

OCCUPATIONS CODE

TITLE 7. PRACTICES AND PROFESSIONS RELATED TO REAL PROPERTY AND  
HOUSING

SUBTITLE A. PROFESSIONS RELATED TO REAL ESTATE

CHAPTER 1101. REAL ESTATE BROKERS AND SALESPERSONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1101.001. SHORT TITLE. This chapter may be cited as  
The Real Estate License Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.002. DEFINITIONS. In this chapter:

(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;

(vii) deals in options on real estate,  
including buying, selling, or offering to buy or sell options on  
real estate;

(viii) aids or offers or attempts to aid in  
locating or obtaining real estate for purchase or lease;

(ix) procures or assists in procuring a  
prospect to effect the sale, exchange, or lease of real estate; or

(x) procures or assists in procuring property to effect the sale, exchange, or lease of real estate; and

(B) includes a person who:

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

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

(a) listing the real estate in a publication primarily used for listing real estate; or

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

(2) "Certificate holder" means a person registered under Subchapter K.

(3) "Commission" means the Texas Real Estate Commission.

(4) "License holder" means a broker or salesperson licensed under this chapter.

(5) "Real estate" means any interest in real property, including a leasehold, located in or outside this state. The term does not include an interest given as security for the performance of an obligation.

(6) "Residential rental locator" means a person who offers for consideration to locate a unit in an apartment complex for lease to a prospective tenant. The term does not include an owner who offers to locate a unit in the owner's complex.

(7) "Salesperson" means a person who is associated with a licensed broker for the purpose of performing an act described by Subdivision (1).

(8) "Subagent" means a license holder who:

(A) represents a principal through cooperation with and the consent of a broker representing the principal; and

(B) is not sponsored by or associated with the principal's broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.151, eff. Sept. 1, 2003.

Sec. 1101.003. CORE REAL ESTATE COURSES. (a) For purposes of this chapter, "core real estate courses" include:

- (1) agency law, which includes the following topics:
  - (A) the relationship between a principal and an agent;
  - (B) an agent's authority;
  - (C) the termination of an agent's authority;
  - (D) an agent's duties, including fiduciary duties;
  - (E) employment law;
  - (F) deceptive trade practices;
  - (G) listing or buying representation procedures;and
  - (H) the disclosure of agency;
- (2) contract law, which includes the following topics:
  - (A) elements of a contract;
  - (B) offer and acceptance;
  - (C) statute of frauds;
  - (D) remedies for breach, including specific performance;
  - (E) unauthorized practice of law;
  - (F) commission rules relating to use of adopted forms; and
  - (G) owner disclosure requirements;
- (3) principles of real estate, which includes:
  - (A) an overview of:
    - (i) licensing as a broker or salesperson;
    - (ii) ethics of practice as a license holder;
    - (iii) titles to and conveyance of real estate;
    - (iv) legal descriptions;
    - (v) deeds, encumbrances, and liens;
    - (vi) distinctions between personal and real property;
    - (vii) appraisal;

- (viii) finance and regulations;
- (ix) closing procedures; and
- (x) real estate mathematics; and

(B) at least three hours of classroom instruction on federal, state, and local laws relating to housing discrimination, housing credit discrimination, and community reinvestment;

(4) property management, which includes the following topics:

- (A) the role of a property manager;
- (B) landlord policies;
- (C) operational guidelines;
- (D) leases;
- (E) lease negotiations;
- (F) tenant relations;
- (G) maintenance;
- (H) reports;
- (I) habitability laws; and
- (J) the Fair Housing Act (42 U.S.C. Section 3601

et seq.);

(5) real estate appraisal, which includes the following topics:

- (A) the central purposes and functions of an appraisal;
- (B) social and economic determinants of the value of real estate;
- (C) appraisal case studies;
- (D) cost, market data, and income approaches to value estimates of real estate;
- (E) final correlations; and
- (F) reporting;

(6) real estate brokerage, which includes the following topics:

- (A) agency law;
- (B) planning and organization;
- (C) operational policies and procedures;
- (D) recruitment, selection, and training of

personnel;

(E) records and control; and

(F) real estate firm analysis and expansion criteria;

(7) real estate finance, which includes the following topics:

(A) monetary systems;

(B) primary and secondary money markets;

(C) sources of mortgage loans;

(D) federal government programs;

(E) loan applications, processes, and procedures;

(F) closing costs;

(G) alternative financial instruments;

(H) equal credit opportunity laws;

(I) community reinvestment laws, including the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.); and

(J) state housing agencies, including the Texas Department of Housing and Community Affairs;

(8) real estate investment, which includes the following topics:

(A) real estate investment characteristics;

(B) techniques of investment analysis;

(C) the time value of money;

(D) discounted and nondiscounted investment criteria;

(E) leverage;

(F) tax shelters depreciation; and

(G) applications to property tax;

(9) real estate law, which includes the following topics:

(A) legal concepts of real estate;

(B) land description;

(C) real property rights and estates in land;

(D) contracts;

(E) conveyances;

- (F) encumbrances;
- (G) foreclosures;
- (H) recording procedures; and
- (I) evidence of titles;

(10) real estate marketing, which includes the following topics:

- (A) real estate professionalism and ethics;
- (B) characteristics of successful salespersons;
- (C) time management;
- (D) psychology of marketing;
- (E) listing procedures;
- (F) advertising;
- (G) negotiating and closing;
- (H) financing; and
- (I) Subchapter E, Chapter 17, Business & Commerce Code; and

(11) real estate mathematics, which includes the following topics:

- (A) basic arithmetic skills and review of mathematical logic;
- (B) percentages;
- (C) interest;
- (D) the time value of money;
- (E) depreciation;
- (F) amortization;
- (G) proration; and
- (H) estimation of closing statements.

(b) The commission may designate a course as an equivalent of a course listed in Subsection (a).

(c) The commission by rule may prescribe:

(1) the content of the core real estate courses listed in Subsection (a); and

(2) the title and content of additional core real estate courses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(a), eff. Sept. 1, 2003.

Sec. 1101.004. ACTING AS BROKER OR SALESPERSON. A person acts as a broker or salesperson under this chapter if the person, with the expectation of receiving valuable consideration, directly or indirectly performs or offers, attempts, or agrees to perform for another person any act described by Section 1101.002(1), as a part of a transaction or as an entire transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.153, eff. Sept. 1, 2003.

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

- (1) an attorney licensed in any state;
- (2) an attorney-in-fact authorized under a power of attorney to conduct a real estate transaction;
- (3) a public official while engaged in official duties;
- (4) an auctioneer licensed under Chapter 1802 while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker or salesperson;
- (5) a person conducting a real estate transaction under a court order or the authority of a will or written trust instrument;
- (6) a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;
- (7) an on-site manager of an apartment complex;
- (8) an owner or the owner's employee who leases the owner's improved or unimproved real estate;
- (9) a partnership or limited liability partnership acting as a broker or salesperson through a partner who is a licensed broker; or
- (10) a transaction involving:
  - (A) the sale, lease, or transfer of a mineral or mining interest in real property;

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

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 62, Sec. 1, eff. May 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 1, eff. September 1, 2007.

Sec. 1101.0055. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. A service contract that a license holder enters into for services governed by this chapter is not a good or service governed by Chapter 601, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 2.27, eff. April 1, 2009.

Sec. 1101.006. APPLICATION OF SUNSET ACT. The Texas Real Estate Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter, Chapter 1102, and Chapter 1303 of this code and Chapter 221, Property Code, expire September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.155(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 1, eff. September 1, 2007.

For expiration of this section, see Subsection (b).

Sec. 1101.007. COMPLIANCE WITH SUNSET RECOMMENDATIONS.

(a) The commission shall:

(1) comply with and implement the management action recommendations regarding the commission adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of the commission; and

(2) report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the commission's implementation of the recommendations under Subdivision (1).

(b) This section expires June 1, 2009.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 2, eff. September 1, 2007.

SUBCHAPTER B. TEXAS REAL ESTATE COMMISSION

Sec. 1101.051. COMMISSION MEMBERSHIP. (a) The Texas Real Estate Commission consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six members who have been engaged in the brokerage business as licensed brokers as their major occupation for the five years preceding appointment; and

(2) three members who represent the public.

(b) Each member of the commission must be a qualified voter.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the real estate industry;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns or controls, directly or indirectly, more

than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the real estate industry; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the real estate industry.

(c) A person may not serve as a commission member or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 3, eff. September 1, 2007.

Sec. 1101.054. OFFICIAL OATH. Not later than the 15th day after the date of appointment, each appointee must take the constitutional oath of office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 285, Sec. 27, eff. Sept. 1, 2003.

Sec. 1101.055. TERMS; VACANCY. (a) Commission members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.056. OFFICERS. (a) The governor shall designate a commission member who is a licensed broker as presiding officer. The presiding officer serves in that capacity at the pleasure of the governor.

(b) At a regular meeting in February of each year, the commission shall elect an assistant presiding officer and secretary from its membership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of appointment the qualifications required by Section 1101.051(a) or (b) or 1101.052;

(2) does not maintain during service on the commission the qualifications required by Section 1101.051(a) or (b) or 1101.052;

(3) is ineligible for membership under Section 1101.053;

(4) cannot discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend

during each calendar year, unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the administrator has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the administrator shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 4, eff. September 1, 2007.

Sec. 1101.058. PER DIEM; REIMBURSEMENT. A commission member is entitled to receive:

(1) \$75 for each day the member performs the member's official duties; and

(2) reimbursement for actual and necessary expenses incurred in performing the member's official duties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and other laws regulated by the

commission;

(2) the programs, functions, rules, and budget of the commission;

(3) the results of the most recent formal audit of the commission;

(4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(5) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 5, eff. September 1, 2007.

#### SUBCHAPTER C. ADMINISTRATOR AND OTHER COMMISSION PERSONNEL

##### Sec. 1101.101. ADMINISTRATOR AND OTHER PERSONNEL.

(a) The commission shall appoint an administrator.

(b) The commission may designate a subordinate officer as assistant administrator to act for the administrator in the administrator's absence.

(c) The commission may employ other subordinate officers and employees necessary to administer and enforce this chapter and Chapter 1102, including a general counsel, attorneys, investigators, and support staff.

(d) The commission shall determine the salaries of the administrator, officers, and employees of the commission. The amounts of the salaries may not exceed the amounts specified by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 6, eff. September 1, 2007.

Sec. 1101.102. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 7, eff. September 1, 2007.

Sec. 1101.103. CODE OF ETHICS; STANDARDS OF CONDUCT. Each member, officer, employee, and agent of the commission is subject to the code of ethics and standards of conduct imposed by Chapter 572, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commission shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter and Chapter 1102; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The administrator or the administrator's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The administrator or the administrator's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY;

REPORT. (a) The administrator or the administrator's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated at least annually; and

(3) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### SUBCHAPTER D. COMMISSION POWERS AND DUTIES

##### Sec. 1101.151. GENERAL POWERS AND DUTIES OF COMMISSION.

(a) The commission shall:

(1) administer this chapter and Chapter 1102;

(2) adopt rules and establish standards relating to permissible forms of advertising by a license holder acting as a residential rental locator;

(3) maintain a registry of certificate holders; and

(4) design and adopt a seal.

(b) The commission may:

(1) adopt and enforce rules necessary to administer this chapter and Chapter 1102; and

(2) establish standards of conduct and ethics for persons licensed under this chapter and Chapter 1102 to:

(A) fulfill the purposes of this chapter and Chapter 1102; and

(B) ensure compliance with this chapter and Chapter 1102.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 8, eff. September 1, 2007.

Sec. 1101.152. FEES.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch.  
297, Sec. 3

(a) The commission shall adopt rules to charge and collect reasonable fees, including a fee for:

(1) filing an original application for a broker license;

(2) annual renewal of a broker license;

(3) filing an original application for a salesperson license;

(4) annual renewal of a salesperson license;

(5) annual registration;

(6) filing an application for a license examination;

(7) filing a request for a branch office license;

(8) filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker;

(9) filing a request to replace a lost or destroyed license or certificate of registration;

(10) filing an application for approval of an education program under Subchapter G;

(11) annual operation of an education program under

Subchapter G;

(12) filing an application for approval of an instructor of core real estate courses;

(13) transcript evaluation;

(14) preparing a license or registration history;

(15) filing an application for a moral character determination; and

(16) conducting a criminal history check for issuing or renewing a license.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch.

1411, Sec. 9

(a) The commission shall adopt rules to charge and collect reasonable fees, including a fee for:

(1) filing an original application for a broker license;

(2) annual renewal of a broker license;

(3) filing an original application for a salesperson license;

(4) annual renewal of a salesperson license;

(5) annual registration;

(6) filing an application for a license examination;

(7) filing a request for a branch office license;

(8) filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker;

(9) filing a request to replace a lost or destroyed license or certificate of registration;

(10) filing an application for approval of an education program under Subchapter G;

(11) annual operation of an education program under Subchapter G;

(12) filing an application for approval of an instructor of core real estate courses;

(13) transcript evaluation;

(14) preparing a license or registration history;

(15) filing an application for a moral character determination; and

(16) conducting a criminal background check in connection with the annual renewal of a license under this chapter.

(b) The commission shall adopt rules to set and collect reasonable fees to implement the continuing education requirements for license holders, including a fee for:

(1) an application for approval of a continuing education provider;

(2) an application for approval of a continuing education course of study;

(3) an application for approval of an instructor of continuing education courses; and

(4) attendance at a program to train instructors of a continuing education course prescribed under Section 1101.455.

(c) Notwithstanding Subsection (a), if the commission issues an original inactive salesperson license under Section 1101.363(b) to a salesperson who is not sponsored by a licensed broker and the salesperson is subsequently sponsored by a licensed broker, the commission may not charge:

(1) the salesperson a fee for filing a request to place the salesperson license on active status; or

(2) the broker a fee for filing a request to sponsor the salesperson.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 1, 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 9, eff. September 1, 2007.

Sec. 1101.153. FEE INCREASE. (a) The fee for filing an original application for an individual broker license and the fee for annual renewal of an individual broker license is the amount of

the fee set by the commission under Section 1101.152 and a fee increase of \$200.

(b) Of each fee increase collected under Subsection (a), \$50 shall be deposited to the credit of the foundation school fund and \$150 shall be deposited to the credit of the general revenue fund. Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.154. ADDITIONAL FEE: TEXAS REAL ESTATE RESEARCH CENTER. (a) The fee for the issuance or renewal of a:

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

(2) salesperson license is the amount of the fee set under Section 1101.152 and an additional \$17.50 fee; and

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

(b) The commission shall transmit quarterly the additional fees collected under Subsection (a) to Texas A&M University for deposit in a separate banking account that may be appropriated only to support, maintain, and carry out the purposes, objectives, and duties of the Texas Real Estate Research Center.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.155. RULES RELATING TO CONTRACT FORMS. (a) The commission may adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

(b) The commission may not prohibit a license holder from using for the sale, exchange, option, or lease of an interest in real property a contract form that is:

(1) prepared by the property owner; or

(2) prepared by an attorney and required by the property owner.

(c) A listing contract form adopted by the commission that relates to the contractual obligations between a seller of real estate and a license holder acting as an agent for the seller must include:

(1) a provision informing the parties to the contract

that real estate commissions are negotiable; and

(2) a provision explaining the availability of Texas coastal natural hazards information important to coastal residents, if that information is appropriate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.156. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person regulated by the commission except to prohibit a false, misleading, or deceptive practice by the person.

(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) restricts the use of any advertising medium;

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

(3) relates to the size or duration of an advertisement used by the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.157. SUBPOENA AUTHORITY. (a) The commission may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) A subpoena may be issued throughout the state and may be served by any person designated by the commission.

(c) If a person fails to comply with a subpoena issued under this section, the commission, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the commission may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.158. ADVISORY COMMITTEES. (a) The commission may appoint advisory committees to perform the advisory functions assigned to the committees by the commission. An advisory committee under this section is subject to Section 2110, Government Code.

(b) A member of an advisory committee who is not a member of the commission may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the commission.

(d) An advisory committee may hold a meeting by telephone conference call or other video or broadcast technology.

(e) Advisory committee meetings are subject to Chapter 551, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 10, eff. September 1, 2007.

Sec. 1101.159. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 10, eff. September 1, 2007.

Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution

procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 10, eff. September 1, 2007.

#### SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1101.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 11, eff. September 1, 2007.

Sec. 1101.202. COMPLAINTS. (a) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission. The commission may provide for that notice:

(1) on each application for a license or certificate of registration or written contract for services of a person

regulated under this chapter or Chapter 1102;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter or Chapter 1102;

(3) in a bill for services provided by a person regulated under this chapter or Chapter 1102;

(4) in conjunction with the notice required by Section 1101.615; or

(5) to be prominently displayed on the Internet website of a person regulated under this chapter or Chapter 1102.

(b) The commission shall provide to a person who files a complaint with the commission relating to a license holder and to the license holder against whom the complaint is filed:

(1) an explanation of the remedies that are available to the person under this chapter; and

(2) information about appropriate state or local agencies or officials with whom the person may file a complaint.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003;

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 3, eff. Sept. 1, 2003.

Sec. 1101.203. COMPLAINT INFORMATION. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain a file on each complaint. The file must include:

(1) information relating to the parties to the complaint;

(2) the subject matter of the complaint;

(3) a summary of the results of the review or investigation of the complaint; and

(4) the disposition of the complaint.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the parties to the complaint of the status of the complaint until final disposition, unless the notice would jeopardize an undercover investigation authorized under Section 1101.204.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 12, eff. September 1, 2007.

Sec. 1101.204. COMPLAINT INVESTIGATION AND DISPOSITION.

(a) The commission or commission staff may file a complaint and conduct an investigation as necessary to enforce this chapter, Chapter 1102, or a rule adopted under those chapters.

(b) The commission shall investigate the actions and records of a license holder if:

(1) a person submits a signed, written complaint; and

(2) the complaint and any evidence presented with the complaint provide reasonable cause for an investigation.

(c) The commission may not conduct an investigation of a person licensed under this chapter or Chapter 1102 in connection with a complaint submitted later than the fourth anniversary of the date of the incident that is the subject of the complaint.

(d) The commission shall promptly provide a written notice to a person licensed under this chapter or Chapter 1102 who is the subject of an investigation unless after deliberation the commission decides against notification.

(e) Notwithstanding any other provision of this chapter, an undercover or covert investigation may not be conducted unless the commission expressly authorizes the investigation after considering the circumstances and determining that the investigation is necessary to implement this chapter.

(f) An investigation or other action against a person licensed under this chapter or Chapter 1102 may not be initiated on the basis of an anonymous complaint.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(1), eff. September 1, 2007.

(h) The commission shall ensure that the commission gives priority to the investigation of a complaint filed by a consumer and an enforcement case resulting from the consumer complaint. The commission shall assign priorities and investigate complaints using a risk-based approach based on the:

- (1) degree of potential harm to a consumer;
  - (2) potential for immediate harm to a consumer;
  - (3) overall severity of the allegations in the complaint;
  - (4) number of license holders potentially involved in the complaint;
  - (5) previous complaint history of the license holder;
- and
- (6) number of potential violations in the complaint.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(b), 14A.157(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 13, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(1), eff. September 1, 2007.

Sec. 1101.205. COMPLAINT INVESTIGATION OF CERTIFICATE HOLDER. The commission shall investigate a signed complaint received by the commission that relates to an act of a certificate holder or a person required to hold a certificate under Subchapter K.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.206. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### SUBCHAPTER F. TEXAS REAL ESTATE BROKER-LAWYER COMMITTEE

Sec. 1101.251. DEFINITION OF COMMITTEE. In this subchapter, "committee" means the Texas Real Estate Broker-Lawyer Committee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.252. COMMITTEE MEMBERSHIP. (a) The Texas Real Estate Broker-Lawyer Committee consists of 13 members appointed as follows:

- (1) six members appointed by the commission;
- (2) six members of the State Bar of Texas appointed by the president of the state bar; and
- (3) one public member appointed by the governor.

(b) Appointments to the committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 38.01, eff. Sept. 1, 2003.

Sec. 1101.253. TERMS; VACANCIES. (a) Committee members serve staggered six-year terms, with the terms of two commission appointees and two State Bar of Texas appointees expiring every two years and the term of the public member expiring every six years.

(b) A committee member shall hold office until the member's successor is appointed.

(c) If a vacancy occurs during a member's term, the entity making the original appointment shall appoint a person to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 38.02, eff. Sept. 1, 2003.

Sec. 1101.254. POWERS AND DUTIES. (a) In addition to other delegated powers and duties, the committee shall draft and revise contract forms that are capable of being standardized to expedite real estate transactions and minimize controversy.

(b) The contract forms must contain safeguards adequate to

protect the principals in the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER G. ACCREDITATION AND APPROVAL OF REAL ESTATE EDUCATIONAL  
PROGRAMS AND COURSES OF STUDY

Sec. 1101.301. ACCREDITATION OF PROGRAMS AND COURSES OF STUDY. (a) The commission, as necessary for the administration of this chapter and Chapter 1102, may:

(1) establish standards for the accreditation of educational programs or courses of study in real estate and real estate inspection conducted in this state, excluding programs and courses offered by accredited colleges and universities;

(2) establish by rule reasonable criteria for the approval of real estate and real estate inspection courses; and

(3) inspect and accredit real estate and real estate inspection educational programs or courses of study.

(b) The commission shall determine whether a real estate or real estate inspection course satisfies the requirements of this chapter and Chapter 1102.

(c) In establishing accreditation standards for an educational program under Subsection (a), the commission shall adopt rules that require a program to establish that at least 55 percent of the program's graduates have passed a licensing exam the first time the exam has been taken by the graduates before the commission may renew the program's accreditation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 14, eff. September 1, 2007.

Sec. 1101.302. BOND REQUIRED. (a) In this section, "educational institution" means a school, excluding an accredited college or university, authorized by the commission under this chapter to offer a real estate or real estate inspection educational program or course of study.

(b) An educational institution shall maintain a corporate surety bond or other security acceptable to the commission that is:

- (1) in the amount of \$20,000;
- (2) payable to the commission; and
- (3) for the benefit of a party who suffers damages caused by the failure of the institution to fulfill obligations related to the commission's approval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 4, eff. September 1, 2007.

Sec. 1101.303. APPROVAL OF CONTINUING EDUCATION PROVIDER OR COURSE OF STUDY. (a) If the commission determines that an applicant for approval as a continuing education provider satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer continuing education for a two-year period.

(b) If the commission determines that an applicant for approval of a continuing education course of study satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer the course of study for a two-year period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 15, eff. September 1, 2007.

Sec. 1101.304. EXAMINATION PASSAGE RATE DATA. (a) The commission shall adopt rules regarding the collection and publication of data relating to examination passage rates for graduates of accredited educational programs.

(b) Rules adopted under this section must provide for a method to:

- (1) calculate the examination passage rate;
- (2) collect the relevant data from the examination administrator or the accredited program; and

(3) post the examination passage rate data on the commission's Internet website, in a manner aggregated by educational program and by license group.

(c) In determining the educational program a graduate is affiliated with for purposes of this section, the educational program is the program the graduate last attended.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 16, eff. September 1, 2007.

Sec. 1101.305. REVIEW COMMITTEE. (a) The commission may appoint a committee to review the performance of an educational program performing below the standards set by the commission under Section 1101.301. The committee shall consist of:

- (1) at least one commission member;
- (2) at least one member of the commission staff;
- (3) individuals licensed under this chapter or Chapter 1102; and
- (4) a representative from the Texas Real Estate Research Center.

(b) A committee formed under this section shall review and evaluate any factor causing an educational program's poor performance and report findings and recommendations to improve performance to the program and to the commission.

(c) A committee formed under this section may not revoke the accreditation of an educational program. The commission may temporarily suspend a program in the same manner as a license under Subchapter N.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 16, eff. September 1, 2007.

#### SUBCHAPTER H. LICENSE REQUIREMENTS

Sec. 1101.351. LICENSE REQUIRED. (a) Unless a person holds a license issued under this chapter, the person may not:

- (1) act as or represent that the person is a broker or salesperson; or
- (2) act as a residential rental locator.

(b) An applicant for a broker or salesperson license may not

act as a broker or salesperson until the person receives the license evidencing that authority.

(c) A licensed salesperson may not act or attempt to act as a broker or salesperson unless the salesperson is associated with a licensed broker and is acting for that broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.352. LICENSE APPLICATION. (a) Each applicant for a broker or salesperson license must submit an application on a form prescribed by the commission.

(b) Each applicant for a broker or salesperson license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) The disclosure under Subsection (b) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003; Amended by Acts 2003, 78th Leg., ch. 15, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(a), eff. Sept. 1, 2003.

Sec. 1101.3521. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The commission shall require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the commission, to the commission or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The commission shall refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The commission shall conduct a criminal history check of each applicant for a license or renewal of a license using

information:

(1) provided by the individual under this section; and  
(2) made available to the commission by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The commission may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the department in conducting the criminal history check.

Added by Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 5, eff. September 1, 2007.

Sec. 1101.353. MORAL CHARACTER DETERMINATION. (a) If before applying for a license under this chapter a person requests that the commission determine whether the person's moral character complies with the commission's moral character requirements for licensing under this chapter and pays the fee prescribed by Section 1101.152, the commission shall make its determination of the person's moral character.

(b) Not later than the 30th day after the date the commission makes its determination, the commission shall notify the person of the determination.

(c) If a person applies for a license after receiving notice of a determination, the commission may conduct a supplemental moral character determination of the person. The supplemental determination may cover only the period after the date the person requests a moral character determination under this section.

(d) The commission may issue a provisional moral character determination. The commission by rule shall adopt reasonable terms for issuing a provisional moral character determination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 3, eff. September 1, 2005.

Sec. 1101.354. GENERAL ELIGIBILITY REQUIREMENTS. To be eligible to receive a license under this chapter, a person must:

- (1) at the time of application:
  - (A) be at least 18 years of age;
  - (B) be a citizen of the United States or a lawfully admitted alien; and
  - (C) be a resident of this state;
- (2) satisfy the commission as to the applicant's honesty, trustworthiness, and integrity;
- (3) demonstrate competence based on an examination under Subchapter I;
- (4) complete the required courses of study, including any required core real estate courses prescribed under this chapter; and
- (5) complete at least:
  - (A) three classroom hours of course work on federal, state, and local laws governing housing discrimination, housing credit discrimination, and community reinvestment; or
  - (B) three semester hours of course work on constitutional law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR CERTAIN BUSINESS ENTITIES. (a) To be eligible for a license under this chapter:

- (1) a corporation must designate one of its officers as its agent for purposes of this chapter; and
- (2) a limited liability company must designate one of its managers as its agent for purposes of this chapter.

(b) A corporation or limited liability company may not act as a broker unless the entity's designated agent is a licensed broker according to the commission's records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.356. BROKER LICENSE: EXPERIENCE AND EDUCATION REQUIREMENTS. (a) An applicant for a broker license must provide to the commission satisfactory evidence that the applicant:

(1) has had at least two years of active experience in this state as a license holder during the 36 months preceding the date the application is filed; and

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

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

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

(b) Subsection (a) does not apply to an applicant who, at the time of application, is licensed as a real estate broker by another state that has license requirements comparable to the requirements of this state.

(c) An applicant for a broker license who is licensed as a salesperson and is subject to the annual education requirements prescribed by Section 1101.454 must provide to the commission satisfactory evidence that the applicant has satisfied the requirements of that section. The hours completed under Section 1101.454 shall be applied to the number of hours required of the applicant under Subsection (a)(2) of this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(b), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 6, eff. September 1, 2007.

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

(1) the applicant:

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

(B) has had at least two years of active

experience in that state as a licensed real estate broker or salesperson during the 36 months preceding the date the application is filed; and

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

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

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.358. SALESPERSON LICENSE: EDUCATION REQUIREMENTS. (a) An applicant for a salesperson license must provide to the commission satisfactory evidence that the applicant has completed at least 14 semester hours, or equivalent classroom hours, of postsecondary education, including:

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

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

(A) agency law;

(B) contract law; and

(C) one additional core real estate course; and

(3) at least four semester hours of core real estate courses or related courses.

(b) The commission shall waive the education requirements of Subsection (a) if the applicant has been licensed in this state as a broker or salesperson within the year preceding the date the application is filed.

(c) If an applicant for a salesperson license was licensed as a salesperson within the year preceding the date the application is filed and the license was issued under the conditions prescribed by Section 1101.454, the commission shall require the applicant to provide the evidence of successful completion of education requirements that would have been required if the license had been maintained without interruption during the preceding year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(c), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 4, eff. September 1, 2005.

Sec. 1101.359. ALTERNATE EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS. An applicant for a broker license who is not subject to the education requirements of Section 1101.356(a)(2) and an applicant for a salesperson license who is not subject to the education requirements of Section 1101.358 or 1101.454 must provide to the commission satisfactory evidence that the applicant has completed the number of classroom hours of continuing education that would have been required for a timely renewal under Section 1101.455 during the two years preceding the date the application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.360. ELIGIBILITY REQUIREMENTS FOR CERTAIN NONRESIDENT APPLICANTS. (a) A resident of another state who is not a licensed real estate broker and who was formerly licensed in this state as a broker or salesperson may apply for a license under this chapter not later than the first anniversary of the date of the expiration of the former license.

(b) A nonresident applicant is subject to the same license requirements as a resident. The commission may refuse to issue a license to a nonresident applicant for the same reasons that it may refuse to issue a license to a resident applicant.

(c) A nonresident applicant must submit with the application an irrevocable consent to a legal action against the applicant in the court of any county in this state in which a cause of action may arise or in which the plaintiff may reside. The action may be commenced by service of process or pleading authorized by the laws of this state or by delivery of process on the administrator or assistant administrator of the commission. The consent must:

(1) stipulate that the service of process or pleading is valid and binding in all courts as if personal service had been made on the nonresident in this state;

(2) be acknowledged; and

(3) if made by a corporation, be authenticated by its seal.

(d) A service of process or pleading served on the commission under this section shall be by duplicate copies. One copy shall be filed in the commission's office, and the other copy shall be forwarded by registered mail to the last known principal address recorded in the commission's records for the nonresident against whom the process or pleading is directed.

(e) A default judgment in an action commenced as provided by this section may not be granted:

(1) unless the commission certifies that a copy of the process or pleading was mailed to the defendant as provided by Subsection (d); and

(2) until the 21st day after the date the process or pleading is mailed to the defendant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.361. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR CERTAIN NONRESIDENT APPLICANTS. (a) Notwithstanding Section 1101.360, a nonresident applicant for a license who resides in a municipality whose boundary is contiguous at any point with the boundary of a municipality in this state is eligible to be licensed under this chapter in the same manner as a resident of this state if the nonresident has been a resident of that municipality for at least the 60 days preceding the date the application is filed.

(b) A person licensed under this section shall maintain at all times a place of business in the municipality in which the person resides or in the municipality in this state that is contiguous to the municipality in which the person resides. The place of business must meet all the requirements of Section 1101.552. A place of business located in the municipality in which the person resides is considered to be in this state.

(c) A person licensed under this section may not maintain a place of business at another location in this state unless the person complies with Section 1101.356 or 1101.357.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.362. WAIVER OF LICENSE REQUIREMENTS: PREVIOUS LICENSE HOLDERS. The commission by rule may waive some or all of the requirements for a license under this chapter for an applicant who was licensed under this chapter within the six years preceding the date the application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.363. ISSUANCE OF LICENSE. (a) The commission shall issue an appropriate license to an applicant who meets the requirements for a license.

(b) The commission may issue an inactive salesperson license to a person who applies for a salesperson license and satisfies all requirements for the license. The person may not act as a salesperson unless the person is sponsored by a licensed broker who has notified the commission as required by Section 1101.367(b). Notwithstanding Section 1101.367(b), the licensed broker is not required to pay the fee required by that subsection.

(c) A license remains in effect for the period prescribed by the commission if the license holder complies with this chapter and pays the appropriate renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 5, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(b), eff. Sept. 1, 2003.

Sec. 1101.364. DENIAL OF LICENSE. (a) The commission shall immediately give written notice to the applicant of the commission's denial of a license.

(b) A person whose license application is denied under this section is entitled to a hearing under Section 1101.657.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

Sec. 1101.365. PROBATIONARY LICENSE. (a) The commission may issue a probationary license.

(b) The commission by rule shall adopt reasonable terms for issuing a probationary license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.366. INACTIVE LICENSE: BROKER. (a) The commission may place on inactive status the license of a broker if the broker:

- (1) is not acting as a broker;
- (2) is not sponsoring a salesperson; and
- (3) submits a written application to the commission before the expiration date of the broker's license.

(b) The commission may place on inactive status the license of a broker whose license has expired if the broker applies for inactive status on a form prescribed by the commission not later than the first anniversary of the expiration date of the broker's license.

(c) A broker applying for inactive status shall terminate the broker's association with each salesperson sponsored by the broker by giving written notice to each salesperson before the 30th day preceding the date the broker applies for inactive status.

(d) A broker on inactive status:

- (1) may not perform any activity regulated under this chapter; and

- (2) must pay annual renewal fees.

(e) The commission shall maintain a list of each broker whose license is on inactive status.

(f) The commission shall remove a broker's license from inactive status if the broker:

- (1) submits an application to the commission;
- (2) pays the required fee; and

(3) submits proof of attending at least 15 classroom hours of continuing education as specified by Section 1101.455 during the two years preceding the date the application under Subdivision (1) is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.367. INACTIVE LICENSE: SALESPERSON. (a) When the association of a salesperson with the salesperson's sponsoring broker terminates, the broker shall immediately return the salesperson license to the commission. A salesperson license returned under this subsection is inactive.

(b) The commission may remove a salesperson license from inactive status under Subsection (a) if, before the expiration date of the salesperson license, a licensed broker files a request with the commission advising the commission that the broker assumes sponsorship of the salesperson, accompanied by the appropriate fee.

(c) As a condition of returning to active status, an inactive salesperson whose license is not subject to the annual education requirements of Section 1101.454 must provide to the commission proof of attending at least 15 hours of continuing education as specified by Section 1101.455 during the two years preceding the date the application to return to active status is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 6, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(c), eff. Sept. 1, 2003.

#### SUBCHAPTER I. EXAMINATIONS

Sec. 1101.401. EXAMINATION REQUIRED. (a) The competency requirement prescribed under Section 1101.354(3) shall be established by an examination prepared or contracted for by the commission.

(b) The commission shall determine the time and place in the state for offering the examination.

(c) The examination must be of sufficient scope in the judgment of the commission to determine whether a person is competent to act as a broker or salesperson in a manner that will

protect the public.

(d) The examination for a salesperson license must be less exacting and less stringent than the broker examination.

(e) The commission shall provide each applicant with study material and references on which the examination is based.

(f) An applicant must satisfy the examination requirement not later than six months after the date the license application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.402. WAIVER OF EXAMINATION. The commission shall waive the examination requirement for an applicant for:

(1) a broker license if:

(A) the applicant was previously licensed in this state as a broker; and

(B) the application is filed before the first anniversary of the expiration date of that license; and

(2) a salesperson license if:

(A) the applicant was previously licensed in this state as a broker or salesperson; and

(B) the application is filed before the first anniversary of the expiration date of that license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.403. ADMINISTRATION OF EXAMINATION; TESTING SERVICE. (a) The commission shall administer any examination required by this chapter or Chapter 1102 unless the commission enters into an agreement with a testing service to administer the examination.

(b) The commission may accept an examination administered by a testing service if the commission retains the authority to establish the scope and type of the examination.

(c) The commission may negotiate an agreement with a testing service relating to examination development, scheduling, site arrangements, administration, grading, reporting, and analysis.

(d) The commission may require a testing service to:

(1) correspond directly with license applicants

regarding the administration of the examination;

(2) collect fees directly from applicants for administering the examination; or

(3) administer the examination at specific locations and specified frequencies.

(e) The commission shall adopt rules and standards as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.404. EXAMINATION RESULTS. (a) Not later than the 30th day after the date an examination is administered, the commission shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commission shall notify each examinee of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the commission shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the commission shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.405. REEXAMINATION. An applicant who fails an examination may apply for reexamination by filing a request accompanied by the proper fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### SUBCHAPTER J. LICENSE RENEWAL

Sec. 1101.451. LICENSE EXPIRATION AND RENEWAL. (a) The commission may issue or renew a license for a period not to exceed 24 months.

(b) The commission by rule may adopt a system under which licenses expire on various dates during the year. The commission shall adjust the date for payment of the renewal fees accordingly.

(c) For a year in which the license expiration date is changed, renewal fees payable shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

(d) Except as provided by Subsection (e), a renewal fee for a license under this chapter may not exceed, calculated on an annual basis, the amount of the sum of the fees established under Sections 1101.152, 1101.154, and 1101.603.

(e) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(f) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 18, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 19, eff. September 1, 2007.

Sec. 1101.452. INFORMATION REQUIRED FOR LICENSE RENEWAL.

(a) To renew an active license that is not subject to the annual education requirements of Section 1101.454, the license holder must provide to the commission proof of compliance with the continuing education requirements of Section 1101.455.

(b) Each applicant for the renewal of a license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) The disclosure under Subsection (b) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.4521. CRIMINAL HISTORY RECORD INFORMATION FOR RENEWAL. An applicant for the renewal of an unexpired license must comply with the criminal history record check requirements of Section 1101.3521.

Added by Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 7, eff. September 1, 2007.

Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR CERTAIN BUSINESS ENTITIES. (a) To renew a license under this chapter:

(1) a corporation must designate one of its officers as its agent for purposes of this chapter; and

(2) a limited liability company must designate one of its managers as its agent for purposes of this chapter.

(b) A corporation or limited liability company may not act as a broker unless the entity's designated agent is a licensed broker according to the commission's records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.454. SALESPERSON LICENSE RENEWAL. (a) An applicant applying for the first renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, of postsecondary education, including 14 hours of core real estate courses.

(b) Repealed by Acts 2005, 79th Leg., Ch. 825, Sec. 15, eff. September 1, 2005.

(c) Repealed by Acts 2005, 79th Leg., Ch. 825, Sec. 15, eff. September 1, 2005.

(d) The commission may not waive the requirements for

renewal under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(d), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 825, Sec. 15, eff. September 1, 2005.

Sec. 1101.455. CONTINUING EDUCATION REQUIREMENTS. (a) In this section, "property tax consulting laws and legal issues" includes the Tax Code, preparation of property tax reports, the unauthorized practice of law, agency law, tax law, law relating to property tax or property assessment, deceptive trade practices, contract forms and addendums, and other legal topics approved by the commission.

(b) A license holder who is not subject to the annual education requirements of Section 1101.454 must attend during the term of the current license at least 15 classroom hours of continuing education courses approved by the commission.

(c) The commission by rule may:

(1) prescribe the title, content, and duration of continuing education courses that a license holder must attend to renew a license; and

(2) approve as a substitute for the classroom attendance required by Subsection (b):

(A) relevant educational experience; and

(B) correspondence courses.

(d) In addition, the commission may approve supervised video instruction as a course that may be applied toward satisfaction of the classroom hours of continuing education courses required by Subsection (b).

(e) At least six of the continuing education hours required by Subsection (b) must cover the following legal topics:

(1) commission rules;

(2) fair housing laws;

(3) Property Code issues, including landlord-tenant

law;

- (4) agency law;
- (5) antitrust laws;
- (6) Subchapter E, Chapter 17, Business & Commerce

Code;

(7) disclosures to buyers, landlords, tenants, and sellers;

(8) current contract and addendum forms;

(9) unauthorized practice of law;

(10) case studies involving violations of laws and regulations;

(11) current Federal Housing Administration and Department of Veterans Affairs regulations;

(12) tax laws;

(13) property tax consulting laws and legal issues; or

(14) other legal topics approved by the commission.

(f) The remaining nine hours may be devoted to other real estate-related topics approved by the commission.

(g) The commission may consider courses equivalent to those described by Subsections (e) and (f) for continuing education credit.

(h) The commission shall automatically approve the following courses as courses that satisfy the mandatory continuing education requirements of Subsection (f):

(1) core real estate courses; and

(2) real estate-related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit.

(i) The commission may not require an examination for a course under this section unless the course is a correspondence course or a course offered by an alternative delivery system, including delivery by computer.

(j) Daily classroom course segments must be at least one hour and not more than 10 hours.

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 297,  
Sec. 8

(k) Notwithstanding the number of hours required by Subsection (e), a member of the legislature licensed under this chapter is only required to complete three hours of continuing education on the legal topics under Subsection (e).

Text of subsection as added by Acts 2007, 80th Leg., R.S., Ch. 1411,  
Sec. 20

(k) An online course offered under this section may not be completed in less than 24 hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.159(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 20, eff. September 1, 2007.

Sec. 1101.456. EXEMPTION FROM CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN BROKERS. Notwithstanding any other provision of this chapter, a broker who, before October 31, 1991, qualified under former Section 7A(f), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by Section 1.041, Chapter 553, Acts of the 72nd Legislature, Regular Session, 1991, for an exemption from continuing education requirements is not required to comply with the mandatory continuing education requirements of this subchapter to renew the broker's license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.457. DEFERRAL OF CONTINUING EDUCATION REQUIREMENTS. (a) The commission by rule may establish procedures under which an applicant may have the applicant's license issued, renewed, or returned to active status before the applicant completes continuing education requirements.

(b) The commission may require an applicant under this section to:

(1) pay a fee, not to exceed \$200, in addition to any fee for late renewal of a license under this chapter; and

(2) complete the required continuing education not later than the 60th day after the date the license is issued, renewed, or returned to active status.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 21, eff. September 1, 2007.

#### SUBCHAPTER K. CERTIFICATE REQUIREMENTS

Sec. 1101.501. CERTIFICATE REQUIRED. A person may not sell, buy, lease, or transfer an easement or right-of-way for another, for compensation or with the expectation of receiving compensation, for use in connection with telecommunication, utility, railroad, or pipeline service unless the person:

(1) holds a license issued under this chapter; or

(2) holds a certificate of registration issued under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### Sec. 1101.502. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE.

(a) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a person must be:

(1) at least 18 years of age; and

(2) a citizen of the United States or a lawfully admitted alien.

(b) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a corporation, limited liability company, partnership, limited liability partnership, or other entity must designate as its agent one of its officers, partners, or managers who is registered under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.503. ISSUANCE OF CERTIFICATE. (a) The commission shall issue a certificate of registration to an applicant who meets the requirements for a certificate of registration.

(b) The certificate remains in effect for the period prescribed by the commission if the certificate holder complies with this chapter and pays the appropriate renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.504. CERTIFICATE EXPIRATION. The duration, expiration, and renewal of a certificate of registration are subject to the same provisions as are applicable under Section 1101.451 to the duration, expiration, and renewal of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.505. DENIAL OF CERTIFICATE. The denial of a certificate of registration is subject to the same provisions as are applicable under Section 1101.364 to the denial of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.506. CHANGE OF ADDRESS. Not later than the 10th day after the date a certificate holder moves its place of business from a previously designated address, the holder shall:

(1) notify the commission of the move; and

(2) obtain a new certificate of registration that reflects the address of the new place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.507. DISPLAY OF CERTIFICATE. A certificate holder shall prominently display at all times the holder's certificate of registration in the holder's place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

#### SUBCHAPTER L. PRACTICE BY LICENSE HOLDER

Sec. 1101.551. DEFINITIONS. In this subchapter:

(1) "Intermediary" means a broker who is employed to negotiate a transaction between the parties to a transaction and

for that purpose may act as an agent of the parties.

(2) "Party" means a prospective buyer, seller, landlord, or tenant or an authorized representative of a buyer, seller, landlord, or tenant, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a license holder who represents a party.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.552. FIXED OFFICE REQUIRED; CHANGE OF ADDRESS; BRANCH OFFICES. (a) A resident broker shall maintain a fixed office in this state. The address of the office shall be designated on the broker's license.

(b) Not later than the 10th day after the date a broker moves from the address designated on the broker's license, the broker shall submit an application, accompanied by the appropriate fee, for a license that designates the new location of the broker's office. The commission shall issue a license that designates the new location if the new location complies with the requirements of this section.

(c) A broker who maintains more than one place of business in this state shall obtain a branch office license for each additional office maintained by the broker by submitting an application, accompanied by the appropriate fee.

(d) A nonresident licensed broker is not required to maintain a place of business in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.553. DISPLAY OF LICENSE. (a) Repealed by Acts 2003, 78th Leg., ch. 15, Sec. 14, eff. Sept. 1, 2003.

(b) Repealed by Acts 2003, 78th Leg., ch. 15, Sec. 14, eff. Sept. 1, 2003.

(c) A residential rental locator shall prominently display in a place accessible to clients and prospective clients:

- (1) the locator's license;
- (2) a statement that the locator is licensed by the commission; and
- (3) the name, mailing address, and telephone number of

the commission as provided by Section 1101.202(a).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 14, eff. Sept. 1, 2003.

Sec. 1101.554. CUSTODY OF SALESPERSON LICENSE. (a) The commission shall deliver or mail each salesperson license to the broker with whom the salesperson is associated.

(b) The broker shall keep the license under the broker's custody and control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.555. NOTICE TO BUYER REGARDING ABSTRACT OR TITLE POLICY. When an offer to purchase real estate in this state is signed, a license holder shall advise each buyer, in writing, that the buyer should:

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

(2) be provided with or obtain a title insurance policy.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.556. DISCLOSURE OF CERTAIN INFORMATION RELATING TO OCCUPANTS. Notwithstanding other law, a license holder is not required to inquire about, disclose, or release information relating to whether:

(1) a previous or current occupant of real property had, may have had, has, or may have AIDS, an HIV-related illness, or an HIV infection as defined by the Centers for Disease Control and Prevention of the United States Public Health Service; or

(2) a death occurred on a property by natural causes, suicide, or accident unrelated to the condition of the property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.557. ACTING AS AGENT; REGULATION OF CERTAIN TRANSACTIONS. (a) A broker who represents a party in a real

estate transaction or who lists real estate for sale under an exclusive agreement for a party is that party's agent.

(b) A broker described by Subsection (a):

(1) may not instruct another broker to directly or indirectly violate Section 1101.652(b)(22);

(2) must inform the party if the broker receives material information related to a transaction to list, buy, sell, or lease the party's real estate, including the receipt of an offer by the broker; and

(3) shall, at a minimum, answer the party's questions and present any offer to or from the party.

(c) For the purposes of this section:

(1) a license holder who has the authority to bind a party to a lease or sale under a power of attorney or a property management agreement is also a party to the lease or sale;

(2) an inquiry to a person described by Section 1101.005(6) about contract terms or forms required by the person's employer does not violate Section 1101.652(b)(22) if the person does not have the authority to bind the employer to the contract; and

(3) the sole delivery of an offer to a party does not violate Section 1101.652(b)(22) if:

(A) the party's broker consents to the delivery;

(B) a copy of the offer is sent to the party's broker, unless a governmental agency using a sealed bid process does not allow a copy to be sent; and

(C) the person delivering the offer does not engage in another activity that directly or indirectly violates Section 1101.652(b)(22).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 7, eff. September 1, 2005.

Sec. 1101.558. REPRESENTATION DISCLOSURE. (a) In this section, "substantive dialogue" means a meeting or written communication that involves a substantive discussion relating to specific real property. The term does not include:

(1) a meeting that occurs at a property that is held open for any prospective buyer or tenant; or

(2) a meeting or written communication that occurs after the parties to a real estate transaction have signed a contract to sell, buy, or lease the real property concerned.

(b) A license holder who represents a party in a proposed real estate transaction shall disclose, orally or in writing, that representation at the time of the license holder's first contact with:

(1) another party to the transaction; or

(2) another license holder who represents another party to the transaction.

(c) A license holder shall provide to a party to a real estate transaction at the time of the first substantive dialogue with the party the written statement prescribed by Subsection (d) unless:

(1) the proposed transaction is for a residential lease for not more than one year and a sale is not being considered; or

(2) the license holder meets with a party who is represented by another license holder.

(d) The written statement required by Subsection (c) must be printed in a format that uses at least 10-point type and read as follows:

"Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

"IF THE BROKER REPRESENTS THE OWNER: The broker becomes the owner's

agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

"IF THE BROKER REPRESENTS THE BUYER: The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

"IF THE BROKER ACTS AS AN INTERMEDIARY: A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction: (1) shall treat all parties honestly; (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner; (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property. With the parties'

consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

"If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding."

(e) The license holder may substitute "buyer" for "tenant" and "seller" for "landlord" as appropriate in the written statement prescribed by Subsection (d).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 7, eff. Sept. 1, 2003.

Sec. 1101.559. BROKER ACTING AS INTERMEDIARY. (a) A broker may act as an intermediary between parties to a real estate transaction if:

(1) the broker obtains written consent from each party for the broker to act as an intermediary in the transaction; and

(2) the written consent of the parties states the source of any expected compensation to the broker.

(b) A written listing agreement to represent a seller or landlord or a written agreement to represent a buyer or tenant that authorizes a broker to act as an intermediary in a real estate transaction is sufficient to establish written consent of the party to the transaction if the written agreement specifies in conspicuous bold or underlined print the conduct that is prohibited under Section 1101.651(d).

(c) An intermediary shall act fairly and impartially. Appointment by a broker acting as an intermediary of an associated

license holder under Section 1101.560 to communicate with, carry out the instructions of, and provide opinions and advice to the parties to whom that associated license holder is appointed is a fair and impartial act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.560. ASSOCIATED LICENSE HOLDER ACTING AS INTERMEDIARY. (a) A broker who complies with the written consent requirements of Section 1101.559 may appoint:

(1) a license holder associated with the broker to communicate with and carry out instructions of one party to a real estate transaction; and

(2) another license holder associated with the broker to communicate with and carry out instructions of any other party to the transaction.

(b) A license holder may be appointed under this section only if:

(1) the written consent of the parties under Section 1101.559 authorizes the broker to make the appointment; and

(2) the broker provides written notice of the appointment to all parties involved in the real estate transaction.

(c) A license holder appointed under this section may provide opinions and advice during negotiations to the party to whom the license holder is appointed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.561. DUTIES OF INTERMEDIARY PREVAIL. (a) The duties of a license holder acting as an intermediary under this subchapter supersede the duties of a license holder established under any other law, including common law.

(b) A broker must agree to act as an intermediary under this subchapter if the broker agrees to represent in a transaction:

(1) a buyer or tenant; and

(2) a seller or landlord.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 8, eff. September 1, 2005.

SUBCHAPTER M. REAL ESTATE RECOVERY TRUST ACCOUNT

Sec. 1101.601. REAL ESTATE RECOVERY TRUST ACCOUNT.

(a) The commission shall maintain a real estate recovery trust account to reimburse aggrieved persons who suffer actual damages caused by an act described by Section 1101.602 committed by:

- (1) a license holder;
- (2) a certificate holder; or
- (3) a person who does not hold a license or certificate and who is an employee or agent of a license or certificate holder.

(b) The license or certificate holder must have held the license or certificate at the time the act was committed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.602. ENTITLEMENT TO REIMBURSEMENT. An aggrieved person is entitled to reimbursement from the trust account if a person described by Section 1101.601 engages in conduct described by Section 1101.652(a)(3) or (b) or 1101.653(1), (2), (3), or (4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.603. PAYMENTS INTO TRUST ACCOUNT. (a) In addition to other fees required by this chapter, an applicant for an original license must pay a fee of \$10.

(b) In addition to other fees required by this chapter, an applicant for an original certificate of registration or renewal certificate must pay a fee of \$50.

(c) The commission shall deposit to the credit of the trust account:

- (1) fees collected under Subsections (a) and (b); and
- (2) an administrative penalty collected under Subchapter O for a violation by a person licensed as a broker or salesperson.

(d) An administrative penalty collected under Subchapter O for a violation by a person who is not licensed under this chapter or Chapter 1102 shall be deposited to the credit of the trust account or the real estate inspection recovery fund, as determined by the commission.

(e) On a determination by the commission at any time that the balance in the trust account is less than \$1 million, each license holder at the next license renewal must pay, in addition to the renewal fee, a fee that is equal to the lesser of \$10 or a pro rata share of the amount necessary to obtain a balance in the trust account of \$1.7 million. The commission shall deposit the additional fee to the credit of the trust account.

(f) To ensure the availability of a sufficient amount to pay anticipated claims on the trust account, the commission by rule may provide for the collection of assessments at different times and under conditions other than those specified by this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(a), eff. Sept. 1, 2003.

Sec. 1101.604. MANAGEMENT OF TRUST ACCOUNT. (a) The commission shall hold money credited to the trust account in trust to carry out the purpose of the trust account.

(b) Money credited to the trust account may be invested in the same manner as money of the Employees Retirement System of Texas, except that an investment may not be made that would impair the liquidity necessary to make payments from the trust account as required by this subchapter.

(c) Interest from the investments shall be deposited to the credit of the trust account.

(d) If the balance in the trust account on December 31 of a year is more than the greater of \$3.5 million or the total amount of claims paid from the trust account during the preceding four fiscal years, the commission shall transfer the excess amount of money in the trust account to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.605. DEADLINE FOR ACTION; NOTICE TO COMMISSION.

(a) An action for a judgment that may result in an order for payment from the trust account may not be brought after the second anniversary of the date the cause of action accrues.

(b) When an aggrieved person brings an action for a judgment

that may result in an order for payment from the trust account, the license or certificate holder against whom the action is brought shall notify the commission in writing of the action.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.606. CLAIM FOR PAYMENT FROM TRUST ACCOUNT.

(a) An aggrieved person who obtains a court judgment against a license or certificate holder for an act described by Section 1101.602 may, after final judgment is entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court that entered the judgment.

(b) After the 20th day after the date the aggrieved person gives written notice of the claim to the commission and judgment debtor, the person may apply to the court that entered the judgment for an order for payment from the trust account of the amount unpaid on the judgment. The court shall proceed promptly on the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.607. ISSUES AT HEARING. At the hearing on the application for payment from the trust account, the aggrieved person must show:

(1) that the judgment is based on facts allowing recovery under this subchapter;

(2) that the person is not:

(A) the spouse of the judgment debtor or the personal representative of the spouse; or

(B) a license or certificate holder who is seeking to recover compensation, including a commission, in the real estate transaction that is the subject of the application for payment;

(3) that, according to the best information available, the judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;

(4) the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and

(5) the balance remaining due on the judgment after

application of the amount under Subdivision (4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(b), eff. Sept. 1, 2003.

Sec. 1101.608. COMMISSION RESPONSE. (a) On receipt of notice under Section 1101.606 and the scheduling of a hearing, the commission may notify the attorney general of the commission's desire to enter an appearance, file a response, appear at the hearing, defend the action, or take any other action the commission considers appropriate.

(b) The commission and the attorney general may act under Subsection (a) only to:

(1) protect the trust account from spurious or unjust claims; or

(2) ensure compliance with the requirements for recovery under this subchapter.

(c) The commission may relitigate in the hearing any material and relevant issue that was determined in the action that resulted in the judgment in favor of the aggrieved person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.609. COURT ORDER FOR PAYMENT. The court shall order the commission to pay from the trust account the amount the court finds payable on the claim under this subchapter if at a hearing the court is satisfied:

(1) of the truth of each matter the aggrieved person is required by Section 1101.607 to show; and

(2) that the aggrieved person has satisfied each requirement of Sections 1101.606 and 1101.607.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.610. PAYMENT LIMITS; ATTORNEY'S FEES.

(a) Payments from the trust account for claims, including attorney's fees, interest, and court costs, arising out of a single transaction may not exceed a total of \$50,000, regardless of the number of claimants.

(b) Payments from the trust account for claims based on judgments against a single license or certificate holder may not exceed a total of \$100,000 until the license or certificate holder has reimbursed the trust account for all amounts paid.

(c) If the court finds that the total amount of claims against a license or certificate holder exceeds the limitations in this section, the court shall proportionately reduce the amount payable on each claim.

(d) A person receiving payment from the trust account is entitled to receive reasonable attorney's fees in the amount determined by the court, subject to the limitations prescribed by this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.611. APPLICATION OF JUDGMENT RECOVERY. An aggrieved person who receives a recovery on a judgment against a single defendant before receiving a payment from the trust account must apply the recovery first to actual damages.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.612. SUBROGATION. (a) The commission is subrogated to all rights of a judgment creditor to the extent of an amount paid from the trust account, and the judgment creditor shall assign to the commission all right, title, and interest in the judgment up to that amount.

(b) The commission has priority for repayment from any subsequent recovery on the judgment.

(c) The commission shall deposit any amount recovered on the judgment to the credit of the trust account.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.613. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter does not limit the commission's authority to take disciplinary action against a license or certificate holder for a violation of this chapter or a commission rule.

(b) A license or certificate holder's repayment of all amounts owed to the trust account does not affect another

disciplinary proceeding brought under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.614. WAIVER OF RIGHTS. An aggrieved person who does not comply with this subchapter waives the person's rights under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.615. NOTICE TO CONSUMERS AND SERVICE RECIPIENTS.

(a) Each license and certificate holder shall provide notice to consumers and service recipients of the availability of payment from the trust account for aggrieved persons:

(1) in conjunction with the notice required by Section 1101.202;

(2) on a written contract for the license or certificate holder's services;

(3) on a brochure that the license or certificate holder distributes;

(4) on a sign prominently displayed in the license or certificate holder's place of business;

(5) in a bill or receipt for the license or certificate holder's services; or

(6) in a prominent display on the Internet website of a person regulated under this chapter.

(b) The notice must include:

(1) the commission's name, mailing address, and telephone number; and

(2) any other information required by commission rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 8, eff. Sept. 1, 2003.

#### SUBCHAPTER N. PROHIBITED PRACTICES AND DISCIPLINARY PROCEEDINGS

Sec. 1101.651. CERTAIN PRACTICES PROHIBITED. (a) A licensed broker may not pay a commission to or otherwise compensate a person directly or indirectly for performing an act of a broker unless the person is:

(1) a license holder; or

(2) a real estate broker licensed in another state who does not conduct in this state any of the negotiations for which the commission or other compensation is paid.

(b) A salesperson may not accept compensation for a real estate transaction from a person other than the broker with whom the salesperson is associated or was associated when the salesperson earned the compensation.

(c) A salesperson may not pay a commission to a person except through the broker with whom the salesperson is associated at that time.

(d) A broker and any broker or salesperson appointed under Section 1101.560 who acts as an intermediary under Subchapter L may not:

(1) disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price, unless otherwise instructed in a separate writing by the seller or landlord;

(2) disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord, unless otherwise instructed in a separate writing by the buyer or tenant;

(3) disclose any confidential information or any information a party specifically instructs the broker or salesperson in writing not to disclose, unless:

(A) the broker or salesperson is otherwise instructed in a separate writing by the respective party;

(B) the broker or salesperson is required to disclose the information by this chapter or a court order; or

(C) the information materially relates to the condition of the property;

(4) treat a party to a transaction dishonestly; or

(5) violate this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE. (a) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action

authorized by this chapter if the license holder:

(1) enters a plea of guilty or nolo contendere to or is convicted of a felony in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence;

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

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

(A) the license holder;

(B) the license holder's spouse; or

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

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

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

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

(7) fails to surrender to the owner, without just cause, a document or instrument that is requested by the owner and that is in the license holder's possession;

(8) fails to use a contract form required by the commission under Section 1101.155;

(9) fails to notify the commission, not later than the 30th day after the date of a final conviction or the entry of a plea

of guilty or nolo contendere, that the person has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud; or

(10) disregards or violates this chapter.

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

(1) acts negligently or incompetently;

(2) engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;

(3) makes a material misrepresentation to a potential buyer concerning a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property;

(4) fails to disclose to a potential buyer a defect described by Subdivision (3) that is known to the license holder;

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

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

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

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

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

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

(11) pays a commission or a fee to or divides a commission or a fee with a person other than a license holder or a real estate broker or salesperson licensed in another state for

compensation for services as a real estate agent;

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

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

(14) solicits, sells, or offers for sale real property by means of a lottery;

(15) solicits, sells, or offers for sale real property by means of a deceptive practice;

(16) acts in a dual capacity as broker and undisclosed principal in a real estate transaction;

(17) guarantees or authorizes or permits a person to guarantee that future profits will result from a resale of real property;

(18) places a sign on real property offering the real property for sale or lease without obtaining the written consent of the owner of the real property or the owner's authorized agent;

(19) offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent;

(20) offers to sell or lease real property on terms other than those authorized by the owner of the real property or the owner's authorized agent;

(21) induces or attempts to induce a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract;

(22) negotiates or attempts to negotiate the sale, exchange, or lease of real property with an owner, landlord, buyer, or tenant with knowledge that that person is a party to an outstanding written contract that grants exclusive agency to another broker in connection with the transaction;

(23) publishes or causes to be published an advertisement, including an advertisement by newspaper, radio,

television, the Internet, or display, that misleads or is likely to deceive the public, tends to create a misleading impression, or fails to identify the person causing the advertisement to be published as a licensed broker or agent;

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

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

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

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

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

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

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

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

(30) fails to deposit, within a reasonable time, money the license holder receives as escrow agent in a real estate transaction:

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

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

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

(32) discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of race, color,

religion, sex, national origin, or ancestry, including directing a prospective buyer or tenant interested in equivalent properties to a different area based on the race, color, religion, sex, national origin, or ancestry of the potential owner or tenant; or

(33) disregards or violates this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(c), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 9, eff. September 1, 2007.

Sec. 1101.653. GROUNDS FOR SUSPENSION OR REVOCATION OF CERTIFICATE. The commission may suspend or revoke a certificate of registration issued under this chapter if the certificate holder:

(1) engages in dishonest dealing, fraud, unlawful discrimination, or a deceptive act;

(2) makes a misrepresentation;

(3) acts in bad faith;

(4) demonstrates untrustworthiness;

(5) fails to honor, within a reasonable time, a check issued to the commission after the commission has mailed a request for payment to the certificate holder's last known address according to the commission's records;

(6) fails to provide to a party to a transaction a written notice prescribed by the commission that:

(A) must be given before the party is obligated to sell, buy, lease, or transfer a right-of-way or easement; and

(B) contains:

(i) the name of the certificate holder;

(ii) the certificate number;

(iii) the name of the person the certificate holder represents;

(iv) a statement advising the party that the party may seek representation from a lawyer or broker in the transaction; and

(v) a statement generally advising the party that the right-of-way or easement may affect the value of the property; or

(7) disregards or violates this chapter or a commission rule relating to certificate holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.654. SUSPENSION OR REVOCATION OF LICENSE OR CERTIFICATE FOR UNAUTHORIZED PRACTICE OF LAW. (a) The commission shall suspend or revoke the license or certificate of registration of a license or certificate holder who is not a licensed attorney in this state and who, for consideration, a reward, or a pecuniary benefit, present or anticipated, direct or indirect, or in connection with the person's employment, agency, or fiduciary relationship as a license or certificate holder:

(1) drafts an instrument, other than a form described by Section 1101.155, that transfers or otherwise affects an interest in real property; or

(2) advises a person regarding the validity or legal sufficiency of an instrument or the validity of title to real property.

(b) Notwithstanding any other law, a license or certificate holder who completes a contract form for the sale, exchange, option, or lease of an interest in real property incidental to acting as a broker is not engaged in the unauthorized or illegal practice of law in this state if the form was:

(1) adopted by the commission for the type of transaction for which the form is used;

(2) prepared by an attorney licensed in this state and approved by the attorney for the type of transaction for which the form is used; or

(3) prepared by the property owner or by an attorney and required by the property owner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.655. REVOCATION OF LICENSE OR CERTIFICATE FOR CLAIM ON ACCOUNT. (a) The commission may revoke a license,

approval, or registration issued under this chapter or Chapter 1102 if the commission makes a payment from the real estate recovery trust account to satisfy all or part of a judgment against the license or registration holder.

(b) The commission may probate an order revoking a license under this section.

(c) A person is not eligible for a license or certificate until the person has repaid in full the amount paid from the account for the person, plus interest at the legal rate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825, Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297, Sec. 10, eff. September 1, 2007.

Sec. 1101.656. ADDITIONAL DISCIPLINARY AUTHORITY OF COMMISSION. (a) In addition to any other authority under this chapter, the commission may suspend or revoke a license, place on probation a person whose license has been suspended, or reprimand a license holder if the license holder violates this chapter or a commission rule.

(b) The commission may probate a suspension, revocation, or cancellation of a license under reasonable terms determined by the commission.

(c) The commission may require a license holder whose license suspension or revocation is probated to:

(1) report regularly to the commission on matters that are the basis of the probation;

(2) limit practice to an area prescribed by the commission; or

(3) continue to renew professional education until the license holder attains a degree of skill satisfactory to the commission in the area that is the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.657. HEARING. (a) If the commission proposes to

deny, suspend, or revoke a person's license or certificate of registration, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(e) A hearing under this section is governed by the contested case procedures under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 22, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

Sec. 1101.658. APPEAL. (a) A person aggrieved by a ruling, order, or decision under this subchapter is entitled to appeal to a district court in the county in which the administrative hearing was held.

(b) An appeal is governed by the procedures under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 23, eff. September 1, 2007.

Sec. 1101.659. REFUND. (a) Subject to Subsection (b), the commission may order a person regulated by the commission to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

(b) The amount of a refund ordered as provided in an

agreement resulting from an informal settlement conference or an enforcement order may not exceed the amount the consumer paid to the person for a service or accommodation regulated by this commission. The commission may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 24, eff. September 1, 2007.

Sec. 1101.660. INFORMAL PROCEEDINGS. (a) The commission by rule shall adopt procedures governing informal disposition of a contested case.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder, certificate holder, or regulated entity an opportunity to be heard; and

(2) require the presence of:

(A) a public member of the commission for a case involving a consumer complaint; and

(B) at least two staff members of the commission with experience in the regulatory area that is the subject of the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 24, eff. September 1, 2007.

Sec. 1101.661. FINAL ORDER. The commission may issue a final order in a proceeding under this subchapter or Subchapter O regarding a person whose license has expired during the course of an investigation or administrative proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 24, eff. September 1, 2007.

Sec. 1101.662. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the

information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

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

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 24, eff. September 1, 2007.

#### SUBCHAPTER O. ADMINISTRATIVE PENALTY

##### Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY.

(a) The commission may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The commission shall periodically review the commission's enforcement procedures and ensure that administrative penalty and disciplinary proceedings are combined into a single enforcement procedure.

(c) The commission may combine a proceeding to impose an administrative penalty with another disciplinary proceeding, including a proceeding to suspend or revoke a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(c), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 25, eff. September 1, 2007.

Sec. 1101.7015. DELEGATION OF ADMINISTRATOR'S AUTHORITY.

The commission may authorize the administrator to delegate to another commission employee the administrator's authority to act under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(d), eff. Sept. 1, 2003.

Sec. 1101.702. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the administrator shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(c) The commission by rule shall adopt a schedule of administrative penalties based on the criteria listed in Subsection (b) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation. The rules adopted under this subsection must provide authority for the commission to suspend or revoke a license in addition to or instead of imposing an administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(e), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 26, eff. September 1, 2007.

Sec. 1101.703. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigation of a possible violation and the facts relating to that violation, the administrator determines that a violation

has occurred, the administrator may issue a notice of violation stating:

(1) a brief summary of the alleged violation;

(2) the administrator's recommendation on the imposition of the administrative penalty or another disciplinary sanction, including a recommendation on the amount of the penalty; and

(3) that the respondent has the right to a hearing to contest the alleged violation, the recommended penalty, or both.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(4), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 27, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 28, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(4), eff. September 1, 2007.

Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Not later than the 20th day after the date the person receives the notice under Section 1101.703, the person may:

(1) accept the administrator's determination, including the recommended administrative penalty; or

(2) request in writing a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the administrator's determination, or fails to respond in a timely manner to the notice, the commission by order shall approve the determination and order payment of the recommended penalty or impose the recommended sanction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 29, eff. September 1, 2007.

Sec. 1101.705. HEARING; DECISION. (a) If the person requests a hearing, the administrator shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing. The administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the commission a proposal for decision regarding the occurrence of the violation and the amount of any proposed administrative penalty.

(c) Based on the findings of fact, conclusions of law, and proposal for decision of the administrative law judge, the commission by order may determine that:

- (1) a violation occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(d) A proceeding under this section is subject to Chapter 2001, Government Code.

(e) The notice of the commission's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(f), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 30, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 31, eff. September 1, 2007.

Sec. 1101.706. NOTICE OF ORDER. The administrator shall give notice of the commission's order to the person. The notice must:

- (1) include the findings of fact and conclusions of law, separately stated;
- (2) state the amount of any penalty imposed;
- (3) inform the person of the person's right to judicial

review of the order; and

(4) include other information required by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Not later than the 30th day after the date the commission's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond in a form approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the order is final; or

(2) request the court to stay enforcement by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the administrator by certified mail.

(c) If the administrator receives a copy of an affidavit under Subsection (b)(2), the administrator may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 32, eff. September 1, 2007.

Sec. 1101.708. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the administrator may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.7085. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 33, eff. September 1, 2007.

Sec. 1101.709. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or is not upheld by the court, the court shall remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 34, eff. September 1, 2007.

Sec. 1101.710. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code. Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 35, eff. September 1, 2007.

SUBCHAPTER P. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1101.751. INJUNCTIVE ACTION BROUGHT BY COMMISSION.

(a) In addition to any other action authorized by law, the commission may bring an action in its name to enjoin a violation of this chapter or a commission rule.

(b) To obtain an injunction under this section, the commission is not required to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.752. ADDITIONAL INJUNCTIVE AUTHORITY. (a) In addition to any other action authorized by law, the commission, acting through the attorney general, may bring an action to abate a violation or enjoin a violation or potential violation of this chapter or a commission rule if the commission determines that a person has violated or is about to violate this chapter.

(b) The action shall be brought in the name of the state in the district court in the county in which:

(1) the violation occurred or is about to occur; or

(2) the defendant resides.

(c) An injunctive action may be brought to abate or temporarily or permanently enjoin an act or to enforce this chapter.

(d) The commission is not required to give a bond in an action under Subsection (a), and court costs may not be recovered from the commission.

(e) If the commission determines that a person has violated or is about to violate this chapter, the attorney general or the county attorney or district attorney in the county in which the violation has occurred or is about to occur or in the county of the defendant's residence may bring an action in the name of the state in the district court of the county to abate or temporarily or permanently enjoin the violation or to enforce this chapter. The plaintiff in an action under this subsection is not required to give a bond, and court costs may not be recovered from the plaintiff.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.753. CIVIL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALESPERSON, OR CERTIFICATE HOLDER. (a) In addition to injunctive relief under Sections 1101.751 and 1101.752, a person who receives a commission or other consideration as a result of acting as a broker or salesperson without holding a license or certificate of registration under this chapter is liable to the state for a civil penalty of not less than the amount of money received or more than three times the amount of money received.

(b) The commission may recover the civil penalty, court costs, and reasonable attorney's fees on behalf of the state.

(c) The commission is not required to give a bond in an action under this section, and court costs may not be recovered from the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.754. PRIVATE CAUSE OF ACTION FOR CERTAIN VIOLATIONS BY BROKER, SALESPERSON, OR CERTIFICATE HOLDER. (a) A person who receives a commission or other consideration as a result of acting as a broker or salesperson without holding a license or certificate of registration under this chapter is liable to an aggrieved person for a penalty of not less than the amount of money received or more than three times the amount of money received.

(b) The aggrieved person may file suit to recover a penalty under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.755. APPEAL BOND EXEMPTION. The commission is not required to give an appeal bond in an action to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.756. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully violates or fails to comply with this chapter or a commission order.

(b) An offense under this section is a Class A misdemeanor.  
Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.757. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY RESIDENTIAL RENTAL LOCATOR. (a) A person commits an offense if the person engages in business as a residential rental locator in this state without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor.  
Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.161(a), eff. Sept. 1, 2003.

Sec. 1101.758. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALESPERSON, OR CERTIFICATE HOLDER. (a) A person commits an offense if the person acts as a broker or salesperson without holding a license under this chapter or engages in an activity for which a certificate of registration is required under this chapter without holding a certificate.

(b) An offense under this section is a Class A misdemeanor.  
(c) to (e) Repealed by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.162(b).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.  
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.162(a), (b), eff. Sept. 1, 2003.

Sec. 1101.759. CEASE AND DESIST ORDER. (a) If it appears to the commission that a person is violating this chapter or Chapter 1102 or a rule adopted under this chapter or Chapter 1102, the commission, after notice and opportunity for a hearing, may issue a

cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter O. Added by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 36, eff. September 1, 2007.

#### SUBCHAPTER Q. GENERAL PROVISIONS RELATING TO LIABILITY ISSUES

Sec. 1101.801. EFFECT OF DISCIPLINARY ACTION ON LIABILITY. Disciplinary action taken against a person under Section 1101.652 does not relieve the person from civil or criminal liability. Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.802. LIABILITY RELATING TO HIV INFECTION OR AIDS. Notwithstanding Section 1101.801, a person is not civilly or criminally liable because the person failed to inquire about, make a disclosure relating to, or release information relating to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, an HIV-related illness, or HIV infection as defined by the Centers for Disease Control and Prevention of the United States Public Health Service. Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.803. GENERAL LIABILITY OF BROKER. A licensed broker is liable to the commission, the public, and the broker's clients for any conduct engaged in under this chapter by the broker or by a salesperson associated with or acting for the broker. Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.804. LIABILITY FOR PROVIDING CERTAIN INFORMATION. A license holder or nonprofit real estate board or association that provides information about real property sales prices or the terms of a sale for the purpose of facilitating the listing, selling, leasing, financing, or appraisal of real property is not liable to another person for providing that information unless the disclosure of that information is specifically prohibited by statute.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.805. LIABILITY FOR MISREPRESENTATION OR CONCEALMENT. (a) In this section, "party" has the meaning assigned by Section 1101.551.

(b) This section prevails over any other law, including common law.

(c) This section does not diminish a broker's responsibility for the acts or omissions of a salesperson associated with or acting for the broker.

(d) A party is not liable for a misrepresentation or a concealment of a material fact made by a license holder in a real estate transaction unless the party:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the party's knowledge of the falsity of the misrepresentation or concealment.

(e) A license holder is not liable for a misrepresentation or a concealment of a material fact made by a party to a real estate transaction unless the license holder:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the license holder's knowledge of the falsity of the misrepresentation or concealment.

(f) A party or a license holder is not liable for a misrepresentation or a concealment of a material fact made by a subagent in a real estate transaction unless the party or license holder:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the party's or license holder's knowledge of the falsity of the misrepresentation or concealment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.806. LIABILITY FOR PAYMENT OF COMPENSATION OR COMMISSION. (a) This section does not:

(1) apply to an agreement to share compensation among

license holders; or

(2) limit a cause of action among brokers for interference with business relationships.

(b) A person may not maintain an action to collect compensation for an act as a broker or salesperson that is performed in this state unless the person alleges and proves that the person was:

(1) a license holder at the time the act was commenced;

or

(2) an attorney licensed in any state.

(c) A person may not maintain an action in this state to recover a commission for the sale or purchase of real estate unless the promise or agreement on which the action is based, or a memorandum, is in writing and signed by the party against whom the action is brought or by a person authorized by that party to sign the document.

(d) A license holder who fails to advise a buyer as provided by Section 1101.555 may not receive payment of or recover any commission agreed to be paid on the sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.