



MATTHEW G. BEVIN
GOVERNOR

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EXECUTIVE ORDER

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY A. Adler

Secretary of State
Frankfort
Kentucky

2016-859
December 1, 2016

**RELATING TO THE REORGANIZATION OF THE OFFICE OF
OCCUPATIONS AND PROFESSIONS, THE REAL ESTATE COMMISSION,
THE REAL ESTATE APPRAISERS BOARD, THE BOARD OF AUCTIONEERS,
AND THE KENTUCKY BOARD OF HOME INSPECTORS AND THE
CREATION OF THE KENTUCKY REAL ESTATE AUTHORITY**

WHEREAS, it is the responsibility of state government to provide the citizens of this Commonwealth with an economical and efficient governmental structure, as well as regulatory practices that are administered in a consistent, ethical, and coordinated manner; and

WHEREAS, the Kentucky Real Estate Commission regulates the licensing and education of real estate brokers and sales associates to safeguard and protect the public interest and to elevate the real estate industry to the highest standards possible through communication, education, and the latest technology; and

WHEREAS, the Real Estate Appraisers Board regulates, examines, and licenses Kentucky real estate appraisers and the registration of appraisal management companies and approves and monitors education, experience, and testing requirements for real estate appraisers; and

WHEREAS, the Board of Auctioneers examines, licenses, and regulates auctioneers and apprentice auctioneers; and

WHEREAS, the Kentucky Board of Home Inspectors regulates the licensing and education of home inspectors so that the inspectors produce quality home inspection reports regarding the condition of a residential dwelling to safeguard and protect the public interest; and

WHEREAS, the Kentucky Real Estate Commission, the Real Estate Appraisers Board, the Board of Auctioneers, and the Kentucky Board of Home Inspectors



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(collectively, the “Former Real Estate Boards”) all serve functions in the real estate industry; and

WHEREAS, without state-action antitrust immunity, members of the Former Real Estate Boards could be personally liable for money damages for the boards’ decisions; and

WHEREAS, in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), the United States Supreme Court held that state government policy makers must actively supervise state boards for the state board to enjoy state-action antitrust immunity if the board is composed of active market participants, such as those licensed in the field a board regulates; and

WHEREAS, it is imperative to protect the citizens who serve on the Commonwealth’s boards from civil liability and to ensure that regulations and their enforcement can withstand antitrust scrutiny, which can be achieved by active state supervision and oversight; and

WHEREAS, it has been determined that immediate action can be taken to further promote efficiency, improve administration, save costs, and protect board members from antitrust liability by abolishing and recreating the Former Real Estate Boards; and

WHEREAS, the Former Real Estate Boards shall be abolished as they currently exist in the General Government Cabinet; and

WHEREAS, under KRS 224.10-052, the Office of Occupations and Professions provides administrative services, technical assistance, and advice to numerous state boards and commissions; and



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WHEREAS, the Office of Occupations and Professions shall be altered to become the Department of Professional Licensing within the Public Protection Cabinet in light of the additional responsibilities the body will be undertaking due to the United States Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101(2015); and

WHEREAS, a new administrative entity called the Kentucky Real Estate Authority shall be created within the Department of Professional Licensing to oversee boards in the real estate industry, thereby providing oversight to the boards by a combination of market and non-market participants, including active state supervision by an appointed Executive Director; and

WHEREAS, the Kentucky Real Estate Authority shall consist of five members, including the Executive Director of the Kentucky Real Estate Authority and the chairs of the newly created Board of Realtors, Board of Appraisers, Board of Auctioneers, and Board of Home Inspectors; and

WHEREAS, the Kentucky Real Estate Authority will provide a unified forum for individuals in separate but related real estate professions to meet and discuss how regulations and policies in one profession impact regulations and policies in another profession; and

WHEREAS, the former Kentucky Real Estate Commission shall be recreated within the Kentucky Real Estate Authority as the Board of Realtors; and

WHEREAS, the former Real Estate Appraisers Board shall be recreated within the Kentucky Real Estate Authority as the Board of Appraisers; and



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WHEREAS, the former Board of Auctioneers shall be recreated within the Kentucky Real Estate Authority as the Board of Auctioneers; and

WHEREAS, the former Kentucky Board of Home Inspectors shall be recreated within the Kentucky Real Estate Authority as the Board of Home Inspectors; and

WHEREAS, each of the new Board of Realtors, Board of Appraisers, Board of Auctioneers, and Board of Home Inspectors (the "New Boards") shall consist of three members appointed by the Governor; and

WHEREAS, the members of each of the Former Real Estate Boards shall become non-voting ex officio members of the New Boards by virtue of their being a member of the Former Real Estate Boards, and such non-voting ex officio members shall serve until the end of each member's respective term, at which time the ex-officio member position shall be eliminated; and

WHEREAS, the New Boards shall not have the authority to promulgate administrative regulations, but shall have the authority to make regulatory recommendations to the Kentucky Real Estate Authority for consideration; and

WHEREAS, the Kentucky Real Estate Authority shall determine whether to approve the regulatory recommendations from the New Boards and propose to the Commissioner of the Department of Professional Licensing that such administrative regulations be promulgated; and

WHEREAS, each of the New Boards shall have the authority to make licensing decisions and to determine whether a penalty should be issued to a person within each board's respective field, conditional upon ratification by the Executive Director of the Kentucky Real Estate Authority, with each decision subject to an appeal by the applicant or licensee to the Commissioner of the Department of Professional Licensing; and



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WHEREAS, each of the Former Real Estate Boards employs a full-time staff;
and

WHEREAS, these staffs, each of which performs similar administrative functions, may be consolidated as a single staff of the Kentucky Real Estate Authority to eliminate duplication and create efficiencies; and

WHEREAS, between now and January 31, 2017, the Public Protection Cabinet, the Department of Professional Licensing, the Kentucky Real Estate Authority, and the New Boards shall study and plan for the efficient consolidation of resources, including office space, contracts, professional services, records, and other administrative functions so as to promote efficiency, improve administration, and save costs.

NOW, THEREFORE, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by the Kentucky Constitution, Sections 69 and 81, and KRS 12.028, do hereby Order and Direct the following to take effect immediately upon the filing of this Order:

Alteration of the Office of Occupations and Professions to the Department of Professional Licensing

- I. The Office of Occupations and Professions as established by KRS 12.252(2) is altered. The Office of Occupations and Professions shall become a department and shall be renamed the Department of Professional Licensing. The Department of Professional Licensing shall remain within the Public Protection Cabinet.
- II. The Department of Professional Licensing shall have the rights and duties enumerated in KRS 224.10-052 and such other duties as are enumerated in this Order and the Kentucky Revised Statutes for the former Office of Occupations and Professions, including the right to charge the Kentucky Real Estate Authority and any other authority or board organized within the Department of Professional Licensing a reasonable amount for administrative services provided.
- III. The Department of Professional Licensing shall be headed by a commissioner as set forth in KRS 12.010(2). The Commissioner of the Department of



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Professional Licensing shall be appointed by the Governor pursuant to KRS 12.040.

- IV. Pursuant to KRS 12.040, I appoint William L. Brown as the Commissioner of the Department of Professional Licensing. Please issue a commission to him.
- V. The Commissioner of the Department of Professional Licensing shall have the power and authority to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 324, KRS Chapter 324A, KRS Chapter 330, and KRS 198B.700–738.
- VI. The Commissioner of the Department of Professional Licensing shall have the power and authority to hear the administrative appeal of any action taken by the Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, or the Board of Home Inspectors, including any action related to the denial, revocation, or suspension of a license and any action related to the issuance of a penalty.

Creation of the Kentucky Real Estate Authority

- VII. An administrative body known as the Kentucky Real Estate Authority is hereby created and established within the Department of Professional Licensing. The Kentucky Real Estate Authority shall be led by an Executive Director, who shall be appointed by the Secretary of the Public Protection Cabinet with the prior written approval of the Governor pursuant to KRS 12.050.
- VIII. The Kentucky Real Estate Authority shall consist of five ex officio, voting members: The Kentucky Real Estate Authority's Executive Director, the Chair of the Board of Realtors, the Chair of the Board of Appraisers, the Chair of the Board of Auctioneers, and the Chair of the Board of Home Inspectors. The Executive Director shall be Chair of the Kentucky Real Estate Authority, and the members shall annually elect a Vice Chair to act in the chair's absence. The Kentucky Real Estate Authority shall meet as often as necessary to perform its responsibilities. A majority of the members of the Kentucky Real Estate Authority shall constitute a quorum for the transaction of business.
- IX. The Kentucky Real Estate Authority is charged with the following power and authority:
 - A. To make recommendations to the Commissioner of the Department of Professional Licensing regarding the promulgation of regulations that govern the fields within the jurisdiction of the Board of Realtors, Board of Appraisers, Board of Auctioneers, and Board of Home Inspectors;
 - B. To oversee the Board of Realtors in fulfilling its duties as set forth in KRS Chapter 324;



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- C. To oversee the Board of Appraisers in fulfilling its duties as set forth in KRS Chapter 324A;
 - D. To oversee the Board of Auctioneers in fulfilling its duties as set forth in KRS Chapter 330;
 - E. To oversee the Board of Home Inspectors in fulfilling its duties as set forth in KRS Chapter 198B;
 - F. To establish and maintain necessary offices within this state;
 - G. To make available for public inspection all decisions, opinions, and interpretations formulated or used by it in discharging its functions;
 - H. To publicize the functions and purposes of the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, and the Board of Home Inspectors;
 - I. To provide appropriate administrative staffing to the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, and the Board of Home Inspectors;
 - J. To charge the Board of Realtors, Board of Appraisers, Board of Auctioneers, and Board of Home Inspectors a reasonable amount for administrative services provided; and
 - K. To delegate any of its power and authority to its employees as necessary.
- X. The Executive Director of the Kentucky Real Estate Authority shall ensure that all duties of the Kentucky Real Estate Authority are fulfilled. This responsibility shall include the duty to:
- A. Serve as Chair of the Kentucky Real Estate Authority;
 - B. Carry out the policy and program directives of the Kentucky Real Estate Authority;
 - C. Be responsible for the day-to-day operations of the Kentucky Real Estate Authority;
 - D. Prepare annual reports on the Kentucky Real Estate Authority's activities;
 - E. Prepare budgets for the Kentucky Real Estate Authority, Board of Realtors, Board of Appraisers, Board of Auctioneers, and Board of Home Inspectors;



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- F. Delegate any power and authority to Kentucky Real Estate Authority employees and contractors as necessary; and
- G. Perform all other duties assigned by law.

- XI. With the approval of the Commissioner of the Department of Professional Licensing, the Executive Director of the Kentucky Real Estate Authority and staff may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the Kentucky Real Estate Authority.

**Abolishment and Recreation of the Kentucky Real Estate Commission
as the Board of Realtors**

- XII. The Kentucky Real Estate Commission as established by KRS 324.281 is abolished from within the General Government Cabinet. The former Kentucky Real Estate Commission shall be recreated and renamed the Board of Realtors. The Board of Realtors shall be organized within the Kentucky Real Estate Authority.
- XIII. The Board of Realtors shall consist of three (3) members appointed by the Governor for a term of three (3) years, except that of the members first appointed, one (1) shall serve for a term expiring October 31, 2017, one (1) shall serve for a term expiring October 31, 2018, and one (1) shall serve for a term expiring October 31, 2019. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. No more than two (2) members of the same political party shall serve at the same time. Further, no member shall reside in the same county as another member. The Governor shall appoint a member of the Board of Realtors to serve as chair, and the Board of Realtors shall annually elect one of its members to serve as vice chair to act in the chair's absence. A majority of the members of the Board of Realtors shall constitute a quorum for the transaction of business.
- XIV. The members serving on the Kentucky Real Estate Commission as it existed prior to the filing of this Order and whose terms have not expired shall be reclassified as non-voting ex-officio members of the Board of Realtors and their terms shall expire on the same expiration date that was established by KRS 324.281(2) and the Executive Order that appointed them. Upon expiration of an ex-officio member's term, the position shall lapse and the number of ex-officio members shall be reduced accordingly.
- XV. To the extent not inconsistent with this Order, all duties, functions, responsibilities, records, equipment, and supporting budgets of the Kentucky Real Estate Commission, as provided for in KRS Chapter 324 and as it existed prior to the filing of this Order, shall be transferred to the Board of Realtors, except that the Board of Realtors shall not have the power to promulgate



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administrative regulations. The Board of Realtors shall be given thirty (30) days to review and comment on a proposed regulation that affects licensees within its jurisdiction before the regulation is promulgated, amended, or repealed, except in the case of an emergency regulation. Any decision of the Board of Realtors to deny, suspend, or revoke a license, or to issue a penalty, shall be subject to the approval of the Executive Director of the Kentucky Real Estate Authority.

XVI. I appoint the following to serve as members of the Board of Realtors:

Lois Ann Disponette, Lawrenceburg, Kentucky,
for a term expiring November 30, 2019.
Mrs. Disponette is also appointed Chair of the Board of Realtors.

Thomas V. Biederman, Versailles, Kentucky,
for a term expiring October 31, 2018.

Kimberly G. Sickles, Louisville, Kentucky,
for a term expiring October 31, 2017.

Please issue a commission to them.

**Abolishment and Recreation of the Real Estate Appraisers Board
as the Board of Appraisers**

XVII. The Real Estate Appraisers Board as established by KRS 324A.015 is abolished from within the General Government Cabinet. The former Real Estate Appraisers Board shall be recreated and renamed the Board of Appraisers. The Board of Appraisers shall be organized within the Kentucky Real Estate Authority.

XVIII. The Board of Appraisers shall consist of three (3) members appointed by the Governor for a term of three (3) years, except that of the members first appointed, one (1) shall serve for a term expiring October 31, 2017, one (1) shall serve for a term expiring October 31, 2018, and one (1) shall serve for a term expiring October 31, 2019. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. No more than two (2) members of the same political party shall serve at the same time. Further, no member shall reside in the same county as another member. The Governor shall appoint a member of the Board of Appraisers to serve as chair, and the Board of Appraisers shall annually elect one of its members to serve as vice chair to act in the chair's absence. A majority of the members of the Board of Appraisers shall constitute a quorum for the transaction of business.

XIX. The members serving on the Real Estate Appraisers Board as it existed prior to the filing of this Order and whose terms have not expired shall be reclassified as non-voting ex-officio members of the Board of Appraisers and



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their terms shall expire on the same expiration date that was established by KRS 324A.015(2) and the Executive Order that appointed them. Upon expiration of an ex-officio member's term, the position shall lapse and the number of ex-officio members shall be reduced accordingly.

XX. To the extent not inconsistent with this Order, all duties, functions, responsibilities, records, equipment, and supporting budgets of the Real Estate Appraisers Board, as provided for in KRS Chapter 324 and as it existed prior to the filing of this Order, shall be transferred to the Board of Appraisers, except that the Board of Appraisers shall not have the power to promulgate administrative regulations. The Board of Appraisers shall be given thirty (30) days to review and comment on a proposed regulation that affects licensees within its jurisdiction before the regulation is promulgated, amended, or repealed, except in the case of an emergency regulation. Any decision of the Board of Appraisers to deny, suspend, or revoke a license, or to issue a penalty, shall be subject to the approval of the Executive Director of the Kentucky Real Estate Authority.

XXI. I appoint the following to serve as members of the Board of Appraisers:

John G. Kenkel, Union, Kentucky,
for a term expiring October 31, 2019.
Mr. Kenkel is also appointed as Chair of the Board of Appraisers.

Russ C. Lohan, Louisville, Kentucky,
for a term expiring October 31, 2018.

Alton D. Wheeler, Winchester, Kentucky,
for a term expiring October 31, 2017.

Please issue commissions to them.

Abolishment and Recreation of the Board of Auctioneers

XXII. The Board of Auctioneers as established by KRS 330.050 is abolished from within the General Government Cabinet. The former Board of Auctioneers shall be recreated and is named the Board of Auctioneers. The Board of Auctioneers shall be organized within the Kentucky Real Estate Authority.

XXIII. The Board of Auctioneers shall consist of three (3) members appointed by the Governor for a term of three (3) years, except that of the members first appointed, one (1) shall serve for a term expiring October 31, 2017, one (1) shall serve for a term expiring October 31, 2018, and one (1) shall serve for a term expiring October 31, 2019. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. No more than two (2) members of the same political party shall serve at the same time. Further, no member shall reside in the same county as another member. The Governor shall appoint a member of



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the Board of Auctioneers to serve as chair, and the Board of Auctioneers shall annually elect one of its members to serve as vice chair to act in the chair's absence. A majority of the members of the Board of Auctioneers shall constitute a quorum for the transaction of business.

- XXIV. The members serving on the Board of Auctioneers as it existed prior to the filing of this Order and whose terms have not expired shall be reclassified as non-voting ex-officio members of the Board of Auctioneers and their terms shall expire on the same expiration date that was established by KRS 330.050(1) and the Executive Order that appointed them. Upon expiration of an ex-officio member's term, the position shall lapse and the number of ex-officio members shall be reduced accordingly.
- XXV. To the extent not inconsistent with this Order, all duties, functions, responsibilities, records, equipment, and supporting budgets of the Board of Auctioneers, as provided for in KRS Chapter 330 and as it existed prior to the filing of this Order, shall be transferred to the new Board of Auctioneers, except that the Board of Auctioneers shall not have the power to promulgate administrative regulations. The Board of Auctioneers shall be given thirty (30) days to review and comment on a proposed regulation that affects licensees within its jurisdiction before the regulation is promulgated, amended, or repealed, except in the case of an emergency regulation. Any decision of the Board of Auctioneers to deny, suspend, or revoke a license, or to issue a penalty, shall be subject to the approval of the Executive Director of the Kentucky Real Estate Authority.
- XXVI. I appoint the following individuals to serve as members of the Board of Auctioneers:
- Joseph R. Gribbins, Jefferstown, Kentucky,
for a term expiring October 31, 2019.
Mr. Gribbins is also appointed Chair of the Board of Auctioneers.
- Cliff E. Irvin, Lancaster, Kentucky,
for a term expiring October 31, 2018.
- Edwin G. Birdwhistell, Lawrenceburg, Kentucky,
for a term expiring October 31, 2017.
- Please issue commissions to them.

**Abolishment and Recreation of the Kentucky Board of Home Inspectors
as the Board of Home Inspectors**

- XXVII. The Kentucky Board of Home Inspectors as established by KRS 198B.704 is abolished from within the General Government Cabinet. The former Kentucky Board of Home Inspectors shall be recreated and is renamed the



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Board of Home Inspectors. The Board of Home Inspectors shall be organized within the Kentucky Real Estate Authority.

- XXVIII. The Board of Home Inspectors shall consist of three (3) members appointed by the Governor for a term of three (3) years, except that of the members first appointed, one (1) shall serve for a term expiring October 31, 2017, one (1) shall serve for a term expiring October 31, 2018, and one (1) shall serve for a term expiring October 31, 2019. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. No more than two (2) members of the same political party shall serve at the same time. Further, no member shall reside in the same county as another member. The Governor shall appoint a member of the Board of Home Inspectors to serve as chair, and the Board of Home Inspectors shall annually elect one of its members to serve as vice chair to act in the chair's absence. A majority of the members of the Board of Home Inspectors shall constitute a quorum for the transaction of business.
- XXIX. The members serving on the Board of Home Inspectors as it existed prior to the filing of this Order and whose terms have not expired shall be reclassified as non-voting ex-officio members of the Board of Home Inspectors and their terms shall expire on the same expiration date that was established by KRS 198B.704(4) and the Executive Order that appointed them. Upon expiration of an ex-officio member's term, the position shall lapse and the number of ex-officio members shall be reduced accordingly.
- XXX. To the extent not inconsistent with this Order, all duties, functions, responsibilities, records, equipment, and supporting budgets of the Kentucky Board of Home Inspectors, as provided for in KRS Chapter 198B and as it existed prior to the filing of this Order, shall be transferred to the Board of Home Inspectors, except that the Board of Home Inspectors shall not have the power to promulgate administrative regulations. The Board of Home Inspectors shall be given thirty (30) days to review and comment on a proposed regulation that affects licensees within its jurisdiction before the regulation is promulgated, amended, or repealed, except in the case of an emergency regulation. Any decision of the Board of Home Inspectors to deny, suspend, or revoke a license, or to issue a penalty, shall be subject to the approval of the Executive Director of the Kentucky Real Estate Authority.
- XXXI. I appoint the following individuals to serve as members of the Board of Home Inspectors:
- Welford T. Wenk, Hopkinsville, Kentucky,
for a term expiring October 31, 2019.
Mr. Wenk is also appointed Chair of the Board of Home Inspectors.
- Edward C. Tong, Owensboro, Kentucky,
for a term expiring October 31, 2018.



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Mitch D. Buchanon, Frankfort, Kentucky,
for a term expiring October 31, 2017.

Please issue commissions to them.

Additional Provisions

- XXXII. Any licensure denial, suspension, or revocation and any other penalty issued by the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, or the Board of Home Inspectors may be appealed to the Commissioner of the Department of Professional Licensing within thirty (30) days of the appealed action being taken. Upon receipt of an appeal, the Commissioner or the Commissioner's designee shall schedule the matter for an administrative hearing that shall be conducted in accordance with KRS Chapter 13B. The Commissioner may assign a hearing officer to hear the appeal. If the Commissioner assigns a hearing officer, the Commissioner shall retain the authority to issue a final order. An aggrieved party may appeal a final order of the Commissioner of the Department of Professional Licensing to the Franklin Circuit Court pursuant to KRS Chapter 13B within thirty (30) days of the issuance of the final order.
- XXXIII. All administrative regulations previously promulgated under the authority of the Kentucky Real Estate Commission, the Real Estate Appraisers Board, the Board of Auctioneers, and the Kentucky Board of Home Inspectors are hereby deemed retroactively promulgated by the Commissioner of the Department of Professional Licensing to the date they were originally issued. All regulations previously promulgated by the Kentucky Real Estate Commission, the Real Estate Appraisers Board, the Board of Auctioneers, and the Kentucky Board of Home Inspectors shall remain in full force and effect and shall be administered by the Department of Professional Licensing, the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, or the Board of Home Inspectors, as applicable, unless inconsistent with this Order.
- XXXIV. The Governor shall set the compensation of the members of the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, the Board of Home Inspectors, and the Kentucky Real Estate Authority. Voting members shall be compensated no more than \$300 per day for official business, subject to an annual maximum of \$6,000. Non-voting ex officio members shall be compensated no more than \$100 per day for official business, subject to an annual maximum of \$2,000. The Executive Director of the Kentucky Real Estate Authority, in his or her capacity as Chair of the Kentucky Real Estate Authority, shall not receive any further compensation. Members, other than the Executive Director of the Kentucky Real Estate Commission, shall not be entitled to any benefits other than the compensation enumerated in this paragraph. Members shall be reimbursed for all expenses paid or incurred in the discharge of official business consistent with the reimbursement policy for state employees.



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- XXXV. Any member of the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, or the Board of Home Inspectors shall forfeit office and be automatically removed if such member misses three consecutive meetings or misses more than twenty-five (25) percent of the meetings held over the previous twelve (12)-month period.
- XXXVI. No member of the Board of Realtors, Board of Appraisers, Board of Auctioneers, or Board of Home Inspectors may serve for more than six (6) consecutive years.
- XXXVII. All personnel of the former Kentucky Real Estate Commission, the former Real Estate Appraisal Board, the former Board of Auctioneers, and the former Kentucky Board of Home Inspectors shall be transferred to the Kentucky Real Estate Authority.
- XXXVIII. The Secretary of the Public Protection Cabinet shall serve as the appointing authority for all personnel of the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, and the Board of Home Inspectors. The Board of Realtors, Board of Appraisers, Board of Auctioneers, and Board of Home Inspectors shall be led by an Administrative Coordinator who is exempted from the classified service.
- XXXIX. Between now and January 31, 2017, the Public Protection Cabinet, the Department of Professional Licensing, the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, and the Board of Home Inspectors shall study and plan for the efficient consolidation of resources, including office space, contracts, professional services, records, and other administrative functions so as to promote efficiency, improve administration, and save costs.
- XL. The Public Protection Cabinet, the Office of State Budget Director, the Personnel Cabinet, the Finance and Administration Cabinet, the Kentucky Real Estate Authority, the Board of Realtors, the Board of Appraisers, the Board of Auctioneers, and the Board of Home Inspectors shall take all necessary action to effectuate the provisions of this Order.


MATTHEW G. BEVIN, Governor
Commonwealth of Kentucky


ALISON LUNDERGAN GRIMES
Secretary of State



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REORGANIZATION PLAN

It is the policy of this Administration to provide the citizens of the Commonwealth with an economical and efficient governmental structure and to administer regulatory practices in a consistent, ethical, and coordinated manner. Therefore, pursuant to the provisions of KRS 12.028, the Governor implements the attached Executive Order to alter one state government agency, abolish and recreate four state government agencies, and create a new state government agency until the subsequent ratification or non-ratification of this Executive Order by the General Assembly.

EXPLANATION OF CHANGE

This reorganization is necessitated by the United States Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015). In that case, the Supreme Court held that state boards composed of market participants (*i.e.*, licensees in that respective field) may be subject to antitrust liability unless the state actively supervises the board. This reorganization meets the requirements of the Supreme Court's decision by (1) transferring the final authority to promulgate administrative regulations from the boards to the Commissioner of the Department of Professional Licensing and (2) creating a new appeal right that allows any person who is aggrieved by a licensing decision or who is penalized to appeal the decision to the Commissioner of the Department of Professional Licensing.

This reorganization also improves the administration of state government and promotes greater economies and efficiencies by reducing the size of boards and consolidating resources. This reorganization includes the following changes:

- Alter the current Office of Occupations and Professions to become the Department of Professional Licensing within the Public Protection Cabinet. This change reflects the agency's increased role following the United States Supreme Court's decision in *North Carolina State Board of Dental Examiners*. Moreover, this change corresponds with the definitions of "department" and "office" in KRS 12.010 because the agency will now do more than provide staff support and administrative functions.
- Create the Kentucky Real Estate Authority within the Department of Professional Licensing. The Kentucky Real Estate Authority will be led by an Executive Director and will consist of a five-member board, chaired by the Executive Director. The Kentucky Real Estate Authority will serve as an administrative regulation clearinghouse for the new boards created by this Order, while also serving as a unified forum for real estate professionals to discuss regulatory innovations across related professions. The Kentucky Real Estate Authority will also provide staffing to the newly created boards.
- Abolish the Kentucky Real Estate Commission from within the General Government Cabinet and recreate it as the Board of Realtors within the Kentucky Real Estate Authority with changed membership requirements and composition,



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including going from five members to three members of diverse political parties and geographic location.

- Abolish the Real Estate Appraisers Board from within the General Government Cabinet and recreate it as the Board of Appraisers within the Kentucky Real Estate Authority with changed membership requirements and composition, including going from five members to three members of diverse political parties and geographic location.
- Abolish the Board of Auctioneers from within the General Government Cabinet and recreate it within the Kentucky Real Estate Authority with changed membership requirements and composition, including going from five members to three members of diverse political parties and geographic location.
- Abolish the Kentucky Board of Home Inspectors from within the General Government Cabinet and recreate it within the Kentucky Real Estate Authority as the Board of Home Inspectors with changed membership requirements and composition, including going from nine members to three members of diverse political parties and geographic location.
- Change the compensation of members of the various boards so that compensation is set by the Governor. Voting members will be compensated at a rate not to exceed \$300 per day of official business and \$6,000 annually, while non-voting members will be compensated at a rate not to exceed \$100 per day of official business and \$2,000 annually. Members of the former Kentucky Real Estate Commission were compensated \$15,000 annually, members of the Board of Auctioneers were compensated \$12,000 annually, members of the former Real Estate Appraisers Board were compensated \$200 per day of official business, and members of the Kentucky Board of Home Inspectors were compensated \$100 per day of official business. In addition, the Commonwealth paid approximately \$10,000 annually in employment taxes for certain board members. The changes in this Order will result in more than \$85,000 annually in cost savings for board member expense.
- Create new non-voting ex officio board positions for any person whose term on the former boards has not expired. These individuals will serve out the remainder of their original term as a non-voting ex officio member, at which time the position will lapse.
- Establish attendance requirements for the new board members so that any member who misses three consecutive meetings or who misses more than twenty-five percent of meetings over a twelve-month period is automatically removed.
- Transfer authority to promulgate administrative regulations from the abolished boards to the Commissioner of the Department of Professional Licensing.
- Require approval from the Executive Director of the Kentucky Real Estate Authority for all license denials, suspensions, and revocations and for any penalties issued so that the requirements of the United States Supreme Court's decision in *North Carolina Board of Dental Examiners* are met.
- Create a right for aggrieved individuals to appeal board decisions to the Commissioner of the Department of Professional Licensing.
- Transfer the supporting budget of each abolished board to its respective recreated board. The Kentucky Real Estate Authority will have authority to charge the recreated boards a reasonable fee for its services. The Executive Director of the



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Kentucky Real Estate Authority will have budgetary authority over the Kentucky Real Estate Authority and each of the abolished boards.

- Transfer personnel of the former Kentucky Real Estate Commission, the former Real Estate Appraisers Board, the former Board of Auctioneers, and the former Kentucky Board of Home Inspectors to the Kentucky Real Estate Authority. The personnel of these former boards complete similar work and functions, and consolidation will serve to create efficiencies and improve administration.

REDUCTION IN EXPENDITURES

This reorganization will create greater economies of scale and efficiencies by requiring multiple boards to share resources. Personnel will be consolidated immediately within the Kentucky Real Estate Authority. Currently, three boards have full-time staffs and offices that are located in three different cities across the Commonwealth. Consolidating functions, resources, staff and space could result in significant cost savings and improved administrative services. A study to propose greater efficiencies and consolidation is due January 31, 2017. More details about potential cost savings will be known after the study is completed.

Moreover, board members will be compensated less. Compensation for current board members range from \$100 per meeting to \$15,000 per year. Under this reorganization, the Governor will set the salaries of board members, which will be no greater than \$300 per day of official business worked for voting members, subject to a \$6,000 annual cap, and \$100 per day of official business worked for non-voting members, subject to a \$2,000 annual cap. Board members will not be eligible for benefits.

IMPROVEMENTS

This reorganization should eliminate the potential for personal antitrust liability for members of the affected boards. States across the country are reviewing and changing board requirements and composition in light of the United States Supreme Court's decision. These changes are necessary to protect board members and the public so that the Commonwealth may continue to recruit qualified individuals to serve in board capacities.

This reorganization creates attendance requirements for board members to ensure that members are actively engaged and contributing to the mission of the board to which they are appointed. Members who miss a certain threshold of meetings will be automatically removed from their position.

This reorganization also creates a single forum that will allow individuals in related real estate professions to meet as a unified group so that they may discuss the impact that regulatory and policy initiatives have on the other professions, thereby leading to more efficient and competent government regulation.

Finally, this reorganization will create efficiencies and potential cost savings by requiring boards to share and consolidate staff and resources.



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PERSONNEL IMPACT

The former Kentucky Real Estate Commission had fourteen full-time employee positions, two of which are currently vacant. The Real Estate Appraisers Board had four full-time employee positions, all of which are filled. The Board of Auctioneers had two full-time employee positions and two part-time employee positions, all of which are filled. The Kentucky Board of Home Inspectors did not have any full-time or part-time employee positions. All existing personnel of the abolished boards are being transferred from their current board structure to the Kentucky Real Estate Authority. This reorganization will not result in staff reductions, though some staff may experience a change in position title.

The number of board members for each individual board will be reduced to three, which will result in the membership of the former board being reduced from twenty-four total members to twelve total members. Members of the abolished boards, unless appointed as voting members to the altered boards, will be transferred into a non-voting ex officio role by virtue of their being on the board prior to this Order.

A new, unclassified executive director position is being created for the Kentucky Real Estate Authority. The executive directors of the abolished boards will be reclassified as administrative coordinators. All administrative coordinators will report to the executive director of the Kentucky Real Estate Authority.