

AN ACT

relating to the regulation of the sale and inspection of real estate.

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

SECTION 1. Subsection (b), Section 1101.152, Occupations Code, is amended to read as follows:

(b) The commission may set and collect reasonable fees to implement the continuing education requirements for license holders, including the following fees:

(1) for an application for approval of a continuing education provider, not more than \$400;

(2) for an application for approval of a continuing education course of study, not more than \$100; ~~and~~

(3) for an application for approval of an instructor of continuing education courses, not more than \$40; and

(4) for attendance at a program to train instructors of a continuing education course prescribed under Section 1101.455, not more than \$100.

SECTION 2. Subsection (c), Section 1101.204, Occupations Code, is amended to read as follows:

(c) The commission may not conduct an investigation of a person licensed under this chapter or Chapter 1102 ~~[license holder]~~ in connection with a complaint submitted later than the fourth anniversary of the date of the incident that is the subject of the

1 complaint.

2 SECTION 3. Section 1101.353, Occupations Code, is amended
3 by adding Subsection (d) to read as follows:

4 (d) The commission may issue a provisional moral character
5 determination. The commission by rule shall adopt reasonable terms
6 for issuing a provisional moral character determination.

7 SECTION 4. Subsection (a), Section 1101.358, Occupations
8 Code, is amended to read as follows:

9 (a) An applicant for a salesperson license must provide to
10 the commission satisfactory evidence that the applicant has
11 completed at least 14 [~~12~~] semester hours, or equivalent classroom
12 hours, of postsecondary education, including:

13 (1) at least four semester hours of core real estate
14 courses on principles of real estate;

15 (2) at least two semester hours of each of the
16 following core real estate courses:

17 (A) agency law; [~~and~~]

18 (B) contract law; and

19 (C) one additional core real estate course; and

20 (3) at least four semester hours of core real estate
21 courses or related courses.

22 SECTION 5. Subsection (a), Section 1101.454, Occupations
23 Code, is amended to read as follows:

24 (a) An applicant applying for the first renewal of a
25 salesperson license must provide to the commission satisfactory
26 evidence of completion of at least 18 [~~14~~] semester hours, or
27 equivalent classroom hours, of postsecondary education, including

1 14 ~~[10]~~ hours of core real estate courses.

2 SECTION 6. Subsections (e) and (h), Section 1101.455,
3 Occupations Code, are amended to read as follows:

4 (e) At least six of the continuing education hours required
5 by Subsection (b) must cover the following legal topics:

6 (1) commission rules;
7 (2) fair housing laws;
8 (3) Property Code issues, including landlord-tenant
9 law;

10 (4) agency law;
11 (5) antitrust laws;
12 (6) Subchapter E, Chapter 17, Business & Commerce
13 Code;

14 (7) disclosures to buyers, landlords, tenants, and
15 sellers;

16 (8) current contract and addendum forms;
17 (9) unauthorized practice of law;
18 (10) case studies involving violations of laws and
19 regulations;

20 (11) current Federal Housing Administration and
21 Department of Veterans Affairs regulations;

22 (12) tax laws;
23 (13) property tax consulting laws and legal issues; or
24 (14) other legal topics approved by the commission.

25 (h) The commission shall automatically approve the
26 following courses as courses that satisfy the mandatory continuing
27 education requirements of Subsection (f) ~~[courses]~~:

(1) core real estate courses; and

(2) real estate-related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit.

SECTION 7. Section 1101.557, Occupations Code, is amended to read as follows:

Sec. 1101.557. ACTING AS AGENT; REGULATION OF CERTAIN TRANSACTIONS. (a) A broker [~~license holder~~] who represents a party in a real estate transaction or who lists real estate for sale under an exclusive agreement for a party is [~~acts as~~] that party's agent.

(b) A broker described by Subsection (a):

(1) may not instruct another broker to directly or indirectly violate Section 1101.652(b)(22);

(2) must inform the party if the broker receives material information related to a transaction to list, buy, sell, or lease the party's real estate, including the receipt of an offer by the broker; and

(3) shall, at a minimum, answer the party's questions and present any offer to or from the party.

(c) For the purposes of this section:

(1) a license holder who has the authority to bind a party to a lease or sale under a power of attorney or a property management agreement is also a party to the lease or sale;

(2) an inquiry to a person described by Section 1101.005(6) about contract terms or forms required by the person's employer does not violate Section 1101.652(b)(22) if the person

1 does not have the authority to bind the employer to the contract;
2 and

3 (3) the sole delivery of an offer to a party does not
4 violate Section 1101.652(b)(22) if:

5 (A) the party's broker consents to the delivery;

6 (B) a copy of the offer is sent to the party's
7 broker, unless a governmental agency using a sealed bid process
8 does not allow a copy to be sent; and

9 (C) the person delivering the offer does not
10 engage in another activity that directly or indirectly violates
11 Section 1101.652(b)(22).

12 SECTION 8. Section 1101.561, Occupations Code, is amended
13 to read as follows:

14 Sec. 1101.561. DUTIES OF INTERMEDIARY PREVAIL. (a) The
15 duties of a license holder acting as an intermediary under this
16 subchapter supersede the duties of a license holder established
17 under any other law, including common law.

18 (b) A broker must agree to act as an intermediary under this
19 subchapter if the broker agrees to represent in a transaction:

20 (1) a buyer or tenant; and

21 (2) a seller or landlord.

22 SECTION 9. Subsection (a), Section 1101.652, Occupations
23 Code, is amended to read as follows:

24 (a) The commission may suspend or revoke a license issued
25 under this chapter or take other disciplinary action authorized by
26 this chapter if the license holder:

27 (1) enters a plea of guilty or nolo contendere to or is

1 convicted of a felony in which fraud is an essential element, and
2 the time for appeal has elapsed or the judgment or conviction has
3 been affirmed on appeal, without regard to an order granting
4 community supervision that suspends the imposition of the sentence;

5 (2) procures or attempts to procure a license under
6 this chapter for the license holder or a salesperson by fraud,
7 misrepresentation, or deceit or by making a material misstatement
8 of fact in an application for a license;

9 (3) engages in misrepresentation, dishonesty, or
10 fraud when selling, buying, trading, or leasing real property in
11 the ~~[license holder's own]~~ name of:

12 (A) the license holder;

13 (B) the license holder's spouse; or

14 (C) a person related to the license holder within
15 the first degree by consanguinity;

16 (4) fails to honor, within a reasonable time, a check
17 issued to the commission after the commission has sent by certified
18 mail a request for payment to the license holder's last known
19 business address according to commission records;

20 (5) fails or refuses to produce on request, for
21 inspection by the commission or a commission representative, a
22 document, book, or record that is in the license holder's
23 possession and relates to a real estate transaction conducted by
24 the license holder;

25 (6) fails to provide, within a reasonable time,
26 information requested by the commission that relates to a formal or
27 informal complaint to the commission that would indicate a

violation of this chapter;

(7) fails to surrender to the owner, without just cause, a document or instrument that is requested by the owner and that is in the license holder's possession;

(8) fails to use a contract form required by the commission under Section 1101.155; ~~[or]~~

(9) fails to notify the commission, not later than the 30th day after the date of a final conviction or the entry of a plea of nolo contendere, that the person has been convicted of or entered a plea of nolo contendere to a felony or a criminal offense involving fraud; or

(10) disregards or violates this chapter.

SECTION 10. Subsection (c), Section 1101.655, Occupations Code, is amended to read as follows:

(c) A person ~~[whose license or certificate is revoked under this section]~~ is not eligible for a ~~[new]~~ license or certificate until the person has repaid in full the amount paid from the account for the person, plus interest at the legal rate.

SECTION 11. Subchapter C, Chapter 1102, Occupations Code, is amended by adding Section 1102.1035 to read as follows:

Sec. 1102.1035. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR CERTAIN BUSINESS ENTITIES. (a) To be eligible for a professional inspector license under this chapter:

(1) a corporation must designate one of its officers or employees as its agent for purposes of this chapter; and

(2) a limited liability company must designate one of its managers or employees as its agent for purposes of this chapter.

1 (b) A corporation or limited liability company may not act
2 as a professional inspector unless the entity's designated agent is
3 a licensed professional inspector according to the commission's
4 records.

5 SECTION 12. Subsection (b), Section 1102.205, Occupations
6 Code, is amended to read as follows:

7 (b) As a prerequisite for renewal of a real estate inspector
8 license, ~~[or]~~ professional inspector license, or apprentice
9 inspector license, the inspector must participate in the continuing
10 education program and submit evidence satisfactory to the
11 commission of successful completion of at least 16 ~~[the following~~
12 ~~number of]~~ classroom hours of core real estate inspection courses
13 for each year of the license period ~~[during the year]~~ preceding the
14 renewal~~+~~

15 ~~[(1) eight hours for a real estate inspector license~~
16 ~~renewal; or~~

17 ~~[(2) 16 hours for a professional inspector license~~
18 ~~renewal].~~

19 SECTION 13. Subchapter E, Chapter 1102, Occupations Code,
20 is amended by adding Section 1102.2051 to read as follows:

21 Sec. 1102.2051. ADDITIONAL RENEWAL REQUIREMENTS FOR
22 CERTAIN BUSINESS ENTITIES. (a) To renew a professional inspector
23 license under this chapter:

24 (1) a corporation must designate one of its officers
25 or employees as its agent for purposes of this chapter; and

26 (2) a limited liability company must designate one of
27 its managers or employees as its agent for purposes of this chapter.

1 (b) A corporation or limited liability company may not renew
2 a professional inspector license unless the entity's designated
3 agent is a licensed professional inspector according to the
4 commission's records.

5 SECTION 14. Subchapter A, Chapter 5, Property Code, is
6 amended by adding Section 5.014 to read as follows:

7 Sec. 5.014. PROHIBITED FEES. A person who has a right of
8 first refusal in real property that is a condominium subject to
9 Chapter 81 or Chapter 82 may not charge a fee for declining to
10 exercise that right, such as a fee for providing written evidence of
11 the declination.

12 SECTION 15. Subsections (b) and (c), Section 1101.454,
13 Occupations Code, are repealed.

14 SECTION 16. (a) The Texas Real Estate Commission shall
15 adopt rules necessary to administer the changes in law made by this
16 Act not later than January 1, 2006.

17 (b) The change in law made by this Act to Section 1101.358,
18 Occupations Code, applies only to an application for a salesperson
19 license filed on or after January 1, 2006. An application for a
20 salesperson license filed before January 1, 2006, is covered by the
21 law in effect at the time the application was filed, and the former
22 law is continued in effect for that purpose.

23 (c) The change in law made by this Act to Section 1101.454,
24 Occupations Code, applies only to the first renewal of a
25 salesperson license that expires on or after January 1, 2006. The
26 first renewal of a salesperson license that expires before January
27 1, 2006, is covered by the law in effect on the date the license

1 expires, and the former law is continued in effect for that purpose.

2 (d) The change in law made by this Act to Section 1101.652,
3 Occupations Code, applies only to conduct that occurs on or after
4 the effective date of this Act. Conduct that occurs before the
5 effective date of this Act is covered by the law in effect
6 immediately before the effective date of this Act, and the former
7 law is continued in effect for that purpose.

8 (e) The change in law made by this Act to Section 1102.205,
9 Occupations Code, applies only to an application for renewal of a
10 real estate inspector license, professional inspector license, or
11 apprentice inspector license that expires on or after January 1,
12 2006. A real estate inspector license, professional inspector
13 license, or apprentice inspector license that expires before
14 January 1, 2006, is covered by the law in effect immediately before
15 the effective date of this Act, and the former law is continued in
16 effect for that purpose.

17 SECTION 17. Except as provided by a contract entered into
18 before the effective date of this Act, Section 5.014, Property
19 Code, as added by this Act, applies only to a fee that is solicited
20 on or after the effective date of this Act for declining the
21 exercise of a right of first refusal.

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

_____ President of the Senate	_____ Speaker of the House
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I hereby certify that S.B. No. 810 passed the Senate on April 7, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 26, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 810 passed the House, with amendments, on May 18, 2005, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor