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FISCAL IMPACT REPORT

SPONSOR Ely **ORIGINAL DATE** 02/11/21 **LAST UPDATED** 03/15/21 **HB** 230/aSTBTC
SHORT TITLE Real Estate Licensure Recovery Limits **SB** _____
ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Real Estate Commission		Indeterminate			Recurring	Real Estate Recovery Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of STBTC Amendment

The Senate Tax, Business and Transportation Committee amendment to House Bill 230 excludes from the proposed definition of “property management” funds collected and disbursed by an owners association, and certain services incidental to the sale and marketing of property as authorized for the management of a condominium or homeowner association.

Synopsis of Original Bill

House Bill 230 (HB230) amends Section 61-29-2 NMSA 1978 governing real estate licensees to add a definition for “property management” that means “real estate services as specified by a management agreement that include marketing, showing, renting and leasing of real property; collection and disbursement of funds on behalf of the owner or owners’ association; supervision of employees and vendors; coordination of maintenance and repairs; management of tenant relations; and preparation of leases or rental agreement, financial reports and other documents.” The definition further explains that “property management” does not include “inspections of property, repairs and maintenance incidental to the sale and marketing of property as authorized by the owner or advertising or taking reservations for vacation rental properties.”

HB230 also amends Section 61-29-23 NMSA 1978 to add property management to the list of transactions available for a cause of action and extend the time to two years after final judgment that a person may file a petition with the Real Estate Commission for recovery. Additionally, the amount recoverable is increased from \$10 thousand to \$50 thousand, with the aggregate amount recoverable increased from \$30 thousand to \$100 thousand. The bill also requires the petition with final judgment to be sent to the commission who will then serve the petition and hearing notice on the licensee, who will be allowed to raise all affirmative defenses. This section also removes certain procedural requirements that had to be met by the petitioner.

Finally, the bill amends Section 61-29-24 NMSA 1978, to allow the commission to conduct the hearing pursuant to the Uniform Licensing Act, Sections 61-1-1 *et seq.*, NMSA 1978.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

RLD explained the bill removes requirements that established too high of a bar for qualifying for payment from the fund and discouraged consumers from petitioning the commission for payment. Combined with the low recovery limits, the act in its current form is not consumer-friendly.

The increase in recovery limits may stretch the capacity of the real estate recovery fund to satisfy judgments. Each licensing period, the commission collects an additional fee of \$10 from each real estate licensee to maintain the real estate recovery fund. The statutory minimum for the fund is \$150 thousand. If the fund falls below this amount, the commission has authority to adjust the additional fee or draw on real estate commission fund balances from exam and licensing fees. RLD reported the commission is in the process of transferring \$120 thousand from real estate commission fund balances to restore the real estate recovery fund back to the required statutory minimum.

HB230 retains language in the act that makes ineligible for recovery a judgment that is covered by any bond, insurance, surety agreement, or indemnity.

SIGNIFICANT ISSUES

According to RLD, the primary objective of HB230 is to make it easier for a consumer who is financially harmed by the fraudulent actions of a judgment-proof real estate broker to recoup some of their losses from the real estate recovery fund. HB230 adds property management as a transaction that may lead to a cause of action that is eligible for reimbursement from the fund.

HB230 deletes language in the act that would require a petitioner to (1) show that the judgment debtor has no property within the state that is subject to payment of a judgment, (2) show that the amount realized on the sale of the debtor's property was insufficient to satisfy the judgment and present the amount realized from the sale and the balance remaining due on the judgment, and (3) make reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets that may be sold or applied in satisfaction of the judgment, including partnership assets, licensee's estate or any bond or insurance, and that the petitioner has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor. Instead, the bill would now allow the Real Estate Commission to

conduct a hearing arising from a petition for recovery from the real estate recovery fund pursuant to the Uniform Licensing Act, in alignment with the manner in which the commission conducts its disciplinary hearings.

ADMINISTRATIVE IMPLICATIONS

The commission will be required to conduct a rulemaking to implement HB230.

AHO/sb/al/rl