete and detailed cost and revenue information was not available in some instances, particularly detailed information concerning costs and revenue associated with publications sold by the agency.

Regarding data processing, TREC has implemented, in cooperation with the Board of Control, a computerized system for handling the bulk of the license issuance and accounting reports. While much of the development of the license issuance system is handled by the Board of Control under its general mandate to provide this service to agencies such as TREC, the agency has also contracted for additional computer services and system development to handle certain accounting and funds management systems beyond the initial licensing system.

The present data processing system includes capability for the Real Estate Commission to enter data in the form of new files and changes or corrections to existing files by means of data entry equipment located in the Real Estate Commission offices. The main computer and printers are located in the Board of Control offices. Reports and licenses are generally printed at night and delivered to the TREC offices for handling during the next day. In addition to the Real Estate Commission's data entry capability, terminals are available to staff from all divisions to make inquiry concerning the status of a licensee or other licensee data.

Conversion to the computer system from an essentially manual system took place in the fall of 1977. Since that time serious workload backlogs have been experienced due to a number of factors. Perhaps most significant were: 1) hardware and systems problems encountered by the Board of Control; and 2) an unexpected increase in applications, apparently due to increased educational requirements established in law. The Board of Control is presently in the process of upgrading the computer equipment available to service the Real Estate Commission licensing and accounting system and of reviewing the system to determine what changes are necessary to improve the efficiency of the operation. While problems have existed and backlogs still exist in the data processing operation, it appears that the organization and basic concept are sound and that, through continued consultation with and assistance from the Board of Control, the use of the data processing system can be made to increase the efficiency of the agency's operations and adequately handle the expected workload.

In the area of personnel, responsibilities include maintaining personnel files, records of time worked and leave accrued, payroll records and equal employment opportunity records and reporting. Interviews and testing of clerical personnel are

conducted by the personnel officer, who also posts notices of job openings with the Texas Employment Commission. The files maintained in the personnel office are generally well organized and complete.

The mail room operation is designed to receive all mail addressed to the agency and sort it for delivery to the appropriate person or section for processing. Typically, the sorting of mail received in the early morning each day is completed by late afternoon of that same day. Three employees are assigned mail opening and sorting as their primary function. The mail room personnel open each letter, sort application pieces into a pre-determined order, check to verify and note if pieces were missing, staple all the pieces together, date stamp and sort into one of eight baskets for delivery to the appropriate desk. After all mail has been sorted, it is delivered to each desk for processing by mail room personnel.

The three most time consuming components of the mail room operation appeared to be the sorting and verification of documents contained in envelopes and the stapling together of individual pieces, which is handled with manual staplers. While the sorting and verification of documents contained in envelopes appear to be essential to the efficiency and effectiveness of later processing, observations indicated that a significant amount of time could be saved by using automatic staplers rather than manual staplers.

Regarding report preparation, major responsibilities of the Real Estate Commission include budget requests, performance reports and annual reports. These reporting functions are handled by the staff services division under the direction of the administrator. The commission formally approves budget requests prior to their submission. Reporting functions generally are completed in a timely manner and in compliance with instructions.

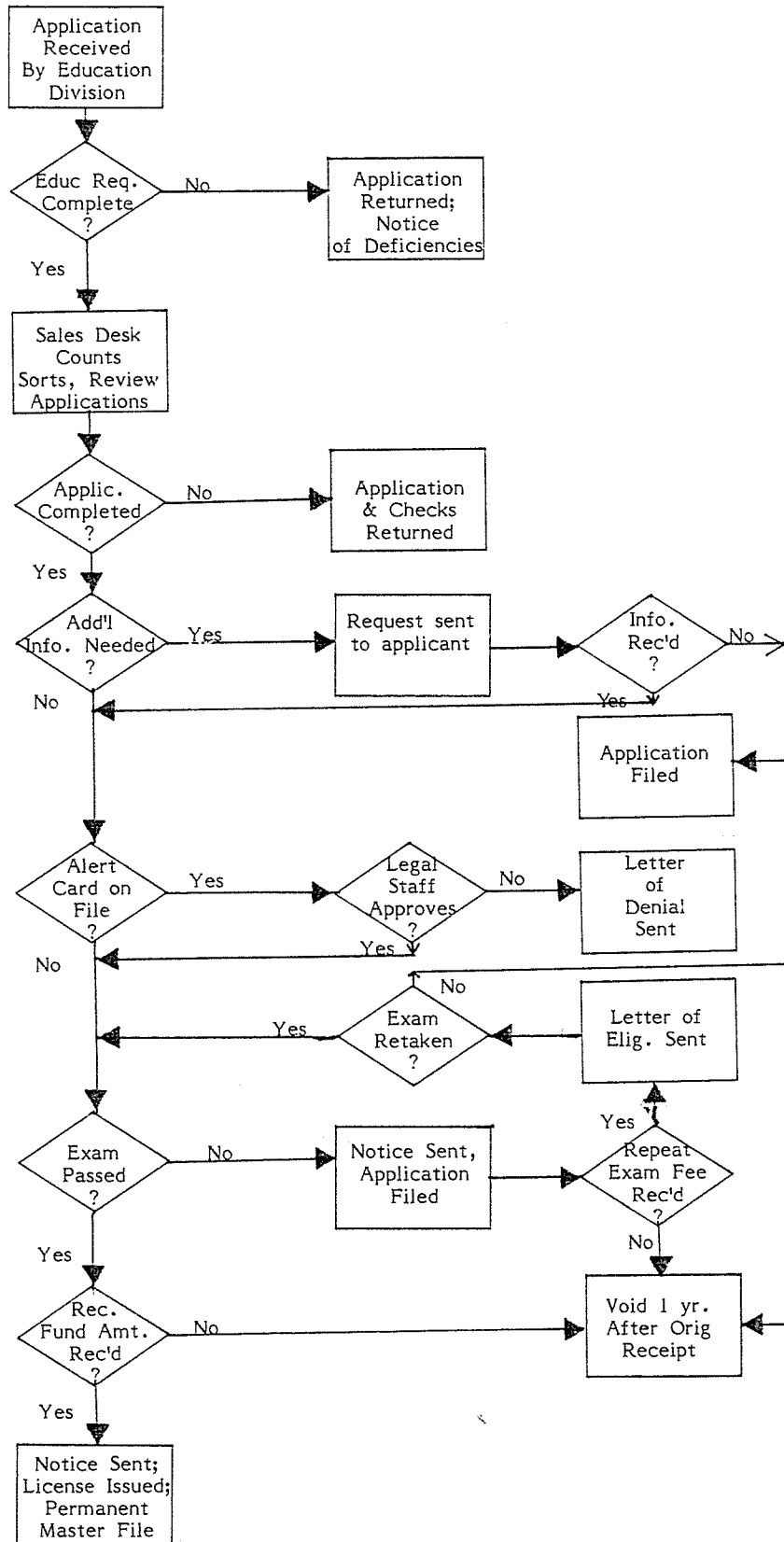
2. Program Operations. General office administrative tasks are performed in support of operations in three basic functional areas: 1) licensing; 2) enforcement; and 3) accreditation. The specific objectives and tasks associated with these functions represent the basic focus of the overall evaluation and will be addressed in greater detail throughout the remainder of this report. However, each of these separate functions entail particular operational processes which were reviewed from the standpoint of administrative efficiency.

With regard to licensing, processes utilized relate to reviewing educational credits and requirements for licensing and renewal; evaluating compliance with other statutory requirements; writing, scheduling, administering and grading of applications; notification of renewal requirements; and preparing and issuing licenses. Subsidiary functions involve correspondence with applicants regarding examination study materials, deficiencies in applications, application status, and scores on examinations. Exhibit I-3 contains the detail of the processing of an original salesman license application. Processes similar to the one in the exhibit are used for broker applications and changes of name, address and sponsorship, except that master files are pulled at the beginning of the process and routing to the "change desk" or "broker desk" replaces routing to the "sales desk".

Renewals are referred to by the Real Estate Commission as annual certifications. The annual certification process involves timely receipt of the application and filing fee, verification of the status of the license, and license issuance and deposit of funds through data processing. Under present processes renewal notices are mailed to sponsoring brokers in early September of each year. All applications and fees must be received by the agency by November 30 for processing. The renewed licenses are effective January 1 of the following year.

EXHIBIT I-3

Process for Salesman Original Licensure



Although the process for issuing licenses is relatively simple, the workload concentration during the last three months of each calendar year creates a heavy demand on both the accounting and data processing systems, particularly in data entry function of the TREC. The agency has never exercised its statutory authority to stagger expiration dates. It appears, however, that by distributing renewals throughout the year more efficient use of staff time and data processing equipment could be achieved. Exhibit I-4 indicates the numbers of original licenses and renewals issued during fiscal year 1977 and the total fees generated from these sources.

EXHIBIT I-4

Summary of Licenses Issued and Revenues Generated  
Fiscal Year 1977  
Texas Real Estate Commission

	<u>Number of Licenses Issued</u>	<u>Revenues Generated from Filing Fees &amp; Renewals</u>
Brokers:		
Renewals	35,360	890,750
New Licenses	<u>4,062</u>	<u>162,460</u>
Total, Brokers	39,362	\$1,053,210
Salesmen:		
Renewals	51,953	649,412
New Licenses	<u>19,893</u>	<u>397,860</u>
Total, Salesmen	71,846	\$1,047,272
	<u>          </u>	<u>          </u>
Total All Licenses	111,208	\$2,100,482

The education and testing section of the Real Estate Commission is responsible for developing and scheduling examinations in support of the licensing function. An average of 58 examination sessions are scheduled monthly, with exam sites in 22 cities throughout the state. During fiscal year 1977, 35,106 examinations were administered by the field investigators. The examinations are sent to the central office where they are graded and licensees are notified of the results. According to education staff members, examinations are usually graded and notifications mailed the day they are received in the Austin office.

Examination scheduling is handled from the Austin office of TREC. Locations of examinations include university campuses, state office buildings, public schools, and other generally accessible public buildings, and are usually available without charge for this purpose. While the schedule of examinations presently utilized increases the availability of the examination to applicants, there appears to be a lack of predictability in number of examinees at any particular session. Admission to take an examination is based on possession of a certificate of eligibility from the TREC and proper identification. A certificate of eligibility is valid at any examination site at any time within one year from TREC's original receipt of an application form. The option of when and where to take an examination rests with the applicant.

During a review of operational processes related to license application processing on May 12, 1978, backlogs existed in several areas. Processing in the mail room was current, but education credits review was processing mail date stamped May 5, 1978, indicating a week lag time on beginning processing. The bulk of the applications processed by the education desk are routed next to the sales desk for further review. At the sales desk there was a further backlog of



approximately four days work on incoming mail. No significant backlogs existed at the broker or change desks on the review date. At the time of the review, the data processing operation was being handled simultaneously with processing of letters of eligibility from the sales desk; however, theoretically these steps should be sequential as indicated in Exhibit I-3. Because of the simultaneous processing of these steps the backlog at these steps was not readily discernible. However, the workload objectives appeared to be shifted at the point of data entry to a type of quota system called "the daily 100". Prior processes had apparently dealt with applications in quantities received in a specified day and objectives appeared to be based on dates of receipt. Because of other demands placed on the data entry personnel, it was determined that processing of original applications (primarily deposit of fees in suspense) should be handled at a rate of 100 applications per day and that other data entry time should be devoted to file update and maintenance and processing of other types of transactions. The primary result of this approach was that the backlog of fee payments not deposited became enormous in amount and the possibility of complying with the statutory requirement that fees be deposited in the State Treasury within seven days of receipt became more remote. Processing of the backlog of file updates resulting from computer failures in 1977 has not yet been completed.

Files maintained in support of the application processing function include: 1) the master file of all licensees; 2) a file of applications which have not been completed as required (lacking sufficient hours of acceptable credit, for example); 3) transcripts of educational credits evaluated, but for which no application or master file could be located; 4) an alert file containing general information which could be relevant in evaluating an applicant's integrity and eligibility for licensure;

and 5) files of applications being held pending successful completion of examination. All of the files appeared to be well maintained and easily accessible. While it appeared that difficulties could be encountered in locating a particular application which was in process, these difficulties would be relatively insignificant during normal workload periods when substantial backlogs did not exist.

The enforcement division responsibilities include investigation of complaints, routine inspections, monitoring accredited school courses and administering examinations. Routine inspections might involve checking that licenses are current and properly displayed, performing escrow audits and reviewing contracts. The enforcement division is composed of three staff attorneys, 13 field representatives, a hearings reporter and five other staff members, supervised by the chief legal counsel. Each of the staff attorneys is assigned a geographical area of responsibility and the field representatives report to the staff attorney for the area. The geographical areas and regions covered by the field investigators and staff attorneys is shown in Exhibit I-5. Exhibit I-6 indicates the licensee workload of each of the field offices and investigators. While there is no established pattern regarding schedule of activities for field investigators, each is expected to work the required 40 hour work week.

The enforcement division is also responsible for administrative functions related to the recovery fund. The process for collecting damages from the recovery fund begins with the filing of a suit in district court, claiming damages as a result of actions of a licensee and receiving a judgement against the licensee. An action for a judgement which may result in a claim upon the recovery fund must be started within two years after the cause for action. The licensee involved in the action must file written notice with the commission upon commencement of the action. The judgment creditor is required to notify the commission upon entry of a

EXHIBIT I-5  
 Enforcement Areas  
 Texas Real Estate Commission

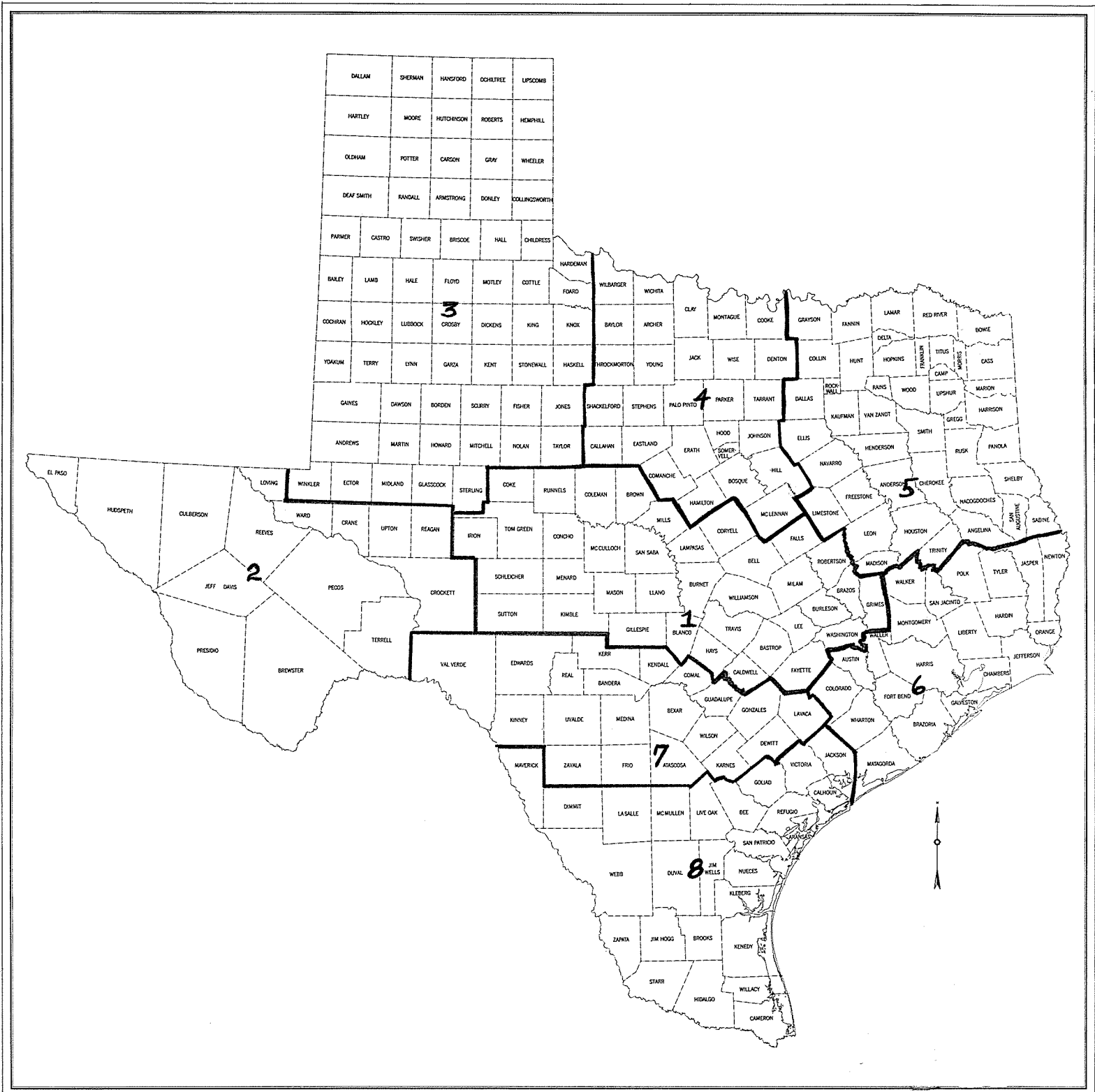


EXHIBIT I-6

Field Coverage  
Texas Real Estate Commission

Area	Base	Number of Investigators	Number of Licensees	Ratio: Licensee/Investigator
1	Austin	1	9,967	9,967
2	El Paso	1	3,820	3,820
3	Lubbock	1	6,891	6,891
4	Fort Worth	2	13,667	6,833
5	Dallas	3	25,742	8,581
6	Houston	3	34,119	11,373
7	San Antonio	1	8,988	8,988
8	Corpus Christi	<u>1</u>	<u>6,017</u>	<u>6,017</u>
Total		13	109,211	8,401

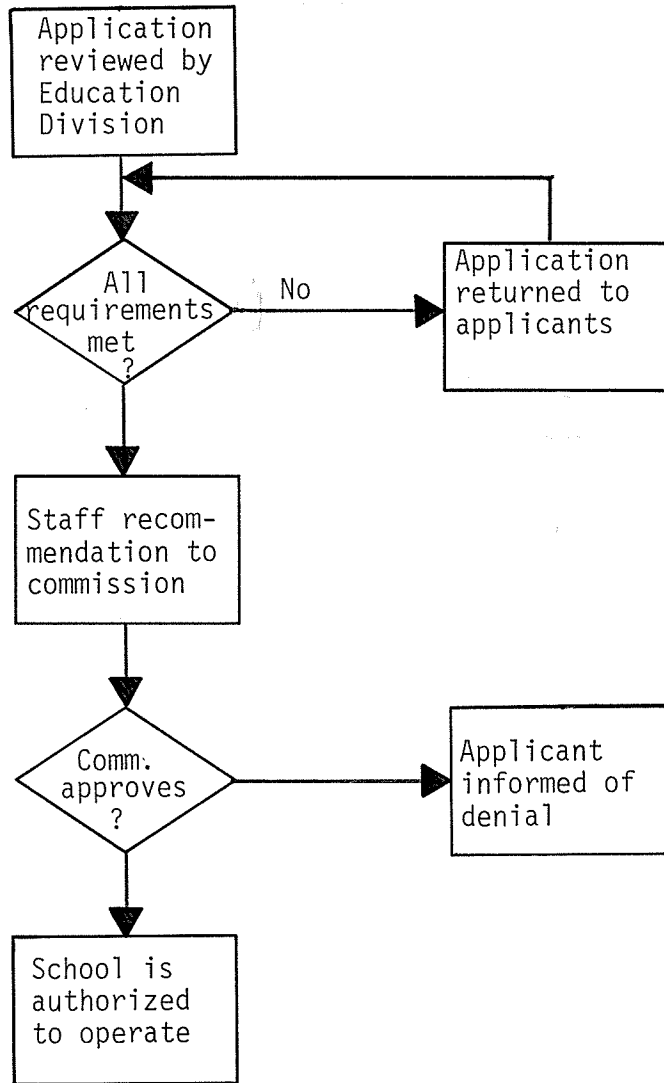
final judgment which could involve payment from the recovery fund and must give the commission notice twenty days prior to an application for payment hearing. The commission may contest the application for payment if it deems the claim to be spurious or unjust. Thus far, five claims have been contested as being spurious or unjust, two of which were successful. Subsequent to payment from the recovery fund, the commission is subrogated to all rights of the judgment creditor to the extent of the amount paid.

Files maintained in support of the enforcement function include complaint files and logs, an alert file, and recovery fund files and logs. The complaint files and logs are well maintained and complete and access to the information contained in the files is efficient. The division does not, however, open complaint files nor record in any manner those complaints which do not clearly indicate that a violation of the law might have occurred or which are referred to other agencies for action. Recovery fund files appear to be generally well organized, although certain summary information was difficult to ascertain from reviewing the files.

With regard to accreditation, the education and testing section is responsible for receiving a processing application for accreditation of new real estate proprietary schools and for review of courses offered through TREC-accredited schools. Exhibit I-7 indicates the process involved in accreditation of new schools or approval of new courses. It appears that the key component in this process is the staff determination of whether licensing requirements are met. Although the law and regulations are general concerning curriculum and personnel, a major portion of the staff review involves reviewing qualifications of faculty and text books to be used.

EXHIBIT I-7

Real Estate Proprietary Schools  
Accreditation Process  
Education Division



The files maintained in support of the accreditation function are primarily applications and other correspondence and reports related to accredited schools. These files appeared to be well organized and easily accessible.

Funding

The Texas Real Estate Commission receives several types of fees from licensees, applicants, and schools, and charges for publications licensee lists and other documents. Exhibit I-8 indicates the fees established by the commission and the statutory limits on fees.

EXHIBIT I-8

Texas Real Estate Commission  
Schedule of Fees

Type of Fee	Fiscal Year 1977	Fiscal Year 1978	Statutory Limit
Original Application Filing Fee for Broker License	\$ 40	\$ 40	NTE \$ 40
Annual Certification Filing Fee for Broker License	40	30	NTE \$ 40
Original Application Filing Fee for Salesman License	20	20	20
Annual Certification Filing Fee for Salesman License	20	20	20
Additional Office or Place of Business	10	10	10
Change of Address or Change of Sponsoring Broker	10	10	10
Replacement of License Lost or Destroyed	10	10	-
License Examination Fee	5	5	NTE 10
Initial filing for School Accreditation	400	400	400
Annual Renewal of School Accreditation	200	200	200

Disposition of the annual certification fees is as follows:

	Total	Real Estate License Fund Number 424	Real Estate Fee Trust Fund Number 969
Broker	\$30	\$15.00	\$15.00
Salesman	20	12.50	7.50

The deposits to the Real Estate Fee Trust Fund are transferred to Texas A&M University for use by the Texas Real Estate Research Center annually after completion of the State Auditor's annual financial audit. Texas Real Estate Commission funding is by legislative appropriation from the Real Estate License Fund. The Real Estate License Act provides that, at the end of each fiscal year, funds in excess of those required to fund agency operations are deposited to the General Revenue Fund.

Revenue Sources. Exhibit I-9 shows that the primary source of funding for the agency's operations has historically been licenses and fees. Further, the fees generated through licensing have been substantially in excess of funds appropriated in support of the agency's activities. During fiscal year 1977, transfers from the Real Estate License Fund amounted to \$1,100,000 while expenditures were not quite \$1,200,000. Stated differently, almost as much money was paid to General Revenue as was expended by the agency. However, this represents a change which was associated with the change in the statutory fees in 1975. During the eight years prior to the effective date of these changes, transfers to General Revenue had ranged from \$85,000 to \$184,000. The agency acted to reduce the fee for annual certification of broker licenses from \$40 (the statutory maximum) to \$30 beginning in calendar year 1978, according to the 1977 Audit Report. Exhibit I-4 contains detail for 1977 concerning the licenses issued and fees received.



EXHIBIT I-9

An Analysis of Revenues, Expenditures and Fund Balances  
 Real Estate License Fund  
 Texas Real Estate Commission

Fiscal Year	Revenue			Transfers to General Rev.	Expenditures	Fund Balance- Aug. 31
	Licenses & Fees	Publication Sales	Gross Revenue			
1968	\$ 465,518	\$ 10,054	\$ 479,995	\$ 184,000	\$ 342,904	\$ 137,956
1969	495,477	13,416	513,121	99,000	366,356	185,721
1970	523,045	13,860	536,961	85,000	421,211	216,471
1971	586,306	19,139	606,091	85,000	437,584	299,978
1972	677,784	16,118	691,820	137,855	488,739	370,204
1973	790,022	34,930	821,366	100,000	645,359	446,211
1974	863,842	44,545	904,959	150,000	731,200	469,970
1975	843,261	44,719	882,377	150,000	828,597	373,750
1976	2,323,718	49,320	2,372,007	650,000	1,092,728	1,003,029
1977	2,676,694	52,305	2,723,779	1,100,000	1,193,596	1,433,212

Projections

1978	2,803,591	56,033	2,859,624	1,400,000	1,387,706	1,505,130
1979	2,952,271	59,895	3,012,256	1,500,000	1,413,230	1,604,156
1980	3,102,766	63,937	3,166,703	1,600,000	1,610,311	1,560,548
1981	3,261,058	67,889	3,328,947	1,500,000	1,743,325	1,646,170
1982	3,427,552	71,841	3,499,393	1,600,000	1,877,339	1,668,224
1983	3,602,674	75,793	3,678,467	1,600,000	2,010,353	1,736,338

Revenues are also received for sale of publications and other documents. Detail concerning these receipts and the costs of production of the documents were not available from the agency or the State Auditor's Office. Funds received from the sale of these items may, under provisions in Article V of the general appropriations bill, be expended under the same authority from which the costs of production were paid. The effect is, therefore, that prices charged in excess of the costs of production apparently result in increases in the amount of funds available for expenditure without the requirement of specific legislative appropriation.

Expenditures. The major item of expenditure for the Real Estate Commission is personnel costs, as indicated in Exhibit I-10. Postage and travel form the next two largest expenditure items. Travel costs for employees are incurred by the field investigators, by the central administrative staff in attending commission meetings, and by the administrator and other personnel who participate in hearings concerning complaints. The travel costs for commission members include payment of actual expenses when on official business. Exhibit I-11 indicates the per diem and travel expenses by commission member. Per diem paid to commissioners is at the rate of \$50 per day and indicates an average of almost 30 days per year on official state business.

Recovery Fund. In addition to the fees collected in support of the agency's operations and the Real Estate Research Center, the law requires that a Recovery Fund be established and that each licensee pay \$10 into the fund as a prerequisite to licensure. Initial payments were required of all licensees in fiscal year 1975. The statute also provides for additional assessments, if the fund balance becomes less than \$300,000, in amounts necessary to increase the fund balance to one million dollars.

EXHIBIT I-10

Real Estate Commission  
 Summary of Expenditures by Category  
 Fiscal Year 1977  
 Texas Real Estate Commission

<u>Category and Item of Expenditure</u>	<u>Amount</u>	<u>% of Total</u>
<u>Personnel Costs</u>		
Per Diem of Board Members	\$ 8,750	1
Salaries	784,825	65
Benefits	<u>114,988</u>	<u>10</u>
Total, Personnel Costs	<u>\$ 908,563</u>	<u>76</u>
<u>Travel</u>		
Board Members	\$ 11,624	1
Employees	<u>47,782</u>	<u>4</u>
Total, Travel	<u>\$ 59,406</u>	<u>5</u>
<u>Rental</u>		
Rental of Building	\$ 10,894	1
Rental of Computer Equipment	11,805	1
Rental of Copying Machines	2,082	-
Rental-Other	<u>2,548</u>	<u>-</u>
Total, Rental	<u>\$ 27,329</u>	<u>2</u>
<u>Other Operating Expenses</u>		
Supplies and Materials	\$ 14,963	1
Postage	72,306	6
Printing by Contract	26,273	2
Office Supplies	3,423	1
Termination Pay-Vacations	25,554	2
Utilities and Telephone	12,304	1
Operating Fund Transfer to Attorney General's Office	25,000	2
Other Operating Expenses	<u>9,272</u>	<u>1</u>
Total, Other Operating Expenses	<u>\$ 189,095</u>	<u>16</u>
<u>Acquisition of Fixed Assets</u>	<u>\$ 9,205</u>	<u>1</u>
Total Expenditures	<u>\$1,193,598</u>	<u>100</u>

EXHIBIT I-11

Commission Members Per Diem and Travel Expenses  
 Fiscal Years 1977-1976  
 Texas Real Estate Commission

	1977		1976	
	Per Diem	Travel	Per Diem	Travel
<u>Commissioners</u>				
Forrest C. Allen	\$1,800.00	\$ 2,465.05	\$1,800.00	\$2,218.94
Franklin A. Jeffers	1,300.00	2,226.95	800.00	1,391.21
Robert C. Jones	1,550.00	1,981.61	1,350.00	1,405.34
William C. (Dub) Miller	1,350.00	1,949.29	750.00	956.47
Harry O. Rearick	1,050.00	1,565.63	1,050.00	1,640.90
Edwin Terry	900.00	1,140.72	1,250.00	1,632.01
Harold Chapman			50.00	
Joe W. Farmer			100.00	101.63
Total Commissioners	<u>\$7,950.00</u>	<u>\$11,329.25</u>	<u>\$7,150.00</u>	<u>\$9,346.50</u>

Balances in the Recovery Fund at the end of each fiscal year since its inception were, according to the self-evaluation report, as follows:

<u>Fiscal Year</u>	<u>Balance</u>
1975	\$ 759,184.06
1976	974,911.60
1977	1,224,504.43

The current balance as of May 5, 1978 was \$1,294,022.26, including current investments and cash balances. A summary of the receipts and disbursements from the fund was prepared by the agency and is included as Exhibit I-12.

Recovery fund payments have been made as a result of judgments against ten licensees. Payments from the fund have totaled \$69,301, an average of \$6,930 per claim. If the number of new salesman licenses issued each year remains at the 1977 level (15,326), payments into the fund each year from that source (\$153,260) will be sufficient to repay claims amounting to more than double the amount that has been paid during the past 18-month period (\$69,301). Therefore, the fund could be expected to continue to grow from its present level by the amount of the prevailing interest rate, while utilizing current new licensee payments to cover judgments ordered.

#### Summary

With regard to commission administration the review found that the commission's primary function dealt with establishing rules and regulations. Other activities of the commission appeared to be largely acceptance of staff recommendations and appointments to two committees. The statute contains a provision delegating all commission authority to the administrator unless the commission acts positively to reserve the authority to itself. As a result, day-to-

day operations and decisions, general staff direction and hearings on complaints are conducted by the administrator.

Staff administrative functions related to general office operations include accounting, data processing, personnel and mail room operations. Generally, records maintained in support of these functions were well organized and complete. It was noted, however, that certain accounting records were not current and that information concerning costs and revenues associated with publications sold by the agency were not available. A review of the processes associated with general office operations indicated deficiencies in the following areas:

1. A cash receipts process which circulates checks throughout the agency while the attached applications are being processed, rather than depositing in a timely manner to the State Treasury;
2. a policy allowing the checks for "filing fees" to be returned if an application cannot be processed to the point of issuing a letter of eligibility for the examination;
3. a recurrent problem with returned checks which could be alleviated by requiring some form of payment other than personal checks (e.g. money orders or cashier's checks);
4. a need to increase the data entry capability, through cooperation with the Board of Control; and
5. the utilization of personnel and equipment in the mail room which would result in the most efficient processing of mail.

Program operations were reviewed according to three basic functional areas: licensing, enforcement and accreditation. The processes involved and the records maintained in each of these areas were reviewed. Records appeared to be generally well organized and complete within the constraints associated with the substantial backlog of work waiting to be processed. While the processes associated with the enforcement and accreditation functions are relatively simple, it appears that the staff is allowed significant amounts of discretion in the use of

time and the actions taken in these areas. However, no improprieties associated with the administration of these discretionary powers was noted. The processing of applications for original licensure is an extremely cumbersome process generally involving at least three of the agency's major divisions and requiring handling of the paperwork by numerous persons. The heavy workload imposed by this process, together with renewal processing during a three to four month period each year, is likely to result in continuing difficulties in preventing backlogs. While increased data entry capability will alleviate some of the backlog problems, it appears that a leveling of workload associated with license issuance may not be completely corrected without implementing a system of staggered renewals. Another component of the licensing process is examinations. Presently, the scheduling of examinations is done in advance and letters of eligibility are sent to applicants, entitling them to take an examination at any time and place or the schedule within a year after application filing. The result is that no prediction of the need for a particular examination session can be made. The time of investigators then must be allocated on the basis of the schedule as established, rather than upon a given level of demand for an examination at a particular time and place.

## Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used can reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files were reviewed to collect and verify selected data presented under this criterion.

The overall objective of the Real Estate Commission as identified in its self-evaluation report is "to protect the public in its dealings with real estate agents by assuring that those authorized to act as real estate agents in Texas are competent, honest, trustworthy and have a reputation for the exercise of integrity" and "to act to prevent unauthorized real estate agency activity in Texas." To fulfill the overall objective reflected in the statements above, the agency's major functions may be divided into two groupings related to licensing and enforcement.

### Licensing

Licensing of real estate agents is composed of two major functions, original licensure and license renewal. In addition, the agency accredits proprietary school programs considered adequate for satisfying educational requirements for licensure. Together these functions are the commission's primary means of accomplishing the objective of licensing: to assure that individuals who are licensed as real



estate agents by the commission are qualified and competent. The major requirements for original licensure as defined by statute are experience (for broker licensure only), education, examination and high ethical standards. Requirements for license renewal are continued compliance with the licensing act and payment of an annual fee. The commission is required by statute to establish standards of accreditation for schools. Statutory requirements provide varying degrees of discretionary authority to the agency for meeting its licensing objective as the following presentation will discuss.

The commission must verify that all applicants for broker meet the statutory requirements of "not less than two years active experience in this state as a licensed real estate salesman during the 36-month period immediately preceding the filing of the application." A further requirement on a salesman is that no commission for real estate sales may be accepted except through a sponsoring broker who assumes responsibility for the salesman's acts. One result of these requirements is that the agency must maintain records which associate a salesman with his sponsoring broker to reflect active sponsorship. The agency maintains master files on the status of all sales persons so that the qualification of an applicant for broker may be determined as required. Agency personnel routinely evaluated the experience of the 8,360 applications for broker during 1977 and made 34,382 changes in master files so that current information on licensees could be maintained.

The agency also verifies the education required by statute of all applicants for original licensure and has established standards for evaluating education courses that applicants may use to satisfy prerequisites. Transcripts or other official evidence of satisfactory completion of courses, equal to the present requirements of six semester hours for salesman and 12 semester hours for broker licensure are

reviewed for all applicants. The education requirements have been incrementally increasing since 1977 so that by 1985, 60 semester hours will be necessary for licensure to practice real estate. These increased requirements have created a need external to the agency for additional real estate courses available to licensees for meeting statutory provisions. In addition, the agency has encountered additional workload as a result of verifying increased courses per applicant. The greatest impact on the commission, however, has been in responding to the very large volume of applications received as individuals attempt to qualify under less demanding standards. To compound the agency's workload difficulties, the increase in educational requirements take place at the end of the calendar year so that the impact of this large volume of applications comes during the annual certification (license renewal) period.

Although the commission does set standards for acceptable educational credits, the statutory requirements of education and experience previously discussed are largely beyond the agency's discretionary authority. Agency procedures are to return applications for original licensure received without the necessary educational or experience requirements by the applicant. In April and May 1978, approximately 150 individuals had applications returned because additional education or experience was required before an application could be processed.

In addition, the agency also accredits private real estate schools prior to accepting their educational credits. The agency indicates that it has sought to approve schools for accreditation as frequently as possible consistent with adequate standards. There are presently 17 private real estate schools, including several with multiple locations, offering courses throughout the state. The agency does have a number of rules addressing standards to which real estate programs must

conform to be accredited. However, written policies establishing the commission's requirements for accreditation have not been systematically developed. Thus, it is not clear that consistent standards are being uniformly applied. Review of files and commission minutes indicates that requirements for accreditation are communicated verbally, without written verification, and that in some cases, accreditation has been withheld pending development of a school name acceptable to the staff. Documentation in agency files indicates that the process of school approval might last several months; however, if written guidelines regarding various components of the commission's review criteria were available, the time required would probably be significantly shortened.

The commission has latitude to define acceptable standards for qualification of applicants in two areas: ethical standards and examinations. Ethical standards regarding honesty, trustworthiness, and integrity have been requirements for licensure since the original "Real Estate Dealers Act" of 1939. The agency uses three major procedures to verify these standards. If an applicant has been licensed in another state, that state is contacted for information regarding the individual. Also, if an applicant indicates on the application such experiences as arrests, criminal or civil suits, unpaid judgments, or previous licensure denial, additional information is sought. Additionally, an "alert file" is maintained against which all applications for original licensure are checked. This file is based on a combination of information sources including newspaper articles and previous agency experience with the applicant. If an applicant is found to have a record in the alert file or previous questionable experiences otherwise determined, the application is sent to the agency's staff attorneys for evaluation. Based on their evaluation, an applicant may be denied a license. Exhibit II-1 displays the frequency and final disposition of such disapprovals occurring in the past two years.

EXHIBIT II-1

Number and Final Disposition of License Disapprovals  
 Enforcement Division  
 Fiscal Years 1976-1977  
 Texas Real Estate Commission

Fiscal Year	Applications Disapproved	Not Appealed	Appealed	
			License not Issued	License Issued
1976	15	5	7	3
1977	15	6	4	5

Since 1955, the commission has also been charged with administration of an examination to applicants for a real estate license. Specifically, the Real Estate License Act states that "the competency of the individual, for the purpose of qualifying for the granting of licensure privileges, shall be judged solely on the basis of the examination." Given this statutory directive, the commission's objective (assuring that only qualified individuals are licensed) may be seen to be largely dependent on the manner in which applicants are examined.

Furthermore, after an individual is licensed, the statute provides that privileges may be retained by the payment of timely annual certification fees so long as the licensee remains in compliance with the licensing act. The agency automatically reissues a license if annual certification fees are paid during the proper period. Suspension or revocation are therefore the agency's only means of licensure removal after the original license is issued. The importance of the examination function is increased by this portion of the licensing act.

With regard to the method of developing the examination for license applicants, the statute specifies that it may be "prepared by or contracted for by the commission." The agency has chosen to develop the test in-house. Preparation

and quality control of the exam and related study materials is the main responsibility of one individual within the Education and Training Division. Examinations and study materials are frequently reviewed and periodically revised in an attempt to keep questions relevant to the needs of licensees. The agency has rejected the approach of developing the exam with the purpose of screening a certain percentage of applicants because of the arbitrariness of choosing a particular failure rate. Agency personnel have instead expressed the philosophy that the exam should test applicants on information which should be known prior to licensure and that this should be done without regard to failure rates. However, as a method of validation, a record of examinee's performance on individual questions is maintained to provide a basis on which the questions may be evaluated. Questions which have a success rate outside of what is considered an acceptable range are restyled or eliminated in an attempt to assure fair questions. No outside consultants have been utilized in validating the examinations.

The commission staff has considered use of other sources for examination questions. Two main standard exams are presently used by other states -- the Educational Testing Service's (used by 22 states) and the California Multi-state test (used by 9 states). In review of these exams, the agency indicates that it could find no economies while several disadvantages were noted including: that a failure rate would have to be determined, that the questions were not specific to Texas, that some questions did not appear as good as staff developed questions, and that the standardized tests seemed too difficult particularly with regard to math. The Real Estate Research Center in its enabling statute is also charged "to supply material to the Texas Real Estate Commission for the preparation of the examinations for real estate salesmen and brokers, if requested to do so by the commission." The commission at one time did request and was provided with questions from the

Center; however, the material presented was determined to be unsuitable for use in the licensing examinations, according to commission staff.

The licensing act stipulates that each applicant is to be provided "with study material and references on which his examination shall be based." The agency reports that compliance with this requirement is assured by providing each applicant with a booklet of questions and answers (different for broker and salesman applicants) containing information from which examinations are developed and concepts on which the examination questions are based. The agency is also charged with making the salesman's examination "less exacting and less stringent" than the brokers exam. That this is accomplished is indicated both by the volume of the study material made available for the two exams (65 pages for salesman, 113 for broker) and by the 1977 failure rates (32 percent for salesman, 43 percent for broker).

To evaluate the present exam used by the commission for assuring licensee competency, two comparisons were used. Exhibit II-2 compares the examination performance of license applicants during the present fiscal year beginning (September 1977) to that of examinees for the previous three fiscal years. This exhibit indicates that the examination has been maintained in such a way that the quality of persons licensed has remained fairly constant over time. Exhibit II-3 compares the examination failure rates of Texas in calendar year 1977 to those of other states. This exhibit indicates that the screening provided by Texas in determining competency for licensure is comparable to that of other states.

One other factor, beyond the agency's means to control, does affect its ability to meet its objective of assuring that only qualified individuals are licensed. The incremental process over time by which the requirements for licensure have been increased, combined with provisions (grandfather clauses) at each change to

exempt persons licensed at that time, has produced a widely varying licensee population. Because of the volume of records kept by the agency and the difficulty of sampling them, the last analysis of dates of original licensure for brokers was performed by the Real Estate Research Center in 1973. Exhibit II-4 displays the number of brokers at that time who had qualified for licensure under various statutory requirements for licensure.

#### EXHIBIT II-2

Examination Performance  
Fiscal Years 1975-1978  
Texas Real Estate Commission

FY	Exam	Passed	Failed	Total Examined	Pass Rate (%)
1975	Salesman	9,440	4,949	14,389	65.6
	Broker	3,285	1,460	4,745	69.2
1976	Salesman	11,964	6,230	18,194	65.7
	Broker	2,616	1,850	4,466	58.5
1977	Salesman	19,727	9,075	28,802	68.4
	Broker	3,614	2,690	6,304	57.3
*1978	Salesman	12,623	5,605	18,228	69.2
	Broker	3,228	2,399	5,627	57.3

\*Figures through 5-31-78

#### EXHIBIT II-3

Examination Pass/Fail Rates  
Calendar Year 1977  
Texas Real Estate Commission

Exam	Texas		United States	
	Pass	Fail	Pass	Fail
Salesman	67%	33%	59%	41%
Broker	61%	39%	57%	43%

EXHIBIT II-4

Description of Brokers in 1972  
by Requirements Under Which Originally Licensed  
Texas Real Estate Commission

1939-1955	1955-1963	1963-1967	1967-1972
No examination requirements	Examination required		
	Or	One year active salesman experience	
No experience requirements	Five years experience	Or	And
		30 classroom hours	90 classroom hours
No education requirements			
Licensed	Licensed	Licensed	Licensed
5,973	7,225	6,059	9,188
%	%	%	%
21.0	25.4	21.3	32.3

Enforcement

Enforcement of the Real Estate License Act is provided through three main functions: establishing standards for implementing the law, discovering possible violations, and using enforcement powers to discourage improper activities. In addition to those main enforcement functions, the commission is also responsible for maintaining the Real Estate Recovery Fund to provide financial remedies to injured persons unable to recover damages from licensees. In sum, these functions provide the means by which the agency seeks to meet the enforcement objective -- to prevent the unlicensed practice of real estate, to insure that licensees practice in compliance with the law, and to minimize harm to the public from the actions of licensees.



The commission uses two formal mechanisms (promulgating rules and preparing advisory opinions) for establishing standards to implement the licensing act. While the commission has met requirements for adequate notice of proposed rules, adopted changes to rules generally are not distributed systematically to licensees. Because licensed individuals are not routinely provided with information concerning developments in established rules, practitioners may not be aware of requirements under which they are practicing.

Commission rules were originally developed in 1975 in response to requirements of the Texas Register and Administrative Procedures Act. The basis of the rules (a policy manual maintained by the legal staff) had been in existence for several years to provide a basis of consistent agency decisions. However, in transferring policy to official rules, portions with more emphasis on exceptions than general policy became subject to misunderstanding. Rules such as those pertaining to the discretion of the commission not to investigate anonymous complaints or complaints addressed to another agency could easily be interpreted to indicate an attempt by the agency to discourage complaints. Agency policy is not to make complaints against licensees difficult to file, but the possibility exists of misunderstanding on the part of a person attempting to determine the requirements for filing a complaint.

To identify violations of the act, the agency's enforcement staff performs routine inspections and specific investigations in response to complaints. Routine inspections initiated by the agency are of three types--inspections of educational programs, licensees, and non-licensees. In all cases, the schedules of inspections are developed by the field offices rather than the central office. The agency has developed both rules and written procedures which speak to audits of educational programs. Similarly, routine visits to licensees are addressed by agency policies.

Land developers, identified by the U.S. Department of Housing and Urban Development, and other non-licensed real estate practitioners are also visited by field personnel in an attempt to prevent unauthorized practice. However, the number of audits which it is possible to perform is limited, and field personnel must rely primarily on informal sources of information to evaluate the required frequency of such inspections. The size of the geographic regions to cover and the other demands on field personnel (to administer exams and investigate complaints) restrict the time available for such activity.

The largest part of the agency's efforts to identify violations are expended on investigations initiated in response to complaints. A large number of complaints are received which are determined to be outside the agency's jurisdiction or for which no violation or insufficient evidence are found. It is possible to conclude that a large number of persons who are familiar enough with the agency to file a complaint do not receive satisfactory resolutions. There also exists an unknown number of dissatisfied individuals who do not make complaints to the Real Estate Commission when violations of the act by real estate agents have occurred. The agency has developed few ways of identifying these persons. Contact has been made with criminal courts in the Houston area, and informal contacts with other agencies and trade associations do identify a limited number of violations of the licensing act.

Three aspects were evaluated regarding the procedures used by the commission for invoking its enforcement powers: the hearing process itself, the penalties assessed, and the success of appeals. Hearing procedures, appear to provide due process relative to time frames, notice and location of hearings. However, one unusual feature of the hearing process is the commission members' total disassociation from it. The administrator or assistant administrator acts as

hearing officer and renders the commission order for every hearing. Appeal is directly to district court. Besides losing the occupational perspective of commission members, there are potential difficulties associated with agency personnel acting in both prosecution and decision-making roles. On the other hand, the person who hears a case also decides it, providing the advantages of continuity and timeliness.

Penalties used by the commission in enforcement action against licensees are revocation, suspension, and probation. Exhibit II-5 displays the number of times these penalties have been used over the last six years, along with other information for comparison. The ratio of penalties assessed to complaint files opened is quite low throughout this period. On the other hand, the ratio of penalties assessed to hearings held was at least 50 percent in each of the past six years--suggesting that hearings do provide a mechanism for holding a licensee accountable for violations. Also revocation (theoretically the most severe penalty) has remained the most frequently used. Revocation must be described as only theoretically the most serious penalty, at present, because the licensee may, under present law, immediately reapply for licensure. Prior to 1975, the act provided for a one year bar to reapplication after revocation.

An indicator of the quality of enforcement actions against licensees is the success of hearing orders appealed. Exhibit II-6 displays decisions of district courts to such appeals during the most recent 21 months. Although the number of appeals is high, in upholding the original order or dismissing 10 of the 14 appeals during this time period, the courts appear to be validating for the most part the procedures and decisions used by the commission in enforcing the licensing act.

The Real Estate Recovery Fund offers considerable potential to assist the commission in meeting its enforcement objective of preventing the practice of real

EXHIBIT II-5

Agency Enforcement Activity  
Fiscal Years 1972-1977

	1972	1973	1974	1975	1976	1977
Total Licensees	69,622	81,490	89,806	91,549	95,344	111,538
Complaint Files Opened	989	841	601	605	907	835
Hearings Held	31	26	32	29	33	57
Revocations	15	13	12	18	12	30
Suspensions	0	0	0	3	9	12
Probations	6	9	4	4	0	4

EXHIBIT II-6

Appeals to District Court  
of Commission Orders  
Disposed September 1976-May 1978  
Texas Real Estate Commission

Upholding TREC	7
Dismissal	3
Modifying TREC	2
Reversing TREC	2
<u>Total</u>	<u>14</u>

estate from harming the public. However, statutory provisions affect several of the commission's activities in administering the fund. The fund, by law, may be applied only to violations of the licensing act by licensees, thereby restricting the agency's ability to reimburse damages caused by unlicensed real estate agents. Another statutory restriction, still unresolved in its application, concerns the fund's reimbursement limits: \$10,000 per claim, \$20,000 per licensee per year, and a total licensee limit of \$40,000. The agency practice has been to make payments on a

first-come, first-served basis. However, a challenge to this practice is presently in district court.

The licensing act provides that the commission "may notify the Attorney General of Texas of its desire to enter an appearance . . . or take whatever other action it deems appropriate on behalf of, and in the name of, the defendant." The act continues that the commission "shall act only to protect the fund from spurious or unjust claims." The commission, on this basis, has developed practices in defense of the fund. The commission's practice for all cases in which it receives notice of an impending claim on the fund is to provide the Attorney General with any grounds on which to deny or restrict recovery. As part of this practice, the commission has interpreted the language which defines the fund's purpose to be "reimbursing aggrieved persons" as a basis for contesting punitive damages. To date, district courts have agreed with the agency's interpretation and denied punitive damages.

Language in the licensing act also specifies that when a claim is paid from the recovery fund, the license of the salesman or broker against whom the claim is made "shall be automatically revoked." The agency, not wishing to deny due process or forfeit agency authority to a district court, provides a hearing prior to automatic revocation. Although this hearing is considered essentially a formality, there has been one instance in which, on the basis of testimony at a hearing, a license was not revoked.

### Summary

The Real Estate Commission objectives focus primarily on two areas, assuring the quality of individuals licensed by the agency and preventing unauthorized real estate activity -- functionally grouped into two categories, licensing and enforcement.

A number of requirements for licensure are presently established by law and their historic development has created a varied licensee population. Experience and education prerequisites have caused both significant increases in workload for the agency and major changes external to the agency, particularly in the areas of salesman-broker relationships and educational courses in real estate. Though the effect of these requirements is largely determined by statute, the commission does accredit private schools offering real estate courses, a function which it performs without clearly defined standards. Two requirements for licensure are largely agency defined, ethical standards and competency. Statutory provisions regarding honesty, trustworthiness, and integrity appear to be well checked and infrequently applied as a basis for disapproval. The results of appeals to these disapprovals suggest that the applicants receive a fair hearing process. Examinations for competency appear to screen applicants for licensure on a basis consistent over time and with the practice of other states. However, the agency has not utilized all resources available to it, such as professional test validation and Real Estate Research Center capability. Nor has it performed non-staff evaluations of the present examination structure, development or administration.

Enforcement functions, besides administration of the Real Estate Recovery Fund, fall into three areas: establishing standards, discovering violations, and administering penalties. Procedures used for interpreting statutory requirements through rules and advisory opinions are generally satisfactory, but the commission could keep licensees better informed of requirements on them. Large numbers of persons who make complaints to the Real Estate Commission find that either the statute does not address their problem or that the agency cannot develop a case adequate for hearing. Routine inspections by enforcement personnel are limited (partly due to exam administration responsibilities), and the agency has systematically pursued few other means of determining violations. Hearing procedures have

been effective in revoking a considerable number of licenses consistent with due process. Use of the Real Estate Recovery Fund has two statutory provisions which limit its ability to protect the public. Damages caused by non-licensed individuals are not recoverable, and recovery is limited on cases involving any one licensee. Agency practice in protecting the fund reflects a strict interpretation of the fund's use for reimbursement of damages, and a less strict interpretation of statutory requirements for automatic license revocation.

### Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) significant effects of this regulation on the public and the industry; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

Restrictiveness of governmental regulation is determined both by restrictions requisite to licensure and restrictions on the practice of licensees. For purposes of this review, requirements for licensure regardless of their individual merits are identified as restrictions and are evaluated to determine if alternative methods are feasible. Similarly, standards imposed on licensed individuals are identified as restrictions for this analysis and are reviewed against less restrictive alternatives. Initially, this review examines the evolution of the present statute.

#### Statutory Changes

The Real Estate License Act has been substantially amended six times since its adoption in 1939. Exhibit III-1 presents a summary description of the original act and the changes made by the subsequent amendments.

Starting with the 1955 amendments, the licensing requirements have become significantly more restrictive for new applicants. The 1955 amendments first required new applicants to pass an exam to establish their competency. In 1963,



EXHIBIT III-1

Summary of Statutory Changes  
Real Estate License Act

Year	Licensing	Enforcement	Administration									
1939	<p><u>Requirements</u></p> <ul style="list-style-type: none"> <li>- Completion of application showing the following:               <ul style="list-style-type: none"> <li>- Occupation previously engaged in by applicant</li> <li>- Prior convictions or indictments for certain crimes</li> </ul> </li> <li>- Sworn recommendations of three citizens regarding honesty, integrity, and competency of applicant</li> <li>- Sixty day state residency requirement</li> </ul> <p><u>Fees</u></p> <table border="0" style="margin-left: 40px;"> <thead> <tr> <th></th> <th style="text-align: center;">Orig Applic.</th> <th style="text-align: center;">Renewal</th> </tr> </thead> <tbody> <tr> <td>Salesmen</td> <td style="text-align: center;">\$ 3</td> <td style="text-align: center;">\$ 3</td> </tr> <tr> <td>Dealers</td> <td style="text-align: center;">\$ 3</td> <td style="text-align: center;">\$ 3</td> </tr> </tbody> </table> <p><u>Exemptions</u></p> <ul style="list-style-type: none"> <li>- Sale of property by owners, the attorney of owners or regular employees of owners. Services rendered by an attorney, receiver, trustee in bankruptcy, administrator, or executor</li> </ul>		Orig Applic.	Renewal	Salesmen	\$ 3	\$ 3	Dealers	\$ 3	\$ 3	<p><u>Prohibitions</u></p> <p><u>Dealers and Salesmen:</u></p> <ul style="list-style-type: none"> <li>- Knowingly making any substantial misrepresentation</li> <li>- Making any false promises with intent to influence, persuade, or induce</li> <li>- Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salesmen, or advertising or otherwise</li> <li>- Acting for more than one party in a transaction without the knowledge or consent of all parties thereto</li> <li>- Failure within a reasonable time to account for or to remit any moneys coming into his possession which belong to others, or</li> <li>- Any other conduct, which constitutes dishonest dealings</li> <li>- Procuring a license under this Act by fraud misrepresentation, or deceit</li> <li>- Conviction of a felony, knowledge of which the Administrator did</li> </ul>	<p><u>Administering Body</u></p> <ul style="list-style-type: none"> <li>- Securities Division Office of Secretary of State</li> </ul> <p><u>Responsibilities</u></p> <ul style="list-style-type: none"> <li>- To investigate persons doing business in real estate upon verified complaint of any person or upon the motion of the administrator of the Securities Division</li> <li>- To issue licenses to applicants of good business repute</li> </ul> <p><u>Limitations</u></p> <ul style="list-style-type: none"> <li>- The administrator has no authority to promulgate rules or regulations not set forth under the act</li> </ul> <p><u>Expiration of Licenses</u></p> <ul style="list-style-type: none"> <li>- Dec. 31 of each year</li> </ul> <p><u>Fund</u></p> <ul style="list-style-type: none"> <li>- Separate fund in state treasury for administration of Act</li> </ul>
	Orig Applic.	Renewal										
Salesmen	\$ 3	\$ 3										
Dealers	\$ 3	\$ 3										

Year	Licensing	Enforcement	Administration
		<p>not have at the time of last issuing a license to such licensee</p> <ul style="list-style-type: none"> <li>- Wilfully disregarding or violating any of the provisions of the law</li> <li>- Demanding from an owner a commission to which he is not justly entitled</li> <li>- Paying commissions or fees to, or dividing commissions or fees with anyone not licensed as a real estate dealer or salesman</li> <li>- Using any trade name or insignia of membership in any real estate organization of which he is not a member</li> <li>- Accepting, giving, or charging any undisclosed commission, rebate, or direct profit on expenditures made for a principal</li> <li>- Soliciting, selling, or offering for sale real property by offering "free lots" or conducting lotteries for the purpose of influencing a purchaser of real property</li> <li>- Acting in the dual capacity of broker and undisclosed principal in any transaction</li> </ul>	

Year	Licensing	Enforcement	Administration
		<ul style="list-style-type: none"> <li>- Guaranteeing, authorizing, or permitting any person to guarantee future profits which may result from the resale of real property</li> <li>- Placing a sign on any property offering it for sale or for rent without the written consent of the owner or his authorized agent</li> <li>- Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting a new contract with another principal</li> <li>- Negotiating the sale, exchange or lease of any real property directly with an owner or lessor knowing that such owner or lessor has a written outstanding contract granting exclusive agency in connection with such property with another real estate broker</li> <li>- Offering real property for sale or for lease without the knowledge and consent of the owner or his authorized agent</li> </ul>	

Year	Licensing	Enforcement	Administration
-534-		<ul style="list-style-type: none"> <li>- Publishing advertising which is misleading, inaccurate in any material particular, or in any way misrepresents any properties, terms, values, policies, or services of the business conducted</li> <li>- Knowingly withholding from or inserting in any statement of account or invoice any statement that makes it inaccurate in any material particular</li> <li>- Publishing or circulating unjustified or unwarranted threats of legal proceedings which tend to or have the effect of harassing competitors or intimidating their customers</li> </ul> <p><u>Powers</u></p> <ul style="list-style-type: none"> <li>- To issue subpoenas</li> <li>- To administer oaths</li> <li>- To examine witnesses and receive evidence</li> </ul> <p><u>Penalties</u></p> <ul style="list-style-type: none"> <li>- Suspension</li> <li>- Revocation</li> <li>- Denial of renewal</li> <li>- Upon conviction of violation of Act: a fine of not more than \$500 and/or imprisonment in the county jail for not more than one year.</li> </ul>	

Year	Licensing	Enforcement	Administration									
1949	<p><u>Fees</u></p> <table border="1"> <thead> <tr> <th></th> <th>Orig. Applic.</th> <th>Renewal</th> </tr> </thead> <tbody> <tr> <td>Salesmen</td> <td>\$ 5</td> <td>\$ 5</td> </tr> <tr> <td>Dealers</td> <td>\$ 10</td> <td>\$ 10</td> </tr> </tbody> </table>		Orig. Applic.	Renewal	Salesmen	\$ 5	\$ 5	Dealers	\$ 10	\$ 10	<p><u>Prohibitions</u></p> <ul style="list-style-type: none"> <li>- Licenses cancelled upon: <ul style="list-style-type: none"> <li>- Conviction of a felony</li> <li>- Conviction of unlawful practice of law</li> </ul> </li> <li>- Adjudgement in a civil proceeding of the unlawful practice of law</li> <li>- Proof that the licensee has committed act constituting the unlawful practice of law</li> <li>- Proof that a real estate licensee, not licensed to practice law, for pecuniary benefit draws a deed, note, will or any other instrument that may affect title to or interest in land</li> </ul>	<p><u>Administering Body</u></p> <ul style="list-style-type: none"> <li>- Texas Real Estate Commission</li> </ul> <p><u>Composition of Commission</u></p> <ul style="list-style-type: none"> <li>- Six members appointed by the Governor with the consent of two-thirds of the Senate present</li> <li>- Six year terms</li> <li>- Each member must be a licensed real estate dealer for five years prior to appointment</li> <li>- \$10 per diem NTE 30 days per year</li> </ul> <p><u>Administrator</u></p> <ul style="list-style-type: none"> <li>- Commission appoints</li> <li>- All powers and duties delegated to administrator unless commission directs others</li> </ul>
	Orig. Applic.	Renewal										
Salesmen	\$ 5	\$ 5										
Dealers	\$ 10	\$ 10										
1955	<p><u>Requirements</u></p> <ul style="list-style-type: none"> <li>- Licenses required for "Real Estate Brokers" and "Real Estate Salesmen" who must be employed by a broker</li> <li>- Applicants must pass a written examination to establish their professional competency.</li> </ul>											

Year	Licensing	Enforcement	Administration												
	<ul style="list-style-type: none"> <li>- Grandfather any one holding a license for the five years preceding the application, unless license was suspended or revoked</li> <li>- Bond in the amount of \$3,000 for a broker and \$2,000 for a salesman payable to the commission for the use and benefit of an injured party</li> </ul> <p><u>Fees</u></p> <table style="margin-left: 40px;"> <tr> <td></td> <td style="text-align: center;">Orig.</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Applic.</td> <td style="text-align: center;">Renewal</td> </tr> <tr> <td style="padding-left: 20px;">Salesmen</td> <td style="text-align: center;">NTE \$10</td> <td style="text-align: center;">NTE \$10</td> </tr> <tr> <td style="padding-left: 20px;">Brokers</td> <td style="text-align: center;">NTE \$10</td> <td style="text-align: center;">NTE \$10</td> </tr> </table> <p><u>Exemptions</u></p> <ul style="list-style-type: none"> <li>- Persons or firms not engaging in the activities of a real estate broker as an occupation or profession. (In addition to prior limitations.)</li> </ul>		Orig.			Applic.	Renewal	Salesmen	NTE \$10	NTE \$10	Brokers	NTE \$10	NTE \$10	<p><u>Prohibitions (additional)</u></p> <ul style="list-style-type: none"> <li>- Execute a contract of sale without advising the purchaser in writing that he or she should have the abstract of title examined by an attorney or should obtain title insurance</li> <li>- The penalty for violation of the above prohibition is loss of the commission for the sale</li> </ul>	<p><u>Responsibilities</u></p> <ul style="list-style-type: none"> <li>- To adopt such values and regulations as appropriate to the proper administration of the Act</li> <li>- May employ necessary staff</li> </ul>
	Orig.														
	Applic.	Renewal													
Salesmen	NTE \$10	NTE \$10													
Brokers	NTE \$10	NTE \$10													
1959		<p><u>Prohibitions (additional)</u></p> <ul style="list-style-type: none"> <li>-Bringing of an action for collection of compensation for performing real estate transaction services, as specified in the act, without being a licensed real estate broker or salesman</li> </ul>													

Year	Licensing	Enforcement	Administration
1963	<p><u>Requirements</u></p> <ul style="list-style-type: none"> <li>- For a broker license:</li> <li>- One year actively as a licensed real estate salesman, or</li> <li>- Completed 30 classroom hours in approved basic real estate courses</li> </ul>	<p><u>Prohibitions (additional)</u></p> <ul style="list-style-type: none"> <li>- Failing or refusing on demand to furnish copies of a document pertaining to a real estate transaction to a person whose signature is affixed to the document</li> <li>- Failing to deposit money received as escrow agent within a reasonable time</li> <li>- Disbursing escrow or trust money before the transaction has been completed</li> <li>- Failing to produce information concerning a real estate transaction upon demand of the Real Estate Commission</li> </ul>	<p><u>Responsibilities (additional)</u></p> <ul style="list-style-type: none"> <li>- To inspect and accredit educational programs or courses of study in real estate and to establish standards of accreditation for such programs</li> </ul>
1967	<p><u>Requirements</u></p> <ul style="list-style-type: none"> <li>- For 1st renewal of a salesman's license for those not licensed as salesmen as of the effective date of the Act and original application after 1 year: <ul style="list-style-type: none"> <li>- 30 classroom hours or equivalent correspondence hours</li> </ul> </li> <li>- For issuance of a broker's license: <ul style="list-style-type: none"> <li>- 90 classroom hours or equivalent correspondence hours, and</li> </ul> </li> </ul>		<p><u>Composition of Commission</u></p> <ul style="list-style-type: none"> <li>- Six members appointed by the governor with the consent of the senate</li> <li>- Each member must have been actively engaged in the real estate business as a broker on a full-time basis for at least five years</li> </ul>

Year	Licensing	Enforcement	Administration									
1967 (cont.)	<p>- One year of active engagement in the real estate brokerage business as a salesman</p> <p><u>Fees</u></p> <table border="0"> <tr> <td></td> <td>Orig. Applic.</td> <td>Renewal</td> </tr> <tr> <td>Salesmen</td> <td>\$10</td> <td>\$5</td> </tr> <tr> <td>Brokers</td> <td>NTE \$20</td> <td>NTE \$10</td> </tr> </table>		Orig. Applic.	Renewal	Salesmen	\$10	\$5	Brokers	NTE \$20	NTE \$10		
	Orig. Applic.	Renewal										
Salesmen	\$10	\$5										
Brokers	NTE \$20	NTE \$10										
1971	<p><u>Fees</u></p> <table border="0"> <tr> <td></td> <td>Orig. Applic.</td> <td>Renewal</td> </tr> <tr> <td>Salesmen</td> <td>\$10</td> <td>\$10</td> </tr> <tr> <td>Broker</td> <td>NTE \$20</td> <td>NTE \$20</td> </tr> </table>		Orig. Applic.	Renewal	Salesmen	\$10	\$10	Broker	NTE \$20	NTE \$20		<p><u>Responsibilities (additional)</u></p> <p>- To transmit \$10 from each filing of broker license renewal applications and \$5 from each salesman license renewal application to Texas A&amp;M University for support and maintenance of the Texas Real Estate Research Center</p>
	Orig. Applic.	Renewal										
Salesmen	\$10	\$10										
Broker	NTE \$20	NTE \$20										
1973			<p><u>Expiration of Licenses</u></p> <p>- Authorized the commission to adopt a system under which licenses expire on various dates during the year</p>									



Year	Licensing	Enforcement	Administration
1975	<p><u>Requirements</u></p> <ul style="list-style-type: none"> <li>- For real estate broker's license: <ul style="list-style-type: none"> <li>- Passing the examination,</li> <li>- Two years experience as a real estate salesman.</li> </ul> </li> <li>- Following educational requirements: <ul style="list-style-type: none"> <li>- Prior to Jan. 1, 1977, 180 classroom hours</li> <li>- After Jan. 1, 1977, 12 semester hours</li> <li>- After Jan. 1, 1979, 15 semester hours</li> <li>- After Jan. 1, 1981, 36 semester hours</li> <li>- After Jan. 1, 1985, 60 semester hours, but two year experience requirement no longer applies</li> </ul> </li> <li>- For real estate salesman's license: <ul style="list-style-type: none"> <li>- Passing the examination</li> <li>- Following education requirements: <ul style="list-style-type: none"> <li>- Prior to Jan. 1, 1977, 30 classroom hours</li> <li>- By the second annual certification, additional 30 classroom hours</li> <li>- By the third annual certification another 30 classroom hours</li> </ul> </li> <li>- After Jan. 1, 1977, 6 semester hours</li> <li>- After Jan. 1, 1979, 12 semester hours</li> <li>- After Jan. 1, 1981, 21 semester hours</li> <li>- After January 1, 1983, 36 semester hours</li> </ul> </li> </ul>	<p><u>Prohibitions (additional)</u></p> <ul style="list-style-type: none"> <li>- Performing without a real estate license and for valuable consideration, a single act of real estate transaction of the type for which a license is required</li> <li>- Failing to disclose to a potential purchaser any significant latent structural defect or other defect known to the broker or salesman</li> <li>- Acting negligently or incompetently in performing an act for which a real estate license is required</li> </ul> <p><u>Penalties</u></p> <ul style="list-style-type: none"> <li>- For conviction of acting as a real estate broker or salesman without obtaining a license: <ul style="list-style-type: none"> <li>- for an individual, not less than \$100 nor more than \$500, and/or up to one year in the county jail for the first offense</li> <li>- for a corporation, not less than \$1,000 nor more than \$2,000 for the first offense</li> </ul> </li> <li>- In the case a person received money in consequence of a violation of the act, he shall, in addition, be liable to a penalty of not less than the amount received and not more than three times the amount received, which penalty may be recovered in a court of competent jurisdiction by an aggrieved person</li> </ul>	<p><u>Composition of Commission</u></p> <ul style="list-style-type: none"> <li>- Six members appointed by the governor with the consent of two-thirds of the senate present</li> <li>- Each member must have been engaged in the real estate brokerage business as a licensed real estate broker as his major occupation for at least five years</li> </ul> <p><u>Responsibilities (additional)</u></p> <ul style="list-style-type: none"> <li>- To establish a real estate recovery fund for reimbursing aggrieved persons who suffer monetary damage for reason of fraudulent or dishonest actions of real estate brokers or salesmen</li> <li>- To inspect and accredit educational programs or courses of study in real estate, and to set standards of accreditation for such programs, excluding accredited colleges and universities.</li> <li>- Increased fee to be transmitted to Real Estate Research Center to \$15 from broker renewal fee and \$7.50 from salesman renewal fee.</li> </ul>

Year	Licensing	Enforcement	Administration																																																
	<ul style="list-style-type: none"> <li>- After Jan. 1, 1985, the commission will accept applications for broker licensure only, and each license issued after that time will be designated as a license to practice real estate</li> <li>- Persons holding licenses on the effective date of the Act are not subject to educational requirements.</li> <li>- State residency requirement increased to six months</li> <li>- Bonding requirement eliminated</li> </ul> <p><u>Fees</u></p> <table style="margin-left: 40px; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Orig</td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Applic</td> <td style="text-align: center;">Renewal</td> <td></td> </tr> <tr> <td>Salesman</td> <td style="text-align: right;">NTE \$20</td> <td style="text-align: right;">NTE \$20</td> <td></td> </tr> <tr> <td>Broker</td> <td style="text-align: right;">NTE \$40</td> <td style="text-align: right;">NTE \$40</td> <td></td> </tr> <tr> <td>School</td> <td style="text-align: right;">\$400</td> <td style="text-align: right;">\$200</td> <td></td> </tr> <tr> <td>New Applicant-Recovery Fund</td> <td></td> <td></td> <td style="text-align: right;">\$10</td> </tr> <tr> <td>All Licenses at Effective</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Date Recovery Fund</td> <td></td> <td></td> <td style="text-align: right;">\$10</td> </tr> <tr> <td>Each Additional Office</td> <td></td> <td></td> <td style="text-align: right;">\$10</td> </tr> <tr> <td>Change of Address</td> <td></td> <td></td> <td style="text-align: right;">\$10</td> </tr> <tr> <td>Change of Sponsoring Broker</td> <td></td> <td></td> <td style="text-align: right;">\$10</td> </tr> <tr> <td>Examination Fee</td> <td></td> <td style="text-align: right;">NTE</td> <td style="text-align: right;">\$10</td> </tr> </table> <p><u>Exemptions</u></p> <ul style="list-style-type: none"> <li>- Salespersons for land developers</li> <li>- Salespersons for homebuilders</li> </ul>		Orig				Applic	Renewal		Salesman	NTE \$20	NTE \$20		Broker	NTE \$40	NTE \$40		School	\$400	\$200		New Applicant-Recovery Fund			\$10	All Licenses at Effective				Date Recovery Fund			\$10	Each Additional Office			\$10	Change of Address			\$10	Change of Sponsoring Broker			\$10	Examination Fee		NTE	\$10	<p><u>Powers (additional)</u></p> <ul style="list-style-type: none"> <li>- To establish standards of conduct and ethics for licensees</li> <li>- To institute an action in its own name to enjoin any violation of any provision of this act or any rule or regulation of the commission</li> </ul>	
	Orig																																																		
	Applic	Renewal																																																	
Salesman	NTE \$20	NTE \$20																																																	
Broker	NTE \$40	NTE \$40																																																	
School	\$400	\$200																																																	
New Applicant-Recovery Fund			\$10																																																
All Licenses at Effective																																																			
Date Recovery Fund			\$10																																																
Each Additional Office			\$10																																																
Change of Address			\$10																																																
Change of Sponsoring Broker			\$10																																																
Examination Fee		NTE	\$10																																																

applicants for a broker's license were required to have served one year as a licensed real estate salesman or to have completed 30 classroom hours in approved basic real estate courses. In 1967, the first educational requirements for real estate salesmen were established -- 30 classroom hours of real estate courses. Real estate brokers were required to have completed 90 classroom hours of real estate courses in addition to having one year's experience as a real estate salesman. The 1975 amendments established a schedule of increasing education requirements which culminate in a requirement of 60 semester hours of approved real estate or related courses after 1985. In conjunction with increasing education requirements for new applicants, the 1975 amendments gave the Real Estate Commission the responsibility for inspecting and accrediting real estate education programs in non-accredited schools. Previously licensed brokers and salesmen are exempt from educational requirements for their licenses through a "grandfather clause". The 1975 amendments also increased the residency requirement from 60 days to six months.

The amendments have also incorporated additional prohibitions into the act. In 1949, the unlawful practice of law was prohibited, with conviction or adjudgment of unlawful practice in a civil suit resulting in the licensee losing his real estate license. The 1955 amendments prohibited executing a contract of sale without advising the purchaser in writing that he or she should have the abstract of title examined by an attorney or should purchase title insurance.

The 1963 amendments made performing without a license and for pay a single transaction, a violation of the Act. Other new prohibitions that have been established are failing to furnish on demand copies of documents to those who had signed the document, failing to produce information concerning a real estate

transaction on demand to the Real Estate Commission, disbursing escrow or trust money before the transaction has been completed, and failing to deposit escrow money within a reasonable time.

Amendments placed in the act in 1975 prohibited acting negligently or incompetently in a real estate transaction, and failing to disclose to potential purchasers latent structural or other defects known to the broker or salesman.

In summary, six major amendments to the Real Estate License Act since its initial passage in 1939 have made the regulation of the real estate industry increasingly restrictive. Requirements for licensure have increased so that there are presently a variety of prerequisites to becoming a real estate practitioner including residency, examination, experience, education, and fee requirements. The list of prohibited practices has also increased over time so that the present statute lists 33 causes for which a person's license may be suspended or revoked. The statutory development by which the Texas licensing act has changed (traced in detail in Table III-1) indicates less restrictive regulatory methods which have, in previous years, been considered adequate for protecting the public.

#### Less Restrictive Methods

In addition to looking at earlier Texas experience, the practices of other states in regard to licensure of real estate brokers were reviewed. The focus of this comparison was to determine if less restrictive regulation is presently used in other jurisdictions. All 50 states presently have some form of regulation of real estate brokers.

The Texas system of licensure of real estate broker is not unusual in the regulatory methods used. However, according to information contained in the 1977 annual report of the Interstate Cooperation Committee of the National Association

of Real Estate License Law Officials, it is more difficult to become a licensed broker in Texas than in most states. Texas is presently in a transition period during which the statutory requirements for becoming a broker are increasing. However, for purposes of this analysis, the current requirements of law are discussed.

Reciprocity is not common among real estate licensing law agencies; 26 have no reciprocal agreements. Although Texas is among the other 24 states which practice some form of reciprocity, the Texas Real Estate Commission presently accepts only licensed brokers from California, who must still pass the commission examination to prove competency.

In 1975, the state's residency requirements were increased from one month to six months. Since 29 states have no residency requirements and another 12 states simply require bona fide residency, Texas is among the nine most restrictive states in this respect.

Texas, as well as all other states, charges application fees and exam fees to persons applying for original licensure. In Texas, these two fees total \$45 for brokers. Compared to the other 49 states' average total for these fees (\$57), Texas has a moderate original application and exam fee schedule.

Annual certification (renewal) of a brokers license in Texas cost \$30. Compared to the average of other states (\$28), Texas is also comparable in this respect.

Texas, along with all but one other state, has established that a board administered examination must be passed by applicants before issuance of a broker license.

Thirty-four states besides Texas have established both education and experience requirements which must be met for licensure as broker. The balance

of states have established provisions to substitute one for the other, require only one of the two, or require neither. Of the 34 states which require both education and experience for broker licensure one-half, including Texas, require two years with about equal numbers requiring less than and more than two years. However, only two of the 33 states besides Texas have education requirements greater than the 180 classroom (12 semester) hours presently required for broker licensure in Texas.

In summary, Texas licensure requirements are as strict as those of most states in acceptance of licensees from other jurisdictions, cost of license applications and renewals, and the experience required before broker licensure. Compared to other states, Texas requirements are more difficult to fulfill in the areas of residency and education, and the education requirements are scheduled by law to increase in the future.

### Regulatory Alternatives

The following discussion presents various methods available for regulating the real estate industry. The discussion is divided into three main sections: 1) a discussion of seven regulatory alternatives ranging from least restrictive to most restrictive; 2) a discussion of operational choices available in applying regulation; and 3) a discussion of possible organizational forms through which regulation can be accomplished.

The following presentation briefly reviews seven of the major types of regulation which may be thought of as alternatives for balancing public needs and occupational requirements.

Alternative 1: No License, No Statutory Regulation. If this alternative were instituted, anyone could enter the occupation of real estate sales as easily as one

may presently become a salesperson for a house builder. The present fees of \$25 for salesmen and \$45 for brokers required of one to be licensed in Texas (assuming examinations are passed the first time) would not be necessary. On the other hand, the public would not be protected by the existence of prohibitions specific to real estate. Neither would those damaged financially have the protection offered by a real estate recovery fund. The public would have the protection of the Deceptive Trade Practices Act enforced by the Attorney General's Office. Also, real estate associations which presently offer remedies to individuals wronged by their members would continue to enforce ethical standards. Finally, a fiscal impact amounting to the excess of licensee fee income, over Real Estate Commission appropriations, by which the general revenue fund is enriched, would be eliminated.

Alternative 2: No License, Some Limited Statutory Regulation. Under this alternative, no state authorization or fees would be required for practice as real estate agent. However, legal grounds would be provided to the public for actions against anyone engaging in real estate practices established by the legislature to be improper. Additionally, even without state licensure, statutes could require that anyone practicing as a real estate agent be bonded or maintain liability insurance to assure some degree of financial compensation in case of damage.

The previous two alternatives may be implemented with no state agency designated to perform functions specific to real estate agents. The following alternatives require that an agency be designated to perform regulatory functions.

Alternative 3: Registration. This alternative would require all individuals acting as real estate agents to identify themselves to the state before beginning practice. Without establishing any minimum standards, the process of registration itself could request certain information such as experience, education, and

association membership. In addition, registration can be designed so as to require submission of fee schedules so that price information is made readily available to the public. A state agency would be required to maintain registration lists available to the public, but in other respects the consumer would be the judge of competency and performance.

Alternative 4: Certification. This alternative would establish optional competency requirements for real estate agents. Upon proving competency in the area of real estate, the agent would be allowed to claim state certification. The certification would be determined only once with no renewal necessary. If this option were available but not required for practice, each real estate agent would have the choice of determining if certification were desirable. The state, by this alternative, would not be placing restrictions on the activities of real estate agents, but would be identifying to the public those agents meeting minimum state standards.

The four regulatory alternatives presented above do not place serious restrictions on entry into an occupation and are therefore less restrictive than the following alternatives which contain licensing requirements.

Alternative 5: Licensure of Locations. By this alternative, all agents would need to be associated with a real estate agency and state licensure requirements would address only agencies. Therefore, agencies would be the parties responsible for meeting such requirements as the provision of acceptable contract forms, compliance with practice standards, and financial liability in case of damages. By not addressing individual competency, this alternative allows the competitive marketplace to perform this type of screening, while at the same time providing some accountability to the public through the mechanism of licensure.



Alternative 6: Licensure of Individuals. This alternative, presently used by Texas in regulating the real estate industry, restricts practice to individuals licensed by the state. As generally applied, this type of licensure is initially contingent on fulfillment of education or experience requirements and successful examination. Once an individual is licensed under this alternative, licensure generally is continued by payment of renewal fees. As a licensee, the individual is directly responsible to the state for practice within the limits of statutory prohibitions. The state may deny or revoke licensure privileges and thereby prevent the practice of undesirable individuals.

Alternative 7: Limited Term Licensure. This alternative is similar to traditional licensure except that rather than continuous renewal upon payment of fee, licenses automatically expire at the end of certain time periods. Reexamination or proof of continuing education is then required for reissuance of licensure privileges. By requiring continuing proof of competency, this alternative represents the most restrictive form of regulation and the greatest assurance to the public of competent practitioners. Implementation of this alternative in Texas would require increased examination or educational verification efforts over those presently needed.

The regulatory alternatives discussed above may be effected in several ways. The following section presents two important operational considerations: 1) whether a combination of less restrictive alternatives presented above will adequately meet specific needs, and 2) to what extent enforcement will be provided as part of regulation.

Several beneficial aspects of the current method used in regulating the real estate industry could be obtained through the combination of less restrictive alter-

natives. Statutes could be developed to continue both current prohibited practices and treble damages available through the courts. Registration could identify, for the public, those individuals against whom successful court actions had been taken, as well as experience and education of registrants. A registration fee could be used to build a recovery fund similar to that presently operated. Combinations of such alternatives offer the potential of adequate public protection and less restrictive regulation.

Another operational choice exists with regard to the extent of enforcement made available to the public. Enforcement activities may be grouped into two general categories: active and passive. Passive enforcement occurs when an agency limits its role to the maintenance of procedures which allow a complainant to seek remedies for prohibited practices without resort to the court system. An agency performing this type of enforcement does not investigate or assist in prosecution, but acts only in a quasi-judicial capacity. Active enforcement is associated with agencies that investigate complaints or initiate inspections. Active enforcement occurs when potential violations coming to an agency's attention are prosecuted. A wide range of choices lie between the least and the most restrictive types of enforcement.

Although the type of organizational structure used for implementation does not per se affect the restrictiveness of regulation, the method of delivery can affect the efficiency with which a certain type of regulation is delivered and therefore indirectly the restrictive impact of regulation.

### Summary

Although a wide range of alternatives are available to regulate the real estate industry, one of the most restrictive (licensure of individuals) has been

chosen exclusively by other states and by Texas throughout the development of its law. However, it has also grown considerably more difficult to become a real estate broker in Texas now than it was when the Real Estate Commission was created. Further, because of the stringency of requirements presently used, it is more difficult to become a broker in Texas than it is in most other states.

#### Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluating the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected through discussions with agency personnel, review of statutes and rules, and the identification of other agencies with the potential ability to offer these same services.

#### Target Population

The target populations served by the Real Estate Commission may be defined as those people who are acting or desiring to act as real estate agents and persons offering or desiring to offer educational courses or programs in the study of real estate. The Real Estate License Act sets out a definition of the activities which are subject to regulation and may be performed only by a real estate broker or salesman. These activities specifically include appraisal of real estate for compensation, and the auctioning of real estate. Both the appraisal and auctioning of real estate are also regulated by other state agencies. In addition, the Act exempts certain persons from its requirements. These include attorneys at law; public officials (in the conduct of official duties); persons involved in the sale of

cemetery lots; and individuals acting officially under a power of attorney, a court order or as a receiver, trustee, administrator, executor or guardian. State law regulates the activities of attorneys; however, the activities of other exempted parties are not regulated by state agencies. The Real Estate Commission has no provision for reciprocal arrangements with other state agencies in Texas regarding licensees. The commission is also responsible for inspecting and approving educational programs in real estate, other than those offered by accredited colleges and universities.

Appraisers. While real estate appraisers generally are not subject to state regulation except through the Real Estate License Act, a substantial subset of persons performing appraisal functions are certified by the Board of Tax Assessor Examiners. This board was established by the legislature in 1977 to "assure the people of Texas that the responsibility of assessing property for taxation is entrusted only to those persons duly registered and competent according to the regulations provided by this Act." In general, the persons regulated by the Board of Tax Assessor Examiners are public officials and thus are exempt from the provisions of the Real Estate License Act. However, any individual who is "engaged in appraisals of real or personal property for ad valorem tax purposes for a taxing authority" is required to register with the board. Of the estimated 3,500 individuals currently registered with the board, an unknown number are subject to the Real Estate License Act. Eleven other states license real estate appraisers through their general real estate regulatory agency.

Auctioneers. Persons who auction real estate are explicitly included in the licensure requirements of the Real Estate License Act as they are in thirty other states. These persons have also been regulated through the Texas Department of Labor and Standards (Article 8700, V.T.C.S.) since 1975. Thus, two licenses are

required before a person may legally auction real property for another person and for compensation. The regulations promulgated by the Real Estate Commission further specify that "an auctioneer who is not a real estate licensee may not call an auction even though a licensee stands beside him and accepts or rejects bids." Of the approximately 800 licensed auctioneers, it is estimated by staff of the Department of Labor and Standards that only ten to twelve also have real estate licenses.

Cemetery Lots. Unlike requirements in other states, persons engaged in the sale of cemetery lots in Texas are explicitly exempted from the provisions of the Real Estate License Act. Further, Article 912a-12, V.T.C.S., provides that "no license or any kind or character shall be required of any person, firm or corporation on account of or to authorize the sale of lots, graves or interment space in any dedicated cemetery." However, the law imposes requirements concerning the organization of cemetery associations and requires the filing of documents concerning cemeteries with the county clerk. In addition, perpetual care cemeteries must be registered with the Department of Banking and are subject to regulations concerning establishment of trusts and fees.

Attorneys. The Real Estate License Act exempts attorneys from its provisions. Attorneys are licensed by the Supreme Court of Texas and subject to the rules governing the State Bar of Texas promulgated by the Supreme Court. Much of the work of real estate agents centers on negotiating contracts acceptable to a buyer and a seller of real estate. These activities generally require an attorney to be involved in real estate transactions. Attorneys were exempted from the original real estate licensing law of 1939; but, in 1955, the real estate regulatory laws were revised to limit this exemption to acting as real estate agents

for persons who were clients of the attorney in his law practice. Disputes soon arose concerning what constituted the unlawful practice of real estate. The 1975 revision, settled these disputes by categorically exempting attorneys from the requirements of the Real Estate License Act.

Under rules promulgated by the Texas Real Estate Commission, attorneys may engage in the real estate business in the same manner as real estate licensees, with the following exceptions:

1. Licensed attorneys may not sponsor salesmen for licensure, and
2. Licensed attorneys may not be designated agents for a corporation which is licensed as a broker.

A licensed attorney may be licensed in the same manner as other persons, according to rules of the Real Estate Commission. Further, the rules specifically provide that law school credits may fulfill educational requirements.

Educational Programs. The Real Estate Commission's responsibilities concerning educational programs are two-fold:

1. The commission must review an applicant's educational credits to assure that they fulfill the requirements of the law for licensure; and
2. The commission is authorized to inspect and accredit educational programs and courses of study, other than those of accredited colleges and universities.

In the first area, the commission staff reviews documents reporting the educational credits of applicants and verifies that the credits were earned at an accredited college or university or in an approved real estate school. Sources of information concerning accredited colleges and universities are primarily Lovejoy's College Guide and Accredited Institutions of Post-secondary Education and Programs by the American Council on Education. The staff maintains its own list of programs approved by the Real Estate Commission.

In the second area of responsibility, the Real Estate Commission was given in 1963, the responsibility of accrediting "real estate schools," establishing program standards and requiring a \$10,000 corporate surety bond. Presently 17 schools are accredited in this manner by the Real Estate Commission, including the network of schools sponsored by the Texas Association of Realtors through its member boards. Based on a review of a small sample of licensee files, these schools appear to provide instruction to a substantial proportion of the applicants, though data of this type are not tabulated by the commission.

Credit is also given toward the educational requirements for real estate licensure for any real estate or real estate-related course at an accredited college or university. Programs at colleges and universities may be established only after approval by the Coordinating Board, Texas College and University System. Presently, four public senior colleges have real estate programs approved by the Coordinating Board which lead to degrees and an additional 29 colleges offer real estate courses. Real estate-related courses, including business law, personnel and office management, are offered at most colleges and universities and may be accepted to meet the educational requirements for licensure. Real estate courses are also offered by the public junior colleges in Texas and according to Coordinating Board personnel, twenty-one public junior colleges and Texas State Technical Institute offer associate degree programs in real estate. Courses offered by these junior colleges are also accepted by the Real Estate Commission.

Statutes and commission regulations specify that courses offered by accredited colleges and universities be accepted as meeting educational requirements for licensure. Accreditation of public and private junior and senior colleges and universities is conducted by the Southern Association of Colleges and Schools as well as numerous other accrediting bodies. Accreditation by any commonly



recognized accrediting body is sufficient for the commission to accept the courses offered in compliance with the educational requirements for licensure.

A final category of schools which could offer real estate courses is proprietary schools licensed by the Texas Education Agency. Texas Education Agency personnel indicate that, at present, none of the schools regulated under the Texas Proprietary School Act offer courses in real estate designed to fulfill the educational prerequisites for licensure. These schools do, however, typically offer courses related to real estate which are acceptable to the Real Estate Commission only if the school is also accredited by the Southern Association or another accrediting body listed in the rules of the commission. Any courses of study in real estate offered by proprietary schools would be subject to approval by the Real Estate Commission. On the other hand, the programs and schools accredited by the Real Estate Commission are excluded from regulation under the Texas Proprietary School Act.

#### Texas Real Estate Broker-Lawyer Joint Committee

The Texas Real Estate Commission and State Bar of Texas agreed in 1974 to a set of principles governing the responsibilities and activities of lawyers and real estate brokers in the conduct of real estate transactions. The two agencies also agreed to form a Joint Committee consisting of representatives of each profession and appointed by their respective agency policy bodies. The responsibilities of the Joint Committee, as set forth in the Statement of Principles are primarily:

1. to act in the interest of the public;
2. to consider and promote changes in procedure and in laws relative to real estate transactions which also preserve the respective roles of the broker and the lawyers;
3. to promote understanding and cordial relations between brokers and lawyers;

4. to consider controversies between brokers and lawyers involving violations of the principles, and attempt to resolve them; and
5. to draft and revise uniform types of standard contract forms

The Statement of Principles agreement appears to be an attempt to resolve a long-standing dispute between the legal profession and the real estate industry concerning the role of each in real estate transactions. Controversies concerning brokers engaging in the unauthorized practice of law and lawyers selling real estate without benefit of licensure have been frequent. The Statement of Principles contains clarification of the roles and responsibilities of attorneys and real estate brokers in real estate transactions. According to staff of the State Bar, the Joint Committee has acted as arbitrator in two cases under the provisions of the Statement of Principles.

The major efforts of the Joint Committee have been directed toward development of standard contracts to be used by real estate brokers and salesmen. Two standard contract forms have been approved by the Real Estate Commission and State Bar Board of Directors and are presently in use. These relate to assumption of loans and tendering of earnest money on residential property. Four other contracts have been approved by the Joint Committee, Real Estate Commission, and State Bar Board of Directors and notice has been published in the Texas Register. These contracts are scheduled to be promulgated as part of the rules of the commission effective January 1, 1979. Conventional, FHA, VA, and all cash purchases of residential property are covered by these four standard contract forms.

Use of the standard contracts is limited to filling in the factual detail in blanks in the standard form. Any transaction which is more complex than the standard form allows must be handled through consultation with an attorney. No other form contracts may be used by brokers or salesmen after the promulgation of

a standard form for a particular type of transaction. Although brokers are required to use standard contracts approved in this manner, attorneys are free to use any form contract or to draw up completely new contracts. In fact, the State Bar still maintains a set of standard form contracts - different from the ones approved by the Joint Committee - which are printed and sold. However, the State Bar does not make them generally available.

The six forms approved to date are designed for transactions involving residential property. It is estimated by the lawyer co-chairman of the Joint Committee that over 75 percent of all residential sales may be handled by the standard contracts already approved. The forms contain many details and requirements designed to provide information and protection to the buyer, as well as the seller, of the property and contain information which a broker is required by law to provide to principals in the transaction.

#### Texas Real Estate Research Center

The Texas Real Estate Research Center was created in 1971 as a part of the Agriculture Department of Texas A&M University. The enabling legislation listed six functions for the Research Center:

1. to conduct studies related to real estate and urban or rural economics and publish and disseminate findings;
2. to assist the teaching program in real estate offered by Texas colleges and universities upon request and to award scholarships and establish real estate chairs;
3. to supply material to the Texas Real Estate Commission for preparation of examinations, upon request of the commission;
4. to develop and revise materials for use in extension courses in colleges and universities, upon request;
5. to assist the Texas Real Estate Commission in developing standards for accreditation of schools offering real estate courses, upon request; and

6. to study and recommend changes in state statutes and municipal ordinances.

Funding for the Research Center is from fees paid by licensees of the Real Estate Commission and transferred to the Research Center. The general appropriation bill contains a rider appropriating the fees specified in law to the Research Center for the purposes specified in the enabling legislation. Fifteen dollars out of each broker license fee and \$7.50 out of each salesman license fee is designated to be paid to the Research Center.

Review of the Research Center's Annual Report and other material indicates that the main activities of the center relate primarily to the first two purposes listed above. Interviews with Real Estate Commission personnel indicate that only one request was made by the commission for materials to be used in preparation of examinations and that a request is currently being developed concerning the structure and curriculum of educational programs in colleges, universities and other schools offering real estate courses.

The enabling legislation provides for a Research Center Advisory Committee to be appointed by the Real Estate Commission. This Advisory Committee is charged with the responsibility of reviewing plans and proposals of the center staff. The Real Estate Research Center is scheduled for Sunset Advisory Commission review in 1981.

#### Associations

An analysis of agencies serving target populations similar to the Real Estate Commission target population would be incomplete without reference to the national, state, and local professional organizations. The major organizational structure of this type is the National Association of Realtors of which the Texas Association of Realtors and local boards of realtors are members. Membership in

this association requires agreement to abide by the terms of the Code of Ethics promulgated by the National Association. Further, only members of the National Association are permitted to use the registered service mark "realtor". Only persons licensed as brokers or salesmen by the Texas Real Estate Commission are eligible to become "realtor members" of the association or local board; however, membership is granted only through election after application and investigation and upon recommendation of a realtor member.

In addition to the service functions, such as providing educational programs and listing services for members, the state association and local boards also perform an enforcement function. The local boards are required under the Constitution of the National Association to enforce the provisions of the Code of Ethics and typically have procedures for reprimanding, suspending or expelling members for violations. At the present time, there are approximately 40,000 realtor and realtor associate members of the Texas Association of Realtors. According to association representatives, this represents almost all the TREC licensees who are actively engaged in the real estate business as a primary occupation.

#### Other Licensing Agencies

Many of the functions performed by the Real Estate Commission are similar to those of other regulatory agencies. Exhibit IV-1 provides a comparison of the regulatory functions performed by the Real Estate Commission and selected other regulatory agencies.

#### Summary

While there are some categories of overlap of target populations with other agencies, the overlaps do not appear to be substantial. In the case of approval of educational programs, the function appears to be being accomplished in a

EXHIBIT IV-1

Comparative Regulatory Functions

Real Estate Commission	Cosmetologists	Motor Vehicle Commission	Nursing Home Administrators	Public Accountancy	Structural Pest Control Board	
X	X	X	X		X	establish qualification standards independently
			X			qualification standards suggested by national organization
X	X		X		X	develop written examinations
			X	X		utilize national exams
X	X		X	X	X	process exam applications
X	X		X	X	X	evaluate qualifications for examination
X	X		X		X	prepare and send candidate ID cards
X	X		X	X	X	collect and process exam fees
						administer exams annually
				X		administer exams semi-annually
X	X		X		X	administer exams on multiple occasions
	X		X		X	administer multiple exams
			X	X		national exam grading procedure
X	X		X		X	agency exam grading procedure
X	X		X	X	X	record and report grades
X	X		X	X	X	prepare and distribute certificates of registration
X	X	X	X	X	X	process annual license renewal
X	X	X	X	X	X	collect renewal fees
X		X		X	X	mail notification of delinquency
X	X		X	X		reciprocal registration processed independently
						reciprocal registration processed thru national org.
X	X		X	X		collect reciprocal registration fees
X	X	X	X	X	X	receive and investigate complaints
X	X				X	field investigation capability
X	X	X	X	X	X	issue warnings
X	X	X	X	X	X	consult legal counsel reference violations
X	X	X		X	X	invoke injunctive powers
X	X	X	X	X	X	arrange agendas for Board meetings
X	X		X	X	X	administer Board meetings
			X	X		prepare roster
			X	X		distribute roster
X	X		X	X		coordinate activities with educational institutions

fragmented, but complete, manner. Functions of the Real Estate Commission are similar to those of other regulatory agencies. Some similar functions relating to the same target population are also performed by the Real Estate Broker -Lawyer Joint Committee, the Texas Real Estate Research Center, and the Texas Association of Realtors.

## Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on proposed statutory changes which would have affected the operations of the agency during the last three legislative sessions. In analyzing these proposals, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

A brief discussion of the position of the agency and interest groups, taken from the self-evaluation report and legislative committee minutes, follows a session-by-session presentation of proposals. Exhibit V-I presents a tabular synopsis of proposed legislative changes over the last three sessions.

### Sixty-third Legislature

S.B. 831 gave the Real Estate Commission the option of adopting a system under which licenses expire on various dates during the year. The purpose of the legislation was to allow the agency to achieve greater efficiency by spreading license renewals throughout the year, rather than having them occur during a brief period. Although the bill was enacted, the Real Estate Commission has not adopted such a system.

H.B. 134, which was not adopted by the Sixty-third Legislature, would have made a seller or his agent liable for damages resulting from the seller's failure to disclose to the buyer the existence of a known structural defect. The bill would also have provided for the revocation of the real estate license by the commission for failure of a real estate broker or salesman to disclose defects of this type. This



EXHIBIT V-1

Tabular Synopsis of Proposed Legislative Changes  
1973-1977

<u>Session</u>	<u>Bill</u>	<u>Proposed Changes</u>	<u>Action</u>
63rd (1973)	S.B. 831	Gave certain agencies, including TREC, the option of adopting a system under which licenses expired on various dates during the year.	Adopted
	H.B. 134	Made a seller, as principal or agent, liable for damages resulting from the seller's failure to disclose to the buyer the existence of a known latent structural defect.  Provided that the Real Estate Commission might revoke a real estate license for failure to disclose to the buyer the existence of any structural defect which the licensee knows to exist.	Failed
64th (1975)	S.B. 421	Provided for the establishment of a real estate recovery fund for reimbursing persons who suffer monetary damages because of acts committed by brokers or salesmen licensed by the Real Estate Commission.	Failed
	H.B. 2033	Prohibited the Real Estate Commission from adopting any rule or regulation requiring the presence or participation in any manner of an attorney in any real estate transaction.	Failed
	S.B. 88	Provided that the Real Estate Commission administer a program requiring that subdivided land be registered before it could be sold, and requiring extensive information relative to the land and its uses as a part of registration.	Failed
	H.B. 927	Substantially the same as S.B. 344 below with the following exceptions: Required a surety bond of \$10,000 for a broker and \$5,000 for a salesman rather than providing for the establishment of a real estate recovery fund.	Failed

EXHIBIT V-1

cont.

<u>Session</u>	<u>Bill</u>	<u>Proposed Changes</u>	<u>Action</u>
		<p>Required an Associate Degree in Real Estate or the equivalent after 1985 rather than 60 semester hours.</p> <p>Did not require the disclosure of any known significant latent defect to the prospective purchaser.</p>	
	S.B. 344	<p>Established a schedule of increasing educational requirements culminating in a 60 semester hour requirements after January 1, 1985.</p> <p>Increased the state residency requirement to six months from 60 days.</p> <p>Established a real estate recovery fund for reimbursing aggrieved persons who suffer monetary damages by reason of fraudulent or dishonest actions by real estate brokers or salesmen.</p> <p>Eliminated bonding requirements.</p> <p>Prohibited a real estate broker or salesman from failing to disclose a known latent structural or other defect.</p> <p>Brought salespersons for land developers within the coverage of the Act.</p> <p>Excluded from the coverage of the Act a salesperson employed by a home builder.</p> <p>Established a new fee schedule.</p>	Adopted
65th (1977)	S.B. 1293	<p>Provided that the six-month residency requirement could be waived for an individual licensed as a real estate broker or salesman in another state for the six month preceding the establishment of Texas residency. Allowed 18 months credit for licensed experience in another state against the two-year experience requirement.</p>	Failed

EXHIBIT V-1

cont.

<u>Session</u>	<u>Bill</u>	<u>Proposed Changes</u>	<u>Action</u>
	S.B. 1068	Eliminated from the definition of real estate broker in the act a person who "appraises or offers or attempts or agrees to appriase real estate.	Failed
	H.B. 1132	Provided that when a person is entitled to a real estate salesman license under the Real Estate License Act, the Commission would issue the license as a real estate sales associate license.  Provided that in the Real Estate License Act, the words "real estate salesman" mean "real estate sales associate."	Failed
	H.B. 1577	Amended the Real Estate License Act to exempt those previously licensed as real estate brokers in Texas from the requirement of at least two years experience as a real estate salesman in the 36 months immediately prior to the application for the real estate broker license.	Failed
	H.B. 1948	Provided that the membership of certain regulatory boards, including the Real Estate Commission, be increased by three members. The three new members were to represent the interests of the general public and were prohibited from having had a pecuniary interest in the regulated occupation in the five years prior to appointment.	Failed

cont.

proposal, which would have provided additional protection to the public at no cost, has been categorized as being in the public interest.

#### Sixty-fourth Legislature

The adoption of S.B. 344 during the Sixty-fourth Session constituted a major revision of the Real Estate License Act. The major changes of the Act, which are identified in more detail in Exhibit V-1, were: 1) substantially increasing education requirements for licenses; 2) increasing the state residency requirements; 3) establishing a real estate recovery fund and eliminating bonding requirements; 4) requiring the disclosure of known latent structural or other defects; 5) bringing salespersons for land developers within the coverage of the Act; 6) excluding from the coverage of the Act a salesperson employed by a homebuilder; and 7) establishing a new fee schedule.

Increased education requirements provided the public with more highly educated new licensees but did not affect the education of those already licensed. Further, the higher requirements increased restrictions on the supply of real estate agents available to the public. Increased residency requirements gave the commission additional evidence of the stability of a potential licensee, but made licensure of persons from other states more difficult, therefore potentially restricting the supply of real estate agents. The new fee schedule increased the funds available to the agency (subject to legislative appropriation) for administrative costs, but also increased the cost for an agent to do business. Establishment of the Recovery Fund and elimination of the bonding requirement--substituting a one-time cost for a periodic bonding charge--was undoubtedly an asset to the licensee. The Recovery Fund also increased the limits on the amounts available to the public for damages. The increased protection afforded by the extension of the law to include salespersons for developers was counterbalanced by

the exclusion of the actions of salespersons employed by a homebuilder. The section relating to disclosure of latent structural defects, included in H.B. 344, has been discussed previously.

In summary, the bill contained a number of elements in the public interest but several of these were mitigated by additional potential costs to the public. For this reason, the bill cannot be judged to have been mainly in the public interest rather than the interest of the regulated industry.

No other legislation affecting the operation of the commission was adopted by the Sixty-fourth Legislature. Two of the proposed acts, which are presented in more detail in Exhibit V-1, were similar to S.B. 344 or were incorporated into S.B. 344. The provisions of S.B. 421 would have established a real estate recovery fund, but did not call for the other changes contained in S.B. 344. H.B. 927 was substantially the same as S.B. 344, except for the absence of provisions for a real estate recovery fund and for the required disclosure of latent defects.

S.B. 88 provided that the Real Estate Commission administer a program requiring that subdivided land be registered before it could be sold, and requiring extensive information relative to the land and its uses as a part of registration. The proposal would have provided more information related to subdivided land sales to the public. The bill would also have created significant cost increases to the buyers of subdivided lands to pay for the development of such information.

H.B. 2033 would have prohibited the commission from adopting any rule or regulation requiring the participation of an attorney in any real estate transaction. (Although the bill did not pass, no such rule has been adopted by the commission.)

#### Sixty-fifth Legislature

While five measures affecting the operation of the commission were proposed during the sixty-fifth session, none of them were adopted. These measures are set

out in greater detail in Exhibit V-1. Four of the measures were directed primarily at the licensing aspect of the commission's function (S.B. 1293, H.B. 1577, H.B. 1132, and S.B. 1068).

H.B. 1948 would have increased the membership of a number of regulatory boards and commissions, including the Real Estate Commission, by three members. The new members were not to have a pecuniary interest in, or be a member of, the profession regulated, and were to represent the interests of the general public. Of the five measures, only H.B. 1948 is considered clearly in the public interest.

#### Positions Taken

The position taken by the commission or by interest groups was determined from the self-evaluation report and from minutes of legislative committee public hearings where there was testimony. According to the self-evaluation report, the Texas Association of Real Estate Brokers Inc., the Texas Association of Realtors, and the Bexar County Real Estate Association Inc., as well as the TREC, supported the adoption of S.B. 344, adopted by the Sixty-fourth Legislature. According to the self-evaluation report, this proposed change was the only one recommended by the agency during the past three legislative sessions. In addition, the Texas Association of Realtors testified in favor of H.B. 927 before the House Business and Industry Commission and later appeared before the same committee to discuss H.B. 927 and S.B. 344. However, during the Sixty-third session, representatives of the Texas Association of Realtors testified before the House Business and Industry Committee against the adoption of H.B. 134, providing for disclosure of known latent defects.

#### Summary

During the past three legislative sessions, there have been 10 proposed changes to Real Estate Commission statutes in addition to the major licensing act

revision of 1975 (S.B. 344). Four of these proposals--providing for staggered licensing, disclosure of latent defects, establishment of the Real Estate Recovery Fund, and public representation on the commission--have been clearly calculated to benefit the public. The other six proposed changes have not been identified as clearly in the public interest either because they dealt with licensees only or because they offered potential costs as well as benefits to the public. The agency has not testified in favor of any of these 10 proposals. Along with the state's major real estate associations, the commission did support adoption of S.B. 344. However, while the major revision of the licensing act in 1975 contained provisions which clearly benefit the public, increased licensing fees, residency requirements, and education requirements may not as clearly be judged as in the public interest.

### Criterion 6

The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained through interviewing agency staff, examining complaint files, and analyzing data presented in the agency's self-evaluation report.

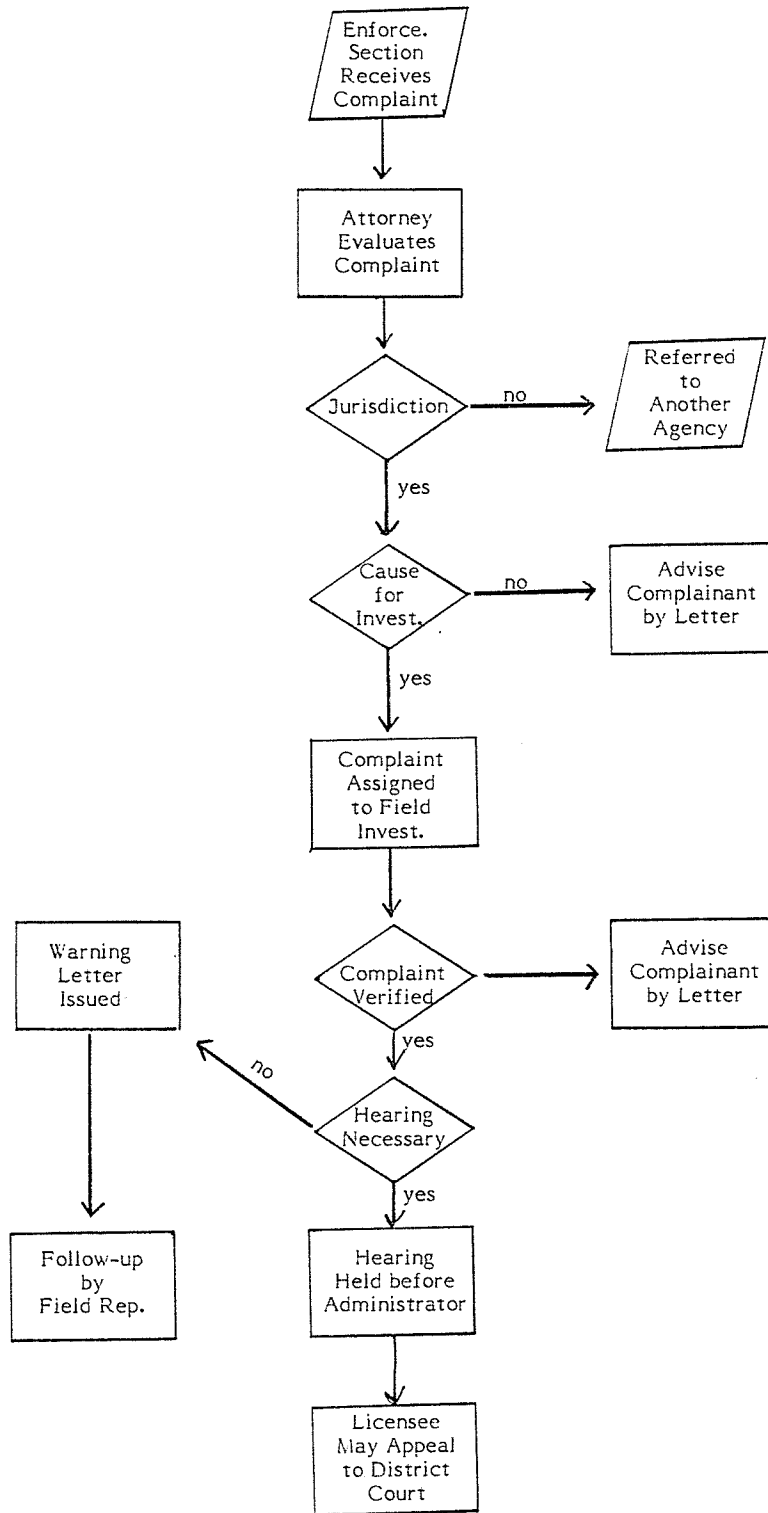
#### Personnel and Their Functions

As indicated in Exhibit VI-1, the coordinator of the complaint process is the commission's Chief Legal Counsel. This individual oversees the activities of the legal staff and of the field investigators, issues formal opinions concerning the statute upon request, performs various legal functions during the hearings process and in general, sets policy and procedures for the enforcement section. Ordinarily, policy considerations concerning purview of the statute and jurisdiction of the agency are handled by the legal staff. However, it appears that in unusual situations a policy determination by either the administrator or assistant administrator is required.

The second group with major responsibilities in the complaint process are the field investigators. There are 13 investigators for the eight regions covering the state. Field offices are maintained in Austin, Houston, Fort Worth and Dallas. While no public offices are maintained in El Paso, Corpus Christi, Lubbock and San Antonio, field investigators are stationed in these areas. Field investigators are



EXHIBIT VI-1  
Complaint Process



responsible for investigating complaints in their region and reporting to the staff attorneys assigned to the regions.

The licensing act directs all responsibilities assigned to the commission to be performed by the administrator or the assistant administrator unless the commission orders otherwise. No such order has been given regarding the complaint process. The administrator or assistant administrator, therefore, act as hearings officers and issue all orders regarding complaints. Appeals from these administrative decisions do not go to the commission, but to the local district court of the appellant.

#### Files

In general, the complaint process appears to be well-documented, with easily accessible and well-maintained complaint files. Written procedures have been formulated for field investigators and for the enforcement section's office staff. However, records are only maintained on cases in which a complaint file is opened. No records or logs are kept of complaints which are referred to other agencies or of complaints which, upon their face, do not appear to be a violation of the statute. For this reason, it was difficult to determine the total number of complaints received and their subsequent disposition.

As an adjunct to the complaint files, an "alert" file is maintained of all individuals against whom a complaint has been filed. Review of this information is a routine part of a complaint investigation.

#### Recovery Fund

The Recovery Fund was instituted in 1975 to reimburse individuals for damages done by licensees. Since that time, 16 claims have been made against the fund; 10 claims were paid, two were contested successfully and four are pending.

The commission has received notification that 11 law suits against licensees are in process; representing potential claims against the recovery fund. To date, 10 claims have been paid for a total recovery of \$69,301.

The statute requires automatic revocation of a license upon issuance of a court order requiring payment from the fund. Subsequent to the court order, a formal hearing is held to revoke the license. Despite the automatic revocation requirement, agency personnel indicated that a hearing is considered necessary to provide due process to the licensee and also to act as a vehicle for the licensee to appeal the decision. To date, all but one such hearings have resulted in revocation.

#### Types and Frequency of Complaints

Several sources of information were available on the number and type of complaints received annually. In addition to the agency's self-evaluation report and staff reports, a sample was drawn from agency files to determine the origin, type and disposition of complaints. Particular attention was paid to those complaints considered to be outside the purview of the statute.

An analysis of the information reported in the commission's self-evaluation report and summarized in Exhibit VI-2 indicates that complaints against licensees have increased while complaints against unlicensed individuals fluctuated considerably during the past three years. The percentage of complaints against licensees for which the agency opened a complaint file, but upon which no action was taken in 1975 was 85 percent, 79 percent in 1976, and 68 percent in 1977. For complaints against unlicensed individuals, the percentage in 1975 was 83 percent, 53 percent in 1976 and 59 percent in 1977. The most common action taken against licensees and against unlicensed persons was the issuance of a warning with relatively few more serious actions taken.

EXHIBIT VI-2

Texas Real Estate Commission  
Disposition of Complaints  
Action Against Licensees and Unlicensed Persons  
(Actual)

	1975		1976		1977	
	Licensee	Unlicensed	Licenses	Unlicensed	Licensee	Unlicensed
Revocation	18	-	12	-	30	-
Probation/ Suspension	4	-	0	-	4	-
Criminal Action	3	-	4	5	12	-
Warning Issued	75	18	131	95	195	29
No Action*	<u>454</u>	<u>86</u>	<u>548</u>	<u>112</u>	<u>518</u>	<u>42</u>
Total	<u>554</u>	<u>104</u>	<u>695</u>	<u>212</u>	<u>759</u>	<u>71</u>

\*Includes no violation, no jurisdiction, allegation not supported by evidence, insufficient evidence, matter settled, failure to go forward and other.

EXHIBIT VI-3

Sources of Complaints Sampled

Source of Complaint	1975	1976	1977
Consumers	54	50	57
Licensees	10	15	13
TREC	<u>15</u>	<u>30</u>	<u>15</u>
Total	<u>79</u>	<u>95</u>	<u>85</u>

In an effort to determine the significance and causes of the high percentage of "no action" dispositions, a sample was drawn for all three years. In addition, all complaints received in fiscal year 1978 which were considered to be "no violations" were reviewed. The sample results are presented in Exhibits VI-3 and VI-4. The results shown in Exhibit VI-3 indicate that an average of 63 percent of complaints are lodged by consumers, 21 percent by licensees and 23 percent by the commission's field investigators.

The disposition of cases reviewed in the sample is summarized in Exhibit VI-4. While warnings were issued more often for licensee-originated complaints, consumer complaints were more apt to result in a more serious sanction. Complaints originating from field investigators were settled more quickly than the others, with most complaints settled without the apparent necessity for further action. The most frequently cited violation was under Section 15(V) which concerns "conduct which constitutes dishonest dealings, bad faith, or untrustworthiness." The general nature of Section 15(V) may partially explain the large number of "no violation" designations. Further, difficulty in determining when an action constitutes a violation has resulted in a strict interpretation of the agency's jurisdiction in instances involving contradictory evidence.

The review of the "no violation" complaints received in the first 10 months of fiscal year 1978 indicated that complaints were primarily from buyers of real estate. Again, Section 15(V) was the most often-cited violation. Perceived misrepresentation on the part of the seller or realtor and misunderstandings about proper disposition of escrow or earnest money appeared to be the most frequent causes of complaints. In many instances, charges of misrepresentation would have been difficult to prove because of a lack of documentation of verbal agreements or

EXHIBIT VI-4

Texas Real Estate Commission  
Disposition of Complaints Sampled

	No Violation	No Jurisdiction	Matter Settled	Insufficient Evidence	Warning Issued	Cease and Desist	Failure to Go Forward	License Revoked	License Suspended	Turn-around Time (Avg.)	% Closed in 1 Month or Less
<u>Consumers</u>											
1975	31%	9%	15%	28%	7%	4%	6%	-	-	3.2 Mos	11%
1976	46%	2%	8%	24%	6%	-	6%	6%	2%	3.0 Mos	16%
1977	33%	5%	2%	28%	18%	4%	7%	4%	-	3.0 Mos	19%
<u>Licenses</u>											
1975	40%	-	10%	10%	3%	10%	-	-	-	2.1 Mos	9%
1976	20%	7%	-	13%	53%	7%	-	-	-	1.2 Mos	46%
1977	46%	-	8%	-	46%	-	-	-	-	1.7 Mos	23%
<u>TREC</u>											
1975	13%	13%	40%	-	13%	13%	-	7%	-	1.3 Mos	17%
1976	3%	-	53%	-	10%	30%	-	3%	-	1.2 Mos	40%
1977	13%	13%	40%	-	13%	13%	-	7%	-	1.7 Mos	40%

because of contradictory testimony.

For many of the complaints reviewed, there appeared to be an underlying misconception on the buyer's part as to the agent's relationship and obligations to the buyer. That is, the principal/agent relationship between a realtor and the seller, who is paying the realtor's commission, is not always evident to the buyer.

#### Summary

The complaint process appears to be fairly efficient and well organized. Documentation is lacking only in regard to those complaints received which are referred to other agencies or do not contain sufficient information to cause the staff to open a file. However, because of the large number of complaints received by the agency and disposed of as "no violation," it appears that a large segment of the public, notably buyers, perceive a need for protections which are not, under the law, afforded through the regulatory processes of the Real Estate Commission.

### Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The review under this criterion began with a determination of the statutory requirements regarding public participation both in the agency's enabling law and general statutes. The agency's procedures were reviewed to determine compliance with these statutes. The agency files and self-evaluation report were reviewed to determine the nature and extent of public participation and any results which might be attributed to public participation.

#### Public Participation

Interviews of agency personnel and documented evidence indicate that there has been no specific effort on behalf of the board to inform the general public of the agency's purposes and functions. There is no budget allocation for media advertising and, consequently, there has been none. The agency has conducted no seminars, conferences or training sessions which might have been available to the public. The agency distributes no consumer-oriented materials designed to inform the public of its operations. However, activities of this type are often performed by the Real Estate Research Center.

Publications of the agency include the rules and regulations of the commission, "The Real Estate License Act," and study materials for licensee applicants. These publications are generally issued without charge to applicants, but are sold to others interested in obtaining the material. Contract forms and computer print-outs of licensees are also sold to interested parties. Exhibit XI contains detail concerning the prices charged for publications and print-outs. The



agency did not report or make available data concerning the volume of requests for each publication nor the number actually sold.

The agency reports that there are frequent requests for information from the public. These may include persons interested in becoming licensed and requests for information on some particular aspect of the statute. The agency does not maintain records of this type and consequently no analysis could be made of the types of information or frequency of requests

There are no advisory bodies to the board through which interests of the general public could be focused and current requirements for board membership do not allow representation of the public.

There are no statutory requirements for notification of the public regarding board meetings or rule changes, other than through compliance with the Open Meetings Act. In this regard, the agency provides formal notification of scheduled commission meetings through the Texas Register Division of the Office of the Secretary of State. The agency maintains a mailing list of individuals who have requested notification of rule changes and of commission meetings. Notice is also sent to the Texas Association of Realtor's magazine and newsletter and to an educational network television station in Dallas.

During the past three fiscal years, seven rule changes have been proposed by the commission, only one of which generated active participation according to the self-evaluation report and commission meeting minutes. A public hearing was held on December 13, 1976 at the request of the Greater Dallas Board of Realtors and the Houston Board of Realtors. According to the self-evaluation report, the two groups mentioned above, together with the Texas Association of Realtors and the Dallas Board of Realtors appeared to oppose the rule change which concerned the use of telephone solicitors by brokers. The commission decided against the rule

Change.

Public attendance at commission meetings is rare. However, licensees and representatives from the Texas Association of Realtors occasionally attend.

#### Summary

Review of the agency's activities regarding general public participation in the development of rules and regulations indicates that little effort has been made to encourage participation by the public; however, direct participation by the public in this type of agency is unlikely under usual circumstances.

### Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals were examined through interviews and review of files.

### Affirmative Action

The Real Estate Commission's original Affirmative Action Plan (AAP) was first developed for the period from March 1, 1974 through February 28, 1975. The plan has not been updated since that time.

The current agency work force is composed of ethnic representation as shown in Exhibit VIII-1. All Black and Hispanic employees are female and almost two-thirds of the entire staff is female. About 11 percent of the total staff is ethnic minority.

Exhibit VIII-2 shows a comparison of agency staff representation with the general work force availability in the Austin Standard Metropolitan Statistical Area (SMSA). This comparison indicates that the commission staff is made up of proportionately more white persons than the general work force and proportionately fewer males than the general work force.

EXHIBIT VIII-1

Ethnic Representation - April 1978  
Texas Real Estate Commission Staff

	<u>White</u>	<u>Hispanic</u>	<u>Black</u>	<u>Total</u>
Male	27	0	0	27
Female	<u>41</u>	<u>6</u>	<u>2</u>	<u>49</u>
Total	68	6	2	76

EXHIBIT VIII-2

Composition of TREC Staff and General Work Force  
Availability in the Austin SMSA

	<u>White</u>	<u>Hispanic</u>	<u>Black</u>	<u>Male</u>	<u>Female</u>
Austin Work Force (Dec. 1977)	75.8%	14.2%	10.0%	49.7%	50.3%
TREC (April 1978)	89.4%	7.9%	2.6%	35.5%	64.5%

Exhibits VIII-3 and VIII-4 contain data regarding the occupation categories and salary distribution of employees. Analysis of these tables indicate that females generally are employed at low salaries for clerical work, while males are employed in the administrative positions and receive relatively high salaries.

An analysis of the data presented reveals that minorities are underrepresented at the administrative, professional, and technical levels with a corresponding disparity in salary. There are no minority males employed by the commission, and of the total minority females employed, none earn above \$10,000.

Although females constitute 64 percent of the total work force, only 26 percent of the women employed earn salaries in excess of \$10,000. Eighty-eight percent of the males earn over \$10,000.

EXHIBIT VIII-4

TREC Salary Distribution  
1974 and 1978

Salary Category	1974		1978	
	Male	Female	Male	Female
4000 - 5999	8%	56%*	0	0
6000 - 7999	8%	32%*	8%	45%*
8000 - 9999	15%	12%	4%	28%*
10000 - 12999	38%	0	4%	13%
13000 - 15999	8%	0	38%	9%
16000 - 24999	23%	0	38%	4%
25000 - above	0	0	8%	0

\*All minorities employed by the commission are included in these categories.

EXHIBIT VIII-3

TREC Occupation Categories

	1974		1978	
	Male	Female	Male	Female
Administrative	4 (31%)	0	5 (19%)	1 (2%)
Professional	4 (31%)	0	4 (15%)	4 (8%)
Technical	3 (23%)	3 (12%)	13 (48%)	2 (4%)
Office/Clerical	2 (15%)	22*(88%)	5 (19%)	42*(86%)

\*All minorities employed by the commission are included in these categories.

The Governor's Office of Equal Employment Opportunity recently completed an annual review of the Texas Real Estate Commission. In a letter dated June 27, 1978, several areas of concern were delineated by the Governor's staff. The suggestions for improvement included the following:

- 1) an up-date of the commission's AAP plan;
- 2) implementation of a more active minority recruitment program;
- 3) promulgation of hiring goals for minorities;
- 4) an upward mobility plan for females.

As shown in Exhibit VIII-5, 43 new employees have been hired by the commission over the past three fiscal years including 14 in positions other than office/clerical. Of these 14, three new employees were female and all were white. At the office/clerical level, seven of the 29 new hires were female minorities. Thus, opportunities to increase minority and female representation at all levels have not been utilized.

EXHIBIT VIII-5

Texas Real Estate Commission  
New Hires  
1975-1977

	Females			Males		
	<u>White</u>	<u>Black</u>	<u>Hispanic</u>	<u>White</u>	<u>Black</u>	<u>Hispanic</u>
Administrative	1	-	-	-	-	-
Professional	2	-	-	5	-	-
Technical	-	-	-	6	-	-
Office/Clerical	21	2	5	1	-	-

Although required by the commission's AAP, grievance procedure information apparently is not routinely disseminated to employees. The agency staff reports that there have been no grievances brought to the EEO coordinator by employees.

There have been two complaints against the Texas Real Estate Commission filed with the U.S. Equal Employment Opportunity Commission (EEOC) in San Antonio. The first of these was filed in 1974 by a former employee and concerned hiring and discharge practices and derogatory remarks. The case was closed by the EEOC in 1975 due to insufficient evidence. The second complaint was filed by a state legislator in 1976 and named several state agencies as well as the Real Estate Commission. The complaint dealt with hiring and promotion policies, wages, qualification and testing and job assignments. The case was closed in 1976 because the EEOC did not have jurisdiction.

To comply with legislation passed by the Sixty-fifth Legislature, state agencies in Travis County must submit information on any job openings in their agency with both TEC and the Governor's Personnel and Equal Employment Opportunity Office. A review of files indicates that the commission has submitted job openings information to both agencies in compliance with statutory provisions.

#### Privacy of Individuals

The provisions of the Open Records Act allow for confidentiality of individual personnel records. The agency has no specific rules governing administration of these provisions; however, informal procedures are in effect which appear to maintain the privacy of these records. No challenges or problems with these procedures are apparent from review of agency files and discussions with agency personnel.

### Summary

Since 1974, when the commission's AAP plan was formulated, there has not been a marked improvement in the commission's minority and female employment practices. Implementation of the suggestions contained in the Governor's EEO staff letter would facilitate the attainment of a more balanced employee representation. Additionally, dissemination of grievance procedure information to employees would serve to ensure that employee complaints would receive a fair hearing. However, the agency appears to be in substantial compliance with the statutory requirements regarding both equal employment opportunities and the privacy of individual records.



### Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

As of January 1, 1974, the executive director is required to file a financial statement relating to his and his family's financial activity for the preceding year. This statement is to be filed with the Secretary of State, reviewed and updated in April of each year (Sections 3 and 4, Article 6252-9b, V.A.C.S.). Board members are required to disclose business interests regulated by the state through affidavits filed with the Secretary of State (Sec. 5, 6252-9b, V.A.C.S.). In addition, Section 6 requires board members having a personal or private interest in any measure, proposal or decision pending before the board to publicly disclose the fact to the board in an open meeting (as defined in Article 6252-17, V.A.C.S.) and to refrain from voting or otherwise participating in the decision. This disclosure is to be entered in the minutes of the meeting.

Section 8(c), Article 6252-9b, V.A.C.S. reads:

No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

The Real Estate License Act contains only one reference to standards of conduct specific to the Real Estate Commission. Section 5(b) of the Act states that "(a)ll members, officers, employees, and agents of the commission are subject to the code of ethics and standards of conduct imposed by ... Article 6252-9b ...." The Act, therefore, serves to reinforce the intent that high standards of conduct are to be observed.

#### Filing Compliance

Review of the documents available in the Secretary of State's office in May 1978 reflected that all commission members and the agency administrator had complied with the filing requirements of Article 6252-9b. However, one commission member had not submitted an affidavit until one year after the effective date of the Act, and two members (appointed in 1973 and 1975) had not submitted affidavits until December 1977. No additional affidavits had been submitted amending the four filed in 1974 and 1975 to reflect acquisition or divestiture of substantial interests in regulated businesses since that time.

#### Administrative Procedures

The commission deals with several areas in which the potential for conflicts of interest exist. Particular attention in this review focused on policies in regard to investment of recovery fund monies, accreditation of real estate schools, enforcement against licensees, public disclosure of financial interest, and general procedures regarding conflicts of interest. Both commission members and staff practices were reviewed in the context of commission policies and the standards of Article 6252-9b.

The commission is charged with responsibility for investing the sums deposited in the Real Estate Recovery Fund. Statutory guidelines for investment are provided in the licensing act--investment in the manner of the Texas State Employees Retirement System and necessary liquidity to assure potential payments. Although the commission members themselves specified investments for the first one and one half years of the fund's existence, in January 1977 the commission delegated responsibility to the chief accountant with more specific guidelines. Included within these guidelines was the directive that a local bank would make the selection of an investment broker if one was required. In this way, the commission established a policy which removed this potential of financial conflict on the part of commission members or staff. In implementing the commission policy, the chief accountant meets with the local bank to determine the type of investment to make, leaving the details to the investment officer.

The commission is also charged with responsibility for accrediting educational programs and courses (other than for colleges) suitable for meeting education requirements for licensing. To avoid potential conflict in making accreditation decisions, responsibility has been divided between the board and the staff. Initial requests are reviewed at the staff level for development of recommendations to the commission. The requests with staff recommendations are then brought to the commission for individual consideration. The staff is not authorized to make final decisions on educational requests and thus final consideration of applications is made at public commission meetings.

Procedures by the staff in investigating alleged violations of the licensing act are specified in the agency's enforcement handbook. In cases which involve a relative, former business associate, personal friend, or "one with whom acrimony may be anticipated", the investigator is required to notify the central office for

consideration of a transfer of assignment. Interviews with staff indicated only one such incident during the past one and one half years, at which time determination was made that a transfer was not necessary. No documentation of such occurrences are made as standard agency procedure, and no procedure exists to periodically or routinely verify compliance with the requirements.

In contrast to the procedures for handling educational accreditation, the commission has delegated all responsibility for enforcement of the licensing act to the staff. Hearings to determine cases of alleged violations are presided over and final decisions are made by either the administrator or assistant administrator. Concerted agency effort is made to insure that the presiding officer is not familiar with the facts of a case which has caused the enforcement division to proceed to a hearing. The decision of the presiding officer is final without recourse by the licensee of appeal to the commission members themselves.

General procedures specified in Article 6252-9b requires public disclosure and disqualification by a commission member regarding any deliberation in which a personal or financial interest is held. Review of the commission minutes for the past three years did not indicate any instance in which these procedures were invoked.

The agency's self-evaluation report indicates that it has experienced no problems related to conflict of interest due to an existing unwritten policy prohibiting employees from engaging in activities in conflict with their official duties. The report also indicates that as of fall 1977 the agency has been providing copies of Article 6252-9b and requesting that a compliance statement be signed by commission members and employees.

## Summary

Review of applicable statutes and agency practices, indicates that the Real Estate Commission is aware of and in compliance with laws regarding conflict of interest. Simple routine policies concerning the status of outside employment could be implemented to provide basic documentation necessary for the enforcement of the bulk of conflict of interest situations.

### Criterion 10

The extent to which the agency complies with the Open Records Act and the Open Meetings Act.

Examination of elements under this criterion was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear. Records in the Office of the Secretary of State were reviewed on a selected basis to determine compliance with posting and informational requirements.

#### Open Records

The Texas Real Estate Commission's Rules and Regulations make no specific reference to open records. Agency policies on open records are informal and do not exist in written form. All requests for information, other than those from a licensee to review his or her own file, are referred to the Enforcement Division. Enforcement Division personnel review the file in the presence of a staff attorney to determine its status. When a licensee wishes to see his or her master file, a room is provided for the licensee to review the file in privacy. Copies of any

information on file, which are classified as "open", are available at the rate of 55 cents for the first page and 15 cents for each page thereafter.

The Enforcement Division handbook specifies certain types of records as available or classified. The handbook specifies open records as reports, audits, evaluations, and investigations that have been completed. Records not available include examinations used to determine competency for licensure, personnel records, intra-agency memorandums or letters, worknotes of employees or supervisors, and information relating to pending litigation. Regarding litigation information, the agency bases its policy on Open Records Decision No. 135 which states that the Attorney General may determine that information "should be withheld from public inspection" if there is "reasonable anticipation" that disclosure of the file "could adversely affect the interest of the State". The agency has requested two such determinations in Open Records Decisions No. 36 and No. 80.

Requests for information from field offices are referred to the attorney for that region. The request must be in writing and specify the documents requested. The attorney then responds to the request.

The agency's self-evaluation report lists four occasions when correspondence or investigative reports were requested. All four were initially denied and Attorney General's Opinions were requested. Upon determination by the Attorney General's office, information requested in these four instances was made available. Information requests for unclassified documents have been received and those documents provided. The number of such requests could not be determined from commission documents.

In addition to their compliance with the Open Records Act, the agency, as required by the Administrative Procedure and Texas Register Act (Article 6252-

13A, V.A.C.S.), indexes and makes available for public inspection, all rules and all other written statements of policy or interpretation, formulated, adopted or used by the agency. Further, all final orders, decisions, and opinions are made available for public inspection.

Publications of the agency include the rules and regulations of the commission, "The Real Estate License Act," and study materials for licensee applicants. These publications are generally issued without charge to applicants, but are sold to others interested in obtaining the material. Contract forms and computer print-outs of licensees are also sold to interested parties. Exhibit X1 contains detail concerning the prices charged for publications and print-outs. The agency did not report or make available data concerning the volume of requests for each publication nor the number actually sold.

EXHIBIT X-1

Texas Real Estate Commission  
Publication and Lists

	Approximate Cost	Price	
Rules and Regulations	\$ .10	\$ 1.05	
Statute	.32	2.10	
Contract Forms			
Pads	.80	2.50	plus
		1.00	handling cost
Slick Proofs		45.00	
Computer Print-outs			
State Listing	125.00*	1,104.00	
County Listing	50.00*	120.00	average

\*Board of Control estimates.



### Open Meetings

In compliance with the Administrative Procedure and Texas Register Act, it is Texas Real Estate Commission policy to file notice of all meetings with the office of the Secretary of State. Written procedures are established within the agency regarding notification of meetings. These procedures appear in the agency self-evaluation report. Records of notice in the Texas Register Division of the Secretary of State's Office indicate that the agency is in compliance with the statutory requirements of notification. By request, notices of meetings are sent to four independent concerns. One of these is a television station in Dallas, and another is a trade publication.

### Hearings

Commission policy for conducting hearings regarding changes in the rules and regulations are within the parameters established in the Administrative Procedure and Texas Register Act. Agency policy regarding hearings appears in both the rules and regulations, and internal agency documents. Notice of intent to take action on new rules is published in the Texas Register at least 30 days in advance. Notice is also mailed to persons who have made a "timely written request".

Twenty-five persons, a governmental subdivision, or an association having at least 25 members may request a public hearing of the Commission's proposed rule changes. This request must be made within 15 days after notice of proposed action has been published. According to the agency's self-evaluation report, the commission has held only one requested hearing--in December 1976. Since this hearing coincided with a regular meeting of the commission, the notification list for the hearing was the same as that for regular meetings. Licensees do not receive notices of hearings. Their only sources are the Texas Register or the four

additional sources who receive notice.

The commission may adopt emergency rules for a period not longer than 120 days, renewable for not more than 60 days, if it determines it is for the public health, safety, or welfare. These rules may be adopted with less than 30 days notice.

Petition for adoption of a rule(s) may be initiated by any person. The petition must include a clear statement justifying its adoption. The commission must take action to deny or adopt such a rule(s) within 60 days after the filing of the petition. Action must consist of written notice of denial or initiation of the rule changing processes.

#### Summary

The agency appears to be in compliance with the provisions of the Open Records Act. No problems were apparent in maintaining confidentiality of certain files or availability of public information. Agency policy in both areas is clearly defined and understood. The review indicates that the TREC has complied with the notification requirements of the Open Meetings Act.

### Criterion 11

The impact in terms of federal intervention or loss of federal funds if the agency is abolished.

Generally, the licensing of occupations is a function which the federal government has left to the states to initiate. The Texas Real Estate Commission does not operate under, or establish its regulations in accordance with, guidelines prescribed by the federal government. Nor does the TREC receive federal funds for any of its programs or activities.

#### Federal Requirements

Though some regulations which affect the real estate agent do exist in federal laws, such as disclosure of responsibilities and charges, and prohibition of kickbacks or referral fees, these regulations are prescribed mainly for federally related loan transactions and are restricted to those dealings. However, similar regulations do exist in Texas law, in the Real Estate License Act. For example, real estate brokers and salesmen must disclose, to all parties to a transaction, for whom they are acting or from whom they are receiving compensation. Also, Section 14(a) of the Real Estate License Act makes it a violation for a "licensed broker to employ or compensate directly or indirectly a person for performing an act enumerated in the definition of a real estate broker in Section 2 of this Act if the person is not a licensed broker or licensed salesman." In addition, the commission's rules and regulations specifically prohibit referral fees unless licensed as a broker or salesman. However, state regulation of such activities does not appear to result from the federal mandate and is applicable to all real estate transactions.

### Federal Intervention

It has never been the objective of the Texas Real Estate Commission to attempt to regulate in the area concerning sales commissions. However, federal concern for the issue has grown in the last several decades and intensified in the last few years, due to the attempts of real estate trade organizations or groups of real estate agents to fix prices. Examples of this federal concern are exhibited in suits brought by the United States Department of Justice, Anti-Trust Division. A number of these cases have affirmed price fixing conspiracies in violation of the Sherman Anti-Trust Act. Although these violations occurred on a local level, involving local real estate boards or groups of local real estate agents, the federal government has intervened. Anti-trust violations have historically been left to the federal branch of the United States Government to regulate. Over the last decade, while other states have increased enforcement activity regarding price fixing in the real estate industry, Texas has not yet assumed an active role in this area. However, according to the Texas Attorney General's Office, Anti-Trust Division, both civil and criminal investigations are now being conducted in Texas by both state and federal investigators.

### Summary

The Texas Real Estate Commission is not required to operate under federally prescribed guidelines for regulating the real estate occupation. However, some portions of the Real Estate License Act are similar to those which appear in federal law. The commission does not receive any federal funds for its programs or activities. Therefore, Texas would not jeopardize its funding relations with the federal government if the functions of the Texas Real Estate Commission were discontinued.

## CONCLUSIONS

Regulation of the real estate industry in Texas was begun in 1939 under the Real Estate Dealers License Act. Responsibility for this regulation was placed with the Office of the Secretary of State, Securities Division. In 1949, the Texas Real Estate Commission was created as an independent six-member regulatory agency. Since its enactment, the Act has been significantly modified to provide examination and increased education and fee requirements for licensure, increased enforcement capabilities, and broader administrative responsibilities.

The commission currently is composed of six members who are actively engaged in the real estate business and functions as a policy-making body. The administrator has been delegated many of the rights, powers, and duties of administering the act. The agency employs 78 persons. The agency's 1977 expenditures amounted to \$1,280,000 and revenues amounted to \$2,700,000. All revenues from fees are deposited to one of two special funds in the State Treasury. All agency expenditures are made from one of these funds. The other fund receives the license fees designated for the operation of the Texas Real Estate Research Center at Texas A&M University. The agency maintains a Recovery Fund at the Treasury for payment of claims for damages resulting from actions of real estate licensees.

Agency procedures for handling receipts of fees involve long lag times from actual receipt to deposit. This is due to the agency's present practice of returning an entire application and the fees submitted with it, if it is not properly completed. In order to accomplish this, the application and attached check are circulated throughout the agency for processing. Because of the long lag times and the acceptance of personal checks, the agency has experienced significantly increased workloads associated with returned checks.

Another area of concern during review of the agency related to the costs and receipts associated with agency publications and rosters. Documentation concerning unit costs and revenue generated was not complete and detailed enough to permit analysis of pricing policies. However, data available indicated that charges significantly exceeded unit costs associated with production. Further, according to Board of Control staff, no records were found to indicate that the Texas Real Estate Commission has consulted with the Board of Control regarding prices to charge for computer printouts, as required by law.

Functions of the Texas Real Estate Commission include: 1) licensing of real estate agents; 2) enforcement of the Act; and 3) accreditation of schools. In 1977, the agency issued 111,538 licenses to real estate brokers and salesmen. Of those licenses, 87,583 were renewals. An average of 58 sessions of examinations is given monthly. These examinations are held regularly in 22 cities. In 1977, 35,106 examinations were administered by the agency investigative field representatives. All qualified applicants are given one year from the date of application to take the exam. Each applicant is allowed discretion to choose among any of the scheduled dates and cities to take the exam.

Accreditation of real estate schools is an important part of guaranteeing competency of licensees. The current process of accreditation takes from one day to nine months to complete. Accreditation standards are not detailed and documentation of internal review policies is not complete.

In 1973, the agency was given statutory authority to stagger license renewal dates; however, this authority has not been exercised. Centralized computer services are utilized by TREC in the issuing of licenses. A breakdown in this system during the fall months of 1977 contributed to a backlog from which the agency is

still trying to recover. These operations have improved and additional computer services are being developed.

Notification of rule changes is sent to whomever makes a "timely" request. Changes in rules are not routinely sent to licensees.

Enforcement activities of the agency include responding to complaints, conducting routine inspections, conducting hearings of violations and claims against the Recovery Fund, and administering examination sessions. The agency held hearings on 57 cases in 1977. Disposition of complaints included 30 revocations, four suspensions, 195 warnings, and 12 other legal actions during 1977. The agency imposed 34 formal sanctions in cases of consumer complaints, and 29 cease and desist orders were filed against unlicensed individuals.

Personnel recruitment by the agency has left the agency's personnel under-represented in two areas: 1) recruitment of minority males on all levels, and 2) placement of women in administrative, technical, and professional positions.

If the legislature determines that the Texas Real Estate Commission should be continued, certain changes in the commission's structure and functions could be considered to increase its effectiveness.

#### THE LEGISLATURE COULD CONSIDER MODIFYING COMMISSION MEMBERSHIP TO INCLUDE REPRESENTATIVES OF THE PUBLIC.

The present composition of commission membership is required to be exclusively of licensed brokers. The perspective of the unlicensed public, therefore, is not available from within the commission itself. General public representation on real estate commissions is consistent with nationwide practice -- a majority of states have included public members on their boards. Representation of the general public would also be consistent with the Texas Real Estate Commission's major objective -- to protect the public.



THE TEXAS REAL ESTATE COMMISSION COULD INVOLVE COMMISSION MEMBERS IN THE HEARINGS PROCESS.

The Real Estate Commission has limited all enforcement procedures to the administrator and staff; the commission members have exercised no enforcement authority. However, because the commission includes practicing licensees, members could play an important role in hearings. For instance, the commission could make final determination on recommendations of a hearings officer, or the commission could hear appeals to hearings decisions. The present agency practice of using the administrator as hearings officer is less expensive than full commission hearings, but licensees could still be afforded access to the commission before necessity of appeal to district court.

Whether or not the Texas Real Estate Commission is continued, if the functions presently performed by the agency are continued, the following changes could increase efficiency and effectiveness of performance.

A REVISED CASH MANAGEMENT SYSTEM COULD BE IMPLEMENTED TO INSURE THE TIMELY DEPOSIT OF ALL REVENUES AND TO INCREASE THE EFFICIENCY OF FINANCIAL ACCOUNTING.

The timely deposit of revenue received by the agency is frequently hindered by agency policy governing the payment and refund of fees. Acceptance of only cashier's checks and money orders for the payment of fees could serve to facilitate the processing of cash receipts and substantially reduce the heavy workload associated with processing returned checks. Additionally, registry and deposit of all monies upon receipt would insure the safeguarding and timely deposit of revenue. If payment of the Recovery Fund fee were required and accepted only as the last step prior to licensure, refunds to those who do not become licensed would be eliminated. If policies were modified so that "filing fees" were not refunded, many of the present problems and backlogs in the accounting system could be alleviated.

CHARGES FOR PUBLICATIONS AND ROSTERS COULD BE REASSESSED FROM A DETERMINATION OF THE COSTS AND REVENUES ASSOCIATED WITH EACH.

Presently, the agency receives from the sale of printed materials and rosters a significant amount of revenue above the costs of making these materials available to the public and licensees. Determination and maintenance of unit costs for these materials would allow the agency to set and justify a reasonable charge for each item. As a result, excess revenue arising from the sale of publications could be largely reduced.

A MORE EQUITABLE REPRESENTATION OF FEMALES AND MINORITIES AT THE ADMINISTRATIVE, PROFESSIONAL AND TECHNICAL ORGANIZATIONAL LEVELS COULD BE ATTEMPTED.

Currently, females and minorities are under-represented in the upper levels of agency staff. There are no minority males employed by the agency and minority females are only employed at the office/clerical level. Representation of such groups at upper organizational levels would indicate compliance with the spirit of equal opportunity legislation.

EXPLICIT STANDARDS AND DOCUMENTED INTERNAL PROCEDURES COULD BE ESTABLISHED WITH REGARD TO ACCREDITATION OF PROPRIETARY SCHOOLS.

At present, documented reasons for delay in the accreditation of a real estate school are not consistent with the time required for staff approval. Standards for accreditation have not been established to a point that an applicant may be clear as to exactly what is required. Additionally, the commission has established no internal review criteria documenting consistent procedures. State resources are available in this area; assisting the commission in the development school accreditation standards is one of the seven purposes for which the Real Estate Research Center was created. Working with such institutions, assurance of objectivity and consistency could be provided through explicit accreditation standards and clearly identified procedures.

LICENSEES COULD PERIODICALLY BE NOTIFIED OF CHANGES IN COMMISSION RULES.

All license applicants are sent copies of commission rules upon filing applications, and after being licensed, compliance with the rules is required by the Act. However, the commission uses no systematic method of updating licensees' knowledge of current rules. Licensee mail-outs are expensive and therefore infrequent, however, they do provide a mechanism for keeping licensees informed of the requirements under which they practice. Costs might be minimized by integrating notices regarding rule changes with either annual license renewal notification or Real Estate Research Center contacts with licensees.

A SYSTEM OF STAGGERED RENEWALS OF LICENSES COULD BE IMPLEMENTED.

Over 100,000 licensees must receive new licenses through the annual renewal process. The time period allocated to

accomplish all renewal processing is four months, with a concentration of most of the workload during a two month period. In addition to the workload increases caused by renewals, statutory increases in education requirements will be causing increases in original applications during November and December of even-numbered years through 1984.

However, the data entry capacity of the present computer facilities is at a level only slightly higher than required to meet the needs of the year-round processing of original applications and license changes. While enlarging this capacity is in the planning stages, it appears unlikely that expansion should be to a level which would readily accommodate the two-month peak workload experienced under the present renewal system. A more efficient approach would be to spread the workload throughout the year in such a manner that a smaller total capacity can adequately serve the licensing function.

#### PROCEDURES FOR ADMINISTERING LICENSING EXAMINATIONS COULD BE MODIFIED TO ACCOMPLISH THE FOLLOWING:

ESTABLISH A MECHANISM BY WHICH THE NUMBER OF APPLICANTS TO TAKE EXAMS IS KNOWN PRIOR TO TEST SESSIONS, AND

DEVELOP A METHOD FOR PROCTORING EXAMS WHICH DOES NOT REQUIRE ENFORCEMENT PERSONNEL.

By law, an examination may be taken with one year of the date of application for original licensure. Current agency practice is to make a schedule of exam sites and times available to the applicant and allow the exams to be taken without prior notice to the agency. The agency is without means to predict personnel, facilities, or exam materials which may be needed for a particular test session. This practice creates potential for both agency inefficiency and examinee inconvenience. A policy such as ten-day notification prior to taking an exam would provide the agency with time to adjust to personnel, facility, and material requirements.

License examinations are offered frequently in all areas of the state. A concern for confidentiality of exams and accessibility of testing locations are the main reasons for the current practice of enforcement field representatives proctoring exams. However, the time required for exam proctoring could be well used for inspections and investigations by field personnel. Compared to the cost of field staff salaries and travel expenses, several exam proctoring alternatives may be available at less cost.

THE LEGISLATURE COULD CONSIDER PLACING RESPONSIBILITY FOR INVESTMENT OF THE RECOVERY FUND IN THE TREASURY.

Currently, agency staff manage recovery fund investments under the direction of the commission. Placement of this responsibility within the Treasury would provide the potential benefits of financial expertise and the more advantageous return accruing to the combined investment of a larger fund.

THE LEGISLATURE COULD CONSIDER MODIFYING THE REAL ESTATE RECOVERY FUND TO ACCOMPLISH THE FOLLOWING CHANGES:

CLARIFY LICENSE REVOCATION PROCEDURES SUBSEQUENT TO ORDERED PAYMENTS, AND

MODIFY THE AMOUNTS RECOVERABLE.

The Real Estate License Act requires automatic revocation of the responsible agent's license upon issuance of a court order authorizing payment from the Recovery Fund. The Act also specifies that prior to license revocation, a licensee is entitled to a public hearing. Agency procedure after an order for payment is issued is to hold a hearing to determine if a license should be revoked. A situation in which a licensee agrees in the hearing process to repay the fund may result in no revocation. Changes in statutory language could provide clearer guidelines regarding such cases.

The act limits payments from the Fund to \$10,000 per transaction, \$20,000 per year per licensee, and \$40,000 total available per licensee. With these limits, full recovery cannot be made if a licensee incurs claims for damages from three or more transactions totalling over \$20,000 in one year. The determination as to whether first-come, first-served, or pro rata payment procedures should be used remains unresolved by the courts. However, regardless of distribution, the damages not recoverable can quickly impair the \$10,000 per transaction protection established for aggrieved persons.

The act established reimbursement for damages at an amount up to \$10,000 per transaction. Providing recovery on the basis of this provision has meant that damages have not been fully recovered in several instances and that no claims for treble damages have been paid. Modifying the amounts recoverable from the fund will require balancing public needs and licensee costs.