

1-1 By: Eltife S.B. No. 862  
1-2 (In the Senate - Filed February 16, 2009; March 9, 2009, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 1, 2009, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 1, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to practices and professions regulated by the Texas Real  
1-9 Estate Commission.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (a), Section 1101.152, Occupations  
1-12 Code, as amended by Section 3, Chapter 297 (H.B. 1530), and Section  
1-13 9, Chapter 1411 (S.B. 914), Acts of the 80th Legislature, Regular  
1-14 Session, 2007, is reenacted and amended to read as follows:

1-15 (a) The commission shall adopt rules to charge and collect  
1-16 ~~[reasonable]~~ fees in amounts reasonable and necessary to cover the  
1-17 costs of administering this chapter, including a fee for:

- 1-18 (1) filing an original application for a broker  
1-19 license;  
1-20 (2) annual renewal of a broker license;  
1-21 (3) filing an original application for a salesperson  
1-22 license;  
1-23 (4) annual renewal of a salesperson license;  
1-24 (5) annual registration;  
1-25 (6) filing an application for a license examination;  
1-26 (7) filing a request for a branch office license;  
1-27 (8) filing a request for a change of place of business,  
1-28 change of name, return to active status, or change of sponsoring  
1-29 broker;  
1-30 (9) filing a request to replace a lost or destroyed  
1-31 license or certificate of registration;  
1-32 (10) filing an application for approval of an  
1-33 education program under Subchapter G;  
1-34 (11) annual operation of an education program under  
1-35 Subchapter G;  
1-36 (12) filing an application for approval of an  
1-37 instructor of core real estate courses;  
1-38 (13) transcript evaluation;  
1-39 (14) preparing a license or registration history;  
1-40 (15) filing an application for a moral character  
1-41 determination; and  
1-42 (16) conducting a criminal history check for issuing  
1-43 or renewing a license.

1-44 SECTION 2. Subsection (b), Section 1101.152, Occupations  
1-45 Code, is amended to read as follows:

1-46 (b) The commission shall adopt rules to set and collect  
1-47 ~~[reasonable]~~ fees in amounts reasonable and necessary to cover the  
1-48 costs of implementing [to implement] the continuing education  
1-49 requirements for license holders, including a fee for:

- 1-50 (1) an application for approval of a continuing  
1-51 education provider;  
1-52 (2) an application for approval of a continuing  
1-53 education course of study;  
1-54 (3) an application for approval of an instructor of  
1-55 continuing education courses; and  
1-56 (4) attendance at a program to train instructors of a  
1-57 continuing education course prescribed under Section 1101.455.

1-58 SECTION 3. Subsection (b), Section 1101.153, Occupations  
1-59 Code, is amended to read as follows:

- 1-60 (b) Of each fee increase collected under Subsection (a):  
1-61 (1) \$50 shall be transmitted to Texas A&M University  
1-62 for deposit in a separate banking account that may be appropriated  
1-63 only to support, maintain, and carry out the purposes, objectives,  
1-64 and duties of the Texas Real Estate Research Center;

2-1                   (2) [~~7~~] \$50 shall be deposited to the credit of the  
 2-2 foundation school fund; and  
 2-3                   (3) \$100 [~~\$150~~] shall be deposited to the credit of the  
 2-4 general revenue fund.

2-5                   SECTION 4. Subsection (a), Section 1101.154, Occupations  
 2-6 Code, is amended to read as follows:

2-7                   (a) The fee for the issuance or renewal of a:

2-8                   (1) broker license is the amount of the fee set under  
 2-9 Sections 1101.152 and 1101.153 and an additional \$20 fee;

2-10                   (2) salesperson license is the amount of the fee set  
 2-11 under Section 1101.152 and an additional \$20 [~~\$17.50~~] fee; and

2-12                   (3) certificate of registration is the amount of the  
 2-13 fee set under Section 1101.152 and an additional \$20 fee.

2-14                   SECTION 5. Section 1101.606, Occupations Code, is amended  
 2-15 by amending Subsection (a) and adding Subsections (c) and (d) to  
 2-16 read as follows:

2-17                   (a) Except as provided by Subsection (c), an [An] aggrieved  
 2-18 person who obtains a court judgment against a license or  
 2-19 certificate holder for an act described by Section 1101.602 may,  
 2-20 after final judgment is entered, execution returned nulla bona, and  
 2-21 a judgment lien perfected, file a verified claim in the court that  
 2-22 entered the judgment.

2-23                   (c) If an aggrieved person is precluded by action of a  
 2-24 bankruptcy court from executing a judgment or perfecting a judgment  
 2-25 lien as required by Subsection (a), the person shall verify to the  
 2-26 commission that the person has made a good faith effort to protect  
 2-27 the judgment from being discharged in bankruptcy.

2-28                   (d) The commission by rule may prescribe the actions  
 2-29 necessary for an aggrieved person to demonstrate that the person  
 2-30 has made a good faith effort under Subsection (c) to protect a  
 2-31 judgment from being discharged in bankruptcy.

2-32                   SECTION 6. Section 1101.652, Occupations Code, is amended  
 2-33 to read as follows:

2-34                   Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF  
 2-35 LICENSE. (a) The commission may suspend or revoke a license  
 2-36 issued under this chapter or take other disciplinary action  
 2-37 authorized by this chapter if the license holder:

2-38                   (1) enters a plea of guilty or nolo contendere to or is  
 2-39 convicted of a felony or a criminal offense involving fraud [~~in~~  
 2-40 ~~which fraud is an essential element~~], and the time for appeal has  
 2-41 elapsed or the judgment or conviction has been affirmed on appeal,  
 2-42 without regard to an order granting community supervision that  
 2-43 suspends the imposition of the sentence;

2-44                   (2) procures or attempts to procure a license under  
 2-45 this chapter for the license holder or a salesperson by fraud,  
 2-46 misrepresentation, or deceit or by making a material misstatement  
 2-47 of fact in an application for a license;

2-48                   (3) engages in misrepresentation, dishonesty, or  
 2-49 fraud when selling, buying, trading, or leasing real property in  
 2-50 the name of:

2-51                                   (A) the license holder;

2-52                                   (B) the license holder's spouse; or

2-53                                   (C) a person related to the license holder within  
 2-54 the first degree by consanguinity;

2-55                   (4) fails to honor, within a reasonable time, a check  
 2-56 issued to the commission after the commission has sent by certified  
 2-57 mail a request for payment to the license holder's last known  
 2-58 business address according to commission records;

2-59                   (5) fails or refuses to produce on request, for  
 2-60 inspection by the commission or a commission representative, a  
 2-61 document, book, or record that is in the license holder's  
 2-62 possession and relates to a real estate transaction conducted by  
 2-63 the license holder;

2-64                   (6) fails to provide, within a reasonable time,  
 2-65 information requested by the commission that relates to a formal or  
 2-66 informal complaint to the commission that would indicate a  
 2-67 violation of this chapter;

2-68                   (7) fails to surrender to the owner, without just  
 2-69 cause, a document or instrument that is requested by the owner and

3-1 that is in the license holder's possession;  
3-2 (8) fails to use a contract form required by the  
3-3 commission under Section 1101.155;  
3-4 (9) fails to notify the commission, not later than the  
3-5 30th day after the date of a final conviction or the entry of a plea  
3-6 of guilty or nolo contendere, that the person has been convicted of  
3-7 or entered a plea of guilty or nolo contendere to a felony or a  
3-8 criminal offense involving fraud; or  
3-9 (10) disregards or violates this chapter.

3-10 (b) The commission may suspend or revoke a license issued  
3-11 under this chapter or take other disciplinary action authorized by  
3-12 this chapter if the license holder, while acting as a broker or  
3-13 salesperson:

3-14 (1) acts negligently or incompetently;  
3-15 (2) engages in conduct that is dishonest or in bad  
3-16 faith or that demonstrates untrustworthiness;  
3-17 (3) makes a material misrepresentation to a potential  
3-18 buyer concerning a significant defect, including a latent  
3-19 structural defect, known to the license holder that would be a  
3-20 significant factor to a reasonable and prudent buyer in making a  
3-21 decision to purchase real property;  
3-22 (4) fails to disclose to a potential buyer a defect  
3-23 described by Subdivision (3) that is known to the license holder;  
3-24 (5) makes a false promise that is likely to influence a  
3-25 person to enter into an agreement when the license holder is unable  
3-26 or does not intend to keep the promise;  
3-27 (6) pursues a continued and flagrant course of  
3-28 misrepresentation or makes false promises through an agent or  
3-29 salesperson, through advertising, or otherwise;  
3-30 (7) fails to make clear to all parties to a real estate  
3-31 transaction the party for whom the license holder is acting;  
3-32 (8) receives compensation from more than one party to  
3-33 a real estate transaction without the full knowledge and consent of  
3-34 all parties to the transaction;  
3-35 (9) fails within a reasonable time to properly account  
3-36 for or remit money that is received by the license holder and that  
3-37 belongs to another person;  
3-38 (10) commingles money that belongs to another person  
3-39 with the license holder's own money;  
3-40 (11) pays a commission or a fee to or divides a  
3-41 commission or a fee with a person other than a license holder or a  
3-42 real estate broker or salesperson licensed in another state for  
3-43 compensation for services as a real estate agent;  
3-44 (12) fails to specify a definite termination date that  
3-45 is not subject to prior notice in a contract, other than a contract  
3-46 to perform property management services, in which the license  
3-47 holder agrees to perform services for which a license is required  
3-48 under this chapter;  
3-49 (13) accepts, receives, or charges an undisclosed  
3-50 commission, rebate, or direct profit on an expenditure made for a  
3-51 principal;  
3-52 (14) solicits, sells, or offers for sale real property  
3-53 by means of a lottery;  
3-54 (15) solicits, sells, or offers for sale real property  
3-55 by means of a deceptive practice;  
3-56 (16) acts in a dual capacity as broker and undisclosed  
3-57 principal in a real estate transaction;  
3-58 (17) guarantees or authorizes or permits a person to  
3-59 guarantee that future profits will result from a resale of real  
3-60 property;  
3-61 (18) places a sign on real property offering the real  
3-62 property for sale or lease without obtaining the written consent of  
3-63 the owner of the real property or the owner's authorized agent;  
3-64 (19) offers to sell or lease real property without the  
3-65 knowledge and consent of the owner of the real property or the  
3-66 owner's authorized agent;  
3-67 (20) offers to sell or lease real property on terms  
3-68 other than those authorized by the owner of the real property or the  
3-69 owner's authorized agent;

4-1 (21) induces or attempts to induce a party to a  
4-2 contract of sale or lease to break the contract for the purpose of  
4-3 substituting a new contract;  
4-4 (22) negotiates or attempts to negotiate the sale,  
4-5 exchange, or lease of real property with an owner, landlord, buyer,  
4-6 or tenant with knowledge that that person is a party to an  
4-7 outstanding written contract that grants exclusive agency to  
4-8 another broker in connection with the transaction;  
4-9 (23) publishes or causes to be published an  
4-10 advertisement, including an advertisement by newspaper, radio,  
4-11 television, the Internet, or display, that misleads or is likely to  
4-12 deceive the public, tends to create a misleading impression, or  
4-13 fails to identify the person causing the advertisement to be  
4-14 published as a licensed broker or agent;  
4-15 (24) withholds from or inserts into a statement of  
4-16 account or invoice a statement that the license holder knows makes  
4-17 the statement of account or invoice inaccurate in a material way;  
4-18 (25) publishes or circulates an unjustified or  
4-19 unwarranted threat of a legal proceeding or other action;  
4-20 (26) establishes an association by employment or  
4-21 otherwise with a person other than a license holder if the person is  
4-22 expected or required to act as a license holder;  
4-23 (27) aids, abets, or conspires with another person to  
4-24 circumvent this chapter;  
4-25 (28) fails or refuses to provide, on request, a copy of  
4-26 a document relating to a real estate transaction to a person who  
4-27 signed the document;  
4-28 (29) fails to advise a buyer in writing before the  
4-29 closing of a real estate transaction that the buyer should:  
4-30 (A) have the abstract covering the real estate  
4-31 that is the subject of the contract examined by an attorney chosen  
4-32 by the buyer; or  
4-33 (B) be provided with or obtain a title insurance  
4-34 policy;  
4-35 (30) fails to deposit, within a reasonable time, money  
4-36 the license holder receives as escrow agent in a real estate  
4-37 transaction:  
4-38 (A) in trust with a title company authorized to  
4-39 do business in this state; or  
4-40 (B) in a custodial, trust, or escrow account  
4-41 maintained for that purpose in a banking institution authorized to  
4-42 do business in this state;  
4-43 (31) disburses money deposited in a custodial, trust,  
4-44 or escrow account, as provided in Subdivision (30), before the  
4-45 completion or termination of the real estate transaction;  
4-46 (32) discriminates against an owner, potential buyer,  
4-47 landlord, or potential tenant on the basis of race, color,  
4-48 religion, sex, disability, familial status, national origin, or  
4-49 ancestry, including directing a prospective buyer or tenant  
4-50 interested in equivalent properties to a different area based on  
4-51 the race, color, religion, sex, disability, familial status,  
4-52 national origin, or ancestry of the potential owner or tenant; or  
4-53 (33) disregards or violates this chapter.

4-54 SECTION 7. Section 1303.3525, Occupations Code, is amended  
4-55 to read as follows:  
4-56 Sec. 1303.3525. HEARING [~~EXAMINER~~]. (a) The commission  
4-57 may authorize the State Office of Administrative Hearings [~~a~~  
4-58 ~~hearing examiner~~] to conduct a hearing and enter a final decision in  
4-59 a proceeding under Section 1303.351.  
4-60 (b) All hearings conducted under Subsection (a) are  
4-61 governed by Chapter 2001, Government Code [~~A final decision of a~~  
4-62 ~~hearing examiner under this section is appealable to the commission~~  
4-63 ~~as provided by commission rule~~].

4-64 SECTION 8. Subsections (b) and (c), Section 221.024,  
4-65 Property Code, are amended to read as follows:  
4-66 (b) The commission [~~may~~]:  
4-67 (1) shall authorize the State Office of Administrative  
4-68 Hearings [~~specific employees~~] to conduct hearings [~~and issue final~~  
4-69 ~~decisions~~] in contested cases; and

5-1 (2) may establish reasonable fees for forms and  
5-2 documents it provides to the public and for the filing or  
5-3 registration of documents required by this chapter.

5-4 (c) If the commission initiates a disciplinary proceeding  
5-5 under this chapter, the person is entitled to a hearing before the  
5-6 State Office of Administrative Hearings [~~commission or a hearing~~  
5-7 ~~officer appointed by the commission~~]. The commission by rule shall  
5-8 adopt procedures to permit an appeal to the commission from a  
5-9 determination made by the State Office of Administrative Hearings  
5-10 [~~a hearing officer~~] in a disciplinary action.

5-11 SECTION 9. Subsection (c), Section 221.027, Property Code,  
5-12 is amended to read as follows:

5-13 (c) A registration may be suspended under this section  
5-14 without notice or hearing on the complaint if:

5-15 (1) institution of proceedings for a hearing before  
5-16 the State Office of Administrative Hearings [~~commission~~] is  
5-17 initiated simultaneously with the temporary suspension; and

5-18 (2) a hearing is held under Chapter 2001, Government  
5-19 Code, and this chapter as soon as possible.

5-20 SECTION 10. (a) The change in law made by this Act to  
5-21 Section 1101.606, Occupations Code, applies only to a judgment  
5-22 entered by a court on or after the effective date of this Act. A  
5-23 judgment entered before the effective date of this Act is governed  
5-24 by the law in effect when the judgment was entered, and the former  
5-25 law is continued in effect for that purpose.

5-26 (b) The change in law made by this Act to Subsection (b),  
5-27 Section 1101.652, Occupations Code, applies only to conduct  
5-28 occurring on or after the effective date of this Act. Conduct  
5-29 occurring before the effective date of this Act is governed by the  
5-30 law in effect when the conduct occurred, and the former law is  
5-31 continued in effect for that purpose.

5-32 (c) The changes in law made by this Act to Section  
5-33 1303.3525, Occupations Code, and Section 221.024, Property Code,  
5-34 apply only to a contested case filed on or after the effective date  
5-35 of this Act. A contested case filed before the effective date of  
5-36 this Act is governed by the law in effect on the date the contested  
5-37 case was filed, and the former law is continued in effect for that  
5-38 purpose.

5-39 SECTION 11. (a) Except as provided by Subsection (b) of  
5-40 this section, this Act takes effect immediately if it receives a  
5-41 vote of two-thirds of all the members elected to each house, as  
5-42 provided by Section 39, Article III, Texas Constitution. If this  
5-43 Act does not receive the vote necessary for immediate effect, this  
5-44 Act takes effect September 1, 2009.

5-45 (b) Subsection (b), Section 1101.153, Occupations Code, as  
5-46 amended by this Act, takes effect September 1, 2011.

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