

Busted

Obvious (and Not So Obvious) Ways to Lose Your License

Kerri Lewis
March 4, 2020

Publication 2261



Everyone's heard the adage, "You can't get paid if you don't work." Well, in the real estate brokerage business, license holders can't work if their licenses are revoked, suspended, or inactive. Most think losing a license is tied to bad acts, something that happens only to other license holders. However, there are several other ways to lose a license and the ability to practice real estate brokerage that may come as a surprise.

Revocation for Bad Acts, Negligence

This is the most obvious reason a license will be revoked or suspended, and rightly so. The legislative purpose for licensing real estate brokers and agents is to protect the public in real property transactions. The Texas Real Estate Commission's (TREC) Standards and Enforcement Services division administers complaint investigations and disciplinary enforcement of The Real Estate License Act (TRELA) and TREC rules to ensure consumer protection. Violations eligible for suspension

The Takeaway

A number of violations can result in loss or suspension of a Texas real estate license. Some, such as bad acts or negligence, are obvious. Certain administrative violations, however, may be less so.

or revocation when acting as a broker or sales agent are mostly found in TRELA §1101.652(b).

A review of TREC orders resulting in revocation over the past two years reveals intentional or negligent acts while performing property management as the number one reason for revocation. Why is that? Property management creates a situation where license holders hold and disburse money that belongs to other people. This provides an opportunity for those with bad intentions to exploit the very consumers who trust them to manage their rental properties (sometimes referred to as "theft by property management"). TREC aggressively pursues

these complaints and has been successful in revoking licenses from these individuals.

Even for those with good intentions, property management activities result in license discipline more often because property management is complicated. In addition to TREC rules, many local, state, and federal rules (including the Texas Property Code, Fair Housing laws, and the Fair Credit Reporting Act) have to be followed. Maintaining trust accounts properly takes diligent record-keeping and self-control. “Robbing Peter to pay Paul,” or failing to timely remit payments to clients, even with the intention to repay later, usually doesn’t work and results in monetary loss to the consumer and a subsequent license revocation. A license holder who wants to perform property management should invest in extra education and training before entering the field.

Continuing education and training are advisable for all license holders who want to avoid losing their license due to negligence. Remember, the law states a license holder must be educated in the characteristics involved in the type of brokerage activity performed for others (TREC Rule §531.3), and a sponsoring broker must have policies and procedures in place to ensure a sales agent is competent to perform the brokerage activity the broker has authorized for that agent (TREC Rule §535.2[i]).

Associating with an unlicensed person who acted as a license holder, advertising real estate for sale while the license was on inactive status, and accepting compensation for a real estate transaction from a person other than the broker with whom the sales agent was associated are other reasons that led to license revocation in the past two years. These cases included some of the administrative factors discussed in the next section.

Administrative Revocation or Suspension

TREC’s right to suspend or revoke a license for administrative violations can be found in TRELA §1101.652(a)–(a-1). Here are the most common violations that result in loss of license or suspension.

Failure to pay. These cases arise when a license holder has a check that bounces or a credit card payment reverses on a payment to TREC for renewal or an administrative penalty. Processing fees are added to the original amount in these situations, and, if all is not repaid within a reasonable time, a violation will be filed against the license holder (TRELA §101.652[a][3]). The good news here is that license holders are provided the “keys to the jail” since the

license is suspended only until repayment has been made in full. Obviously, the way to avoid losing a license for this reason is by repaying TREC in good funds.

Failure to respond to commission. Two separate violations can be applied here. The first is the failure of a license holder to provide information that relates to a formal or informal complaint within a reasonable amount of time after a request by TREC (TRELA §1101.652[a][4]). The second is failure to produce a document, book, or record that relates to a real estate transaction conducted by the license holder within a reasonable time after it is requested by TREC (TRELA §1101.652[a-1][2]). TREC defines a “reasonable amount of time” as 14 calendar days from receipt of a request by TREC (TREC Rule §535.142[f][3]).

In both cases, the license holder again holds the keys to the jail. Suspension lasts only until TREC receives the information, documents, or records.

Some license holders have the misconception that not answering TREC after a complaint has been filed will delay investigation or prosecution of the complaint. This is not true. Failure-to-respond violations are filed early in the investigation process and may be in addition to any substantive violations filed later after further investigation. Always answer TREC requests for information promptly. Remember, not all complaints result in discipline, and TREC actively pursues agreed orders focusing on additional education, allowing license holders to continue working in many cases.

Failure to disclose criminal convictions. License holders are required to notify TREC within 30 days after pleading guilty or no contest to or being convicted of any felony or criminal offense involving fraud (TRELA §1101.652[a][7]). These pleas or convictions must be disclosed on the license holder’s renewal application. Failure to disclose this information or making a material misstatement about it on a renewal application is a separate violation (TRELA §1101.652[a][2]).

The best advice for a license holder in this situation is to disclose, disclose, disclose. Not every conviction is grounds for losing a license, and it is better to go through the process with TREC than to try hiding it. It is the same as what parents tell their teenagers about getting into trouble: “It will be worse for you if I hear it from somebody else.” Offenders who cooperate and have mitigating factors might receive

an agreed order allowing them to continue to work in real estate.

Revocation/Suspension for Violation of Agreed Orders

Most agreed orders and some final orders issued by TREC contain automatic suspension language if certain terms of the order are violated. For example, if a term requiring the license holder to provide TREC a signed verification that the sponsoring broker has received a copy of the agreed order is not met, the license will be suspended automatically until TREC receives the signed verification. If a scheduled payment of an administrative penalty is missed, the license is suspended until *all* of the administrative penalty is paid in full.

Many agreed orders are issued with suspensions or revocations that are probated. This means the license holder can continue to have an active license as long as all terms of the probation set out in the order are met. However, if the probation terms are not met, the probationary status can be lifted, and the full suspension or revocation will take effect. A new law took effect Sept. 1, 2019, allowing TREC to deny a renewal if the license holder is not in compliance with all the terms of a TREC order (TRELA §1101.459). Bottom line: License holders who have an order with TREC should follow the terms in the order to the letter to avoid losing their license.

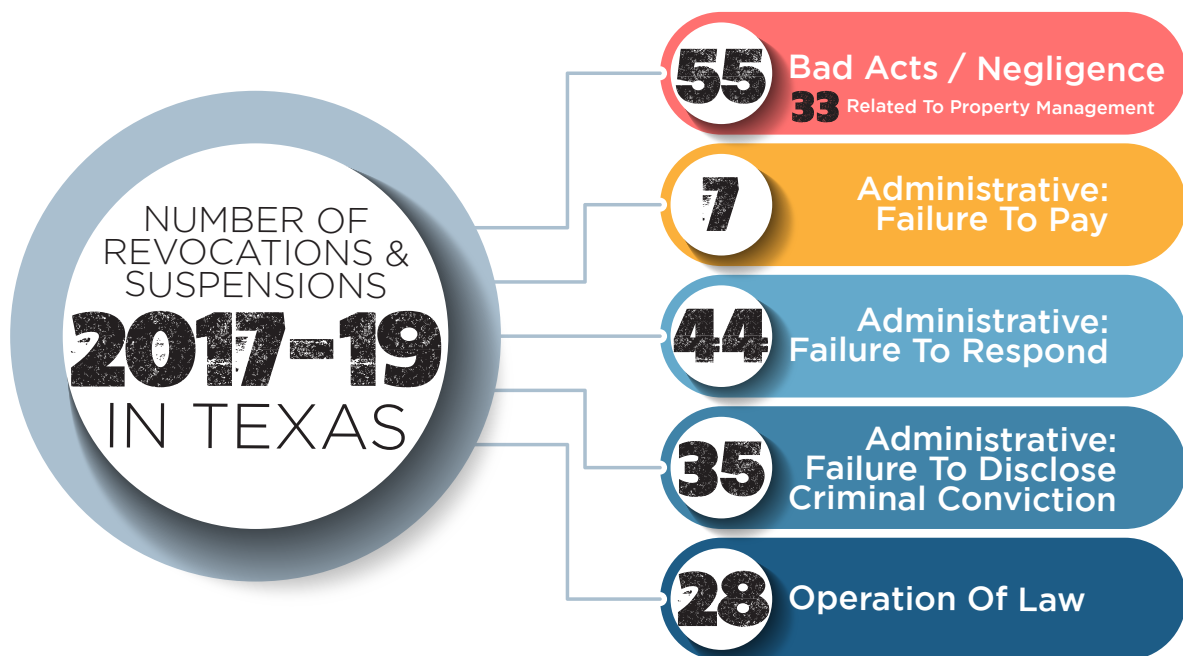
Revocation by Operation of Law

This type of revocation happens automatically because that is how the law is written. No action, other than notification of the revocation, is required by TREC. Two laws currently trigger revocation this way.

Imprisonment following a felony. If a license holder is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, then the license is revoked at that time (TRELA §53.021[b]).

Failure to repay recovery fund. TREC has two statutory funds available to reimburse consumers who suffer damages caused by TREC license holders. They are the Real Estate Recovery Trust Account and the Real Estate Inspection Recovery Fund. A consumer who wins a civil lawsuit against a license holder can apply for payment from one of these funds. A separate complaint with TREC does not need to be filed.

If TREC makes a payment from one these funds on behalf of a license holder, that license holder has 30 days after the date TREC gives the license holder notice of the payment to repay TREC the full amount. If full payment is not received by that date, the license is automatically revoked (TRELA §1101.655).



Note: Statistics do not include revocation for violation of agreed orders or number of licenses placed on inactive status. Source: Texas Real Estate Commission

A license holder can avoid revocation by repaying the fund in a timely manner. In addition, license holders who receive notice of a pending recovery fund claim should contact TREC to provide any evidence they have that the civil judgment does not meet the statutory requirements for reimbursement from the funds.

License Inactivation

Although not technically a suspension or revocation, failure to maintain a license in an active status will result in loss of the ability to work. The circumstances that can result in *immediate* inactivation for an agent or broker are set out in TREC Rules Sections 535.121-535.123. Here are the most common inadvertent ways a license can become inactive.

Loss of designated broker. All business entity brokers must have a designated broker in good standing with TREC. That broker must be an officer, manager/member, or partner of the entity. If the designated broker dies or becomes incapacitated, or if the designated broker's license expires or is suspended or revoked (including probated suspension or revocation), the business entity will immediately be placed on inactive status. Remember, if the entity is placed on inactive status, licenses of all agents sponsored by the entity are also placed on inactive status. Agents will either have to find a new sponsoring broker or be re-activated by the broker entity after a new designated broker has been approved by TREC. Therefore, it is critical for owners of a business entity broker to monitor the license status of their designated broker and have a succession plan in place to minimize business disruption when the current designated broker can no longer act in that

capacity. (Read "Who's on Deck? Broker Succession Planning" to learn more.)

Loss of active business status in Texas. Pay attention to business entity legal requirements. Failure to file franchise tax reports with the comptroller, even if no taxes are due, will result in the entity being disqualified to do business by the State of Texas. This will cause the entity to be placed on inactive status. As with the loss of designated broker, if the entity is placed on inactive status, licenses of all agents sponsored by the entity are also placed on inactive status.

Failure to complete continuing education requirements. Most license holders know they must meet continuing education (CE) requirements to renew in active status (TREC Rule §535.91[a]). Although a license holder may purchase a 60-day deferral to complete CE and still renew active (TREC Rule §535.91[g]), many license holders forget to complete the required CE within the 60 days. Failure to complete the CE within the extension period will result in the license being inactivated until the CE is completed. An easy way to prevent losing one's license this way is to get CE done early. The renewal period is two years, allowing plenty of opportunities to get education completed before the renewal date. As a bonus, taking continuing education early and often helps a license holder avoid disciplinary actions due to negligence violations discussed in this article.

Nothing in this publication should be construed as legal advice for a particular situation. For specific advice, consult an attorney. 📌

Lewis (kerri@2oldchicks.com) is a member of the State Bar of Texas and former General Counsel for TREC.

© 2020. Real Estate Center. All rights reserved.

