

Tex. Fin. Code § 13.011. Consumer Information and Complaints.

(a) The Department of Savings and Mortgage Lending shall maintain a system to promptly and efficiently act on complaints filed with that department. The Department of Savings and Mortgage Lending shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The Department of Savings and Mortgage Lending shall make information available describing its procedures for complaint investigation and resolution.

(c) The Department of Savings and Mortgage Lending shall periodically notify the complaint parties of the status of the complaint until final disposition.

Sunset Licensing and Regulation Model

Category	Subject	Standard	Explanation
Enforcement	Complaints — Investigation	Agencies that regulate health care practitioners or other high-risk professions should have clear authority to order evaluations for potentially impaired licensees, under certain circumstances.	<p>Agencies that license and regulate professionals should be authorized to submit to an evaluation by a peer assistance program or an approved health care provider when an impairment is suspected. Use of this authority should be predicated on probable cause that the practitioner is currently impaired due to substance abuse or a physical or mental health condition and limited to professions where the risk to the public merits such consideration.</p> <p>Agencies should have a process that balances licensees' privacy and due process rights with the need to protect the public. Once an agency has requested a licensee to undergo an evaluation, the agency's process should provide for a show cause hearing for licensees who wish to contest an order for an evaluation. This hearing provides an opportunity for licensees to present evidence as to why an evaluation is not necessary. After the hearing, the board should be able to either order the licensee to submit to the evaluation or withdraw its original request. The authority to require an evaluation should be limited to proving or disproving whether grounds for disciplinary action exist under existing law.</p> <p>Information related to participation in a peer assistance program, including the results of an evaluation, should be kept confidential, but the board should be authorized to disclose this information in enforcement and other proceedings affecting a person's license because of the threat to public safety. The agency should also be permitted to publicly disclose that the license of a person ordered to participate in a peer assistance program is suspended, revoked, or otherwise limited by referring to the statutory grounds for disciplinary action, without disclosing the specific impairment or condition that resulted in the board's action. Confidentiality can promote participation in peer assistance programs without creating a fear of stigmatization.</p>
Enforcement	Complaints — hearings	The agency's statute or rules should provide for administrative dismissal of complaints.	<p>Agency staff should have the authority to dismiss complaints without having to involve the board. The board should be informed of all such dismissals, however. This approach saves board time in considering each complaint while still providing the board information on staff actions.</p> <p>Though expungement of dismissals is not considered standard practice, the Legislature has seen fit to add expungement procedures for lawyers, dentists, and land surveyors. Expungement means that record of the case is removed from the licensee's file, depriving the agency of information that may be useful if subsequent complaints are filed against the licensee. Another approach that may be considered is making dismissed complaints — especially if they can be judged frivolous — exempt from public disclosure under the Public Information Act. Such an approach would not limit the agency's access to past complaint information that may be useful in subsequent complaints against the licensee but would prevent information on dismissed complaints from being publicly accessible, which is fairer to the licensee.</p>
Enforcement	Complaints — hearings	The agency should use methods other than just hearings, such as settlement conferences, to resolve complaints.	<p>Informal hearings often require significant time and expense, both for the agency and the licensee. Texas has developed other means for resolving complaints short of formal hearings. These methods include informal settlement conferences (ISCs) and mediated settlement conferences conducted either by the agency or by the State Office of Administrative Hearings (SOAH). When possible, resolution through these less formal methods should be explored before using the full hearing process.</p> <p>Agencies whose rulemaking body relies on outside expertise for enforcement cases should have clear authority to seek advisory board member or other expert participation in informal disposition of cases as appropriate.</p> <p>The agency's board should approve informal agreements. This approach ensures the board's knowledge of staff decisions and appropriate oversight of staff operations.</p>

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Category	Subject	Standard	Explanation
Enforcement	Complaints — hearings	An agency's hearings should comply with the Administrative Procedure Act (APA).	<p>The APA, found in Chapter 2001 of the Texas Government Code, sets out minimum standards of uniform practice and procedure for state agencies. Whether an agency's administrative hearings are held at SOAH or in-house, the agency's hearings process should comply with these minimum standards. The APA also entitles a person who has exhausted all administrative remedies to judicial review.</p> <p>The idea behind the APA is that, in general, agencies should have a standard approach to hearings that allows for due process and clear expectations for both the agency and the industry or profession it regulates. A standard approach is intended to create a more consistent and coherent body of law for agencies and regulated entities or individuals to follow and for courts to apply.</p> <p>Two cautions apply to this using this standard too rigidly. First, some aspects of administrative procedure have to be developed by each agency's rules, providing some flexibility for different agency circumstances. Second, some agencies, like the Railroad Commission, have statutes that deviate from APA standards. In cases where standard APA provisions and an agency's statute conflict, such as deadlines for filing and certain prerequisites for appeals, the agency's statutes supersede the APA.</p> <p>Care must also be taken to differentiate formal hearings governed by the APA from informal settlement conferences (ISCs), which are much more flexible in that very little "standard" law exists for ISCs and, generally, the agency's statute or rules establish each agency's ISC process.</p>
Enforcement	Complaints — hearings	The State Office of Administrative Hearings (SOAH) should conduct a licensing agency's complaint hearings, unless a compelling reason can be made not to.	<p>SOAH handles hearings for almost all licensing agencies as well as other agencies of state government. An agency uses SOAH for its administrative hearings if its own statute is silent on hearings procedure or mandates the use of SOAH, or if the agency wishes to contract with SOAH for assistance. Agencies may hold their own hearings if they have their own hearings examiners that are dedicated solely to the hearings process.</p> <p>SOAH offers a consistent standard of independence and professionalism in carrying out the hearings process. In most cases, agencies using SOAH have the opportunity to relinquish the final decision to SOAH, or to leave the final decision to its own board. If the decision is left to the agency's board, the board may change SOAH's findings of fact or conclusions of law only in limited circumstances where errors have clearly been made (Section 2001.058, Texas Government Code), and must do so in writing.</p> <p>In addition, the opportunity to have a formal hearing is an essential part of providing due process to parties in a regulatory dispute. SOAH receives funding annually to conduct a certain number of formal hearings per each agency that is statutorily directed to use SOAH for formal hearings. Although SOAH has funding to conduct the hearing, some agencies may discourage use of SOAH due to the potential additional expenses, such as expert witnesses, travel, and transcripts. Nevertheless, each agency that is required to use SOAH for formal hearings should make a full faith effort to provide this option to licensees who are the subjects of complaint investigations.</p>
Enforcement	Complaints — sanctions	A licensing agency's enforcement process should not make it overly difficult to bring disciplinary action.	<p>The burden for bringing disciplinary action should be reasonable and not set so high that its use is discouraged. For example, requirements for a higher vote threshold for the board to take disciplinary action can discourage an agency from disciplining a licensee.</p> <p>Another impediment may be increasing the burden of proof before disciplinary action may be taken. Examples include a requirement that a person knowingly or repeatedly violated a law or regulation or that a person be given the opportunity to cure their alleged violation before the agency may act.</p>

Tex. Fin. Code § 13.018. Advisory Committees.

- (a)** The savings and mortgage lending commissioner may appoint advisory committees to assist the Department of Savings and Mortgage Lending and savings and mortgage lending commissioner in performing their duties.
- (b)** The savings and mortgage lending commissioner shall specify each committee's purpose, powers, and duties and shall require each committee to report to the savings and mortgage lending commissioner or Department of Savings and Mortgage Lending in the manner specified by the savings and mortgage lending commissioner concerning the committee's activities and the results of its work.

Tex. Gov't Code § 2110.008 Duration of Advisory Committees.

- (a)** A state agency that has established an advisory committee may designate the date on which the committee will automatically be abolished. The designation must be by rule. The committee may continue in existence after that date only if the agency amends the rule to provide for a different abolishment date.
- (b)** Unless the state agency that establishes an advisory committee designates a different date under Subsection (a), the committee is automatically abolished on the later of:
 - (1)** September 1, 2005; or
 - (2)** the fourth anniversary of the date of its creation.
- (c)** An advisory committee that state or federal law has specifically created as described in Section 2110.0012(1) is considered for purposes of Subsection (b)(2) to have been created on the effective date of that law unless the law specifically provides for a different date of creation.
- (d)** This section does not apply to an advisory committee that has a specific duration prescribed by statute.

Sec. 2001.031. Informal Conferences and Advisory Committees.

- (a)** A state agency may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rulemaking.
- (b)** A state agency may appoint committees of experts or interested persons or representatives of the public to advise the agency about contemplated rulemaking.
- (c)** The power of a committee appointed under this section is advisory only.

Tex. Fin. Code § 157.0024 Mortgage Industry Advisory Committee.

The mortgage industry advisory committee shall advise and assist the commissioner with respect to this chapter as provided by Section 156.104.

Sec. 156.104. Mortgage Industry Advisory Committee.

- (a)** The mortgage industry advisory committee is created to advise and assist the commissioner.
- (b)** The advisory committee is composed of six members appointed by the commissioner. Each of the members must be:
 - (1)** under the regulatory authority of the department;

(2) actively engaged in the business of originating, brokering, or funding residential mortgage loans at the time of appointment; and

(3) primarily engaged in the business of originating, brokering, or funding residential mortgage loans for at least two years before the member's appointment.

(b-1) The members of the committee must include six individuals licensed by the department as residential mortgage loan originators, two of whom must hold an active real estate broker or salesperson license issued under Chapter 1101, Occupations Code.

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

(d) The members of the advisory committee serve for a staggered three-year term, with the terms of two members expiring February 1 of each year.

(e) The advisory committee shall meet at least twice a year at the call of the commissioner.

(f) The commissioner may remove a member of the advisory committee if:

(1) the member does not maintain the qualifications required by Subsection (b); or

(2) the commissioner determines that the member cannot discharge the member's duties for a substantial part of the term for which the member is appointed.

(g) In the event of a vacancy during a term, the appointing entity or official shall fill the vacancy for the unexpired part of the term with a person who meets the qualifications of the vacated position.

(h) In addition to other powers and duties delegated to the advisory committee by the commissioner, the advisory committee shall advise the commissioner with respect to:

(1) the proposal and adoption of rules relating to the mortgage industry;

(2) the form of or format for any applications or other documents under this chapter or Chapter 157; and

(3) the interpretation, implementation, and enforcement of this chapter and Chapter 157.

(i) Each member of the advisory committee is entitled to a per diem allowance and to reimbursement of travel expenses necessarily incurred in performing functions as a member of the committee, subject to any applicable limitation in the General Appropriations Act.

(j) The advisory committee shall take a record vote on any matter described by Subsection (h)(1). The commissioner shall inform the finance commission of:

(1) the result of the vote; and

(2) any additional information the commissioner considers necessary to ensure the finance commission is sufficiently notified of the advisory committee's recommendations.

(k) A record vote taken by the advisory committee under Subsection (j) is only a recommendation and does not supersede the rulemaking authority of the finance commission under this subchapter.