

By: Flores

H.B. No. 1530

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the sale and inspection of real estate and residential service contracts.

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

SECTION 1. Section 1101.005, Occupations Code, is amended to read as follows:

Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) an attorney licensed in any state;

(2) an attorney-in-fact authorized under a power of attorney to conduct a real estate transaction;

(3) a public official while engaged in official duties;

(4) an auctioneer licensed under Chapter 1802 while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker or salesperson;

(5) a person conducting a real estate transaction ~~acting~~ under a court order or the authority of a will or written trust instrument;

(6) a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;

(7) an on-site manager of an apartment complex;

1 (8) an owner or the owner's employee who leases the
2 owner's improved or unimproved real estate;

3 (9) a partnership or limited liability partnership
4 acting as a broker or salesperson through a partner who is a
5 licensed broker; or

6 (10) a transaction involving:

7 (A) the sale, lease, or transfer of a mineral or
8 mining interest in real property;

9 (B) the sale, lease, or transfer of a cemetery
10 lot;

11 (C) the lease or management of a hotel or motel;
12 or

13 (D) the sale of real property under a power of
14 sale conferred by a deed of trust or other contract lien.

15 SECTION 2. Section 1101.057(a), Occupations Code, is
16 amended to read as follows:

17 (a) It is a ground for removal from the commission that a
18 member:

19 (1) does not have at the time of appointment the
20 qualifications required by Section 1101.051(a) or (b) or 1101.052;

21 (2) does not maintain during service on the commission
22 the qualifications required by Section 1101.051(a) or (b) or
23 1101.052;

24 (3) violates a prohibition established by Section
25 1101.053;

26 (4) cannot~~[, because of illness or disability,~~
27 discharge the member's duties for a substantial part of the member's

1 term; or

2 (5) is absent from more than half of the regularly
3 scheduled commission meetings that the member is eligible to attend
4 during each calendar year, unless the absence is excused by
5 majority vote of the commission.

6 SECTION 3. Section 1101.204(g), Occupations Code, is
7 amended to read as follows:

8 (g) The commission may authorize a commission employee to
9 file a signed, written complaint against a person licensed under
10 this chapter or Chapter 1102 and to conduct an investigation if:

11 (1) a judgment against the person has been paid from
12 the real estate recovery trust account under this chapter or the
13 real estate inspection recovery fund under Chapter 1102;

14 (2) the person is convicted of a criminal offense that
15 may constitute grounds for the suspension or revocation of the
16 person's license;

17 (3) the person fails to honor a check issued to the
18 commission;

19 (4) the person fails to pay the fee and complete
20 required continuing education within the period prescribed by
21 commission rules adopted under Section 1101.457; or

22 (5) the person fails to provide, within a reasonable
23 time, information:

24 (A) requested by the commission in connection
25 with an application to renew a license; or

26 (B) required under Section 1101.652(a)(9).

27 SECTION 4. Section 1101.302(b), Occupations Code, is

1 amended to read as follows:

2 (b) An educational institution shall maintain a corporate
3 surety bond or other security acceptable to the commission that is:

4 (1) in the amount of \$20,000 [~~\$10,000~~];

5 (2) payable to the commission; and

6 (3) for the benefit of a party who suffers damages
7 caused by the failure of the institution to fulfill obligations
8 related to the commission's approval.

9 SECTION 5. Section 1101.356(a), Occupations Code, is
10 amended to read as follows:

11 (a) An applicant for a broker license must provide to the
12 commission satisfactory evidence that the applicant:

13 (1) has had at least two years of active experience in
14 this state as a license holder during the 36 months preceding the
15 date the application is filed; and

16 (2) has successfully completed at least 60 semester
17 hours, or equivalent classroom hours, of postsecondary education,
18 including:

19 (A) at least 18 semester hours or equivalent
20 classroom hours of core real estate courses, two semester hours of
21 which must be real estate brokerage; and

22 (B) at least 42 hours of core real estate courses
23 or related courses accepted by the commission.

24 SECTION 6. Section 1101.455, Occupations Code, is amended
25 by adding Subsection (k) to read as follows:

26 (k) Notwithstanding the number of hours required by
27 Subsection (e), a member of the legislature licensed under this

1 chapter is only required to complete three hours of continuing
2 education on the legal topics under Subsection (e).

3 SECTION 7. Section 1101.652(a), Occupations Code, is
4 amended to read as follows:

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

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

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

17 (3) engages in misrepresentation, dishonesty, or
18 fraud when selling, buying, trading, or leasing real property in
19 the name of:

20 (A) the license holder;

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

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

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

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

6 (6) fails to provide, within a reasonable time,
7 information requested by the commission that relates to a formal or
8 informal complaint to the commission that would indicate a
9 violation of this chapter;

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

13 (8) fails to use a contract form required by the
14 commission under Section 1101.155;

15 (9) fails to notify the commission, not later than the
16 30th day after the date of a final conviction or the entry of a plea
17 of guilty or nolo contendere, that the person has been convicted of
18 or entered a plea of guilty or nolo contendere to a felony or a
19 criminal offense involving fraud; or

20 (10) disregards or violates this chapter.

21 SECTION 8. Section 1101.655(a), Occupations Code, is
22 amended to read as follows:

23 (a) The commission may revoke a license, approval, or
24 ~~[certificate of]~~ registration issued under this chapter or Chapter
25 1102 if the commission makes a payment from the real estate recovery
26 trust account to satisfy all or part of a judgment against the
27 license or registration ~~[certificate]~~ holder.

SECTION 9. Section 1102.054(a), Occupations Code, is amended to read as follows:

(a) The commission may remove a committee member if the member:

(1) does not have at the time of appointment the qualifications required by Section 1102.051;

(2) cannot~~[, because of illness or disability,]~~ discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each year unless the absence is excused by the committee.

SECTION 10. Section 1102.111, Occupations Code, is amended to read as follows:

Sec. 1102.111. SUBSTITUTE REQUIREMENTS. (a) The commission by rule shall provide for substitution of relevant experience and ~~[or]~~ additional education in place of:

(1) the number of real estate inspections required for licensing; and

(2) the requirement that an applicant be:

(A) licensed as an apprentice inspector before being licensed as a real estate inspector; or

(B) licensed as a real estate inspector before being licensed as a professional inspector.

(b) Rules adopted under Subsection (a) may not require an applicant to:

(1) complete more than 320 additional classroom hours

1 of core real estate inspection courses; or

2 (2) have more than seven years of relevant experience.

3 SECTION 11. Sections 1102.402(a) and (c), Occupations Code,
4 are amended to read as follows:

5 (a) The commission may revoke a [the] license issued under
6 this chapter or a license, approval, or registration issued under
7 Chapter 1101 [of an inspector] if the commission makes a payment
8 from the real estate inspection recovery fund to satisfy all or part
9 of a judgment against the person issued the license, approval, or
10 registration [inspector].

11 (c) A person [~~whose license is revoked under this section~~]
12 is not eligible for a [~~new~~] license until the person has repaid in
13 full the amount paid from the fund on the person's account, plus
14 interest at the legal rate.

15 SECTION 12. Section 1303.302, Occupations Code, is amended
16 to read as follows:

17 Sec. 1303.302. CERTAIN CONDITIONAL SALES OF PROPERTY
18 PROHIBITED. (a) A seller of a residential property or the buyer's
19 or seller's agent may not condition the sale of the property on the
20 buyer's purchase of a residential service contract.

21 (b) A seller of a residential property or the buyer's or
22 seller's agent shall provide to the buyer a statement that clearly
23 and conspicuously states that:

24 (1) the purchase of a residential service contract is
25 optional; and

26 (2) the buyer may purchase similar coverage through
27 another residential service company or insurance company

1 authorized to engage in business in this state.

2 SECTION 13. Sections 1102.1035 and 1102.2051, Occupations
3 Code, are repealed.

4 SECTION 14. Not later than January 1, 2008, an educational
5 institution that maintains a bond under Section 1101.302(b),
6 Occupations Code, on the effective date of this Act shall obtain a
7 bond in the amount required by Section 1101.302(b), Occupations
8 Code, as amended by this Act.

9 SECTION 15. The change in law made by this Act to Section
10 1101.356(a), Occupations Code, applies only to a license
11 application filed on or after January 1, 2008. A license
12 application filed before that date is covered by the law in effect
13 at the time the application was filed, and the former law is
14 continued in effect for that purpose.

15 SECTION 16. This Act takes effect September 1, 2007.