

1-1 By: Staples S.B. No. 382
1-2 (In the Senate - Filed February 7, 2005; February 15, 2005,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 17, 2005, reported favorably by the following vote: Yeas 8,
1-5 Nays 0; March 17, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to disciplinary proceedings and contested cases involving
1-9 real estate appraisers and appraiser trainees.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 1103.451, Occupations Code, is amended
1-12 by amending Subsections (a), (b), and (c), and adding Subsection
1-13 (e) to read as follows:

1-14 (a) Any person, including a member of the board, may
1-15 initiate the complaint process under this subchapter by filing with
1-16 the board a written ~~[an affidavit stating the]~~ complaint on a form
1-17 prescribed by the board.

1-18 (b) The board, on its own motion, may file a formal
1-19 complaint against:

1-20 (1) a certified or licensed appraiser; or

1-21 (2) an appraiser trainee who is approved by the board
1-22 under Subchapter H.

1-23 (c) A complaint alleging that a certified or licensed
1-24 appraiser or an approved appraiser trainee has violated a rule of
1-25 professional conduct adopted by the board must be filed with the
1-26 board.

1-27 (e) A complaint alleging a violation by a person licensed,
1-28 certified, or approved under this chapter may not be terminated
1-29 solely on the basis that the person fails to renew the license,
1-30 certificate, or approval.

1-31 SECTION 2. Subsection (c), Section 1103.452, Occupations
1-32 Code, is amended to read as follows:

1-33 (c) If the board determines that a complaint does not
1-34 present facts that are grounds for disciplinary action, the board
1-35 or the commissioner shall dismiss the complaint and may not take
1-36 further action.

1-37 SECTION 3. Subsection (b), Section 1103.455, Occupations
1-38 Code, is amended to read as follows:

1-39 (b) The report must contain:

1-40 (1) statements of fact;

1-41 (2) the recommendations of the investigator; and

1-42 (3) the position or defense of the investigated
1-43 appraiser or appraiser trainee.

1-44 SECTION 4. Section 1103.456, Occupations Code, is amended
1-45 to read as follows:

1-46 Sec. 1103.456. ~~[BOARD]~~ ACTION BASED ON REPORT. Based on
1-47 the report submitted under Section 1103.455, the board may:

1-48 (1) order further investigation of the complaint;

1-49 (2) permit the appraiser or appraiser trainee who is
1-50 the subject of the complaint to attend ~~[appear before the board for]~~
1-51 an informal discussion as provided by Section 1103.457;

1-52 (3) determine that there is not probable cause to
1-53 believe that a violation occurred and dismiss the case; or

1-54 (4) determine that there is probable cause to believe
1-55 that a violation occurred and proceed as the complainant with a
1-56 contested case hearing under Subchapter K.

1-57 SECTION 5. Subsection (a), Section 1103.457, Occupations
1-58 Code, is amended to read as follows:

1-59 (a) On the action ~~[motion]~~ of the board or on request of the
1-60 appraiser or appraiser trainee who is the subject of a complaint,
1-61 the board may permit the appraiser or appraiser trainee an
1-62 opportunity to appear before the board or an agent of the board for
1-63 a voluntary, informal discussion of the facts and circumstances of
1-64 the alleged violation.

2-1 SECTION 6. Subsections (a), (c), and (e), Section 1103.458,
 2-2 Occupations Code, are amended to read as follows:

2-3 (a) The board may negotiate a settlement and enter into a
 2-4 consent order with an appraiser or appraiser trainee who is the
 2-5 subject of a complaint under this subchapter.

2-6 (c) A consent order must be:
 2-7 (1) approved by the board; and
 2-8 (2) signed by the commissioner [~~presiding officer of~~
 2-9 ~~the board~~] and the appraiser or appraiser trainee who is the subject
 2-10 of the complaint.

2-11 (e) An appraiser or appraiser trainee who consents to
 2-12 negotiate under this section waives the right to notice and the
 2-13 opportunity to be heard under Chapter 2001, Government Code, during
 2-14 the negotiation.

2-15 SECTION 7. Subsections (a), (c), and (d), Section 1103.459,
 2-16 Occupations Code, are amended to read as follows:

2-17 (a) The board may enter into a consent agreement as provided
 2-18 by this section rather than taking action against a [~~first-time~~]
 2-19 violator of the rules of professional conduct adopted by the board.

2-20 (c) A consent agreement must be:
 2-21 (1) approved by the board; and
 2-22 (2) signed by the commissioner [~~presiding officer of~~
 2-23 ~~the board~~] and the appraiser or appraiser trainee who is the subject
 2-24 of the complaint.

2-25 (d) An appraiser or appraiser trainee may be prosecuted for
 2-26 failure to comply with a consent agreement.

2-27 SECTION 8. Subsections (b) and (c), Section 1103.502,
 2-28 Occupations Code, are amended to read as follows:

2-29 (b) The notice must:
 2-30 (1) state the time and place of the hearing; and
 2-31 (2) state that the appraiser or appraiser trainee must
 2-32 submit an answer as prescribed by Section 1103.505 not later than
 2-33 the 20th day after the date the appraiser or appraiser trainee
 2-34 receives the notice.

2-35 (c) Not later than the 30th day before the hearing date, the
 2-36 board shall personally deliver or send by certified mail, return
 2-37 receipt requested, to the appraiser or appraiser trainee:

2-38 (1) the notice prescribed by this section; and
 2-39 (2) the statement of charges prescribed by Section
 2-40 1103.503.

2-41 SECTION 9. Sections 1103.503, 1103.504, and 1103.505,
 2-42 Occupations Code, are amended to read as follows:

2-43 Sec. 1103.503. STATEMENT OF CHARGES. (a) The attorney
 2-44 representing the board [~~general~~] shall prepare the statement of
 2-45 charges.

2-46 (b) The statement of charges must:
 2-47 (1) state each act or omission with which the
 2-48 appraiser or appraiser trainee is charged, including any standard
 2-49 of professional practice or rule of professional conduct alleged to
 2-50 have been violated; and
 2-51 (2) be sufficiently detailed to enable the appraiser
 2-52 or appraiser trainee to prepare a defense.

2-53 Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION.
 2-54 [~~(a)~~] The attorney general shall[~~+~~

2-55 [~~(1)~~] ~~review and approve each statement of charges and~~
 2-56 ~~notice of hearing prepared by the board, and~~

2-57 [~~(2)~~] provide legal representation for the public
 2-58 interest in all proceedings before the board[~~-~~

2-59 [~~(b)~~] ~~The attorney general shall represent the public~~
 2-60 ~~interest~~] and may not represent the board in a contested case before
 2-61 the board.

2-62 Sec. 1103.505. ANSWER. The appraiser's or appraiser
 2-63 trainee's answer must contain:

2-64 (1) the name, address, and telephone number of the
 2-65 appraiser or appraiser trainee;

2-66 (2) a specific statement regarding any allegation in
 2-67 the complaint, which must:

2-68 (A) be in the form of an admission or denial; and
 2-69 (B) contain any explanation or other statement of

3-1 mitigating circumstances the appraiser or appraiser trainee
 3-2 determines relevant; and

3-3 (3) any additional information the appraiser or
 3-4 appraiser trainee determines relevant to the investigation that may
 3-5 assist in deciding the contested case.

3-6 SECTION 10. The heading to Section 1103.508, Occupations
 3-7 Code, is amended to read as follows:

3-8 Sec. 1103.508. HEARING [~~BEFORE BOARD~~].

3-9 SECTION 11. Subsection (c), Section 1103.508, Occupations
 3-10 Code, is amended to read as follows:

3-11 (c) As an independent subdivision of the Texas Real Estate
 3-12 Commission, the [The] board may provide for the Texas Real Estate
 3-13 Commission's [an] administrative law judge to act as presiding
 3-14 officer to conduct the hearing and issue final decisions for the
 3-15 board.

3-16 SECTION 12. Section 1103.510, Occupations Code, is amended
 3-17 to read as follows:

3-18 Sec. 1103.510. FAILURE TO APPEAR. (a) If an appraiser or
 3-19 appraiser trainee receives proper notice of a contested case
 3-20 hearing but does not appear in person at the hearing, the board and
 3-21 presiding officer may conduct the hearing or enter an order, as the
 3-22 board determines appropriate.

3-23 (b) The appraiser or appraiser trainee is bound by the
 3-24 results of the hearing to the same extent as if the appraiser or
 3-25 appraiser trainee had appeared.

3-26 SECTION 13. Sections 1103.513 through 1103.516,
 3-27 Occupations Code, are amended to read as follows:

3-28 Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case
 3-29 hearing shall be conducted in the following order, subject to
 3-30 modification at the discretion of the board:

3-31 (1) the presiding officer shall read a summary of the
 3-32 charges and answers to the charges and other responsive pleadings
 3-33 filed by the appraiser or appraiser trainee before the hearing;

3-34 (2) the attorney representing the board [~~general~~]
 3-35 shall make a brief opening statement, including a summary of the
 3-36 charges and a list of the witnesses and documents to support the
 3-37 charges;

3-38 (3) the appraiser or appraiser trainee may make an
 3-39 opening statement, including the names of any witnesses the
 3-40 appraiser or appraiser trainee may call;

3-41 (4) the attorney representing the board [~~general~~]
 3-42 shall present evidence, concluding with a summary of the evidence
 3-43 for the state;

3-44 (5) the appraiser or appraiser trainee shall present
 3-45 evidence;

3-46 (6) the attorney representing the board [~~general~~] may
 3-47 present rebuttal evidence;

3-48 (7) the appraiser or appraiser trainee may present
 3-49 rebuttal evidence; and

3-50 (8) the closing arguments shall be made in the
 3-51 following order:

3-52 (A) the attorney representing the board
 3-53 [~~general~~];

3-54 (B) the appraiser or appraiser trainee; and

3-55 (C) the attorney representing the board
 3-56 [~~general~~] on rebuttal.

3-57 Sec. 1103.514. COPIES OF EVIDENCE. A copy of each document
 3-58 offered as evidence at a contested case hearing shall be provided to
 3-59 the opposing party [~~and to board members~~].

3-60 Sec. 1103.515. RESPONSE TO CERTAIN ACCUSATIONS. (a) To
 3-61 the extent an appraiser or appraiser trainee believes the appraiser
 3-62 or appraiser trainee is being asked to reply to an accusation,
 3-63 innuendo, or fact for the first time in a contested case hearing,
 3-64 the appraiser or appraiser trainee may respond to the board in
 3-65 writing not later than the 10th day after the last day of the
 3-66 hearing [~~or at a subsequent scheduled board meeting~~].

3-67 (b) If the appraiser or appraiser trainee chooses to respond
 3-68 as provided by this section, the attorney representing the board
 3-69 [~~general~~] is entitled to continue to present evidence during the

4-1 hearing.

4-2 Sec. 1103.516. DIRECT EXAMINATION. In a contested case
4-3 hearing, the presiding officer [~~or other board members~~] may conduct
4-4 a direct examination of a witness at any stage of the witness's
4-5 testimony.

4-6 SECTION 14. Subsection (a), Section 1103.517, Occupations
4-7 Code, is amended to read as follows:

4-8 (a) The board [~~presiding officer~~] in a contested case
4-9 hearing may grant a witness immunity from disciplinary action by
4-10 the board [~~only if the board members hearing the case vote~~
4-11 ~~unanimously to grant immunity~~].

4-12 SECTION 15. Section 1103.518, Occupations Code, is amended
4-13 to read as follows:

4-14 Sec. 1103.518. BOARD ACTION AFTER HEARING. On conclusion
4-15 of a [~~By a majority vote of the board members hearing the~~] contested
4-16 case hearing and on submission of all written responses allowed
4-17 under Section 1103.515, the board:

4-18 (1) shall make findings of fact and conclusions of
4-19 law; and

4-20 (2) may take one or more of the following actions:

4-21 (A) dismiss the charges, including issuing an
4-22 order declaring that the case file is confidential;

4-23 (B) suspend or revoke the appraiser's
4-24 certificate or license or the appraiser trainee's approval;

4-25 (C) impose a period of probation with or without
4-26 conditions;

4-27 (D) require the appraiser to submit to
4-28 reexamination for a certificate or license;

4-29 (E) require the appraiser or appraiser trainee to
4-30 participate in additional professional education or continuing
4-31 education;

4-32 (F) issue a public or private reprimand or a
4-33 warning;

4-34 (G) issue a consent order; or

4-35 (H) impose an administrative penalty as
4-36 prescribed by Section 1103.552.

4-37 SECTION 16. Subsection (b), Section 1103.457, Subsection
4-38 (b), Section 1103.458, Subsection (b), Section 1103.459,
4-39 Subsection (b), Section 1103.508, and Section 1103.509,
4-40 Occupations Code, are repealed.

4-41 SECTION 17. The changes in law made by this Act apply only
4-42 to a disciplinary proceeding or a contested case hearing under
4-43 Chapter 1103, Occupations Code, that is conducted on or after the
4-44 effective date of this Act.

4-45 SECTION 18. This Act takes effect September 1, 2005.

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