

1-1 By: Carona S.B. No. 747  
1-2 (In the Senate - Filed February 16, 2011; February 23, 2011,  
1-3 read first time and referred to Committee on Business and Commerce;  
1-4 March 2, 2011, reported favorably by the following vote: Yeas 7,  
1-5 Nays 0; March 2, 2011, sent to printer.)

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

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

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

1-11 SECTION 1. Section 1101.002, Occupations Code, is amended  
1-12 by amending Subdivision (1) and adding Subdivision (1-a) to read as  
1-13 follows:

1-14 (1) "Broker":

1-15 (A) means a person who, in exchange for a  
1-16 commission or other valuable consideration or with the expectation  
1-17 of receiving a commission or other valuable consideration, performs  
1-18 for another person one of the following acts:

1-19 (i) sells, exchanges, purchases, or leases  
1-20 real estate;

1-21 (ii) offers to sell, exchange, purchase, or  
1-22 lease real estate;

1-23 (iii) negotiates or attempts to negotiate  
1-24 the listing, sale, exchange, purchase, or lease of real estate;

1-25 (iv) lists or offers, attempts, or agrees  
1-26 to list real estate for sale, lease, or exchange;

1-27 (v) ~~appraises or offers, attempts, or~~  
1-28 ~~agrees to appraise real estate;~~

1-29 ~~agrees to auction real estate;~~  
1-30 ~~(vi) [(-vi)] auctions or offers, attempts, or~~

1-31 ~~(vii) [(-vii)] deals in options on real~~  
1-32 ~~estate, including buying, selling, or offering to buy or sell~~  
1-33 ~~options on real estate;~~

1-34 ~~(viii) [(-viii)] aids or offers or attempts~~  
1-35 ~~to aid in locating or obtaining real estate for purchase or lease;~~

1-36 ~~(ix) [(-ix)] procures or assists in~~  
1-37 ~~procuring a prospect to effect the sale, exchange, or lease of real~~  
1-38 ~~estate; ~~(x)~~~~

1-39 ~~(x) [(-x)] procures or assists in procuring~~  
1-40 ~~property to effect the sale, exchange, or lease of real estate;~~

1-41 ~~(xi) collects or accepts rent from residents~~  
1-42 ~~of a multifamily dwelling with fewer than five units; or~~

1-43 ~~(xii) provides a written opinion relating to~~  
1-44 ~~the estimated price of real property if the opinion:~~

1-45 ~~(a) is not referred to as an~~  
1-46 ~~appraisal;~~

1-47 ~~(b) is provided in the ordinary course~~  
1-48 ~~of the person's business; and~~

1-49 ~~(c) is related to the management,~~  
1-50 ~~sale, exchange, purchase, or lease of real estate; and~~

1-51 (B) includes a person who:

1-52 (i) is employed by or for an owner of real  
1-53 estate to sell any portion of the real estate; or

1-54 (ii) engages in the business of charging an  
1-55 advance fee or contracting to collect a fee under a contract that  
1-56 requires the person primarily to promote the sale of real estate by:

1-57 (a) listing the real estate in a  
1-58 publication primarily used for listing real estate; or

1-59 (b) referring information about the  
1-60 real estate to brokers.

1-61 (1-a) "Business entity" means a "domestic entity" or  
1-62 "foreign entity" as those terms are defined by Section 1.002,  
1-63 Business Organizations Code.

1-64 SECTION 2. Section 1101.005, Occupations Code, is amended

2-1 to read as follows:

2-2 Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does  
2-3 not apply to:

2-4 (1) an attorney licensed in this [any] state;

2-5 (2) an attorney-in-fact authorized under a power of  
2-6 attorney to conduct a real estate transaction;

2-7 (3) a public official while engaged in official  
2-8 duties;

2-9 (4) an auctioneer licensed under Chapter 1802 while  
2-10 conducting the sale of real estate by auction if the auctioneer does  
2-11 not perform another act of a broker or salesperson;

2-12 (5) a person conducting a real estate transaction  
2-13 under a court order or the authority of a will or written trust  
2-14 instrument;

2-15 (6) a person employed by an owner in the sale of  
2-16 structures and land on which structures are located if the  
2-17 structures are erected by the owner in the course of the owner's  
2-18 business;

2-19 (7) an on-site manager of an apartment complex;

2-20 (8) an owner or the owner's employee who leases the  
2-21 owner's improved or unimproved real estate; or

2-22 (9) ~~[a partnership or limited liability partnership  
2-23 acting as a broker or salesperson through a partner who is a  
2-24 licensed broker, or~~

2-25 ~~[(10)]~~ a transaction involving:

2-26 (A) the sale, lease, or transfer of a mineral or  
2-27 mining interest in real property;

2-28 (B) the sale, lease, or transfer of a cemetery  
2-29 lot;

2-30 (C) the lease or management of a hotel or motel;  
2-31 or

2-32 (D) the sale of real property under a power of  
2-33 sale conferred by a deed of trust or other contract lien.

2-34 SECTION 3. Subchapter D, Chapter 1101, Occupations Code, is  
2-35 amended by adding Section 1101.161 to read as follows:

2-36 Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. The  
2-37 commission may solicit and accept a gift, grant, donation, or other  
2-38 item of value from any source to pay for any activity under this  
2-39 chapter or Chapter 1102 or 1103.

2-40 SECTION 4. Section 1101.301, Occupations Code, is amended  
2-41 by amending Subsection (c) and adding Subsection (d) to read as  
2-42 follows:

2-43 (c) In establishing accreditation standards for an  
2-44 educational program under Subsection (a), the commission shall  
2-45 adopt rules setting an examination passage rate benchmark for each  
2-46 category of license issued by the commission under this chapter or  
2-47 Chapter 1102. The benchmark must be based on the average percentage  
2-48 of examinees that pass the licensing exam on the first attempt. A  
2-49 program must meet or exceed the benchmark for each license category  
2-50 [that require a program to establish that at least 55 percent of the  
2-51 program's graduates have passed a licensing exam the first time the  
2-52 exam has been taken by the graduates] before the commission may  
2-53 renew the program's accreditation.

2-54 (d) The commission may deny an application for  
2-55 accreditation if the applicant at any time owns or controls an  
2-56 educational program or course of study for which accreditation was  
2-57 revoked.

2-58 SECTION 5. Section 1101.351, Occupations Code, is amended  
2-59 by adding Subsection (a-1) to read as follows:

2-60 (a-1) Unless a business entity holds a license issued under  
2-61 this chapter, a person employed by, sponsored by, or associated  
2-62 with the business entity may not:

2-63 (1) act as or represent that the person is a broker or  
2-64 salesperson; or

2-65 (2) act as a residential rental locator.

2-66 SECTION 6. Section 1101.352, Occupations Code, is amended  
2-67 by adding Subsection (d) to read as follows:

2-68 (d) At the time an application is submitted under Subsection  
2-69 (a), each applicant shall provide the commission with the

3-1 applicant's current mailing address, telephone number, and e-mail  
 3-2 address. The applicant shall notify the commission of any change in  
 3-3 the applicant's mailing or e-mail address or telephone number  
 3-4 during the time the application is pending.

3-5 SECTION 7. Section 1101.355, Occupations Code, is amended  
 3-6 to read as follows:

3-7 Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS  
 3-8 FOR [CERTAIN] BUSINESS ENTITIES. (a) To be eligible for a license  
 3-9 under this chapter, a business entity must:

3-10 (1) [a corporation must] designate one of its managing  
 3-11 officers as its agent for purposes of this chapter; and

3-12 (2) provide proof that the entity maintains errors and  
 3-13 omissions insurance with a minimum annual limit of \$1 million for  
 3-14 each occurrence if the designated agent owns less than 10 percent of  
 3-15 the business entity [a limited liability company must designate one  
 3-16 of its managers as its agent for purposes of this chapter].

3-17 (b) A business entity [corporation or limited liability  
 3-18 company] may not act as a broker unless the entity's designated  
 3-19 agent is a licensed broker in active status and good standing  
 3-20 according to the commission's records.

3-21 (c) A business entity that receives compensation on behalf  
 3-22 of a license holder must be licensed as a broker under this chapter.

3-23 SECTION 8. Section 1101.356, Occupations Code, is amended  
 3-24 by amending Subsection (a) and adding Subsection (d) to read as  
 3-25 follows:

3-26 (a) An applicant for a broker license must provide to the  
 3-27 commission satisfactory evidence that the applicant:

3-28 (1) has had at least six [~~two~~] years of active  
 3-29 experience in this state as a license holder during the 84 [~~36~~]  
 3-30 months preceding the date the application is filed; and

3-31 (2) has successfully completed at least 60 semester  
 3-32 hours, or equivalent classroom hours, of postsecondary education,  
 3-33 including:

3-34 (A) at least 18 semester hours or equivalent  
 3-35 classroom hours of core real estate courses, two semester hours of  
 3-36 which must be real estate brokerage; and

3-37 (B) at least 42 hours of core real estate courses  
 3-38 or related courses accepted by the commission.

3-39 (d) The commission by rule shall establish what constitutes  
 3-40 active experience for purposes of this section and Section  
 3-41 1101.357.

3-42 SECTION 9. Section 1101.357, Occupations Code, is amended  
 3-43 to read as follows:

3-44 Sec. 1101.357. BROKER LICENSE: ALTERNATE EXPERIENCE  
 3-45 REQUIREMENTS FOR CERTAIN APPLICANTS. An applicant for a broker  
 3-46 license who does not satisfy the experience requirements of Section  
 3-47 1101.356 must provide to the commission satisfactory evidence that:

3-48 (1) the applicant:

3-49 (A) is a licensed real estate broker in another  
 3-50 state;

3-51 (B) has had at least six [~~two~~] years of active  
 3-52 experience in that state as a licensed real estate broker or  
 3-53 salesperson during the 84 [~~36~~] months preceding the date the  
 3-54 application is filed; and

3-55 (C) has satisfied the educational requirements  
 3-56 prescribed by Section 1101.356; or

3-57 (2) the applicant was licensed in this state as a  
 3-58 broker in the year preceding the date the application is filed.

3-59 SECTION 10. Section 1101.358, Occupations Code, is amended  
 3-60 to read as follows:

3-61 Sec. 1101.358. SALESPERSON LICENSE: EDUCATION  
 3-62 REQUIREMENTS. (a) An applicant for a salesperson license must  
 3-63 provide to the commission satisfactory evidence that the applicant  
 3-64 has completed at least 12 [~~14~~] semester hours, or equivalent  
 3-65 classroom hours, of postsecondary education consisting of  
 3-66 including:

3-67 (1) at least four semester hours of core real estate  
 3-68 courses on principles of real estate; and

3-69 (2) at least two semester hours of each of the

4-1 following core real estate courses:

- 4-2 (A) agency law;  
 4-3 (B) contract law; ~~and~~  
 4-4 (C) contract forms and addendums; and  
 4-5 (D) real estate finance ~~[one additional core real~~  
 4-6 ~~estate course; and~~

4-7 ~~[(3) at least four semester hours of core real estate~~  
 4-8 ~~courses or related courses].~~

4-9 (b) The commission shall waive the education requirements  
 4-10 of Subsection (a) if the applicant has been licensed in this state  
 4-11 as a broker or salesperson within the six months ~~[year]~~ preceding  
 4-12 the date the application is filed.

4-13 (c) If an applicant for a salesperson license was licensed  
 4-14 as a salesperson within the six months ~~[year]~~ preceding the date the  
 4-15 application is filed and the license was issued under the  
 4-16 conditions prescribed by Section 1101.454, the commission shall  
 4-17 require the applicant to provide the evidence of successful  
 4-18 completion of education requirements that would have been required  
 4-19 if the license had been maintained without interruption during the  
 4-20 preceding six months ~~[year]~~.

4-21 SECTION 11. Subsection (f), Section 1101.401, Occupations  
 4-22 Code, is amended to read as follows:

4-23 (f) An applicant must satisfy the examination requirement  
 4-24 not later than one year ~~[six months]~~ after the date the license  
 4-25 application is filed.

4-26 SECTION 12. Subsections (e) and (f), Section 1101.451,  
 4-27 Occupations Code, are amended to read as follows:

4-28 (e) A person whose license has been expired for 90 days or  
 4-29 less may renew the license by paying to the commission a fee equal  
 4-30 to 1-1/2 times the required renewal fee. If a license has been  
 4-31 expired for more than 90 days but less than six months ~~[one year]~~,  
 4-32 the person may renew the license by paying to the commission a fee  
 4-33 equal to two times the required renewal fee.

4-34 (f) If a person's license has been expired for six months  
 4-35 ~~[one year]~~ or longer, the person may not renew the license. The  
 4-36 person may obtain a new license by submitting to reexamination and  
 4-37 complying with the requirements and procedures for obtaining an  
 4-38 original license.

4-39 SECTION 13. Section 1101.453, Occupations Code, is amended  
 4-40 to read as follows:

4-41 Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR  
 4-42 ~~[CERTAIN]~~ BUSINESS ENTITIES. (a) To renew a license under this  
 4-43 chapter, a business entity must:

4-44 (1) ~~[a corporation must]~~ designate one of its managing  
 4-45 officers as its agent for purposes of this chapter; and

4-46 (2) provide proof that the entity maintains errors and  
 4-47 omissions insurance with a minimum annual limit of \$1 million for  
 4-48 each occurrence if the designated agent owns less than 10 percent of  
 4-49 the business entity ~~[a limited liability company must designate one~~  
 4-50 ~~of its managers as its agent for purposes of this chapter].~~

4-51 (b) A business entity ~~[corporation or limited liability~~  
 4-52 ~~company]~~ may not act as a broker unless the entity's designated  
 4-53 agent is a licensed broker in active status and good standing  
 4-54 according to the commission's records.

4-55 SECTION 14. Subsection (a), Section 1101.454, Occupations  
 4-56 Code, is amended to read as follows:

4-57 (a) An applicant applying for the first renewal of a  
 4-58 salesperson license must provide to the commission satisfactory  
 4-59 evidence of completion of at least 18 semester hours, or equivalent  
 4-60 classroom hours, ~~[of postsecondary education, including 14 hours]~~  
 4-61 of core real estate courses.

4-62 SECTION 15. Subchapter J, Chapter 1101, Occupations Code,  
 4-63 is amended by adding Section 1101.458 to read as follows:

4-64 Sec. 1101.458. ADDITIONAL EDUCATION REQUIREMENTS FOR  
 4-65 CERTAIN LICENSE HOLDERS. (a) A broker who sponsors a salesperson,  
 4-66 or a license holder who supervises another license holder, must  
 4-67 attend during the term of the current license at least six classroom  
 4-68 hours of broker responsibility education courses approved by the  
 4-69 commission.

5-1           (b) The commission by rule shall prescribe the title,  
 5-2 content, and duration of broker responsibility education courses  
 5-3 required under this section.

5-4           (c) Broker responsibility education course hours may be  
 5-5 used to satisfy the hours described by Section 1101.455(f).

5-6           (d) This section does not apply to a broker who is exempt  
 5-7 from continuing education requirements under Section 1101.456.

5-8           SECTION 16. Subsection (b), Section 1101.502, Occupations  
 5-9 Code, is amended to read as follows:

5-10           (b) To be eligible to receive a certificate of registration  
 5-11 or a renewal certificate under this subchapter, a business  
 5-12 [corporation, limited liability company, partnership, limited  
 5-13 liability partnership, or other] entity must designate as its agent  
 5-14 one of its managing officers~~[, partners, or managers]~~ who is  
 5-15 registered under this subchapter.

5-16           SECTION 17. Subchapter K, Chapter 1101, Occupations Code,  
 5-17 is amended by adding Section 1101.5041 to read as follows:

5-18           Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION  
 5-19 REQUIREMENT FOR CERTIFICATE. An applicant for an original  
 5-20 certificate of registration or renewal of a certificate of  
 5-21 registration must comply with the criminal history record check  
 5-22 requirements of Section 1101.3521.

5-23           SECTION 18. Section 1101.552, Occupations Code, is amended  
 5-24 by adding Subsection (e) to read as follows:

5-25           (e) A license holder shall provide the commission with the  
 5-26 license holder's current mailing address, telephone number, and  
 5-27 e-mail address. A license holder shall notify the commission of a  
 5-28 change in the license holder's mailing or e-mail address or  
 5-29 telephone number.

5-30           SECTION 19. Section 1101.554, Occupations Code, is amended  
 5-31 to read as follows:

5-32           Sec. 1101.554. COPY [CUSTODY] OF SALESPERSON LICENSE.  
 5-33 ~~[(a)]~~ The commission shall deliver or mail a copy of each  
 5-34 salesperson license to the broker with whom the salesperson is  
 5-35 associated.

5-36           ~~[(b) The broker shall keep the license under the broker's~~  
 5-37 ~~custody and control.]~~

5-38           SECTION 20. Subchapter N, Chapter 1101, Occupations Code,  
 5-39 is amended by adding Section 1101.6561 to read as follows:

5-40           Sec. 1101.6561. SUSPENSION OR REVOCATION OF EDUCATIONAL  
 5-41 PROGRAM ACCREDITATION. The commission may suspend or revoke an  
 5-42 accreditation issued under Subchapter G or take any other  
 5-43 disciplinary action authorized by this chapter if the provider of  
 5-44 an educational program or course of study violates this chapter or a  
 5-45 rule adopted under this chapter.

5-46           SECTION 21. (a) Not later than December 1, 2011, the Texas  
 5-47 Real Estate Commission shall adopt rules necessary to implement  
 5-48 Section 1101.301, Occupations Code, as amended by this Act, and  
 5-49 Subsection (d), Section 1101.356, and Section 1101.458,  
 5-50 Occupations Code, as added by this Act.

5-51           (b) Subsection (e), Section 1101.552, Occupations Code, as  
 5-52 added by this Act, applies only to a broker or salesperson license  
 5-53 issued or renewed on or after December 1, 2011. A license issued or  
 5-54 renewed before December 1, 2011, is governed by the law in effect  
 5-55 immediately before the effective date of this Act, and the former  
 5-56 law is continued in effect for that purpose.

5-57           (c) Subsection (b), Section 1101.502, Occupations Code, as  
 5-58 amended by this Act, and Section 1101.5041, Occupations Code, as  
 5-59 added by this Act, apply only to an application for a certificate of  
 5-60 registration or renewal of a certificate of registration filed with  
 5-61 the Texas Real Estate Commission on or after December 1, 2011. An  
 5-62 application filed before that date is governed by the law in effect  
 5-63 at the time the application was filed, and the former law is  
 5-64 continued in effect for that purpose.

5-65           (d) Section 1101.458, Occupations Code, as added by this  
 5-66 Act, applies only to a license issued or renewed on or after  
 5-67 September 1, 2012. A license issued or renewed before September 1,  
 5-68 2012, is governed by the law in effect immediately before the  
 5-69 effective date of this Act, and the former law is continued in

6-1 effect for that purpose.

6-2 (e) Sections 1101.352, 1101.355, 1101.356, 1101.357, and  
6-3 1101.401, Occupations Code, as amended by this Act, apply only to an  
6-4 application for a real estate broker or salesperson license  
6-5 submitted to the Texas Real Estate Commission on or after the  
6-6 effective date of this Act. An application for a license submitted  
6-7 before that date is governed by the law in effect on the date the  
6-8 application was submitted, and the former law is continued in  
6-9 effect for that purpose.

6-10 (f) Section 1101.358, Occupations Code, as amended by this  
6-11 Act, applies only to an application for a real estate salesperson  
6-12 license submitted to the Texas Real Estate Commission on or after  
6-13 September 1, 2012. An application for a license submitted before  
6-14 that date is governed by the law in effect on the date the  
6-15 application was submitted, and the former law is continued in  
6-16 effect for that purpose.

6-17 (g) Sections 1101.451, 1101.453, and 1101.454, Occupations  
6-18 Code, as amended by this Act, apply only to the renewal of a real  
6-19 estate broker or salesperson license that expires on or after the  
6-20 effective date of this Act. A license that expires before that date  
6-21 is governed by the law in effect on the date the license expires,  
6-22 and the former law is continued in effect for that purpose.

6-23 (h) A person who holds a license as a real estate broker  
6-24 issued before the effective date of this Act may continue to renew  
6-25 that license without complying with the changes in law made by this  
6-26 Act to Sections 1101.356 and 1101.357, Occupations Code.

6-27 (i) Sections 1101.002 and 1101.005, Occupations Code, as  
6-28 amended by this Act, apply, with respect to conduct that  
6-29 constitutes acting as a broker or salesperson under Chapter 1101,  
6-30 Occupations Code, only to conduct engaged in on or after the  
6-31 effective date of this Act. Conduct engaged in before the effective  
6-32 date of this Act is governed by the law in effect when the conduct  
6-33 was engaged in, and the former law is continued in effect for that  
6-34 purpose.

6-35 SECTION 22. This Act takes effect September 1, 2011.

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