

By: Geren

H.B. No. 1406

A BILL TO BE ENTITLED

AN ACT

relating to practices and professions regulated by the Texas Real Estate Commission.

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

SECTION 1. Section 1101.152(a), Occupations Code, as amended by Section 3, Chapter 297 (H.B. 1530), and Section 9, Chapter 1411 (S.B. 914), Acts of the 80th Legislature, Regular Session, 2007, is reenacted and amended to read as follows:

(a) The commission shall adopt rules to charge and collect ~~reasonable~~ fees in amounts reasonable and necessary to cover the costs of administering this chapter, including a fee for:

(1) filing an original application for a broker license;

(2) annual renewal of a broker license;

(3) filing an original application for a salesperson license;

(4) annual renewal of a salesperson license;

(5) annual registration;

(6) filing an application for a license examination;

(7) filing a request for a branch office license;

(8) filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker;

(9) filing a request to replace a lost or destroyed

1 license or certificate of registration;

2 (10) filing an application for approval of an
3 education program under Subchapter G;

4 (11) annual operation of an education program under
5 Subchapter G;

6 (12) filing an application for approval of an
7 instructor of core real estate courses;

8 (13) transcript evaluation;

9 (14) preparing a license or registration history;

10 (15) filing an application for a moral character
11 determination; and

12 (16) conducting a criminal history check for issuing
13 or renewing a license.

14 SECTION 2. Section 1101.152(b), Occupations Code, is
15 amended to read as follows:

16 (b) The commission shall adopt rules to set and collect
17 ~~[reasonable]~~ fees in amounts reasonable and necessary to cover the
18 costs of implementing ~~[to implement]~~ the continuing education
19 requirements for license holders, including a fee for:

20 (1) an application for approval of a continuing
21 education provider;

22 (2) an application for approval of a continuing
23 education course of study;

24 (3) an application for approval of an instructor of
25 continuing education courses; and

26 (4) attendance at a program to train instructors of a
27 continuing education course prescribed under Section 1101.455.

1 SECTION 3. Section 1101.153(b), Occupations Code, is
2 amended to read as follows:

3 (b) Of each fee increase collected under Subsection (a):

4 (1) \$50 shall be transmitted to Texas A&M University
5 for deposit in a separate banking account that may be appropriated
6 only to support, maintain, and carry out the purposes, objectives,
7 and duties of Texas Real Estate Research Center;

8 (2) [r] \$50 shall be deposited to the credit of the
9 foundation school fund; and

10 (3) \$100 [~~\$150~~] shall be deposited to the credit of the
11 general revenue fund.

12 SECTION 4. Section 1101.154(a), Occupations Code, is
13 amended to read as follows:

14 (a) The fee for the issuance or renewal of a:

15 (1) broker license is the amount of the fee set under
16 Sections 1101.152 and 1101.153 and an additional \$20 fee;

17 (2) salesperson license is the amount of the fee set
18 under Section 1101.152 and an additional \$20 [~~\$17.50~~] fee; and

19 (3) certificate of registration is the amount of the
20 fee set under Section 1101.152 and an additional \$20 fee.

21 SECTION 5. Section 1101.606, Occupations Code, is amended
22 by amending Subsection (a) and adding Subsections (c) and (d) to
23 read as follows:

24 (a) Except as provided by Subsection (c), an [An] aggrieved
25 person who obtains a court judgment against a license or
26 certificate holder for an act described by Section 1101.602 may,
27 after final judgment is entered, execution returned nulla bona, and

1 a judgment lien perfected, file a verified claim in the court that
2 entered the judgment.

3 (c) If an aggrieved person is precluded by action of a
4 bankruptcy court from executing a judgment or perfecting a judgment
5 lien as required by Subsection (a), the person shall verify to the
6 commission that the person has made a good faith effort to protect
7 the judgment from being discharged in bankruptcy.

8 (d) The commission by rule may prescribe the actions
9 necessary for an aggrieved person to demonstrate that the person
10 has made a good faith effort under Subsection (c) to protect a
11 judgment from being discharged in bankruptcy.

12 SECTION 6. Section 1101.652, Occupations Code, is amended
13 to read as follows:

14 Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF
15 LICENSE. (a) The commission may suspend or revoke a license
16 issued under this chapter or take other disciplinary action
17 authorized by this chapter if the license holder:

18 (1) enters a plea of guilty or nolo contendere to or is
19 convicted of a felony or a criminal offense involving fraud [~~in~~
20 ~~which fraud is an essential element~~], and the time for appeal has
21 elapsed or the judgment or conviction has been affirmed on appeal,
22 without regard to an order granting community supervision that
23 suspends the imposition of the sentence;

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

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

4 (A) the license holder;

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

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

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

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

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

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

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

26 (9) fails to notify the commission, not later than the
27 30th day after the date of a final conviction or the entry of a plea

1 of guilty or nolo contendere, that the person has been convicted of
2 or entered a plea of guilty or nolo contendere to a felony or a
3 criminal offense involving fraud; or

4 (10) disregards or violates this chapter.

5 (b) 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, while acting as a broker or
8 salesperson:

9 (1) acts negligently or incompetently;

10 (2) engages in conduct that is dishonest or in bad
11 faith or that demonstrates untrustworthiness;

12 (3) makes a material misrepresentation to a potential
13 buyer concerning a significant defect, including a latent
14 structural defect, known to the license holder that would be a
15 significant factor to a reasonable and prudent buyer in making a
16 decision to purchase real property;

17 (4) fails to disclose to a potential buyer a defect
18 described by Subdivision (3) that is known to the license holder;

19 (5) makes a false promise that is likely to influence a
20 person to enter into an agreement when the license holder is unable
21 or does not intend to keep the promise;

22 (6) pursues a continued and flagrant course of
23 misrepresentation or makes false promises through an agent or
24 salesperson, through advertising, or otherwise;

25 (7) fails to make clear to all parties to a real estate
26 transaction the party for whom the license holder is acting;

27 (8) receives compensation from more than one party to

1 a real estate transaction without the full knowledge and consent of
2 all parties to the transaction;

3 (9) fails within a reasonable time to properly account
4 for or remit money that is received by the license holder and that
5 belongs to another person;

6 (10) commingles money that belongs to another person
7 with the license holder's own money;

8 (11) pays a commission or a fee to or divides a
9 commission or a fee with a person other than a license holder or a
10 real estate broker or salesperson licensed in another state for
11 compensation for services as a real estate agent;

12 (12) fails to specify a definite termination date that
13 is not subject to prior notice in a contract, other than a contract
14 to perform property management services, in which the license
15 holder agrees to perform services for which a license is required
16 under this chapter;

17 (13) accepts, receives, or charges an undisclosed
18 commission, rebate, or direct profit on an expenditure made for a
19 principal;

20 (14) solicits, sells, or offers for sale real property
21 by means of a lottery;

22 (15) solicits, sells, or offers for sale real property
23 by means of a deceptive practice;

24 (16) acts in a dual capacity as broker and undisclosed
25 principal in a real estate transaction;

26 (17) guarantees or authorizes or permits a person to
27 guarantee that future profits will result from a resale of real

1 property;

2 (18) places a sign on real property offering the real
3 property for sale or lease without obtaining the written consent of
4 the owner of the real property or the owner's authorized agent;

5 (19) offers to sell or lease real property without the
6 knowledge and consent of the owner of the real property or the
7 owner's authorized agent;

8 (20) offers to sell or lease real property on terms
9 other than those authorized by the owner of the real property or the
10 owner's authorized agent;

11 (21) induces or attempts to induce a party to a
12 contract of sale or lease to break the contract for the purpose of
13 substituting a new contract;

14 (22) negotiates or attempts to negotiate the sale,
15 exchange, or lease of real property with an owner, landlord, buyer,
16 or tenant with knowledge that that person is a party to an
17 outstanding written contract that grants exclusive agency to
18 another broker in connection with the transaction;

19 (23) publishes or causes to be published an
20 advertisement, including an advertisement by newspaper, radio,
21 television, the Internet, or display, that misleads or is likely to
22 deceive the public, tends to create a misleading impression, or
23 fails to identify the person causing the advertisement to be
24 published as a licensed broker or agent;

25 (24) withholds from or inserts into a statement of
26 account or invoice a statement that the license holder knows makes
27 the statement of account or invoice inaccurate in a material way;

1 (25) publishes or circulates an unjustified or
2 unwarranted threat of a legal proceeding or other action;

3 (26) establishes an association by employment or
4 otherwise with a person other than a license holder if the person is
5 expected or required to act as a license holder;

6 (27) aids, abets, or conspires with another person to
7 circumvent this chapter;

8 (28) fails or refuses to provide, on request, a copy of
9 a document relating to a real estate transaction to a person who
10 signed the document;

11 (29) fails to advise a buyer in writing before the
12 closing of a real estate transaction that the buyer should:

13 (A) have the abstract covering the real estate
14 that is the subject of the contract examined by an attorney chosen
15 by the buyer; or

16 (B) be provided with or obtain a title insurance
17 policy;

18 (30) fails to deposit, within a reasonable time, money
19 the license holder receives as escrow agent in a real estate
20 transaction:

21 (A) in trust with a title company authorized to
22 do business in this state; or

23 (B) in a custodial, trust, or escrow account
24 maintained for that purpose in a banking institution authorized to
25 do business in this state;

26 (31) disburses money deposited in a custodial, trust,
27 or escrow account, as provided in Subdivision (30), before the

1 completion or termination of the real estate transaction;

2 (32) discriminates against an owner, potential buyer,
3 landlord, or potential tenant on the basis of race, color,
4 religion, sex, disability, familial status, national origin, or
5 ancestry, including directing a prospective buyer or tenant
6 interested in equivalent properties to a different area based on
7 the race, color, religion, sex, disability, familial status,
8 national origin, or ancestry of the potential owner or tenant; or

9 (33) disregards or violates this chapter.

10 SECTION 7. Section 1303.3525, Occupations Code, is amended
11 to read as follows:

12 Sec. 1303.3525. HEARING [~~EXAMINER~~]. (a) The commission
13 may authorize the State Office of Administrative Hearings [~~a~~
14 ~~hearing examiner~~] to conduct a hearing and enter a final decision in
15 a proceeding under Section 1303.351.

16 (b) All hearings conducted under Subsection (a) are
17 governed by Chapter 2001, Government Code [~~A final decision of a~~
18 ~~hearing examiner under this section is appealable to the commission~~
19 ~~as provided by commission rule~~].

20 SECTION 8. Sections 221.024(b) and (c), Property Code, are
21 amended to read as follows:

22 (b) The commission [~~may~~]:

23 (1) shall authorize the State Office of Administrative
24 Hearings [~~specific employees~~] to conduct hearings [~~and issue final~~
25 ~~decisions~~] in contested cases; and

26 (2) may establish reasonable fees for forms and
27 documents it provides to the public and for the filing or

1 registration of documents required by this chapter.

2 (c) If the commission initiates a disciplinary proceeding
3 under this chapter, the person is entitled to a hearing before the
4 State Office of Administrative Hearings [~~commission or a hearing~~
5 ~~officer appointed by the commission~~]. The commission by rule shall
6 adopt procedures to permit an appeal to the commission from a
7 determination made by the State Office of Administrative Hearings
8 [~~a hearing officer~~] in a disciplinary action.

9 SECTION 9. Section 221.027(c), Property Code, is amended to
10 read as follows:

11 (c) A registration may be suspended under this section
12 without notice or hearing on the complaint if:

13 (1) institution of proceedings for a hearing before
14 the State Office of Administrative Hearings [~~commission~~] is
15 initiated simultaneously with the temporary suspension; and

16 (2) a hearing is held under Chapter 2001, Government
17 Code, and this chapter as soon as possible.

18 SECTION 10. (a) The change in law made by this Act to
19 Section 1101.606, Occupations Code, applies only to a judgment
20 entered by a court on or after the effective date of this Act. A
21 judgment entered before the effective date of this Act is governed
22 by the law in effect when the judgment was entered, and the former
23 law is continued in effect for that purpose.

24 (b) The change in law made by this Act to Section
25 1101.652(b), Occupations Code, applies only to conduct occurring
26 on or after the effective date of this Act. Conduct occurring
27 before the effective date of this Act is governed by the law in

1 effect when the conduct occurred, and the former law is continued in
2 effect for that purpose.

3 (c) The changes in law made by this Act to Section
4 1303.3525, Occupations Code, and Section 221.024, Property Code,
5 apply only to a contested case filed on or after the effective date
6 of this Act. A contested case filed before the effective date of
7 this Act is governed by the law in effect on the date the contested
8 case was filed, and the former law is continued in effect for that
9 purpose.

10 SECTION 11. (a) Except as provided by Subsection (b) of
11 this section, this Act takes effect immediately if it receives a
12 vote of two-thirds of all the members elected to each house, as
13 provided by Section 39, Article III, Texas Constitution. If this
14 Act does not receive the vote necessary for immediate effect, this
15 Act takes effect September 1, 2009.

16 (b) Section 1101.153(b), Occupations Code, as amended by
17 this Act, takes effect September 1, 2011.