

By: Carona

S.B. No. 747

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 1101.002, Occupations Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Broker":

(A) means a person who, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, performs for another person one of the following acts:

(i) sells, exchanges, purchases, or leases real estate;

(ii) offers to sell, exchange, purchase, or lease real estate;

(iii) negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;

(iv) lists or offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(v) ~~[appraises or offers, attempts, or agrees to appraise real estate,~~

~~(vi)]~~ auctions or offers, attempts, or agrees to auction real estate;

1 (vi) [~~(vii)~~] deals in options on real
2 estate, including buying, selling, or offering to buy or sell
3 options on real estate;

4 (vii) [~~(viii)~~] aids or offers or attempts
5 to aid in locating or obtaining real estate for purchase or lease;

6 (viii) [~~(ix)~~] procures or assists in
7 procuring a prospect to effect the sale, exchange, or lease of real
8 estate; [~~or~~]

9 (ix) [~~(x)~~] procures or assists in procuring
10 property to effect the sale, exchange, or lease of real estate;

11 (x) collects or accepts rent from residents
12 of a multifamily dwelling with fewer than five units; or

13 (xi) provides a written opinion relating to
14 the estimated price of real property if the opinion:

15 (a) is not referred to as an
16 appraisal;

17 (b) is provided in the ordinary course
18 of the person's business; and

19 (c) is related to the management,
20 sale, exchange, purchase, or lease of real estate; and

21 (B) includes a person who:

22 (i) is employed by or for an owner of real
23 estate to sell any portion of the real estate; or

24 (ii) engages in the business of charging an
25 advance fee or contracting to collect a fee under a contract that
26 requires the person primarily to promote the sale of real estate by:

27 (a) listing the real estate in a

1 publication primarily used for listing real estate; or

2 (b) referring information about the
3 real estate to brokers.

4 (1-a) "Business entity" means a "domestic entity" or
5 "foreign entity" as those terms are defined by Section 1.002,
6 Business Organizations Code.

7 SECTION 2. Section 1101.005, Occupations Code, is amended
8 to read as follows:

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

11 (1) an attorney licensed in this [~~any~~] state;

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

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

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

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

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

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

27 (8) an owner or the owner's employee who leases the

1 owner's improved or unimproved real estate; or

2 (9) [~~a partnership or limited liability partnership~~
3 ~~acting as a broker or salesperson through a partner who is a~~
4 ~~licensed broker, or~~

5 [~~(10)~~] a transaction involving:

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

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

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

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

14 SECTION 3. Subchapter D, Chapter 1101, Occupations Code, is
15 amended by adding Section 1101.161 to read as follows:

16 Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. The commission
17 may solicit and accept a gift, grant, donation, or other item of
18 value from any source to pay for any activity under this chapter or
19 Chapter 1102 or 1103.

20 SECTION 4. Section 1101.301, Occupations Code, is amended
21 by amending Subsection (c) and adding Subsection (d) to read as
22 follows:

23 (c) In establishing accreditation standards for an
24 educational program under Subsection (a), the commission shall
25 adopt rules setting an examination passage rate benchmark for each
26 category of license issued by the commission under this chapter or
27 Chapter 1102. The benchmark must be based on the average percentage

1 of examinees that pass the licensing exam on the first attempt. A
2 program must meet or exceed the benchmark for each license category
3 ~~[that require a program to establish that at least 55 percent of the~~
4 ~~program's graduates have passed a licensing exam the first time the~~
5 ~~exam has been taken by the graduates]~~ before the commission may
6 renew the program's accreditation.

7 (d) The commission may deny an application for
8 accreditation if the applicant at any time owns or controls an
9 educational program or course of study for which accreditation was
10 revoked.

11 SECTION 5. Section 1101.351, Occupations Code, is amended
12 by adding Subsection (a-1) to read as follows:

13 (a-1) Unless a business entity holds a license issued under
14 this chapter, a person employed by, sponsored by, or associated
15 with the business entity may not:

16 (1) act as or represent that the person is a broker or
17 salesperson; or

18 (2) act as a residential rental locator.

19 SECTION 6. Section 1101.352, Occupations Code, is amended
20 by adding Subsection (d) to read as follows:

21 (d) At the time an application is submitted under Subsection
22 (a), each applicant shall provide the commission with the
23 applicant's current mailing address, telephone number, and e-mail
24 address. The applicant shall notify the commission of any change in
25 the applicant's mailing or e-mail address or telephone number
26 during the time the application is pending.

27 SECTION 7. Section 1101.355, Occupations Code, is amended

1 to read as follows:

2 Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS
3 FOR ~~[CERTAIN]~~ BUSINESS ENTITIES. (a) To be eligible for a license
4 under this chapter, a business entity must:

5 (1) ~~[a corporation must]~~ designate one of its managing
6 officers as its agent for purposes of this chapter; and

7 (2) provide proof that the entity maintains errors and
8 omissions insurance with a minimum annual limit of \$1 million for
9 each occurrence if the designated agent owns less than 10 percent of
10 the business entity ~~[a limited liability company must designate one~~
11 ~~of its managers as its agent for purposes of this chapter].~~

12 (b) A business entity ~~[corporation or limited liability~~
13 ~~company]~~ may not act as a broker unless the entity's designated
14 agent is a licensed broker in active status and good standing
15 according to the commission's records.

16 (c) A business entity that receives compensation on behalf
17 of a license holder must be licensed as a broker under this chapter.

18 SECTION 8. Section 1101.356, Occupations Code, is amended
19 by amending Subsection (a) and adding Subsection (d) to read as
20 follows:

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

23 (1) has had at least six ~~[two]~~ years of active
24 experience in this state as a license holder during the 84 ~~[36]~~
25 months preceding the date the application is filed; and

26 (2) has successfully completed at least 60 semester
27 hours, or equivalent classroom hours, of postsecondary education,

1 including:

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

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

7 (d) The commission by rule shall establish what constitutes
8 active experience for purposes of this section and Section
9 1101.357.

10 SECTION 9. Section 1101.357, Occupations Code, is amended
11 to read as follows:

12 Sec. 1101.357. BROKER LICENSE: ALTERNATE EXPERIENCE
13 REQUIREMENTS FOR CERTAIN APPLICANTS. An applicant for a broker
14 license who does not satisfy the experience requirements of Section
15 1101.356 must provide to the commission satisfactory evidence that:

16 (1) the applicant:

17 (A) is a licensed real estate broker in another
18 state;

19 (B) has had at least six [~~two~~] years of active
20 experience in that state as a licensed real estate broker or
21 salesperson during the 84 [~~36~~] months preceding the date the
22 application is filed; and

23 (C) has satisfied the educational requirements
24 prescribed by Section 1101.356; or

25 (2) the applicant was licensed in this state as a
26 broker in the year preceding the date the application is filed.

27 SECTION 10. Section 1101.358, Occupations Code, is amended

1 to read as follows:

2 Sec. 1101.358. SALESPERSON LICENSE: EDUCATION
3 REQUIREMENTS. (a) An applicant for a salesperson license must
4 provide to the commission satisfactory evidence that the applicant
5 has completed at least 12 [~~14~~] semester hours, or equivalent
6 classroom hours, of postsecondary education consisting of [~~7~~
7 ~~including~~]:

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

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

12 (A) agency law;

13 (B) contract law; [~~and~~]

14 (C) contract forms and addendums; and

15 (D) real estate finance [~~one additional core real~~
16 ~~estate course; and~~

17 [~~(3) at least four semester hours of core real estate~~
18 ~~courses or related courses~~].

19 (b) The commission shall waive the education requirements
20 of Subsection (a) if the applicant has been licensed in this state
21 as a broker or salesperson within the six months [~~year~~] preceding
22 the date the application is filed.

23 (c) If an applicant for a salesperson license was licensed
24 as a salesperson within the six months [~~year~~] preceding the date the
25 application is filed and the license was issued under the
26 conditions prescribed by Section 1101.454, the commission shall
27 require the applicant to provide the evidence of successful

1 completion of education requirements that would have been required
2 if the license had been maintained without interruption during the
3 preceding six months [~~year~~].

4 SECTION 11. Section 1101.401(f), Occupations Code, is
5 amended to read as follows:

6 (f) An applicant must satisfy the examination requirement
7 not later than one year [~~six months~~] after the date the license
8 application is filed.

9 SECTION 12. Sections 1101.451(e) and (f), Occupations Code,
10 are amended to read as follows:

11 (e) A person whose license has been expired for 90 days or
12 less may renew the license by paying to the commission a fee equal
13 to 1-1/2 times the required renewal fee. If a license has been
14 expired for more than 90 days but less than six months [~~one year~~],
15 the person may renew the license by paying to the commission a fee
16 equal to two times the required renewal fee.

17 (f) If a person's license has been expired for six months
18 [~~one year~~] or longer, the person may not renew the license. The
19 person may obtain a new license by submitting to reexamination and
20 complying with the requirements and procedures for obtaining an
21 original license.

22 SECTION 13. Section 1101.453, Occupations Code, is amended
23 to read as follows:

24 Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR
25 [~~CERTAIN~~] BUSINESS ENTITIES. (a) To renew a license under this
26 chapter, a business entity must:

27 (1) [~~a corporation must~~] designate one of its managing

1 officers as its agent for purposes of this chapter; and

2 (2) provide proof that the entity maintains errors and
3 omissions insurance with a minimum annual limit of \$1 million for
4 each occurrence if the designated agent owns less than 10 percent of
5 the business entity [~~a limited liability company must designate one~~
6 ~~of its managers as its agent for purposes of this chapter~~].

7 (b) A business entity [~~corporation or limited liability~~
8 ~~company~~] may not act as a broker unless the entity's designated
9 agent is a licensed broker in active status and good standing
10 according to the commission's records.

11 SECTION 14. Section 1101.454(a), Occupations Code, is
12 amended to read as follows:

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

18 SECTION 15. Subchapter J, Chapter 1101, Occupations Code,
19 is amended by adding Section 1101.458 to read as follows:

20 Sec. 1101.458. ADDITIONAL EDUCATION REQUIREMENTS FOR
21 CERTAIN LICENSE HOLDERS. (a) A broker who sponsors a salesperson,
22 or a license holder who supervises another license holder, must
23 attend during the term of the current license at least six classroom
24 hours of broker responsibility education courses approved by the
25 commission.

26 (b) The commission by rule shall prescribe the title,
27 content, and duration of broker responsibility education courses

1 required under this section.

2 (c) Broker responsibility education course hours may be
3 used to satisfy the hours described by Section 1101.455(f).

4 (d) This section does not apply to a broker who is exempt
5 from continuing education requirements under Section 1101.456.

6 SECTION 16. Section 1101.502(b), Occupations Code, is
7 amended to read as follows:

8 (b) To be eligible to receive a certificate of registration
9 or a renewal certificate under this subchapter, a business
10 [~~corporation, limited liability company, partnership, limited~~
11 ~~liability partnership, or other~~] entity must designate as its agent
12 one of its managing officers[~~, partners, or managers~~] who is
13 registered under this subchapter.

14 SECTION 17. Subchapter K, Chapter 1101, Occupations Code,
15 is amended by adding Section 1101.5041 to read as follows:

16 Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION
17 REQUIREMENT FOR CERTIFICATE. An applicant for an original
18 certificate of registration or renewal of a certificate of
19 registration must comply with the criminal history record check
20 requirements of Section 1101.3521.

21 SECTION 18. Section 1101.552, Occupations Code, is amended
22 by adding Subsection (e) to read as follows:

23 (e) A license holder shall provide the commission with the
24 license holder's current mailing address, telephone number, and
25 e-mail address. A license holder shall notify the commission of a
26 change in the license holder's mailing or e-mail address or
27 telephone number.

1 SECTION 19. Section 1101.554, Occupations Code, is amended
2 to read as follows:

3 Sec. 1101.554. COPY [~~CUSTODY~~] OF SALESPERSON LICENSE.

4 [~~(a)~~] The commission shall deliver or mail a copy of each
5 salesperson license to the broker with whom the salesperson is
6 associated.

7 [~~(b) The broker shall keep the license under the broker's~~
8 ~~custody and control.~~]

9 SECTION 20. Subchapter N, Chapter 1101, Occupations Code,
10 is amended by adding Section 1101.6561 to read as follows:

11 Sec. 1101.6561. SUSPENSION OR REVOCATION OF EDUCATIONAL
12 PROGRAM ACCREDITATION. The commission may suspend or revoke an
13 accreditation issued under Subchapter G or take any other
14 disciplinary action authorized by this chapter if the provider of
15 an educational program or course of study violates this chapter or a
16 rule adopted under this chapter.

17 SECTION 21. (a) Not later than December 1, 2011, the Texas
18 Real Estate Commission shall adopt rules necessary to implement
19 Section 1101.301, Occupations Code, as amended by this Act, and
20 Sections 1101.356(d) and 1101.458, Occupations Code, as added by
21 this Act.

22 (b) Section 1101.552(e), Occupations Code, as added by this
23 Act, applies only to a broker or salesperson license issued or
24 renewed on or after December 1, 2011. A license issued or renewed
25 before December 1, 2011, is governed by the law in effect
26 immediately before the effective date of this Act, and the former
27 law is continued in effect for that purpose.

1 (c) Section 1101.502(b), Occupations Code, as amended by
2 this Act, and Section 1101.5041, Occupations Code, as added by this
3 Act, apply only to an application for a certificate of registration
4 or renewal of a certificate of registration filed with the Texas
5 Real Estate Commission on or after December 1, 2011. An application
6 filed before that date is governed by the law in effect at the time
7 the application was filed, and the former law is continued in effect
8 for that purpose.

9 (d) Section 1101.458, Occupations Code, as added by this
10 Act, applies only to a license issued or renewed on or after
11 September 1, 2012. A license issued or renewed before September 1,
12 2012, is governed by the law in effect immediately before the
13 effective date of this Act, and the former law is continued in
14 effect for that purpose.

15 (e) Sections 1101.352, 1101.355, 1101.356, 1101.357, and
16 1101.401, Occupations Code, as amended by this Act, apply only to an
17 application for a real estate broker or salesperson license
18 submitted to the Texas Real Estate Commission on or after the
19 effective date of this Act. An application for a license submitted
20 before that date is governed by the law in effect on the date the
21 application was submitted, and the former law is continued in
22 effect for that purpose.

23 (f) Section 1101.358, Occupations Code, as amended by this
24 Act, applies only to an application for a real estate salesperson
25 license submitted to the Texas Real Estate Commission on or after
26 September 1, 2012. An application for a license submitted before
27 that date is governed by the law in effect on the date the

1 application was submitted, and the former law is continued in
2 effect for that purpose.

3 (g) Sections 1101.451, 1101.453, and 1101.454, Occupations
4 Code, as amended by this Act, apply only to the renewal of a real
5 estate broker or salesperson license that expires on or after the
6 effective date of this Act. A license that expires before that date
7 is governed by the law in effect on the date the license expires,
8 and the former law is continued in effect for that purpose.

9 (h) A person who holds a license as a real estate broker
10 issued before the effective date of this Act may continue to renew
11 that license without complying with the changes in law made by this
12 Act to Sections 1101.356 and 1101.357, Occupations Code.

13 (i) Sections 1101.002 and 1101.005, Occupations Code, as
14 amended by this Act, apply, with respect to conduct that
15 constitutes acting as a broker or salesperson under Chapter 1101,
16 Occupations Code, only to conduct engaged in on or after the
17 effective date of this Act. Conduct engaged in before the effective
18 date of this Act is governed by the law in effect when the conduct
19 was engaged in, and the former law is continued in effect for that
20 purpose.

21 SECTION 22. This Act takes effect September 1, 2011.