

Department of Real Estate (Report Highlights)

August 2001

The Department of Real Estate licenses and regulates more than 46,200 active real estate salespersons and brokers who sell real estate, cemetery plots, and private campground memberships. The Department also regulates over 9,560 real estate sales corporations. The Department can investigate complaints against licensees, take disciplinary action against violators, provide information to the public on licensees, and approve real estate schools and courses.

Our Conclusions:

While the Department operates in the public interest in some ways, improvements are needed. The Department employs a licensing process that ensures that only qualified licensees work in real estate and issues licenses in a timely manner. The Department also audits broker records to ensure brokers appropriately handle client monies. However, the Department's policies and procedures discourage the filing of complaints against licensees and do not ensure adequate investigations of the complaints received. Other practices impede consumer access to information. When the Department does impose discipline, it treats licensees with similar violations differently. Finally, the Recovery Fund, which provides some compensation to defrauded or similarly harmed consumers, is costly and cumbersome to administer.

Department Needs to Improve Complaint-Handling Practices

The Department's efforts to manage its workload discourage legitimate complaints—People may find it hard to file a complaint because:

- Department staff may erroneously tell callers their complaints are not within the Department's jurisdiction.
- The Department's complaint form may discourage complaints by overstating areas where the Department has no jurisdiction.

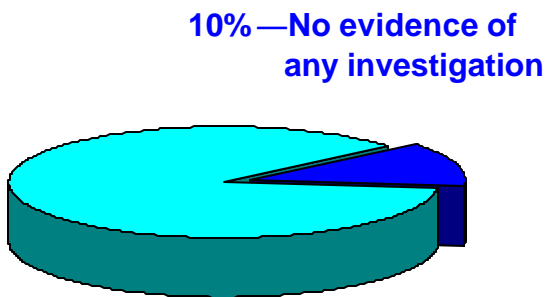
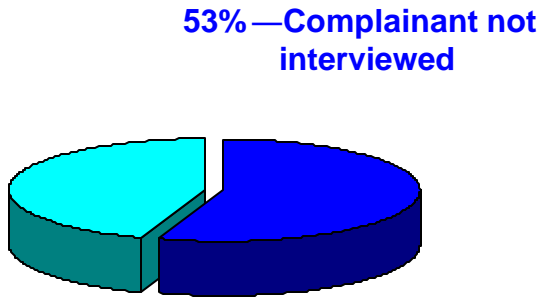
- Until April 2001, the Department required a consumer to submit a notarized complaint.

The Department does not track complaints received and does not conduct thorough investigations—The Department does not track the number of complaints it receives, or the disposition of those complaints. Without knowing this information, the Department cannot report the number of complaints received and disposition of these complaints to oversight bodies and the public.

Further, while many complaints may not be within the Department's jurisdiction, some valid complaints are screened out after they are filed.

- Auditors reviewed 16 complaints that were screened out—2 should have been investigated.

Some complaint investigations are inadequate. The Department's procedures insufficiently guide investigators on how to conduct an investigation or the elements of an investigation. A sample of complaints showed:



The Department should:

- ✓ Revise customer services policies and procedures and train its customer services representatives to assist consumers who may wish to file complaints.
- ✓ Revise its complaint form so people are not unnecessarily discouraged from filing complaints;

- ✓ Track and report the number of complaints it receives; and
- ✓ Revise its guidelines to ensure investigations are complete and thorough.

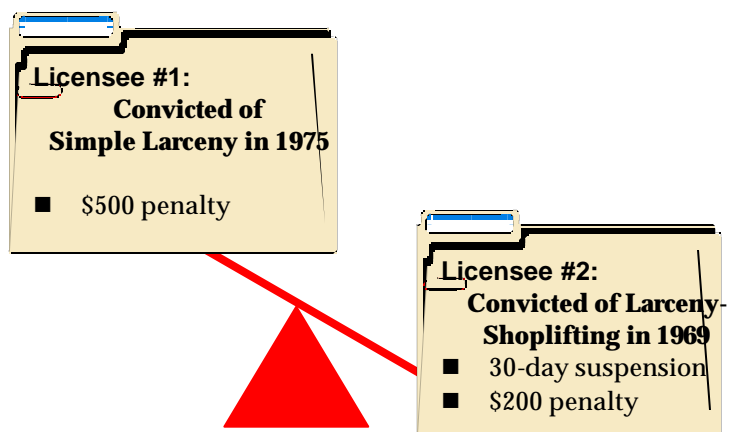
The Department Is Inconsistent in Its Discipline

Some licensees are treated differently for similar offenses.

- ✓ The Department has no guidelines for deciding discipline;
- ✓ While the Department considers various factors, discipline appears to be partially based on licensees' abilities to negotiate a deal; and
- ✓ Case files have no explanation for the varied treatment.

The following cases illustrate the types of differences in penalties imposed.

False Applications Filed Because Licensees Failed to Disclose Theft Convictions



Breach of Fiduciary Responsibility

Licensee #1:
Did Not Inform Client That Buyer Failed to Make \$5,000 Earnest Payment

- 18-month suspension
- \$500 penalty

Licensee #2:
Forged Client's Name on a Contract

- 60-day suspension
- \$500 penalty

Recovery Fund Costly and Cumbersome to Administer

Real Estate Recovery Fund

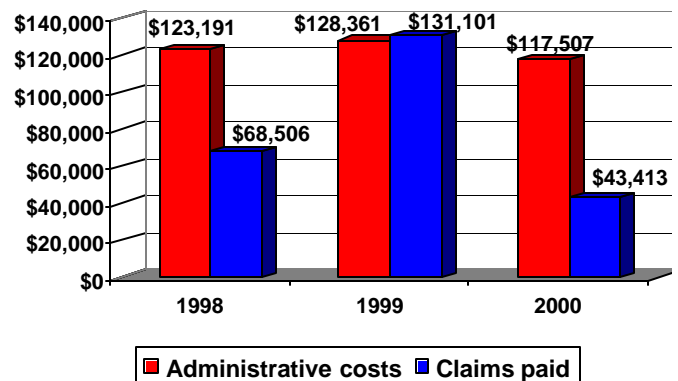
- Pays for losses from a licensee's wrongdoing, such as fraud, when the licensee cannot pay.
- Effective August 2001, pays up to \$30,000 per real estate transaction or \$90,000 total per licensee.
- Comes from a surcharge on real estate licensees.

It costs more to administer the Fund than it pays in claims—Administrative costs include the salary of half of an assistant Attorney General's time, an administrator, and support staff; office space; and telephone use.

The Department should:

- ✓ Develop and implement disciplinary guidelines that consider the:
 - Violation's severity;
 - Licensee's discipline history;
 - Aggravating/mitigating factors; and
 - Range of possible sanctions.
- ✓ Document reasons for disciplinary action imposed.

Administrative Costs and Claims



Several factors cause the high costs:

- Because statute requires claims to be filed with the court, the Fund's attorney must be involved with all claims.
- The Fund administrator begins monitoring and working on cases many months before a claim is made. However, this is an inefficient use of resources because claims are often never made.
- Some non-Fund-related duties of the attorney and administrator are paid out of the Fund.

The Legislature should:

- ✓ Consider changing the Recovery Fund process to permit the Department to approve claims rather than go through court.

The Department should:

- ✓ Adopt rules to implement a new claims process if statutes are changed.
- ✓ Ensure that the Fund pays only the costs that it should pay.

Consumers Do Not Have Ready Access to Information

The Department limits consumer access to information by:

- Refusing to give information about licensees' discipline and complaints over the phone;
- Requiring consumers to make written requests and then wait up to six weeks to get the information;
- Requiring consumers to come to the Department's office to view the information; and
- Withholding information about the number or nature of pending complaints.

The Department's process may also discourage consumers from requesting this public information by requiring them to provide personal information including:

- photo identification;
- address;
- phone number; and
- driver's license number.

The Department should:

- ✓ Provide information about licensees over the phone;
- ✓ Stop requiring consumers to make written requests in order to review complaint information;
- ✓ Stop requiring consumers to provide photo ID and personal information in order to review complaint information; and
- ✓ Give consumers the licensee's complete disciplinary history, including pending complaints.

To Obtain More Information

- A copy of the full report can be obtained by calling (602) 553-0333 or by visiting our Web site at:

www.auditorgen.state.az.us

- The contact person for this report is **Dale Chapman**.