A Report
to the
Montana
Legislature

Performance Audit

Licensing Real Estate Professionals

Board of Realty Regulation
Department of Labor and Industry

January 2016

Legislative Audit
Division

15P-01

Legislative Audit Committee

Representatives

Randy Brodehl, Chair
Randybrodehl57@gmail.com

Tom Burnett
Burnett.tom@gmail.com

Virginia Court
virginacourt@yahoo.com

Denise Hayman
Rep.Denise.Hayman@mt.gov

Kenneth Holmlund
rep.ken.holmlund@mt.gov

Mitch Tropila
tropila@mt.net

Senators

Dee Brown
senatordee@yahoo.com

Taylor Brown
taylor@northernbroadcasting.com

Mary McNally, Vice Chair
McNally4MTLeg@gmail.com

J.P. Pomnichowski
pomnicho@montanadsl.net

Bruce Tutvedt
tutvedt@montanasky.us

Gene Vuckovich
Sen.Gene.Vuckovich@mt.gov

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Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy.

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. Members of the performance audit staff hold degrees in disciplines appropriate to the audit process.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

Audit Staff

Orry Hatcher
Angus Maciver
Nick Hill

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LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor
Deborah F. Butler, Legal Counsel

Deputy Legislative Auditors:
Cindy Jorgenson
Angus Maciver

January 2016

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of the licensing of real estate professionals. This report includes recommendations to improve operations of the Board of Realty Regulation and the Department of Labor and Industry. Recommendations include creating more effective criteria for the approval and denial of applications, increasing oversight of pre-licensure education and testing, reviewing the board's fee schedule, increasing the visibility of the Real Estate Recovery Account, developing stronger data integrity controls, and developing a work plan to use as a guide when making decisions. A written response from both the Board of Realty Regulation and the Department of Labor and Industry are included at the end of the report.

We wish to express our appreciation to the board members and the department officials and staff for their cooperation and assistance throughout the audit.

Respectfully submitted,

Tori Hunthausen, CPA
Legislative Auditor

Room 160 • State Capitol Building • PO Box 201705 • Helena, MT • 59620-1705
Phone (406) 444-3122 • FAX (406) 444-9784 • E-Mail lad@mt.gov

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The Board of Realty Regulation
Department of Labor and Industry A-1

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Appointed and Administrative Officials

Department of Labor and Industry	Pam Bucy, Commissioner
	Todd Younkin, Administrator, Business Standards Division
	Traci Collett, Acting Chief, Licensing Bureau
	Maggie Connor, Chief, Board Management Bureau
	Vacant, Executive Officer, Board of Realty Regulation
Board of Realty Regulation	Carlie Boland (Public member, 05/2017)
	Patrick Goodover, Chair (Industry member, 05/2016)
	Cynthia Lanier (Industry member, 05/2019)
	Eric Ossorio (Industry member, 05/2015)
	Josh Peck (Public member, 05/2019)
	Ric Smith (Industry member, 05/2018)
	Daniel Wagner (Industry member, 05/2019)

Montana Legislative Audit Division

Performance Audit
Licensing Real Estate Professionals
Board of Realty Regulation
Department of Labor and Industry

January 2016 15P-01 Report Summary

Montana's 5,000 real estate professionals have been affected by recent changes in how the Department of Labor and Industry and the Board of Realty Regulation operate. Both the department and the board need to make improvements to address problems with license applications, continuing education requirements, fees and funding, data accuracy, and decision-making.

Context

Montana regulates the practice of various professions and occupations through licensing boards. All boards are administratively attached to the Department of Labor and Industry (DLI).

The Board of Realty Regulation (BRR) is responsible for regulating the state's real estate sales and rental industry and licensing real estate professionals doing business in real estate within the state of Montana. Licensees consist of nearly 5,000 active salespersons, brokers, property managers, and timeshare salespersons. The BRR is administratively attached to DLI, which provides all the administrative, legal, and clerical services needed by the BRR, including corresponding with applicants and licensees; receiving and processing routine applications for licenses; issuing and renewing routine licenses; disciplining licensees; setting administrative fees; preparing agendas and meeting notices; conducting mailings; taking minutes of board meetings and hearings; and filing.

There are currently 33 professional and occupational boards and two programs administratively attached to DLI. DLI has undergone a number of changes since 2012, which has had an impact on the professional and occupational licensing boards. Specifically, the Business Standards Division (BSD) underwent a major reorganization in the summer of 2012. This shift removed staff from individual boards and implemented a "pool" system, in which groups of employees were placed within BSD's bureaus to perform similar functions for many boards. Effectively, staff was refocused from having a large amount of knowledge related to a single board to focusing on certain tasks for a larger number of boards. This change, along with a new board licensing database within the BSD in 2012, led to a number of changes that have had an effect on DLI staff and the BRR.

Results

Audit work found several concerns involving pre-licensure and continuing education, a lack of policies and procedures, unused and outdated forms and applications, licensee/supervisor relationships, BRR-related fees, and the Real Estate Recovery Account, all of which has led to a number of factors affecting the BRR in recent years. Audit recommendations to the BRR include:

- Review and modify the state real estate exam.
- Better define the nonroutine application policy.

(continued on back)

- Establish and follow waiver application criteria.
- Review the potential for reciprocity agreements.
- Eliminate or edit unused forms and applications.
- Establish salesperson limits for supervising brokers.
- Review the criteria for annual continuing education audits.
- Review BRR-related fees.
- Review and update BRR rules and laws.
- Increase the visibility of the Real Estate Recovery Account.
- Review BRR's website for accuracy and content.
- Create and implement a biennial work plan.

Audit work also found DLI needs to strengthen its board licensing database, comply with BRR-related laws and rules, and notify and report DLI goals and results to the BRR. Audit recommendations to DLI include:

- Comply with all BRR-related laws and rules.
- Establish more data entry controls within the board licensing database.
- Implement stronger internal controls in regard to licensee relationships within the board licensing database.
- Sync board licensing database records and eBiz profiles.
- Identify performance standards for administrative processes and regularly report results at BRR meetings.
- Establish priorities for the BRR executive officer to ensure the board is provided with consistent and updated information.

Recommendation Concurrence	
Concur	6
Partially Concur	1
Do Not Concur	0

Source: Agency audit response included in final report.

For a complete copy of the report (15P-01) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to **lad@mt.gov**; or check the web site at **http://leg.mt.gov/audit**
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Call toll-free 1-800-222-4446, or e-mail **ladhotline@mt.gov**.

Chapter I – Introduction and Background

Introduction

The Board of Realty Regulation (BRR) is responsible for regulating the state's real estate sales and rental industry and licensing real estate professionals doing business within the state of Montana. Licensees consist of nearly 5,000 active salespersons, brokers, property managers, and timeshare salespersons. The BRR is administratively attached to the Department of Labor and Industry (DLI). DLI provides all the administrative, legal, and clerical services needed by boards including corresponding with applicants and licensees; receiving and processing routine applications for licenses; issuing and renewing routine licenses; disciplining licensees; setting administrative fees; preparing agendas and meeting notices; conducting mailings; taking minutes of board meetings and hearings; and filing. There are currently 33 professional and occupational boards and two programs administratively attached to DLI. This chapter discusses the background of the BRR and DLI and the scope, objectives, and methodologies of the audit.

Background

Montana regulates the practice of various professions and occupations through licensing boards. The membership of licensing boards consists of members of the profession or occupation and members of the public appointed by the governor. The primary purpose of professional licensing is to ensure public health, safety, and welfare are protected from unskilled, incompetent, or unethical practitioners. To achieve this goal, licensing boards are responsible for ensuring qualified individuals enter the profession and adhere to established standards of professional conduct.

Department Duties

Pursuant to §2-15-121, MCA, the department shall: direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the board; collect all revenues for the board; provide staff for the board; and print and disseminate any required notices, rules, or orders adopted, amended, or repealed by the board.

Occupational and Professional Board Duties

Section 2-15-121, MCA, requires a board to exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of DLI and without approval or control of the DLI; submit its budgetary requests through DLI; and submit reports required of it by law or by the Governor through DLI. Section 37-1-131, MCA, requires boards to set and enforce standards and adopt and enforce rules governing the

licensing, certification, registration, and conduct of licensees; adjudicate disciplinary cases heard by a hearings examiner; and pay DLI for the board's pro rata share of costs equitably assessed to boards.

Department of Labor and Industry

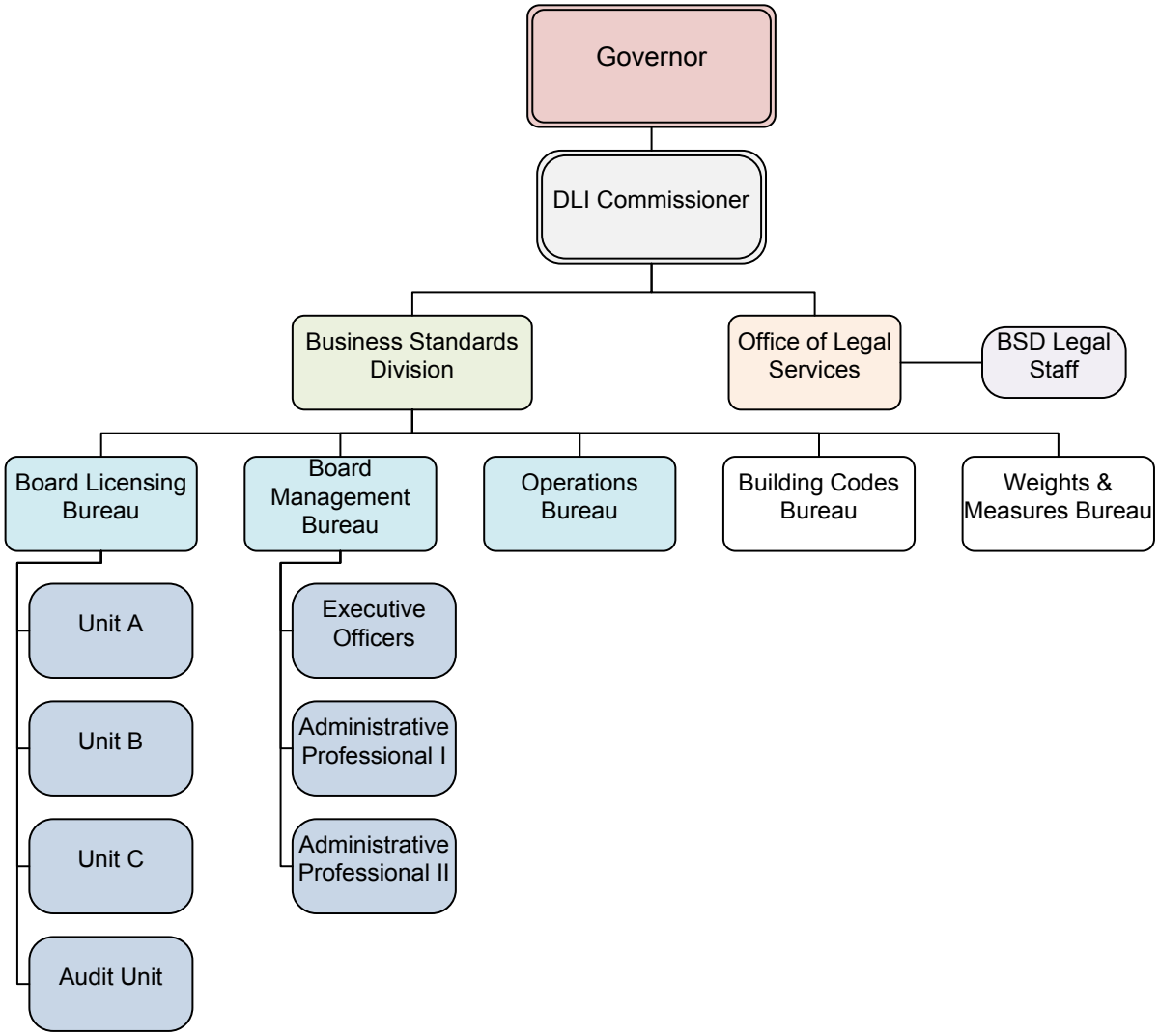
DLI has undergone a number of changes since 2012, which has had an impact on the professional and occupational licensing boards. Specifically, the Business Standards Division (BSD) underwent a major reorganization in the summer of 2012. Prior to August 2012, the BSD had two bureaus that oversaw licensing boards:

- The Business and Occupational Licensing Bureau was charged with licensing and regulating persons and businesses engaged in non-health care professions and occupations.
- The Health Care Licensing Bureau was charged with licensing and regulating persons and businesses engaged in specific health care professions and occupations.

Under this structure, the boards had their own, dedicated staff. Although employed by DLI, board staff worked exclusively for the individual boards. In an effort to standardize operations, these two bureaus were eliminated and replaced with the Licensing Bureau and the Board Management Bureau.

This shift also removed staff from individual boards and established a "pool" system, in which groups of employees were placed within the new bureaus to perform similar functions for many boards. Effectively, staff was refocused from having a large amount knowledge in a single board to focusing on certain tasks for a larger number of boards. Figure 1 (see page 3) shows the BSD's current structure.

Figure 1
DLI's Business Standards Division Organizational Chart



Source: Compiled by Legislative Audit Division from Department of Labor and Industry records.

As shown, the BSD is organized into five bureaus, three of which work directly with administering and licensing board activities. The Licensing Bureau provides all licensing and renewal functions for the boards and programs. In addition, the Licensing Bureau has an Audit Unit that conducts random audits related to board and program requirements, such as continuing education, maintenance of annual certifications of licensees, and internal compliance audits of division policies and procedures. The Board Management Bureau provides professional and administrative support to all boards and programs by preparing agendas, facilitating meetings of the boards and providing information to the public, and other administrative and financial responsibilities. The

Operations Bureau provides technical and administrative support to all boards and programs regarding misconduct and practice complaints and investigations, fiscal responsibilities, information technology, and legal unit liaison and reception duties.

Board of Realty Regulation

One of the main goals of a professional and occupational licensing board member is to serve the public interest, which means looking at the issues before the board from the point of view of their impact on the consumers of the service, rather than from the point of view of the profession subject to licensure.

Board Members and Terms

The BRR consists of seven members; five are licensed salespersons, brokers, and/or property managers and two are members of the public. All members are appointed by the governor and serve staggered terms of four years. A member may not serve more than two terms or any portion of two terms. The BRR utilizes several sub-committees and panels that deal with licensee disciplinary issues and continuing education.

Fees and Funding

Like all boards, the BRR sets fees for applications, renewals, and other forms used by licensees. The BRR does not receive general fund appropriations. Fees are used to pay for a variety of services and overhead, such as information technology, rent, DLI staff, board meetings, etc. All fees assessed to licensees are deposited directly into the BRR's state special revenue account. DLI then bills the BRR for the time its staff works on BRR-related tasks.

Executive Officer

As previously discussed, boards and programs administratively attached to DLI no longer have dedicated staff. However, each board does have an executive officer (EO). In some cases, the EO may work for multiple boards or in different capacities. According to the position description, the EO is responsible for planning, administering, and overseeing all board operations to provide effective executive guidance, ensure compliance with applicable statutes and Administrative Rules, and to assist the board in formulating public policy. They also research, analyze, and make recommendations to the board for matters under its purview. The EO is also responsible for researching and assisting in drafting and implementation of proposed legislation and/or Administrative Rules.

Recent Changes Within the Business Standards Division and the Board of Realty Regulation

As previously discussed, there are a number of events that occurred in the past four years that may have led to many of the issues found during audit work. These events include:

- In January 2012 DLI implemented a new licensing database for all professional and occupational licensing boards.
- In August 2012 DLI reorganized the bureaus within the Business Standards Division–employees' roles switched from working directly for dedicated boards to working on tasks for multiple boards within a "pool" system.
- Between May 2013 and September 2014 the BRR's Education sub-committee oversaw all continuing education application approval/denial duties.
- Between January 2014 and September 2015, the BRR executive officer position has been held by three different people.
- Term limits and members not being re-appointed recently changed the composition of the board. Presently, only one board member has been on the BRR for more than two years.

Collectively, these events left the BRR and the DLI struggling to make decisions effectively, maintain consistency in operations, and stay up-to-date on regulatory developments affecting the real estate industry. DLI's decision to pursue a major administrative reorganization, while simultaneously attempting to implement a significant information system replacement, had short-term impacts on the BRR and its licensees. BRR has exacerbated this situation through a decision-making process that often appears haphazard and lacking in consistency. This audit will discuss changes needed to ensure their administrative processes and regulatory decision-making are more responsive to the needs of licensees and, by extension, the general public.

Audit Objectives

Based on audit assessment work, audit staff developed four audit objectives:

1. Determine if Department of Labor and Industry and Board of Realty Regulation procedures result in efficient processing and impartial review of new license applications, license renewals, and license revisions.
2. Review the Board of Realty Regulation's continuing education requirements and processes in which instructors and courses are approved or denied.
3. Analyze Board of Realty Regulation license and Real Estate Recovery Account fees and related expenditures.
4. Review management information controls and integrity of data in the information systems used by the Board of Realty Regulation.

Audit Scope

Audit assessment work and interviews with DLI staff, the BRR chair, and members of professional real estate associations (at both state and local levels) led audit work to focus on a number of areas: the approval processes for license applicants and CE; the various fees associated with the BRR; data integrity; and the general regulatory practices of the BRR. The BRR licenses salespersons, broker, property managers, and timeshare salespersons. However, the scope of this audit focused primarily on salespersons and brokers, as these two license types encompass nearly 90 percent of all licenses issued by BRR. Audit work also included examination of the various fees required by the BRR to receive and maintain licensure. This included thorough review of a unique account referred to as the Real Estate Recovery Account.

Analysis was also done on all licensee data relating to the BRR found within DLI's licensing database. The time frame analyzed involved license year 2010-11 through March 2015 (the BRR license year runs from November 1 through October 31). However, audit work was extended in certain areas. For example, we looked into BRR finances back to fiscal year 2002, and the Real Estate Recovery Account back to 1988.

Audit Methodologies

To address the audit objectives, audit staff conducted the following audit work:

- Reviewed state laws and Administrative Rules related to DLI and BRR.
- Reviewed DLI policies and Standard Operating Procedure documents.
- Reviewed BRR motions and policies from other boards within DLI.
- Reviewed BRR board meeting "board books," agendas, and minutes during the time outlined in the scope of our audit.
- Interviewed multiple DLI staff inside and outside the Business Standards Division, all seven BRR board members, and representatives from the professional associations.
- Sent a survey to nearly 4,000 active BRR salespersons and brokers, with a response rate of 697.
- Reviewed and analyzed the entire licensing database for calendar year 2012 through March 27, 2015. This covered salesperson and broker applications; the relationships between supervising brokers and salespersons; waiver, predetermination, and equivalency applicants; and CE course and instructor applicants.
- Researched other regional states to compare some of the practices within the real estate boards/commissions to the BRR.
- Researched other boards within DLI (Board of Architects, Board of Medical Examiners, Board of Nursing, Board of Public Accountants, and the Board

of Realty Appraisers) to compare some of the practices to the BRR, such as fees, Administrative Rules, laws, motions and policies, and CE.

- Reviewed and compared fees in other DLI boards to BRR.
- Reviewed documentation and SABHRS data for the BRR's Real Estate Recovery Account and BRR's state special revenue account.

Report Contents

The remainder of this report contains chapters providing information regarding BRR and DLI and our audit findings, conclusions, and recommendations.

- Chapter II further details the licensing and renewing of real estate professionals, including pre-licensure education, application approval and denial processes; and the use and necessity of BRR forms and applications.
- Chapter III discusses the salesperson/supervising broker relationship.
- Chapter IV addresses the BRR's continuing education requirements, including the CE application process, BRR-sponsored courses, and annual audits.
- Chapter V discusses the fees associated with BRR and the Real Estate Recovery Account.
- Chapter VI addresses needed improvements in data controls within DLI's management information systems and BRR's website.
- Chapter VII summarizes the findings from the previous chapters and makes recommendations regarding the establishment of a formal work plan for the BRR.

Chapter II – Licensing and Renewals

Introduction

In order to work within the real estate industry in Montana, a person must be licensed by the Board of Realty Regulation (BRR) as a salesperson, broker, property manager, or timeshare salesperson. Initial requirements include taking pre-licensure education, successfully passing a state and national real estate exam, and submitting an application. If approved, a licensee can then work for the remainder of the license year before having to renew their license by taking the required minimum number of continuing education (CE) hours and submitting a license renewal form. The BRR license year runs from November 1 through October 31.

This chapter will explain this process in more detail and evaluate whether Department of Labor and Industry (DLI) and the BRR procedures result in the efficient processing and impartial review of new license applications, license renewals, and license modifications.

Background

The BRR licenses four types of licensees under §37-51-102 and §37-53-102, MCA:

- **Salesperson:** A person who, for a salary, commission, or compensation of any kind, is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.
- **Broker:** A person who, for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents.
- **Property Manager:** A person, who for a salary, commission, or compensation of any kind, engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property.
- **Timeshare Salesperson:** A person, who for a salary, commission, or compensation of any kind, is associated with a timeshare development to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

Table 1 shows the total number of active licensees within the BRR as of March 27, 2015.

Table 1
Total Active BRR Licensees*

Licensee Type	Number of Licenses	Percentage
Salesperson	2,377	48%
Broker	2,065	42%
Property Manager	520	10%
Timeshare Salesperson	2	0%
Total	**4,964**	**100%**

Source: Compiled by the Legislative Audit Division from Department of Labor and Industry records.

*As of March 27, 2015.

Overall, there are approximately 5,000 active licensees, with salespersons making up nearly 50 percent of all BRR licensees; followed by brokers at approximately 42 percent. As shown, there are currently only two active timeshare salespersons; however, the BRR has an established license and set of Administrative Rules for this license type.

Pre-Licensure Education and Continuing Education

To become licensed with the BRR the applicant must abide by education requirements in statute and Administrative Rules. Requirements include completing a 60-hour pre-licensure course prior to applying to become a salesperson and an additional 60-hour course prior to becoming a broker. In addition, applicants have to take both a state and a national real estate exam after the pre-licensure coursework.

Section 37-51-302, MCA, and ARM 24.210.602 outline the initial requirements an applicant must obtain before applying to become a licensed salesperson or broker, which are listed below.

Salesperson

- Must be at least 18 years of age
- Completion of 10th grade education
- Must have completed 60 hours of pre-licensing instruction
- Must pass a board-approved examination

Broker

- Must be at least 18 years of age
- Graduation from high school or equivalent
- Must have completed 60 hours of pre-licensing instruction
- Must pass a board-approved examination
- Must have two years of experience as a licensed salesperson

Pre-Licensure Education May Not Be Conforming to the Current Real Estate Industry in Montana

Audit work identified concerns regarding the effectiveness of both the pre-licensure course and the state exam required to become a salesperson and a broker. A survey of active licensees that took a pre-licensure course within the past five years found 29.2 percent of respondents thought the education did not prepare them to practice real estate in Montana. Some of the recurring comments included: the course being taught in such a way to simply pass the state exam, course material dealt with real estate outside of Montana, and not covering the day-to-day basics of being a salesperson.

Interviews with representatives from a real estate pre-licensing and continuing education school in Montana indicated the state exam does not match the laws and Administrative Rules of Montana, and as a result, the 60-hour pre-licensure course does not apply applicable laws and rules. Other comments indicated the exam question topics are obscure or irrelevant to contemporary practices of a BRR licensee.

State Exam Needs To Be Reviewed on a Consistent Basis

Under ARM 24.210.602(4), "…Candidates for licensure must take a board-approved examination and make a passing score as determined by a psychometrically sound, criterion-related method associated with assessment of minimal competence." This rule indicates BRR members must review and approve the state exam. The state exam is outsourced to a third party that issues and scores the exam. Interviews with BRR members found only one of seven have reviewed the exam, with the remaining six stating they did not know when it was last revised. DLI staff stated the exam was last reviewed with a member of the BRR in 2011. In 2015 two DLI legal representatives also reviewed the state exam. The exam was also periodically reviewed solely by a DLI employee that was not licensed with the BRR, and thus not a real estate professional.

Audit work solicited input from active salespersons who took the state exam within the last five years. Table 2 (see page 12) shows the responses to two statements involving the state salesperson exam.

Table 2
State Salesperson Exam Responses*

Answer Options	"The Required State Exam Effectively Covered Areas of Real Estate You Practice in on a Daily Basis."	"The Questions on the Required Montana State Exam Were Relevant to the Present Day Real Estate Industry in Montana."
Strongly Disagree	6%	4%
Disagree	21%	17%
Neither Agree nor Disagree	30%	35%
Agree	39%	40%
Strongly Agree	4%	4%

Source: Compiled by Legislative Audit Division from licensee survey results.

*Respondents took the exam within the past five years.

As shown, less than 50 percent of respondents agreed to both of the statements with the remaining respondents either having no opinion or disagreeing. Many comments from the respondents involved the exam being outdated, not relevant, and not practical. There were also comments suggesting the state exam appeared to be written by people who were not licensed with the BRR, which resulted in questions not pertaining to Montana real estate and the day-to-day activities of a real estate licensee.

BRR could improve the applicability, relevance, and value of the state licensure exam by conducting a thorough review of existing content. This would ensure law and rule references are current, and would also provide an opportunity to update exam content to reflect contemporary practice in the real estate industry. Implementing a cyclical review process would ensure the exam and the associated educational content remain relevant and properly prepare licensees for professional practice.

Recommendation #1

We recommend the Board of Realty Regulation review the state real estate exam to ensure it is relevant and aligns with state laws and Administrative Rules.

Application Process

The time it takes to process an application from the day it is received to the day it is approved or denied is a good indication of the efficiency and effectiveness of a program. Staff within the BSD's Licensing Bureau is responsible for the licensing of board applicants. The bureau is separated into four units that process licenses and CE applications, which are detailed below:

- **Unit A:** Unit A staff creates and inputs all licensee demographic information into applicant profiles. They also process all license renewals and make miscellaneous changes to licensee profiles based on individualized board forms (i.e. changing a business address).
- **Unit B:** Unit B staff process applications of moderate complexity (including BRR applications). This includes uploading education information, transcripts, disciplinary information (if applicable), and other information required for all 30+ board applications into the applicant profiles in DLI's licensing database.
- **Unit C:** Unit C staff conduct the same tasks as Unit B staff; however, they are responsible for boards with greater license complexities, such as the Board of Medical Examiners, the Board of Pharmacy, and the Board of Behavioral Health.
- **Audit Unit:** Audit Unit staff process all CE course and instructor applications and conducts all the CE audits.

Based on information found within the DLI's licensing database, Table 3 outlines the eventual status of all applications submitted to the BRR between January 2012 and March 27, 2015.

Table 3
Status of All BRR Applications
January 1, 2012 through March 27, 2015

Record Status	Number of Applications	Percentage of Applications
License Issued	1,527	95.7%
Approved	3	0.2%
Issued With Probation	11	0.7%
Denied	8	0.5%
Disciplinary Denial	3	0.2%
Additional Info Required	20	1.3%
Pending	6	0.4%
Timed Out	6	0.4%
Void	11	0.7%
Total	**1,595**	**100%**

Source: Compiled by Legislative Audit Division from Department of Labor and Industry records.

As shown, nearly 96 percent of all applications were approved by either DLI staff or BRR members. This process is explained in the following sections.

Routine versus Nonroutine Applications

When applications are processed by DLI staff, an application is first determined to be routine or nonroutine. In regards to BRR, the license application contains ten disciplinary questions involving such topics as chemical dependency, complaints against the applicant (if currently or formerly

licensed), civil legal proceedings, mental health disorders, and court-martials. If the applicant answers "yes" to any of these questions, the applicant would need to send in documentation explaining the situation. DLI staff, using criteria such as the application policy, and BRR Administrative Rules, polices or motions, then determine whether the application is routine or nonroutine. If nonroutine, the application is forwarded to the BRR members for review during an upcoming board meeting.

Length of Time to Process Applications

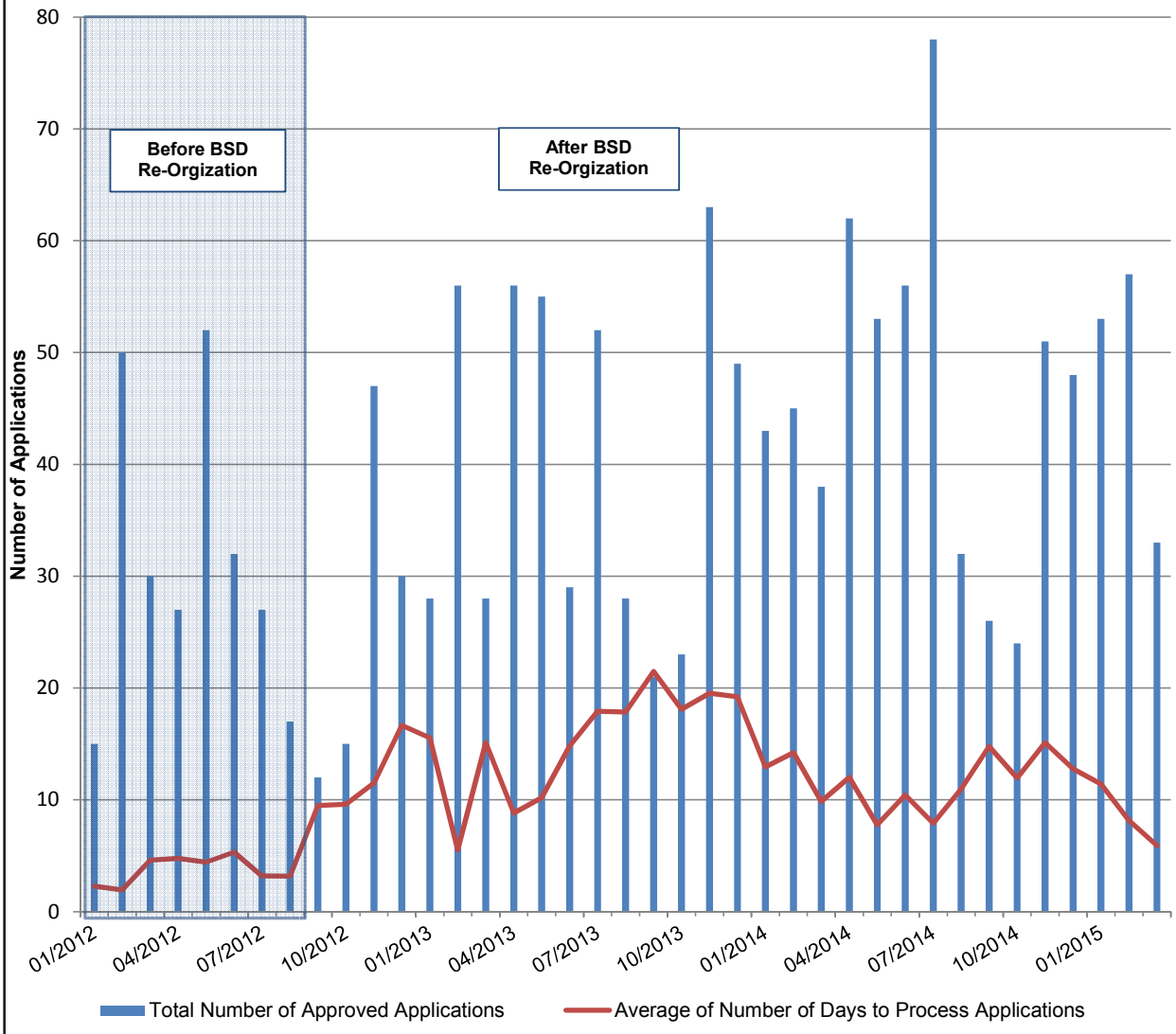
A major component of the license application process is the amount of time it takes to actually process the application. Many factors can contribute to the time needed to process an application, including from the internal controls (i.e. where the application is routed, to whom, how it is entered into DLI's licensing database, etc.); the application statute; Administrative Rules and policies that give guidance to DLI staff; and how often the boards meet to go over nonroutine applications.

Prior to the BSD reorganization in 2012, the boards had its own dedicated DLI staff. The BRR had five staff, including an executive officer, program manager, auditor, investigator, and education director. This staff did all the work for the BRR, including answering phones, processing licensing and CE applications, conducting CE audits, etc. When the staff were removed from individual boards and placed into pools, they were assigned to work on tasks for multiple boards. This led to complaints about questions not being answered accurately, documentation being lost, and applications taking longer to process.

Data analysis determined the average number of days it took for DLI staff to approve all the salesperson, broker, and property managers' applications increased after the BSD reorganization in August 2012. However, this trend is decreasing. In the chart below, the red line shows the average number of days to approve a BRR application since January 2010. It shows the number of days increasing after the reorganization in August 2012 until about September 2013. The reasons for the increase after the reorganization may be the result of many DLI employees being moved into different positions and learning new tasks and information about 30-plus boards. By the fall of 2013 the application processing times decreased. The reason may be the staff started to better understand their new roles. Although processing times have not yet reached pre-BSD reorganizations levels (the March 2015 average was 5.9 days to approve a BRR license), the trend is declining.

Figure 2

Average Number of Days to Process an Approved BRR License



Source: Compiled by the Legislative Audit Division from Department of Labor and Industry records.

This trend is further emphasized through a survey of all active salespersons and brokers. Seventy-four percent of the respondents stated their applications were processed in a timely manner, with only 5.8 percent affirming they did not think they were processed in a timely manner. It is important to note that although the application processing times certainly increased after the reorganization of the BSD, the licensees themselves did not notice much of a difference in processing times.

Conclusion

License application processing times increased after the reorganization of the Business Standards Division in August 2012; however, processing times have gradually decreased in line with DLI's expectations of the positive effects of its reorganization effort.

Nonroutine Applications

All applications will eventually be considered routine or nonroutine by department staff. As previously discussed, nonroutine applications are those in which the applicant indicated there was a disciplinary action on their application. If nonroutine, staff will schedule a time for the application to be reviewed by BRR members at a future board meeting, at which point a vote will take place to approve or deny the applicant. The time it takes to process a nonroutine application is dramatically higher than routine applications, mostly due to the fact the application has to be reviewed by the BRR members at their full board meeting. Until recently, the BRR met about every six weeks. However, the BRR is currently in the process of evaluating this practice and may be extending the period between meetings. This would likely increase the time it takes to approve or deny a nonroutine application. An analysis of the licensing data found on average it took nearly 55 days to approve a nonroutine application reviewed by the BRR since January 2012. This means a potential licensee has to wait nearly eight weeks for their license to be approved.

BRR Uses Motions in Place of Formal Policies

To effectively set objectives and achieve goals, an organization, whether it be a business, a nonprofit, a board, etc., should have policies and procedure in place for guidance. A policy is a deliberate system of principles to guide decisions and achieve rational outcomes. It is a statement of intent, and is implemented as a procedure or protocol. Policies are generally adopted by the board. The BRR does not have formal policies and procedures established. Instead, it uses two motions in the place of policies. A motion is a formal proposal by a member of a board that the board take certain action. These can bring new business before the board or consist of other proposals relating either to a pending motion or the body itself.

Categorizing Criminal History for Nonroutine Applicants

Presently, staff uses BRR Administrative Rules and the following motion, which was created by the BRR in January 2013, to determine if the application is nonroutine:

> *"…non-DUI motor vehicle offenses older than 5-years do not need to come before the Board. The motion was amended to: an application which reveals any offense within the past 10-years must come before the Board for review except motor vehicle offenses other than DUI. Motor vehicle offenses not involving DUI older than 5-years do not need to come to the Board. Motion carried."*

The above motion, which has been found in board books as a lead-in for discussion, is restricted only to motor vehicle offenses and specific only to DUI convictions. The motion does not address any other criminal convictions in any level of detail, which potentially leads to some applications going to the board as nonroutine that could probably be approved by DLI staff, allowing applicants to get licensed sooner. Audit work found instances in which applications that should have been considered nonroutine were filed as routine and, as a result, were not reviewed by the BRR. This includes multiple applicants who had vehicle offenses less than five years old being considered routine applications. Interviews found that DLI staff that work closely with the BRR had different interpretations of the motion. In addition, interviews with the seven BRR members also found conflicting interpretation of this motion.

Currently, other boards administratively attached to DLI have clear and thorough nonroutine policies in place. For example, the Montana Board of Pharmacy and the Montana Board of Private Security define the types and number of misdemeanor crimes that would warrant a review, clearly explain time frames in which disciplinary issues are no longer a concern, and define unprofessional conduct that would deem an application to be nonroutine.

BRR Board Meeting Attendance for Nonroutine Applicants

When an application is deemed nonroutine, the applicant is sent a letter stating, "While the Board does not require your attendance at the upcoming meeting, you may join the meeting by phone or in person so the board can discuss your application with you. Be advised that the board may decline to make a decision on your application until such a discussion takes place, thus delaying a final decision on your application." DLI staff voiced concerns about preferential treatment for nonroutine applicants that attend the BRR board meetings in person versus those that attend via teleconference and those that do neither. Interviews with BRR members found several stated a nonroutine applicant will have a better chance of being approved if they appear in front of the board in person because they think they can better gauge the applicant in person.

This practice may provide an unfair advantage to those that live near Helena or have the ability to take time off of work to attend a board meeting. While the BRR members are likely better able to judge an applicant's credentials or sincerity through

direct responses to questions, this can be accomplished as easily over the phone as it can be in person. By clarifying its position on board meeting attendance, the board could make it easier for applicants to make decisions about continuing the process and could ensure equity during its consideration of nonroutine applications.

Discipline for Existing BRR Licensees

When a potential BRR applicant lists disciplinary issues on the application, they will likely find their application being classified as nonroutine and reviewed by the BRR. However, it is unclear exactly what happens to an existing BRR licensee who obtains a disciplinary issue since their last license renewal. If an existing licensee has a disciplinary issue, they can notify the BRR right away, or they could notify the BRR via the renewal application process (this has occurred 338 times between January 1, 2010, and October 5, 2015). If the BRR has not yet seen the case, a BRR-generated complaint is processed so the board can look at the matter and determine what action is necessary. However, if the matter has already been before the BRR the information is uploaded to the renewal record and subsequently the license record. If it is later found out the applicant omitted the information on the renewal form, a complaint will be generated and the licensee will likely have to go through the complaint process. Currently, there is no policy in place for the BRR to follow when these issues arise. Possible options could include license termination or suspension, a fine, or loss of a supervisory endorsement. A BRR member noted this is an area that needs to be addressed, so can the board treat applicants and licensees equally.

Recommendation #2

We recommend the Board of Realty Regulation:

A. *Clearly define, in policy, criteria for treating an application as nonroutine, including classification of criminal convictions.*

B. *Clarify its position of nonroutine applicants appearing at board meetings in person versus over the phone.*

C. *Clearly define, in policy, how to renew applicants who received legal or disciplinary actions since their last renewal.*

Other Applications

The BRR offers three additional applications as part of the license application process for those having circumstances outside of the regular license application requirements: the waiver application, the equivalency application, and the predetermination application. The following sections will describe the purpose and use of each application.

The BRR Utilizes a Waiver Application

A waiver application may be submitted to determine if a salesperson or broker applicant with a real estate license in another state can have certain licensing requirements waived if they apply for a Montana license. When using a waiver, the licensing standards in the other state must be substantially equivalent to Montana's standards. If completed, the BRR may waive all or part of the required pre-licensing education, the state examination, and/or the Rookie course (the Rookie course will be discussed in greater detail in Chapter IV). After the BRR determines which Montana requirements are waived, the applicant is then required to complete a salesperson or broker application in order to receive a Montana license. According to DLI staff, the BRR is the only professional and occupational licensing board in Montana to have such an application in use.

Waiver Motion Not Being Used Consistently

The BRR adopted a motion in March 2009 to set guidelines for the waiver application. The motion outlines which requirements can be waived based on the existing experience of the potential applicant. However, audit work found the BRR is not consistently applying the motion. Examples include making waiver applicants unnecessarily take the state exam and the Rookie course. For example, a couple from out of state both applied for a license in the same month. One applicant, who was a licensed salesperson in the other state since 2010 and had one real estate transaction in the prior three years, was allowed to forgo the national exam. The spouse, who was a licensed broker in the other state since 1994 and had 30 transactions in the prior three years, did not have the national exam waived. In addition, both applicants were required to take the Rookie course, when only the salesperson should have had to.

A review of the waiver application led to some questions. For example, the waiver application contains the same disciplinary questions that are on broker and salesperson applications, which leads to redundancy. Opinions of the waiver among BRR members differed. All stated they did not know that disciplinary questions are on the application, and most stated they should be removed. There was also confusion among the members on whether or not the waiver application becomes the official license application upon approval; some stated the waiver application does become the official application, while others stated applicants would still need to fill out a salesperson or broker application to get their license. The wavier application states a broker or salesperson application is required to become licensed.

The BRR Does Not Have Reciprocity Agreements in Place with States

A license reciprocity agreement is between states that allow an existing licensee in one state to receive a license from another state as long as the licensee has a license in good standing. In most cases the licensing board may also require the licensee to take its state exam. The BRR does not have reciprocity agreements with other states; instead it uses its waiver application. A reciprocity agreement differs from the waiver application, as the waiver application only waives certain licensing requirements when an applicant applies, while a reciprocity agreement will allow the applicant a license in full standing as long as the other state's real estate standards are substantially equivalent to or greater than the BRR's. Below is a table outlining the reciprocity agreements in place within our five sampled states.

Table 4
Current Reciprocity Agreements in Place in Sampled States

Montana	South Dakota	North Dakota	Wyoming	Idaho	Utah
Alberta, Canada	No reciprocity agreement. Education can be waived and applicant would be required to take state exam.	Georgia, Iowa, and Minnesota	No reciprocity agreement. Complete Wyoming portion of Salesman I and all of Salesman II and pass the state exam.	None	Georgia, Mississippi, and Alberta, Canada

Source: Official state real estate websites.

As shown, the five states' real estate commissions varied in reciprocity agreements, with two having full agreements in place with other states, and three having no such agreements. The BRR used to have reciprocity agreements in place with 12 states up until 2009, but currently has an agreement only with Alberta, Canada. DLI staff stated the main reason reciprocity agreements were eliminated was because of changes to §37-1-304, MCA, in the mid-1990s.

According DLI staff, the BRR thought these statutory changes–specifically, the ability to issue a license without examination to a person licensed in another state if the board determines the other state's license standards are substantially equivalent to or greater than Montana standards-negated the need for reciprocity agreements. Instead, they replaced the agreements with the waiver application. It is important to note the relevant statutory section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. In addition, staff said it became hard for DLI staff to keep up-to-date on the levels of licensure in states BRR had agreements with as some states started to offer single licensing structures in which all licensees were considered brokers with varying levels of endorsements.

Audit work consisted of reviewing reciprocity agreements in place within our sampled boards administratively attached to DLI. Many other boards attached to DLI have reciprocity agreements in place. Interviews with DLI staff found the BRR has not reviewed new reciprocity agreements with other states since they were eliminated in 2009. However, discussions with board members indicated the BRR could be open to discussing the possibility of having agreements in place again. The current waiver process results in each out-of-state applicant being subject to an individualized review, resulting in higher risk of error in applying application criteria, especially as the BRR does not consistently use its waiver motion. Although it may not be practical to develop reciprocity agreements with every state, focusing efforts on those surrounding or regional states with higher numbers of applicants could reduce application errors and encourage greater competition in the state's real estate industry.

Recommendation #3

We recommend the Board of Realty Regulation:

A. *Establish and consistently follow criteria for the approval and denial of waiver applications, and*

B. *Review the potential for establishing reciprocity agreements with other jurisdictions that meet Montana licensing standards.*

Predetermination Application

In 1990 the BRR created a predetermination application that can be used by a potential applicant who has prior disciplinary actions, open legal matters, criminal convictions, or a deferred sentence. The objective of the application is for the potential applicant to determine if their past disciplinary problems could prevent them from getting a license in the future if they decide to apply, thus, potentially saving the person the time and money associated with pre-licensure education and the exam costs. DLI staff stated the BRR is the only professional licensing board in Montana to have such an application in use. However, the application has been used very little since its inception and has some questionable requirements. According to data found within DLI's licensing database, the application has only been used a total of 11 times since 2013. The following is a summary of these applications:

- Two applicants submitted the application instead of a waiver application.
- One applicant submitted the application in error.
- One applicant never submitted all the required materials, so it timed out.

- Two applicants were denied because of convictions. The applicants still have the ability to apply for a salesperson license via the salesperson application, but they would likely be denied.
- Three applicants were approved, of which two successfully became salespersons, and the remaining person never filed a salesperson application.
- Two applicants still had their applications pending at the time of data analysis.

As shown, the predetermination application, which has an $87.50 fee, is not utilized very often. In addition, the application requires the signature of a supervising broker. This requirement is confusing. The predetermination application is completed before the applicant decides whether or not to even start the licensing process, so it would be unnecessary to find a supervising broker at this stage. Additionally, a supervising broker signature is already required on a salesperson application, so this is a redundant step for potential applicants. Interviews with all seven BRR board members found they did not know the signature requirement was even on the application, which shows there is a generally low level of awareness about how the predetermination process works.

Equivalency Application

Another application type used by the BRR is the equivalency application. According to §37-51-302(2)(c), MCA, a broker applicant must be a salesperson for the preceding two years or have the experience equivalent to a salesperson with two years of experience. However, a Montana salesperson who has been licensed for the preceding 18 months may apply for a determination that he or she possesses experience equivalent for a licensed broker via an equivalency application. A review of this application found that much like the predetermination application, it is being used minimally, and often incorrectly. Analysis of all six equivalency applications within DLI's licensing database found the following:

- One application was voided because the applicant mistakenly filled out the equivalency application instead of a waiver application.
- Two applications were denied. One of these applicants mistakenly filed the equivalency application instead of a waiver application, and the second applicant did not have a Montana salesperson license.
- Two applications needed additional information. In each case the application was not processed because it did not include the application fee. However, in both cases, the applicant did not need to fill out the application because they were already licensed as a Montana salesperson for more than two years prior to filling out the application.
- One applicant withdrew their equivalency application learning it was not necessary as the applicant was already licensed as a salesperson for more than two years.

In summary, the equivalency application was incorrectly used in every case. There is an $87.50 fee associated with the equivalency application, which is paid in addition to the $175 fee submitted with the broker application itself.

Neither the predetermination nor equivalency applications appear to be necessary for the BRR to discharge its duties properly. These additional application types add to the administrative complexity of running day-to-day operations, and as shown by our review, increase the risk of errors. There appears to be little demand for these application types among prospective or current licensees and they add unnecessary costs to the licensing process. The board could just as easily incorporate rule or policy-based parameters addressing these circumstances and allow staff to apply these as part of the regular licensing process.

Recommendation #4

We recommend the Board of Realty Regulation eliminate both the predetermination application and the equivalency application.

Chapter III – Supervising Brokers

Introduction

In Montana, all licensed salespersons must be under the supervision of a broker. Under §37-51-302(4)(b), MCA, the supervising broker is required to actively supervise and train the salesperson. The brokers are also responsible for the performance of salespeople under their supervision and to assure that all documents for a real estate transaction are appropriately prepared and executed.

Importance of the Supervising Broker Relationship

Supervising broker relationships are an integral part of a salesperson's daily duties and career. The Board of Realty Regulation (BRR) has established an endorsement for brokers who want to supervise salespersons. To obtain the endorsement the broker must be licensed in Montana and complete an eight-hour supervising broker pre-endorsement course. To maintain the endorsement, the licensee must take a four-hour designated supervising broker course annually. Salespersons can only be under the direction of one supervising broker at a time, although rules allows for a salesperson to be temporarily associated with another supervising broker for up to 60 days if the existing supervising broker is unable to supervise.

A salesperson or their supervising broker can sever the relationship at any time. ARM 24.210.601(2) requires the supervising broker to immediately return the salesperson's license to the BRR with a letter noting the termination. The supervising broker remains the supervising broker for the salesperson until the license and release are received by the BRR. Furthermore, a salesperson whose license has been cancelled because of termination of relationship with their supervising broker must notify the BRR of any new supervising broker relationship. A salesperson can also place the license on inactive status by paying all required fees within ten days of the BRR receiving the termination of the relationship. According to data from the Department of Labor and Industry (DLI) licensing database, there were 1,154 brokers that had an active supervising broker endorsement as of March 2015.

Transferring to a New Supervising Broker

Changing supervising brokers is a common occurrence within the BRR. Survey results found 42 percent of active salespersons have changed supervising brokers at least one time during their careers. Using data from DLI's licensing database, the table below shows the number of times salespersons have changed their supervising broker.

Table 5
Salesperson-Supervising Broker Relationship Changes
January 1, 2012 through March 27, 2015

Number of Times a Salesperson Changed Supervising Broker	Number of Instances
Changed Broker 1 Time	591
Changed Broker 2 Times	127
Changed Broker 3 Times	19
Changed Broker 4 Times	4
Changed Broker 5 Times	1
Total	**742**

Source: Compiled by Legislative Audit Division from Department of Labor and Industry records.

As shown, there were 742 instances in which a salesperson changed from one supervising broker to another between January 2012 and March 2015. The professional real estate associations voiced concerns over the time it took DLI staff to process the forms used to change supervising brokers because salespersons are not allowed to work while they are not under the direction of a supervising broker. According to DLI staff, the internal goal to process a completed salesperson change form is either the day the form is received or the next day. These changes are made in DLI's licensing database by staff within BSD's Unit A. Audit work was conducted to determine if this goal is being met.

Audit work found that 25 percent of the supervising broker changes are not being made within DLI's goal time frame, with nearly 11 percent not being assigned to a new supervising broker for more than two weeks. Additionally, there is a discrepancy between what the licensing database analysis found and what the survey data results stated. Table 6 shows the number of days it took to change supervising brokers.

Table 6
Number of Days Between Supervising Brokers*
January 1, 2012 through March 27, 2015

Days	Number of Occurrences	Percentage
0 Days (Same day processing)	655	72%
1 to 3 days	62	7%
4 to 7 days	60	6%
8 to 14 days	38	4%
15 days or more	98	11%
Totals	**913**	**100%**

Source: Compiled by Legislative Audit Division from Department of Labor and Industry records.

* Total days – not based on business days.

Table 7 shows 23 percent of salespersons surveyed stated they had to wait more than seven days to have their supervising broker paperwork processed by DLI staff. This difference could be related to the time it takes to mail a hardcopy form to DLI and route the form to the BSD for processing.

Table 7
How Many Days Were You Out of Work While Your "Change of Supervising Broker" Form Was Being Processed by DLI

Number of Days	Response Percent
0 days	23%
1 to 3 days	15%
4 to 7 days	20%
8 to 14 days	13%
15 days or more	10%
Unknown	19%

Source: Compiled by Legislative Audit Division from license survey results.

Currently, BRR license applicants can apply for a license online and can also renew their licenses online. This process eliminates the need for signing and mailing paper forms, speeds up the application process, and conforms to today's electronic business standards. Data from DLI shows that 83 percent of brokers renewed online during the 2014 license year while 85 percent of salespersons renewed online. There is currently not an online format available for processing supervising broker changes. By implementing an online process, the BRR could reduce the administrative complexity and cost of changing supervising brokers, and decrease the risks of business interruption for licensees. Although there are likely some initial start-up costs involved in this change, the BRR and its licensees have the potential to recover some or all this investment through increased administrative efficiency and decreased risks of business losses for licensees. DLI has been aware of this issue for some time and has requested its Technology Services Division to fix it.

Recommendation #5

We recommend the Department of Labor and Industry provide an online method for the changing of supervising brokers.

Number of Salespersons Supervised by Supervising Brokers

Currently, there is no law, rule, or policy limiting the number of salespersons that can be supervised by a broker with a supervising broker endorsement. Table 8 (see page 28) breaks down the number of salespersons under a supervising broker.

Nearly 84 percent of supervising brokers supervise one to five salespersons. However, approximately 16 percent supervise six or more salespersons. Of those, four supervising brokers supervised over 50 salespersons. As previously discussed, supervising brokers are required to actively supervise and train the salesperson. Furthermore, under ARM 24.210.601(12), "Supervising brokers have the responsibility to exercise adequate supervision to assure that all documents for a real estate transaction, prepared by salespeople under their supervision, are appropriately prepared and executed." During their early years of licensure, salespersons have to learn about the real estate industry, including contracts, real estate forms, lending information, title companies, etc.

Table 8
Number of Salespersons Supervised by a Supervising Broker

Number of Salespersons Supervised	Total Occurrences
1 - 2	360
3 - 5	126
6 - 10	54
11 - 15	16
16 - 25	15
26 - 50	7
Over 50	4

Source: Compiled by Legislative Audit Division from Department of Labor and Industry records.

As part of our survey of BRR licensees, we asked several questions about the supervising broker relationship, including overall opinions about how well this practice works and communication about the responsibilities and duties of supervising brokers. Table 9 shows responses to two statements answered by either salesperson licensees or supervising broker licensees.

Table 9
Supervising Broker Relationship Survey Statements

Answer Options	In your opinion, your supervising broker is helpful and viewed as a resource for you as you practice in the real estate industry in Montana.*	The Board of Realty Regulation and the Department of Labor & Industry communicate with you regarding your responsibilities and duties as a supervising broker.**
Strongly Disagree	1%	5%
Disagree	1%	20%
Neither Agree nor Disagree	10%	35%
Agree	41%	37%
Strongly Agree	47%	3%

Source: Compiled by Legislative Audit Division from licensee survey results.

* This question was answered only by licensed salespersons.

** This question was answered only by licensed supervising brokers.

As shown, BRR salesperson licensees are generally satisfied with how the supervising broker relationship works; around 88 percent of licensed salesperson respondents had a positive view of the supervising broker relationship. However, when asked whether they received regular communications from their supervising broker regarding the BRR and DLI, roughly one quarter of respondents said they did not. This lack of communication is also seen with the supervising brokers themselves; only around 40 percent of licensed supervising broker respondents agreed that they received regular communications from BRR and DLI regarding their responsibilities and duties. Multiple survey respondents currently licensed as supervising brokers also submitted comments questioning BRR and DLI communications and the ability of supervising brokers to exercise their duties effectively.

The supervising broker relationship obviously has strong support among licensed real estate professionals, but there is currently limited guidance regarding how this relationship should work in practice. Some brokers supervise many more salespersons than would appear to be realistic, given the duties outlined in law and Administrative Rule. Discussions with board members indicated some of the brokers that supervise a large number of salespersons, such as 70-plus salespersons, may actually be supervising a smaller number of supervising brokers, who, in turn, supervise the salespersons on a day-to-day basis. However, this kind of multi-level supervision is not currently authorized under law or rule. The BRR could strengthen the supervising broker relationship by identifying an appropriate limit for the number of supervisory relationships one broker can effectively manage. The board should also work with DLI staff to identify options for improving the quality and frequency of its communications with supervising brokers regarding their responsibilities and duties.

Recommendation #6

We recommend the Board of Realty Regulation:

A. *Establish a limit for the number of salespersons a broker with a supervising broker endorsement may supervise.*

B. *Work with Department of Labor and Industry staff to improve communications with supervising brokers regarding their responsibilities and duties.*

Chapter IV – Continuing Education

Introduction

Section 37-1-306, MCA, states in part: "A board may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education…" The Board of Realty Regulation (BRR) requires all licensees to take continuing education (CE) courses to maintain licensure. ARM 24.210.667 states all active licensees must complete a minimum of 12 hours of BRR-approved real estate CE every licensing year, which runs from November 1 through October 31. This chapter will explain CE in greater depth, including the application process, BRR-sponsored courses, and the annual audits conducted by the Department of Labor and Industry (DLI) on the BRR's behalf.

Background

The second objective of this audit was to review the BRR's CE requirements and processes in which instructors and courses are approved or denied. Concerns during audit work involved: 1) inconsistencies in approving and denying of CE instructors and courses, 2) the length of time involved in processing CE applications, and 3) the policies in place to approve and deny CE applications.

Many of these concerns arose when the BRR's Education sub-committee made the decision to directly oversee the role of approving and denying CE applications in May 2013. According to BRR members and DLI staff, the BRR was promised its own dedicated education director after the August 2012 reorganization that would focus on CE-related duties. However, the position description had to be updated and there were conflicting thoughts between DLI and BRR about the required qualifications. Growing disagreements between BRR and the DLI resulted in the BRR's Education sub-committee taking over the review, approval, and denial of all CE applications in the absence of an education director in May 2013.

Types of Applications for Continuing Education

There are three types of applications that must be approved in order for a CE course to be taught: the course application (content and materials for a course), the instructor application (the qualified individual teaching the content), and the provider application (businesses or membership organizations providing courses). It is important to note CE instructors are not licensed; their applications are simply approved or denied. Table 10 (see page 32) displays the number of CE applications filed by calendar year starting on January 1, 2012.

Table 10
Total CE Applications by License Year
Calendar Years 2012 through 2014

Application Type	Application Status	2012	2013	2014	Total
CE Instructor	Approved	76	78	82	**236**
	Non-Standard Ready for Review*		1	7	**8**
	Denied		6	2	**8**
	Void		1	3	**4**
	Total	**76**	**86**	**94**	**256**
CE Course	Approved	173	183	162	**518**
	Non-Standard Ready for Review*		2	2	**4**
	Denied		33	5	**38**
	Additional Information Required			1	**1**
	Void			14	**14**
	Timed Out	1	1		**2**
	Withdrawn at Applicant Request			2	**2**
	Total	**174**	**219**	**186**	**579**

Source: Compiled by Legislative Audit Division from Department of Labor and Industry records.

* Application is assigned to executive officer for review. The executive officer approves application or assigns it for review at future board meeting.

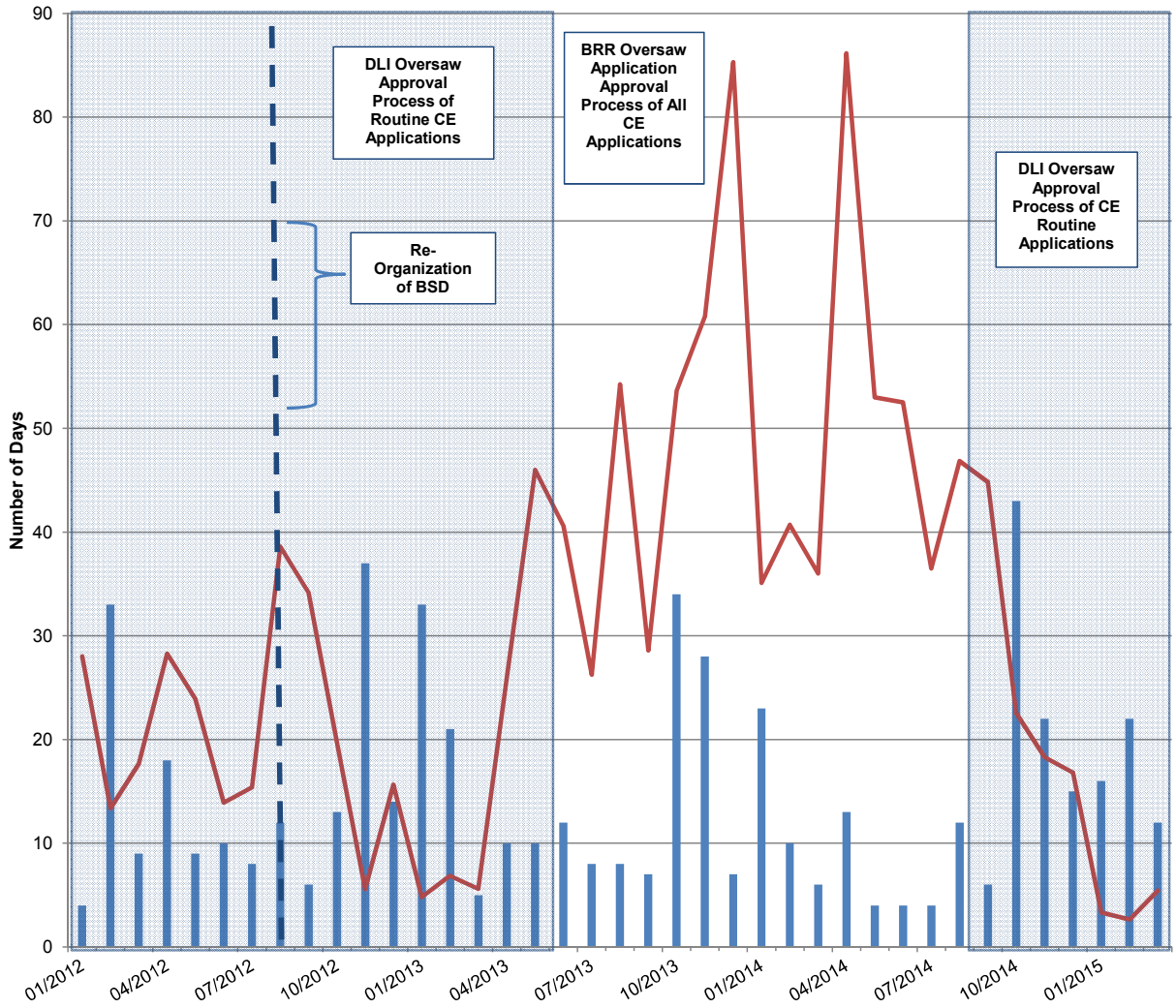
Overall, a vast majority of applications are approved. DLI staff within the Audit Unit stated they use BRR Administrative Rules and requirements identified on the CE applications as criteria when approving and denying applications. There are no other policies or motions written by BRR to guide DLI staff in the approval of CE. One BRR member stated the current CE Administrative Rules are too confusing, which makes it difficult for CE applicants. Unlike BRR license applications, there are no nonroutine CE applications. Instead, DLI staff in the Audit Unit now take questionable applications to the BRR board meetings and have the members decide whether to approve or deny the application.

Continuing Education Course Applications

DLI staff within BSD's Audit Unit stated they are not aware of any specific processing time goals for CE course applications. In the absence of specific goals, they use the same goals in place for BRR license applications in Units B and C. Audit work included reviewing and analyzing all license and CE data within DLI's license database between

January 1, 2012, and March 27, 2015. Analysis found the average number of days to approve a CE course application increased after the reorganization; largely due to the BRR's Education sub-committee decision to take over the approval and denial of all CE applications in May 2013. As the figure below shows, there was a significant increase in processing times when this occurred.

Figure 3
Average Number of Days to Approve CE Course Applications



Source: Compiled by the Legislative Audit Division from Department of Labor and Industry records.

The number of days it took to approve CE course applications increased 336 percent when the BRR Education sub-committee took over these duties. During this time frame, course providers are forced to wait this additional time to ensure their courses are approved before they can schedule a time for the courses. Licensees are

also impacted, as they would have to wait longer for the course to be approved and scheduled before they can sign up to attend. There was a dramatic decrease in the approval times when the BRR gave the approval duties back to DLI staff in September 2014. In fact, application processing times for CE course applications is now averaging the same time as before the BRR took over review duties.

Continuing Education Instructor Applications

When the BRR Education sub-committee took over the approval and denial of CE course applications, they also did the same with CE instructor applications. A review of data found in DLI's licensing database found the trends regarding CE course applications are the same as CE instructor applications. The number of days it took to approve CE instructor applications increased by 25 when the BRR's Education sub-committee took over these duties. However, the times decreased when the BRR authorized DLI to oversee CE applications in September 2014.

Continuing Education Application Denials

Concerns brought forth from BRR licensees and the professional real estate associations involved the BRR's Education sub-committee denying CE instructor and course applications at a higher rate and without cause. Specifically, courses were being denied that had been previously approved for many years. DLI staff had similar concerns, stating the sub-committee became very inconsistent in the approving of CE applications, with its decisions changing from meeting to meeting. Staff also stated there were cases in which an instructor application would be denied by the sub-committee for reasons that were not based on established approval criteria. Using the same data used to process BRR license application timelines, audit staff found denials were more prevalent during the time period in which the Education sub-committee oversaw CE applications. Seven percent of CE instructor applications were denied during the time the BRR oversaw the approving and denying of CE applications.

However, at a denial rate of 15.4 percent, there was a larger discrepancy of CE course application denials when the BRR oversaw CE applications. Interviews with BRR members found some thought the denials were warranted, while other courses were simply being denied because they may have been redundant. It was their opinion some courses approved by DLI staff in the past should not have been, and needed to be denied. Overall, this time period introduced a higher level of uncertainty in regards CE application decisions.

CONCLUSION

CE application processing times and denials rates increased while the BRR oversaw the approval and denial of all CE applications because the board did not follow established motions and policies, which resulted in inconsistent decisions. However, denial rates and processing times have improved since the BRR granted DLI authority to oversee the approval/denial process for CE applications in 2014.

BRR-Sponsored Rookie Course and Supervising Broker Pre-Endorsement Course

Most CE approved by the BRR is taught by private entities, such as real estate schools, professional real estate associations, and private individuals. However, the BRR sponsors (is the course provider for) the two courses required in BRR Administrative Rules: the Rookie course and the Supervising Broker Pre-Endorsement course.

Rookie Course

ARM 24.210.661 requires all newly licensed salespersons to take the BRR- sponsored Rookie course. According to DLI staff, the Rookie course was created in 2000 because of complaints received from both real estate industry members and members of the public involved in real estate transactions (i.e. title companies, lenders, etc.). Complaints stemmed around new salespersons not having the level of knowledge needed to be effective in the field. Part of audit work involved surveying active salespersons and brokers. When asked if the Rookie course was helpful and beneficial in their growth as a BRR licensee, 64 percent of respondents agreed, with only eight percent disagreeing. It appears as a whole the licensees find the course valuable.

Rookie Course Required To Be Completed During Initial License Year

Pursuant to ARM 24.210.661 all newly licensed salespersons are required to complete the Rookie course by the first renewal date following their original license issue date. The BRR's license year starts November 1 and ends on October 31. Because of this requirement, a salesperson licensed on October 15 must take the Rookie course by October 31 or their license will be terminated. When a license is terminated the former licensee needs to apply for a salesperson license again to practice real estate. They would be required to fill out an application, pay the application fee, and wait for their application to be approved. During this time the former licensee would not be able to work as a licensed salesperson.

Under existing rule, a total of 83 first-year salespersons have had their licenses terminated since license year 2010-11 because they did not complete the Rookie course before their first renewal period. Typically, the Rookie course has been offered four or five times a year in bigger cities throughout Montana, such as Missoula, Bozeman, Billings, and Helena. Part of audit work included surveying salespersons that took the Rookie course at some point during the past five years. Table 11 shows how far licensees had to travel in order to take the required course. Although 50 percent of licensees had to travel less than 50 miles to take course, nearly 40 percent of respondents traveled over 75 miles attend the course.

Table 11

What is the Number of Miles You Traveled to the 12-Hour Rookie Course You Were Required to Take During Your First License Year as a Salesperson?

Number of Miles	Response Percent
Less than 25 miles	45%
25-50 miles	5%
51-75 miles	7%
Over 75 miles	39%
Unknown	4%

Source: Compiled by Legislative Audit Division from licensee survey results.

Currently, the BRR does not offer an online version of the Rookie course. Creating an online version of the course would greatly reduce two current trends that are negatively impacting new licensees:

1. Salespersons could access the online version of the Rookie course at any time, thus reducing the chance they would have their salesperson license terminated if they cannot attend a Rookie course in person, especially if the course is not available.
2. Licensees would not have to travel far distances to take the Rookie course in person.

Audit work found there is another board administratively attached to DLI that requires its licensees to complete certain education when first licensed within a certain time frame or their licenses are revoked. In addition, two real estate commissions in our sample states also require their first-time licensees to take certain courses to maintain licensure. These three boards/commissions allowed licensees a minimum of a year to complete the required training.

Recommendation #7

We recommend the Board of Realty Regulation:

A. *Revise Administrative Rules to allow first-year salespersons 12 months following their initial license date to complete the Rookie course, or*

B. *Provide an online version of the Rookie course.*

Continuing Education Audit/Compliance Checks

Overall, the board considers continuing education (CE) a key part of licensure, and as such, CE is required of all licensees on an annual basis to maintain a valid, active license. To ensure licensees are abiding by CE requirements, the BRR conducts an annual audit of the licensees' CE through a process referred to as a compliance check. Currently, under §37-1-306, MCA, a board that requires continuing education may conduct a random audit of up to 50 percent of all licensees who have renewed their licenses to determine CE compliance. However, §37-51-204(4), MCA, states "Education information obtained electronically by the board or stored in the board's databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-306." Under ARM 24.210.667(13), "All continuing education course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering." To comply with this Administrative Rule, the BRR requires course providers to upload CE course roster data into the database created by an e-commerce service contracted by the state. Licensees can then log into an online profile and see what courses and hours they have taken for the present license year. At the end of the license year the BSD's Audit Unit staff download a list of all BRR licensees, along with their CE for the previous license year that states if licensees took the required minimum number of CE hours. The compliance check process then involves identifying licensees with insufficient CE hours and directs the licensee to become compliant with the requirements.

The BRR Is the Only Board to Voluntarily Conduct a Compliance Check of 100 Percent of Licensees

The BRR has historically conducted a compliance check/audit of 100 percent of licensee CE, and it is the only board that voluntarily does so. (The Board of Real Estate Appraisers is required to conduct an audit of all its licensees under federal law.) As discussed, 2015 was the first year the BRR requested an audit of less than 100 percent of licensees; auditing three percent during the 2014 license year. Interviews with BRR

members found a mixed response to the percentage that should be audited. Some felt 100 percent should always be audited while others thought the audit should consist of far less.

The compliance check process being used by BRR is different from the self-certification model many professional licensing boards use during license renewal. Self-certification places responsibility on the licensed professional for adhering to CE requirements, includes specific attestations during renewal about whether they meet these requirements, and can result in disciplinary proceedings if an audit of CE hours reveals any noncompliance. The following figure shows an example of the self-certification and attestation language used on a typical license renewal form (in this case the Board of Nursing).

Figure 4

Board of Nursing License Renewal CE Self-Certification Language

CONTINUING EDUCATION ATTEST STATEMENTS: (CE requirements are on the Board website www.nurse.mt.gov , click on the "Regulations" tab, select "Administrative Rules" and click on " Subchapter 21 - Renewals and Continuing Education".)

☐ I am aware of the continuing education requirements pertaining to my RN/LPN licensure and hold myself responsible for fulfilling these requirements. I will submit "proof of attendance" when audited or upon request by the Board.

I hereby declare under penalty of perjury the information included in my renewal application to be true and complete to the best of my knowledge. In signing this renewal application, I am aware that a false statement may lead to disciplinary action against my license. The Board may audit my records to verify my compliance with the rules and regulations governing this license. I have read and am familiar with the laws and rules of the State of Montana relating to nursing and agree to comply with them.

Source: Compiled by the Legislative Audit Division from Department of Labor and Industry records.

As shown, the renewal documentation requirements clearly outline the responsibilities of the licensed professional, including the potential for disciplinary action. Most of the professional licensing boards administered through DLI use self-certification, relying on the professional responsibility of licensees, random audit procedures, and the deterrence effect of disciplinary action to enforce CE requirements. This differs from the self-certification questions found on the BRR's license renewal applications, which are found below.

Figure 5
BRR License Renewal CE Self-Certification Language

NOTICE YOU MUST ANSWER THESE QUESTIONS	☐ YES I HAVE COMPLETED THE 12 HOURS OF CONTINUING EDUCATION AND CORE COURSE ☐ NO I HAVE NOT COMPLETED THE 12 HOURS OF CONTINUING EDUCATION AND CORE COURSE

Source: Compiled by the Legislative Audit Division from Department of Labor and Industry records.

As shown, the language in BRR's renewal application has the licensee state whether or not they have completed the CE requirements.

Current Audit Practice May Lead to Inefficiencies and Additional Costs

Conducting 100 percent compliance checks are very time-consuming, which ultimately means they are very costly for the BRR. Below are DLI's estimates of what the compliance checks cost the BRR for the last two license years:

- The compliance check of 100 percent of licensees for the 2013 license year (November 1, 2012, through October 31, 2013) consisted of approximately 1,116 hours of DLI staff time and cost the BRR approximately $66,960.
- Three percent of BRR licensees were audited for the 2014 license year in order to save costs. The audit consisted of approximately 334.5 hours of DLI staff time and cost approximately $20,070.

DLI staff stated the BRR has not had issues with noncompliance with CE outside the norm of other boards.

The historic practice of auditing 100 percent of BRR licensees may also lead to potential liability concerns for BRR and DLI. As discussed, up until the most recent license year, BRR has audited 100 percent of its licensees for CE compliance. To do this DLI would use a spreadsheet that would list all active licensees and indicate whether or not the licensee had the minimum number of CE hours. However, last license year BRR only audited three percent of its licensees through a random-sample process. The potential problem this creates is that BRR and DLI still have access to all the names of licensees that have not met CE requirements in the prior license year. By selecting a random, nonrisk-based sample, DLI and the BRR are potentially ignoring some licensees that are in noncompliance with CE. These noncompliant licensees are still considered active licensees. In the event one of these noncompliant licensees is involved in a disciplinary process or other litigation where their license status is a relevant

factor, DLI and the BRR could be subject to legal or other risks arising from their knowledge of CE compliance. To avoid this situation, the BRR could move towards a self-certification model for the purposes of CE compliance and remove the requirement to have course providers upload CE course rosters, thus eliminating the list containing all the licensees' CE compliance status. The removal of the CE compliance list would reduce liability concerns.

Recommendation #8

We recommend the Board of Realty Regulation:

A. *Revise the continuing education self-certification question on renewal applications,*

B. *Define a continuing education audit protocol, and*

C. *Eliminate the requirement for course providers to upload course roster information.*

Chapter V – Board Fees and the Real Estate Recovery Account

Introduction

All 33 professional and occupational boards and two programs administratively attached to the Department of Labor and Industry (DLI) charge fees for applications, license renewals, continuing education (CE) (if applicable), and other changes to licensee records. DLI then recoups costs associated with administratively assisting the boards by billing the boards for the time staff spends on board tasks, overhead costs, rent, phone lines, etc. This first portion of this chapter will focus on Board of Realty Regulation-related (BRR) fees. The second half of the chapter will consist of reviewing the BRR's Real Estate Recovery Account (RERA), which is an account created in §37-51-501, MCA, used to provide payment of claims based on unsatisfied judgments against BRR licensees. The third objective of this audit was to analyze BRR and RERA fees and related expenditures. Fees are established by both DLI and the boards, both of which are explained below.

Department Fees

Among other duties outlined under §37-1-101(1), MCA, the department must establish and provide all the administrative, legal, and clerical services needed by the boards within the department and set administrative fees. An administrative fee as defined in §37-1-130, MCA, is a "fee established by the department to cover the cost of administrative services" provided to the boards as established in §37-1-134, MCA. Under §37-1-134, MCA, "…the department may establish standardized administrative fees. These fees may include but are not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs."

Board Fees

Fees set by the boards and programs are defined under §37-1-130(3), MCA, as "(a) a fee established by the board to cover program area costs as provided in §37-1-134, MCA, and (b) any other legislatively prescribed fees specific to boards and department programs." Section 37-1-134, MCA, which was reviewed and changed by the 2015 Legislature and effective July 1, 2015, allows the boards to set fees. These fees relate "to its program area that provide the amount of money usually needed for the operation of the board for services, including but not limited to licensing, reciprocity, renewals, applications, inspections, investigations, compliance, discipline, and audits…**In setting the fees, the board shall consider the revenues and expenses incurred in**

the prior five licensing renewal years, but a board's cash balances may not exceed two times the board's annual appropriation level." (Emphasis added)

BRR Revenues and Expenditures

According to DLI staff, each biennium the DLI Business Standards Division is provided an appropriation, which is allocated among all the bureaus, boards, and programs within the division. Each board is allocated an appropriation amount, which is a cap on the amount of money it can spend each fiscal year. The boards' cash balances cannot exceed two times the boards' annual appropriation level. As a result, although a board may have excess funds in its state special revenue account, it may only spend up to the appropriated amount. Every year DLI staff works with the BRR to determine the board's operating budget. These budgets are established based on input from the board's executive officer, who is responsible for planning the board's upcoming expenses in the next fiscal year. Below is a table outlining the BRR's assets, revenues and expenditures since fiscal year 2010.

Table 12
Board of Realty Regulation's State Special Revenue Account
Fiscal Years 2010 through 2015

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenue	$706,339	$738,518	$715,673	$737,950	$1,100,966	$1,110,209
Expenditures	$802,388	$846,896	$1,031,844	$891,842	$976,669	$1,080,630
Difference Between Revenue and Expenditures	($96,050)	($108,378)	($316,171)	($153,892)	$124,297	$29,579

Source: Compiled by the Legislative Audit Division from SABHRS records.

As shown, the BRR spent $520,614 more than it received in board-related revenues since fiscal year 2010. BRR expenses include salaries and benefits for DLI employees, travel, rent, education grants, and legal expenses. Historically, legal expenses and salaries and benefits account for nearly 75 percent of total expenses. A review of budget records found the large increase in expenditures in fiscal year 2012 was due to higher salaries and benefits and a large increase in attorney fees. According to DLI staff, the BRR did two strategic planning sessions in 2011 and 2012. These sessions used approximately three-quarters of the BRR's general counsel's time, three-quarters of the department counsel's time, a full-time investigator, a full-time education director, and more of the board's compliance employee's time.

Part of audit work consisted of surveying active brokers and salespersons to gauge their thoughts on the current fees associated with the BRR, including a question about the fairness/reasonableness of fees, which is shown in Table 13.

Table 13
In Your Opinion, the Fees Associated with Your Licensure Are Fair and Reasonable
(i.e. The Fees Associated with Applications, Renewals, Continuing Education, Forms, etc.)

Answer Options	Response Percent
Strongly Disagree	6%
Disagree	20%
Neither Agree nor Disagree	28%
Agree	43%
Strongly Agree	3%

Source: Compiled by Legislative Audit Division from licensee survey results.

As shown, slightly under half of BRR licensees have a positive view of the board's licensing fees and think the fees are fair and reasonable. Around one quarter think the fees are not fair or reasonable. Audit work consisted of reviewing all of the BRR's fees to determine if they are in line with similar standard administrative fees with other DLI professional or occupational licensing boards, and with similar industry fees charged by real estate boards or commissions in the surrounding states. These state real estate commissions, which were chosen because of their vicinity to Montana and because the populations, besides Utah, are close to that of Montana, include:

- South Dakota Real Estate Commission
- North Dakota Real Estate Commission
- Wyoming Real Estate Commission
- Idaho Real Estate Commission
- Utah Division of Real Estate Commission

BRR-Related Fees

The BRR has established a number of fees for salespersons and brokers under ARM 24.210.401. These fees relate to license applications, license renewals, changes to license status, continuing education applications, and changes made to licenses, such as business addresses and supervising brokers. The following sections outline some of these fees in comparison to similar fees found in our sampled real estate commissions.

License Application and Renewal Fees

Each BRR licensee has to complete an application in order to become licensed, which is then renewed annually. The application fee is the fee associated with becoming a licensee; it does not include the costs of pre-education courses and the national and state real estate exam. Table 14 (see page 44) shows the costs of license applications and renewals in the BRR and our sampled states.

Table 14
License Fees Comparison*

License Type		Montana	South Dakota	North Dakota	Wyoming	Idaho	Utah
Salesperson	Application*	$150	$225	$100	$300	$160	$100
	Annual Renewal**	$150	$63	$100	$117	$80	$21
Broker	Application*	$175	$225	$120	$300	$160	$100
	Annual Renewal**	$175	$63	$120	$117	$80	$24

Source: Official state real estate websites.

* Does not include fees for fingerprinting, recovery fees, etc. All fees as of September 1, 2015.

** Some states renew over a two- or three-year period–these values are pro-rated for an annual basis.

As shown, the application fees are lower than the BRR's fee in two of the five other states, and broker application fees are lower in three states. However, the renewal fees are lower than the BRR's renewal fees in all five sampled real estate commissions.

Other Fees Associated with License Maintenance

The following sections will outline fees required by DLI and BRR in order to maintain licensure or to make changes to licensee information. Audit work consisted of comparing these fees with similar fees within real estate commissions in our sampled states. The results are summarized in the following table.

Table 15
Difference Between Similar Fees Between the Board of Realty Regulation and Real Estate Commissions in Sampled States

Fee Type	Montana	South Dakota	North Dakota	Wyoming	Idaho	Utah	Other States Average
Deactivate License	$20	$0	$0	$0	$0	$0	$0
Reactivate License	$80	$0	$0	$30	$30	$15	$15
Change Supervising Broker	$80	$15	$10	$30	$30	$50	$27
CE Course Application*	$130	$75	$50	$50	$50	$75	$60
CE Course Instructor*	$87.50	$0	$0	$0	$50	$50	$20

Source: Official state real estate websites.

* Based on actual fees; not pro-rated by year in the event the application is good for multiple years.

Active and Inactive Licenses

A licensee who does not wish to actively work in the real estate industry, but wants to maintain their licensure, can place their license in inactive status. According to ARM 24.210.624, a licensee can place their license in inactive status by paying a fee, forwarding their license to the BRR for cancellation, submitting a written request to be placed inactive, and being released by their supervising broker (in the event the licensee is a salesperson). In order to avoid lapse, expiration, or termination of the license, the inactive BRR licensee must renew the inactive license annually by paying the annual renewal fee.

The BRR currently charges a $20 fee to change a license from active to inactive status. According to DLI staff, the BRR is the only board to charge such a fee. Data from DLI's licensing database found BRR licensees changed their status from active to inactive 663 times as of August 18, 2015, which led to $13,260 in additional revenue for the BRR.

The BRR also charges an $80 fee to change from inactive to active status. However, this type of fee is more common in other DLI boards, with fees ranging from $20 to $250. There were 130 cases in which inactive license were changed to active status within DLI's licensing database as of August 18, 2015. This has resulted in $10,400 in additional fees collected by the BRR.

Change of Supervising Broker Fees

As discussed in Chapter III, the BRR has a requirement in place in which salespersons are required to be supervised by a broker with a supervising broker endorsement. This is a common occurrence in the real estate industry. All five of the real estate commissions in the sampled states have such a license/endorsement in place.

It is not uncommon for a salesperson to change brokerage firms or supervising brokers within an existing firm. When this occurs, the current supervising broker, the salesperson, and the new supervising broker must sign a form and submit an $80 fee to the BRR to make the change. In the event multiple salespersons are transferred between supervising brokers within the same brokerage firm, an $80 fee is assessed to for each licensee. A survey of active salespersons and brokers found there were some complaints surrounding the $80 fee. This fee is larger than the average fee within our five sampled states, which was $27. Analysis of DLI's licensing database found there were 742 instances in which a salesperson changed from one supervising broker to another between January 1, 2012, and March 27, 2015. This amounted to $59,360 in fees deposited into the BRR's state special revenue account.

Continuing Education Course and Instructor Application Fees

In Chapter IV, CE requirements for BRR licensees, specifically salespersons and brokers, were discussed. Under ARM 24.210.667, licensees are required to take a minimum of 12 hours of CE approved by the BRR. There are three components of CE within the BRR: a course provider, the instructor, and the course itself. Each has to be approved for a CE course to be taught. The average CE instructor application fee for our sampled real estate commissions was $60 while the average fee for CE course applications was $20. Both of these are much lower than the BRR's CE application fees (there is no fee associated with a course provider application).

Change of Business Address Fee

The BRR also assesses a fee to change the business address of a brokerage. Licensees themselves can change their home address at no cost, but it will cost a brokerage $80 to change its business address. A review of all the fees assessed within the boards administratively attached to DLI found two other boards that had the same type of fee. The Board of Private Security charges $10 to change a business address, and the Board of Real Estate Appraisers charge $45. It is important to note DLI staff makes all these changes in the licensee records using the same DLI licensing software.

Inactive Renewal Fees

As discussed, a BRR licensee can place their license on inactive status and remain inactive as long as they annually pay the renewal fee. The BRR charges the same amount for an inactive renewal as an active renewal fee, a practice that is common among the real estate commissions in our sampled states. Audit work found nine different licenses within our sampled boards offer inactive licenses. All of these inactive renewal fees ranged from 50 to 60 percent less than their active license counterpart.

BRR Is in Noncompliance with Administrative Rules

ARM 24.210.401(13) requires BRR licensees pay a fee of $80 to change their license status from inactive to active for salespersons and brokers. As previously discussed, BRR licensees are charged the same annual fee for both an active license and an inactive license; $150 for salespersons and $175 for brokers. Under ARM 24.101.403(1)(i) "status change fee from inactive to active during the licensure period is the difference between the cost of an inactive license and an active license renewal fee." As such, BRR licensees should not be assessed a fee to change their license from inactive to active status ($150 for an active salesperson license minus $150 for inactive salesperson license is $0). As discussed, the BRR has collected over $10,000 in fees while in noncompliance with DLI Administrative Rules.

Summary of Fees

In summary, the BRR's fees are generally higher than similar fees found within the real estate commissions in our sampled states and other boards administratively attached to DLI. In August 2013 the BRR implemented changes in board rules that nearly doubled the price of all fees. Interviews with DLI staff found the BRR did not consider any other boards administratively attached to DLI or other real estate commissions when deciding what the fee increases should be.

It is important to note that audit work did not include an analysis of the exact duties and responsibilities of each state's real estate commission in our sample. As such, we cannot determine what expenditures these other commissions have. However, these other real estate commissions appear to be functioning with fees that are generally much lower than those required by the BRR. While this may be related to different funding models or the availability of other revenue sources, it is also possible that real estate licensing boards in regional peer states have found ways to reduce the scale or scope of their regulatory activities. By avoiding unnecessary regulatory activity, professional licensing boards can reduce their spending on administrative costs and pass those savings on to licensees in the form of lower fees. The disparity between real estate licensing fees in Montana and other states may indicate there are opportunities for the BRR to review not only its fees, but also its expenditures in relation to regional peers to ensure it is operating as effectively and efficiently as possible. Revisions to §37-1-134, MCA, in the 2015 Legislative Session directed boards to consider "revenues and expenses incurred in the prior 5 licensing renewal years" when setting fees. As part of its implementation of these statutory changes, the BRR should consider whether disparities between its fees and those in surrounding states are justifiable, and whether there are options for reducing the scale and scope of its regulatory activity to reduce administrative costs.

Recommendation #9

We recommend the Board of Realty Regulation:

A. *Include an assessment of the relationship between regulatory activity and administrative costs when reviewing revenues and expenditures in the last five licensing renewal years, and*

B. *Comply with Administrative Rules relating to fees for changing license status from inactive to active.*

Real Estate Recovery Account

Section 37-51-501, MCA, establishes the Real Estate Recovery Account (RERA). This account is used to provide payment for any actual and direct loss unpaid on a judgment against a BRR licensee. The maximum amount which may be paid is $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or the number of properties involved.

Essentially, the RERA exists to compensate consumers who suffer financial losses as a result of the actions of a BRR licensee. Although these accounts are common in other states, it is unique among Montana's professional and occupational licensing boards. No other licensing boards in the state offer consumers a means of claiming some form of compensation from the regulatory authority as a result of the actions of licensees. For all other licensed professionals, consumer compensation for financial loss would be a matter decided solely by court actions and/or through the licensees' own general liability insurance coverage.

The RERA is funded under §37-51-502(1), MCA, which requires all licensees to be assessed a $35 fee at the time of licensure. The minimum balance of the account is $100,000 and the BRR may transfer excess money to its state special revenue account for educational purposes outlined in §37-51-204, MCA. According to DLI staff, the RERA was created in 1985 and is funded by two sources: fees from new licensees and interest. Money in the account is invested in Montana's short-term investment pool (STIP) to earn interest. The table below outlines the RERA fund equity balance, revenues and expenditures since fiscal year 2010.

Table 16
Real Estate Recovery Account Information
As of October 6, 2015

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Fund Equity Balance	$633,324	$547,736	$476,785	$377,556	$376,126	$397,397
Revenues	$12,492	$12,323	$10,161	$14,124	$17,100	$21,770
Expenditures	$4,770	$97,911	$81,112	$113,353	$40,063	$499

Source: Compiled by the Legislative Audit Division from SABHRS records.

As shown, the fund equity balance in the RERA has decreased in recent years as the BRR has started to transfer excess revenues into its state special revenue account to help pay for education-related expenses, mainly its BRR-sponsored CE courses. Below are descriptions of the three types of RERA expenditures.

Operating Expenses and Claims/Benefits

Operating expenses relate to the administrative charge by the state's e-commerce service provider to collect the $35 RERA fee for new BRR licensees on behalf of the state.

The main purpose of the RERA is to provide payment of claims based on unsatisfied judgments against BRR licensees. A breakdown of this information is found in Table 17. As shown, DLI records indicate $115,777 was paid in claims since 1988; two reaching the $25,000 limit. The final RERA expense involves the transferring of money from the RERA to the BRR state special revenue account to help pay for education expenses, such as the two BRR-sponsored continuing education courses: the Rookie course and the Supervising Broker Pre-Endorsement course.

Table 17
Real Estate Recovery Account Claims Paid

Name	Year Awarded	Amount Awarded
Claimant 1	1988	$ 638
Claimant 2	1989	25,000
Claimant 3	1992	14,859
Claimant 4	1995	3,912
Claimant 5*	1995	1,470
Claimant 6*	1995	18,000
Claimant 7	1999	1,471
Claimant 8	1999	25,000
Claimant 9	2000	7,579
Claimant 10	2001	16,100
Claimant 11	2011	1,749
Total		**$115,777**

Source: Compiled by Legislative Audit Division from Department of Labor and Industry records.

* Claimants 5 and 6 were against the same licensee.

RERA Visibility

Audit work determined general knowledge of the RERA is low by both BRR members and licensees. This may be contributing to the lack of use since 1988. Interviews with board members found they were not clear how often the account is used, how many times it has been used, or how much money is in the account. Members' estimates about how much money was in the account varied from the unknown, to $100,000, and up to $1,000,000. There were also conflicting opinions about whether or not the RERA is even necessary and what licensees are assessed the fee. Audit staff surveyed BRR salespersons and brokers about their knowledge of the account. Results found nearly three out of four licensees do not know what the account is used for or how it can be accessed. Of those that are aware of the RERA account, 45 percent neither agreed nor disagreed that the RERA is useful and beneficial for licensees. This is concerning as all licensees paid fees to fund the account. Information on the BRR's website about the RERA is also very limited.

Real Estate Recovery Accounts in Sample States

A review of other states found the existence of accounts similar to the BRR's RERA is commonplace among other real estate commissions/boards. Audit work entailed researching accounts in these other states in our sample to find their maximum account balance requirements, the fees associated with creating and maintaining the account, the maximum amounts for claims, and what other uses are allowed for these funds outside of claims. Below is a table outlining the real estate recovery accounts in the sampled states.

Table 18
Comparison of Real Estate Recovery Accounts in Sample States

	Montana	South Dakota	North Dakota	Wyoming	Idaho	Utah
Name	Real Estate Recovery Account	Real Estate Recovery Fund	Education, Research and Recovery Fund	Real Estate Recovery Account	Real Estate Recovery Fund	Real Estate Education, Research and Recovery Fund
Fee Amount	$35 One-time fee	*	$20 – One-time fee **	$20 when applying and renewing	$20 when applying and renewing	$12 when applying and renewing
Maximum Balance	N/A	$100,000	N/A	$50,000	$20,000	N/A
Maximum Judgement	$25,000	$15,000	$15,000	$10,000	$10,000	$15,000 for a single transaction; and $50,000 for one licensee
Other Uses of Recovery Fee	Education purposes	The Real Estate Commission's general fund	Education and research, establish courses at ND colleges, and educational or research projects	Education purposes	Subject to appropriation by the legislature for the use of the Real Estate Commission	Investigate fraud, and advance education and research

Source: Official state real estate websites.

* Recovery fee may be assessed to each licensee if fund is below $100,000.

** Recovery fee of no more than $20 may be assessed to each licensee if fund is below $60,000.

As shown, there is a wide variance in the maximum balance of the recovery accounts, the maximum judgement amounts, and how excess funds are used. Under §37-51-501(2), MCA: "The board shall maintain a minimum balance of $100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204." Section 37-51-204, MCA, refers

to educational programs. Audit work determined the RERA account is being utilized very little for judgments, so the BRR has been transferring RERA funds to the BRR account to help reimburse BRR-related education costs, mainly funding the Rookie and Supervising Broker Pre-Endorsement courses. However, the BRR currently still has over $350,000 in the RERA.

The BRR, its licensees, and the general public could benefit from a re-evaluation of the purpose and use of the RERA. Given high account balances and limited claims, it is not clear whether the current $35 fee, as defined in §37-51-502(1), MCA, is appropriate, or whether allowing the balance to increase without establishing a maximum effectively serves the statutory purposes of this account. Based on our review of other states, the BRR could also review options for new or expanded use of the RERA, including independent research or educational projects, or enhanced efforts to combat fraudulent or deceptive practices within the real estate industry. However, because of §37-51-204, MCA, the BRR members will need to work with the legislature if they want to make changes to the minimum amount required within the RERA or if they want to use excess funds outside of education.

The BRR should also look for ways to improve its efforts to market the RERA to both licensees and the general public. Increasing awareness among the profession is a necessary first step in ensuring the RERA is actually being used for its intended purposes. Direct marketing to consumers should also be addressed, potentially through information provided to the public as part of disciplinary proceedings or other situations where the professionalism or integrity of BRR licensees has been found deficient.

Recommendation #10

We recommend the Board of Realty Regulation:

A. *Align the current parameters for funding the Real Estate Recovery Account with resource needs,*

B. *Determine whether existing uses of the Real Estate Recovery Account funds should be expanded to increase protections for consumers, and*

C. *Increase the visibility of the Real Estate Recovery Account to both licensees and the general public through improved marketing.*

Fee Not Being Assessed in Compliance with Law

In addition to issues with the statutory purposes and use of the RERA, we also identified issues with how the $35 fee is being assessed. According to DLI staff, all BRR licensees are required to pay a one-time fee of $35, which is deposited into the RERA. Licensees will pay this fee for each license they obtain. For example, if they start out as salesperson and then receive their broker license, they will be charged the $35 fee twice. That same person will be charged the $35 fee again if they decide to become a property manager. According to §37-51-502(1), MCA, "A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of $35 at the time of licensure, to be credited to the real estate recovery account." Presently, applications for licensure require two payments to be made when applying to become a BRR licensee: the application fee and the $35 RERA fee. DLI staff stated the RERA fee is nonrefundable. As such, applicants that are denied a license, or their application is voided or timed-out, do not have their $35 RERA reimbursed. Between calendar year 2012 and March 2015, there were 28 cases in which this occurred, which resulted an additional $980 being deposited into the RERA account by applicants that were not granted a BRR license.

Recommendation #11

We recommend the Department of Labor and Industry comply with statute and only assess the Real Estate Recovery Account fee to license applicants that have their applications approved.

Chapter VI – Management Information Systems

Introduction

The final objective of this audit involved reviewing management information controls and the integrity of data in the information systems administered by the Department of Labor and Industry (DLI) for the Board of Realty Regulation (BRR). A management information system is a computerized database of information organized and programmed in such a way that it produces regular reports on operations.

There are three main sources of management information in use by DLI and BRR:

- DLI's professional licensing database (the public version of this is called eBiz)
- Professional Continuing Education web service (provided by the state's E-government services contractor)
- The Board of Realty Regulation website

Most of the management information generated or stored via these systems can be accessed by licensees or the general public via various online applications or services. We asked various questions about BRR websites/online services as part of our survey of salespersons and brokers, and responses indicated these three systems are all widely used by licensees, as shown in the table below.

Table 19
Please Indicate Which of the Following Online Services Provided by BRR and DLI You Have Utilized

Answer Options	Response Percent
Board of Realty Regulation website	78%
Licensed Professional Continuing Education Lookup website	77%
Licensee Lookup / eBiz website	60%
I have not used any of these websites	8%

Source: Compiled by Legislative Audit Division from licensee survey results.

As part of this objective, audit staff reviewed management information controls and integrity of data used by BRR and DLI. This was based on concerns voiced during early stages of audit work from BRR stakeholders: the state and local professional real estate associations, and BRR licensees. Concerns centered on the inability to access accurate and updated information through BRR websites and services.

Background

DLI is charged with providing administrative and technical support for the 33 professional licensing boards and two programs in Montana. In regards to BRR, DLI uses two systems to aid with these tasks: its licensing database, which is used to track and license board licensees, and, in some cases continuing education (CE) instructors and courses; and the Professional Continuing Education web service, which is used to track CE courses, instructors, and licensee hours. These two systems are explained in detail below.

Licensing Database

In January 2012, DLI's Business Standards Division (BSD) purchased an off-the-shelf software program to be used by the Building Codes Division to issue permits. At the same time, BSD was looking for a new licensing package that would replace the aging database used to issue board licenses. After a Request for Proposals was issued, the same company supplying the software package used by the Building Codes Division was issued the contract. In the summer of 2012 the BSD decided to roll out new licensing database division-wide to all the boards. According to DLI staff, the main goals of the licensing database were to create more consistency, standardization, and automation.

BRR utilizes the licensing database through the issuing of licenses for salespersons, brokers, property managers, and timeshare salespersons. It also issues supervising broker endorsements and approves applications for CE providers, instructors, and courses (CE licenses are not issued; applications are simply approved or denied). These tasks are done by DLI employees within BSD's Licensing Bureau. As discussed in Chapter II, staff within Units A and B work on licensing duties, while staff in the Audit Unit complete CE duties.

DLI's licensing database has been operating as the sole licensing database within BSD since the summer of 2012. However, the software is still being updated and edited on a continuous basis. According to staff, it was developed in such a way in which each board's Administrative Rules and policies are implemented into the system. As a result, if a board has specific rules defining what makes a board's license application routine versus nonroutine, the system would have this criteria built in and the employee would verify when entering in the application data.

Interviews with BSD staff indicate that the implementation of DLI's licensing database was rushed, and it was rolled out before it was ready, with employee database training limited to a few weeks. Staff noted this led to failures in functionality and automation with certain tasks. DLI staff stated at any given time there are several hundred items

that need to be addressed and fixed. Staff within DLI's Technical Services Division (TSD) is tasked with completing these items, which are based on priority. DLI's licensing database is primarily used internally. However, it can also be accessed by licensees and members of the public. This is discussed below.

Public-Facing eBiz Functionality

Licensees may not be familiar with the DLI's licensing database; however, they may use it throughout the year under the name "eBiz." eBiz is the name DLI gave the portion of the database used by both licensees and the public. eBiz gives the user a limited portion of a licensee's actual database record (also known as profile). This is what licensees see when they use the "Licensee Look-Up" system. Online applications and renewals can also be done through eBiz. Below is a summary of what information licensees and public members can see when they look at a profile via eBiz:

Licensee View: A board licensee can use eBiz to access their license profile. In regards to the BRR, the user would see the following:

- Name, address, city, state, zip code, phone numbers, email, license type, and status, state license number, business name (if applicable), license information, and trust account information (if applicable).

They can also do the following tasks through eBiz:

- Apply for or renew a license, and change the demographic information listed above. They can also change their user ID, password, and security question.

Public View: A member of the public can use eBiz to look up a licensee for any board. In regards to the BRR, the user would see the following:

- Name, license type and status, state license number, business name (if applicable), license issue and expiration date, supervising broker endorsement or supervising broker's name (if applicable), and city where licensee lives.
- In the case a licensee was reprimanded, one can also find documentation relating to the reason in the profile.

Profile Updates

If a licensee wants to make a change to their license profile, they can do so one of three ways: contact DLI staff directly, filling out a change form (separate forms for salespersons, brokers and property managers), or making a change online through the BRR's website or eBiz. Some comments received in the survey involved licensee documentation being sent to an address that did not match the address attached to the licensee's eBiz profile. Interviews with DLI staff found a licensee cannot currently change their address in the licensing database through their eBiz profile. A licensee is able to change "Public User" contact information, which is what the licensee sees; however, this does not change the actual contact information linked to the licensee's

record in the database. When a licensee makes a change to their address via the BRR website, the change is emailed to DLI staff within Unit A, who in turn personally updates the licensee's record.

DLI staff is aware of the issue with the lack of connectivity/real time updates between the professional licensing database and the eBiz service available to licensees. In an effort to avoid confusion, eBiz users currently receive an on-screen message informing them that any profile changes they make will not transfer to their actual licensing records. Despite this precaution, our survey responses indicate there is still a lot of confusion among licensees about the inability to directly update profiles. Confusion among licensees is likely attributable to the fact that in everyday use of most commercial web services, profile-type information automatically updates to a permanent record. DLI has been aware of this issue for some time and has requested their Technical Services Division to fix it.

DLI staff has also indicated they plan to request updates to the professional licensing database to provide connectivity with eBiz and real time profile updates. These changes should be prioritized as part of ongoing efforts to improve system functionality. In addition to the frustration some licensees may experience when trying to update profile information, the lack of connectivity with eBiz could result in problems with lost or misdirected mail, inaccurate information being provided during disciplinary or other regulatory actions, or business interruption for real estate professionals.

Recommendation #12

We recommend the Department Labor and Industry establish a two-way connection between the licensing database and eBiz to allow for licensee profile edits.

Data Integrity Concerns

We identified concerns from licensees and the real estate professional associations that data in the licensing database may be inaccurate. Complaints include outdated or missing supervising brokers in salespersons' profiles, inaccurate license statuses, and cases in which a licensee is listed as having a supervising broker endorsement when they should not. Audit work consisted of reviewing BRR data within DLI's licensing database between January 1, 2012 (the earliest date data was available) and March 27, 2015. Analysis of this data found the following issues (not an all-inclusive list):

Record Inaccuracies

- Missing Social Security Numbers
- Missing names
- Missing or invalid ZIP codes
- Inconsistencies in "Record Status" (i.e. "approved" vs. "license issued")
- Missing records status
- Missing address
- Inconsistencies with relationship records License records with a non-October 31 expiration date (noncompliant with ARM 24.101.413(5)(ai))
- CE Applications still active beyond two years (noncompliant with ARM 24.210.674(2))

Alternative ID Inaccuracies

Each licensee is given a unique "Alternative ID" when they apply and receive a license, such as RRE-BRO-LIC-XXXXX for a broker (where XXXXX is a unique five-digit number). The Alternative IDs are important as they also help link supervising brokers to salespersons. A review of the Alternative IDs in the database found a number of issues with the fields that contained the Alternative ID. Some of the Issues included: records with no RRE-XXX-LIC listed-just the license number; a Wyoming license number; licensee names instead of ALT ID; BR0 instead of BRO; and records with no hyphen between LIC and number.

Having inaccurate or missing data makes it more difficult for DLI staff to use the database as a management tool. For example, audit staff found an example in which a salesperson license was issued to a realty firm with no name attached to it; in Montana, a salesperson license is to be issued to a person, not an organization. Staff stated some of these inaccuracies could be due to the conversion that took place when the database was switched from the previous licensing database to the existing database. Part of audit work consisted of using a dummy account to apply for a BRR license through eBiz. When applying, the following fields were required to have data entered: first, middle, and last name; social security number; birthdate; gender; address, city; state; ZIP; and email. However, when analyzing the licensing database, audit staff found that instances in which all these fields, except for city, were blank in a record. DLI staff indicated some of these issues would be mitigated if more controls were in place.

Data Entry Controls

An accurate, trustworthy information system should have data entry controls in place. Data entry controls help ensure the completeness and accuracy of data. There are multi-level controls over data entry including system edits, required fields, data formatting, and potential duplicates. System edits are program code used as controls in data entry

and processing. Data entry fields can be marked as required. If a required field is left blank, the control will halt data entry processing and prompt the user to enter a valid value in the required field in order to continue. Data formatting rules ensure consistent data types for each form. For example, ensuring a phone entry has all ten numbers and only numeric characters. An automated system edit is activated when a user submits data. This automated script checks for potential duplicates by comparing the submitted information with current data. If any potential duplicates are identified they are listed in a popup screen pausing data entry.

Recommendation #13

We recommend the Department of Labor and Industry establish data entry controls within the licensing database to ensure licensing data is accurate, complete, and reliable for new applications and renewals going forward.

Supervising Broker Relationship

As discussed in Chapter III, in order for a licensed salesperson to practice real estate in Montana they must be under the direction of an active broker with a supervising broker endorsement. It is not uncommon for salespersons to switch from one supervising broker to another within a firm or when they change brokerage firms. Audit work found data integrity issues relating to how these relationships are input and updated in the licensing database records for both the salesperson and their supervising broker.

Supervising Broker/Salesperson Inaccuracies

Before the current licensing database was implemented division-wide in the summer of 2012, BSD used another database to track and issue licenses. According to staff, this database had the capability to automatically update both the salesperson and the supervising broker records simultaneously when a change was made in a single record. However, this capability is not yet available within the new licensing database. This has resulted in a number of issues in regards to the relationships in the records for both salespersons and supervising brokers. Audit staff analyzed these relationships and found the following errors (not an all-inclusive list):

- 47 instances of inactive expired, terminated, expired, or deceased brokers still having an active supervising relationship over a salesperson (the salesperson license may be active, closed, terminated, or expired).
- 18 salespersons being supervised by a broker that does not have an endorsement.

- 13 active salespersons not assigned to a supervising broker.
- 478 instances of a broker supervising a non-active salesperson.
- 913 instances in which a salesperson was supervised by a broker prior to the broker receiving their supervising broker endorsement.
- 17 instances in which a salesperson was supervised by a broker after the supervising broker's endorsement expired.
- 7 cases of a salesperson supervising a salesperson.
- 22 instances in which a broker is being supervised; six of these brokers are supervised by a salesperson.
- There are six supervising brokers who have multiple endorsements without an end date.
- Hundreds of instances in which a salesperson's records states a certain licensee is their supervising broker; however, the supervising broker's record does not show they are supervising the salesperson, and vice versa.

According to DLI staff, supervising broker relationships within the licensing database is an area where the new database has not been successful. The loss of functionality and automation has caused problems, such as when someone looks up a salesperson on eBiz; it is quite possible the supervising broker listed is not accurate. As discussed in previous chapters, the supervising broker relationship is a central feature of the regulation of the real estate industry. Supervising brokers have specific responsibilities and duties under Administrative Rule, and supervised salespersons and brokers should have defined expectations regarding how this relationship affects their work. The failure of the department's new professional licensing system to accurately record and process the management information that defines these relationships could undermine a central principle in regulation of the profession. The potential effects of this situation could include everyday inconveniences, such as misdirected communications or confusion for consumers, but could also have more serious impacts, in terms of business interruption or delays in disciplinary actions. DLI has been aware of this issue for some time and has requested its Technical Services Division to fix it.

Lack of Consistency in Salesperson/Supervising Broker Records

In addition to the problems relating to the actual relationship between salesperson and supervising broker records, audit work also found issues within the individual relationship records themselves. A review of the database found the following forms

of supervision under the "Type of Supervision" field within the license records of salespersons and brokers with supervising broker endorsements:

Supervising Broker

- Employs
- Owns
- Person in Charge
- Sponsors
- Supervises
- Undefined

Salespersons

- Sponsored By
- Supervised By

These types of relationships have different meanings. According to DLI staff, "Supervised By" and "Supervising" are used to represent true supervision. In this case, the salesperson is being supervised by the supervising broker. This differs from the other meanings, such as sponsors, which are used within other boards.

Recommendation #14

We recommend the Department of Labor and Industry:

A. *Implement internal controls to link the salesperson/supervising broker relationship within the department's licensing database, and*

B. *Establish uniform standards to define relationships and supervision status in the department's licensing database.*

BRR Website

All boards administratively attached to DLI have a website that is maintained by DLI. A website is generally a first source of information from those interested in pursuing an occupational license from a board. As such, it should deliver accurate information in an easy-to-navigate format. Audit work consisted of reviewing the BRR's website to determine if it was up-to-date and contained information necessary to licensees and the public. A portion of the issues found during a review of the website include the following:

- Outdated BRR Administrative Rules
- Outdated continuing education instructor and provider newsletters
- Broken links

- Contradicting contact information
- FAQs are out of date

Interviews with BRR board members found BRR members do not review the website for accuracy or relevance of information. The general thought was if they heard a complaint about the website, they would refer it to DLI staff and have them fix the problem. DLI staff stated it is the board's executive officer's responsibility to ensure the website is up-to-date and TSD staff makes any necessary changes. A survey of active salespersons and brokers found 79 percent of respondents have used the BRR website. With nearly four out of five licensees using the website, it is important to keep the information relevant and timely.

Recommendation #15

We recommend the Board of Realty Regulation and its executive officer review the board's website for content and accuracy on a regular basis.

Chapter VII – Making Realty Regulation More Responsive to the Needs of Licensees

Introduction

This final chapter addresses issues relating to both the administrative role of the Department of Labor and Industry (DLI) and the work practices of the Board of Realty Regulation (BRR). The following sections summarize the findings throughout this audit report and address underlying circumstances that have affected the ability of DLI and the BRR to effectively serve licensees.

DLI Could Improve Services to BRR

As discussed, there has been a great deal of change within DLI, especially within Business Standards Division (BSD). This has led to a number of factors that has affected the BRR in recent years. Throughout this report we have noted several administrative concerns under the purview of DLI. These include:

- Data Integrity issues with the licensing database.
- A lack of a two-way connection between the licensing database and DLI's eBiz portal.
- The current continuing education audit process is costly and may lead to potential liability to DLI and/or BRR.
- Supervising broker changes are not meeting internal BSD processing goals, which can lead to licensees not being able to work in a timely manner.
- A number of Administrative Rules are out of date or not being followed.
- Real Estate Recovery Account fee is not being consistently assessed according to board statutes.

In addition to the findings above, audit work also found other factors that may lead to slower processing times for applications and changes to licenses, and confusion from licensees and DLI staff. These include:

- DLI requires the use of original ink signatures on many forms and documents used by the BRR. Scanned and faxed documents are not accepted.
- There is confusion among licensees about the use of licenses, pocket cards, and wall certificates. According to DLI staff, existing laws and rules are outdated.
- Currently, not all BRR applications and forms are available in an electronic format. This has led to delays in processing, which may lead to BRR licensees being unable to work and continuing education (CE) instructors being unable to teach a course in a timely manner.

DLI's Responsibility to the BRR

There are two leading causes for the problems regarding DLI: DLI's Licensing Bureau is not regularly communicating department benchmarks and results to the BRR, and BRR members have not consistently and effectively interpreted information regarding budgets, the RERA account, board rules and laws, and board-related forms and applications from DLI staff. The EO has also not provided guidance regarding board policy decisions. These issues are discussed in detail below.

The Licensing Bureau has goals for approving routine applications. However, these goals are not communicated with the BRR and the board does not receive regular updates regarding application processing time frames. According to the position description (PD), the executive officer (EO) is responsible for planning, administering, and overseeing all board operations to provide effective executive guidance, ensure compliance with applicable statutes and Administrative Rules, and to assist the board in formulating public policy. They also research, analyze, and make recommendations to the board for matters under its purview, and research and assist in drafting and implementing proposed legislation and/or Administrative Rules.

Although this PD is detailed, it is also universal; all the EOs for all 30-plus boards and programs operate under the same PD. The word "realty" is not even present in the current PD. All boards primarily have the same goals: keeping the public safe and licensing individuals. However, boards also have unique attributes. What the EO does for BRR might be completely different then what the EO does for the Board of Medical Examiners.

A second issue regarding BRR is the recent turnover of its EO in the past two years. The most recent EO for the BRR was in place from August through December 2015 (the EO also has non-EO responsibilities for another board). This was its third EO since the beginning of 2014. The previous EO served for about one and a half years. Currently, there does not appear to be a good plan in place for the EO to follow when overseeing this board in the event the current EO decides to the leave the BRR.

As discussed in Chapter I, §2-15-121, MCA, outlines the responsibilities of the boards and the department in which board are allocated for administrative purposes (in this case–DLI). Specifically, DLI is responsible for directing and supervising the budgeting, record keeping, reporting, and related administrative and clerical functions of the BRR. DLI could improve the delivery of services to the BRR by identifying performance measures relevant to the BRR, and establishing priorities for the EO to follow and report.

Recommendation #16

We recommend the Department of Labor and Industry improve the efficiency and effectiveness of administrative services provided to the Board of Realty Regulation by:

A. *Identifying measures and performance standards for key administrative processes and regularly reporting results at board meetings, and*

B. *Establishing priorities for the Board of Realty Regulation executive officer position to ensure the board is provided with consistent and updated information.*

BRR Members Currently Lack a Plan to Provide Clear Direction and Review

Along with the other issues previously discussed, another area that has facilitated some of the problems audit work found with BRR is the lack of policies in place to direct decision-making. This has led to inconsistent decision-making, outdated information and testing procedures, and undue burdens on applicants and existing licensees. The BRR only has two motions (instead of policies) in place used for guidance when approving applicants, both of which are unclear and/or not being followed. As previously discussed, a motion is a proposal made by a board member to take a certain action, and a policy is a statement of intent used to guide to decision-making. The BRR's use of motions in place of policies is an area of concern. Staff stated the lack of policies has led BRR members to change their minds on issues from meeting to meeting. A majority of BRR members also agreed a lack of policies has led to confusion in areas such as how to deal with existing licensees that incur disciplinary charges. Survey data from active licensees also reflect this conclusion. Only 53 percent of respondents agreed to the statement that *"The laws, rules and policies used to govern the Board of Realty Regulation are reflective of today's real estate industry."*

The BRR Does Not Have a Formal Work Plan

The BRR does not have a work plan in place to direct board actions. Currently, the BRR members follow an agenda at meetings that consistently includes the following areas: a DLI update, board actions (i.e. nonroutine application review, correspondence from licensees and the professional real estate associations, CE course approvals from DLI staff, and rulemaking), sub-committee reports, and a report from the executive officer. However, the board does not regularly review other areas that are the source of

some of the problems found during audit work. A successful work plan could include the following:

- Review Administrative Rules and laws to ensure they are relevant to today's real estate market and technology advancements within DLI.
- Review all current motions in place to make certain they are clear and being used properly, consistently, and regularly.
- Implement new policies for areas that need clearer direction.
- Review the BRR's website for outdated information and broken hyperlinks, and address real estate topics that are not currently found on the website.
- Review BRR-related fees to learn if they are comparable to fees for similar services in other boards administratively attached to DLI, and to other real estate commissions.
- Review pre-licensure education and the state real estate exam to find if the materials and testing relate to present real estate laws and Administrative Rules.
- Review all BRR-related forms and applications to determine if they include redundant or obsolete information.

Reviewing the topics above could help the BRR and DLI identify key areas that need to be addressed. Also, implementing clear, effective policies could help give the BRR and DLI staff guidance on how to address certain situations, such as what to do when an existing applicant has a disciplinary action since their last renewal; overall, it would benefit decision-making by adding more consistency and reliability. By creating a thorough work plan, the BRR will have clear guidance on when and what to review. This is especially useful given the high turnover within the BRR itself and the DLI staff dedicated to helping the BRR.

Recommendation #17

We recommend the Board of Realty Regulation develop and implement a biennial work plan that includes regular and cyclical review of all significant areas of board regulatory activity affecting real estate industry professionals.

The Board of Realty Regulation

Department of Labor and Industry

Responses

MONTANA BOARD OF REALTY REGULATION
PAT M. GOODOVER II, CHAIRPERSON
P.O. BOX 1725
GREAT FALLS, MT 59403
406-727-8222
[Fax: 727-8223]

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LEGISLATIVE AUDIT DIV.

January 8, 2016

Tori Hunthausen
Legislative Audit Committee
PO Box 201705
Helena, MT 59620-1705

Dear Ms. Hunthausen,

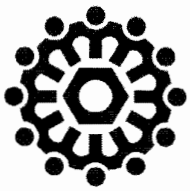
Thank you for providing me with the final report of the Legislative Audit Committee's audit of the Board of Realty Regulation. You asked for a response to this final draft by January 13th.

Rules require that if we are going to have a public meeting on anything, we need to give adequate notice. We do not have enough time between now and your response date to do so, plus our meeting would be public, and would need to occur prior to the formal presentation of this audit to the Legislative Committee. We have been asked not to disseminate this report to anyone until it is presented to the Legislative Committee, so that necessitates that we meet after that date to discuss this report.

I will be presenting this to the board members for a formal response by March 31, 2016. We will call a public meeting, which requires time for the meeting being "noticed" to the public, at which the Board will discuss and address each item, and we will submit a revised response after that meeting. In the interim, I will provide a copy of your final report to each of the Board of Realty Regulation members for their confidential review.

Sincerely,

Pat M. Goodover II
Chairman
Montana Board of Realty Regulation



Montana Department of LABOR & INDUSTRY

Governor Steve Bullock
Commissioner Pam Bucy

Commissioner's Office

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LEGISLATIVE AUDIT DIV.

January 13, 2016

Ms Tori Hunthausen
Legislative Auditor
Legislative Audit Division
PO Box 201705
Helena, MT 59620-1705

Subject: Performance Audit #15P-01: Board of Realty Regulation and Department of Labor and Industry

Dear Ms Hunthausen:

The Department of Labor and Industry has reviewed the January 2016 Report for the Performance Audit conducted of the Board of Realty Regulation and the Department of Labor and Industry. The Department would like to thank your audit staff for their review. As a Department we are always looking for ways to improve and we appreciate the efforts of others to help assure we are providing quality services with the best accountability possible. Our responses to the Department specific recommendations appear below.

Recommendation #5

We recommend the Department of Labor and Industry provide an online method for the changing of supervising brokers.

Response:

> **Concur.** As stated in the report, this issue had previously been identified by the Department, and the Department has been actively working towards resolution. This issue has been identified as a priority on the joint Business Standards Division/Technology Services Division two-year workplan, and is projected to be accomplished by July 2016.

Recommendation #11

We recommend the Department of Labor and Industry comply with statute and only assess the real estate recovery Account fee to license applicants that have their applications approved.

Response:

> **Concur.** The Department has updated staff instructions to specifically direct the refund of the Real Estate Recovery Account fee to applicants who have their applications denied.

Additionally, the Department has identified prior applicant's owed refunds during the 2006-2015 time period, and has initiated processing of those refunds.

Recommendation #12

We recommend the Department of Labor and Industry establish a two-way connection between the licensing database and eBiz to allow for licensee profile edits.

Response:

Concur. As stated in the report, this issue had previously been identified by the Department, and the Department has been actively working towards resolution. This issue has been identified as a priority on the joint Business Standards Division/Technology Services Division two-year workplan. It is anticipated this issue will be resolved with the eBiz upgrade to version 8.0. This version has been successfully installed in the "sandbox" environment as of December 22, 2015, is currently being tested by BSD staff, and will be fully implemented upon successful testing. If not fully resolved by this upgrade, the issue will be prioritized and completed through the BSD/TSD programming workplan. This task is projected to be accomplished by July 2016.

Recommendation #13

We recommend the Department of Labor and Industry establish data entry controls within the licensing database to ensure licensing data is accurate, complete, and reliable for new applications and renewal going forward.

Response:

Concur. The Department agrees data integrity is critical to overall success of the eBiz licensing system. Upon successful upgrade to eBiz version 8.0, new functionality will be examined to identify options for using additional data entry controls to help ensure accurate, complete, and reliable data from that point forward. Version 8.0 has been successfully installed in the "sandbox" environment as of December 22, 2015, is currently being tested by BSD staff, and will be fully implemented upon successful testing.

However, as stated in the report, audit staff verified the current existence of data entry controls and was not able to verify whether the majority of identified data integrity issues resulted from lack of data entry controls or initial data conversion. Therefore it is unknown the impact that additional data entry controls may have on eBiz data integrity. Ultimately the final check for accuracy and completeness will be accomplished by licensing staff, who perform a robust data check during the application review process to maximize accuracy and completeness of the application, supporting materials, and the applicant's license record in the eBiz licensing system. This data check includes the validation of applicant-provided information in the system against hard-copy documentation provided by the applicant to resolve any mismatches.

Recommendation #14

We recommend the Department of Labor and Industry:

A. **Implement internal controls to link the salesperson/supervising broker relationship within the department's licensing database.**
B. **Establish uniform standards to define relationships and supervision status in the department's licensing database.**

Response:

A. **Concur.** As stated in the report, this issue had previously been identified by the Department, and the Department has been actively working towards resolution. This issue has been identified as a priority on the joint Business Standards Division/Technology Services Division two-year workplan. It is anticipated this issue will be resolved with the eBiz upgrade to version 8.0. This version has been successfully installed in the "sandbox" environment as of December 22, 2015, and will be fully implemented upon successful testing. If not fully resolved by this upgrade, the issue will be prioritized and completed through the BSD/TSD programming workplan. This task is projected to be accomplished by July 2016.

B. **Concur.** The Department will refine available options in the eBiz licensing system to reduce the use of multiple definitions where a sole definition is appropriate. This task is projected to be accomplished by July 2016. Completion of the task referenced in recommendation 14A will aid in full resolution of this issue.

Recommendation #15

We recommend the Board of Realty Regulation and its Executive Officer review the board's website for content and accuracy on a regular basis.

Response:

Concur. The Executive Officer for the Board has been actively reviewing and coordinating updates to the website. However, turnover in EO's temporarily caused gaps in updates. Reviews and updates are currently being accomplished. Additionally, the BSD website is currently being redesigned using content management software. This will allow BSD staff instead of programmers to make changes, allowing for more real-time updates to the website. The Executive Officer will continue to review the website and coordinate updates as necessary. The website redesign is currently being tested and reviewed by BSD staff, and is expected to be rolled out by March 2016.

Recommendation #16

We recommend the Department of Labor and Industry improve the efficiency and effectiveness of administrative services provided to the Board of Realty Regulation by:

A. **Identifying measures and performance standards for key administrative processes and regularly reporting results at board meetings, and**

B. Establishing priorities for the Board of Realty Regulation Executive Officer position to ensure the board is provided with consistent and updated information.

Response:

A. Concur. The Department has been actively engaged in a process to catalogue data availability and recommended timeframes for review. The next step will be for the Executive Officer to review this data and any benchmarks with the Board of RRE to determine which data and time periods they should review over the course of a licensing year. Standing agenda items will be placed on Board agendas to ensure the reviews occur as intended. The reviews will be updated as new data or new areas for review become available.

B. Partially Concur. The Department agrees that the Board should be provided with consistent and updated information, and will use tools such as annual policy reviews, data/benchmark reviews, and standing agenda items for topics such as budget reviews to accomplish this. However, the Department does assert that consistent and updated information as referenced in the audit report has indeed been provided to the Board by the Executive Officer in the past and is being provided at the current time.

Sincerely,

Pam Bucy

Pam Bucy
Commissioner

CC: Todd Younkin, BSD Administrator