

By: Staples

S.B. No. 382

A BILL TO BE ENTITLED

AN ACT

1
2 relating to disciplinary proceedings and contested cases involving
3 real estate appraisers and appraiser trainees.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 1103.451, Occupations Code, is amended
6 by amending Subsections (a), (b), and (c), and adding Subsection
7 (e) to read as follows:

8 (a) Any person, including a member of the board, may
9 initiate the complaint process under this subchapter by filing with
10 the board a written [~~an affidavit stating the~~] complaint on a form
11 prescribed by the board.

12 (b) The board, on its own motion, may file a formal
13 complaint against:

14 (1) a certified or licensed appraiser; or

15 (2) an appraiser trainee who is approved by the board
16 under Subchapter H.

17 (c) A complaint alleging that a certified or licensed
18 appraiser or an approved appraiser trainee has violated a rule of
19 professional conduct adopted by the board must be filed with the
20 board.

21 (e) A complaint alleging a violation by a person licensed,
22 certified, or approved under this chapter may not be terminated
23 solely on the basis that the person fails to renew the license,
24 certificate, or approval.

1 SECTION 2. Subsection (c), Section 1103.452, Occupations
2 Code, is amended to read as follows:

3 (c) If the board determines that a complaint does not
4 present facts that are grounds for disciplinary action, the board
5 or the commissioner shall dismiss the complaint and may not take
6 further action.

7 SECTION 3. Subsection (b), Section 1103.455, Occupations
8 Code, is amended to read as follows:

9 (b) The report must contain:
10 (1) statements of fact;
11 (2) the recommendations of the investigator; and
12 (3) the position or defense of the investigated
13 appraiser or appraiser trainee.

14 SECTION 4. Section 1103.456, Occupations Code, is amended
15 to read as follows:

16 Sec. 1103.456. [~~BOARD~~] ACTION BASED ON REPORT. Based on
17 the report submitted under Section 1103.455, the board may:

18 (1) order further investigation of the complaint;
19 (2) permit the appraiser or appraiser trainee who is
20 the subject of the complaint to attend [~~appear before the board for~~]
21 an informal discussion as provided by Section 1103.457;

22 (3) determine that there is not probable cause to
23 believe that a violation occurred and dismiss the case; or

24 (4) determine that there is probable cause to believe
25 that a violation occurred and proceed as the complainant with a
26 contested case hearing under Subchapter K.

27 SECTION 5. Subsection (a), Section 1103.457, Occupations

1 Code, is amended to read as follows:

2 (a) On the action [~~motion~~] of the board or on request of the
3 appraiser or appraiser trainee who is the subject of a complaint,
4 the board may permit the appraiser or appraiser trainee an
5 opportunity to appear before the board or an agent of the board for
6 a voluntary, informal discussion of the facts and circumstances of
7 the alleged violation.

8 SECTION 6. Subsections (a), (c), and (e), Section 1103.458,
9 Occupations Code, are amended to read as follows:

10 (a) The board may negotiate a settlement and enter into a
11 consent order with an appraiser or appraiser trainee who is the
12 subject of a complaint under this subchapter.

13 (c) A consent order must be:

14 (1) approved by the board; and

15 (2) signed by the commissioner [~~presiding officer of~~
16 ~~the board~~] and the appraiser or appraiser trainee who is the subject
17 of the complaint.

18 (e) An appraiser or appraiser trainee who consents to
19 negotiate under this section waives the right to notice and the
20 opportunity to be heard under Chapter 2001, Government Code, during
21 the negotiation.

22 SECTION 7. Subsections (a), (c), and (d), Section 1103.459,
23 Occupations Code, are amended to read as follows:

24 (a) The board may enter into a consent agreement as provided
25 by this section rather than taking action against a [~~first-time~~]
26 violator of the rules of professional conduct adopted by the board.

27 (c) A consent agreement must be:

1 (1) approved by the board; and

2 (2) signed by the commissioner [~~presiding officer of~~
3 ~~the board~~] and the appraiser or appraiser trainee who is the subject
4 of the complaint.

5 (d) An appraiser or appraiser trainee may be prosecuted for
6 failure to comply with a consent agreement.

7 SECTION 8. Subsections (b) and (c), Section 1103.502,
8 Occupations Code, are amended to read as follows:

9 (b) The notice must:

10 (1) state the time and place of the hearing; and

11 (2) state that the appraiser or appraiser trainee must
12 submit an answer as prescribed by Section 1103.505 not later than
13 the 20th day after the date the appraiser or appraiser trainee
14 receives the notice.

15 (c) Not later than the 30th day before the hearing date, the
16 board shall personally deliver or send by certified mail, return
17 receipt requested, to the appraiser or appraiser trainee:

18 (1) the notice prescribed by this section; and

19 (2) the statement of charges prescribed by Section
20 1103.503.

21 SECTION 9. Sections 1103.503, 1103.504, and 1103.505,
22 Occupations Code, are amended to read as follows:

23 Sec. 1103.503. STATEMENT OF CHARGES. (a) The attorney
24 representing the board [~~general~~] shall prepare the statement of
25 charges.

26 (b) The statement of charges must:

27 (1) state each act or omission with which the

1 appraiser or appraiser trainee is charged, including any standard
2 of professional practice or rule of professional conduct alleged to
3 have been violated; and

4 (2) be sufficiently detailed to enable the appraiser
5 or appraiser trainee to prepare a defense.

6 Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION.

7 [~~(a)~~] The attorney general shall~~+~~

8 [~~(1) review and approve each statement of charges and~~
9 ~~notice of hearing prepared by the board; and~~

10 [~~(2)~~] provide legal representation for the public
11 interest in all proceedings before the board~~-~~

12 [~~(b) The attorney general shall represent the public~~
13 ~~interest~~] and may not represent the board in a contested case before
14 the board.

15 Sec. 1103.505. ANSWER. The appraiser's or appraiser
16 trainee's answer must contain:

17 (1) the name, address, and telephone number of the
18 appraiser or appraiser trainee;

19 (2) a specific statement regarding any allegation in
20 the complaint, which must:

21 (A) be in the form of an admission or denial; and

22 (B) contain any explanation or other statement of
23 mitigating circumstances the appraiser or appraiser trainee
24 determines relevant; and

25 (3) any additional information the appraiser or
26 appraiser trainee determines relevant to the investigation that may
27 assist in deciding the contested case.

1 SECTION 10. The heading to Section 1103.508, Occupations
2 Code, is amended to read as follows:

3 Sec. 1103.508. HEARING [~~BEFORE BOARD~~].

4 SECTION 11. Subsection (c), Section 1103.508, Occupations
5 Code, is amended to read as follows:

6 (c) As an independent subdivision of the Texas Real Estate
7 Commission, the [~~The~~] board may provide for the Texas Real Estate
8 Commission's [~~an~~] administrative law judge to act as presiding
9 officer to conduct the hearing and issue final decisions for the
10 board.

11 SECTION 12. Section 1103.510, Occupations Code, is amended
12 to read as follows:

13 Sec. 1103.510. FAILURE TO APPEAR. (a) If an appraiser or
14 appraiser trainee receives proper notice of a contested case
15 hearing but does not appear in person at the hearing, the board and
16 presiding officer may conduct the hearing or enter an order, as the
17 board determines appropriate.

18 (b) The appraiser or appraiser trainee is bound by the
19 results of the hearing to the same extent as if the appraiser or
20 appraiser trainee had appeared.

21 SECTION 13. Sections 1103.513 through 1103.516,
22 Occupations Code, are amended to read as follows:

23 Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case
24 hearing shall be conducted in the following order, subject to
25 modification at the discretion of the board:

26 (1) the presiding officer shall read a summary of the
27 charges and answers to the charges and other responsive pleadings

1 filed by the appraiser or appraiser trainee before the hearing;

2 (2) the attorney representing the board [~~general~~]
3 shall make a brief opening statement, including a summary of the
4 charges and a list of the witnesses and documents to support the
5 charges;

6 (3) the appraiser or appraiser trainee may make an
7 opening statement, including the names of any witnesses the
8 appraiser or appraiser trainee may call;

9 (4) the attorney representing the board [~~general~~]
10 shall present evidence, concluding with a summary of the evidence
11 for the state;

12 (5) the appraiser or appraiser trainee shall present
13 evidence;

14 (6) the attorney representing the board [~~general~~] may
15 present rebuttal evidence;

16 (7) the appraiser or appraiser trainee may present
17 rebuttal evidence; and

18 (8) the closing arguments shall be made in the
19 following order:

20 (A) the attorney representing the board
21 [~~general~~];

22 (B) the appraiser or appraiser trainee; and

23 (C) the attorney representing the board
24 [~~general~~] on rebuttal.

25 Sec. 1103.514. COPIES OF EVIDENCE. A copy of each document
26 offered as evidence at a contested case hearing shall be provided to
27 the opposing party [~~and to board members~~].

1 Sec. 1103.515. RESPONSE TO CERTAIN ACCUSATIONS. (a) To
2 the extent an appraiser or appraiser trainee believes the appraiser
3 or appraiser trainee is being asked to reply to an accusation,
4 innuendo, or fact for the first time in a contested case hearing,
5 the appraiser or appraiser trainee may respond to the board in
6 writing not later than the 10th day after the last day of the
7 hearing [~~or at a subsequent scheduled board meeting~~].

8 (b) If the appraiser or appraiser trainee chooses to respond
9 as provided by this section, the attorney representing the board
10 [~~general~~] is entitled to continue to present evidence during the
11 hearing.

12 Sec. 1103.516. DIRECT EXAMINATION. In a contested case
13 hearing, the presiding officer [~~or other board members~~] may conduct
14 a direct examination of a witness at any stage of the witness's
15 testimony.

16 SECTION 14. Subsection (a), Section 1103.517, Occupations
17 Code, is amended to read as follows:

18 (a) The board [~~presiding officer~~] in a contested case
19 hearing may grant a witness immunity from disciplinary action by
20 the board [~~only if the board members hearing the case vote~~
21 ~~unanimously to grant immunity~~].

22 SECTION 15. Section 1103.518, Occupations Code, is amended
23 to read as follows:

24 Sec. 1103.518. BOARD ACTION AFTER HEARING. On conclusion
25 of a [~~By a majority vote of the board members hearing the~~] contested
26 case hearing and on submission of all written responses allowed
27 under Section 1103.515, the board:

1 (1) shall make findings of fact and conclusions of
2 law; and

3 (2) may take one or more of the following actions:

4 (A) dismiss the charges, including issuing an
5 order declaring that the case file is confidential;

6 (B) suspend or revoke the appraiser's
7 certificate or license or the appraiser trainee's approval;

8 (C) impose a period of probation with or without
9 conditions;

10 (D) require the appraiser to submit to
11 reexamination for a certificate or license;

12 (E) require the appraiser or appraiser trainee to
13 participate in additional professional education or continuing
14 education;

15 (F) issue a public or private reprimand or a
16 warning;

17 (G) issue a consent order; or

18 (H) impose an administrative penalty as
19 prescribed by Section 1103.552.

20 SECTION 16. Subsection (b), Section 1103.457, Subsection
21 (b), Section 1103.458, Subsection (b), Section 1103.459,
22 Subsection (b), 1103.508, and Section 1103.509, Occupations Code,
23 are repealed.

24 SECTION 17. The changes in law made by this Act apply only
25 to a disciplinary proceeding or a contested case hearing under
26 Chapter 1103, Occupations Code, that is conducted on or after the
27 effective date of this Act.

1 SECTION 18. This Act takes effect September 1, 2005.