

SUBJECT: Regulation of Texas Real Estate Commission and real estate professionals

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 8 ayes — Smith, Gutierrez, Geren, Goldman, Kuempel, Miles, D. Miller, S. Thompson

0 nays

1 absent — Guillen

SENATE VOTE: On final passage, April 7 — 30-1 (Burton)

WITNESSES: *(On House companion bill, HB 1918)*

For — Abby Lee, Texas Association of Realtors; *(Registered, but did not testify: Steven Garza and Daniel Gonzalez, Texas Association of Realtors)*

Against — *(Registered, but did not testify: Kelley Shannon, Freedom of Information Foundation of Texas)*

On — *(Registered, but did not testify: Douglas Oldmixon, Texas Real Estate Commission)*

DIGEST: SB 699 would change certain definitions and terminology used in Occupations Code, ch. 1101, which regulates real estate professionals. It also would require license revocation in certain cases, create procedures for actions brought against real estate brokers and salespersons, and amend requirements for licenses, fees, and education of those individuals.

Terminology and definitions. The bill would expand the definition of “broker” to mean a person who, for compensation or consideration, dealt in a lease to purchase real estate and advised or offered advice to an owner of real estate related to negotiating or completing a short sale. It also would change the term “salesperson” to “sales agent.”

License revocation. The bill would prohibit a person whose license or registration was revoked or surrendered or whose application was denied after a hearing from applying to the Texas Real Estate Commission (TREC) for a license or registration for two years after the date of the revocation, surrender, or denial.

TREC would be required to revoke a license, approval, or registration if the commission made a payment from the real estate recovery trust account on behalf of a license or registration holder who failed to repay TREC within 31 days of receiving notice of the payment.

TREC complaint and investigation. The bill would require information or material prepared or compiled by TREC in connection with a complaint, investigation, or audit of a real estate broker or sales agent to be kept confidential and not subject to disclosure under public information requests.

The information could be disclosed to certain individuals and entities related to the action. This release of information would not be considered a voluntary disclosure that would subject it to requests for public information. The information would become subject to disclosure after the dismissal or final resolution of the proceeding.

Real estate recovery trust account. The bill would require TREC to prescribe a notice regarding the availability of payment from the trust account for aggrieved persons in certain cases and establish methods for disbursement of notice to consumers and service recipients.

If an aggrieved person obtained a court judgment against a license or certificate holder for which the aggrieved person would be entitled to reimbursement from the trust account, the person and TREC could attempt to reach a settlement before setting a hearing before the court. TREC could agree to pay all or part of the claim without a hearing.

An aggrieved person who obtained a judgment in a case with multiple defendants would be required to seek satisfaction of the judgment from

those defendants before filing a verified claim for an order of trust account funds. Aggrieved persons would be required to schedule a hearing within a year of the date they applied to the court for an order of payment from the trust account. If they failed to do so, recovery would be waived.

If individuals received proper notice of a contested case hearing against TREC but failed to appear, the administrative law judge conducting the hearing could choose to proceed with the hearing or enter an order. The individual would be bound by the results of the hearing the same as if he or she had appeared. The judge could award costs if TREC requested and provided proof of the costs.

Continuing education. The bill would allow a member of TREC or an employee to make a presentation for continuing education to a group of license holders. The presenter could not receive compensation but could receive reimbursement for reasonable travel expenses.

The bill would require TREC to set the number of required continuing education hours for renewal of certain licenses and could not set it lower than 15 hours. TREC also could not increase the number of required classroom hours by more than three during the term of a license.

TREC could allow an education program to offer a course of study on a probationary basis if it met the benchmark set by the commission for educational programs within a reasonable amount of time.

The bill would change the continuing education requirements for certain sales agents applying to renew their licenses. Eight of the required hours would have to cover certain legal topics, including the ethical requirements of engaging in real estate brokerage.

Fees. The bill would remove the specification that the fee associated with certain license renewal requests be annual. The issuance or renewal of a broker's license would require an additional fee of \$70, up from \$20 in current law. This provision would take effect only would take effect September 1, 2015, only if the 84th Legislature enacted legislation

repealing Occupations Code, sec. 1101.153.

Examination. An applicant who failed the examination for a license three consecutive times could not apply for re-examination or submit a new license application until the applicant submitted evidence to TREC that he or she had completed additional education since the date of the last attempt.

Good standing. Under current law, TREC can determine whether a broker is in good standing. The bill would specify that in determining this issue, TREC could consider the disciplinary history of and the payment status of any amount owed to TREC by a broker or a business entity the broker served.

TREC staff. A TREC member would have quasi-judicial immunity from a lawsuit for an action that was taken as a TREC member and that was in compliance with the law.

Except as otherwise provided, the bill would take effect January 1, 2016.

**SUPPORTERS
SAY:**

SB 699 would clarify several provisions of current statute governing real estate brokers and sales agents. These changes would be necessary to update the relevant law to align with current practice.

The bill would set a period of ineligibility for reapplication for individuals whose licenses or registrations had been revoked. Professionals in the industry should be worthy of the public's trust because they deal with people's homes and businesses. The two-year ineligibility period would prevent the waste of resources associated with processing applications of individuals who ultimately would not be licensed because of a recent revocation. The penalty of a revocation should have meaning and should not be taken lightly.

The information related to complaints, investigations, or audits would be confidential only until dismissal or final resolution of the action. The public could access the information at that time.

OPPONENTS
SAY:

SB 699 would create an arbitrary barrier to entry by prohibiting people from applying for a license or registration for two years after their licenses were revoked or surrendered or their applications were denied. The real estate industry already is complicated and difficult to enter, and this bill only would make that harder. It also would add regulations to an already over-regulated industry.

The bill would make certain information confidential and unavailable to the public. This information would be related to complaints, investigations, or audits concerning real estate brokers and sales agents. The public has a right to information regarding real estate professionals that might be acting unlawfully.