

By: Averitt S.B. No. 810  
(In the Senate - Filed February 28, 2005; March 10, 2005,  
read first time and referred to Committee on Business and Commerce;  
March 31, 2005, reported favorably by the following vote: Yeas 9,  
Nays 0; March 31, 2005, sent to printer.)

A BILL TO BE ENTITLED  
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  
complaint.

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

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

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

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

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

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

(A) agency law; ~~and~~

(B) contract law; and

(C) one additional core real estate course; and

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

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

(a) An applicant applying for the first renewal of a  
salesperson license must provide to the commission satisfactory  
evidence of completion of at least 18 ~~14~~ semester hours, or  
equivalent classroom hours, of postsecondary education, including  
14 ~~10~~ hours of core real estate courses.

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

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

(1) commission rules;

(2) fair housing laws;

(3) Property Code issues, including landlord-tenant law;  
 (4) agency law;  
 (5) antitrust laws;  
 (6) Subchapter E, Chapter 17, Business & Commerce Code;  
 (7) disclosures to buyers, landlords, tenants, and sellers;  
 (8) current contract and addendum forms;  
 (9) unauthorized practice of law;  
 (10) case studies involving violations of laws and regulations;  
 (11) current Federal Housing Administration and Department of Veterans Affairs regulations;  
 (12) tax laws;  
 (13) property tax consulting laws and legal issues; or  
 (14) other legal topics approved by the commission.

(h) The commission shall automatically approve the following courses as courses that satisfy the mandatory continuing 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. A broker ~~[license holder]~~ who represents a party in a real estate transaction ~~is [acts as]~~ that party's agent.

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

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

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

(1) a buyer or tenant; and  
 (2) a seller or landlord.

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

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

(1) enters a plea of guilty or nolo contendere to or is convicted of a felony in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence;

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

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

(A) the license holder;  
 (B) the license holder's spouse; or  
 (C) a person related to the license holder within the first degree by consanguinity;

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

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

(6) fails to provide, within a reasonable time, information requested by the commission that relates to a formal or 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 as its agent for purposes of this chapter; and

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

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

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

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

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

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

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

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

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

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

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

SECTION 14. Subsections (b) and (c), Section 1101.454, Occupations Code, are repealed.

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

(b) The change in law made by this Act to Section 1101.358, Occupations Code, applies only to an application for a salesperson license filed on or after January 1, 2006. An application for a salesperson license filed before January 1, 2006, is covered by the

law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

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

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

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

SECTION 16. This Act takes effect September 1, 2005.

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