

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 86/2

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## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Alaska Real Estate Commission (AREC) should revise the procedures for processing and closing licensing complaints.

Currently AREC uses procedures for processing licensing complaints which are ineffective and inefficient. A copy of each complaint file is sent to an AREC commissioner. This "coordinating commissioner" is supposed to assist the Accountant III (REC investigator/auditor hereinafter referred to as investigator) in his investigation by offering real estate expertise. For each complaint recommended for closure, the commissioner is supposed to review the file and approve or disapprove the closure recommendation. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission.

The first sunset review of AREC by Legislative Audit dated May 7, 1979, found fault with commissioners being informed as to the facts and being involved in the investigations and recommended that investigation procedures be changed and revised to develop an accurate and proper system for handling complaints. A follow-up review dated June 4, 1981, recommended that a formal system of investigative procedures be developed, approved, and documented prior to the investigative responsibility being transferred from the Division of Occupational Licensing. An Ombudsman investigation completed on April 13, 1983, included recommendations addressing delays in the management and processing of licensing complaints. An Office of Management and Budget (OMB) management report dated December 1984 found that AREC lacked a formal, structured procedure for processing license complaints.

The executive director and investigator have established informal procedures in response to these recommendations that conflict with those in use by other regulatory licensing boards under Occupational Licensing. We recommend AREC take a proactive, rather than reactive approach and revise its procedures to include the following:

1. Case files should not be copied and sent to a commissioner. This is the single most compromising element of the present system.
2. The investigator should fully investigate every complaint. This may involve nothing more than reading the complaint form and supporting documents, but the case file should contain evidence of the investigation conducted.

3. The investigator should prepare a generic summary of the complaint, evidence, investigation, and conclusion reached. If that conclusion recommends closure due to no violation or no jurisdiction, the summary should be sent to each commissioner at least two weeks prior to the next meeting for action by the entire Commission. At the meeting, the complaint could either be referred back to the investigator for further action or closed.
4. If the investigator determines a violation has occurred, an accusation or statement of issues would be prepared as under the current procedures. If a hearing is requested, the commissioners would act on the hearing officer's proposed decision.
5. These procedures should be formalized and supported by time standards. Implementation of these procedures would allow the investigator to be more efficient. Cases recommended for closure would be acted on at the next meeting and the carrying over of cases to the next meeting due to the absence of one or more commissioners would not occur. The amount of copying and mailing costs, as well as time spent tracking complaints, would be reduced substantially.

#### Recommendation No. 2

AREC should actively pursue recovery of Surety Fund claims paid and the associated hearing costs from the involved licensees.

Alaska Statute 08.88.071(b) allows AREC to suspend the license of a broker, associate broker, or salesperson until an agreement is reached on terms and conditions for the repayment to the Real Estate Surety Fund of the money awarded to the claimant and the costs of hearing the claim. To date, repayment by the involved licensee has been more voluntary than required. Of the approximately \$430,000 of claims and associated hearing costs paid from the Surety Fund, only fifteen percent or \$65,000 has been recovered.

The Attorney General's (AG) Office must file suit to collect these payments. Several of the larger payouts have recently been turned over to an Assistant AG for action. The Commission has been trying to develop a process to recover through Small Claims Court, which has a \$2,000 limit, those claims under \$5,000 which the AG's Office will not prosecute. This process has not been implemented due to lack of time by the investigator to follow through.

We recommend that judgement, execution, and collection be undertaken on a test basis as soon as possible through the appropriate trial court in order to refine the procedures necessary for recovery of monies owed to the Surety Fund.

Initially, active licensees should be notified that their licenses will be suspended if an agreement on repayment is not reached. If these procedures reveal inadequate authority for recovery, statute changes may be necessary. However, lack of action because a problem may exist is not acceptable. These procedures must be formalized and written in order to facilitate recovery.

Recommendation No. 3

AREC should undertake a major revision of Alaska Statutes, Title 8, Chapter 88.

The Attorney General's Office as well as staff and commissioners of AREC pointed to statutes which needed revision. Some sections need clarification while others appeared to give inadequate authority to the Commission to carry out its duties. Some examples follow:

1. Duties of the Commission. AS 08.88.071.
  - (a)(3) could be changed to a simple statement such as: "hold hearings and order disciplinary sanctions against a person who violates this chapter or the regulations of the commission." A separate section is needed delineating grounds for denial, suspension, and revocation of a license. A section on penalties or disciplinary sanctions is usually found in other chapters of Title 8.
  - (b) should be relocated to Article 5, the Real Estate Surety Fund. Combined license and Surety Fund claim hearings are now being scheduled and suspension of a license until repayment of the claim should not be confused with suspension for a licensing violation. Qualifying language may be needed to distinguish between suspension for a violation and suspension for a repayment agreement in those combined hearings. Repayment of the Surety Fund claim does not "buy back" the license suspended for a violation.
2. Entitlement to license. AS 08.88.171.

This section should be retitled "eligibility for license" or "qualifications for license." At this time, a broker or associate broker is still "entitled" to a salesperson license even though the Commission revokes the broker or associate broker license. If this is not the intent of the Legislature, a provision should be included that licensees lose their eligibility for all licenses upon license revocation and that license eligibility can only be reinstated by the Commission.
3. Reinstatement of lapsed license. AS 08.88.241.

The Commission has taken the position that a broker, associate broker, or salesperson whose license has

lapsed for more than two years must be reexamined before reinstatement and must begin at the salesperson level. If the intent of the legislation is that the broker and associate broker licenses cannot be reinstated after examination, that language should be inserted in the statutes. The current policy is to reinstate any license lapsed less than two years without examination.

4. Out-of-state licenses. AS 08.88.261.  
This section should be repealed. The State of Alaska does not have reciprocity agreements with other states. License by endorsement is available to a person who holds a valid active real estate license issued by another state upon passing an examination in Alaska law and meeting the requirements of AS 08.88.171.
5. Education. AS 08.88.091.  
Authority to sell informational materials at a price designed to recover costs and deposit the money in the Real Estate Surety Fund should be added. The Commission should establish guidelines for charges for copies exceeding one per licensee.

Specific language should be added regarding the liability of the licensee to repay Surety Fund claims and hearing costs paid from the Surety Fund. Procedures should be developed in consultation with the Attorney General's Office to standardize and expedite recovery efforts. Other areas needing clarification are definitions of "real estate" and "employed" as used in Chapter 88.

This project should be prioritized. A reimbursable services agreement with the Department of Law, if necessary, or a contract with a private attorney would assure the time needed to accomplish this goal.

In addition, the Commission should revise the regulations, License Biennium and License Renewal, 12 AAC 64.070 and .071. A staggered renewal should be instituted to spread the workload more evenly throughout the biennium. An alternative to staggering license renewal within the biennium could be to seek statutory change to allow for a triennial renewal and staggering license renewal over three years. This change would also necessitate a change to the fee section of the statutes, AS 08.88.221.

#### Recommendation No. 4

AREC should analyze the need for an additional clerical position.

The staff of AREC consists of an executive director, an investigator, a licensing examiner, two half-time hearing officers, a secretary, and a clerk typist. Staff complains

of a workload such that they are unable to complete their assigned duties. The investigator and hearing officers were added to staff with no increase in clerical support. Each of these positions generate a large amount of clerical work. The investigator spends a great deal of time tracking complaint files and Surety Fund claims because no one else is available to do it. The license examiner must do most of the typing and filing of that position due to lack of support. The hearing officers currently have a backlog of proposed decisions awaiting typing. Additionally, AREC is now involved in a computer conversion which will require a substantial amount of time of the licensing examiner and investigator to develop programs to assist them in their duties. When the programs are developed all the information for the licensing history and complaint files must be entered in the system. Also, 1986 is the biennial renewal year which historically overwhelms the staffing available.

Thirty-one percent of the licensees responding to a questionnaire had complaints regarding the handling of applications, fees, or other administrative duties of the Commission. An accurate, up-to-date roster of licensees is still not available. The Commission has not published its quarterly newsletter since February 1985, which was a copy of the statutes and regulations. The executive director states he does not have time to manage the appropriation from the Surety Fund for education. However, a position has recently been authorized, funded by the Surety Fund, for an educational coordinator. This position may also require clerical support.

We believe the need for additional temporary clerical help is critical at this time. The license examiner and investigator must have time available to assist in development of computer programs. Existing staff must have assistance with the biennial renewal of licenses and data input. The Commission should try to make the funding available from the FY 86 budget, seek assistance from any departmental typing pool, or request supplemental funding. Implementation of the recommendations such as changing the license renewal date and computerizing operations may reduce the workload and streamline operations so that a permanent position is not necessary in the long-term. Further analysis will be needed after the changes are instituted. However, we believe temporary assistance is critically necessary at this time.

#### Recommendation No. 5

The investigator should develop a time accounting system which would document investigative actions.

During the course of our review, fifty license complaint files were examined from FY 84 and 85. Documentation

included the license complaint form and supporting documentation, a checklist, priority evaluation form, copies of the ten-day letters sent and the responses received, and the investigator's report/recommendation. Twenty-five of the fifty files had one or more errors noted such as lack of forms, incomplete forms, no commissioner signatures on closure recommendations, or missing files. It was extremely difficult to determine what, if any, investigation was done. Some files were referred back to the investigator marked "investigate" but no further action had been documented.

The investigator was unable to estimate how much time he spent on investigations, tracking Surety Fund claims, and other assigned duties. Implementation of a time accounting system, in conjunction with the computerized complaint tracking system, would analyze his workload as well as document investigative procedures.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analysis of Commission activities relate to the public need factors defined in the "sunset" law. This analysis is not intended to be all inclusive, but addresses those areas we were able to cover within the scope of our review.

- I. The extent to which the board, commission, or program has operated in the public interest.
  - A. The Commission has held five meetings each year during the last three years.
  - B. The Commission has implemented regulations to administer Surety Fund claims.
  - C. The Commission has issued fifteen stop orders to prevent unlicensed activity from continuing.
  - D. The Commission has sponsored seminars and publications on real estate matters.
  
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
  - A. Procedures for processing licensing complaints are ineffective and inefficient (see Recommendation No. 1). Additionally, complaint files often lack documentation to determine if investigations are properly conducted (see Recommendation No. 5).
  - B. The statutes governing the Commission are not clear and concise and need revision (see Recommendation No. 3).
  - C. Existing staff needs temporary clerical assistance through completion of computer programming and the biennial license renewal (see Recommendation No. 4).
  - D. The Commission requires increasingly more legal assistance from the Department of Law, Attorney General's Office, which may not be available under the present budgetary program.

- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
- A. The Commission succeeded in having some obsolete or vague statutory requirements repealed or amended. Changes were also enacted to the Surety Fund claim process. A claimant is required to pay a \$250 filing fee, which may not be in the public's best interest.
- IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
- A. Commission meetings are announced to the public. Time is scheduled to hear from interested persons.
- B. Comments on regulation changes are solicited by announcement in public newspapers and notices to interested associations.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Commission announces proposed regulation changes or additions in newspapers in accordance with the Administrative Procedures Act.
- B. The Commission formed a Project Action Committee composed of commission members, licensees, and the public. Task forces for statutes and regulations, education, and agency were established to make recommendations in those areas.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.
- A. We found no instances where the Commission did not respond to public inquiries.
- B. During the last three years, forty-nine complaints have been closed by the Office of the Ombudsman. Ten of these were found to be justified or partially justified and most involved unreasonable delay or lack of action on licensing complaints and Surety Fund claims.

VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

A. The Commission gave the licensing examination each month in Anchorage and quarterly in Fairbanks, Kenai, and Juneau. Approximately 7,500 persons took the examination with 3,100 or 41 percent passing during the past three years. Licenses issued totalled 2,329.

B. The Commission revoked, suspended, or denied thirty licenses in the last three years. As of June 30, 1985, the Commission had 176 open license complaints.

VIII. The extent to which State personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

A. We found no evidence of problems in this area.

IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

A. Please refer to the previous section, Findings and Recommendations, and the December 1984 report by OMB included in its entirety as Appendix D of this report.

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APPENDIXES

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APPENDIX A

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA REAL ESTATE COMMISSION  
SCHEDULE OF GENERAL FUND REVENUES  
COMPARED WITH OPERATING EXPENDITURES  
For Fiscal Years 1983 through 1985  
(UNAUDITED)  
(Note 1)

	<u>Fiscal Year</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
<u>Revenues</u>	<u>\$ 130,941</u>	<u>\$477,074</u>	<u>\$229,200</u>
<u>Expenditures:</u>			
Personal services	195,737	195,066	245,089
Travel	18,011	19,752	18,890
Contractual services	91,241	83,700	42,734
Supplies and materials	5,312	3,282	4,243
Machinery and equipment	490	428	1,236
<u>Total Expenditures</u>	<u>310,791</u>	<u>302,228</u>	<u>312,192</u>
<u>Revenues over (under)</u> <u>    Expenditures</u>	<u>\$(179,850)</u>	<u>\$174,846</u>	<u>\$(82,992)</u>

SCHEDULE OF REVENUES

<u>Unrestricted Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Examination fee	\$ 50	With taking the examination
Reciprocity fee	100	With granting of license through reciprocity
Initial license fee	100	With issuance of license
Renewal-active license	100	Biennially
Renewal-inactive license	50	Biennially
Amendment or transfer of license fee	5	When amending or transferring

Note 1: The information included in this schedule was obtained from the accounting records of the Alaska Real Estate Commission. The information has not been audited by us and, accordingly, we express no opinion on it.

APPENDIX B

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA REAL ESTATE COMMISSION  
SCHEDULE OF EXAMINATION STATISTICS  
For Fiscal Years 1983 through 1985

	<u>Fiscal Year</u>		
	<u>1983</u>	<u>1984</u>	<u>1985</u>
<u>Brokers and Associate Brokers</u>			
Number of examinees	425	442	302
Number passed	190	186	156
Percentage pass rate	<u>44.7%</u>	<u>42.1%</u>	<u>51.7%</u>
<u>Salespersons</u>			
Number of examinees	2,305	2,436	1,604
Number passed	839	1,018	694
Percentage pass rate	<u>36.4%</u>	<u>41.8%</u>	<u>43.3%</u>
<u>Total</u>			
Number of examinees	2,730	2,878	1,906
Number passed	1,029	1,204	850
Percentage pass rate	<u>37.7%</u>	<u>41.8%</u>	<u>44.6%</u>
<u>Initial Licenses Issued</u>	<u>708</u>	<u>939</u>	<u>682</u>

APPENDIX C

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA REAL ESTATE COMMISSION  
SUMMARY OF RESPONSES TO A  
REAL ESTATE LICENSEE QUESTIONNAIRE

Are you licensed as a (please circle one of the following):

Broker	Associate Broker	Salesperson	<i>Not Designated</i>
38	25	29	15

	<u>Yes</u>	<u>No</u>	<u>N/O*</u>
1. Do you believe that it is in the public's best interest that the following professions be licensed?			
a) Brokers	<u>99%</u>	<u>1%</u>	<u>0%</u>
b) Associate Brokers	<u>97%</u>	<u>3%</u>	<u>0%</u>
c) Salespersons	<u>98%</u>	<u>2%</u>	<u>0%</u>
2. Do you believe that the Real Estate Commission has operated in the public's best interest?	<u>84%</u>	<u>9%</u>	<u>7%</u>
3. Do you have any complaints regarding the handling of applications, fees, or other administrative duties by the Commission?	<u>31%</u>	<u>63%</u>	<u>6%</u>

Please explain if answered Yes.

*Most prevalent answer was that the processing of applications, renewals, and complaints is not timely.*

\*No/Opinion

APPENDIX C

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA REAL ESTATE COMMISSION  
SUMMARY OF RESPONSES TO A  
REAL ESTATE LICENSEE QUESTIONNAIRE

	<u>Yes</u>	<u>No</u>	<u>N/O</u>
4. Do you believe the examination and screening process for licensure is performed adequately by the Commission?	<u>73%</u>	<u>22%</u>	<u>5%</u>
Please explain if answered No.			
<i>Most prevalent answer was that requirements should be stricter.</i>			
5. Do you believe that applicants for real estate licenses should be required to complete real estate courses before they are licensed?	<u>67%</u>	<u>27%</u>	<u>6%</u>
6. Do you believe that continuing education should be required for the following to renew their licenses?			
a) Prokers	<u>56%</u>	<u>37%</u>	<u>7%</u>
b) Associate Brokers	<u>53%</u>	<u>37%</u>	<u>10%</u>
c) Salespersons	<u>54%</u>	<u>37%</u>	<u>9%</u>
7. Do you believe licensing by reciprocity should be continued?	<u>76%</u>	<u>18%</u>	<u>6%</u>
8. Does the license examination cover material which is not pertinent or relevant to actual practice?	<u>48%</u>	<u>33%</u>	<u>19%</u>

Please explain if answered Yes.

*Most prevalent answers were that the examination is too technical, and more emphasis should be placed on professional ethics.*

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DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA REAL ESTATE COMMISSION  
SUMMARY OF RESPONSES TO A  
REAL ESTATE LICENSEE QUESTIONNAIRE

9.	Has the Commission handled complaints fairly?	<u>47%</u>	<u>14%</u>	<u>39%</u>
10.	Do you believe the Commission should conduct broker trust account audits on a random basis?	<u>60%</u>	<u>32%</u>	<u>8%</u>
11.	Do you believe the Commission has adequate revocation and suspension powers to be effective?	<u>81%</u>	<u>8%</u>	<u>11%</u>
12.	Do you believe the Commission should be allowed to levy fines for enforcement of regulations?	<u>59%</u>	<u>28%</u>	<u>13%</u>
13.	Do you believe the Commission has discriminated against minorities?	<u>0%</u>	<u>86%</u>	<u>14%</u>

Response Rate:

Number of Questionnaires Sent:	250
Number of Responses Received:	107
Response Rate:	42.8%

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**Management Audit Report  
On The  
Alaska Real Estate Commission**

Division of Management  
December 1984

**OMB**

**STAFF PAPERS AND REPORTS**

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STATE OF ALASKA  
BILL SHEFFIELD, GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF MANAGEMENT

BILL SHEFFIELD, GOVERNOR

POUCH AM  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3568

December 11, 1984

Mr. John T. Shively  
Chief of Staff  
Office of the Governor  
Pouch A  
Juneau, AK 99811

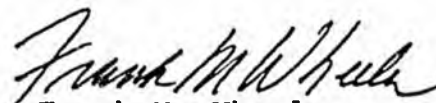
Dear Mr. Shively:

We are pleased to submit our Management Audit Report on the Alaska Real Estate Commission (AREC). The audit was requested by Barbara Hill, AREC Chairman.

This report provides specific recommendations for improving the Commission's licensing, license complaint, and surety fund claim operations. This report also identifies the need for improving the Commission's current office automation and internal management control.

AREC is presently taking action to improve its operations based on our recommendations. An implementation project, under the direction of AREC Commissioner Dave Ribacchi, should be completed by September 1985.

Sincerely,



Frank M. Wheeler  
Associate Director

Enclosure

cc/enc: Carol Derfner, Special Staff Assistant  
Office of the Governor

Lois Cock, Director  
Division of Administrative Services  
Department of Commerce and  
Economic Development

Barbara Hill, Chairman  
Alaska Real Estate Commission

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## SUMMARY

The Alaska Real Estate Commission (AREC) regulates the State's real estate profession by examining prospective licensees, issuing licenses, investigating license complaints, and holding hearings to suspend or revoke licenses. AREC is also responsible for adjudicating surety fund claims from victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees.

At the request of AREC Chairman Barbara Hill, the Office of Management and Budget (OMB) conducted a management audit of AREC. This report shows that AREC could improve its licensing, license complaint, and surety fund claim operations. The report also identifies the need for improving the Commission's current office automation and internal management control.

## LICENSING

AREC could improve its licensing operations by:

- Verifying that license candidates have passed the licensing examination before issuing licenses;
- Prorating initial license fees within the licensing biennium;
- Establishing the license renewal date as the first of the month following each licensee's birthday;
- Using the current ten-year license certificate as a permanent license certificate;
- Updating the licensee register;
- Initiating a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers; and
- Identifying licensees with lapsed licenses who are currently engaged in real estate business.

### LICENSE COMPLAINTS

AREC could improve its license complaint operations by:

- Establishing a formal, structured procedure for processing license complaints;
- Re-evaluating the investigator position;
- Discontinuing to close complaints "without prejudice" and establishing an administrative closure process;
- Providing complainants and respondents with closure letters immediately following complaint closures; and
- Revising the license entitlement statute to read "Eligibility for License" and including a provision that licensees will lose their eligibility for all licenses upon license revocation.

### SURETY FUND CLAIMS

AREC could improve its surety fund claim operations by:

- Establishing a minimum fund balance for the Real Estate Surety Fund instead of the current maximum fund balance;
- Combining license action and surety fund claim hearings;
- Reducing the current \$250 filing fee to a more reasonable amount, such as \$50, or discontinuing the fee if surety fund claims are included with license complaints;
- Re-evaluating the staff hearing officer position;
- Proceeding to recover paid claims and hearing costs from licensees; and
- Returning the two \$10,000 warrants found in Commission files to the State treasury.

### OFFICE AUTOMATION

AREC could improve its operations by:

- Replacing the current Wang word processing system with a computer system, such as a Wang VS System 80 if it meets needs; and
- Considering to replace the current daisy-wheel printer with a higher speed printer.

### INTERNAL MANAGEMENT CONTROL

AREC could improve its operations by:

- Establishing standard policies and operating procedures; and
- Delegating authority in writing to its staff.

### OTHER ISSUES

Other issues which should be addressed by AREC include:

- Ensuring the confidentiality of open investigative files;
- Conducting audits of broker trust accounts;
- Developing an operations manual for commissioners; and
- Forming joint committees between AREC and the Alaska Association of Realtors to study areas of common concern.

### AGENCY COMMENTS

Based on the recommendations in our draft report, AREC is taking action to improve its operations. AREC Commissioner Dave Ribacchi has been appointed project manager to coordinate the Commission's implementation of our recommendations. During the implementation project, Commissioner Ribacchi will utilize joint committees between AREC and the Alaska Association of Realtors. Senior OMB Analyst Greg Moyer, who conducted the management audit, will assist Commissioner Ribacchi and the joint committees.

## INTRODUCTION

The Alaska Real Estate Commission (AREC) was established in 1964 to regulate the State's real estate profession. AREC regulatory responsibilities include:

- examining prospective real estate licensees;
- issuing real estate licenses to qualified applicants;
- conducting investigations to determine whether real estate agents have violated statutes or regulations; and
- holding hearings to suspend or revoke licenses of real estate agents who violate statutes or regulations.

AREC is also authorized to conduct educational clinics or seminars for the purpose of raising the standards of the real estate industry and the competency of licensees.

## LICENSEES

There are currently a total of about 5,500 licensed real estate agents in Alaska. Of this total, approximately 3,900 are actively employed as real estate agents, 600 are inactive, and 1,000 are lapsed (licenses not renewed by real estate agents).

Of the 3,900 active licensees, approximately 1,400 are associate brokers or brokers, and 2,500 are salespersons. A broker differs from an associate broker in that a broker is an owner of a real estate business or is employed as a broker by a corporation. An associate broker has met the statutory qualifications of a broker, but is employed by a real estate broker.

## LICENSE REQUIREMENTS

For a real estate broker or associate broker license, an applicant must pass an examination, be a State resident, have had 24 months of continuous work experience as a real estate salesperson, and have not engaged in conduct demonstrating unfitness to be a broker.

For a real estate salesperson license, an applicant must pass an examination, be a resident of the State, be employed by a real estate broker, and have not engaged in conduct demonstrating unfitness to be a salesperson.

## LICENSE RENEWAL

Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. Licenses were last renewed on February 1, 1984. The next renewal will be on February 1, 1986.

## LICENSE FEES

The fee schedule for real estate licenses is as follows:

	<u>License Fee</u>	<u>Surety Fee 1/</u>	<u>Process Fee</u>	<u>Total Fees</u>
<u>Initial License</u>				
Salesperson	\$100	\$40		\$140
Assoc. Broker/ Broker	\$100	\$125		\$225
<u>License Changes</u>				
Transfer			\$5	\$5
Name change			\$5	\$5
Address change			\$5	\$5
Inactivation			\$5	\$5
Reactivation			\$5	\$5
<u>Renewal</u>				
Active Salesperson	\$100	\$40		\$140
Active Broker or Assoc. Broker	\$100	\$125		\$225
Inactive Salesperson	\$50			\$50
Inactive Broker or Assoc. Broker	\$50			\$50

1/ AREC places these fees in the Real Estate Surety Fund to be used for making monetary settlements to victims of fraud, deceit, intentional misrepresentation, and conversion of trust funds by real estate agents.

During FY 84, which included a renewal of all licenses, AREC collected fees totaling approximately \$845,000. Of this amount, about \$292,000 was credited to the Real Estate Surety Fund and about \$553,000 was credited to the General Fund.

#### AREC ORGANIZATION

AREC consists of seven members: five real estate brokers or associate brokers, and two public members appointed by the Governor, with confirmation of the Legislature.

AREC staff consists of an executive director, two half-time hearing officers, an auditor, a licensing examiner, a clerk typist, and a secretary.

#### PURPOSE AND SCOPE

Our review was conducted at the request of Barbara Hill, Chairman of the Alaska Real Estate Commission. The review had two purposes. The first purpose was to assess the effectiveness and efficiency of AREC operations, systems, and management methods. The second purpose was to provide recommendations for any needed improvements regarding operating efficiency and effectiveness which would enhance service delivery or reduce present costs.

During our review, we performed the following steps:

- Reviewed applicable statutes, regulations, and AREC policies and procedures;
- Interviewed Commission members and staff, and Alaska Association of Realtors officials;
- Documented and evaluated the Commission's workloads, staffing, and management methods;
- Reviewed and analyzed current AREC systems and procedures for examining prospective licensees, issuing and renewing licenses, investigating license violations, and adjudicating license complaints and surety fund claims;
- Reviewed statutes, regulations, and procedures of other states' real estate commissions; and
- Attended two Commission meetings and the National Association of Real Estate License Law Officials (NARELLO) annual meeting.

## LICENSING

AREC licensing responsibilities are critical to regulating the State's real estate profession. These responsibilities include examining prospective licensees, collecting license fees, renewing licenses, and maintaining a current license register. Our review found that AREC could improve its operations in each of these areas as discussed below.

### LICENSING EXAMINATION

In Alaska, candidates for a real estate license must pass a licensing examination. Currently, an average of 200 candidates a month take the Alaska real estate licensing examination. The Educational Testing Service (ETS), which is under contract to administer the examination statewide, provides each candidate who takes the examination with a pass/fail notice. ETS also provides AREC with a pass/fail listing on microfiche.

Candidates who pass the licensing examination may apply to AREC for a real estate license. On the license application, candidates must provide the date they passed the examination and the examination site. With this information, AREC can verify whether candidates actually passed the examination by checking their names on the ETS pass/fail listings. However, our review found that AREC has been issuing real estate licenses without verifying that candidates actually passed the licensing examination. According to the AREC license examiner, AREC has relied on information provided by candidates on the license application.

Issuing licenses without verifying examination results defeats the purpose of examining license candidates. By not verifying examination results, there is a remote possibility that some real estate licenses have been issued to candidates who have failed the examination or have never taken the examination.

### LICENSE FEES

Our review found that initial license fees would be more equitable if the fees were prorated within the licensing biennium. Currently, broker/associate broker candidates and salesperson candidates must pay the total license fees of \$225 and \$140 respectively when applying for their initial licenses. Current AREC regulations prohibit prorating fees within the licensing biennium. By not prorating fees, some new licensees are required to pay another \$225 or \$140 in renewal fees even though their initial licenses were applied for and received a month or two prior to the renewal date.

If AREC would prorate initial license fees, we envision the fees being prorated from the first of the month following date of initial license application to date of renewal. (The date of initial license application would be the postmark date if application is mailed or AREC receipt date if application is delivered.)

#### LICENSE RENEWAL

Our review found that license renewals could be accomplished more efficiently if licenses were renewed biennially based on each licensee's birthday. Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. To renew over 5,000 licenses at the same time, AREC must commit the majority of its staff to send renewal notices, open mail, receipt fees, review renewal applications, issue licenses, and update licensee data. The latest license renewal in February 1984 required staff commitment from December 1983 to May 1984. During this period, other AREC functions such as investigating license complaints, monitoring surety fund claim hearings, and publishing the AREC newsletter were disrupted.

By establishing the license renewal date as the first of the month following each licensee's birthday, AREC would have twelve license renewals instead of one. This renewal process would spread the administrative workload over the entire year allowing time for the AREC staff to perform its other functions with minimal disruption. Both the AREC executive director and license examiner support this renewal process. In addition, real estate commissions in Idaho, Oregon, and Washington have switched to this renewal process to eliminate the burden of renewing all licenses at the same time.

If AREC would establish the license renewal date based on each licensee's birthday, we envision a transition renewal in February 1986. Licenses would be renewed from February 1, 1986, to the first of the month following each licensee's birthday in 1987. Total renewal fees (license and surety fees) would be prorated based on the schedule shown on the following page.

<u>Birthday Month</u>	<u>Date License Renewed to</u>	<u>Broker/Associate Broker Renewal Fees</u>	<u>Salesperson Renewal Fees</u>
January	February 1, 1987	\$113	\$ 70
February	March 1, 1987	122	76
March	April 1, 1987	131	82
April	May 1, 1987	141	88
May	June 1, 1987	150	93
June	July 1, 1987	159	99
July	August 1, 1987	169	105
August	September 1, 1987	178	111
September	October 1, 1987	188	117
October	November 1, 1987	197	123
November	December 1, 1987	206	128
December	January 1, 1987	216	134

The next license renewal would be two years from the above dates and biennium renewal fees for brokers/associate brokers and salespersons would be \$225 and \$140 respectively.

#### LICENSE CERTIFICATE

For license renewals prior to the February 1984 renewal, AREC provided licensees with license certificates that were valid for only one licensing biennium. However, for the February 1984 renewal, AREC provided licensees with certificates that are to be valid for five licensing bienniums. Each license certificate has five spaces for renewal validation stickers. This use of validation stickers is similar to the system used for motor vehicle licensing.

We support the use of validation stickers instead of printing and issuing new license certificates at each renewal. However, we believe the current ten-year license certificates could be permanent license certificates by continuing to place new validation stickers over existing stickers. Real estate commissions in Montana, Rhode Island, South Dakota, and Tennessee currently have permanent license certificates with validation stickers.

If AREC would establish the license renewal date as the first of the month following each licensee's birthday, we envision the validation stickers to read as shown in the example below.

EXAMPLE

For a licensee with a birthday on May 3, the following validation sticker would be sent to the licensee at the February 1, 1986 renewal:

EXPIRES 6-1-87
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During May 1987, the license would again be renewed and the following validation sticker would be sent to the licensee:

EXPIRES 6-1-89
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LICENSEE REGISTER

AREC is required by statute to maintain a current register of licenses. AREC currently maintains an alphabetical register of licensees on its Wang word processor. The register is kept on 23 separate system documents which group licensees alphabetically by the first letter of their last names. For each licensee, the register provides the licensee's real estate office and address, license number, and license expiration date (currently January 31, 1986 for all licensees).

We reviewed the accuracy of the AREC licensee register by comparing its contents with a current licensee register provided by the Anchorage Multiple Listing Service (MLS). Our review found inaccuracies in the AREC licensee register. Specifically, we found:

- The AREC register did not account for some licensees. During our review, we found five licensed real estate agents (including one broker) not listed on the

register. Each of these licensees are actively engaged in real estate business.

- The AREC register listed some licensees twice - once as active and once as lapsed.
- The AREC register did not have current company names and addresses for some real estate firms.

Concerning licensees not accounted for on the register, the AREC licensing examiner told us that her predecessor failed to enter some licensees on the register during the 1982 renewal. Specifically, these licensees included some brokers with low license numbers and some licensees with license numbers between 7000 and 7999.

#### Lapsed Licenses

The AREC licensing examiner estimates that 1,000 licensees on the AREC licensee register have lapsed licenses. Given the inaccuracies found in the AREC licensee register, we are concerned that some licensees with lapsed licenses may not have received notices of the February 1984 license renewal. Though licensees have the responsibility to renew their licenses with or without renewal notices, we believe that AREC should make an attempt to identify licensees with lapsed licenses who are currently engaged in real estate business. For example, AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

#### RECOMMENDATIONS

In the area of licensing, we recommend that AREC:

1. Verify that license candidates have passed the licensing examination before issuing licenses. It is our understanding that the AREC license examiner has already been instructed by the executive director to implement this recommendation.
2. Prorate initial license fees within the licensing biennium.
3. Establish the license renewal date as the first of the month following each licensee's birthday.
4. Use the current ten-year license certificate as a permanent license certificate by continuing to place new validation stickers over existing stickers.

5. Update the licensee register. For a cost of \$85, Wang Laboratories could take the 23 system documents of the current alphabetical register and provide AREC with a register in sequential order by license number. This new register could then be compared with information in the Commission's hard-copy license folders which are also kept in sequential order by license number. This register could also be compared with an AREC notebook which recorded license issues in sequential order prior to use of the word processor.
6. Initiate a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers.
7. Identify licensees with lapsed licenses who are currently engaged in real estate business. AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

## LICENSE COMPLAINTS

As a regulatory agency, AREC is responsible for investigating complaints alleging licensee violations of State statutes or regulations. AREC is also responsible for suspending or revoking licenses of real estate licensees who actually violate statutes or regulations. Our review found that AREC could improve its operations in each of these areas as discussed below.

### COMPLAINT STATISTICS

As of September 14, 1984, AREC showed the following license complaint statistics:

<u>Year</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Closed</u>	<u>Total</u> <u>Complaints</u> <u>Open</u>
1977	86	85	1
1978	108	99	9
1979	203	200	3
1980	114	110	4
1981	119	101	18
1982	151	115	36
1983	184	103	81
1984 to date	<u>170</u>	<u>54</u>	<u>116</u>
Total	<u>1,135</u>	<u>867</u>	<u>268</u>

Of the 268 open complaints, only 24 complaints were designated as being in active investigation and 17 were designated as having license actions in progress. The remaining 227 open cases were in backlog status.

We reviewed 61 of approximately 240 closed license complaints which were in AREC files awaiting closure letters. Our review found that the average processing time for these complaints from date of complaint filing to date of recommended closure was 14 months.

### COMPLAINT PROCESSING

Our review found that AREC lacks a formal, structured procedure for processing license complaints. AREC currently processes complaints based on informal procedures established by the executive director and auditor. We believe these procedures were implemented before being fully developed and are currently

ineffective and inefficient. Examples of these procedures are shown below.

1. For each complaint actively investigated, AREC has a procedure to forward a copy of the complaint file to an AREC commissioner. The commissioner supposedly becomes an "investigating commissioner" who will assist the AREC auditor during the investigation. However, we found that neither the auditor nor commissioners know what is expected of the "investigating commissioner." The procedure has never been formalized to identify the commissia ers' investigative duties.
  
2. For each complaint recommended for closure, AREC has a procedure to forward the original complaint file to an AREC commissioner. The commissioner is supposed to review the file, approve or disapprove the closure recommendation, and return the file to the AREC auditor. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission. We question the entire Commission voting to close complaints when the complaints were only reviewed by one commissioner. We also question the mailing of original complaint files to commissioners, especially when we were told that four original files have been lost through these mailings.

We believe that AREC needs a formal, structured procedure for processing complaints from date of initial inquiry to completion of hearing. The procedure should provide a sequence of processing stages and internal time standards (processing days from date of complaint filing). We also believe that the processing stages should be supported by statutes and regulations.

If AREC would establish a formal, structured procedure for processing license complaints, we envision the following major processing stages, internal time standards, and needed statute and regulation sections:

<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
1. <u>INQUIRY</u>			
AREC documents the volume and nature of questions answered and problems resolved by telephone, mail, and personal contact.			Acceptance of Inquiry  Record of Inquiry

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
2.	<u>COMPLAINT</u>		Complaint	Complaints by Individuals Complaints by Commission
	AREC sends a copy of the complaint and an interrogatory to respondent.	10 days		
	Respondent provides AREC with completed interrogatory.	30 days		
3.	<u>STAFF INVESTIGATION</u>		Investigation	Investigation Procedures Determination Procedures
	AREC prepares an investigative plan of action.	45 days		
	After investigation, AREC makes a determination whether or not complaint is supported by substantial evidence.	90 days		
4.	<u>STIPULATION</u>		Stipulation	Stipulation Procedures
	If the complaint is supported by substantial evidence, AREC provides respondent with proposed terms of stipulation, i.e., license suspension for specific time period.	120 days		
	Respondent accepts or rejects the proposed stipulation.	150 days		

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
5.	<u>HEARING</u>		Hearing	Commencement of Hearing Process
	If proposed stipulation is rejected by respondent, a hearing commences.	180 days	Order	Subpoenas
				Notice of Hearing
				Conduct of Hearing
				Hearing Officer's Recommended Decision
				Orders by Commission
				Hearing Record

By establishing a complaint processing procedure supported by internal time standards, statutes, and regulations, we believe that AREC would be more accountable to licensees and the public.

#### INVESTIGATOR

The AREC auditor is responsible for investigating license complaints filed with the Commission. The auditor is an Accountant III with no prior investigative experience.

Current AREC statutes state that "the executive director shall appoint, with approval of the commission, a full-time investigator or auditor." We understand that an auditor was appointed because investigations may involve audits of broker trust accounts. However, we found that the auditor has conducted only three trust account audits since his appointment three years ago.

We believe AREC should re-evaluate its investigator position. In our opinion, the State's class specification 7768, Investigator III, includes the knowledge and skills needed by AREC. We note that each investigator within the State's Division of Occupational Licensing is an Investigator III.

### Closure Letters

AREC currently has about 240 closed license complaints which are awaiting closure letters to complainants and respondents. These complaints were closed by the Commission between 1982 and 1984. Given that the usual license complaint involves two brokers, two salespersons, and a complainant, we estimate that approximately 960 respondents and 240 complainants have not received closure letters.

We believe that AREC has the responsibility to provide complainants and respondents with prompt notices of complaint closures. AREC currently has a form letter which could be prepared immediately following closures.

For the 240 closed license complaints currently awaiting closure letters, AREC should consider employing a student intern or other part-time employee to prepare the estimated 1,200 closure letters. Given that some of these complaints were filed years ago, the mailing addresses of complainants and respondents will have to be verified.

### COMPLAINT CLOSURE

Our review found that the majority of complaints closed by AREC are closed for the reason of limited staff resources, not lack of substantial evidence. We reviewed 61 of approximately 240 closed complaints which were in AREC files awaiting closure letters. Almost all of the complaints we reviewed were voted closed by the Commission "without prejudice" -- meaning that the complaints, if investigated, would probably prove that license violations occurred, but the violations are probably not severe enough for using staff resources to investigate. Though the AREC auditor told us that these complaints could be reopened for investigation at a later time, we question the closing of complaints which may be supported by substantial evidence. We also question the time and money spent to officially close complaints which may be reopened; i.e., mailing complaint files to/from commissioners for review of staff recommended closures and voting to officially close complaints at Commission meetings.

If AREC would discontinue the closing of complaints "without prejudice," we envision the following complaint closure process:

1. After receipt of the respondent's completed interrogatory (within 30 days of complaint filing), AREC staff makes a determination based on the weight of the evidence whether or not the complaint warrants further investigation.

2. If the AREC staff determines that the complaint does not warrant further investigation, the staff administratively closes the complaint and notifies the complainant and respondent. By regulation, the complainant may apply to the Commission's chairman for a reconsideration of the staff's determination to close the complaint. The application must be in writing and filed within 30 days after receipt of closure notice unless the chairman grants an extension. The chairman will review the entire complaint file and may hear oral argument from the parties. If the chairman grants the complainant's application for reconsideration, the chairman will remand the complaint to staff for further investigation.

#### LICENSE ACTION

If AREC proves that a licensee has violated State statutes or regulations, the licensee's real estate license could be revoked or suspended by the Commission. However, we found that a broker or associate broker is still "entitled" to a salesperson license even though AREC revokes the broker or associate broker license. Current AREC statute 08.88.171, Entitlement to License, has no provision for barring a broker's or associate broker's entitlement to a salesperson license after revocation of the broker or associate broker license.

If AREC would revise its license entitlement statute, we envision the following statutory changes:

1. Change AS 08.88.171 from "Entitlement to License" to "Eligibility for License."
2. Include in AS 08.88.171 a provision that licensees lose their eligibility for all licenses upon license revocation. Also, include a provision that license eligibility can only be reinstated by the Commission.

#### RECOMMENDATIONS

In the area of license complaints, we recommend that AREC:

1. Establish a formal, structured procedure for processing license complaints. The procedure should include a sequence of processing stages with internal time standards. The processing stages should be supported by statutes and regulations.

2. Re-evaluate the investigator position. We believe that the position requires the knowledge and skills of an Investigator III, not an Accountant III.
3. Discontinue closing complaints "without prejudice." We believe AREC should establish an administrative closure process for complaints.
4. Provide complainants and respondents with closure letters immediately following complaint closures. For the approximately 240 closed complaints currently awaiting closure letters, AREC should employ a student intern or other part-time employee to prepare the estimated 1,200 letters.
5. Revise its license entitlement statute to read "Eligibility for License" and include a provision that licensees lose their eligibility for all licenses upon license revocation.

## SURETY FUND CLAIMS

In 1974 the Real Estate Surety Fund was established to provide monetary settlements to victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees. From 1974 to 1980, victims had to receive court judgments against licensees before claims were paid. However, in 1981 AREC was given the responsibility of adjudicating surety fund claims. Our review found that AREC could improve its operations in this area as discussed below.

### CLAIM STATISTICS

As of September 14, 1984, AREC showed the following surety fund claim statistics:

<u>Year Claims Filed</u>	<u>Total Claims Filed</u>	<u>Total Claims Paid</u>	<u>Total Amounts Paid</u>
1981	52	3	\$11,943
1982	92	18	\$62,612
1983	123	14	\$67,644
1984 to date	101	6	\$43,017

A total of 197 open claims were in backlog status.

### FUND BALANCE

The Real Estate Surety Fund is totally funded by surety fees assessed from licensees. Current AREC statutes state that the fund may not exceed \$500,000. The fund's current balance is about \$650,000. We understand that the excess \$150,000 will be transferred to the General Fund.

Given that the fund balance currently exceeds its statutory limit, we question the Commission's continued assessment of surety fees. By continuing to assess surety fees, AREC is collecting monies from licensees for the General Fund, not the Surety Fund. Licensees actually pay the General Fund twice - once from their license fees and another from their surety fees.

AREC is attempting to resolve this situation by introducing legislation to raise the fund limit from \$500,000 to \$850,000. However, we estimate that the fund balance will probably exceed the \$850,000 limit after the February 1986 renewal. New legislation would have to be introduced to raise the fund limit again.

Based on the National Association of Realtors suggested pattern for real estate license law, we envision a statute provision for a minimum fund balance instead of the current maximum fund balance. As long as the balance remains above the minimum, licensees would not be assessed surety fees. However, if the balance becomes less than the minimum, licensees would be assessed surety fees during the next license renewal.

By establishing a minimum fund balance, AREC and licensees could realize the following benefits:

1. Based on the dollar amount of claims paid in prior years, AREC could set a minimum fund balance which would not require continuous statutory revisions as is currently being experienced with the maximum fund balance.
2. By not having to assess surety fees while the fund balance remains above the minimum, AREC could have less administrative costs.
3. By not having to pay surety fees while the fund balance remains above the minimum, brokers/associate brokers and salespersons could save \$125 and \$40 respectively in renewal fees.

#### HEARINGS

Our review found that AREC could combine license action and surety fund claim hearings. Currently, AREC holds separate hearings for adjudicating license actions and surety fund claims. However, given that a surety fund claim can only be awarded if a license violation occurs, we envision the following changes:

1. One AREC complaint form for complainants to report license violations and any monetary damages resulting from the violations. (AREC currently has separate forms for license complaints and surety fund claims.)
2. Staff investigations to determine if reported license violations are supported by substantial evidence and to verify any monetary damages. (AREC currently investigates only reported license violations; surety fund claims are automatically scheduled for hearing with no staff review or investigation.)
3. One hearing to determine license actions to be taken against licensees who violate State statutes or regulations and to determine complainants' monetary settlements from the Surety Fund (AREC currently holds separate hearings.)

### HEARING OFFICERS

In November 1984 two half-time hearing officers joined the AREC staff to adjudicate surety fund claims and license actions. The AREC executive director estimates that the hearing officers will complete the backlog of surety fund claims in eight to ten months. Given this estimate, we believe that AREC should re-evaluate its hearing officer position. AREC may only need one half-time hearing officer in FY 86. The other half-time hearing officer might be utilized as a hearing advocate to assist in AREC investigations and hearing preparations.

### FILING FEE

As of October 4, 1984, persons filing surety fund claims must pay a \$250 filing fee. We understand that the filing fee was established to discourage the filing of frivolous claims. Since AREC does not investigate surety fund claims, all claims including those considered frivolous must be adjudicated by a hearing.

We believe that the \$250 filing fee is excessive, if not unnecessary. A \$50 filing fee, as currently charged by small claims court, would be more reasonable. In addition, a filing fee would not be necessary if surety fund claims were included with license complaints. Frivolous claims would be identified during staff investigations of license complaints.

### CLAIM RECOVERY

According to AREC statute 08.88.490, when the Commission pays a surety fund claim, "the Commission shall be subrogated to all of the rights of the claimant to the amount paid and the claimant shall assign all of his right, title, and interest in that portion of the claim to the Commission." Based on this statute provision, AREC has attempted to recover paid claims and hearing costs from the licensees who committed the license violations. However, our review found that AREC recovery attempts have been minimal. We found that AREC has sent only one notice, dated July 31, 1984, to the licensees requesting payment.

As of September 14, 1984, AREC showed the following claim recovery statistics:

<u>Number of Licensees</u>	<u>Total Amount of Claims Paid and Hearing Costs Incurred</u>	<u>Total Amount Recovered From Licensees</u>
33	\$200,680	\$33,597

### CLAIM WARRANTS

During our review, we found two \$10,000 warrants which should have been returned to the State treasury. Both warrants were issued as surety fund claim payments, but the warrants were never forwarded to the claimants. One warrant, issued December 1981, was being held pending the outcome of an appeal made by the respondent. However, the warrant is no longer redeemable because of its age. The other warrant, issued March 1984, was not forwarded to the claimant due to a May 1984 court interpretation which disallowed payment of the claim.

### RECOMMENDATIONS

In the area of surety fund claims, we recommend that AREC:

1. Establish a minimum fund balance for the Real Estate Surety Fund. Surety fees would only be assessed if the fund balance becomes less than the minimum.
2. Combine license action and surety fund claim hearings. AREC should also consider including surety fund claims with license complaints.
3. Reduce the \$250 filing fee to a more reasonable amount, such as \$50. However, if AREC includes surety fund claims with license complaints, the filing fee should be discontinued.
4. Re-evaluate the staff hearing officer position. Given the executive director's estimate of future workload, AREC may only need one half-time hearing officer in FY 86.
5. Proceed to recover paid claims and hearing costs from licensees.
6. Return the two \$10,000 warrants found in Commission files to the State treasury.

## OFFICE AUTOMATION

Office automation is essential for AREC to operate an effective and efficient regulatory agency. Our review found that AREC could improve its current automation as discussed below.

### CURRENT AUTOMATION

Our review found that AREC needs to improve its current office automation. AREC currently utilizes a Wang word processing system. We found that this system is being utilized far beyond its intended capabilities and is supplying only a fraction of the automated support needed by AREC.

In our opinion, AREC could use a computer system, not just the word processing system, to support the following areas:

1. Licensing - For each licensee, AREC needs computer support which will capture and provide access to current and historical data including:
  - a. personal data
  - b. licensing examination results
  - c. initial license date and number
  - d. current license status
  - e. history and dates of status changes
  - f. current employer
  - g. employer history and dates
  - h. current license complaint or surety claim
  - i. history of disciplinary actions
  - j. renewal and expiration dates
  
2. Office Registration - For each real estate office, AREC needs computer support which will capture and provide access to current and historical data including:
  - a. office address/telephone number
  - b. date office registration submitted
  - c. current office status
  - d. type of business/list of partners or corporation officers
  - e. current broker in charge/license number
  - f. history of brokers in charge with dates of employment and dates of termination
  - g. trust account name/number/bank

3. License Complaints and Surety Fund Claims - For each license complaint and surety fund claim, AREC needs computer support which will capture and provide access to current and historical data including:

- a. case number
- b. date initiated
- c. complainant/address/telephone number
- d. respondent/address/telephone number
- e. history of actions taken and dates
- f. next actions to be taken and dates
- g. current case status
- h. history of status changes

If AREC would improve its current automation, we envision a separate field (screen of information) for each licensee. Each field would be accessed by the licensee's license number. In addition, each field would provide other reference numbers such as the license number of the licensee's employing broker, the identification number of the licensee's real estate office, and file numbers of any license complaints or surety fund claims.

By including license numbers and other reference numbers, a computer could manipulate information to produce licensee rosters by real estate office or license type (broker, associate broker, or salesperson). To produce these rosters on the current word processing system, the AREC license examiner must sort information in 23 separate system documents. A recent roster of brokers took 1½ days to compile.

#### IMPROVED AUTOMATION

The Department of Commerce and Economic Development is taking steps to improve the Commission's office automation. The department's computer systems specialist is currently reviewing two alternative systems. These systems include:

1. Wang Office Information System (OIS) 140. This system is primarily a high-powered word processor with limited data processing capabilities.
2. Wang VS System 80. This system is a computer with high-volume, interactive computing capabilities. This system is currently being utilized by the State's Division of Occupational Licensing in Juneau.

Given the information processing needs of AREC, we believe AREC needs a computer system such as the Wang VS System 80, not another word processor. According to the department's computer systems specialist, the department has identified a refurbished VS system 80 which is available for purchase. If purchased,

this computer system could be utilized by AREC and other department operations in Anchorage.

We believe the department's computer systems specialist should also consider replacing the Commission's printer. We found the current daisy-wheel printer to be quite slow in printing licenses and licensee rosters. For example, a recent roster of brokers (approximately 750 names and addresses) took almost four hours to print.

#### RECOMMENDATIONS

In the area of office automation, we recommend that AREC:

1. Replace the current word processing system. Of the two alternative systems being considered for AREC (Wang OIS 140 and Wang VS System 90), the VS system is assumed to adequately support the Commission's information processing needs; a formal needs assessment would confirm its desirability.
2. Consider replacing the current daisy-wheel printer. We believe that AREC operations would benefit by having a higher speed printer.

## INTERNAL MANAGEMENT CONTROL

To increase operational efficiency and effectiveness, the Commission needs to improve its internal management control. Specifically, we found that the Commission needs to establish two essential elements of internal management control as discussed below.

### STANDARD POLICIES AND PROCEDURES

Our review found that the Commission has not established standard policies and operating procedures to give direction to staff decisions, and to set bounds within which such decisions and resulting actions are acceptable to the Commission. According to the AREC executive director, staff currently receive verbal directions from individual commissioners.

If the Commission would establish standard policies and operating procedures, we envision the following advantages for AREC:

1. Staff effort could be economized. It would be unnecessary for the staff to redecide the same issues.
2. Delegation of authority could be facilitated. Staff would be expected to proceed with actions so long as the situations are covered by the policies and procedures.
3. Control could be made easier. Policies and procedures would lead to uniformity of staff actions.

### DELEGATED AUTHORITY

Our review also found that the Commission has not delegated authority to give its staff the right to decide and the power to carry out decisions within the staff's responsibilities. During our review, we witnessed staff frustration as a result of not being given the authority to carry out responsibilities.

If the Commission would formally delegate authority to its staff, we believe that the delegation should be spelled out in writing.

RECOMMENDATIONS

In the area of internal management control, we recommend that AREC:

1. Establish standard policies and operating procedures.
2. Delegate authority in writing to its staff.

## OTHER ISSUES

During our review, we identified other issues which should be addressed by AREC. These issues and our recommendations are provided below.

### CONFIDENTIALITY OF INVESTIGATIVE FILES

The Commission's open investigative files include unsubstantiated allegations of professional misconduct. A recent Attorney General opinion for AREC states that information in the Commission's open investigative files may not be withheld from public inspection. However, a prior Attorney General opinion for the State's Division of Occupational Licensing states that the division's open investigative files may be withheld from public inspection. Since AREC and the Division of Occupational Licensing have similar information in their investigative files, we question the different Attorney General opinions. In our opinion, the subjects of unsubstantiated allegations have a constitutional right not to have the information made public until the AREC investigation is completed and the relevant facts are presented at a public hearing.

#### Recommendation

We recommend that AREC request an explanation from the Attorney General concerning the different opinions given to AREC and the Division of Occupational Licensing. To ensure the confidentiality of open investigative files, we recommend that AREC statutes include a provision that all records of investigation and information obtained by the Commission during an investigation are confidential and may not be made available by the Commission for public inspection.

### TRUST ACCOUNT AUDITS

The AREC executive director estimates that over fifty percent of the complaints filed with the Commission involve improper trust account management. Given this estimate, we question the lack of trust account audits currently being conducted by AREC. As previously mentioned, the AREC auditor has conducted only three audits of broker trust accounts in the last three years. Each of these audits was conducted as part of a complaint investigation.

If AREC could employ an Investigator III to handle complaint investigations, the current AREC auditor could conduct trust account audits on a full-time basis. We envision these audits being conducted as a service to brokers. Any accounting or

procedural deficiencies found and corrective actions needed would be discussed with brokers during exit conferences.

Recommendation

If staff resources would be available, we recommend that AREC conduct trust account audits to identify and resolve problems before the problems cause complaints to be filed with the Commission.

OPERATIONS MANUAL FOR COMMISSIONERS

AREC commissioners do not have an operations manual which could include:

- current statutes and regulations;
- delegated authority to staff;
- by-laws;
- standard policies and operating procedures;
- case law;
- forms; and
- other information which the commissioners deem appropriate.

Recommendation

We recommend that AREC develop an operations manual. This manual would provide excellent orientation material for new commissioners.

AREC/ALASKA ASSOCIATION OF REALTORS

We found that both the Alaska Real Estate Commission and the Alaska Association of Realtors (AAR) share the common goal of having effective and efficient regulation of the State's real estate profession. Based on this common goal, we believe that joint AREC/AAR committees could be utilized to study common concerns such as continuing education for licensees and statute/regulation revisions.

Recommendation

We recommend that the Alaska Real Estate Commission and the Alaska Association of Realtors form joint committees to study common concerns.

(Intentionally left blank)

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

December 30, 1985

RECEIVED

DEC 31 1985

LEGISLATIVE  
AUDIT

Mr. Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box W  
Juneau, AK 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your preliminary  
audit report on the Alaska Real Estate Commission.

Enclosed is the response from the Alaska Real Estate Commission  
on "A Performance Report on the Department of Commerce and  
Economic Development, Alaska Real Estate Commission,  
September 19, 1985."

Sincerely,

  
Loren H. Lounsbury  
Commissioner

LHL/wfs3357W  
122785a  
Enclosure

RECEIVED  
DEC 31 1985

STATE OF ALASKA  
MEMORANDUM

LEGISLATIVE  
AUDIT

To: Loren Lounsbury  
Commissioner  
Dept. of Commerce & Economic Dev.

DATE: December 20, 1985

From: James L. Magowan  
Executive Director  
Alaska Real Estate Commission

Re: Answer to Preliminary Report of the Division of Legislative Audit

The real estate commission has reviewed the preliminary report of the Division of Legislative Audit and submits the following response:

Recommendation No. 1

The commission concurs with this recommendation and has implemented procedures that comply with the recommendations set out in the report. Procedures implementing each of the five points specifically mentioned have been adopted. The procedures now in place are attached (Attachment # 1).

Recommendation No. 2

The commission concurs with this recommendation. The commission has referred several major claims to the attorney general for collection. The commission is also submitting an application for membership in the Anchorage Credit Bureau so that it can be a source of credit information about licensees who have suspended licenses due to non repayment of the fund. The commission is also supporting an increase in the small claims limit to \$5000.

The authority to suspend licenses until the fund is repaid, without an additional hearing became effective October 2, 1984. Counsel advised that this authority applied to claims filed since that time. Commission policy and practice is to suspend the license of any licensee against whom an award is granted until the fund is repaid or satisfactory arrangements for repayment are made. The commission was advised that even with the statutory authority to suspend a license when the fund is not repaid it is necessary to advise the licensee, prior to the hearing, that this may occur. Licensees are now so notified and the order to suspend the license is contained in the final decision, again upon advice of counsel or hearing examiner as to the requirements for "due Process".

Effective recovery of most claims, particularly large ones requires that the commission execute against property or assets of the parties. This requires that the commission have court judgements. The commission feels that

effective recovery will, therefore, require additional assistance and time from the AG. The commission is also seeking statutory authority to execute on orders of payment out of the surety fund as though they were judgements, without further extended court proceedings once an award has been sustained on appeal or the time for appeal has tolled without appeal being filed.

Prior to the "suspension" clause being added to the statute the commission attempted collection in 1983. It sent letters to all licensees advising of the possibility of court action if the fund were not reimbursed. This attempt was largely ineffective due to the commission's inability to actively pursue the claims in court.

#### Recommendation No. 3

The commission concurs with this recommendation. The commission has requested that an attorney be assigned to assist with this on numerous occasions during the past nine years. During 1985 the commission formed a Project Action Committee one of the tasks of the committee was the preparation of recommendations for statutory amendments that the commission could submit for consideration during its "Sunset" review. The commission is submitting the results of this committee's work for consideration by the legislature. The issues specified in the LBA report as well as numerous others are addressed.

The commission concurs with the specific changes recommended in points 1 through 5 in the recommendation.

The commission is using a new renewal system for 1986-87 biennium. Before changing the dates for renewal the commission is going to evaluate the efficiency of this system as well as its cost effectiveness. Recent computer technology may make the current biennium clerically manageable and less costly than going to a Monthly or Birthdate renewal. The commission is not locked into one system over another but does not wish to introduce a new system until it is sure that it will not be introducing additional costs at the same time.

#### Recommendation No. 4

The commission concurs. An additional clerical position is desperately needed at this time.

#### Recommendation No. 5

The commission concurs and a time accounting system is now in effect.

#### Analysis of Public Need

The commission generally concurred with the findings of this section. The commission however notes that managerial and policy changes of the past 18 months have just begun to produce noticeable effects. The rate of complaint closures and license actions has begun to show dramatic increase.

In response to Item III the commission notes that it supported a filing fee of \$50 for a surety claim. The \$250 filing fee was enacted over recommendations from the commission and the industry that a lower fee be

adopted. There have been two known instances where claimants reported that they would need additional time before they could file a claim because they needed to obtain the money to pay the fee. There have been no substantiated instances at this time that a claim with at least face validity was not filed due to the amount of the fee.

The commission is currently reviewing options for the conduct of routine trust account audits including the possibility of developing a self-audit program that will enable the commission to identify problems in a more cost effective manner while at the same time offering the licensees a valuable educational and self help tool.

0179M

Complaint Investigative Procedures Checklist

1. Complaint Receipt: and evaluation

- Day
- [ 1] a. The Complaints Clerk will:
    - (1) log in the complaint with assignment of a complaint number;
    - [ 1] (2) establish a complaint file to include:
      - (a) a procedural checklist;
      - (b) a contact record sheet;
    - [ 1] (3) forward the file to the Investigator.
    - [10] (4) send ten-day letters to identified licensees;
    - (5) post responses to the file and forward them to the Investigator for evaluation.
  
  - b. The Investigator will:
    - [1-3] (1) assign a priority classification;
    - [1-3] (2) assign a classification as to type of alleged violation;
    - (3) identify the licensees to be contacted for response to the complaint (and any surety claim that accompanies the complaint);
    - (4) initiate an investigative report under paragraph 2a.

2. Complaint evaluation:

- [1-3] a. The investigative report will include:
  - (1) allegation(s) of the complainant;
  - (2) violations that appear to be present;
  - (3) evidence that supports the allegation(s);
  - (4) probable outcome of the complaint;
  
- [30] b. Ten-day letter responses received. For failure to respond, initiate subpoena procedures in paragraph 8.
  
- [30] c. The Investigator will evaluate the responses and decide:
  - (1) to investigate further, or
  - (2) to close:
    - (a) complete the investigative report for the file;
    - (b) summarize the complaint for:
      - 1 the weekly report to the Director;
      - 2 the report for the next Commission meeting.

3. Investigation:

- [45] a. Write a work plan to detail the work required to complete the investigation and when the work will be accomplished. The work plan will be reviewed by the Executive Director.
  
- [90] b. Interview witnesses.
  
- [90] c. Identify needed additional documentation and obtain it.
  
- d. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

#### 4. Hearing:

- [150] a. Complete the Investigative Report.
- [150] b. Draft the accusation or statement of issues for the license action with the investigative report as the basis for this document.
- [150] c. Submit the draft license action and the investigative report, along with necessary evidence, to the Assistant Attorney General for review and critique.
- [150] d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.
- [150] e. Prepare the final copy of the license action document.
- [150] f. Serve the license action on the licensee(s) and copy to the Commission:
  - (1) complete the affidavit of service;
  - (2) provide notice of defense.
- [180] (a) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next Commission meeting.
- [180] (b) If a notice of defense is filed, copy the license action, with notice(s) of defense, to the appropriate Hearing Examiner.
- [180] (c) If an entry of appearance is filed at any time by an attorney, copy the complete file to the Assistant Attorney General who may decide to enter the case if not already involved.
- g. Provide required assistance to the Hearing Examiner and/or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

#### 5. Commission meeting:

- a. After hearing, copy the proposed decision to all parties, to the Commissioners and to the Lieutenant Governor.
- b. Ensure that the adoption order is signed by the Chairman.

#### 6. Post-meeting:

- a. Copy all parties with the adopted decision by certified mail. Include a reconsideration request form to the licensee if the decision was to suspend or revoke;
- b. Notify each complainant of complaint closure;
- c. Publish the decision results in the licensee's local newspaper thirty days after service of the adopted decision to the licensee (and counsel) if there has been no request for reconsideration granted by the Commission and/or appeal to the Superior Court.

## 7. Stop Orders:

a. When a stop order is needed, coordinate service with the Commission. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. The stop order may be served with approval of a majority of the Commission. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and have the Assistant Attorney General review it for completeness and propriety.

c. The stop order may be served by certified mail or in person by the Investigator. If in person, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. Following service, the Investigator will complete an affidavit of service.

e. If a notice of defense is filed, a copy of the stop order, with the investigative report of the circumstances, will be provided to the Attorney General's office as soon as possible to comply with the requirement that hearings be scheduled within thirty days.

f. If the subject continues to operate after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

## 8. Subpoenae:

a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An affidavit of service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

## Complaint Investigative Procedures

### 1. Complaint Receipt:

- a. The Complaints Clerk will, within two days of receipt:
  - (1) log in the complaint with assignment of a complaint number;
  - (2) establish a complaint file to include:
    - (a) a procedural checklist;
    - (b) a contact record sheet;
  - (3) forward the file to the Investigator.
- b. The Investigator will, within one to three days of receipt:
  - (1) assign priority and violation type classifications;
  - (2) list the licensees to be contacted for response to the complaint;
  - (3) initiate an investigative report as described in paragraph 2a.
  - (4) return the file to the Complaints Clerk to send ten-day letters.

c. The Complaints Clerk will send a ten-day letter to all identified licensees. The letter will include a copy of the complaint and copies of supporting documentation which are necessary to understand the complaint and which the licensee would not already have.

d. Respondents to receive ten-day letters for a surety claim will be the same as those for the parallel license complaint.

### 2. Complaint Evaluation:

a. For each complaint, the Investigator will initiate an investigative report. This report will serve as the basis for the decision to close or proceed to hearing. It will include information as to contacts, information sources, information and conclusions. At the start, this report will list the:

- (1) allegation(s) of the complainant;
- (2) violations that appear to be present;
- (3) evidence that supports the allegation(s);
- (4) probable outcome of the complaint.

b. The responses to ten-day letters should be received within thirty days of the complaint filing date. If a respondent fails to respond, a second, certified, notice of complaint will be sent. If the respondent still fails to respond, a subpoena will be served according to procedures in paragraph 8.

c. Upon receipt of the response(s) to the ten-day letter(s), the Investigator will reevaluate the complaint. Following this reevaluation, there will be a decision to close the complaint without action or to investigate further.

d. If the decision is to close, the Investigator will summarize the events of the complaint, without names, and specify the reason for closure. The summary will be included in the weekly report to the Director and in the Investigator's Report to the Commission at the next meeting. The investigative report will be completed with an explanation of the reasons for closure and will be included in the complaint file. The complaint file will then go to the Complaints Clerk for closure letters to be sent to the parties. The complaint is considered closed at this time unless new information or a Commission request cause it to be reopened.

e. An unqualified license applicant will not receive a ten-day letter. The case will go immediately to the statement of issues stage in paragraph 4. An investigative report as specified in paragraph 1c will be initiated.

3. Investigation: With the decision to investigate further, the investigative report draft to date will serve as the basis for the investigation.

a. A work plan will be written by the Investigator which will detail what work remains to be done to complete the investigation and when the various elements of that work will be accomplished.

(1) The work plan is due within forty-five days of the complaint date.

(2) The work plan will be reviewed by the Executive Director.

b. Interview witnesses.

c. Identify needed additional documentation and obtain it.

d. The investigative report will serve as a record of the investigation.

e. Record contacts and other work done on the complaint on the contact record sheet inside the complaint folder. The time taken for that particular entry will also be recorded.

f. The investigation will be completed within ninety days of complaint receipt. By that time, the Investigator will determine whether the complaint should be taken to hearing or closed. The procedures as outlined in paragraph 1f will be used whenever the complaint is to be closed without action.

4. Hearing: the Investigator will:

a. Complete the investigative report.

b. Draft the accusation or statement of issues for the license action. The investigative report will serve as the basis for this document.

c. Submit the draft license action to the Assistant Attorney General for review. The investigative report and supporting evidence will be provided to the Assistant Attorney General at the same time for this review.

d. Determine whether a license action will be heard with or without Attorney General participation after consultation with the Director and the Assistant Attorney General. If without, the Investigator and/or the Director will represent the Commission at the hearing.

e. Prepare the final copy of the license action document.

f. Serve the license action. Service can be in person or by certified mail to the last registered address of the licensee.

(1) Provide notice of defense.

(2) Complete the affidavit of service.

g. Notice of Defense:

(1) If a notice of defense is not filed with the Commission within the specified fifteen days, prepare for an uncontested hearing at the next

Commission meeting as specified in paragraph 4j.

(2) With a notice of defense:

(a) assign the case to a Hearing Examiner;

(b) copy the accusation/statement of issues, with notice(s) of defense, to the Hearing Examiner.

(c) copy the license action, with notice(s) of defense, the investigative report and full documentation, to the Assistant Attorney General if the case is to be heard with Attorney General participation.

(3) The Assistant Attorney General will be informed of each instance where an attorney files an entry of appearance and will have the option to enter any case where the Commission staff had previously intended to proceed alone. If the Assistant Attorney General decides to enter the case, copy the entire file to the Attorney General's office.

h. Copy the served accusation/statement of issues to the Commission.

i. Provide whatever assistance is required by either the Hearing Examiner or the Assistant Attorney General to arrange for and conduct the pre-hearing conference and hearing.

5. Commission meeting:

a. Upon receipt of the proposed decision after hearing, provide copies to the parties, all Commissioners and to the Lieutenant Governor.

b. Once decided, ensure that the adoption order is signed by the Chairman.

c. Provide copies of the closed complaint summaries for review by the Commission.

d. An uncontested hearing will have neither a Hearing Examiner nor an Assistant Attorney General present. The Investigator will present the case to the Commission at the meeting as if the matter were contested. Each Commissioner will be provided with a full copy of the investigative report and evidence that supports the accusation or statement of issues.

6. Post-meeting:

a. Copy all parties with the adopted decision in the license action by certified mail. Include a reconsideration request form to the respondent if the decision was to revoke, suspend or deny.

b. Notify each complainant of complaint closure.

c. Publish the decision in the licensee's local newspaper on three successive weekends thirty days after service of the adopted decision to the respondent (and counsel) if there has been no granted reconsideration request by the Commission and/or appeal to the Superior Court. Publication can be immediate in uncontested cases.

7. Stop Orders:

a. When a stop order is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the

need for the stop order; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. The Investigator will draft the stop order and take it to the Attorney General's office for review. The Investigator will also ask the coordinating Assistant Attorney General to review enforcement procedures available should the subject(s) of the stop order refuse to abide by it.

c. The stop order may be served by certified mail or in person by the Investigator. Upon service of the stop order, the Investigator will make sure that the subject(s) understand that it is a definite order from the Commission to stop the identified activity, and that to continue is a violation which could result in a further charge.

d. An affidavit of service will be completed.

e. A copy of the stop order, with supporting documentation and the investigative report, will be provided to the Attorney General's office if a notice of defense is filed. This will be done as soon as possible after receipt to comply with the requirement that hearings in such matters be scheduled within thirty days.

f. If the subject continues to operate without licensure after service of the stop order, the Investigator will notify the Attorney General's office to enforce the order.

#### 8. Subpoenae:

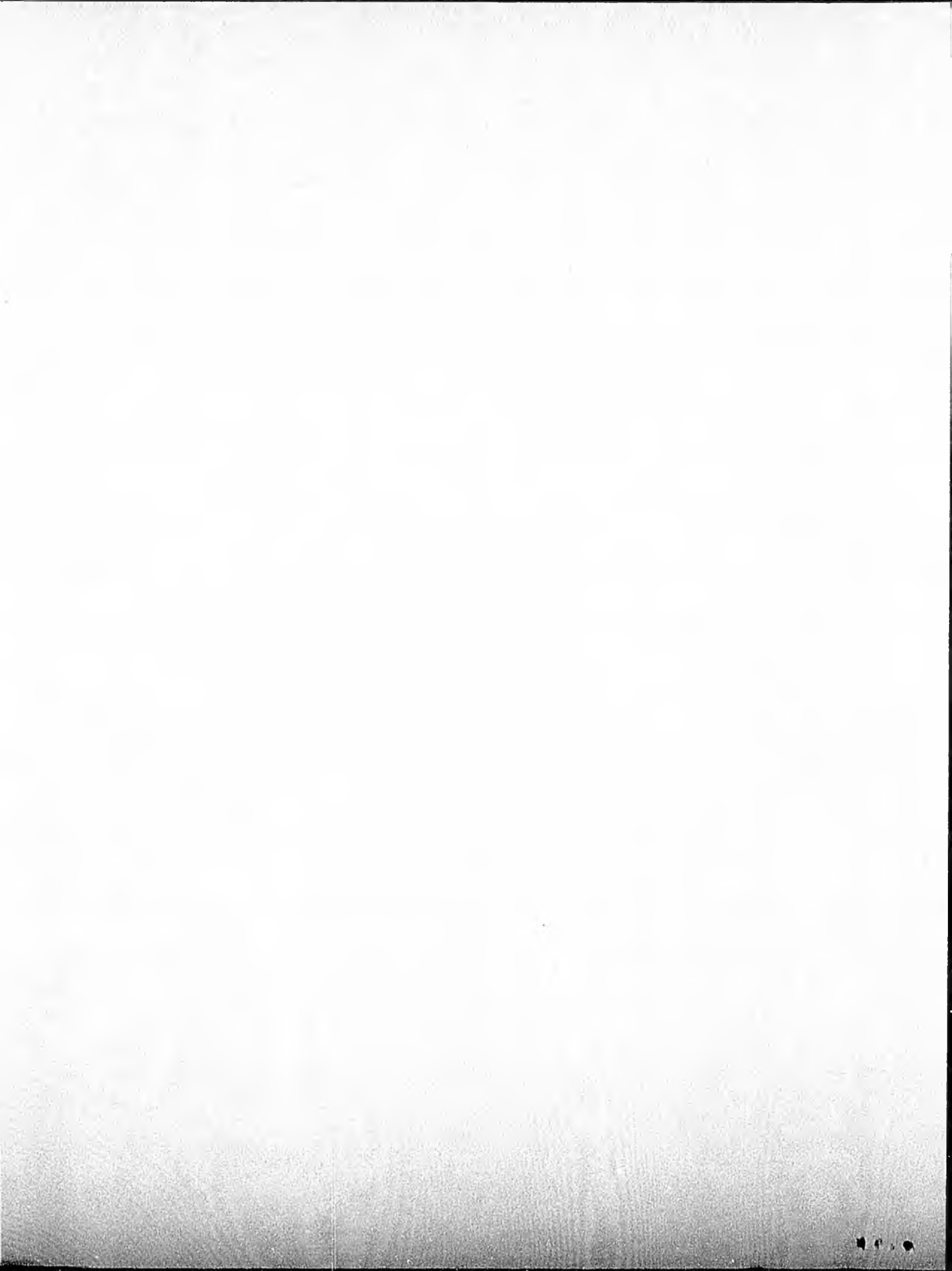
a. When a subpoena is needed, the Investigator will poll the Commission for approval. The Commission will be given a brief explanation of the need for the subpoena; this will be a written statement so that all members receive the same information. A majority of the Commission must approve service. Any Commissioner not contacted directly will be informed by telegram.

b. Service may be by mail or in person. An Affidavit of Service will be completed.

c. If the recipient of the subpoena does not comply, the Investigator will contact the Attorney General's office by memorandum to request enforcement. The Investigator will provide any assistance that may be requested by the Assistant Attorney General.

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**Management Audit Report  
On The  
Alaska Real Estate Commission**

Division of Management  
December 1984

**OMB**

**STAFF PAPERS AND REPORTS**

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STATE OF ALASKA  
BILL SHEFFIELD, GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET

DIVISION OF MANAGEMENT

BILL SHEFFIELD, GOVERNOR

POUCH AM  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3568

December 11, 1984

Mr. John T. Shively  
Chief of Staff  
Office of the Governor  
Pouch A  
Juneau, AK 99811

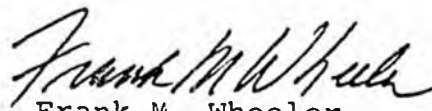
Dear Mr. Shively:

We are pleased to submit our Management Audit Report on the Alaska Real Estate Commission (AREC). The audit was requested by Barbara Hill, AREC Chairman.

This report provides specific recommendations for improving the Commission's licensing, license complaint, and surety fund claim operations. This report also identifies the need for improving the Commission's current office automation and internal management control.

AREC is presently taking action to improve its operations based on our recommendations. An implementation project, under the direction of AREC Commissioner Dave Ribacchi, should be completed by September 1985.

Sincerely,



Frank M. Wheeler  
Associate Director

Enclosure

cc/enc: Carol Derfner, Special Staff Assistant  
Office of the Governor

Lois Cook, Director  
Division of Administrative Services  
Department of Commerce and  
Economic Development

Barbara Hill, Chairman  
Alaska Real Estate Commission

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## SUMMARY

The Alaska Real Estate Commission (AREC) regulates the State's real estate profession by examining prospective licensees, issuing licenses, investigating license complaints, and holding hearings to suspend or revoke licenses. AREC is also responsible for adjudicating surety fund claims from victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees.

At the request of AREC Chairman Barbara Hill, the Office of Management and Budget (OMB) conducted a management audit of AREC. This report shows that AREC could improve its licensing, license complaint, and surety fund claim operations. The report also identifies the need for improving the Commission's current office automation and internal management control.

## LICENSING

AREC could improve its licensing operations by:

- Verifying that license candidates have passed the licensing examination before issuing licenses;
- Prorating initial license fees within the licensing biennium;
- Establishing the license renewal date as the first of the month following each licensee's birthday;
- Using the current ten-year license certificate as a permanent license certificate;
- Updating the licensee register;
- Initiating a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers; and
- Identifying licensees with lapsed licenses who are currently engaged in real estate business.

### LICENSE COMPLAINTS

AREC could improve its license complaint operations by:

- Establishing a formal, structured procedure for processing license complaints;
- Re-evaluating the investigator position;
- Discontinuing to close complaints "without prejudice" and establishing an administrative closure process;
- Providing complainants and respondents with closure letters immediately following complaint closures; and
- Revising the license entitlement statute to read "Eligibility for License" and including a provision that licensees will lose their eligibility for all licenses upon license revocation.

### SURETY FUND CLAIMS

AREC could improve its surety fund claim operations by:

- Establishing a minimum fund balance for the Real Estate Surety Fund instead of the current maximum fund balance;
- Combining license action and surety fund claim hearings;
- Reducing the current \$250 filing fee to a more reasonable amount, such as \$50, or discontinuing the fee if surety fund claims are included with license complaints;
- Re-evaluating the staff hearing officer position;
- Proceeding to recover paid claims and hearing costs from licensees; and
- Returning the two \$10,000 warrants found in Commission files to the State treasury.

### OFFICE AUTOMATION

AREC could improve its operations by:

- Replacing the current Wang word processing system with a computer system, such as a Wang VS System 80 if it meets needs; and
- Considering to replace the current daisy-wheel printer with a higher speed printer.

### INTERNAL MANAGEMENT CONTROL

AREC could improve its operations by:

- Establishing standard policies and operating procedures; and
- Delegating authority in writing to its staff.

### OTHER ISSUES

Other issues which should be addressed by AREC include:

- Ensuring the confidentiality of open investigative files;
- Conducting audits of broker trust accounts;
- Developing an operations manual for commissioners; and
- Forming joint committees between AREC and the Alaska Association of Realtors to study areas of common concern.

### AGENCY COMMENTS

Based on the recommendations in our draft report, AREC is taking action to improve its operations. AREC Commissioner Dave Ribacchi has been appointed project manager to coordinate the Commission's implementation of our recommendations. During the implementation project, Commissioner Ribacchi will utilize joint committees between AREC and the Alaska Association of Realtors. Senior OMB Analyst Greg Moyer, who conducted the management audit, will assist Commissioner Ribacchi and the joint committees.

## INTRODUCTION

The Alaska Real Estate Commission (AREC) was established in 1964 to regulate the State's real estate profession. AREC regulatory responsibilities include:

- examining prospective real estate licensees;
- issuing real estate licenses to qualified applicants;
- conducting investigations to determine whether real estate agents have violated statutes or regulations; and
- holding hearings to suspend or revoke licenses of real estate agents who violate statutes or regulations.

AREC is also authorized to conduct educational clinics or seminars for the purpose of raising the standards of the real estate industry and the competency of licensees.

## LICENSEES

There are currently a total of about 5,500 licensed real estate agents in Alaska. Of this total, approximately 3,900 are actively employed as real estate agents, 600 are inactive, and 1,000 are lapsed (licenses not renewed by real estate agents).

Of the 3,900 active licensees, approximately 1,400 are associate brokers or brokers, and 2,500 are salespersons. A broker differs from an associate broker in that a broker is an owner of a real estate business or is employed as a broker by a corporation. An associate broker has met the statutory qualifications of a broker, but is employed by a real estate broker.

## LICENSE REQUIREMENTS

For a real estate broker or associate broker license, an applicant must pass an examination, be a State resident, have had 24 months of continuous work experience as a real estate salesperson, and have not engaged in conduct demonstrating unfitness to be a broker.

For a real estate salesperson license, an applicant must pass an examination, be a resident of the State, be employed by a real estate broker, and have not engaged in conduct demonstrating unfitness to be a salesperson.

LICENSE RENEWAL

Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. Licenses were last renewed on February 1, 1984. The next renewal will be on February 1, 1986.

LICENSE FEES

The fee schedule for real estate licenses is as follows:

	<u>License Fee</u>	<u>Surety Fee 1/</u>	<u>Process Fee</u>	<u>Total Fees</u>
<u>Initial License</u>				
Salesperson	\$100	\$40		\$140
Assoc. Broker/ Broker	\$100	\$125		\$225
<u>License Changes</u>				
Transfer			\$5	\$5
Name change			\$5	\$5
Address change			\$5	\$5
Inactivation			\$5	\$5
Reactivation			\$5	\$5
<u>Renewal</u>				
Active Salesperson	\$100	\$40		\$140
Active Broker or Assoc. Broker	\$100	\$125		\$225
Inactive Salesperson	\$50			\$50
Inactive Broker or Assoc. Broker	\$50			\$50

1/ AREC places these fees in the Real Estate Surety Fund to be used for making monetary settlements to victims of fraud, deceit, intentional misrepresentation, and conversion of trust funds by real estate agents.

During FY 84, which included a renewal of all licenses, AREC collected fees totaling approximately \$845,000. Of this amount, about \$292,000 was credited to the Real Estate Surety Fund and about \$553,000 was credited to the General Fund.

#### AREC ORGANIZATION

AREC consists of seven members: five real estate brokers or associate brokers, and two public members appointed by the Governor, with confirmation of the Legislature.

AREC staff consists of an executive director, two half-time hearing officers, an auditor, a licensing examiner, a clerk typist, and a secretary.

#### PURPOSE AND SCOPE

Our review was conducted at the request of Barbara Hill, Chairman of the Alaska Real Estate Commission. The review had two purposes. The first purpose was to assess the effectiveness and efficiency of AREC operations, systems, and management methods. The second purpose was to provide recommendations for any needed improvements regarding operating efficiency and effectiveness which would enhance service delivery or reduce present costs.

During our review, we performed the following steps:

- Reviewed applicable statutes, regulations, and AREC policies and procedures;
- Interviewed Commission members and staff, and Alaska Association of Realtors officials;
- Documented and evaluated the Commission's workloads, staffing, and management methods;
- Reviewed and analyzed current AREC systems and procedures for examining prospective licensees, issuing and renewing licenses, investigating license violations, and adjudicating license complaints and surety fund claims;
- Reviewed statutes, regulations, and procedures of other states' real estate commissions; and
- Attended two Commission meetings and the National Association of Real Estate License Law Officials (NARELLO) annual meeting.

## LICENSING

AREC licensing responsibilities are critical to regulating the State's real estate profession. These responsibilities include examining prospective licensees, collecting license fees, renewing licenses, and maintaining a current license register. Our review found that AREC could improve its operations in each of these areas as discussed below.

### LICENSING EXAMINATION

In Alaska, candidates for a real estate license must pass a licensing examination. Currently, an average of 200 candidates a month take the Alaska real estate licensing examination. The Educational Testing Service (ETS), which is under contract to administer the examination statewide, provides each candidate who takes the examination with a pass/fail notice. ETS also provides AREC with a pass/fail listing on microfiche.

Candidates who pass the licensing examination may apply to AREC for a real estate license. On the license application, candidates must provide the date they passed the examination and the examination site. With this information, AREC can verify whether candidates actually passed the examination by checking their names on the ETS pass/fail listings. However, our review found that AREC has been issuing real estate licenses without verifying that candidates actually passed the licensing examination. According to the AREC license examiner, AREC has relied on information provided by candidates on the license application.

Issuing licenses without verifying examination results defeats the purpose of examining license candidates. By not verifying examination results, there is a remote possibility that some real estate licenses have been issued to candidates who have failed the examination or have never taken the examination.

### LICENSE FEES

Our review found that initial license fees would be more equitable if the fees were prorated within the licensing biennium. Currently, broker/associate broker candidates and salesperson candidates must pay the total license fees of \$225 and \$140 respectively when applying for their initial licenses. Current AREC regulations prohibit prorating fees within the licensing biennium. By not prorating fees, some new licensees are required to pay another \$225 or \$140 in renewal fees even though their initial licenses were applied for and received a month or two prior to the renewal date.

If AREC would prorate initial license fees, we envision the fees being prorated from the first of the month following date of initial license application to date of renewal. (The date of initial license application would be the postmark date if application is mailed or AREC receipt date if application is delivered.)

#### LICENSE RENEWAL

Our review found that license renewals could be accomplished more efficiently if licenses were renewed biennially based on each licensee's birthday. Currently, all real estate licenses are renewed biennially on the first of February in even-numbered years. To renew over 5,000 licenses at the same time, AREC must commit the majority of its staff to send renewal notices, open mail, receipt fees, review renewal applications, issue licenses, and update licensee data. The latest license renewal in February 1984 required staff commitment from December 1983 to May 1984. During this period, other AREC functions such as investigating license complaints, monitoring surety fund claim hearings, and publishing the AREC newsletter were disrupted.

By establishing the license renewal date as the first of the month following each licensee's birthday, AREC would have twelve license renewals instead of one. This renewal process would spread the administrative workload over the entire year allowing time for the AREC staff to perform its other functions with minimal disruption. Both the AREC executive director and license examiner support this renewal process. In addition, real estate commissions in Idaho, Oregon, and Washington have switched to this renewal process to eliminate the burden of renewing all licenses at the same time.

If AREC would establish the license renewal date based on each licensee's birthday, we envision a transition renewal in February 1986. Licenses would be renewed from February 1, 1986, to the first of the month following each licensee's birthday in 1987. Total renewal fees (license and surety fees) would be prorated based on the schedule shown on the following page.

<u>Birthday Month</u>	<u>Date License Renewed to</u>	<u>Broker/Associate Broker Renewal Fees</u>	<u>Salesperson Renewal Fees</u>
January	February 1, 1987	\$113	\$ 70
February	March 1, 1987	122	76
March	April 1, 1987	131	82
April	May 1, 1987	141	88
May	June 1, 1987	150	93
June	July 1, 1987	159	99
July	August 1, 1987	169	105
August	September 1, 1987	178	111
September	October 1, 1987	188	117
October	November 1, 1987	197	123
November	December 1, 1987	206	128
December	January 1, 1987	216	134

The next license renewal would be two years from the above dates and biennium renewal fees for brokers/associate brokers and salespersons would be \$225 and \$140 respectively.

#### LICENSE CERTIFICATE

For license renewals prior to the February 1984 renewal, AREC provided licensees with license certificates that were valid for only one licensing biennium. However, for the February 1984 renewal, AREC provided licensees with certificates that are to be valid for five licensing bienniums. Each license certificate has five spaces for renewal validation stickers. This use of validation stickers is similar to the system used for motor vehicle licensing.

We support the use of validation stickers instead of printing and issuing new license certificates at each renewal. However, we believe the current ten-year license certificates could be permanent license certificates by continuing to place new validation stickers over existing stickers. Real estate commissions in Montana, Rhode Island, South Dakota, and Tennessee currently have permanent license certificates with validation stickers.

If AREC would establish the license renewal date as the first of the month following each licensee's birthday, we envision the validation stickers to read as shown in the example below.

EXAMPLE

For a licensee with a birthday on May 3, the following validation sticker would be sent to the licensee at the February 1, 1986 renewal:

EXPIRES 6-1-87
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During May 1987, the license would again be renewed and the following validation sticker would be sent to the licensee:

EXPIRES 6-1-89
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LICENSEE REGISTER

AREC is required by statute to maintain a current register of licenses. AREC currently maintains an alphabetical register of licensees on its Wang word processor. The register is kept on 23 separate system documents which group licensees alphabetically by the first letter of their last names. For each licensee, the register provides the licensee's real estate office and address, license number, and license expiration date (currently January 31, 1986 for all licensees).

We reviewed the accuracy of the AREC licensee register by comparing its contents with a current licensee register provided by the Anchorage Multiple Listing Service (MLS). Our review found inaccuracies in the AREC licensee register. Specifically, we found:

- The AREC register did not account for some licensees. During our review, we found five licensed real estate agents (including one broker) not listed on the

register. Each of these licensees are actively engaged in real estate business.

- The AREC register listed some licensees twice - once as active and once as lapsed.
- The AREC register did not have current company names and addresses for some real estate firms.

Concerning licensees not accounted for on the register, the AREC licensing examiner told us that her predecessor failed to enter some licensees on the register during the 1982 renewal. Specifically, these licensees included some brokers with low license numbers and some licensees with license numbers between 7000 and 7999.

#### Lapsed Licenses

The AREC licensing examiner estimates that 1,000 licensees on the AREC licensee register have lapsed licenses. Given the inaccuracies found in the AREC licensee register, we are concerned that some licensees with lapsed licenses may not have received notices of the February 1984 license renewal. Though licensees have the responsibility to renew their licenses with or without renewal notices, we believe that AREC should make an attempt to identify licensees with lapsed licenses who are currently engaged in real estate business. For example, AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

#### RECOMMENDATIONS

In the area of licensing, we recommend that AREC:

1. Verify that license candidates have passed the licensing examination before issuing licenses. It is our understanding that the AREC license examiner has already been instructed by the executive director to implement this recommendation.
2. Prorate initial license fees within the licensing biennium.
3. Establish the license renewal date as the first of the month following each licensee's birthday.
4. Use the current ten-year license certificate as a permanent license certificate by continuing to place new validation stickers over existing stickers.

5. Update the licensee register. For a cost of \$85, Wang Laboratories could take the 23 system documents of the current alphabetical register and provide AREC with a register in sequential order by license number. This new register could then be compared with information in the Commission's hard-copy license folders which are also kept in sequential order by license number. This register could also be compared with an AREC notebook which recorded license issues in sequential order prior to use of the word processor.
6. Initiate a cooperative information network between the Commission, Alaska Association of Realtors, and multiple listing services to periodically compare each other's licensee registers.
7. Identify licensees with lapsed licenses who are currently engaged in real estate business. AREC could send a notice to brokers instructing the brokers to verify the license status of each associate broker and salesperson under their supervision.

## LICENSE COMPLAINTS

As a regulatory agency, AREC is responsible for investigating complaints alleging licensee violations of State statutes or regulations. AREC is also responsible for suspending or revoking licenses of real estate licensees who actually violate statutes or regulations. Our review found that AREC could improve its operations in each of these areas as discussed below.

### COMPLAINT STATISTICS

As of September 14, 1984, AREC showed the following license complaint statistics:

<u>Year</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Filed</u>	<u>Total</u> <u>Complaints</u> <u>Closed</u>	<u>Total</u> <u>Complaints</u> <u>Open</u>
1977	86	85	1
1978	108	99	9
1979	203	200	3
1980	114	110	4
1981	119	101	18
1982	151	115	36
1983	184	103	81
1984 to date	<u>170</u>	<u>54</u>	<u>116</u>
Total	<u>1,135</u>	<u>867</u>	<u>268</u>

Of the 268 open complaints, only 24 complaints were designated as being in active investigation and 17 were designated as having license actions in progress. The remaining 227 open cases were in backlog status.

We reviewed 61 of approximately 240 closed license complaints which were in AREC files awaiting closure letters. Our review found that the average processing time for these complaints from date of complaint filing to date of recommended closure was 14 months.

### COMPLAINT PROCESSING

Our review found that AREC lacks a formal, structured procedure for processing license complaints. AREC currently processes complaints based on informal procedures established by the executive director and auditor. We believe these procedures were implemented before being fully developed and are currently

ineffective and inefficient. Examples of these procedures are shown below.

1. For each complaint actively investigated, AREC has a procedure to forward a copy of the complaint file to an AREC commissioner. The commissioner supposedly becomes an "investigating commissioner" who will assist the AREC auditor during the investigation. However, we found that neither the auditor nor commissioners know what is expected of the "investigating commissioner." The procedure has never been formalized to identify the commissia ers' investigative duties.
2. For each complaint recommended for closure, AREC has a procedure to forward the original complaint file to an AREC commissioner. The commissioner is supposed to review the file, approve or disapprove the closure recommendation, and return the file to the AREC auditor. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission. We question the entire Commission voting to close complaints when the complaints were only reviewed by one commissioner. We also question the mailing of original complaint files to commissioners, especially when we were told that four original files have been lost through these mailings.

We believe that AREC needs a formal, structured procedure for processing complaints from date of initial inquiry to completion of hearing. The procedure should provide a sequence of processing stages and internal time standards (processing days from date of complaint filing). We also believe that the processing stages should be supported by statutes and regulations.

If AREC would establish a formal, structured procedure for processing license complaints, we envision the following major processing stages, internal time standards, and needed statute and regulation sections:

<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
1. <u>INQUIRY</u>			
AREC documents the volume and nature of questions answered and problems resolved by telephone, mail, and personal contact.			Acceptance of Inquiry  Record of Inquiry

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
2.	<u>COMPLAINT</u>		Complaint	Complaints by Individuals Complaints by Commission
	AREC sends a copy of the complaint and an interrogatory to respondent.	10 days		
	Respondent provides AREC with completed interrogatory.	30 days		
3.	<u>STAFF INVESTIGATION</u>		Investigation	Investigation Procedures Determination Procedures
	AREC prepares an investigative plan of action.	45 days		
	After investigation, AREC makes a determination whether or not complaint is supported by substantial evidence.	90 days		
4.	<u>STIPULATION</u>		Stipulation	Stipulation Procedures
	If the complaint is supported by substantial evidence, AREC provides respondent with proposed terms of stipulation, i.e., license suspension for specific time period.	120 days		
	Respondent accepts or rejects the proposed stipulation.	150 days		

	<u>Processing Stage</u>	<u>Internal Time Standard</u>	<u>Statute Section</u>	<u>Regulation Section</u>
5.	<u>HEARING</u>		Hearing	Commencement of Hearing Process
	If proposed stipulation is rejected by respondent, a hearing commences.	180 days	Order	Subpoenas
				Notice of Hearing
				Conduct of Hearing
				Hearing Officer's Recommended Decision
				Orders by Commission
				Hearing Record

By establishing a complaint processing procedure supported by internal time standards, statutes, and regulations, we believe that AREC would be more accountable to licensees and the public.

#### INVESTIGATOR

The AREC auditor is responsible for investigating license complaints filed with the Commission. The auditor is an Accountant III with no prior investigative experience.

Current AREC statutes state that "the executive director shall appoint, with approval of the commission, a full-time investigator or auditor." We understand that an auditor was appointed because investigations may involve audits of broker trust accounts. However, we found that the auditor has conducted only three trust account audits since his appointment three years ago.

We believe AREC should re-evaluate its investigator position. In our opinion, the State's class specification 7768, Investigator III, includes the knowledge and skills needed by AREC. We note that each investigator within the State's Division of Occupational Licensing is an Investigator III.

## Closure Letters

AREC currently has about 240 closed license complaints which are awaiting closure letters to complainants and respondents. These complaints were closed by the Commission between 1982 and 1984. Given that the usual license complaint involves two brokers, two salespersons, and a complainant, we estimate that approximately 960 respondents and 240 complainants have not received closure letters.

We believe that AREC has the responsibility to provide complainants and respondents with prompt notices of complaint closures. AREC currently has a form letter which could be prepared immediately following closures.

For the 240 closed license complaints currently awaiting closure letters, AREC should consider employing a student intern or other part-time employee to prepare the estimated 1,200 closure letters. Given that some of these complaints were filed years ago, the mailing addresses of complainants and respondents will have to be verified.

## COMPLAINT CLOSURE

Our review found that the majority of complaints closed by AREC are closed for the reason of limited staff resources, not lack of substantial evidence. We reviewed 61 of approximately 240 closed complaints which were in AREC files awaiting closure letters. Almost all of the complaints we reviewed were voted closed by the Commission "without prejudice" -- meaning that the complaints, if investigated, would probably prove that license violations occurred, but the violations are probably not severe enough for using staff resources to investigate. Though the AREC auditor told us that these complaints could be reopened for investigation at a later time, we question the closing of complaints which may be supported by substantial evidence. We also question the time and money spent to officially close complaints which may be reopened; i.e., mailing complaint files to/from commissioners for review of staff recommended closures and voting to officially close complaints at Commission meetings.

If AREC would discontinue the closing of complaints "without prejudice," we envision the following complaint closure process:

1. After receipt of the respondent's completed interrogatory (within 30 days of complaint filing), AREC staff makes a determination based on the weight of the evidence whether or not the complaint warrants further investigation.

2. If the AREC staff determines that the complaint does not warrant further investigation, the staff administratively closes the complaint and notifies the complainant and respondent. By regulation, the complainant may apply to the Commission's chairman for a reconsideration of the staff's determination to close the complaint. The application must be in writing and filed within 30 days after receipt of closure notice unless the chairman grants an extension. The chairman will review the entire complaint file and may hear oral argument from the parties. If the chairman grants the complainant's application for reconsideration, the chairman will remand the complaint to staff for further investigation.

#### LICENSE ACTION

If AREC proves that a licensee has violated State statutes or regulations, the licensee's real estate license could be revoked or suspended by the Commission. However, we found that a broker or associate broker is still "entitled" to a salesperson license even though AREC revokes the broker or associate broker license. Current AREC statute 08.88.171, Entitlement to License, has no provision for barring a broker's or associate broker's entitlement to a salesperson license after revocation of the broker or associate broker license.

If AREC would revise its license entitlement statute, we envision the following statutory changes:

1. Change AS 08.88.171 from "Entitlement to License" to "Eligibility for License."
2. Include in AS 08.88.171 a provision that licensees lose their eligibility for all licenses upon license revocation. Also, include a provision that license eligibility can only be reinstated by the Commission.

#### RECOMMENDATIONS

In the area of license complaints, we recommend that AREC:

1. Establish a formal, structured procedure for processing license complaints. The procedure should include a sequence of processing stages with internal time standards. The processing stages should be supported by statutes and regulations.

2. Re-evaluate the investigator position. We believe that the position requires the knowledge and skills of an Investigator III, not an Accountant III.
3. Discontinue closing complaints "without prejudice." We believe AREC should establish an administrative closure process for complaints.
4. Provide complainants and respondents with closure letters immediately following complaint closures. For the approximately 240 closed complaints currently awaiting closure letters, AREC should employ a student intern or other part-time employee to prepare the estimated 1,200 letters.
5. Revise its license entitlement statute to read "Eligibility for License" and include a provision that licensees lose their eligibility for all licenses upon license revocation.

## SURETY FUND CLAIMS

In 1974 the Real Estate Surety Fund was established to provide monetary settlements to victims of fraud, deceit, misrepresentation, and conversion of trust funds by licensees. From 1974 to 1980, victims had to receive court judgments against licensees before claims were paid. However, in 1981 AREC was given the responsibility of adjudicating surety fund claims. Our review found that AREC could improve its operations in this area as discussed below.

### CLAIM STATISTICS

As of September 14, 1984, AREC showed the following surety fund claim statistics:

<u>Year Claims Filed</u>	<u>Total Claims Filed</u>	<u>Total Claims Paid</u>	<u>Total Amounts Paid</u>
1981	52	3	\$11,943
1982	92	18	\$62,612
1983	123	14	\$67,644
1984 to date	101	6	\$43,017

A total of 197 open claims were in backlog status.

### FUND BALANCE

The Real Estate Surety Fund is totally funded by surety fees assessed from licensees. Current AREC statutes state that the fund may not exceed \$500,000. The fund's current balance is about \$650,000. We understand that the excess \$150,000 will be transferred to the General Fund.

Given that the fund balance currently exceeds its statutory limit, we question the Commission's continued assessment of surety fees. By continuing to assess surety fees, AREC is collecting monies from licensees for the General Fund, not the Surety Fund. Licensees actually pay the General Fund twice - once from their license fees and another from their surety fees.

AREC is attempting to resolve this situation by introducing legislation to raise the fund limit from \$500,000 to \$850,000. However, we estimate that the fund balance will probably exceed the \$850,000 limit after the February 1986 renewal. New legislation would have to be introduced to raise the fund limit again.

Based on the National Association of Realtors suggested pattern for real estate license law, we envision a statute provision for a minimum fund balance instead of the current maximum fund balance. As long as the balance remains above the minimum, licensees would not be assessed surety fees. However, if the balance becomes less than the minimum, licensees would be assessed surety fees during the next license renewal.

By establishing a minimum fund balance, AREC and licensees could realize the following benefits:

1. Based on the dollar amount of claims paid in prior years, AREC could set a minimum fund balance which would not require continuous statutory revisions as is currently being experienced with the maximum fund balance.
2. By not having to assess surety fees while the fund balance remains above the minimum, AREC could have less administrative costs.
3. By not having to pay surety fees while the fund balance remains above the minimum, brokers/associate brokers and salespersons could save \$125 and \$40 respectively in renewal fees.

#### HEARINGS

Our review found that AREC could combine license action and surety fund claim hearings. Currently, AREC holds separate hearings for adjudicating license actions and surety fund claims. However, given that a surety fund claim can only be awarded if a license violation occurs, we envision the following changes:

1. One AREC complaint form for complainants to report license violations and any monetary damages resulting from the violations. (AREC currently has separate forms for license complaints and surety fund claims.)
2. Staff investigations to determine if reported license violations are supported by substantial evidence and to verify any monetary damages. (AREC currently investigates only reported license violations; surety fund claims are automatically scheduled for hearing with no staff review or investigation.)
3. One hearing to determine license actions to be taken against licensees who violate State statutes or regulations and to determine complainants' monetary settlements from the Surety Fund (AREC currently holds separate hearings.)