

*Texas Torts and Remedies***CHAPTER 14****REAL ESTATE AGENTS AND
BROKERS**

by
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Scope

This chapter discusses the Real Estate License Act and actions brought directly under that statute. It also explores the effect of this statute on common law tort actions that may be brought against real estate professionals. The effect of the Deceptive Trade Practices Act on real estate agents is briefly discussed, as are the fraud statute specifically addressed to real estate and securities transactions and the Texas Fair Housing Act. Two federal statutes, the Real Estate Settlement Procedures Act, and the Fair Housing Act of 1968, are also discussed. Regulations applying to real estate inspectors and appraisers are also noted.

The general principles of professional liability are discussed in Ch. 10, *General Principles of Professional Liability*. The various tort theories for actions against real estate agents are discussed in Ch. 1, *Negligence*, and Ch. 44, *Fraud and Misrepresentation*. The Deceptive Trade Practices Act is covered in detail in Ch. 43, *Deceptive Trade Practices Act*. Liability for business interference torts is discussed in Ch. 46, *Interference With Business Relations*.

For forms of pleadings for actions involving real estate agents and brokers, see Texas Litigation Guide, ch. 253, *Agents and Brokers*.

* The chapter is updated by the Publisher's Editorial Staff.

SYNOPSIS

A. STATUTORY CAUSES OF ACTION

- § 14.01 **Real Estate License Act**
 - [1] **Background and Purpose of Act**
 - [2] **Scope of Act: Brokers and Salespersons**
 - [a] **Persons Covered**
 - [b] **Activities Covered**
 - [c] **Exemptions**
 - [3] **Recovery Under Act: Against Brokers and Salespersons**
 - [a] **In General**
 - [b] **Penalty for Unlicensed Conduct**
 - [c] **Collecting Judgments Against Licensees: Real Estate Recovery Trust**
 - [4] **Application of Act to Establish Vicarious Liability**
 - [4A] **Disclosure and Conduct Obligations Relating to Representation of Party**
 - [a] **General Obligations**
 - [b] **Obligations When Broker Acts as Intermediary**
 - [5] **Regulation and Liability of Real Estate Inspectors**
- § 14.02 **Statutory Fraud**
 - [1] **In General**
 - [2] **Measure of Damages**
 - [3] **Scienter Requirement**
 - [4] **Vicarious Liability**
- § 14.03 **Deceptive Trade Practices Act**
- § 14.04 **Real Estate Settlement Procedures Act**
 - [1] **Purpose and Scope**
 - [2] **Persons Covered**
 - [3] **Kickbacks, Referral Fees, and Unearned Fees**
 - [a] **Prohibitions**
 - [b] **Criminal and Civil Liability**
 - [4] **Statutory Defenses**
- § 14.05 **Fair Housing Act of 1968**
 - [1] **Purpose and Scope**
 - [2] **Prohibited Acts**
 - [a] **In General**
 - [b] **Steering**
 - [c] **Blockbusting**
 - [3] **Private Actions for Violations**

- [a] Right to Sue
- [b] Standard of Proof
- [c] Vicarious Liability
- [d] Damages

- § 14.06 Texas Fair Housing Act
 - [1] Scope and Purpose of Act
 - [2] Prohibited Activities
 - [3] Administrative Enforcement
 - [4] Private Cause of Action
 - [5] Role of Attorney General

§§ 14.07-14.09 [Reserved]

B. STATUTORY CAUSES OF ACTION

- § 14.10 Negligence Actions
- § 14.11 Actions for Breach of Fiduciary Duty
 - [1] Nature of Fiduciary Duty
 - [a] In General
 - [b] Agent as Undisclosed Principal
 - [c] Agent as Disclosed Principal
 - [d] Representation of Multiple Parties
 - [e] Principal's Instructions
 - [f] Loyalty to Principal
 - [2] Creation and Termination of Relationship
- § 14.12 Common-Law Fraud Actions
- § 14.13 Actions for Tortious Interference
 - [1] In General
 - [2] Interference With Existing Contract
 - [3] Interference With Prospective Contract
 - [4] Conspiracy
- § 14.14 Defenses
 - [1] Ratification, Waiver, and Estoppel
 - [2] Comparative Responsibility
 - [3] Statute of Limitation
 - [4] Other Defenses