

SUBJECT: Clean-up changes to Real Estate License Act

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Kubiak, Brimer, Dear, Goolsby, Pickett, Torres, Yarbrough
0 nays
2 absent — Wilson, D. Jones

SENATE VOTE: On final passage, April 26 — voice vote

WITNESSES: For — None
Against — None
On — Mark A. Mosely, Texas Real Estate Commission

DIGEST: SB 1636 would make a number of revisions to the Real Estate License Act, including:

- removing all gender-specific language, including changing "real estate salesman," to "real estate salesperson" and "chairman" to "chairperson;"
- clarifying that the act does not apply to a person who is registered, licensed, or certified by the Texas Appraiser Licensing and Certification Board, regardless of whether the person performs services in a federally related transaction;
- requiring the Texas Real Estate Commission to waive the examination of an applicant for a broker or salesperson license after a lapse of two years, rather than one year, in holding a license. If an application is filed after the second anniversary of the expiration date of the applicant's license, the applicant must satisfy the examination requirement and any continuing education requirement. After the fifth anniversary of expiration, the applicant must satisfy the original license requirements;

- authorizing the commission to adopt rules requiring proprietary schools to apply for reaccreditation and pay reasonable filing fees up to \$400 for a school and \$100 for a course;
- authorizing the commission to contract with a testing service to prepare study materials, collect filing fees, and accept and process license application, in addition to administering examinations;
- requiring the commission to automatically approve core real estate courses for continuing education credit;
- clarifying that a person could only make a claim against the recovery fund for a judgment amount entered against a real estate licensee if the judgment debt of the real estate licensee has been judicially determined to be nondischargeable in a pending bankruptcy;
- authorizing the use of recovery fund monies for collection expenses, subject to a specific appropriation;
- clarifying the intent of various disciplinary provisions and making other provisions agency neutral;
- permitting the commission to authorize employees to file complaints against licensees relating to a payment from a recovery fund, a criminal conviction, or an act of the licensee that involves obtaining or attempting to obtain a license by fraud, or bouncing a check to the commission.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 1636 would clean up a number of provisions in the Real Estate License Act. Most notably, the bill would delete all gender-specific references. This would be particularly appropriate in a profession with many female licensees.

The bill would permit commission staff to file complaints against licensees who have clearly done something wrong, as in the case of bouncing a check to the commission. Currently, the commission must vote to file each and every complaint. This is burdensome to the commission, and the

change of the law would not adversely affect the licensees charged because the same administrative due process and judicial review rights would be required.

The bill would also clarify that a person could only make a claim against the recovery fund for a judgment amount entered against a real estate licensee that has been judicially determined to be nondischargeable in a pending bankruptcy. The recovery fund pays judgments to victims of real estate licensees when the judgment cannot be collected from the licensee. Current law leaves room for doubt that might require the recovery fund to pay a dischargeable judgment amount to the licensee's victim. This was not the intent of the recovery fund law. If the judgment debt is nondischargeable, the commission can try to collect from the licensee after it has paid the licensee's victim from the recovery fund. If the judgment were dischargeable, the commission would not be able to do so.

In addition, the bill would allow the commission to have private vendors prepare study materials for the real estate exam and accept and process license applications. The commission is already allowed to contract with private vendors for administration of exams. This would relieve many of the ministerial tasks undertaken by the commission, but the commission would still be responsible for its discretionary duties such as deciding who should be licensed.

The bill would also allow licenses to become reactivated within two years after expiration, rather than just one, without having to take the examination again. The real estate license has a term of two years, and many licensees allow their licenses to lapse for more than one year before realizing that they needed to renew. This is common for part-time professions. This change would allow those people a greater window within which to renew their licenses without having to retake the examination.

**OPPONENTS
SAY:**

Permitting the commission to authorize its staff to file complaints would be detrimental to the rights of licensees. Requiring the commission to vote on whether or not to file a complaint acts as a safeguard to protect the licensee against overbroad or biased enforcement. This bill would imprudently remove that safeguard.