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State Auditor

An Audit Report on

**The Real Estate Commission:
A Self-directed Semi-independent
Agency**

September 2014
Report No. 14-037



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Overall Conclusion

The Real Estate Commission (Commission) accurately and completely recorded \$23.5 million in license and permit-related receipts during fiscal year 2013. However, the Commission should improve the reporting of its finances on the *Annual Financial Report* and the annual *Self-directed Semi-independent Agency Report (SDSI Report)*.

Annual Financial Report. The Commission's fiscal year 2013 *Annual Financial Report* was significantly misstated, with misstatements in both revenues and expenditures. For example, the Commission overstated revenues and transfers related to license and permit activities by approximately \$4.1 million.

SDSI Report. The financial information in the Commission's fiscal year 2013 *SDSI Report* was incomplete. The *SDSI Report* contained information only on operational revenues and expenditures. That report did not present information on accounts totaling \$16.7 million in nonoperational revenues and fee surcharges¹ and \$16.4 million in nonoperational expenditures, transfers, and payments of fee surcharges to third parties.

The accuracy of the Commission's reports is important because the Legislature may use both of those reports to monitor the Commission's and the Texas Appraiser Licensing and Certification Board's finances.

The Commission also should strengthen access controls over data in its automated regulatory system, which is called Versa. The Commission adequately controls access to the Versa application, but it does not adequately protect Versa data.

Background Information

Texas Occupations Code, Chapter 1105, authorized the Real Estate Commission (Commission) to operate independently of the General Appropriations Act beginning in fiscal year 2012.

The Commission oversees the regulation of real estate brokers and salespersons and other real estate industry professionals. Texas Occupations Code, Section 1103.051, designates the Texas Appraiser Licensing and Certification Board (Board), which regulates real estate appraisers, as an independent subdivision of the Commission. The Commission's administrator also reports to the Board as its commissioner. The Board has certain staff who work only for the Board, but the Commission also shares certain staff with the Board.

The Commission reported that there were 43,385 active real estate broker licenses and 73,194 active real estate salesperson licenses at the end of fiscal year 2013. The Federal Financial Institutions Examinations Council Appraisal Subcommittee reported that there were 3,821 licensed appraisers in fiscal year 2013. The Commission employed 105 individuals as of August 2013.

¹The Commission is required by statute to collect revenues for State's General Revenue Fund, the Foundation School Fund, Texas A&M University, and recovery trust funds that the Commission administers. The Commission also collects surcharges that it pays to third parties, including the Department of Information Resources (for convenience fees for using the State's online payment system) and the Department of Public Safety and the Federal Bureau of Investigation (for fingerprinting or other services for a national or state criminal history check in connection with a license application or renewal).

The Commission does not ensure segregation of duties and the integrity of data stored on its network, the Versa database, and servers. Certain information technology staff also have administrator access that would allow them to change Versa data without a record of who accessed the administrator account or made the changes. In addition, the Commission assigns Versa user IDs by position, rather than assigning user IDs to specific individuals, and it does not consistently comply with its policy to disable and remove user accounts when users' employment is terminated. The Commission also did not have evidence showing that it regularly reviewed user access to Versa.

The Commission sets fee rates based on its budgetary needs, and it assesses penalties in accordance with statute. It collected approximately \$10.0 million in license fees and more than \$187,000 in penalties during fiscal year 2013.

Auditors communicated other, less significant issues to the Commission's management in writing.

Summary of Management's Response

The Commission agreed with the audit recommendations in this report. The Commission's detailed management responses are presented immediately following each set of recommendations in the Detailed Results section of this report.

Summary of Information Technology Review

Auditors performed a limited review of the general controls for two information systems the Commission used to account for its financial information:

- Versa, which is the Commission's automated regulatory system. The Commission uses Versa as its primary means for accounting for license and permit revenue, which represents the majority of the Commission's revenue.
- The Uniform Statewide Accounting System (USAS), which is the State's accounting system. The Commission uses USAS as its primary means of accounting for expenditures. Auditors conducted limited testing of general controls for USAS; specifically, auditors reviewed the Commission's access controls to USAS.

Auditors reviewed controls over user access and policies over change management and back-up and recovery and determined that the Commission adequately controls access to the Versa application. However, as discussed above, the Commission does not sufficiently ensure segregation of duties and the integrity of data stored on its network, the Versa database, and servers. The Commission should strengthen user access controls to minimize the risk of unauthorized alteration or deletion of data.

Summary of Objectives, Scope, and Methodology

The audit objectives were to:

- Verify the accuracy of certain key financial statement balances and the effectiveness of key financial controls at the Commission.
- Evaluate the Commission's process for setting fees and penalties.

The scope of this audit included reviewing support for financial balances the Commission reported in the fiscal year 2013 *Annual Financial Report* and in the November 2013 *SDSI Report*. Specifically, auditors reviewed bank statements, Versa information, and USAS information that supported both reports. Auditors also reviewed the Commission's process for setting fees and assessing penalties and analyzed and evaluated data and the results of related tests.

The audit methodology included collecting information and documentation from the Commission and reviewing policies and procedures, statutes, and rules related to financial reporting to the Legislature and the Commission's requirements for setting fees and penalties.

Auditors determined that expenditure data and license revenue data in USAS and Versa were sufficiently reliable for the purposes of this audit.

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Detailed Results

Chapter 1

The Commission Accounted for Fiscal Year 2013 License and Permit Revenue Accurately and Completely, But It Should Improve Its Financial Reporting

The Real Estate Commission (Commission) accurately and completely recorded \$23.5 million in fiscal year 2013 license and permit-related receipts² (including amounts and revenue coding) for both itself and the Texas Appraiser Licensing and Certification Board (Board) in the Commission's automated regulatory system, which is called Versa. Auditors tied fiscal year 2013 receipt data in the Commission's bank records to Versa. License and permit revenue represented 86 percent of the Commission's and the Board's combined \$27.4 million in total revenues that were recorded in the Uniform Statewide Accounting System and Versa for fiscal year 2013.

While the Commission accurately and completely accounted for license and permit revenue, it should improve its financial reporting. The Commission reported fiscal year 2013 financial activities for itself and the Board in two reports: the fiscal year 2013 *Annual Financial Report* and the November 2013 *Self-directed Semi-independent Agency Report (SDSI Report)*. Those reports provide the Legislature a way to monitor the Commission's and the Board's finances. The Commission did not report all financial information in the fiscal year 2013 *Annual Financial Report* and *SDSI Report*, and it did not always present the information in accordance with financial reporting requirements.

Appendix 3 contains details on the Commission's revenues and expenditures for the *SDSI Report*.

Annual Financial Report

The Commission overstated revenues and transfers related to license and permit activities by approximately \$4.1 million (19 percent) on the fiscal year 2013 *Annual Financial Report*. That amount was a significant overstatement, both to the license and permit revenue line item itself and to the financial statements in the fiscal year 2013 *Annual Financial Report* as a whole.

Additionally, the Commission prepared the fiscal year 2013 *Annual Financial Report* primarily on a cash basis, rather than on a full or modified accrual

² The Commission's License and Permits account includes license fees and other revenues including Occupational Fees, Fees Collected for Texas A&M University, Real Estate Recovery Trust Fund Recoveries, Administrative Penalties, and Miscellaneous Revenues. That revenue also includes receipts that the Commission reports as Sales of Goods and Services and Other Revenue on its annual financial statements.

accounting basis as required by the Comptroller of Public Accounts' *Reporting Requirements for Fiscal Year 2013 Annual Financial Reports of State Agencies and Universities* (Comptroller's requirements). Not properly accruing expenditures resulted in the Commission understating expenditures by nearly \$657,000 on the fiscal year 2013 *Annual Financial Report* (that \$657,000 amount included a \$554,000 understatement of the other expenditures account).

The fiscal year 2013 *Annual Financial Report* also did not comply with the Comptroller's requirements because the Commission omitted certain accounts from the primary exhibits in that report. Specifically, although the Commission reported a \$534,000 compensable leave balance liability and \$206,000 in capital assets in the notes to the fiscal year 2013 *Annual Financial Report*, it omitted those items from the primary exhibits in that report. Omitting those items from the primary exhibits affects the accuracy of fund balances in those primary exhibits. The financial reporting issues occurred because the Commission did not have a thorough review process for the *Annual Financial Report*.

SDSI Report

The Commission accurately reported \$10.6 million in revenues and \$8.9 million in expenditures in the *SDSI Report* for fiscal year 2013. However, that report did not contain a complete list of revenues and expenditures as required by the Texas Occupations Code, Section 1105.005(c)(4). For example, that report did not include accounts totaling \$16.7 million in nonoperational revenues and fee surcharges³ and \$16.4 million in nonoperational expenditures, transfers, and payments of fee surcharges to third parties. Appendix 3 contains a list of the accounts the Commission did not report on its *SDSI Report* for fiscal year 2013.

The Commission's fiscal year 2013 *SDSI Report* contained budgets approved by the members of the Texas Real Estate Commission and the members of the Texas Appraiser Licensing and Certification Board, as required by the Texas Occupations Code.

³The Commission is statutorily required to collect revenues for the State's General Revenue Fund, the Foundation School Fund, Texas A&M University, and recovery trust funds that the Commission administers. The Commission also collects surcharges that it pays to third parties, including the Department of Information Resources (for convenience fees for using the State's online payment system) and the Department of Public Safety and the Federal Bureau of Investigation (for fingerprinting or other services for a national or state criminal history check in connection with a license application or renewal).

Recommendations

The Commission should:

- Strengthen controls over the preparation of *Annual Financial Reports* to help ensure those reports are accurate and prepared according to the Comptroller of Public Accounts' requirements.
- Include all revenues and expenditures on annual *SDSI Reports*, as required by the Texas Occupations Code.

Management's Response

- *Strengthen controls over the preparation of Annual Financial Reports to help ensure those reports are accurate and prepared according to the Comptroller of Public Accounts' requirements.*

We agree with the findings during the period audited. The agency prepared the fiscal year 2013 Annual Financial Report primarily on a cash basis based on the interpretation of the Comptroller of Public Accounts Fiscal Policies and Procedures (FPP) S.009, which states that accruals and encumbrances against prior appropriation years will not be allowed during the subsequent fiscal year.

Management agrees that license and permit revenues were overstated in the Annual Financial Report. This overstatement was due to the reporting of Professional fee revenue as a part of our General funds and also as additions in Fiduciary Funds. We have sought guidance from our Financial Reporting analyst at the State Comptroller's office and the revenues will be reported correctly on future reports.

The agency was advised by our vendor, who compiled the AFR, that the compensable leave balance liability and the capital assets did not need to be included in the exhibits since they are included in the notes to the fiscal year 2013 Annual Financial Report. The agency sought and received advice from the Comptroller's Office that the amounts in question should be included in the exhibits as well as the notes.

The agency will comply with the SAO recommendations and strengthen controls over the preparation of the Annual Financial Reports.

- *Include all revenues and expenditures on annual SDSI Reports, as required by the Texas Occupations Code.*

We agree with the findings during the period audited. The agency will comply with the SAO recommendations for the fiscal year 2014 reports and will include all revenues and expenditures on the annual SDSI report per Texas Occupations Code, Section 1105.005(c)(4).

The agency may also seek a change to the SDSI report submission date in Texas Occupations Code, Section 1105.005(c) from November 1 of each year to November 20 of each year to coincide with Annual Financial Report submission date.

The Commission Should Strengthen Controls Over Data in Its Automated Regulatory System

The Commission adequately controls access to the Versa application, but it does not adequately protect Versa data. The Commission does not ensure segregation of duties and the integrity of data stored on its network, the Versa database, and servers. Certain information technology staff members also have administrator access that would allow them to change Versa data without a record of who accessed the administrator account or made the changes.

In addition, the Commission assigns network user IDs by position, rather than by assigning user IDs to specific individuals. Two (10 percent) of the 20 position-based users accounts that auditors tested were active but the associated positions were vacant. Those user accounts could be shared and used without any record of who used them or who changed data using them. Additionally, the Commission does not consistently comply with its policy to disable and remove user accounts for Versa when a user's employment is terminated.

Title 1, Texas Administrative Code, Section 202.21 (d)(4), requires an agency's information security officer to report at least annually to the agency head the status and effectiveness of information resources security controls. The Commission does not have documentation showing that it regularly reviews user access to Versa. Commission policy does not specify a regular interval for conducting those reviews. Although the Commission has relevant user access policies, most of those policies are more than eight years old.

Recommendations

The Commission should:

- Review administrator access and ensure that changes to Versa data can be traced to an individual user.
- Discontinue issuing network user IDs by position and, instead, issue unique user IDs to individual users.
- Comply with its policy to disable and remove user accounts when a user's employment is terminated.
- Document its regular reviews of Versa user access.
- Review and update its Versa user access policies and ensure that those policies require regular access reviews within a set time frame (such as annually).

Management's Response

- *Review administrator access and ensure that changes to Versa data can be traced to an individual user.*

We agree with the finding during the period audited. The commission will develop a new standard for naming user accounts to include a methodology which will relate to an individual rather than their position. Procedures will be updated to reflect this change.

- *Discontinue issuing network user IDs by position and, instead, issue unique user IDs to individual users.*

We agree with the finding during the period audited. The commission will develop a new standard for naming user accounts to include a methodology which will relate to an individual rather than their position. Procedures will be updated to reflect this change.

- *Comply with its policy to disable and remove user accounts when users' employment is terminated.*

We agree with the finding during the period audited. The commission will update the ITS procedures and work with Human Resources to ensure ITS receives notice and proper requests for disabling user IDs upon employees leaving the organization. The commission will begin permanently deactivating existing user accounts as people leave the agency and not reassign them for future use.

- *Document its regular reviews of Versa user access.*

We agree with the finding during the period audited. ITS has updated the year end procedures to include a review and documentation of the review of user IDs for network, Neubus and Versa applications. Lists will be provided to each of the operations divisions for approval of level permissions for staff.

- *Review and update its Versa user access policies and ensure that those policies require regular access reviews within a set time frame (such as annually).*

We agree with the finding during the period audited. ITS has updated the year end procedures to include a review of access policies for Versa, Neubus and the network.

The Commission Sets Fees Based on Its Budgetary Needs and Assesses Penalties in Accordance with Statute

Fees

The Commission sets fee rates based on its budgetary needs. The Commission charges fees for applications for professional licenses, renewals of professional licenses, and the operation of professional education programs. The Commission prepares its budgets by estimating expenses on a detailed level. Management then determines the fee levels that will be needed to raise the necessary revenue and charges fee rates to raise the necessary revenues.

Both the Commission and the Board have target reserve levels that are equal to three to four months' of operating expenditures. Appendix 4 shows the reserve amounts for the Commission and the Board for fiscal years 2009 through 2013, as reported in the Commission's *Annual Financial Report*.

Commission fees. The Commission had 35 fees at the end of fiscal year 2011, and it became a self-directed semi-independent agency at the beginning of fiscal year 2012. Thirty-three of the fees⁴ had set rates, and the median⁵ increase in those 33 fees was \$5.00 (or 15 percent) between the end of fiscal year 2011 and the end of fiscal year 2013. The Commission added 14 new fees between the end of fiscal year 2011 and the end of fiscal year 2013; 10 of those new fees had set fee amounts; the median of those 14 fees was \$125.⁶

The Commission's fiscal year 2013 fees were within levels allowed by the Texas Occupations Code and the Texas Administrative Code.

Board fees. The Board had 22 fees at the end of fiscal year 2011. Nineteen of those fees⁷ had set rates, and the median increase in those 19 fees was \$10.00 (or 3 percent) between the end of fiscal year 2011 and the end of fiscal year 2013. The Board added 13 new fees between the end of fiscal year 2011 and the end of fiscal year 2013; 7 of those new fees⁸ had a set amount, and the median of those 7 fees was \$30.

Appendix 2 presents detailed information on the Commission's and the Board's fees for fiscal year 2011 and fiscal year 2013.

⁴ Two Commission fees had variable rates and were not included in the calculation of the average fee increase.

⁵ The median, rather than the average, is presented because certain fees experienced relatively large increases. For example, two new Board fees for appraisal management companies were \$3,000 each, which resulted in the relatively high average of \$620. The third highest fee was \$50.

⁶ Four Commission fees had variable rates and were not included in the calculation of the average fee increase.

⁷ Three Board fees had variable rates and were not included in the calculation of the average fee increase.

⁸ Six Board fees had variable rates and were not included in the calculation of the average fee increase.

Penalties

The Commission issued penalties against individuals and entities and collected a total of more than \$187,000 in penalties in fiscal year 2013.

The Commission's schedules of administrative penalties are in the Texas Administrative Code. Those schedules contain a range of penalties for violations. The penalty levels on those schedules are within the parameters allowed by the Texas Occupations Code. Statute requires the Commission to consider factors such as the nature, extent, and the gravity of the prohibited acts and any history of previous offenses when administering penalties. The Commission's penalty schedules do not include guidance for considering those other factors when determining penalties. Appendix 5 contains information on the residential services portion of the Commission's penalty schedule.

Auditors examined 30 orders for disciplinary action that the Commission imposed against licensees during fiscal year 2013 and determined that the penalties were within levels permitted by statute and the Texas Administrative Code. The orders resulted in the following penalties:

- Fifteen (50 percent) of the 30 orders included monetary penalties for multiple offenses. For those 15 orders, the Commission assessed penalties as a single amount for multiple offenses⁹.
- Two (7 percent) of the 30 orders resulted in a monetary penalty for a single offense.
- Thirteen (43 percent) of the 30 orders resulted in nonmonetary penalties. For example, in 1 of the 13 orders, the Commission required a licensee convicted of felony theft to surrender her real estate salesperson license and not attempt to renew it for six years.

The Commission's administrator signed off on all penalties that auditors tested.

⁹ The cumulative penalty amounts for multiple offenses were within levels permitted by statute and the Texas Administrative Code and reflected the severity of the offenses.

Appendices

Appendix 1

Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to:

- Verify the accuracy of certain key financial statement balances and the effectiveness of key financial controls at the Real Estate Commission (Commission).
- Evaluate the Commission's process for setting fees and penalties.

Scope

The scope of this audit included reviewing support for financial balances the Commission reported in the fiscal year 2013 *Annual Financial Report* and in the November 2013 *Self-directed Semi-independent Agency Report (SDSI Report)*. Specifically, auditors reviewed bank statements, Versa (the Commission's automated regulatory system) information, and the Uniform Statewide Accounting System (USAS) information that supported both reports. Auditors also reviewed the Commission's process for setting fees and assessing penalties and analyzed and evaluated data and the results of related tests.

Methodology

The audit methodology included collecting information and documentation from the Commission and reviewing policies and procedures, statutes, and rules related to financial reporting to the Legislature and the Commission's requirements for setting fees and penalties.

Auditors assessed the reliability of the expenditure data and license revenue data by (1) reviewing access controls in USAS and Versa, (2) gaining an understanding of general controls for Versa system, (3) comparing data to other sources of information, (4) analyzing key data elements for completeness and reasonableness, and (5) interviewing Commission employees knowledgeable about the data. Auditors determined that the expenditure data and license revenue data was sufficiently reliable for the purposes of the audit.

Auditors did not determine whether the Commission's disciplinary actions report generator contained the complete population of disciplinary actions the Commission took during fiscal year 2013. Auditors concluded that data was of undetermined reliability. Auditors selected a nonstatistical sample of

disciplinary actions to observe limited instances of the Commission's process for assessing penalties; therefore, it would not be appropriate to extrapolate those results from that sample to the population.

Information collected and reviewed included the following:

- Commission policies and procedures.
- Commission *Annual Financial Reports*.
- Texas Treasury Safekeeping Trust Company bank statements.
- USAS expenditure data.
- *SDSI Report* for November 2013.
- Payroll summary reports.
- Commission-approved operational budgets.

Procedures and tests conducted included the following:

- Interviewed Commission management and staff.
- Analyzed expenditure and revenue data reported in the *Annual Financial Report* pertaining to the Commission.
- Analyzed the financial information in the November 2013 *SDSI Report*.
- Reviewed access controls to Versa.
- Analyzed the Commission's process for setting fees.
- Reviewed license penalties for consistency.

Criteria used included the following:

- Texas Occupations Code, Chapters 1101 and 1105.
- Commission policies and procedures.
- Title 22, Texas Administrative Code, Chapter 535.
- Title 1, Texas Administrative Code, Chapter 202 (Information Security Standards).
- Comptroller of Public Accounts' *Reporting Requirements for Fiscal Year 2013 Annual Financial Reports of State Agencies and Universities*.
- Sunset Advisory Commission recommendations.

Project Information

Audit fieldwork was conducted from January 2014 through May 2014. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Gregory Scott Adams, MPA, CPA, CGFM (Project Manager)
- Lilia C. Srubar, CPA (Assistant Project Manager)
- Johann A. Hajek
- Steven M. Summers, CPA, CISA, CFE
- Michael Yokie, CISA
- Becky Beachy, CIA, CGAP (Quality Control Reviewer)
- Nicole M. Guerrero, MBA, CIA, CGAP (Audit Manager)

Fees the Commission Charged Before and After It Became a Self-directed Semi-independent Agency

The Real Estate Commission (Commission) became a self-directed semi-independent agency in fiscal year 2012. Table 1 contrasts the fees that the Commission charged at the end fiscal year 2011 (before it became a self-directed semi-independent agency) with the fees it charged at the end of fiscal year 2013 (two years after it became a self-directed semi-independent agency).

Table 1

Real Estate Commission Fees				
Fee	Fee at the End of Fiscal Year		Change in Fee From Fiscal Year 2011 to Fiscal Year 2013	
	2011	2013	Dollar Change	Percent Change
Title 22, Texas Administrative Code, Section 535.101, Fees - Real Estate Brokers and Salespersons				
Original application for a real estate broker license, which includes a fee for transcript evaluation	\$105.00	\$119.00	\$14.00	13%
Annual renewal of a real estate broker license	\$34.00	\$39.00	\$5.00	15%
Original application for a real estate salesperson license, which includes a fee for transcript evaluation	\$105.00	\$119.00	\$14.00	13%
Annual renewal of a real estate salesperson license	\$34.00	\$39.00	\$5.00	15%
License examination	\$61.00	\$61.00	\$0.00	0%
Request for, or renewal of, a license for each additional office or place of business for a period of two years	\$20.00	\$50.00	\$30.00	150%
Request an inactive broker license be returned to active status	\$20.00	\$50.00	\$30.00	150%
Request for a license for a change of place of business, change of a licensee name, or to establish a relationship with a sponsoring broker	\$20.00	\$20.00	\$0.00	0%
Application for accreditation of a core education program under Texas Occupations Code, Section 1101.301	\$400.00	\$400.00	\$0.00	0%
One-year operation of a core real estate education program under Texas Occupations Code, Section 1101.301	\$200.00	\$200.00	\$0.00	0%
\$50 plus \$20 per classroom hour approved by the Real Estate Commission for each core education course for a period of four years	Not Applicable	Fee Amount Varies	Fee Amount Varies	Not Applicable

Real Estate Commission Fees				
Fee	Fee at the End of Fiscal Year		Change in Fee From Fiscal Year 2011 to Fiscal Year 2013	
	2011	2013	Dollar Change	Percent Change
Application for accreditation as a mandatory continuing education (MCE) provider for a period of two years under Texas Occupations Code, Section 1101.302	Not Applicable	\$400.00	\$400.00	Not Applicable
\$50 plus \$10 per classroom hour approved by the Real Estate Commission for each MCE course for a period of two years	Not Applicable	Fee Amount Varies	Fee Amount Varies	Not Applicable
MCE deferral fee	Not Applicable	\$200.00	\$200.00	Not Applicable
Certificate of license history, active licensure, or sponsorship	\$20.00	\$40.00	\$20.00	100%
Moral character determination	\$25.00	\$50.00	\$25.00	100%
Instructor application for a two-year period for real estate core or MCE courses, or both	\$25.00	\$150.00	\$125.00	500%
Annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 or fewer days	\$51.00	\$58.50	\$7.50	15%
Annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but fewer than 6 months	\$68.00	\$78.00	\$10.00	15%
Late reporting fee of \$250 to reactivate a license under Texas Occupations Code, Section 535.92(g) (relating to renewal, time for filing, and satisfaction of MCE requirements)	\$250.00	\$250.00	\$0.00	0%
Application, renewal, change request, or other record on paper that a person may otherwise file with the Real Estate Commission electronically by accessing the Real Estate Commission's Web site, entering the required information online, and paying the appropriate fee	\$20.00	\$20.00	\$0.00	0%
Processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds	Not Applicable	\$30.00	\$30.00	Not Applicable
Title 22, Texas Administrative Code, Section 535.210, Fees - Real Estate Inspectors				
Original application for a license as an apprentice inspector	\$35.00	\$84.00	\$49.00	140%
Original application for a license as a real estate inspector, which includes a fee for transcript evaluation	\$75.00	\$89.00	\$14.00	19%
Original application for a license as a professional inspector, which includes a fee for transcript evaluation	\$90.00	\$104.00	\$14.00	16%

Real Estate Commission Fees				
Fee	Fee at the End of Fiscal Year		Change in Fee From Fiscal Year 2011 to Fiscal Year 2013	
	2011	2013	Dollar Change	Percent Change
Annual renewal of the license of an apprentice inspector	\$22.00	\$27.00	\$5.00	23%
Annual renewal of the license of a real estate inspector	\$27.00	\$32.00	\$5.00	19%
Annual renewal of the license of a professional inspector	\$27.00	\$32.00	\$5.00	19%
License examination	\$61.00	\$61.00	\$0.00	0%
Requesting a change of a licensee name, or to establish a relationship with a sponsoring professional inspector	\$20.00	\$20.00	\$0.00	0%
Request an inactive professional inspector license be returned to active status	\$20.00	\$50.00	\$30.00	150%
Certificate of license history, active licensure, or sponsorship	Not Applicable	\$40.00	\$40.00	Not Applicable
Application for accreditation of a core inspector education program for a period of four years under Texas Occupations Code, Chapter 1101	Not Applicable	\$400.00	\$400.00	Not Applicable
One-year operation of a core education program under Texas Occupations Code, Chapter 1101	Not Applicable	\$200.00	\$200.00	Not Applicable
\$50 plus \$10 per classroom hour approved by the Real Estate Commission for each core inspector education course for a period of four years	Not Applicable	Fee Amount Varies	Fee Amount Varies	Not Applicable
\$400 for filing an application for accreditation as an inspector continuing education (ICE) provider for a period of two years under Texas Occupations Code, Section 1102.205	Not Applicable	\$400.00	\$400.00	Not Applicable
\$50 plus \$10 per classroom hour approved by the Real Estate Commission for each ICE course for a period of two years	Not Applicable	Fee Amount Varies	Fee Amount Varies	Not Applicable
Application for approval as an instructor for a two-year period for core or ICE courses, or both	Not Applicable	\$50.00	\$50.00	Not Applicable
Moral character determination	Not Applicable	\$50.00	\$50.00	Not Applicable
Application, renewal, change request, or other record on paper that a person may otherwise file with the Real Estate Commission electronically by accessing the Real Estate Commission's Web site, entering the required information online, and paying the appropriate fee	\$20.00	\$20.00	\$0.00	0%
Processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds	Not Applicable	\$30.00	\$30.00	Not Applicable

Real Estate Commission Fees				
Fee	Fee at the End of Fiscal Year		Change in Fee From Fiscal Year 2011 to Fiscal Year 2013	
	2011	2013	Dollar Change	Percent Change
Title 22, Texas Administrative Code, Section 535.404, Fees - Easement or Right-of-way Agents				
Application for registration for a two-year period	\$160.00	\$200.00	\$40.00	25%
Renewal of a registration for a two-year period	\$160.00	\$200.00	\$40.00	25%
Title 22, Texas Administrative Code, Section 539.231, Fees - Residential Service Companies				
Application for a license	\$3,500.00	\$3,500.00	\$0.00	0%
Filing an annual report	\$3,500.00	\$3,500.00	\$0.00	0%
Evidence of coverage	\$250.00	\$250.00	\$0.00	0%
Schedule of charges	\$250.00	\$250.00	\$0.00	0%
Title 22, Texas Administrative Code, Section 543.3, Fees - Timeshare Act				
Original registration, fee determined by number of interests: \$500-\$3,500	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies
Amendment application, fee determined by number of interests: \$100-\$2,000	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies

Source: Real Estate Commission.

Table 2 lists the fees that the Appraiser Licensing and Certification Board charged in fiscal years 2011 and 2013.

Table 2

Appraiser Licensing and Certification Board Fees				
Fee	Fee at the End of Fiscal Year		Change in Fee From Fiscal Year 2011 to Fiscal Year 2013	
	2011	2013	Dollar Change	Percent Change
Title 22, Texas Administrative Code, Section 535.101, Fees - Real Estate Brokers and Salespersons				
Application for a general certification	\$390.00	\$400.00	\$10.00	3%
Application for a residential certification	\$340.00	\$350.00	\$10.00	3%
Application for a license	\$315.00	\$325.00	\$10.00	3%
Application for approval as an appraiser trainee	\$185.00	\$300.00	\$115.00	62%
Timely renewal of a general certification	\$360.00	\$370.00	\$10.00	3%
Timely renewal of a residential certification	\$310.00	\$320.00	\$10.00	3%
Timely renewal of a license	\$285.00	\$295.00	\$10.00	4%

Appraiser Licensing and Certification Board Fees				
Fee	Fee at the End of Fiscal Year		Change in Fee From Fiscal Year 2011 to Fiscal Year 2013	
	2011	2013	Dollar Change	Percent Change
Timely renewal of an appraiser trainee approval	\$155.00	\$270.00	\$115.00	74%
Fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license or certification within 90 days of expiration	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies
Fee equal to two times the timely renewal fee for the late renewal of a license or certification more than 90 days but fewer than six months after expiration	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies
Nonresident appraiser registration	\$150.00	\$150.00	\$0.00	0%
Annual federal registry	\$25.00	\$25.00	\$0.00	0%
Application fee by reciprocity set at the amount of the fee charged for a similar license or certificate issued to a Texas resident	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies	Fee Amount Varies
Preparing a certificate of licensure history, active licensure, or sponsorship	\$25.00	\$40.00	\$15.00	60%
Addition or termination of sponsorship of an appraiser trainee	\$20.00	\$20.00	\$0.00	0%
Replacing a lost or destroyed certificate	\$15.00	\$20.00	\$5.00	33%
Fee for a returned check equal to that charged for a returned check by the Real Estate Commission	Not Applicable	\$30.00	\$30.00	Not Applicable
Extension of time to complete required continuing education	\$200.00	\$200.00	\$0.00	0%
Request a certificate or license be placed on inactive status	\$50.00	\$25.00	-\$25.00	-50%
Request a return to active status	\$50.00	\$50.00	\$0.00	0%
Evaluation of an applicant's education	\$30.00	\$30.00	\$0.00	0%
Evaluation of an applicant's criminal history	\$30.00	\$50.00	\$20.00	67%
Fee of \$20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Appraiser Licensing and Certification Board's Web site and entering the required information online	\$20.00	\$20.00	\$0.00	0%
Title 22, Texas Administrative Code, Section 159.52, Fees - Appraisal Management Companies				
Application for a two-year registration	Not Applicable	\$3,000.00	\$3,000.00	Not Applicable
Timely renewal of a two-year registration	Not Applicable	\$3,000.00	\$3,000.00	Not Applicable

Appraiser Licensing and Certification Board Fees				
Fee	Fee at the End of Fiscal Year		Change in Fee From Fiscal Year 2011 to Fiscal Year 2013	
	2011	2013	Dollar Change	Percent Change
A fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but fewer than 6 months after expiration;	Not Applicable	Fee Amount Varies	Fee Amount Varies	Not Applicable
National registry fee in the amount charged by the appraisal subcommittee for the appraisal management company registry	Not Applicable	Fee Amount Varies	Fee Amount Varies	Not Applicable
Fee for each appraiser on a panel at the time of renewal of a registration	Not Applicable	\$10.00	\$10.00	Not Applicable
Fee to add an appraiser to a panel in the Appraiser Licensing and Certification Board's records	Not Applicable	\$10.00	\$10.00	Not Applicable
Fee for the termination of an appraiser from a panel	Not Applicable	\$10.00	\$10.00	Not Applicable
Return to active status	Not Applicable	\$50.00	\$50.00	Not Applicable
Prepare a certificate of licensure history or active licensure	Not Applicable	\$40.00	\$40.00	Not Applicable
Fee for a returned check equal to that charged for a returned check by the Real Estate Commission	Not Applicable	\$30.00	\$30.00	Not Applicable
Filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Appraiser Licensing and Certification Board's Web site and entering the required information online	Not Applicable	\$20.00	\$20.00	Not Applicable
Any fee required by the Department of Information Resources for establishing and maintaining online applications	Not Applicable	Fee Amount Varies	Fee Amount Varies	Not Applicable

Source: Appraiser Licensing and Certification Board.

Revenues and Expenditures Reported and Not Reported in the SDSI Report for Fiscal Year 2013

As noted in Chapter 1, the Real Estate Commission (Commission) did not include a complete list of revenues and expenditures for both itself and the Texas Appraiser Licensing and Certification Board (Board) in its required *Self-directed Semi-independent Agency Report (SDSI Report)* for fiscal year 2013, as required by the Texas Occupations Code, Section 1105.005 (c)(4). For example, the Commission did not include accounts totaling \$16.7 million in nonoperational and pass-through revenues and \$16.4 million in nonoperational and pass-through expenditures and transfers.

Table 3 shows the expenditures and revenues the Commission reported in the November 2013 *SDSI Report*, and Table 4 on the next page shows the expenditure and revenue accounts the Commission did not report in the November 2013 *SDSI Report*.

Table 3

Expenditures and Revenues the Commission Reported in the SDSI Report for Fiscal Year 2013			
Category	Real Estate Commission	Appraiser Licensing and Certification Board	Totals
Expenditures			
Operations Expenditures			
Salaries and Wages	\$4,126,542	\$871,061	\$4,997,603
Employee Benefits	1,412,177	248,182	1,660,359
Other Personnel Costs	155,329	37,018	192,347
Professional Fees and Services	162,221	47,407	209,628
Consumables	22,784	7,445	30,229
Utilities	10,632	750	11,382
Travel	26,150	18,489	44,639
Office Rent	459,457	97,703	557,160
Equipment Rental	25,118	7,352	32,470
Registration and Membership	21,456	10,427	31,883
Maintenance and Repairs	110,915	3,273	114,188
Reproduction and Printing	534	437	971
Contract Services	39,732	19,673	59,405
Postage	16,420	3,424	19,844
Supplies and Equipment	85,825	4,616	90,441
Communication Services	30,929	5,907	36,836
Other Operating Expenses	<u>9,620</u>	<u>1,772</u>	<u>11,392</u>

Expenditures and Revenues the Commission Reported in the <i>SDSI Report</i> for Fiscal Year 2013			
Category	Real Estate Commission	Appraiser Licensing and Certification Board	Totals
Subtotal for Operations Expenditures	\$6,715,841	\$1,384,936	\$8,100,777
Non-operations Expenditures			
Department of Public Safety Criminal History Background Checks	\$ 13	\$ 2,904	\$2,917
Statewide Cost Allocation Plan (SWCAP)	44,382	8,982	53,364
Contribution to General Revenue ^a	<u>720,000</u>	<u>30,000</u>	<u>750,000</u>
Subtotal - Non-operations Expenditures	\$764,395	\$41,886	\$806,281
Total Expenditures	\$7,480,236	\$1,426,822	\$8,907,058
Revenues			
License Fees	\$8,877,430	\$1,228,050	\$10,105,480
Miscellaneous Revenue	118,130	12,732	130,862
E-newsletter	230,636	0	230,636
Appraisal Management Companies	<u>0</u>	<u>153,570</u>	<u>153,570</u>
Total Revenues	\$9,226,196	\$1,394,352	\$10,620,548
^a This is a required transfer, rather than an expenditure. Texas Occupations Code, Section 1105.005 (c)(4), which requires the <i>SDSI Report</i> , does not preclude the Commission from reporting financial information other than expenditures and revenues. Presenting transfers correctly would provide report users with a more complete picture of the Commission's finances.			

Source: The Commission's *SDSI Report* for fiscal year 2013.

Table 4

Expenditures and Revenues the Commission Did Not Report in the <i>SDSI Report</i> for Fiscal Year 2013			
Category	Real Estate Commission	Appraiser Licensing and Certification Board	Totals
Expenditures			
Payment from State Appropriation to Local Account	\$ 3,813,736	\$ 0	\$3,813,736
Federal Bureau of Investigation Criminal History Checks	2,146,688	0	2,146,688
Payment of Claims from Trust ^a	904,299	0	904,299
Texas Online	310,747	15,641	326,388
Appraiser Federal Revenue Fees	<u>0</u>	<u>206,920</u>	<u>206,920</u>
Total Expenditures	\$7,175,470	\$222,561	\$7,398,031

Expenditures and Revenues the Commission Did Not Report in the SDSI Report for Fiscal Year 2013			
Category	Real Estate Commission	Appraiser Licensing and Certification Board	Totals
Transfers			
Occupation Fees Transferred to the State's General Revenue Fund	\$4,703,357	\$0	\$4,703,357
Fees Transferred to Texas A&M University	<u>4,251,540</u>	<u>0</u>	<u>4,251,540</u>
Total Transfers	\$8,954,897	\$0	\$8,954,897
Total Expenditures and Transfers	\$16,130,367	\$222,561	\$16,352,928
Revenues			
Occupation Fees	\$5,351,083	\$0	\$5,351,083
Fees Collected for Transfer to Texas A&M University	4,521,023	0	4,521,023
Appropriations Revenue	3,813,736	0	3,813,736
Federal Bureau of Investigation Criminal History Fees	1,888,149	0	1,888,149
Real Estate Recovery Trust Fund Recoveries ^a	455,635	0	455,635
Texas Online Fees	343,586	16,771	360,357
Interest Revenue	113,451	228	113,679
Real Estate Inspection Recovery Trust Fund Recoveries	27,820	0	27,820
Annual Registry Fees ^b	<u>0</u>	<u>218,466</u>	<u>218,466</u>
Total Revenues	\$16,514,483	\$235,465	\$16,749,948
^a The Payment of Claims from Trust account and the Real Estate Recovery Trust Fund Recoveries account are within the Commission's fiduciary funds and can be used only for purposes designated by the Texas Occupations Code. ^b The payment of annual registry fees is required by federal law.			

Sources: Expenditure and transfer data from the Uniform Statewide Accounting System and revenue data from the Commission's automated regulatory system (Versa).

Reserve Amounts

The Real Estate Commission (Commission) and the Appraiser Licensing and Certification Board (Board) have targeted reserve amounts equal to 3 to 4 months of operating expenses based on their business needs. Table 5 shows the reserve amounts for the Commission and the Board from the *Annual Financial Reports* for fiscal years 2009 through 2013. The reserves shown are equal to the differences between (1) total fund balances or net assets, as applicable, and (2) all other fund balance/net asset reservations or designations. Table 5 also shows the number of months of operating expenses the reserves would cover.

Table 5

Reserve Amounts in Annual Financial Reports and Number of Months of Operating Expenses Those Reserves Would Cover				
Fiscal Year	Real Estate Commission		Appraiser Licensing and Certification Board	
	Reserves (in thousands) ^a	Months of Operating Expenses ^b Reserves Would Cover	Reserves (in thousands) ^a	Months of Operating Expenses Reserves Would Cover
2009	\$74.8	0.1	\$6.4	0.1
2010	\$332.8	0.4	\$145.3	1.6
2011	\$811.7	0.9	\$133.6	1.6
2012	\$2,594.1	2.2	\$334.3	2.9
2013	\$4,862.0	3.3	\$287.9	2.4

^a The Commission's reported reserves for fiscal year 2013 did not include \$206,000 in capital assets and \$534,000 in compensable leave liabilities, which the Commission did not report in the primary exhibits of the *Annual Financial Reports*. The Board's reserves, which were reported in Exhibits VIII, Exhibit IX, and the supporting schedules of the Commission's *Annual Financial Report*, included capital assets and compensable leave liabilities.

^b Operating Expenses include Operating Transfers Out to other state agencies.

Source: The Commission's *Annual Financial Reports* for fiscal years 2009 through 2013.

In addition, the Commission and the Board both maintain the following:

- Real Estate Recovery Trust Account** - Texas Occupations Code, Chapter 1101, established the Real Estate Recovery Trust Account to reimburse persons suffering damages from individuals regulated by the Commission. The statute also required the Commission to manage the Real Estate Recovery Trust Account to ensure that it has a balance of between \$1 million and the greater of (1) \$3.5 million or (2) the total amount of claims paid from that account during the preceding four fiscal years. If the Real Estate Recovery Trust Account's balance exceeds the statutorily permitted maximum at the end of a calendar year, statute requires the Commission to transfer the excess amount to the State's General Revenue Fund.

- Real Estate Inspection Recovery Fund - Texas Occupations Code, Section 1102**, established the Real Estate Inspection Recovery Fund to reimburse persons suffering damages from individuals regulated by the Commission. The statute also required the Commission to manage the Real Estate Recovery Inspection Trust Account to ensure that it has a balance of between \$300,000 and \$600,000. If the Real Estate Inspection Recovery Fund's balance exceeds \$600,000 at the end of a calendar year, statute requires the Commission to transfer the excess amount to the State's General Revenue Fund.

Table 6 shows the reserves and claims for the Real Estate Recovery Trust Account and the Real Estate Inspection Recovery Fund in fiscal years 2009 through 2013. The table also shows statutorily required transfers from the Real Estate Inspection Recovery Fund to the State's General Revenue Fund during the same time period. The Commission did not transfer funds from the Real Estate Recovery Trust Account to the State's General Revenue Fund during that time.

Table 6

Reserves and Claims					
Fiscal Year	Real Estate Recovery Trust Account		Real Estate Inspection Recovery Fund		
	Reserves (in thousands)	Amount of Claims Settled (in thousands)	Reserves (in thousands)	Amount of Claims Settled (in thousands)	Transfers to the State's General Revenue Fund (in thousands)
2009	\$2,960.2	\$88.3	\$624.0	\$12.5	\$37.7
2010	\$3,042.6	\$536.6	\$630.8	\$16.2	\$32.3
2011	\$2,288.9	\$856.8	\$601.2	\$25.0	\$34.4
2012	\$2,189.0	\$527.3	\$604.9	\$12.5	\$7.3
2013	\$1,732.7	\$904.3	\$616.5	\$0.0	\$13.2

Sources: The Commission's *Annual Financial Reports* for fiscal years 2009 through 2013.

Penalty Schedule

In December 2007, the Commission adopted Title 22, Texas Administrative Code, Section 539.140. Those rules contain the current schedule of administrative penalties to which residential services are subject. The Commission's penalties in those rules are listed below, followed by excerpts from the Texas Administrative Code and the Texas Occupations Code sections that are referenced in those rules.

Title 22, Texas Administrative Code, Section 539.140

(a) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1303.355(c) of the Texas Occupations Code.

(b) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) 22 TAC §539.137(b);
- (2) §1303.202(a);
- (3) §1303.202(b);
- (4) §1303.052; and
- (5) §1303.352(a)(1).

(c) An administrative penalty range of \$500 - \$5,000 per violation per day may be assessed for the following violations of the Texas Occupations and Administrative Codes:

- (1) §1303.101;
- (2) §1303.151;
- (3) 22 TAC §539.81;
- (4) §1303.153;
- (5) §1303.352(a)(2);
- (6) §1303.352(a)(3); and
- (7) §1303.352(a)(6).

(d) The commission may assess an additional administrative penalty of up to two times that assessed under subsections (b) and (c) of this section if the residential service company has a history of previous violations.

The following are excerpts from the Texas Administrative Code and the Texas Occupations Code that are referenced in the Commission's rules above.

Title 22, Texas Administrative Code, Section 539.137

(b) Each residential service company shall file a Mid-Year Report no later than August 1 of each year for the preceding months of January through June.

Texas Occupations Code, Section 1303.202

(a) Not later than April 1 of each year, each residential service company shall file with the commission a report covering the preceding calendar year.

(b) The report must:

- (1) be on a form prescribed by the commission;
- (2) be verified by at least two of the residential service company's principal officers

Texas Occupations Code, Section, Section 1303.052

(a) A residential service company must pay to the commission a fee for filing an application for a license or an amendment to the application.

(b) A residential service company shall pay to the commission a fee for:

- (1) filing an annual report under Section 1303.202; and
- (2) any other filing required by this chapter.

(c) A residential service company shall pay to the commission a fee for the cost of an examination conducted under Section 1303.053.

Texas Occupations Code, Section 1303.352

(a) The commission may discipline a residential service company under Section 1303.351 if the continued operation of the company would be hazardous to its contract holders or if the company:

- (1) operates in conflict with its basic organizational document or in a manner that is contrary to that described in and reasonably inferred from information submitted under Section 1303.103, unless an amendment to the information has been filed with and approved by the commission;

Texas Occupations Code, Section 1303.101

(a) A person may not issue a residential service contract or perform or arrange to perform services under a residential service contract unless the person is licensed as a residential service company under this chapter or is the authorized representative of a person licensed as a residential service company under this chapter.

Texas Occupations Code, Section 1303.151

A residential service company shall maintain a funded reserve against its liability to provide repair and replacement services under its outstanding residential service contracts written in this state.

Title 22, Texas Administrative Code, Section 539.81

(a) Each residential service company licensed by the commission shall maintain funded reserves in the amount required by Subchapter D of the Act. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds, which are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, Subchapter D, calculated based on all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve.

Texas Occupations Code, Section 1303.153

(a) As a guarantee that a residential service company will meet its obligations to its contract holders, the company shall maintain with the commission a bond or other security accepted by the commission.

Texas Occupations Code, Sections 1303.352(a)(2)(3), and (6)

(a) The commission may discipline a residential service company under Section 1303.351 if the continued operation of the company would be hazardous to its contract holders or if the company:

(2) issues evidence of coverage that does not comply with Sections 1303.251 and 1303.252

(3) uses a schedule of charges that does not comply with Section 1303.253

(6) advertised or marketed the company's services in a false, misrepresentative, misleading, deceptive, or unfair manner

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