

1-1 By: Hancock S.B. No. 2212
1-2 (In the Senate - Filed March 10, 2017; March 29, 2017, read
1-3 first time and referred to Committee on Business & Commerce;
1-4 April 18, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0, 1 present not
1-6 voting; April 18, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10				X
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 2212 By: Hancock

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to certain real estate brokerage and advertising
1-22 activities.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subchapter A, Chapter 1101, Occupations Code, is
1-25 amended by adding Section 1101.0045 to read as follows:

1-26 Sec. 1101.0045. EQUITABLE INTERESTS IN REAL PROPERTY.

1-27 (a) A person may acquire an option or an interest in a contract to
1-28 purchase real property and then sell or offer to sell the option or
1-29 assign or offer to assign the contract without holding a license
1-30 issued under this chapter if the person:

1-31 (1) does not use the option or contract to purchase to
1-32 engage in real estate brokerage; and

1-33 (2) discloses the nature of the equitable interest to
1-34 any potential buyer.

1-35 (b) A person selling or offering to sell an option or
1-36 assigning or offering to assign an interest in a contract to
1-37 purchase real property without disclosing the nature of that
1-38 interest to a potential buyer is engaging in real estate brokerage.

1-39 SECTION 2. Section 1101.156(b), Occupations Code, is
1-40 amended to read as follows:

1-41 (b) The commission may not include in rules to prohibit
1-42 false, misleading, or deceptive practices by a person regulated by
1-43 the commission a rule that:

1-44 (1) restricts the use of any advertising medium;

1-45 (2) restricts the person's personal appearance or use
1-46 of the person's voice in an advertisement;

1-47 (3) relates to the size or duration of an
1-48 advertisement used by the person; ~~or~~

1-49 (4) restricts the person's advertisement under an
1-50 assumed or ~~a~~ trade name that is authorized by a law of this state
1-51 and registered with the commission; or

1-52 (5) requires the term "broker," "agent," or a similar
1-53 designation or term, a reference to the commission, or the person's
1-54 license number to be included in the person's advertisement.

1-55 SECTION 3. Section 1101.652(b), Occupations Code, is
1-56 amended to read as follows:

1-57 (b) The commission may suspend or revoke a license issued
1-58 under this chapter or take other disciplinary action authorized by
1-59 this chapter if the license holder, while engaged in real estate
1-60 brokerage:

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

3-1 (C) implies that a sales agent is responsible for
3-2 the operation of the broker's real estate brokerage business; [7]
3-3 or

3-4 (D) fails to include [identify] the name of the
3-5 broker for whom the license holder acts, which name may be the
3-6 licensed name, assumed name, or trade name of the broker as
3-7 authorized by a law of this state and registered with the commission
3-8 [person causing the advertisement to be published as a licensed
3-9 broker or agent];

3-10 (24) withholds from or inserts into a statement of
3-11 account or invoice a statement that the license holder knows makes
3-12 the statement of account or invoice inaccurate in a material way;

3-13 (25) publishes or circulates an unjustified or
3-14 unwarranted threat of a legal proceeding or other action;

3-15 (26) establishes an association by employment or
3-16 otherwise with a person other than a license holder if the person is
3-17 expected or required to act as a license holder;

3-18 (27) aids, abets, or conspires with another person to
3-19 circumvent this chapter;

3-20 (28) fails or refuses to provide, on request, a copy of
3-21 a document relating to a real estate transaction to a person who
3-22 signed the document;

3-23 (29) fails to advise a buyer in writing before the
3-24 closing of a real estate transaction that the buyer should:

3-25 (A) have the abstract covering the real estate
3-26 that is the subject of the contract examined by an attorney chosen
3-27 by the buyer; or

3-28 (B) be provided with or obtain a title insurance
3-29 policy;

3-30 (30) fails to deposit, within a reasonable time, money
3-31 the license holder receives as escrow or trust funds in a real
3-32 estate transaction:

3-33 (A) in trust with a title company authorized to
3-34 do business in this state; or

3-35 (B) in a custodial, trust, or escrow account
3-36 maintained for that purpose in a banking institution authorized to
3-37 do business in this state;

3-38 (31) disburses money deposited in a custodial, trust,
3-39 or escrow account, as provided in Subdivision (30), before the
3-40 completion or termination of the real estate transaction;

3-41 (32) discriminates against an owner, potential buyer,
3-42 landlord, or potential tenant on the basis of race, color,
3-43 religion, sex, disability, familial status, national origin, or
3-44 ancestry, including directing a prospective buyer or tenant
3-45 interested in equivalent properties to a different area based on
3-46 the race, color, religion, sex, disability, familial status,
3-47 national origin, or ancestry of the potential owner or tenant; or

3-48 (33) disregards or violates this chapter.

3-49 SECTION 4. Subchapter D, Chapter 5, Property Code, is
3-50 amended by adding Section 5.086 to read as follows:

3-51 Sec. 5.086. EQUITABLE INTEREST DISCLOSURE. Before entering
3-52 into a contract, a person selling an option or assigning an interest
3-53 in a contract to purchase real property must disclose to any
3-54 potential buyer that the person is selling only an option or
3-55 assigning an interest in a contract and that the person does not
3-56 have legal title to the real property.

3-57 SECTION 5. This Act takes effect September 1, 2017.

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