

By: Eltife

S.B. No. 651

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 1101.652(a), Occupations Code, is  
25 amended to read as follows:

26 (a) The commission may suspend or revoke a license issued  
27 under this chapter or take other disciplinary action authorized by

1 this chapter if the license holder:

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

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

11 (3) engages in misrepresentation, dishonesty, or  
12 fraud when selling, buying, trading, or leasing real property in  
13 the name of:

14 (A) the license holder;

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

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

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

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

27 (6) fails to provide, within a reasonable time,

1 information requested by the commission that relates to a formal or  
2 informal complaint to the commission that would indicate a  
3 violation of this chapter;

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

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

9 (9) fails to notify the commission, not later than the  
10 30th day after the date of a final conviction or the entry of a plea  
11 of guilty or nolo contendere, that the person has been convicted of  
12 or entered a plea of guilty or nolo contendere to a felony or a  
13 criminal offense involving fraud; or

14 (10) disregards or violates this chapter.

15 SECTION 7. Section 1101.655(a), Occupations Code, is  
16 amended to read as follows:

17 (a) The commission may revoke a license, approval, or  
18 [~~certificate of~~] registration issued under this chapter or Chapter  
19 1102 if the commission makes a payment from the real estate recovery  
20 trust account to satisfy all or part of a judgment against the  
21 license or registration [~~certificate~~] holder.

22 SECTION 8. Section 1102.054(a), Occupations Code, is  
23 amended to read as follows:

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

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

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

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

7           SECTION 9. Section 1102.111(b), Occupations Code, is  
8 amended to read as follows:

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

11           (1) complete more than 320 additional classroom hours  
12 of core real estate inspection courses; or

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

14           SECTION 10. Sections 1102.402(a) and (c), Occupations Code,  
15 are amended to read as follows:

16           (a) The commission may revoke a [the] license issued under  
17 this chapter or a license, approval, or registration issued under  
18 Chapter 1101 [of an inspector] if the commission makes a payment  
19 from the real estate inspection recovery fund to satisfy all or part  
20 of a judgment against the person issued the license, approval, or  
21 registration [inspector].

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

26           SECTION 11. Section 1303.302, Occupations Code, is amended  
27 to read as follows:

1           Sec. 1303.302. CERTAIN CONDITIONAL SALES OF PROPERTY  
2 PROHIBITED. (a) A seller of a residential property or the buyer's  
3 or seller's agent may not condition the sale of the property on the  
4 buyer's purchase of a residential service contract.

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

8                   (1) the purchase of a residential service contract is  
9 optional; and

10                   (2) the buyer may purchase similar coverage through  
11 another residential service company or insurance company  
12 authorized to engage in business in this state.

13           SECTION 12. Sections 1102.1035 and 1102.2051, Occupations  
14 Code, are repealed.

15           SECTION 13. Not later than January 1, 2008, an educational  
16 institution that maintains a bond under Section 1101.302(b),  
17 Occupations Code, on the effective date of this Act shall obtain a  
18 bond in the amount required by Section 1101.302(b), Occupations  
19 Code, as amended by this Act.

20           SECTION 14. The change in law made by this Act to Section  
21 1101.356(a), Occupations Code, applies only to a license  
22 application filed on or after January 1, 2008. A license  
23 application filed before that date is covered by the law in effect  
24 at the time the application was filed, and the former law is  
25 continued in effect for that purpose.

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