

August 2009
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Special Report

Real Estate Commission

AUDIT OVERVIEW

The Real Estate Commission Resolves Complaints in a Timely Manner; However, It Does Not Provide Status Reports as Required by WVC §30-5-1(c) in Cases Longer Than Six Months



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EXECUTIVE SUMMARY

The Legislative Auditor's Office initiated a review of the Real Estate Commission (Commission) as authorized under WVC §4-2-5 in order to determine the Commission's compliance with timeframes established by West Virginia Code and Commission rules in conducting complaint proceedings. It was found that the Commission resolves complaints within an average time period of just over five months. In cases that remain unresolved beyond six months, status reports, as required by WVC §30-1-5(c), are not provided. In cases that were unresolved within one and a half years, there were no documented agreements between the complainant and the Commission to extend the case beyond one and a half years. The Executive Director indicated that the Commission was unaware of these requirements and that efforts will be made to ensure compliance in the future.

It was found that the Commission resolves complaints within an average time period of just over five months. In cases that remain unresolved beyond six months, status reports, as required by WVC §30-1-5(c), are not provided.

Recommendation

The Legislative Auditor recommends that the Real Estate Commission comply with WVC §30-1-5(c) by providing status reports to complainants in cases lasting longer than six months and by obtaining written agreement to extend the time for the final ruling in cases extending beyond one year from the receipt date of the status report.

OBJECTIVE, SCOPE & METHODOLOGY

Objective

The Legislative Auditor's Office initiated this review of the Real Estate Commission (Commission) as authorized under WVC §4-2-5 in order to determine the Commission's compliance with timeframes established by West Virginia Code and Commission rules in conducting complaint proceedings.

Scope

The scope of this review was limited to complaint proceedings and covered FY 2006, 2007, 2008, and 2009 up to complaints filed as of May 18, 2009.

Methodology

The Legislative Auditor's Office obtained information from the Real Estate Commission for all complaints filed with the Commission for the evaluated timeframe, a total of 163 complaints. The information provided included the date the complaint was received; the date the complaint was first considered by the Commission; the disposition date; and the disposition finding. PERD randomly selected 60 cases in order to verify this information and to sample the dates notification was sent to the licensee against whom a complaint was filed and the dates that status reports were sent to complainants in cases where the complaint process lasted longer than six months, pursuant to WVC §30-1-5(c). Additionally, further information was obtained for the six cases from FY 2006, 2007, and 2008 that are still on-going. Three of these cases were included in the random sample and four were not.

ISSUE 1

The Real Estate Commission Resolves Complaints in a Timely Manner; However, It Does Not Provide Status Reports as Required by WVC §30-5-1(c) in Cases Longer Than Six Months.

On Average, Complaints Are Resolved Within Five Months

Requirements for the disposition of complaints by the West Virginia Real Estate Commission (Commission) are laid out in WVC §30-1-5; WVC §30-40-20; and the West Virginia Real Estate Commission Procedural Rule §174-4. The complaint process is as follows:

- The Commission receives a complaint or initiates a complaint under its own motion.
- The licensee is notified in writing of the complaint and must respond within 20 days unless an extension is granted. Failure to respond may be seen as an admission of guilt.
- The Commission may cause an investigation to be made into the complaint.
- Upon investigating the claim, the Commission may:
 - Determine there is probable cause and hold a hearing or settle the matter through consent agreement or otherwise.
 - Determine there is no probable cause for discipline and close the case.
 - Allow the licensee to appear before the Commission for an informal discussion of the allegations.
 - Order further investigation.
- Within six months of the complaint being filed, the Commission must provide a status report by certified mail to the party filing the complaint.
- Within one year of the status report's return receipt date,

Within six months of the complaint being filed, the Commission must provide a status report by certified mail to the party filing the complaint.

the Commission must issue a final ruling, unless the complainant and the Commission agree in writing to an extension.

A review of the 163 complaints received by the Commission over the previous three fiscal years and the current fiscal year as of May 18, 2009 illustrated that the average complaint is resolved within 147 days, or just over five months. Notification letters to licensees against whom complaints have been filed are typically sent out within three days of the receipt of the complaint, the first consideration of complaints are typically made within 44 days, and the disposition of complaints is made an average of 106 days after the first consideration. These averages are shown in Table 1 below.

Within one year of the status report's return receipt date, the Commission must issue a final ruling, unless the complainant and the Commission agree in writing to an extension.

<p align="center">Table 1 Average Days of Complaint Proceedings</p>			
<p align="center">Average # of Days Between Receipt of Complaint and Notification to Licensee</p>	<p align="center">Average # of Days Between Receipt of Complaint and First Consideration of Complaint</p>	<p align="center">Average # of Days Between First Consideration of Complaint and Disposition</p>	<p align="center">Average # of Days Between Receipt of Complaint and Disposition</p>
3	44	106	147

Adequate Documentation Exists for the Status of Unresolved Complaints

Table 2 illustrates the outcomes of the complaints filed during the evaluated time period. As these figures show, of the 163 complaints received, all but 25 have been resolved, 18 of which are ongoing cases from the current fiscal year.

A review of the 163 complaints received by the Commission over the previous three fiscal years and the current fiscal year as of May 18, 2009 illustrated that the average complaint is resolved within 147 days, or just over five months.

**Table 2
Complaint Dispositions**

Fiscal Year	Complaints Received	Unresolved	Dismissed	Consent Order	Dismissed Without Prejudice	Hearing
2006	35	2	25	8	0	0
2007	47	2	31	14	0	0
2008	48	3	30	12	1	2
2009¹	33	18	12	3	0	0
Totals	163	25	98	37	1	2

¹Complaints filed as of May 18, 2009.

PERD reviewed the seven cases still pending from previous fiscal years in order to determine why these cases are still open. All of the seven case files contained adequate documentation to support the ongoing status of the complaint process. Four of the cases had been referred to the Deputy Attorney General’s office for investigation; one had been tabled due to pending civil litigation concerning the subject of the complaint; and two, both against the same licensee, had been extended for various reasons, documentation for which was contained in the file.

PERD reviewed the seven cases still pending from previous fiscal years in order to determine why these cases are still open. All of the seven case files contained adequate documentation to support the ongoing status of the complaint process.

Status Reports Are Not Provided to Complainants in Cases Lasting Longer Than Six Months

In order to confirm the complaint information provided by the Commission, PERD randomly selected 60 cases for verification. Cases lasting longer than six months were also evaluated for compliance with the stipulations in WVC §30-1-5(c), which requires a status report be sent via certified mail to the complainant within six months of the complaint being filed and that a final ruling be issued within one year of the status report’s return receipt date unless an extension is agreed upon by the complainant and the Commission.

Of the 60 cases evaluated, 15 extended beyond 6 months. Of these 15, one case was exempt from the status report requirement because it was initiated by the Commission rather than an outside complainant. Of the remaining 14 cases, 6 files contained correspondence updating

complainants of the status of their cases. However, in these six cases it is apparent that the correspondences were not sent for the purpose of complying with West Virginia Code. Some of the update letters were sent well after the six-month period and some of the required information was not provided. Upon the Legislative Auditor's inquiry, the executive director indicated that the Commission was unaware of the status report requirement, but that efforts will be made to fully comply with the requirement in the future.

Six of the randomly selected cases extended beyond one and a half years, as have the four ongoing cases not included in the random sample. None of these case files contained documentation of an agreement between the complainant and the Commission that an extension of the final ruling be granted. In order to comply with state code, the Commission should obtain a written agreement with the complainant to extend the time for the final ruling in future cases that extend beyond one year of the receipt of the status report.

Upon the Legislative Auditor's inquiry, the executive director indicated that the Commission was unaware of the status report requirement, but that efforts will be made to fully comply with the requirement in the future.

In order to fully comply with WVC §30-1-5(c), the Commission must:

Within six months of the complaint being filed, send a status report to the party filing the complaint by certified mail with a signed return receipt and within one year of the status report's return receipt date issue a final ruling, unless the party filing the complaint and the board agree in writing to extend the time for the final ruling.

The Legislative Auditor recommends that the Real Estate Commission comply with WVC §30-1-5(c) by providing status reports to complainants in cases lasting longer than six months and by obtaining written agreement to extend the time for the final ruling in cases extending beyond one year from the receipt date of the status report.

Conclusion

The Legislative Auditor's Office initiated a review of the Real Estate Commission as authorized under WVC §4-2-5 in order to

determine the Commission's compliance with timeframes established by West Virginia Code and Commission rules in conducting complaint proceedings. It was found that the Commission resolves complaints within an average time period of just over five months. In cases that remain unresolved beyond six months, status reports, as required by WVC §30-1-5(c), are not provided. In cases that were unresolved within one and a half years, there were no documented agreements between the complainant and the Commission to extend the case beyond one and a half years. The Executive Director indicated that the Commission was unaware of these requirements and that efforts will be made to ensure compliance in the future.

Recommendation

The Legislative Auditor recommends that the Real Estate Commission comply with WVC §30-1-5(c) by providing status reports to complainants in cases lasting longer than six months and by obtaining written agreement to extend the time for the final ruling in cases extending beyond one year from the receipt date of the status report.

Appendix A: Transmittal Letter

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John Sylvia
Director

July 24, 2009

Richard Strader
Executive Director
West Virginia Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301

Dear Mr. Strader:

This is to transmit a draft copy of the review of the West Virginia Real Estate Commission's complaint process. This report is scheduled to be presented during the August 10-12, 2009 interim meeting of the Joint Committee on Government Operations and the Joint Standing Committee on Government Organization. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify us by Tuesday, July 28, 2009. We need your written response by noon on Wednesday, July 29, 2009, in order for it to be included in the final report. If your agency intends to distribute additional material to committee members at the meeting, please contact the House Government Organization staff at 340-3192 by Thursday, August 6, 2009 to make arrangements.

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

Sincerely,

A handwritten signature in blue ink that reads "Brian Armentrout".

Brian Armentrout
Research Manager

Joint Committee on Government and Finance

Appendix B: Agency Response



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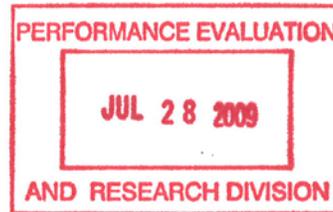
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July 28, 2009

Brian Armentrout, Research Manager
Performance Evaluation and Research Division
Legislative Auditor's Office
Building 1, Room W-314
Charleston, WV 25305



Dear Mr. Armentrout:

I have reviewed the draft copy of your review of the West Virginia Real Estate Commission's complaint process. I wish to thank you and your staff for identifying the issue, and to assure you that the Real Estate Commission will comply with the recommendation included in your report.

In any case where a complaint is unresolved after six months, the Commission will provide a status report to the party who filed the complaint by certified mail, return receipt. Within one year from the receipt date of the status report, the Commission will issue a final ruling, unless the complainant and the Real Estate Commission agree in writing to extend the time for the final ruling.

Sincerely,
Richard E. Strader
Richard E. Strader, CPA
Executive Director



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