

By: Hancock

S.B. No. 2212

A BILL TO BE ENTITLED

AN ACT

relating to certain real estate brokerage and advertising activities.

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

SECTION 1. Subchapter A, Chapter 1101, Occupations Code, is amended by adding Section 1101.0045 to read as follows:

Sec. 1101.0045. EQUITABLE INTERESTS IN REAL PROPERTY.

(a) A person may acquire an option or an interest in a contract to purchase real property and then sell or offer to sell the option or assign or offer to assign the contract without holding a license issued under this chapter if the person:

(1) does not use the option or contract to purchase to engage in real estate brokerage; and

(2) discloses the nature of the equitable interest to any potential buyer.

(b) A person selling or offering to sell an option or assigning or offering to assign an interest in a contract to purchase real property without disclosing the nature of that interest to a potential buyer is engaging in real estate brokerage.

SECTION 2. Section 1101.156(b), Occupations Code, is amended to read as follows:

(b) The commission may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

- 1 (1) restricts the use of any advertising medium;
- 2 (2) restricts the person's personal appearance or use
3 of the person's voice in an advertisement;
- 4 (3) relates to the size or duration of an
5 advertisement used by the person; [~~or~~]
- 6 (4) restricts the person's advertisement under an
7 assumed or [~~a~~] trade name that is authorized by a law of this state
8 and registered with the commission; or
- 9 (5) requires the term "broker," "agent," or a similar
10 designation or term, a reference to the commission, or the person's
11 license number to be included in the person's advertisement.

12 SECTION 3. Section 1101.652(b), Occupations Code, is
13 amended to read as follows:

14 (b) The commission may suspend or revoke a license issued
15 under this chapter or take other disciplinary action authorized by
16 this chapter if the license holder, while engaged in real estate
17 brokerage:

- 18 (1) acts negligently or incompetently;
- 19 (2) engages in conduct that is dishonest or in bad
20 faith or that demonstrates untrustworthiness;
- 21 (3) makes a material misrepresentation to a potential
22 buyer concerning a significant defect, including a latent
23 structural defect, known to the license holder that would be a
24 significant factor to a reasonable and prudent buyer in making a
25 decision to purchase real property;
- 26 (4) fails to disclose to a potential buyer a defect
27 described by Subdivision (3) that is known to the license holder;

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

4 (6) pursues a continued and flagrant course of
5 misrepresentation or makes false promises through an agent or sales
6 agent, through advertising, or otherwise;

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

9 (8) receives compensation from more than one party to
10 a real estate transaction without the full knowledge and consent of
11 all parties to the transaction;

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

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

17 (11) pays a commission or a fee to or divides a
18 commission or a fee with a person other than a license holder or a
19 real estate broker or sales agent licensed in another state for
20 compensation for services as a real estate agent;

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

26 (13) accepts, receives, or charges an undisclosed
27 commission, rebate, or direct profit on an expenditure made for a

- 1 principal;
- 2 (14) solicits, sells, or offers for sale real property
3 by means of a lottery;
- 4 (15) solicits, sells, or offers for sale real property
5 by means of a deceptive practice;
- 6 (16) acts in a dual capacity as broker and undisclosed
7 principal in a real estate transaction;
- 8 (17) guarantees or authorizes or permits a person to
9 guarantee that future profits will result from a resale of real
10 property;
- 11 (18) places a sign on real property offering the real
12 property for sale or lease without obtaining the written consent of
13 the owner of the real property or the owner's authorized agent;
- 14 (19) offers to sell or lease real property without the
15 knowledge and consent of the owner of the real property or the
16 owner's authorized agent;
- 17 (20) offers to sell or lease real property on terms
18 other than those authorized by the owner of the real property or the
19 owner's authorized agent;
- 20 (21) induces or attempts to induce a party to a
21 contract of sale or lease to break the contract for the purpose of
22 substituting a new contract;
- 23 (22) negotiates or attempts to negotiate the sale,
24 exchange, or lease of real property with an owner, landlord, buyer,
25 or tenant with knowledge that that person is a party to an
26 outstanding written contract that grants exclusive agency to
27 another broker in connection with the transaction;

1 (23) publishes or causes to be published an
2 advertisement [~~, including an advertisement by newspaper, radio,~~
3 ~~television, the Internet, or display,~~] that:

4 (A) misleads or is likely to deceive the public;

5 (B) [~~7~~] tends to create a misleading impression;

6 (C) implies that a sales agent is responsible for
7 the operation of the broker's real estate brokerage business; [~~7~~] or

8 (D) fails to include [~~identify~~] the name of the
9 broker for whom the license holder acts, which name may be the
10 licensed name, assumed name, or trade name of the broker as
11 authorized by a law of this state and registered with the commission
12 [~~person causing the advertisement to be published as a licensed~~
13 ~~broker or agent~~];

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

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

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

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

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

27 (29) fails to advise a buyer in writing before the

1 closing of a real estate transaction that the buyer should:

2 (A) have the abstract covering the real estate
3 that is the subject of the contract examined by an attorney chosen
4 by the buyer; or

5 (B) be provided with or obtain a title insurance
6 policy;

7 (30) fails to deposit, within a reasonable time, money
8 the license holder receives as escrow or trust funds in a real
9 estate transaction:

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

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

15 (31) disburses money deposited in a custodial, trust,
16 or escrow account, as provided in Subdivision (30), before the
17 completion or termination of the real estate transaction;

18 (32) discriminates against an owner, potential buyer,
19 landlord, or potential tenant on the basis of race, color,
20 religion, sex, disability, familial status, national origin, or
21 ancestry, including directing a prospective buyer or tenant
22 interested in equivalent properties to a different area based on
23 the race, color, religion, sex, disability, familial status,
24 national origin, or ancestry of the potential owner or tenant; or

25 (33) disregards or violates this chapter.

26 SECTION 4. Subchapter D, Chapter 5, Property Code, is
27 amended by adding Section 5.086 to read as follows:

1 Sec. 5.086. EQUITABLE INTEREST DISCLOSURE. Before entering
2 into a contract, a person selling an option or assigning an interest
3 in a contract to purchase real property must disclose to any
4 potential buyer that the person is selling only an option or
5 assigning an interest in a contract and that the person does not
6 have legal title to the real property.

7 SECTION 5. This Act takes effect September 1, 2017.