

Enforcement Plan

This enforcement plan is established by the Texas Department of Licensing and Regulation pursuant to the Texas Occupations Code, § 51.302(c). This plan describes the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Texas Department of Licensing and Regulation (hereinafter “TDLR” or “the Department”). This plan also presents the criteria that are considered by the Department’s Enforcement staff in determining the amount of an administrative penalty or the magnitude of a sanction to be pursued.

I. Content of the Enforcement Plan

The enforcement plan contains a separate segment for each type of person or entity regulated by TDLR. For example, under the Elevator statute, there are three types of regulated persons/entities: building owners, elevator inspectors, and elevator contractors. Therefore, this plan contains three segments related to the Elevator statute: one for building owners, one for inspectors, and one for contractors.

Each segment of the plan contains a brief description of each individual violation that may be committed by the regulated person or entity, a citation to the statute and rule provision for each violation, and a range of penalties and/or sanctions applicable to each violation. The violations are organized into classes,

typically three to five classes, which denote the relative seriousness of the offenses. A range of penalties and sanctions is presented for each class of violation. Specifically, a range is presented for the first, second, and third occurrence of each class of violation. For purposes of this plan, a previous complaint alleging a violation of the statute or rules is counted as a “violation” only if it resulted in a formal disciplinary action by the Department: an Agreed Order, a Final Order, or a Reprimand.

The administrative penalty amounts presented for each class of violation will be pursued on a “per violation” basis. In other words, if a Respondent commits three violations of the same class, he will be subject to a maximum penalty of three times the highest dollar amount specified in the range.

II. Statutes and Rules Referenced in the Enforcement Plan

This enforcement plan conforms with the statutes and rules currently in effect on the date the plan is published. The plan will be revised periodically to reflect changes in statutes and rules.

While this plan is intended to present a fairly comprehensive list of the violations that may be committed under the current statutes and rules, the plan does not in any way restrict or limit the Department’s authority to pursue violations that may have been omitted from the plan.

III. Applicability of the Enforcement Plan

The purpose of the enforcement plan is to establish a structure within which TDLR's prosecuting attorneys will make decisions about the relief to be sought in their cases. The plan is not binding upon the Commission and Executive Director when acting as the final decision-makers in contested cases. The Commission and Executive Director are bound only by the limits of the law, specifically, Chapter 51 of the Texas Occupations Code and the individual program statutes administered by TDLR.

TDLR's prosecuting attorneys are generally expected to seek penalties and sanctions that are within the ranges presented in this plan. Pursuit of a penalty or sanction outside the stated range is permitted only with the express approval of the Department's Director of Enforcement, when exceptional circumstances warrant a departure from the plan.

IV. Factors to be Considered by the Department

In determining the amount of a proposed administrative penalty or the degree of a proposed sanction to be assessed within the ranges presented, the Department will consider the following factors:

- (1) The severity or seriousness of the violation.
- (2) Whether the violation was willful or intentional.

- (3) Whether the Respondent acted in good faith to avoid or mitigate the violation, or to correct the violation after it became apparent.
- (4) Whether the Respondent has engaged in similar violations in the past.
- (5) The level of penalty or sanction necessary to deter future violations.
- (6) Any other matter that justice may require.

Auctioneers
(AUC)

Texas Occupations Code, Chapter 1802

16 Texas Administration Code, Chapter 67

Class A:

1st Violation	2nd Violation	3rd Violation
warning letter to \$1,500	\$1,000 to \$2,500 plus up to 6-month probated suspension	\$2,000 to \$4,000 per day not corrected plus 1-year probated suspension up to 1-year full suspension

- Failure to include name and license number in advertisement 1802.051(b)
- Failure to report change of address 67.20(c)
- Failure to include license number in yellow pages advertisement 67.70(a)
- Failure to announce, give notice, display or disclose auctioneer is licensed, and covered by the recovery fund 67.100(c)(1)
- Failure to announce, give notice, display or disclose terms and conditions of the sale 67.100(c)(2)
- Failure to announce, give notice, display or disclose if owner has reserved right to bid 67.100(c)(3)
- Failure to notify consumers of Department information 67.100(e)
- Failure to furnish to the Department name, address, & phone numbers of all auction companies 67.70(b)
- Failure to provide Department with assumed names 67.70(b)

Class B:

1st Violation	2nd Violation	3rd Violation
\$500 to \$3,000 and/or up to 6-month probated suspension	\$2,000 to \$4,000 plus 1-year probated suspension up to 1-year full suspension	\$3,500 to \$5,000 plus 6-month full suspension up to revocation

- Unlicensed auctioneer activity 1802.051(a)
- Act as auctioneer for company not owned or operated by licensee 1802.051(c)
- Allowed unlicensed auctioneer to call bids 67.100(a)
- Advertised auction as absolute when minimum bids required 67.100(d)
- Failed to state buyer's premium in advertisement 67.100(f)
- In advertisement altered meaning of another statement in different size font 67.100(g)

Class C:

1st Violation	2nd Violation	3rd Violation
\$1,500 to \$3,500 plus up to 1-year probated suspension	\$2,500 to \$4,500 plus 1-year probated suspension up to 2-year full suspension	\$4,000 to \$5,000 plus 1-year full suspension up to revocation

- Failed to account for or remit money belonging to another 1802.251(5)
- Commingling funds of another with own funds 1802.251(5)
- Failed to maintain escrow account 67.101(1)
- Failed to deposit auction proceeds in escrow account within 72 hours of auction 67.101(2)
- Failed to pay public monies as required by law 67.101(3)
- Failed to pay funds due to seller within 15 banking days of auction 1802.251(5) and 67.101(4)
- Failed to keep records relative to an auction for 2 years 67.102(a)
- Failed to include, in records kept for an auction, any of the following: 67.102(b)
 - names and addresses of consignors
 - date of the auction
 - name of auctioneer and clerk for sale
 - gross proceeds
 - location and account number of escrow account
 - itemized list of expenses charged to consignor
 - list of all purchasers

- description and selling price of each item sold
- Failed to keep all documents relating to an auction 67.102(c)

Class D:

1st Violation	2nd Violation	3rd Violation
\$2,000 to \$4,000 plus 1-year probated suspension up to revocation	\$3,000 to \$5,000 plus 1-year full suspension up to revocation	\$5,000 to revocation

- Obtained license by fraud 1802.251(2)
- Substantial misrepresentation on application 1802.251(3)
- Flagrant course of misrepresentation or making false promises 1802.251(4)
- Violation of Business and Commerce Code (DTPA) 1802.251(6)
- Used or permitted use of false bidders, cappers, or shills 67.100(b)