



## **ARKANSAS REAL ESTATE COMMISSION**

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# **REAL ESTATE LICENSE LAW TIME-SHARE LAW**

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ARKANSAS CODE ANNOTATED

§17-42-101, ET SEQ.

§18-14-101, ET SEQ.

**\*\*\* CURRENT THROUGH THE 2015 REGULAR SESSION AND UPDATES \*\*\***

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## SUMMARY OF CONTENTS

	Page
<b>1. Real Estate License Law</b>	
(a) Table of Contents.	iii
(b) Real Estate License Law – General Provisions.	1
(c) Arkansas Real Estate Commission.	6
(d) Licenses.	8
(e) Applicability – Real Estate Recovery Fund – Disciplinary Actions.	20
(f) Renewal of Licenses.	22
(g) Interest on Trust Accounts Program.	30
(h) Interference with Real Estate Licensee Relationship.	31
<b>2. Real Estate Time-Sharing</b>	
(a) Table of Contents.	33
(b) General Provisions.	35
(c) Administration and Registration.	38
(d) Creation, Termination, and Management.	42
(e) Protection of Purchasers.	46
(f) Advertising.	52
(g) Financing.	54
(h) Camping Sites.	54

**TABLE OF CONTENTS**  
**TITLE 17 – CHAPTER 42**  
**REAL ESTATE LICENSE LAW**

	Page
<b>Subchapter 1 – Real Estate License Law – General Provisions</b>	
17-42-101. Title.	1
17-42-102. Legislative findings and intent.	1
17-42-103. Definitions.	1
17-42-104. Exemptions	3
17-42-105. Violations and criminal sanctions.	4
17-42-106. Injunction.	4
17-42-107. Capacity to sue and be sued.	5
17-42-108. Disclosure requirement.	5
17-42-109. Civil penalties for engaging in unlicensed real estate activity.	5
17-42-110. Broker’s price opinions.	6
<b>Subchapter 2 – Arkansas Real Estate Commission.</b>	
17-42-201. Creation – Members.	6
17-42-202. Organization – Employees.	7
17-42-203. Powers and duties.	7
17-42-204. Disposition of funds – Fund created.	7
17-42-205. Subpoenas and subpoenas duces tecum.	8
<b>Subchapter 3 – Licenses.</b>	
17-42-301. License required – Violations.	9
17-42-302. Issuance or denial of license.	9
17-42-303. Education and experience requirements.	9
17-42-304. Fees.	10
17-42-305. Nonresident license requirements.	10
17-42-306. Application procedure.	11
17-42-307. Expiration and renewal.	12
17-42-308. Inactive license.	13
17-42-309. Place of business.	13
17-42-310. Change of name or address – Lost license or card.	13
17-42-311. Violations.	14
17-42-312. Investigation of complaint – Penalties.	15
17-42-313. Dismissal of complaint – Appeal.	16
17-42-314. Hearings.	16
17-42-315. Criminal background check.	17
17-42-316. Agency relationship and duties generally.	17
17-42-317. Representing seller or lessor in an agency relationship.	18
17-42-318. Representing buyer or lessee in an agency relationship.	18
17-42-319. Waiver of Agency Duties.	19

<b>Subchapter 4 – Applicability – Real Estate Recovery Fund – Disciplinary Actions</b>	
17-42-401. Applicability.	20
17-42-402. Construction.	20
17-42-403. Creation – Administration.	20
17-42-404. Fees – Use of Funds.	20
17-42-405. Additional fees.	21
17-42-406. Disciplinary hearing – Procedure.	21
17-42-407. Jurisdiction.	22
17-42-408. Appeal.	22
17-42-409. Subrogation – Suspension of license.	22
17-42-410. [Repealed]	22
<b>Subchapter 5 – Renewal of Licenses</b>	
17-42-501. Real Estate Education Program.	23
17-42-502. Definitions.	23
17-42-503. Exemptions.	24
17-42-504. Requirements – Mandatory real estate education.	24
17-42-505. Civil penalties – Jurisdiction.	24
17-42-506. Powers and duties.	25
17-42-507. Disposition of funds.	26
17-42-508. Subpoenas and subpoenas duces tecum.	26
17-42-509. Issuance or denial of license.	26
17-42-510. Education fees.	26
17-42-511. License application procedure.	27
17-42-512. Term of license.	27
17-42-513. Approval of courses and course content.	27
17-42-514. Curricula.	28
17-42-515. Violations.	28
17-42-516. Investigation of complaint – Penalties.	28
17-42-517. Dismissal of complaint – Appeal.	29
17-42-518. Hearings.	29
<b>Subchapter 6 – Interest on Trust Accounts Program</b>	
17-42-601. Establishment of program.	30
17-42-602. Notice.	30
17-42-603. Disposition of funds.	30
<b>Subchapter 7 – Interference with Real Estate Licensee Relationships.</b>	
17-42-701. Definitions.	31
17-42-702. Interference with licensee relationships prohibited.	31

TITLE 17

CHAPTER 42  
REAL ESTATE LICENSE LAW

SUBCHAPTER.

1. REAL ESTATE LICENSE LAW – GENERAL PROVISIONS.
2. ARKANSAS REAL ESTATE COMMISSION.
3. LICENSES.
4. APPLICABILITY – REAL ESTATE RECOVERY FUND – DISCIPLINARY ACTIONS.
5. RENEWAL OF LICENSES.
6. INTEREST ON TRUST ACCOUNTS PROGRAM
7. INTERFERENCE WITH REAL ESTATE LICENSEE RELATIONSHIP.

**SUBCHAPTER 1 – REAL ESTATE LICENSE LAW – GENERAL PROVISIONS**

SECTION.

- 17-42-101. Title.
- 17-42-103. Definitions.
- 17-42-104. Exemptions.
- 17-42-105. Violations and criminal sanctions.
- 17-42-106. Injunction.
- 17-42-107. Capacity to sue and be sued.
- 17-42-108. Disclosure requirement.
- 17-42-109. Civil penalties for engaging in unlicensed real estate activity.
- 17-42-110. Broker's price opinions.

**17-42-101. Title.**

This chapter shall be known as the "Real Estate License Law".

**17-42-102. Legislative findings and intent.**

The legislature finds that it is necessary to regulate the practice of real estate brokers and salespersons in order to protect the public health, safety, and welfare. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public.

**17-42-103. Definitions.**

As used in this chapter:

(1) (A) "Associate broker" means an individual who has a broker's license and who is employed by a principal broker, or is associated with a principal broker as an independent contractor, and who participates in any activity described in subdivision (9) of this section while under the supervision of a principal broker or executive broker.

(B) An associate broker shall have no supervisory authority over any other licensee;

(2) "Branch office" means a real estate principal broker's office other than his or her principal place of business;

(3) "Broker's price opinion" means an estimate prepared by a licensee that details the probable selling price of real estate and provides a varying level of detail about the real estate's condition, market, and neighborhood, and information about sales of comparable real estate;

(4) "Classroom hour" means a period of at least fifty (50) minutes, but not more than sixty (60) minutes, of actual classroom instruction with the instructor present;

(5) "Continuing education" means postlicensure education derived from participation in courses in real estate-related subjects that have been approved by the State Board of Private Career Education or that are not required to be approved by the board;

(6) "Continuing education unit" means a period of ten (10) contact hours of actual classroom instruction with the instructor present;

(7) (A) "Executive broker" means an individual who:

(i) Has a broker's license;

(ii) Is employed by a principal broker or associated with a principal broker as an independent contractor; and

(iii) Participates in any activity described in subdivision (10) of this section while under the supervision of a principal broker.

(B) An executive broker may supervise associate brokers and salespersons;

(8) (A) "Licensee" means an individual who holds any type of license issued by the Arkansas Real Estate Commission.

(B) "Licensee" includes a principal broker, an executive broker, an associate broker, and a salesperson.

(C) This chapter does not preclude a licensee from:

(i) Doing business as a professional corporation under § 4-29-101 et seq.; or

(ii) Receiving payment from a real estate firm or principal broker of an earned commission to the licensee's legal business entity if the licensee earned the commission on behalf of the real estate firm or principal broker;

(9) "Participate in a real estate auction" means to do any act or conduct for compensation or the expectation of compensation and designed, intended, or expected to affect the bidding or results of a real estate auction, including without limitation serving as an auctioneer or ringman or encouraging, soliciting, or receiving bids;

(10) "Principal broker" means an individual expecting to act or acting for another for a fee, commission, or other consideration who:

(A) Sells, exchanges, purchases, rents, or leases real estate;

(B) Offers to sell, exchange, purchase, rent, or lease real estate;

(C) Negotiates, offers, attempts, or agrees to negotiate the sale, exchange, purchase, rent, or lease of real estate;

(D) Lists, offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(E) Auctions, offers, attempts, or agrees to auction real estate, or participates in a real estate auction;

(F) Buys, sells, or assigns or offers to buy, sell, or assign or otherwise deals in options on real estate or improvements to real estate;

(G) Collects, offers, attempts, or agrees to collect rent for the use of real estate;

(H) Advertises or holds himself or herself out as being engaged in the business of buying, selling, exchanging, renting, or leasing real estate;

(I) Assists or directs in the procuring of prospects calculated to result in the sale, exchange, lease, or rent of real estate;

(J) Assists or directs in the negotiation of any transaction calculated or intended to result in the sale, exchange, lease, or rent of real estate;

(K) Engages in the business of charging an advance fee in connection with any contract whereby

he or she undertakes to promote the sale or lease of real estate either through its listing in a publication issued for such a purpose or for referral of information concerning the real estate to brokers, or both; or

(L) Performs any of the acts described in this subdivision (10) as an employee of or on behalf of the owner of, or any person who has an interest in, real estate;

(11) (A) "Real estate" means an interest in real property.

(B) "Real estate" includes without limitation a leasehold, time-share interval, or an interest in real property that is purchased or sold in connection with the purchase or sale of all or part of the assets, stock, or other ownership interest of a business or other organization;

(12) "Salesperson" means an individual who:

(A) Has a salesperson's license;

(B) Is employed by a principal broker or is associated with a principal broker as an independent contractor; and

(C) Participates in any activity described in subdivision (10) of this section while under the supervision of a principal broker or executive broker; and

(13) "Unlicensed real estate activity" means offering or engaging in any practice, act, or operation set forth in subdivision (10) of this section without a valid active Arkansas license issued by the commission.

#### **17-42-104. Exemptions.**

(a) This chapter does not apply to:

(1) A person not licensed under this chapter who performs any of the acts described in § 17-42-103(10) with regard to the property owned, leased, or purchased by him or her;

(2) An attorney in fact under a duly executed and recorded power of attorney from the owner or lessor authorizing the final consummation by performance of any contract for the sale, lease, or exchange of real estate, provided that the attorney in fact does not receive or have an expectation of receiving a fee, commission, or other consideration, directly or indirectly, for performing the act;

(3) An attorney at law in the performance of his or her duties as an attorney at law;

(4) A person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian, or while acting under a court order or under the authority of a will or of a trust instrument;

(5) A person acting as a resident manager when the resident manager resides on the premises and is engaged in the leasing of real property in connection with his or her employment;

(6) A person employed only at a salaried or hourly rate to engage in the leasing of real property for or on behalf of a licensed principal broker, the real estate firm of a licensed principal broker, or an owner of real estate, if the person:

(A) Does not engage in or offer to perform any practice, act, or operation set forth in § 17-42-103(10) other than receiving a security deposit or payment as permitted by subdivision (a)(6)(B)(iii) of this section; and

(B) Performs only one (1) or more of the following functions:

(i) Delivering a lease application, lease, or an amendment to a lease application or lease to any person;

(ii) Receiving a lease application, lease, or an amendment to a lease application for delivery to the principal broker, real estate firm, or owner;

(iii) Receiving a security deposit, rental payment, or any related payment for delivery to and made payable to the principal broker, real estate firm, or owner;

(iv) Acting under the direct written instructions of the principal broker, real estate firm, or owner:

(a) Showing a rental unit to any person; or

(b) Assisting in the execution of a preprinted lease or rental agreement containing terms established by the principal broker, real estate firm, or owner; or

(v) Conveying information prepared by the principal broker, real estate firm, or owner about a lease application, lease, the status of a security deposit, or the payment of rent to or from any person;

(7) An officer or employee of a federal agency or state government, or any political subdivision, in the

performance or conduct of his or her official duties;

(8) A multiple listing service wholly owned by a nonprofit organization or association of real estate licensees;

(9) An officer of a corporation, a member or manager of a limited liability company, a partner of a partnership, or the equivalent of an officer of another form of business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the acts are not performed by the officer, member, or partner for or in expectation of a commission or other compensation resulting solely from a successful transaction; or

(10) A person employed primarily at a salaried or hourly rate by a corporation, limited liability company, partnership, or other business entity acting with respect to real property owned or leased by the entity or an affiliated entity under common ownership or in connection with the proposed purchase, sale, rental, or leasing of real property by the entity or affiliate if the:

(A) Acts are not performed by the employee for or in expectation of a commission or other compensation resulting solely from a successful transaction;

(B) Primary business activity of both the entity and affiliated entity is not ownership or acquisition of real estate; and

(C) Employee is not providing real estate services to or on behalf of more than one (1) entity not affiliated by common ownership.

(b) Any real estate broker licensed by the Arkansas Real Estate Commission on or before January 1, 1985, who is engaged in the sale of real estate by auction only is authorized to employ real estate salespersons to work under the license of the broker even though the broker is employed in a non-real estate-related field and is only a part-time broker.

#### **17-42-105. Violations and criminal sanctions.**

(a) It is unlawful to:

(1) Engage in unlicensed real estate activity; or

(2) Violate this chapter:

(A) Individually; or

(B) As an officer, agent, or member of a firm, corporation, partnership, copartnership, association, limited liability company, or other entity by participating in or being an accessory to a violation of this chapter by the firm, corporation, partnership, copartnership, association, limited liability company, or other entity.

(b) A commissioner of the Arkansas Real Estate Commission, the Executive Director of the Arkansas Real Estate Commission, a commissioner's designee, the Executive Director's designee, or any licensee residing in the county where the violation occurs may by affidavit institute criminal proceedings for a violation of this chapter without filing a bond for costs.

(c) The prosecuting attorney for each county shall prosecute any violation of this chapter that occurs in his or her county.

(d) A violation of this chapter is a Class D felony.

#### **17-42-106. Injunction.**

(a) If the Arkansas Real Estate Commission has reason to believe that a person has violated a provision of this chapter, the commission or its designee may bring an action in the circuit court of any county in which the person resides or does business to enjoin the person from continuing, engaging in, or doing any act or acts in furtherance of the violation.



(b) In any action under this section, the circuit court of any county in which the person resides or does business may enter a preliminary injunction, a final injunction, or an order for any other appropriate relief.

#### **17-42-107. Capacity to sue and be sued.**

(a) An action or suit shall not be instituted, nor recovery be had, in any court of this state by any person or other legal entity for compensation for performance of any acts described in § 17-42-103(10) unless at the time of offering to perform and performing any such act or procuring any promise to contract for the payment of compensation for any such contemplated act:

(1) The person holds an active license under this chapter as a principal broker; or

(2) The person or other legal entity was the owner of the real estate firm that contracted for or otherwise performed the acts for the compensation that is the subject of the action or suit through either a principal broker or a person approved by the Arkansas Real Estate Commission under § 17-42-301(f) while licensed or approved by the commission at the time of the acts.

(b) No salesperson, executive broker, or associate broker may sue in his or her own capacity for the recovery of fees, commissions, or compensation for services as a salesperson, executive broker, or associate broker unless the action is against the principal broker with whom he or she is licensed or was licensed at the time the acts were performed.

(c) (1) As used in this subsection, "systematic residential rental property inspection program" means a program that requires all persons who reside outside of the State of Arkansas and are owners of residential rental property located within the corporate limits of a municipality in this state to designate an agent for service of process.

(2) In any municipality that has established a systematic residential rental property inspection program, a licensee as defined under § 17-42-103 shall not have criminal or civil liability to the municipality, to the nonresident owner, or otherwise for any action or inaction of the municipality or owner:

(A) When acting as an agent for service of process for a nonresident owner;

(B) Arising from the agent's performance of duties as the agent for service of process; and

(C) If within three (3) business days of receipt of service of process or at other times established by ordinance in effect as of August 12, 2005, the licensee sends the service of process to the last known address of the nonresident owner.

(3) This subsection supersedes any provision of common law to the contrary.

#### **17-42-108. Disclosure requirement.**

(a) (1) In every real estate transaction involving a licensee, the licensee shall clearly disclose to all parties or to their agents which party or parties he or she is representing.

(2) A licensee may represent more than one (1) party to a real estate transaction pursuant to and subject to regulations and rules of the Arkansas Real Estate Commission.

(b) The timing, method, and other requirements of such a disclosure shall be established by the commission, and the commission shall also determine the consequences of failure to make disclosure in accordance with such requirements.

#### **17-42-109. Civil penalties for engaging in unlicensed real estate activity.**

(a) If after notice and a hearing in accordance with this chapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas Real Estate Commission finds that a person has engaged in unlicensed real estate activity, the commission may impose a civil penalty of no more than five thousand dollars (\$5,000) and assess costs against the person.

(b) The fact that a person offers to engage in or offers to perform any practice, act, or operation set forth in § 17-42-103(10) without a license is prima facie evidence that the person is engaged in unlicensed

real estate activity.

(c) In addition to civil penalties imposed under this section, the commission may require the person engaged in unlicensed real estate activity to reimburse any compensation, fees, or other remuneration collected during the unlicensed real estate activity.

#### **17-42-110. Broker's price opinions.**

(a) A licensee may prepare, provide, and collect a fee for issuing a broker's price opinion for:

(1) An existing or potential seller for the purposes of listing and selling real estate;

(2) An existing or potential buyer of real estate;

(3) A third party making decisions or performing due diligence related to the potential listing, offering, sale, exchange, option, lease, or acquisition price of real estate; or

(4) (A) An existing or potential lienholder.

(B) However, a broker's price opinion prepared for an existing or potential lienholder in conjunction with the purchase of a buyer's principal residence shall not be used as the primary basis to determine the value of the buyer's principal residence for the purpose of a loan origination of a residential mortgage loan secured by the buyer's principal residence.

(b) The Arkansas Real Estate Commission may prescribe rules for the preparation and issuance of a broker's price opinion.

(c) Licensees shall have the authority to prepare and provide broker price opinions pursuant to this section, notwithstanding the provisions of the Arkansas Appraiser Licensing and Certification Act, § 17-14-101 et seq., § 17-14-201 et seq., and § 17-14-301 et seq.

(d) A broker's price opinion or market analysis issued by a real estate licensee shall not contain the terms "market value", "appraised value", or "appraisal".

## **SUBCHAPTER 2 – ARKANSAS REAL ESTATE COMMISSION**

### **SECTION.**

17-42-201. Creation – Memberts.

17-42-202. Organization – Employees.

17-42-203. Powers and duties.

17-42-204. Disposition of funds – Fund created.

17-42-205. Subpoenas and subpoenas duces tecum.

#### **17-42-201. Creation -- Members.**

(a) (1) The Arkansas Real Estate Commission shall consist of five (5) members, appointed by the Governor for terms of three (3) years, whose terms shall begin on January 1 and end on December 31 of the third year or when their respective successors are appointed and qualified.

(2) (A) Three (3) members shall have been licensed real estate brokers or licensed real estate salespersons for not fewer than five (5) years prior to their nominations.

(B) The Governor shall consult the Arkansas Realtors Association before making an appointment to fill a vacancy.

(3) (A) Two (2) members shall not be actively engaged in or retired from the business of real estate.

(B) One (1) shall represent consumers, and one (1) shall be sixty (60) years of age or older and shall represent the elderly.

(C) Both shall be appointed from the state at large, subject to confirmation by the Senate.

(D) The two (2) positions may not be held by the same person.

- (E) Both shall be full voting members but shall not participate in the grading of examinations.
- (b) Each commissioner may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.
- (c) Appointments made by the Governor under this section shall be subject to confirmation by the Senate.

**17-42-202. Organization -- Employees.**

- (a) (1) Immediately upon the qualification of the member appointed in each year, the Arkansas Real Estate Commission shall meet and organize by selecting from its members a chair and vice chair.
- (2) A simple majority shall constitute a quorum.
- (3) The commission shall meet as often as necessary or desirable in order to conduct its business.
- (b) (1) The commission shall employ an executive director and such staff as may be necessary to carry out the provisions of this chapter and to put into effect the rules and regulations the commission may promulgate.
- (2) The executive director shall have such duties, authority, and responsibility as the commission may designate, or as necessarily implied herein.
- (3) The commission shall fix the salaries of employees.

**17-42-203. Powers and duties.**

- (a) The Arkansas Real Estate Commission may do all things necessary and convenient for carrying into effect the provisions of this chapter and may from time to time promulgate necessary or desirable rules and regulations.
- (b) The commission shall have power to administer oaths.
- (c) The commission shall adopt a seal with such design as it may prescribe engraved thereon.
- (d) Copies of all records and papers in the office of the commission, certified and authenticated by the commission, shall be received in evidence in all courts equally and with like effect as the originals.
- (e) The commission:
  - (1) Shall maintain in writing or in electronic format a list of the names and addresses of all active licensees licensed by it under the provisions of this chapter; and
  - (2) May publish in writing or in electronic format the names of all persons who have been sanctioned under § 17-42-312 or by consent order, together with other information relative to the enforcement of the provisions of this chapter as it may deem of interest to the public.
- (f) The commission may conduct or assist in conducting real estate institutes and seminars and incur and pay the reasonable and necessary expenses in connection therewith. The institutes or seminars shall be open to all licensees.
- (g) The commission is authorized to make reasonable charges for materials provided by the commission and for services performed in connection with providing materials.
- (h) (1) The commission is authorized to establish reasonable procedures that shall be used by real estate licensees in conducting real estate auctions.
- (2) For the protection of the public, real estate licensees who manage and conduct real estate auctions also shall be required to be licensed by the Auctioneer's Licensing Board.
- (3) Notwithstanding subdivision (h)(2) of this section, the commission shall have sole jurisdiction over real estate licensees and their actions when managing or conducting real estate auctions.

**17-42-204. Disposition of funds -- Fund created.**

- (a) Except as otherwise provided herein, all fees, charges, fines, and penalties collected by the Arkansas Real Estate Commission shall be deposited into a fund to be known as the "Arkansas Real Estate Commission Fund".

(b) The commission is empowered to expend funds appropriated from the Arkansas Real Estate Commission Fund for the requirements, purposes, and expenses of the commission under the provisions of this chapter.

#### **17-42-205. Subpoenas and subpoenas duces tecum.**

(a) The Arkansas Real Estate Commission shall have the power to issue subpoenas and subpoenas duces tecum in connection with both its investigations and hearings.

(b) A subpoena duces tecum may require any book, writing, document, or other paper or thing which is germane to an investigation or hearing conducted by the commission to be transmitted to the commission.

(c) (1) Service of a subpoena shall be as provided by law for the service of subpoenas in civil cases in the circuit courts of this state, and the fees and mileage of officers serving the subpoenas and of witnesses appearing in answer to the subpoenas shall be the same as provided by law for proceedings in civil cases in the circuit courts of this state.

(2) (A) The commission shall issue a subpoena or subpoena duces tecum upon the request of any party to a hearing before the commission.

(B) The fees and mileage of the officers serving the subpoena and of the witness shall be paid by the party at whose request a witness is subpoenaed.

(d) (1) In the event a person shall have been served with a subpoena or subpoena duces tecum as herein provided and fails to comply therewith, the commission may apply to the circuit court of the county in which the commission is conducting its investigation or hearing for an order causing the arrest of the person and directing that the person be brought before the court.

(2) The court shall have the power to punish the disobedient person for contempt as provided by law in the trial of civil cases in the circuit courts of this state.

### **SUBCHAPTER 3 - LICENSES**

#### **SECTION**

17-42-301. License required – Violations.

17-42-302. Issuance or denial of license.

17-42-303. Education and experience requirements.

17-42-304. Fees.

17-42-305. Nonresident license requirements.

17-42-306. Application procedure – Licensing examination required.

17-42-307. Expiration and renewal.

17-42-308. Inactive license.

17-42-309. Place of business.

17-42-310. Change of name or address – Lost license or card.

17-42-311. Violations.

17-42-312. Investigation of complaint – Penalties.

17-42-313. Dismissal of complaint – Appeal.

17-42-314. Hearings.

17-42-315. Criminal background check.

17-42-316. Agency relationship and duties generally.

17-42-317. Representing seller or lessor in an agency relationship.

17-42-318. Representing buyer or lessee in an agency relationship.

17-42-319. Waiver of Agency Duties.

**17-42-301. License required -- Violations.**

(a) No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this chapter.

(b) Any person who directly or indirectly for another with the intention, or on the promise of receiving any valuable consideration, offers, attempts, or agrees to perform any single act described in § 17-42-103(10), whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this chapter.

(c) The commission of a single act by a person required to be licensed under this chapter and not so licensed shall constitute a violation of this chapter.

(d) It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this chapter.

(e) (1) Notwithstanding the provisions of this section, a person or other legal entity not licensed by the Arkansas Real Estate Commission may own a real estate firm, provided the employees or agents employed by or associated with the firm who perform real estate activities identified under § 17-42-103(10) hold an active license under this chapter.

(2) The firm may enter into contracts or otherwise perform activities identified under § 17-42-103(10) only through a principal broker and a licensee employed by or associated with the principal broker that holds an active license issued by the commission at the time of performing the contract or activities.

(f) The commission may provide for the continuing temporary operation of a real estate firm having all rights under § 17-42-107(a) upon the death, resignation, termination, or incapacity of the principal broker or upon the closing of a real estate firm, under the direction of a person approved by the commission, subject to time limitations and other conditions imposed by the commission.

**17-42-302. Issuance or denial of license.**

(a) The Arkansas Real Estate Commission shall issue a license to any applicant who meets the following requirements:

(1) Attainment of the age of majority;

(2) Successful completion of educational requirements prescribed by this chapter;

(3) Successful completion of experience requirements prescribed by this chapter;

(4) Successful completion of an examination administered or approved by the commission;

(5) Demonstrates no record of unprofessional conduct;

(6) Evidence of good reputation for honesty, trustworthiness, and integrity sufficient to safeguard the interests of the public; and

(7) Completion of a criminal history background check through the Department of Arkansas State Police and the Federal Bureau of Investigation as set out in § 17-42-315.

(b) The commission shall determine what constitutes adequate proof of meeting the requirements of subsection (a) of this section and shall deny a license to any applicant who fails to meet the requirements or who fails to pay the appropriate fees.

**17-42-303. Education and experience requirements.**

(a) The Arkansas Real Estate Commission shall establish education requirements for licensure, including the standards and procedures for approval of education programs, subject to the following conditions:

(1) (A) The most education hours required of an applicant for a broker's license shall not exceed one hundred twenty (120) hours within the thirty-six (36) months immediately preceding the date of application.

(B) Effective on May 1, 2014, an applicant for a broker's license shall complete at least forty-five

(45) of the required education hours in a course developed by the commission; and

(2) The maximum number of hours required of an applicant for a salesperson's license shall not exceed ninety (90) hours, at least thirty (30) hours of which shall be in the basic principles of real estate.

(b) (1) The commission shall establish the experience requirement for licensure for an applicant for a broker's license subject to the condition of serving an active, bona fide apprenticeship by holding a valid real estate salesperson's license issued by the commission or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(2) However, the commission may waive the experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four (24) months within the previous forty-eight-month period immediately preceding the date of application.

(c) (1) The commission shall establish a post-licensure education requirement for individuals in their first year of licensure as salespersons or brokers.

(2) The commission shall not require more than thirty (30) classroom hours of post-licensure education hours.

#### **17-42-304. Fees.**

The Arkansas Real Estate Commission shall have authority to establish, charge, and collect the following fees:

(1) An application fee not to exceed fifty dollars (\$50.00);

(2) An original broker's license fee not to exceed eighty dollars (\$80.00);

(3) A broker's license annual renewal fee not to exceed eighty dollars (\$80.00);

(4) An original salesperson's license fee not to exceed sixty dollars (\$60.00);

(5) A salesperson's license annual renewal fee not to exceed sixty dollars (\$60.00);

(6) A broker's expired license fee not to exceed one hundred ten dollars (\$110) per year or fraction thereof;

(7) A salesperson's expired license fee not to exceed eighty dollars (\$80.00) per year or fraction thereof;

(8) A license reissuance fee not to exceed thirty dollars (\$30.00);

(9) An initial duplicate license fee not to exceed thirty dollars (\$30.00);

(10) A duplicate license annual renewal fee not to exceed thirty dollars (\$30.00);

(11) A transfer fee not to exceed thirty dollars (\$30.00);

(12) (A) An examination fee not to exceed seventy-five dollars (\$75.00).

(B) However, the commission at its discretion may direct each applicant to pay the actual costs of the examination fee directly to a testing service engaged by the commission to administer the examination;

(13) Pursuant to § 17-42-313, an appeal filing fee not to exceed one hundred dollars (\$100);

(14) A Real Estate Recovery Fund fee not to exceed twenty-five dollars (\$25.00); and

(15) The actual cost of a state and federal criminal history background check.

#### **17-42-305. Nonresident license requirements.**

(a) In order to be licensed in Arkansas a nonresident must:

(1) Either:

(A) Meet the requirements of § 17-42-302; or

(B) Show satisfactory proof of current active licensure in the applicant's resident jurisdiction, which must be a jurisdiction that offers Arkansas licensees opportunities for licensure substantially

comparable to those offered to that jurisdiction's licensees by this chapter;

(2) Pay any required fees;

(3) Sign a statement that the applicant has read the Real Estate License Law, § 17-42-101 et seq., and regulations and agrees to abide by its provisions in all real estate activity;

(4) (A) Affiliate with a resident or nonresident principal broker licensed by the Arkansas Real Estate Commission, if a salesperson or associate broker.

(B) If a nonresident licensee terminates the affiliation with a principal broker licensed by the commission, the license of the nonresident shall automatically be terminated until the nonresident places the license on inactive status or affiliates with another broker licensed by the commission;

(5) (A) Cause the licensing body of the applicant's resident jurisdiction to furnish to the commission a certification of licensure and copies of the records of any disciplinary actions taken against the applicant's license in that or other jurisdictions.

(B) Disciplinary action by any other lawful licensing authority may be grounds for denial of a license to a nonresident or for suspension or revocation of a license issued to a nonresident or for other appropriate disciplinary action authorized by this chapter;

(6) (A) File with the Executive Director of the Arkansas Real Estate Commission a designation in writing that appoints the executive director to act as the licensee's agent upon whom all judicial and other process or legal notices directed to the licensee may be served.

(B) Service upon the executive director shall be equivalent to personal service upon the licensee.

(C) Copies of the appointment certified by the executive director shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the originals thereof might be admitted.

(D) In such a written designation, the licensee shall agree that any lawful process against the licensee which is served upon the executive director shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this jurisdiction.

(E) The executive director shall mail a copy of any such process or notice by certified mail to the last known business address of the licensee; and

(7) (A) Agree in writing to cooperate with any investigation initiated by the commission by promptly supplying any documents the commission may request and by personally appearing at the commission's offices or such other location in this state as the commission may request.

(B) If notice is sent by certified mail to the last known business address of a nonresident licensee directing the licensee to produce documents or to appear for an interview and the licensee fails to comply with that request, the commission may impose on the nonresident licensee any disciplinary sanction permitted by this chapter.

(b) The commission in its discretion may enter into written agreements with similar licensing authorities of other jurisdictions as may be necessitated by the laws of those jurisdictions to assure for Arkansas licensees nonresident licensure opportunities comparable to those afforded to nonresidents by this chapter.

(c) The commission may deny licensure under subdivision (a)(1)(B) of this section to an applicant whose resident licensure is in a jurisdiction which the commission deems not to have educational or experience requirements at least equal to those of Arkansas.

#### **17-42-306. Application procedure -- Licensing examination required.**

(a) (1) Applications for licensure must be submitted on forms provided by the Arkansas Real Estate Commission.

(2) The commission may require any information and documentation needed to determine if the applicant meets the criteria for licensure as provided in this chapter.

(3) Each applicant shall pay such application fee and examination fee as the commission may require pursuant to § 17-42-304.

(4) (A) Applicants that have provided all required information and documentation to the commission may sit for the examination, provided that a request has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check

(B) Upon the successful completion of the license exam, no license shall be issued until the commission receives and approves the state and federal criminal background check.

(b) (1) (A) An applicant who successfully completes the examination shall pay, within ninety (90) days from the date of the examination, such license fee and Real Estate Recovery Fund fee as the commission may require pursuant to § 17-42-304.

(B) (i) If the federal criminal background check has not been received by the commission within ninety (90) days of the date of the examination, the date may be extended by the commission until receipt of the federal criminal background check.

(ii) No real estate license shall be issued until receipt and approval by the commission of the state and federal criminal background check.

(2) The applicant's failure to pay the license fee and Real Estate Recovery Fund fee within that ninety-day period shall invalidate the examination results, and the applicant shall be required to make new application and retake the examination as an original applicant.

### **17-42-307. Expiration and renewal.**

(a) Every license shall expire on a date established by the Arkansas Real Estate Commission.

(b) (1) A broker or salesperson shall complete annually:

(A) Not less than six (6) or more than nine (9) classroom hours of continuing education required by the commission;

(B) The distance education equivalent of subdivision (b)(1)(A) of this section required by the commission; or

(C) A course that the commission has determined to demonstrate mastery of an acceptable real estate subject.

(2) A licensee who satisfies subdivision (b)(1) of this section completes the continuing education requirements for the licensing year.

(3) If a licensee files for renewal of a license but fails to provide proof of continuing education, the licensee's license is inactive until proof is provided to the commission.

(c) (1) To renew or reactivate a license, a licensee shall complete the number of classroom hours of continuing education or the distance education equivalent of continuing education required by the commission for each inactive year not to exceed a total of thirty (30) classroom hours.

(2) Except as provided in subdivision (c)(1) of this section, a person is not subject to the education requirements of this section while the person's license is inactive.

(3) The commission may waive all or part of the requirements of subdivision (c)(1) of this section if a licensee is unable to complete the continuing education due to extenuating circumstances.

(d) (1) For each active licensee, the commission shall issue a new license for each ensuing renewal period in the absence of a reason or condition that may warrant the refusal of a license, upon receipt of the:

(A) Written request for license renewal at least ninety (90) days before the expiration of the license upon forms provided by the commission; and

(B) Renewal fee.

(2) (A) A broker or salesperson who does not wish to engage in the real estate business may renew a license on inactive status in the absence of a reason or condition that may warrant the refusal of a license upon receipt of the:

(1) Written request of the applicant at least ninety (90) days before the expiration of the license upon forms provided by the commission; and

(2) Renewal fee.

(B) The commission may limit the number of renewal periods in which a license may be renewed



on inactive status.

(C) The renewal fee for inactive status is the same as for renewal of an active license.

(3) An application for renewal filed after the date established by the commission to renew a license is treated as an application to renew an expired license.

(e) If a person to whom a valid license has been issued permits the license to expire for a period not in excess of that established by the commission, the commission shall issue to the person a current license without requiring the person to submit to an examination if the person furnishes the information required by the commission, including proof of completion of appropriate continuing education requirements, and pays the fee required by the commission.

(f) (1) New salesperson and broker licensees shall complete post-licensure education under § 17-42-303(c).

(2) If the licensee fails to complete the post-licensure education requirements within twelve (12) months after the date the license was issued, the commission shall place the license on inactive status until the commission receives documentation that the licensee has completed the post-licensure education requirements.

#### **17-42-308. Inactive license.**

(a) (1) A licensee may place his or her license on inactive status.

(2) The holder of an inactive license shall not practice as a real estate broker or salesperson in this state without first activating the license.

(b) An inactive license which is not renewed shall be treated as an expired license pursuant to § 17-42-307.

(c) Inactive licenses may be activated upon compliance with requirements established by the Arkansas Real Estate Commission, including payment of appropriate fees.

(d) The provisions of this chapter relating to disciplinary action against a licensee shall be applicable to an inactive or expired license.

#### **17-42-309. Place of business.**

(a) Every principal broker shall maintain a place of business and shall display a permanently attached sign bearing the name under which the broker conducts his or her real estate business and the words "real estate", "realty", or other words approved by the Arkansas Real Estate Commission which clearly indicate to the public that the broker is engaged in the real estate business.

(b) (1) If a principal broker maintains a branch office, a duplicate license shall be issued upon payment by the principal broker of the initial fee and, thereafter, such renewal fee as the commission may require pursuant to § 17-42-304.

(2) However, a duplicate license shall not be issued for a branch office at which licensees are assigned unless the principal broker establishing the branch office has designated an executive broker to supervise the licensees.

#### **17-42-310. Change of name or address -- Lost license or card.**

(a) (1) When a licensee changes his or her name, place of business, or address shown on the license, or loses a license or pocket card, he or she shall promptly notify the Arkansas Real Estate Commission of such a change or loss.

(2) Upon receipt of the notice and payment of the relevant fee, the commission shall reissue the license.

(b) It is the responsibility of each licensee to keep the commission notified of his or her mailing address, both home and business, at all times.

(c) The licenses of the principal broker and all licensees employed by or associated with him or her shall be retained by the principal broker and conspicuously displayed in his or her place of business.

(d) (1) Upon the termination of a licensee's employment by or association with a principal broker, the licensee shall promptly deliver his or her pocket card to the principal broker, and the principal broker shall promptly notify the commission of the termination and return to the commission the license and pocket card of the terminated licensee, which shall automatically inactivate the license.

(2) If the pocket card is unavailable, the principal broker shall promptly so notify the commission in writing.

(e) A license inactivated under this section may be transferred to another principal broker upon application of the licensee, payment of the relevant fee, and submission of a statement that he or she is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents or any other pertinent information belonging to the licensee's previous principal broker or firm.

### **17-42-311. Violations.**

(a) The following acts, conduct, or practices are prohibited, and any licensee found guilty shall be subject to disciplinary action as provided in § 17-42-312:

(1) Obtaining a license by means of fraud, misrepresentation, or concealment;

(2) Violating any of the provisions of this chapter or any rules or regulations adopted pursuant to this chapter or any order issued under this chapter;

(3) Being convicted of or pleading guilty or nolo contendere to a felony or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness regardless of whether the imposition of sentence has been deferred or suspended;

(4) Making any substantial misrepresentation;

(5) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce, persuade, or influence any person to act thereon;

(6) Failing within a reasonable time to account for or to remit any moneys coming into his or her possession which belong to others;

(7) Committing any act involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness;

(8) Acting for more than one (1) party in a transaction without the knowledge of all parties for whom he or she acts or accepting a commission or valuable consideration for the performance of any of the acts specified in this chapter from any person except the licensed principal broker under whom he or she is licensed;

(9) Acting as a broker or salesperson while not licensed with a principal broker, representing or attempting to represent a broker other than the principal broker with whom he or she is affiliated without the express knowledge and consent of the principal broker, or representing himself or herself as a salesperson or having a contractual relationship similar to that of a salesperson with anyone other than a licensed principal broker;

(10) Advertising in a false, misleading, or deceptive manner;

(11) Being unworthy or incompetent to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public;

(12) Paying a commission or valuable consideration to any person for acts or services performed in violation of this chapter, including paying a commission or other valuable consideration to an unlicensed person for participation in a real estate auction; and

(13) Any other conduct, whether of the same or a different character from that specified in this section, which constitutes improper, fraudulent, or dishonest dealing.

(b) Any license obtained through mistake or inadvertence shall be subject to revocation.

(c) A licensee whose license is revoked pursuant to this section shall be eligible to apply for a new license after the expiration of two (2) years from the date of revocation.

### **17-42-312. Investigation of complaint -- Citations -- Penalties.**

(a) (1) The Arkansas Real Estate Commission may, on its own motion, and shall, upon the verified complaint in writing of any person, provided that the complaint and any evidence, documentary or otherwise, presented in connection therewith shall make out a prima facie case, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker or real estate sales person regardless of whether the transaction was for his or her own account or in his or her capacity as a broker or salesperson.

(2) If the complaint fails to state a prima facie case or if, after investigation, the Executive Director of the Arkansas Real Estate Commission determines that there is insufficient proof of a violation of this chapter, the executive director shall dismiss the complaint.

(3) If, however, the executive director determines that there is sufficient proof of a violation of this chapter, the person shall be notified of the charges against him or her and ordered to appear for a hearing.

(4) If a person violates this chapter, the commission may impose any one (1) or more of the following sanctions or requirements:

- (A) Suspension, revocation, or denial of his or her license or the renewal thereof;
- (B) A penalty of not more than one thousand dollars (\$1,000) for each violation;
- (C) Completion of appropriate educational programs or courses;
- (D) Successful completion of an appropriate licensing examination;
- (E) Conditions or restrictions upon the person's license or practice; or
- (F) Payment of restitution, damages, or other penalties appropriate to the circumstances of the case

that would:

- (i) Achieve the desired disciplinary purpose;
- (ii) Compensate or reimburse an injured party or the commission; or
- (iii) Promote the regulation of the real estate profession.

(b) The commission is authorized to file suit in Pulaski County Circuit Court or the circuit court of the county where the defendant resides or does business to collect a penalty assessed under this chapter if the penalty is not paid as ordered by the commission or the executive director.

(c) The commission may suspend the imposition of any sanctions imposed upon appropriate terms and conditions.

(d) (1) In lieu of the procedure contained in subdivisions (a)(1)-(3) of this section, the executive director may issue a citation imposing:

- (A) A penalty of not more than one hundred dollars (\$100) to a broker or salesperson who:
  - (i) Fails to complete annual education requirements; or
  - (ii) Fails to complete post-licensure education requirements by the established deadline; or
- (B) A penalty of not more than two hundred fifty dollars (\$250) to a broker, salesperson, or the supervising broker of a broker or salesperson if a broker or salesperson performs activities that require an active real estate license while his or her license is expired.

(2) The citation shall include:

(A) The name, title, mailing address on file with the commission, and real estate license number of the licensee;

- (B) The specific violation and related statute, regulation, or rule;
- (C) The time and date the citation is issued;
- (D) The amount of the penalty;
- (E) The deadline of thirty (30) days from issuance of the citation and procedure to either:
  - (i) Pay the citation without further penalty; or
  - (ii) Dispute the citation;
- (F) A statement that the amount of the penalty and the findings of the executive director as to the facts are considered accurate, conclusive, finally adjudicated, and nonappealable if a verified written complaint contesting the citation is not filed within thirty (30) days of the citation's issuance; and

(2) The citation shall include:

(G) A signature line for the licensee to accept the penalty without filing a written dispute.

(3) A licensee who is issued a citation under this subsection shall within thirty (30) days of the issuance of the citation:

(A) Accept the conditions of the citation by signing and returning the citation to the commission accompanied by the penalty payment; or

(B) File a verified written complaint under this section contesting the citation.

(4) The commission may treat the failure to respond within thirty (30) days of the issuance of the citation as a violation of this chapter punishable by the penalties provided in subsection (a) of this section.

(5) (A) If a licensee does not dispute the citation or request a hearing under § 17-42-314, the findings contained in the citation are deemed accurate, conclusive, finally adjudicated, and nonappealable.

(B) If a licensee disputes the citation by timely filing a verified written complaint with the commission, the licensee shall be provided a hearing before the commission under § 17-42-314.

(6) The commission may modify or vacate a citation issued under this subsection with or without a hearing.

### **17-42-313. Dismissal of complaint -- Appeal.**

(a) Any person whose complaint against a licensed real estate broker or salesperson is dismissed by the Executive Director of the Arkansas Real Estate Commission without a hearing may appeal the dismissal to the Arkansas Real Estate Commission subject to and in accordance with the following provisions:

(1) The request for appeal must be in writing and received in the office of the commission not later than sixty (60) days following the date of dismissal by the executive director;

(2) The request for appeal must be accompanied by such filing fee as the commission may require pursuant to § 17-42-304; and

(3) (A) (i) The appellant must also pay the cost of preparing the record for the commission's review, which cost shall be determined by the commission.

(ii) The costs must be paid by the appellant within thirty (30) days after notification of the amount. Otherwise, the appeal will be dismissed.

(B) However, if the commission's review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.

(C) Any person who is indigent and unable to pay either the filing fee or the cost of the record, or both, may file a pauper's oath in such form as required by the commission, and, if the commission determines that the appellant is indeed indigent, the filing fee or cost of the record, or both, shall be waived.

(b) (1) All appeals duly perfected pursuant to subsection (a) of this section shall be presented to and decided by the commission on the written record.

(2) Such a decision may be to affirm the executive director's dismissal, to order additional investigation, or to order a hearing on the complaint.

### **17-42-314. Hearings.**

(a) Proceedings under § 17-42-312 and hearings on denials of licenses shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Except in cases in which a licensee has obtained a license by false or fraudulent representation, the Arkansas Real Estate Commission shall not investigate the actions of or conduct any disciplinary hearing regarding any real estate broker or salesperson unless the complaint is filed or the investigation initiated within three (3) years from the date of the actions complained of or concerning which an investigation is initiated.

**17-42-315. Criminal background check.**

(a) (1) Beginning January 1, 2006, the Arkansas Real Estate Commission may require each original applicant for a license issued by the commission to apply to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(2) (A) An applicant may sit for the examination required by § 17-42-302(a)(4) while awaiting the results of a background check prescribed by this section.

(B) No license shall be issued to an applicant until the commission receives and approves the state and federal criminal background check.

(b) The check shall conform to applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the commission and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all releasable information obtained concerning the applicant.

(e) At the conclusion of any background check required by this section, the Identification Bureau of the Department of Arkansas State Police shall be allowed to retain the fingerprint card of the applicant until notified by the commission that the person is no longer licensed.

(f) Except as provided in subsection (g) of this section, a person shall not receive or hold a license issued by the commission if the person has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness.

(g) (1) The provisions of subsection (f) of this section may be waived by the commission upon the request of:

(A) An affected applicant for licensure; or

(B) The person holding a license subject to sanctions.

(2) Circumstances for which a waiver may be granted shall include, but not be limited to, the following:

(A) The age at which the crime was committed;

(B) The circumstances surrounding the crime;

(C) The length of time since the crime;

(D) Subsequent work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public.

(h) (1) Any information received by the commission from the Identification Bureau of the Department of Arkansas State Police or the Federal Bureau of Investigation pursuant to this section shall not be available for examination except by the affected applicant for licensure or his or her authorized representative, or by the person whose license is subject to sanctions or his or her authorized representative.

(2) No record, file, or document shall be removed from the custody of the Department of Arkansas State Police.

(i) Any information made available to the affected applicant for licensure or the person whose license is subject to sanctions shall be information pertaining to that person only.

(j) Rights of privilege and confidentiality established in this section shall not extend to any document created for purposes other than the background check.

(k) The commission may adopt rules and regulations to fully implement the provisions of this section.

**17-42-316. Agency relationship and duties generally.**

(a) The common law of agency under Arkansas as supplemented by this section applies to the

relationship between a licensee and the licensee's client.

(b) (1) In accepting employment by a client, a licensee pledges a primary duty of absolute fidelity to protect and promote the interests of the client or clients.

(2) The licensee's duty includes without limitation the obligation to:

(A) Use reasonable efforts to further the interest of the client;

(B) Exercise reasonable skill and care in representing the client and carrying out the responsibilities of the agency relationship;

(C) Perform the terms of the written agency agreement;

(D) Follow lawful instructions of the client unless doing so would expose the licensee to liability from another party to a contract, lease, or rental agreement;

(E) Perform all duties specified in this section in a manner that demonstrates loyalty to the interests of the client;

(F) Comply with all requirements of this section and other applicable statutes, rules, and regulations;

(G) Disclose to the client material facts of the transaction that the licensee is aware of or should be aware of in the exercise of reasonable skill and care and that are not confidential information under a current or prior agency or dual agency relationship;

(H) Advise the client to obtain expert advice concerning material matters when necessary or appropriate;

(I) Account in a timely manner for all moneys and property received in which the client has or may have an interest;

(J) Keep confidential all confidential information; and

(K) Refrain from disclosing confidential information to a licensee who is not an agent of the client.

(c) The duties required of a licensee under this section may not be waived by a client.

#### **17-42-317. Representing seller or lessor in an agency relationship.**

(a) When representing a seller or lessor in an agency relationship, a licensee shall:

(1) (A) Use reasonable efforts to obtain a purchase or lease offer at a price and with terms acceptable to the seller or lessor.

(B) Unless requested by the seller or lessor, the licensee is not obligated to seek additional offers if the property is subject to a contract of sale, lease, or letter of intent to lease;

(2) Accept delivery of and present an offer to the seller or lessor in a timely manner, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease;

(3) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:

(A) Answer the seller's or lessor's questions regarding the steps the seller or lessor must take to fulfill the terms of a contract; and

(B) Provide information to the seller or lessor regarding offers or counteroffers of which the licensee has actual knowledge; and

(4) Assist the seller or lessor in developing, communicating, and presenting offers or counteroffers.

(b) A licensee does not breach a duty or an obligation to a seller or lessor with whom the licensee has an agency relationship by showing alternative properties to a prospective buyer or by acting as an agent or subagent for other sellers or lessors.

(c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

#### **17-42-318. Representing buyer or lessee in an agency relationship.**

(a) When representing a buyer or lessee in an agency relationship, a licensee shall:

(1) (A) Use reasonable efforts to locate a property at a price and with purchase or lease terms

acceptable to the buyer or lessee.

(B) Unless requested by the client, the licensee is not obligated to seek additional purchase or lease possibilities if the buyer or lessee has contracted to purchase or lease or has extended a letter of intent to lease suitable property;

(2) Within the scope of knowledge required for licensure, but without violating the limits of the licensee's authority:

(A) Answer the buyer's or lessee's questions regarding the steps the buyer must take to fulfill the terms of any contract; and

(B) Provide information to the buyer or lessee regarding offers or counteroffers;

(3) Assist the buyer or lessee in developing, communicating, and presenting offers or counteroffers; and

(4) In a timely manner:

(A) Present an offer to purchase or lease to the seller or lessor or their agent, regardless of whether or not the property is subject to a contract of sale, lease, or letter of intent to lease; and

(B) Accept delivery of and present any counteroffers to the buyer or lessee.

(b) If a dual or multiple agency relationship is disclosed under § 17-42-108, a licensee does not breach a duty or an obligation to the buyer or lessee by:

(1) Showing property to other buyers or lessees; or

(2) Acting as an agent or subagent for other buyers or lessees or as an agent or subagent for sellers or lessors.

(c) This section does not permit a licensee to perform any act or service that constitutes the practice of law.

#### **17-42-319. Waiver of agency duties.**

(a) A licensee shall perform the duties required under § 17-42-317 or § 17-42-318 unless the client agrees to waive these duties and signs a waiver of duties statement that contains:

(1) A list of the fiduciary duties required of all licensees under § 17-42-316;

(2) A list of the duties contained in § 17-42-317 or § 17-42-318 set forth in a manner that allows for the parties to indicate each duty that is being waived; and

(3) The following language in at least 10-point boldface type:

#### **"Agreement to Waive**

By signing below, I agree that the real estate licensee who represents me will not perform the duties that are initialed above. I also understand that in a proposed real estate transaction, no other real estate licensee will perform the waived duties, and I realize that I may need to hire other professionals such as an attorney.

\_\_\_\_\_  
Signature of Client

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Licensee

\_\_\_\_\_  
Date"

(b) If a licensee enters into an agency relationship containing the waivers outlined in this section, all reasonable efforts must be taken to inform other licensees that:

(1) Any moneys of others, including without limitation earnest money, advance fees, or security deposits are not to be transmitted or kept by the licensee, notwithstanding other applicable statutes and rules; and

(2) A licensee for a buyer or lessee remains authorized to present offers to buy, lease, or rent real property directly to the licensee's principal notwithstanding a:

- (A) Waiver under subsection (a) of this section; or
- (B) Conflicting statute or rule.

## **SUBCHAPTER 4 – APPLICABILITY – REAL ESTATE RECOVERY FUND – DISCIPLINARY ACTIONS**

### **SECTION.**

- 17-42-401. Applicability
- 17-42-402. Construction
- 17-42-403. Creation – Administration.
- 17-42-404. Fees – Use of fund.
- 17-42-405. Additional fee.
- 17-42-406. Disciplinary hearing – Procedure.
- 17-42-407. Jurisdiction.
- 17-42-408. Appeal.
- 17-42-409. Subrogation – Suspension of license.
- 17-42-410. [Repealed.]

#### **17-42-401. Applicability.**

The provisions of this subchapter shall apply only to:

- (1) Licensees who were licensed at the time of the occurrence of the acts or violations complained of; and
- (2) Acts or violations which occur after December 31, 1979.

#### **17-42-402. Construction.**

Nothing in this subchapter shall be construed to limit or restrict in any manner other civil or criminal remedies which may be available to any person.

#### **17-42-403. Creation -- Administration.**

There is created and established the "Real Estate Recovery Fund", which shall be maintained and administered by the Arkansas Real Estate Commission as provided in this subchapter.

#### **17-42-404. Fees -- Use of fund.**

(a) The Arkansas Real Estate Commission shall set the fees at such amount as it deems necessary to initially establish the Real Estate Recovery Fund and to reestablish the fund at the beginning of each annual renewal period. However, the fees shall not exceed the limits set forth in § 17-42-405.

(b) The assets of the fund may be invested and reinvested as the commission may determine, with the advice of the State Board of Finance.

(c) Any amounts in the fund may be used by the commission for the following additional purposes:

(1) (A) To fund educational seminars and other forms of educational projects for the use and benefit generally of licensees.

(B) The production and distribution of informational literature of an educational nature shall



qualify as educational projects;

(2) To fund real estate chairs or courses at various state institutions of higher learning for the purpose of making such courses available to licensees and the general public;

(3) To fund research projects in the field of real estate; and

(4) To fund any and all other educational and research projects of a similar nature having to do with the advancement of the real estate field in Arkansas.

#### **17-42-405. Additional fee.**

(a) In addition to the other fees provided for in this chapter and regulations of the Arkansas Real Estate Commission, each licensed real estate broker and salesperson shall pay to the commission for the benefit of the Real Estate Recovery Fund a fee as the commission may require, not to exceed the lesser of:

(1) Twenty-five dollars (\$25.00) per annual renewal; or

(2) An amount sufficient to restore the fund balance to two hundred fifty thousand dollars (\$250,000).

(b) Likewise, each person who becomes a licensee for the first time shall at that time pay to the commission for the benefit of the fund such fee as the commission may require, not to exceed twenty-five dollars (\$25.00).

(c) No fees collected under the provisions of this subchapter may be expended from the fund except for the purposes set forth in this subchapter.

#### **17-42-406. Disciplinary hearing -- Procedure.**

(a) (1) In any disciplinary hearing before the Arkansas Real Estate Commission which involves any licensee who has allegedly violated any provision of this chapter or commission regulations, the commission shall first determine whether a violation has occurred.

(2) If so, the commission shall then determine the amount of damages, if any, suffered by the aggrieved party or parties. However, damages shall be limited to actual damages in accordance with § 17-42-407.

(3) The commission shall then direct the licensee to pay that amount to the aggrieved party or parties.

(4) If that amount has not been paid within thirty (30) days following entry of the commission's final order in the matter and the order has not been appealed to the circuit court, then the commission shall pay, upon request, from the Real Estate Recovery Fund to the aggrieved party or parties the amount specified. However, the commission shall not:

(A) Pay in excess of twenty-five thousand dollars (\$25,000) for any one (1) violation or continuing series of violations, regardless of the number of licensees who participated in such a violation or continuing series of violations; or

(B) Pay an amount in excess of the fund balance.

(b) The question of whether or not certain violations constitute a continuing series of violations shall be a matter solely within the discretion and judgment of the commission.

(c) Nothing within this subchapter shall obligate the fund for any amount in excess of a total of seventy-five thousand dollars (\$75,000) with respect to:

(1) The acts of any one (1) licensee; or

(2) Any group of related claims.

(d) Whether or not a claim is one (1) of a group of related claims shall be a matter solely within the discretion and judgment of the commission.

(e) When unsatisfied or pending claims are such that they exceed the limits payable under subsection (c) of this section, the commission shall be the sole determinant of how the available funds shall be allocated among such claims.

#### **17-42-407. Jurisdiction.**

(a) The Arkansas Real Estate Commission's jurisdiction and authority to award damages to an aggrieved party pursuant to § 17-42-406 is limited to actual, compensatory damages. The commission shall not award punitive or exemplary damages, nor shall it award interest on damages.

(b) Likewise, the appellate jurisdiction of the circuit court is limited to the awarding of actual, compensatory damages.

(c) The circuit court shall have no authority or jurisdiction to assess punitive or exemplary damages under this subchapter.

(d) The circuit court's jurisdiction over the Real Estate Recovery Fund shall be limited to appeals from the commission's orders.

(e) The circuit court shall have no jurisdiction or authority to order payments from the fund in any amount in excess of either:

- (1) The amount determined by the commission; or
- (2) The limits set forth in § 17-42-406.

#### **17-42-408. Appeal.**

(a) An appeal may be taken to the circuit court from a final order of the Arkansas Real Estate Commission in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) An appeal shall automatically stay that portion of the commission's order which directs the payment of damages, and neither the licensee nor the commission shall be obligated to pay the damages to the aggrieved party or parties until such time as the appeal is finally decided, whether in the circuit court or in the Supreme Court.

#### **17-42-409. Subrogation -- Suspension of license.**

Upon the payment by the Arkansas Real Estate Commission of any amount of money under the provisions of § 17-42-406:

(1) The recipients of the payment, to the extent of the payment, shall assign to the commission all rights and claims that they may have against the licensee involved;

(2) The commission shall be subrogated to all of the rights of the recipients of the payment, to the extent of the payment; and

(3) In addition to any other disciplinary action taken against the licensee on the merits of the hearing, his or her license shall be immediately suspended until he or she has completely reimbursed the commission for the payment, plus interest at a rate to be determined by the commission. The rate shall not exceed ten percent (10%) per annum.

#### **17-42-410. [Repealed.]**

### **SUBCHAPTER 5 – RENEWAL OF LICENSES**

#### **SECTION.**

17-42-501. Real estate education program.

17-42-502. Definitions.

17-42-503. Exemptions.

17-42-504. Requirements – Mandatory real estate education.

17-42-505. Civil penalties – Jurisdiction.

17-42-506. Powers and duties.

- 17-42-507. Disposition of funds.
- 17-42-508. Subpoenas and subpoenas duces tecum.
- 17-42-509. Issuance or denial of license.
- 17-42-510. Education fees.
- 17-42-511. License application procedure.
- 17-42-512. Term of license
- 17-42-513. Approval of courses and course content.
- 17-42-514. Curricula.
- 17-42-515. Violations.
- 17-42-516. Investigation of complaint – Penalties.
- 17-42-517. Dismissal of complaint – Appeal.
- 17-42-518. Hearings.

**17-42-501. Real estate education program.**

The Arkansas Real Estate Commission shall establish an education program for real estate licensees to ensure that education is available and accessible to an applicant or a licensee. The education program is intended to fulfill the education requirements for a real estate license and to provide real estate courses intended to fulfill the education requirements for a real estate license.

**17-42-502. Definitions.**

As used in this subchapter:

- (1) "Accredited college or university" means a state-supported institution of higher education or a nonpublic, not-for-profit college or university currently incorporated and recognized by the Arkansas Higher Education Coordinating Board as an Arkansas independent institution of higher education operating under the applicable laws of this state;
- (2) "Administrator" means a person employed by a real estate trade or professional association licensed by the Arkansas Real Estate Commission;
- (3) "Approved course" means a course of instruction approved by the commission that satisfies the education requirements for prelicense education, postlicense education, or continuing education for a real estate license;
- (4) "Associate instructor" means a person who is licensed by the commission to teach real estate courses while under the supervision of an administrator or principal instructor that satisfy the education requirements for a real estate license;
- (5) "Association license" means a license granted by the commission to a real estate trade or professional association offering approved education that satisfies education requirements for a real estate license;
- (6) "Branch school" means a school affiliated with a main school to which the commission has issued a school license;
- (7) "Classroom course" means a real estate course that:
  - (A) Is presented at a facility in person by an instructor and attended in person by the student; or
  - (B) Connects by contemporaneous, two-way audio and visual technology an instructor and a student who are separated by distance;
- (8) "Distance education" means a real estate course that is delivered through an electronic medium that allows the instructor and student to be separated by both distance and time;
- (9) "Guest speaker" means a person who is not licensed by the commission who teaches a part of a course approved by the commission;
- (10) "Instructional site" means a physical place where education courses approved by the commission are conducted apart from the main school or branch school;

(11) "Main school" means an institution or organization that is the primary school location to which the commission has issued a school license;

(12) "Nonqualified offering" means a course in real estate education that has not been approved by the commission but is offered to persons intending to apply for a real estate license;

(13) "Postlicense education" means real estate education required to be successfully completed within a time frame established by the commission after a real estate license is issued;

(14) "Prelicense education" means real estate education required to be successfully completed by an applicant before sitting for the examination for a broker or salesperson license;

(15) (A) "Principal instructor" means a person who is licensed by the commission for each licensed school that is responsible for the education courses at a main school and the acts necessary to comply with this subchapter and rules enacted by the commission.

(B) A principal instructor may:

(i) Contract with or employ an associate instructor or guest speaker;

(ii) Supervise an associate instructor or guest speaker;

(iii) Submit an education course to the commission for approval;

(iv) Advertise as being engaged in the business of offering real estate education courses; and

(v) Charge tuition and fees for real estate education courses;

(16) "Satisfactory completion" means, as determined by a principal instructor, successful completion of a required course that is approved by the commission;

(17) "School license" means a license granted by the commission to a proprietary education institution offering education courses approved by the commission that fulfill mandatory education requirements for attaining or maintaining a real estate license; and

(18) "Student" means an applicant or licensee who attends real estate education courses approved by the commission.

#### **17-42-503. Exemptions.**

(a) The licensing requirements of this subchapter do not apply to:

(1) The National Association of Realtors, the National Association of Real Estate Brokers, or other associated entities if each association identifies an administrator;

(2) An accredited college or university; or

(3) An instructor associated with an entity listed in subdivision (a)(1) or (a)(2) of this section if the course is developed by or for those specific entities.

(b) The requirement for course approval by the Arkansas Real Estate Commission under this subchapter does not apply to:

(1) A classroom course in a real estate-related subject identified by the commission as an approved topic if it is offered by the National Association of Realtors, the National Association of Real Estate Brokers, or other associated entities;

(2) A course of at least three (3) semester hours or equivalent in a real estate subject that is approved by the commission and offered by an accredited college or university;

(3) A course in a real estate-related subject offered by the commission;

(4) A course or a conference in a real estate-related subject approved by the commission and offered annually on a limited basis in Arkansas; or

(5) A course that is not used to fulfill the education requirements of this subchapter for attaining a real estate license.

#### **17-42-504. Requirements -- Mandatory real estate education.**

(a) A person shall not practice as a provider of real estate education for real estate licensure unless the person holds a real estate license under this subchapter.

(b) A person or school shall not represent that an offered real estate course satisfies the education

requirements for real estate licensure unless the course is approved by the Arkansas Real Estate Commission.

- (c) (1) It is a violation of this subchapter to fail to obtain:
  - (A) A license to practice as a provider of real estate education for real estate licensure; or
  - (B) Approval for a real estate education course by the commission.
- (2) A real estate education course offered in violation of this subchapter is a nonqualified offering.

#### **17-42-505. Civil penalties -- Jurisdiction.**

(a) If after notice and a hearing under this subchapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas Real Estate Commission finds that a person has offered a nonqualified offering, the commission may impose a civil penalty of no more than five thousand dollars (\$5,000) and assess costs against the person.

(b) The fact that a person offers to provide or provides a course offering without the appropriate license or course approval from the commission is prima facie evidence that the person is offering a nonqualified offering.

(c) In addition to civil penalties imposed under this section, the commission may require a person who offered a nonqualified offering to reimburse compensation, fees, or other remuneration collected for the nonqualified offering.

#### **17-42-506. Powers and duties.**

(a) The Arkansas Real Estate Commission may adopt rules as necessary to implement this subchapter.

(b) The commission shall license, approve, and regulate schools, associations, principal instructors, and associate instructors offering commission-approved prelicense, postlicense, and continuing education courses offered to satisfy education requirements for real estate licensure.

(c) The commission shall establish the licensing or education requirements for:

- (1) A school or association that applies for a license to offer real estate courses that satisfy the education requirements for real estate licensure;
- (2) Principal and associate instructors of courses approved by the commission;
- (3) Courses that satisfy the education requirements for applicants for real estate licensure and licensees; and
- (4) Guest speakers of courses approved by the commission.

(d) The commission shall:

- (1) Establish procedural guidelines for licensed schools and their locations and those providing real estate education designed for students to meet the education requirements for a real estate license;
- (2) Charge fees and pay the necessary expenses to develop, approve, sponsor, contract for, or conduct real estate courses and seminars for real estate licensees or instructors of real estate education;
- (3) Maintain in electronic format a list of the names of real estate schools, associations, administrators, instructors, and courses approved under this subchapter;
- (4) Publish in electronic format the names of the persons, associations, or schools that have been sanctioned by formal hearing or consent order under this subchapter;
- (5) Periodically monitor courses offered or taught by the licensed schools and instructors; and
- (6) Establish course requirements with respect to:
  - (A) Accessibility;
  - (B) Attendance;
  - (C) Satisfactory completion; and
  - (D) Curricula.

**17-42-507. Disposition of funds.**

Except as otherwise provided in this subchapter, the fees, charges, fines, and penalties collected by the Arkansas Real Estate Commission under this subchapter are to be deposited into the Arkansas Real Estate Commission Fund and spent under § 17-42-204.

**17-42-508. Subpoenas and subpoenas duces tecum.**

The Arkansas Real Estate Commission may issue subpoenas and subpoenas duces tecum with both its investigations and hearings of persons, entities, and courses under § 17-42-205.

**17-42-509. Issuance or denial of license.**

(a) The Arkansas Real Estate Commission shall issue a license to an applicant instructor of real estate education who:

- (1) Is twenty-one (21) years of age or older;
- (2) Has successfully completed the real estate education requirements under this subchapter;
- (3) Has sufficient experience as determined by the commission;
- (4) Has no record of unprofessional conduct; and
- (5) Shows evidence of a reputation of honesty, trustworthiness, and integrity sufficient to safeguard the interest of the public.

(b) The commission shall determine what constitutes proof of meeting the requirements of subsection (a) of this section.

(c) A person or entity shall not be issued a license under this subchapter if:

(1) The person or entity has had a real estate or other professional or occupational license suspended or revoked for disciplinary reasons;

(2) The person has been refused a renewal of a license issued by this state or any other jurisdiction;

(3) The person or entity has pleaded guilty or nolo contendere to or been found guilty of a felony or misdemeanor involving fraud, misrepresentation, or dishonest or dishonorable dealing in a court of competent jurisdiction; or

(4) The person or entity fails to pay the appropriate fees.

(d) (1) Subsection (c) of this section may be waived by the commission on request of an affected applicant for licensure.

(2) Circumstances for which a waiver may be granted include:

(A) The applicant's age at the time the action occurred;

(B) The circumstances surrounding the action;

(C) The length of time since the action;

(D) Work history;

(E) Employment references;

(F) Character references; and

(G) Other evidence demonstrating that the applicant does not pose a threat to the public.

**17-42-510. Education fees.**

(a) The Arkansas Real Estate Commission may charge and collect the following fees annually:

(1) An original license fee for each main school not to exceed five hundred dollars (\$500);

(2) An original license fee for each branch of a main school not to exceed three hundred dollars (\$300);

(3) A renewal fee for each main school not to exceed four hundred dollars (\$400);

(4) A renewal fee for each branch of a main school not to exceed two hundred dollars (\$200);

(5) An administrator license application fee not to exceed two hundred dollars (\$200);

- (6) An administrator renewal fee not to exceed one hundred dollars (\$100);
- (7) A principal instructor license application fee not to exceed two hundred fifty dollars (\$250);
- (8) A principal instructor license renewal fee not to exceed one hundred fifty dollars (\$150);
- (9) An associate instructor license application fee not to exceed two hundred dollars (\$200);
- (10) An associate instructor license renewal fee not to exceed one hundred dollars (\$100);
- (11) A license amendment fee not to exceed one hundred dollars (\$100);
- (12) A license reissuance fee not to exceed fifty dollars (\$50.00);
- (13) A course approval fee not to exceed one hundred dollars (\$100) for each approved course;
- (14) A course approval renewal fee not to exceed fifty dollars (\$50.00) for each approved course;
- (15) A late renewal fee for a license or course approval not to exceed two hundred fifty dollars (\$250);

and

(16) For an appeal of the dismissal of a complaint by the Executive Director of the Arkansas Real Estate Commission, a filing fee not to exceed one hundred dollars (\$100).

(b) Except for the fees for course approval and course approval renewal, state agencies and full-time accredited college or university instructors are exempt from the fees in this subchapter.

#### **17-42-511. License application procedure.**

(a) Applications for licensure are submitted on forms provided by the Arkansas Real Estate Commission.

(b) An applicant for licensure shall pay the fees required under this subchapter.

(c) An applicant for licensure or course approval shall furnish contact information on forms provided by the commission.

(d) (1) An applicant, administrator, or licensee is required to maintain current contact information with the commission.

(2) Contact information includes physical and mailing addresses, home and business telephone numbers, and home and business email.

#### **17-42-512. Term of license.**

(a) A license is issued for a term of one (1) year.

(b) (1) The Arkansas Real Estate Commission shall issue approval for renewal of a license in the absence of a reason or condition that may warrant the refusal of the renewal on receipt of a renewal request thirty (30) days before the expiration of the license.

(2) A late fee applies to applications received after the renewal deadline.

(c) (1) A licensee who has not applied for renewal or whose renewal application did not meet the requirements for renewal shall be notified by the commission.

(2) If a license is not renewed by the date of its expiration, an application submitted for renewal of the license is considered a new application for licensure.

#### **17-42-513. Approval of courses and course content.**

(a) Except for courses exempted in § 17-42-503(b), a real estate course that is intended to satisfy the education requirements for a real estate license shall first be approved by the Arkansas Real Estate Commission.

(b) An application for course approval shall be submitted on the form required by the commission with the required fees.

(c) Requirements for course approval are determined by the commission.

### **17-42-514. Curricula.**

- (a) The Arkansas Real Estate Commission may:
- (1) Require not less than six (6) or more than nine (9) classroom hours of continuing education for licensees;
  - (2) Identify subject matter topics for continuing education courses;
  - (3) Identify a specific topic of not more than three (3) classroom hours to be included in the annual continuing education requirement;
  - (4) Develop and require a specific curriculum for continuing education courses for licensed brokers or their designees; and
  - (5) Identify subject matter topics for which licensed schools and instructors may develop courses that fulfill the annual continuing education requirements.
- (b) The commission may develop the curricula for prelicense and postlicense education.

### **17-42-515. Violations.**

An applicant for a real estate educator license or a licensee is subject to disciplinary action under this subchapter if the applicant for a real estate educator license or a licensee pleads guilty or nolo contendere to or is found guilty of any of the following:

- (1) Obtaining a real estate educator license or real estate education course approval by fraud, misrepresentation, or concealment;
- (2) Violating this subchapter, the rules adopted by the Arkansas Real Estate Commission, or an order issued by the commission;
- (3) Committing an act, felony, or crime involving moral turpitude, fraud, dishonesty, untruthfulness, or untrustworthiness regardless of whether the imposition of the sentence has been deferred or suspended;
- (4) Engaging or allowing unlawful discriminatory practices;
- (5) Violating the requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., regarding access to and delivery of real estate education courses;
- (6) Issuing or reporting a false certificate of completion for a real estate education course;
- (7) Teaching a course in a way that instructs licensees to engage in unlawful or noncompliant activities;
- (8) Failing to monitor attendance of students to ensure satisfactory completion of real estate education courses approved by the commission;
- (9) Utilizing an instructor or guest speaker who does not meet the requirements of this subchapter;
- (10) Making a substantial misrepresentation of a material fact to the commission;
- (11) Advertising in a false, misleading, or deceptive way;
- (12) Being unworthy or incompetent to act or operate as a real estate education school or association or a real estate educator; or
- (13) Engaging in other conduct that constitutes improper, fraudulent, or dishonest dealing.

### **17-42-516. Investigation of complaint -- Penalties.**

- (a) (1) The Arkansas Real Estate Commission may on its own motion and shall on the complaint in writing of a person, if the complaint and evidence presented make a prima facie case, investigate the action of a person or entity engaged in the business or acting in the capacity of a real estate school, association, or instructor licensed by the commission.
- (2) A student's inability to pass the real estate exam does not in and of itself make a prima facie case.
  - (3) If the complaint fails to state a prima facie case or if the Executive Director of the Arkansas Real Estate Commission determines there is insufficient proof of a violation of this subchapter, the executive director shall dismiss the complaint.
  - (4) If the executive director determines that there is sufficient proof of a violation of this subchapter,



the person or entity responsible shall be notified of the charges and ordered to appear for a hearing.

(5) If the person or entity is found to have violated this subchapter, the commission may impose one (1) or more of the following sanctions:

(A) Suspend, revoke, or deny:

(i) The license of the person or entity; or

(ii) A course approval or the renewal of a course approval;

(B) Impose a penalty not to exceed one thousand dollars (\$1,000) for each violation;

(C) Require completion of appropriate education programs or courses;

(D) Place conditions or restrictions on the license or course approval held by the person or entity in violation or order the licensed entity or person to reimburse moneys collected from the complainant; or

(E) Impose other requirements or penalties as may be appropriate to the circumstances of the case that achieve the desired disciplinary purposes without impairing the public welfare and morals.

(b) The commission shall file suit in the circuit court of the county in which the defendant resides or does business to collect a penalty assessed under this subchapter if the penalty is not paid within the time prescribed by the commission.

(c) Under certain circumstances, the commission may suspend the imposition of any sanction.

(d) The license of an instructor, school, or association with outstanding disciplinary fines or student reimbursements is suspended until the moneys owed the commission or amounts ordered to be paid by the commission are paid.

#### **17-42-517. Dismissal of complaint -- Appeal.**

(a) A person whose complaint against a licensed school, administrator, or instructor is dismissed by the Executive Director of the Arkansas Real Estate Commission without a hearing may appeal the dismissal to the Arkansas Real Estate Commission subject to the following:

(1) The request for appeal is in writing and received by the commission within sixty (60) days following the date of dismissal by the executive director;

(2) The request for appeal is accompanied by a filing fee as the commission may require under this subchapter; and

(3) (A) (i) The appellant shall pay the cost of preparing the record for the commission's review.

(ii) The appellant shall pay the costs within thirty (30) days after notification of the amount or the appeal is dismissed.

(B) If the commission's review results in an order to hold a hearing, the filing fee and the cost of preparing the record are refunded to the appellant.

(C) A person who is indigent and cannot pay the filing fee or the cost of the record, or both, may file a pauper's oath in a form provided by the commission. If the commission determines that the appellant is indeed indigent, the filing fee or cost of the record may be waived.

(b) (1) An appeal perfected under subsection (a) of this section is presented to and decided by the commission on the written record.

(2) The decision by the commission may be to affirm the dismissal by the executive director, to order additional investigation, or to order a hearing.

#### **17-42-518. Hearings.**

(a) Proceedings under this subchapter are conducted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Except in the case of a person or entity obtaining a license or course approval by false or fraudulent representation, the Arkansas Real Estate Commission shall not investigate the actions of or conduct a disciplinary hearing regarding a licensed school, administrator, or instructor unless the complaint is filed or the investigation begins within three (3) years from the date of the actions.

## **SUBCHAPTER 6 – INTEREST ON TRUST ACCOUNTS PROGRAM**

### **SECTION.**

17-42-601. Establishment of program.

17-42-602. Notice.

17-42-603. Disposition of funds.

#### **17-42-601. Establishment of program.**

(a) The Arkansas Real Estate Commission is hereby authorized and empowered, subject to the following restrictions and limitations, to establish a program authorizing and permitting the collection of interest on real estate brokers' trust accounts and the disbursement of the interest by the depository institutions involved to an Arkansas nonprofit corporation for use for such tax-exempt purposes as are hereinafter set forth.

(b) Participation in the program shall be completely voluntary with each broker rather than mandatory.

#### **17-42-602. Notice.**

(a) All real estate brokers participating in the interest on real estate brokers' trust accounts program shall post a notice at least four inches by seven inches (4" x 7") stating that they participate in the interest on real estate brokers' trust accounts program.

(b) The notice shall be displayed prominently and shall contain information concerning the purposes for which the interest accumulating on the account shall be used, and shall state: "If funds belonging to you are deposited in this firm's trust account, any interest earned therefrom will be forwarded by the depository bank to a nonprofit organization which will dispense the funds to provide for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation selected by the Arkansas Real Estate Commission."

#### **17-42-603. Disposition of funds.**

(a) (1) The recipient of the funds generated by the interest on real estate brokers' trust account program shall be such Arkansas nonprofit corporation as the Arkansas Real Estate Commission shall designate.

(2) The corporation shall be governed by a board of directors consisting of not fewer than five (5) nor more than fifteen (15) members.

(3) At least sixty percent (60%) of the total number of directors shall be appointed by the commission and the remainder by the Arkansas Realtors Association.

(4) The corporation shall be tax exempt as defined by § 501(c)(3) of the Internal Revenue Code.

(b) The funds generated by the program shall be used for economic development, research, education, and such other public service purposes as may be determined by the recipient corporation specified in this section.

## SUBCHAPTER 7 – INTERFERENCE WITH REAL ESTATE LICENSEE RELATIONSHIPS

### SECTION.

17-42-701. Definitions.

17-42-702. Interference with licensee relationships prohibited.

#### **17-42-701. Definitions.**

As used in this subchapter:

(1) "Actual introduction" means the referral of a principal to a licensee by the person or entity seeking the referral fee before the principal and licensee have engaged in material discussions regarding a specific real estate transaction;

(2) (A) "Interference with a licensee relationship" means:

(i) A demand for a referral fee from a licensee when reasonable cause for payment does not exist;

(ii) A threat to reduce, withhold, or eliminate any relocation or other benefits or the actual reduction, withholding, or elimination of any relocation or other benefit for the purpose of obtaining a referral fee from a licensee when reasonable cause for payment does not exist; or

(iii) An attempt to induce a principal to breach or terminate a representation agreement for the purpose of replacing that agreement with another representation agreement in order to obtain a referral fee.

(B) "Interference with a licensee relationship" does not mean:

(i) Communications between an employer or an employer's representative and an employee concerning relocation policies and benefits if the communication does not involve advice about or encouragement to terminate or amend an existing representation agreement; and

(ii) Advice to a principal about the right to allow a licensee relationship to expire under its own terms or not to renew the licensee relationship upon its expiration;

(3) "Licensee relationship" means an agreement between a licensee and a principal under which the licensee agrees to act as a principal broker as defined in § 17-42-103;

(4) "Principal" means the buyer, seller, landlord, or tenant in a licensee relationship;

(5) "Reasonable cause for payment" means the creation of a cooperative or subagency relationship between licensees or a representation agreement as the result of an actual introduction of business;

(6) (A) "Referral fee" means any mutually agreed-upon fee, commission, or other consideration to be paid by a licensee to any person or entity.

(B) "Referral fee" does not mean a cooperative commission offered by a listing licensee to a selling licensee or by a selling licensee to a listing licensee; and

(7) (A) "Representation agreement" means an agreement between a principal and a licensee in which the licensee agrees to perform any of the activities of a principal broker.

(B) "Representation agreement" includes:

(i) A buyer's agency agreement, a property listing agreement, and a cooperative brokerage agreement; and

(ii) Any agreement containing any of the agreements described in subdivision (7)(B)(i) of this section.

#### **17-42-702. Interference with licensee relationships prohibited.**

(a) No person shall knowingly interfere with a licensee relationship between a licensee and a person or entity.

(b) No licensee shall be liable for a referral fee when reasonable cause for payment does not exist.

(c) (1) Any person or entity aggrieved by a violation of this subchapter may bring a civil action in any court of competent jurisdiction.

(2) The damages recoverable in an action under subdivision (c)(1) of this section shall be:

(A) The actual damages; and

(B) Reasonable attorney's fees and expenses.

(d) Nothing in this subchapter is intended to:

(1) Create a presumption that if reasonable cause for payment of a referral fee exists, a legal right to the referral fee exists; or

(2) Authorize the payment of a referral fee that is otherwise prohibited by law or regulation of the Arkansas Real Estate Commission.

**TABLE OF CONTENTS**  
**TITLE 18 – CHAPTER 14**  
**ARKANSAS TIME SHARE ACT**

<b>Subchapter 1 – General Provisions.</b>	Page
18-14-101. Title.	35
18-14-102. Definitions.	35
18-14-103. Applicability.	37
18-14-104. Legal status of time-share estates.	37
18-14-105. Regulatory discrimination prohibited.	37
<b>Subchapter 2 – Administration and Registration</b>	
18-14-201. Powers and duties of the Arkansas Real Estate Commission.	38
18-14-202. Registration required.	39
18-14-203. Abbreviated registration – Exemptions.	40
18-14-204. Application for registration.	41
18-14-205. Material changes.	41
18-14-206. Effectiveness of registration or amendment.	41
18-14-207. Regulation and use of public offering statement.	42
<b>Subchapter 3 – Creation, Termination, and Management</b>	
18-14-301. Time-share plans permitted.	42
18-14-302. Contents of instruments establishing time-share estates.	42
18-14-303. Provisions for management and operation of time-share estate plans.	43
18-14-304. Developer control period.	44
18-14-305. Instruments establishing time-share uses.	44
18-14-306. Provisions for management and operation of time-share use plans.	44
18-14-307. Partition of accommodations.	45
18-14-308. Records.	45
18-14-309. Supervisory authority.	45
18-14-310. Out-of-state time-share plan.	46
<b>Subchapter 4 – Protection of Purchasers</b>	
18-14-401. Penalties.	46
18-14-402. Civil remedies.	46
18-14-403. Statute of limitations.	46
18-14-404. Required contents of public offering statements for time-share interests.	47
18-14-405. Material changes.	49
18-14-406. Other statutes not applicable.	49
18-14-407. Escrow accounts – Other financial assurances.	49
18-14-408. Guarantees for completion of time-share properties.	50
18-14-409. Mutual rights of cancellation.	51
18-14-410. Liens.	51
18-14-411. Financial records – Examination.	51

<b>Subchapter 5 – Advertising</b>	
18-14-501. Filing of advertising materials.	52
18-14-502. False advertising declared unlawful.	52
18-14-503. Prohibited advertising.	52
18-14-504. Unfair acts or practices.	53
18-14-505. Enforcement.	53
<b>Subchapter 6 – Financing</b>	
18-14-601. Financing of time-share plans.	54
18-14-602. Protection of purchasers from subsequent underlying lien.	54
<b>Subchapter 7 – Camping Sites</b>	
18-14-701. Definition.	54
18-14-702. Camping site – Buyer’s right to cancel.	54
18-14-703. Seller to provide notice of cancellation – Form.	55

TITLE 18

CHAPTER 14

ARKANSAS TIME-SHARE ACT

SUBCHAPTER.

1. GENERAL PROVISIONS
2. ADMINISTRATION AND REGISTRATION
3. CREATION, TERMINATION, AND MANAGEMENT
4. PROTECTION OF PURCHASERS
5. ADVERTISING
6. FINANCING
7. CAMPING SITES

**SUBCHAPTER 1 – GENERAL PROVISIONS**

SECTION.

- 18-14-101. Title.
- 18-14-102. Definitions.
- 18-14-103. Applicability.
- 18-14-104. Legal status of time-share estates.
- 18-14-105. Regulatory discrimination prohibited.

**18-14-101. Title.**

This chapter shall be known and may be cited as the "Arkansas Time-Share Act".

**18-14-102. Definitions.**

As used in this chapter:

- (1) "Accommodation" means an apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure that:
  - (A) Is affixed to real property;
  - (B) Is designed for occupancy or use by one (1) or more individuals; and
  - (C) Is part of a time-share plan;
- (2) "Acquisition agent" means a person that by telephone, inducement, solicitation, or otherwise in the ordinary course of business directly tries to encourage a person in this state to attend a sales presentation for a time-share plan;
- (3) "Amenities" means a recreational facility made available to purchasers in a time-share plan;
- (4) "Association" means a council or an association composed of the owners of time-share interests in a time-share plan;
- (5) (A) "Broker" means a person that sells or offers to sell in the ordinary course of business, time-share interests in a time-share plan to a purchaser.
  - (B) A broker and a sales agent conducting business from a location in this state, whether on a temporary or ongoing basis, are subject to the Real Estate Law, § 17-42-101 et seq.

(C) A violation that results from a time-share activity is not subject to the Real Estate Law, § 17-42-401 et seq.;

(6) (A) "Component site" means a specific geographic location where accommodations that are part of a multisite time-share plan are located.

(B) Separate phases of a single time-share property in a specific geographic location under common management are considered a single component site;

(7) (A) "Developer" means:

(i) A person who establishes a time-share plan, or is in the business of selling time-share interests or that uses a broker to sell time-share interests; or

(ii) A person that succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer, if the person:

(a) Offers at least twelve (12) time-share interests in a particular time-share plan; and

(b) Is in the business of selling time-share interests or uses a broker to sell time-share interests.

(B) "Developer" does not include a broker who is in the business of selling time-share interests;

(8) "Exchange agent" means a person that owns or operates an exchange program;

(9) "Exchange program" means a method, arrangement, or procedure for the voluntary exchange of time-share interests among time-share owners;

(10) "Managing agent" means a person responsible for operating and maintaining a time-share property or time-share plan on behalf of the association;

(11) (A) "Offering" means an offer to sell, a solicitation, an inducement, or an advertisement made in this state, whether directly or indirectly or by radio, television, newspaper, magazine, mail, or electronic media, in which a person is given an opportunity or encouraged to acquire a time-share interest.

(B) "Offering" does not include a time-share owner that may refer a person to a developer if the time-share owner's activities are limited to the referral of a prospective purchaser to the developer, the time-share owner receives nominal consideration, and does not refer more than twenty (20) prospective purchasers to the developer annually;

(12) "Person" means one (1) or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof;

(13) "Project instrument" means a time-share instrument or other applicable document that establishes a time-share plan that contains restrictions or covenants to regulate the use, occupancy, or disposition of a time-share plan, including a declaration, rule, or an amendment thereto, of a condominium, and the articles of incorporation, bylaws, rules of an association, or an amendment thereto;

(14) "Public offering statement" means the statement under § 18-14-404;

(15) "Purchaser" means a person other than a developer or lender who acquires an interest in a time-share plan;

(16) (A) "Reservation system" means the method, arrangement, or procedure where a purchaser is required to compete with other purchasers to reserve an accommodation of a multisite time-share plan for one (1) or more time-share periods regardless of whether the reservation system is operated and maintained by the multisite time-share plan, a managing entity, an exchange company, or other person.

(B) If a purchaser is required to use an exchange program as the principal means of reserving an accommodation and facility of the plan, the arrangement is a reservation system.

(C) If the exchange company uses a mechanism to exchange time-share periods among members of the exchange program, the use of the mechanism is not a reservation system in a multistate time-share plan;

(17) (A) "Time-share estate" means an arrangement by which the purchaser receives a right to occupy a time-share property, together with a real estate interest in the time-share property.

(B) "Time-share estate" includes real property interests held in a trust in which the owners or the owners' association of the time-share plan are the express beneficiaries of that trust and the trustee is independent of the developer.

(C) If the real property interests are held in a trust, the conveyance of the real property to the trust shall be free of financial liens and encumbrances or include a recorded nondisturbance agreement;



(18) "Time-share instrument" means a master deed, master lease, declaration, or other instrument used to establish a time-share plan;

(19) "Time-share interest" means a time-share estate or a time-share use;

(20) (A) "Time-share plan" means an arrangement, plan, scheme, or similar method, excluding an exchange program but including a membership agreement, sale, lease, deed, license, or right-to-use agreement, in which a purchaser, in exchange for consideration, receives an ownership right in or the right to use the accommodations for a period of time less than a year during a given year, but not necessarily consecutive years, regardless of whether the period of time is determined in advance.

(B) A time-share plan may be either a:

(i) "Single site time-share plan" which is the right to use an accommodation at a single time-share property; or

(ii) "Multisite time-share plan" which includes:

(a) A "specific time-share interest" which is the right to use an accommodation at a specific time-share property, together with the use rights in accommodations at one (1) or more other component sites established by or acquired through the reservation system of the time-share plan; or

(b) A "nonspecific time-share interest" which is the right to use accommodations at more than one (1) component site established by or acquired through the reservation system of the time-share plan but does not include the specific right to use any particular accommodations;

(21) "Time-share property" means:

(A) One (1) or more accommodations and related amenities that are subject to a time-share instrument; and

(B) Any other property or property rights appurtenant to the accommodations and amenities; and

(22) "Time-share use" means any arrangement under which the purchaser receives a right to occupy a time-share property but does not receive a time-share estate.

### **18-14-103. Applicability.**

(a) This chapter applies to a time-share plan established after February 25, 1983, under § 18-14-201 et seq., § 18-14-401 et seq., and § 18-14-501 et seq.

(b) This chapter does not apply to the offer or sale of a time-share interest if the use extends over a period of three (3) years or less, whether or not the accommodation is located in this state.

### **18-14-104. Legal status of time-share estates.**

(a) (1) A time-share estate is an estate in real property and has the character and incidents of an estate in fee simple at common law, including an estate for years with a remainder over in fee simple or an estate for years with no remainder if a leasehold.

(2) This section supersedes any contrary rule at common law.

(b) A document transferring or encumbering a time-share estate in real property shall not be rejected for recordation because of the nature or duration of that estate or interest.

(c) For purposes of title, a time-share estate constitutes a separate estate or interest in property, except for real property tax purposes.

### **18-14-105. Regulatory discrimination prohibited.**

A zoning, subdivision, or other ordinance or regulation shall not discriminate against the establishment of time-share interests or impose a requirement upon a time-share plan that it would not impose upon a similar development under a different form of ownership.

## SUBCHAPTER 2 – ADMINISTRATION AND REGISTRATION

### SECTION.

- 18-14-201. Powers and duties of the Arkansas Real Estate Commission.
- 18-14-202. Registration required.
- 18-14-203. Abbreviated registration – Exemptions.
- 18-14-204. Application for registration.
- 18-14-205. Material changes.
- 18-14-206. Effectiveness of registration or amendment.
- 18-14-207. Regulation and use of public offering statement.

### **18-14-201. Powers and duties of the Arkansas Real Estate Commission.**

- (a) The Arkansas Real Estate Commission may:
  - (1) Set fees;
  - (2) Adopt, amend, and repeal rules;
  - (3) Issue orders consistent with this chapter;
  - (4) Prescribe forms and procedures for submitting information to the commission;
  - (5) Accept grants-in-aid from any governmental source;
  - (6) Contract with agencies charged with similar functions in this or other jurisdictions;
  - (7) Cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices;
  - (8) Develop information that may be useful in the discharge of the duties of the commission;
  - (9) Initiate private investigations within or without this state;
  - (10) After notice and a hearing under this chapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq.:
    - (A) Issue a notice of suspension;
    - (B) Impose a civil penalty of no more than five thousand dollars (\$5,000) per occurrence; and
    - (C) Assess costs against the person if:
      - (i) A representation in any document or information filed with the commission is false or misleading;
      - (ii) A developer or agent of a developer has engaged or is engaging in any unlawful act or practice;
      - (iii) A developer or agent of a developer has distributed, caused to be distributed, or is distributing, orally or in writing, false or misleading promotional materials concerning a time-share plan;
      - (iv) A developer or agent of a developer has concealed, diverted, or disposed of any funds or assets of a person in a way that impairs rights of purchasers of time-share interests in the time-share plan;
      - (v) A developer or agent of a developer has failed to perform a stipulation or agreement made to induce the commission to issue an order relating to that time-share plan; or
      - (vi) A developer or agent of a developer has otherwise violated this chapter or the rules or orders of the commission;
  - (11) Issue a cease and desist order if the developer has not registered the time-share plan under this chapter; and
  - (12) After notice and hearing, issue an order revoking the registration of a time-share plan upon a determination that a developer or agent of a developer has failed to comply with a notice of suspension issued by the commission, which order affects the time-share plan.
- (b) In addition to the civil penalties under subdivision (a)(10) of this section, the commission may require the person found to have violated this chapter or the rules or orders of the commission to reimburse any compensation, fees, or other remuneration collected during the activity that resulted in the violation.

## 18-14-202. Registration required.

(a) (1) (A) A developer shall not offer or dispose of a time-share interest unless the time-share plan is registered with the Arkansas Real Estate Commission.

(B) However, a developer may accept a reservation together with a deposit if the deposit is:

- (i) Placed in an escrow account with an institution having trust powers; and
- (ii) Refundable to the purchaser at any time.

(2) A reservation requires a subsequent affirmative act by the purchaser via a separate instrument to establish a binding obligation.

(3) A developer shall not dispose of or transfer a time-share interest while an order revoking or suspending the registration of the time-share plan is in effect.

(b) (1) An acquisition agent shall register the time-share plan for which it is providing prospective purchasers with the commission unless there is an effective registration of the plan filed with the commission by the developer.

(2) An acquisition agent if other than the developer shall furnish to the commission:

- (A) Its principal office address and telephone number;
- (B) The name of its designated responsible managing employee; and

(C) Any additional information the commission requires including evidence that a bond in an amount determined by the commission but not to exceed twenty-five thousand dollars (\$25,000) has been placed with a surety company, corporate bond acceptable to the commission, or a cash bond with the commission to cover a violation of any solicitation ordinances, zoning ordinances, building codes, or other regulations governing the use of the premises in which the time-share plan is promoted.

(3) Each acquisition agent shall renew the registration annually and pay a filing fee not to exceed one hundred fifty dollars (\$150) for the registration and each renewal of the registration.

(c) (1) A real estate principal broker shall register with the commission the time-share plan that it is selling unless there is an effective registration of the plan filed with the commission by the developer.

(2) The real estate principal broker if other than the developer shall furnish to the commission:

- (A) Its principal office address and telephone number;
- (B) The name of its designated responsible managing employee;
- (C) Any special escrow accounts set up for the deposit and collection of purchasers' funds; and
- (D) Any additional information the commission requires, including evidence that a bond in an amount determined by the commission but not to exceed twenty-five thousand dollars (\$25,000) has been placed with a surety company, corporate bond acceptable to the commission, or a cash bond with the commission to cover any defalcations of the real estate principal broker and any of its sales agents.

(3) Each real estate principal broker shall renew its registration annually and pay a filing fee not to exceed one hundred fifty dollars (\$150) for the registration and each renewal of the registration.

(d) (1) A managing agent shall register with the commission the time-share plan that it is managing unless there is an effective registration of the plan filed with the commission by the developer.

(2) The managing agent shall furnish to the commission:

- (A) Its principal office address and telephone number;
- (B) The name of its designated responsible managing employee; and
- (C) Any additional information the commission requires, including evidence that a bond in an amount determined by the commission but not to exceed twenty-five thousand dollars (\$25,000) has been placed with a surety company, corporate bond acceptable to the commission, or a cash bond with the commission to cover any default of the managing agent of his or her duties and responsibilities.

(3) Each managing agent shall renew the registration annually and pay a filing fee not to exceed one hundred fifty dollars (\$150) for the registration and each renewal of the registration.

(e) (1) If the acquisition agent, real estate principal broker, or management agent is under the control of, a subsidiary of, or affiliate of the developer, the bond of the broker or agent whether one (1) or more, can be consolidated and reduced to an amount determined by the commission but not to exceed seventy-five thousand dollars (\$75,000) if there is a disclosure of the affiliation to the commission.

(2) If the developer registers an additional time-share plan, including additional phases, in the existing time-share plan with the commission, the developer is not required to furnish an additional bond or increase the existing bond for the additional registration if the initial bond remains in effect.

(f) (1) An exchange agent shall file a statement with the commission containing:

(A) A list of the time-share plans or properties that it is offering exchange services for;

(B) Its principal office address and telephone number; and

(C) The name of its designated responsible managing employee or its contact person.

(2) Each exchange agent shall renew his or her registration annually and pay a filing fee not to exceed one hundred fifty dollars (\$150) for the registration and each renewal thereof of the registration.

(g) The acquisition agent and real estate principal broker shall each maintain their respective records of any employees or independent contractors employed by them, their addresses, and the commissions paid for the immediately preceding two (2) calendar years.

(h) Any interest earned on a bond or a bond substitute, whether cash, certificate of deposit, bank account, security, or other instrument, while on deposit with or for the benefit of the commission becomes the separate property of the commission and is deposited into the Real Estate Recovery Fund in § 17-42-403.

(i) A filing fee may be discounted for an applicant that submits the required filings using the Association of Real Estate License Law Officials' web-based document management program.

### **18-14-203. Abbreviated registration -- Exemptions.**

(a) An abbreviated registration with the Arkansas Real Estate Commission may be accepted if the developer is registered and has issued a public offering statement or similar disclosure document that is provided to purchasers under any of the following:

(1) Securities Act of 1933, 15 U.S.C. § 77a et seq.;

(2) Arkansas Securities Act, § 23-42-101 et seq.;

(3) Federal Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 et seq., if the time-share plan is made a part of the subdivision that is being registered; and

(4) Any federal or state act that requires a federal or state agency to review a public offering statement or similar disclosure document that must be distributed to purchasers if the commission determines that the federal or state public offering statement is substantially equivalent to that required by this chapter.

(b) Annually or when a public offering statement is amended, the public offering statement shall be submitted to the commission for recertification.

(c) An applicant filing an abbreviated registration shall pay:

(1) A filing fee not to exceed five hundred dollars (\$500);

(2) Any necessary investigation expenses as stated in § 18-14-204(d); and

(3) A fee not to exceed three hundred dollars (\$300) for each request for recertification under subsection (b) of this section.

(d) A registration with the commission is not required in the case of:

(1) A transfer of a time-share interest by any time-share interest owner other than the developer or its agent unless the transfer is made to evade this chapter;

(2) Any disposition under a court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A developer's offer of additional time-share interests in a time-share plan located outside this state to owners that have previously purchased from the developer or a developer under common ownership or control with the developer, if the developer has had a registration or amendment approved by the commission within the preceding seven (7) years;

(6) A gratuitous transfer of a time-share interest;

(7) A time-share property that consists of a single accommodation and related amenities for which the developer or a person under the control of, a subsidiary of, or affiliate of the developer operates as the

acquisition agent, broker, or exchange agent; or

(8) A disposition of a time-share interest owned by an owners' association of which the time-share interest is a part.

**18-14-204. Application for registration.**

(a) An application for registration of a time-share plan shall contain:

(1) The public offering statement;

(2) A brief description of the time-share property;

(3) Copies of time-share instruments;

(4) Financial statements prepared according to generally accepted accounting principles and fully and fairly disclosing the current financial condition of the developer;

(5) Any other documents referred to in the registration application; and

(6) Other information as required by the Arkansas Real Estate Commission.

(b) (1) If the accommodation in the time-share plan is in a condominium development or other common-interest subdivision, the application for registration shall contain evidence that the use of the accommodation for time-share purposes is not prohibited by the project instruments.

(2) If the project instruments do not expressly authorize time-sharing, the application for registration shall contain evidence that purchasers in the condominium development or other common-interest subdivision were given written notice at least sixty (60) days before the application for registration was submitted that the accommodation would be used for time-share purposes.

(3) If the project instruments contain a prohibition against time-sharing, the board of directors of the association shall certify that the amendment procedures in the project instruments were followed and that the project instruments have been amended to permit time-sharing.

(c) The application shall be accompanied by a filing fee not to exceed one thousand dollars (\$1,000).

(d) (1) The commission shall thoroughly investigate matters relating to the application and may require a personal inspection of the time-share property by a person designated by it.

(2) All direct expenses incurred by the commission in inspecting the time-share property are paid by the applicant, and the commission may require a deposit sufficient to cover the direct expenses before incurring them.

(e) An application for registration shall be renewed, annually, and the renewal filing fee shall not exceed five hundred dollars (\$500).

**18-14-205. Material changes.**

(a) A developer shall amend or supplement its registration to report a material change in the information required by § 18-14-204.

(b) (1) If there is a material change in a registration document, the developer shall file an amendment with the Arkansas Real Estate Commission to report the material change no later than forty-five (45) days after the developer knows or reasonably should have known of the change.

(2) The developer may continue to offer and dispose of time-share interests under the existing registration pending review of the amendments by the commission if the developer discloses the material change to prospective purchasers.

(3) The commission may charge a fee not to exceed three hundred dollars (\$300) to process an amendment.

**18-14-206. Effectiveness of registration or amendment.**

(a) (1) Except as otherwise provided, the effective date of the registration or any amendment is forty-five (45) days after its filing or such earlier date as the Arkansas Real Estate Commission may determine, having regard for the public interest and the protection of purchasers.

(2) If an amendment to a registration is filed before the effective date, the registration is considered to have been filed when the amendment was filed.

(b) (1) If it appears to the commission that the application for registration or an amendment to the registration is on its face incomplete or inaccurate in any material respect, the commission shall so advise the developer by listing each deficiency in writing before the date the registration would otherwise be effective.

(2) The notification of the deficiency serves to suspend the effective date of the filing until ten (10) days after the developer files the additional information as required by the commission.

(3) (A) Any developer, upon receipt of the notice of deficiencies, may request a hearing.

(B) The hearing shall be held within thirty (30) days of receipt of the request.

### **18-14-207. Regulation and use of public offering statement.**

(a) (1) The Arkansas Real Estate Commission may require a developer to alter or supplement the form or substance of a public offering statement to assure adequate and accurate disclosure to prospective purchasers.

(2) The commission may require that certain disclosures contained in the public offering statement be in boldface type to protect the purchaser.

(b) (1) The public offering statement shall not be used for promotional purposes before registration and may be used afterwards only in its entirety.

(2) A person shall not advertise that the commission has approved or recommended the time-share plan, the disclosure statement, or any of the documents contained in the application for registration.

## **SUBCHAPTER 3 – CREATION, TERMINATION, AND MANAGEMENT**

### **SECTION.**

18-14-301. Time-share plans permitted.

18-14-302. Contents of instruments establishing time-share estates.

18-14-303. Provisions for management and operation of time-share estate plans.

18-14-304. Developer control period.

18-14-305. Instruments establishing time-share uses.

18-14-306. Provisions for management and operation of time-share use plans.

18-14-307. Partition of accommodations.

18-14-308. Records.

18-14-309. Supervisory authority.

18-14-310. Out-of-state time-share plan.

### **18-14-301. Time-share plans permitted.**

A time-share plan may be established in any accommodation unless expressly prohibited by the project instruments.

### **18-14-302. Contents of instruments establishing time-share estates.**

A project and time-share instrument that establishes a time-share estate located or offered in this state shall contain:

(1) The name of the county in which the property is situated;

(2) The legal description, street address, or other description sufficient to identify the property;

- (3) Identification of time periods by letter, name, number, or combination thereof;
- (4) Identification of time-share estates and, when applicable, the method by which additional time-share estates may be established;
- (5) The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share estate and, when applicable, to each accommodation in a project that is not subject to the time-share plan;
- (6) Restrictions on the use, occupancy, alteration, or alienation of time-share interests;
- (7) The ownership interest, if any, in personal property and for care and replacement;
- (8) Any other matters the developer considers appropriate; and
- (9) (A) Provisions concerning the establishment of a lien against an owner's time-share interest in favor of the association of time-share estate owners to secure payment of common expenses.  
 (B) This lien when provided for in the time-share instrument is enforceable and foreclosable in the way other statutory liens are enforceable and foreclosable under the laws of this state.

**18-14-303. Provisions for management and operation of time-share estate plans.**

The time-share instruments for a time-share estate plan offered in this state shall prescribe reasonable arrangements for management and operation of the time-share plan or time-share property and for the maintenance, repair, and furnishing of accommodations including:

- (1) Establishment of an association of time-share estate owners;
- (2) Adoption of bylaws for organizing and operating the association;
- (3) Payment of costs and expenses of operating the time-share plan or time-share property and owning and maintaining the accommodations;
- (4) Employment and termination of employment of the managing agent for the association;
- (5) Preparation and dissemination to owners of information concerning the time-share plan or property, including:
  - (A) An annual budget;
  - (B) Operating statements; and
  - (C) Other financial information;
- (6) Procedures for establishing the rights of owners for the use of accommodations by prearrangement or under a first-reserved, first-served system;
- (7) Adoption of standards and rules of conduct for the use and occupancy of accommodations by owners;
- (8) Collection of assessments from owners to defray the expenses of management of the time-share plan or time-share property and maintenance of the accommodation and amenities of the time-share plan or time-share property;
- (9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of the accommodations by owners, their guests, and other users;
- (10) Methods for providing compensating use periods or monetary compensation to an owner if an accommodation cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation; and
- (11) (A) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share plan for failure of the owner to comply with the time-share instruments or the rules of the association concerning the use of the accommodations and amenities.  
 (B) Under these procedures an owner shall be given notice and the opportunity to refute or explain the charges against him or her in person or in writing to the governing body of the association before a decision to impose discipline is rendered.  
 (C) A monetary penalty may be secured by the lien in § 18-14-302.

#### **18-14-304. Developer control period.**

(a) The time-share instruments for a time-share estate plan may provide for a length of time, known as the "developer control period", during which the developer, or a managing agent selected by the developer, may manage the time-share plan and the accommodations in the time-share plan.

(b) If the time-share instruments for a time-share estate plan provide for the establishment of a developer control period, the procedure shall ordinarily include:

(1) Termination of the developer control period by action of the association or by operation of the time-share instruments;

(2) Termination of contracts for goods and services for the time-share plan or for accommodations in the time-share plan during the developer control period; and

(3) A regular accounting by the developer to the association concerning matters that significantly affect the interests of owners in the time-share plan.

#### **18-14-305. Instruments establishing time-share uses.**

A project instrument or time-share instrument that establishes time-share uses containing accommodations located or offered in this state shall contain:

(1) Identification by name of the time-share plan and street address where the time-share plan is situated;

(2) Identification of the time periods, type of accommodations, the accommodations that are in the time-share plan and the length of time that the accommodations are committed to the time-share plan;

(3) In case of a time-share plan, identification of which accommodations are in the time-share plan and the method for adding, deleting, or substituting other accommodations; and

(4) Any other matters that the developer considers appropriate.

#### **18-14-306. Provisions for management and operation of time-share use plans.**

The time-share instruments for a time-share use plan containing accommodations offered in this state shall prescribe reasonable arrangements for the management and operation of the time-share plan and for the maintenance, repair, and furnishing of accommodations including:

(1) Standards and procedures for upkeep, repair, and interior furnishing of accommodations and for maid, cleaning, linen, and similar services to the accommodations during use periods;

(2) Adoption of standards and rules of conduct governing the use and occupancy of accommodations by owners;

(3) Payment of the costs and expenses of operating the time-share plan and owning and maintaining the accommodations;

(4) Selection of a managing agent;

(5) Preparation and dissemination to owners of an annual budget, operating statements, and other financial information concerning the time-share plan or time-share property;

(6) Procedures for establishing the rights of owners to the use of accommodations by prearrangement or under a first-reserved, first-served priority system;

(7) Organization of a management advisory board consisting of time-share use owners, including an enumeration of rights and responsibilities of the board;

(8) Procedures for imposing and collecting assessments or use fees from time-share use owners as necessary to defray costs of management of the time-share plan and providing materials and services to the accommodations;

(9) Comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use of accommodations by time-share use owners, their guests, and other users;



(10) Methods for providing compensating use periods or monetary compensation to an owner if an accommodation cannot be made available for the period to which the owner is entitled by schedule or by a confirmed reservation; and

(11) (A) Procedures for imposing a monetary penalty or suspension of an owner's rights and privileges in the time-share plan for failure of the owner to comply with the time-share instruments or the rules established by the developer concerning the use of the accommodations.

(B) The owner shall be given notice and the opportunity to refute or explain the charges, in person or in writing, to the management advisory board before a decision to impose discipline is rendered.

#### **18-14-307. Partition of accommodations.**

An action for partition of an accommodation shall not be maintained unless permitted by the time-share instrument.

#### **18-14-308. Records.**

(a) The association or managing agent shall maintain among its records a list of the names and post office addresses of the owners of time-share interests in the time-share plan.

(b) The list shall:

(1) Be updated every six (6) months; and

(2) Not be published or provided to owners or a third person to use or sell the list for commercial purposes.

(c) (1) If an owner of a time-share interest in the time-share plan provides a written request to the association to communicate with its membership, the association shall determine within thirty (30) days of the date of the request whether the communication advances legitimate association business and if so, provide a method to grant the request without disclosing the association membership list to the requesting owner.

(2) (A) The association shall notify the requesting owner of the costs to make the communication before the communication is made to the owners.

(B) The requesting owner shall pay the costs to the association before the association makes the communication.

(3) An alternative method that accomplishes the original purpose of the request made under subdivision (c)(1) of this section is a reasonable alternative.

(4) (A) If the association determines that a communication does not advance legitimate association business, the association shall notify the requesting owner in writing within thirty (30) days of the reasons for the rejection.

(B) An owner that is denied a request for information under subdivision (c)(4)(A) of this section may appeal the denial to the court in whose jurisdiction the association lies.

(C) If the court determines that the communication does advance legitimate association business, the court may order the association to pay the requesting owner's costs, including attorney's fees reasonably incurred to enforce the requesting owner's rights.

#### **18-14-309. Supervisory authority.**

(a) Notwithstanding the obligations imposed on other persons by this chapter, the developer shall supervise, manage, and control the aspects of the offering of a time-share plan, including the promotion, advertising, contracting, and closing.

(b) A violation of this section during the offering is a violation by the developer and the person that committed the violation.

**18-14-310. Out-of-state time-share plan.**

(a) A single site time-share plan and component sites of a multisite time-share plan that are located outside the state are to be established and governed by the applicable laws of the state in which the time-share property or component site is located.

(b) If there is a conflict between the affirmative standards stated in the laws of the state or jurisdiction that governs an out-of-state time-share plan and this subchapter, the law of the state or jurisdiction in which the time-share property is located controls.

(c) If the association and the time-share instruments provide for the matters contained in §§ 18-14-302 -- 18-14-306, as applicable, the developer or association is considered to be in compliance with these sections and is not required to revise the time-share instruments to comply with this subchapter.

**SUBCHAPTER 4 – PROTECTION OF PURCHASERS**

**SECTION.**

18-14-401. Penalties.

18-14-402. Civil remedies.

18-14-403. Statute of limitations.

18-14-404. Required contents of public offering statements for time-share interests.

18-14-405. Material changes.

18-14-406. Other statutes not applicable.

18-14-407. Escrow accounts – Other financial assurances.

18-14-408. Guarantees for completion of time-share properties.

18-14-409. Mutual rights of cancellation.

18-14-410. Financial records – Examination.

**18-14-401. Penalties.**

A developer or any other person subject to this chapter that offers or disposes of a time-share interest without complying with this chapter or that violates this chapter is guilty of a misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000) per occurrence or by imprisonment not to exceed one (1) year, or both.

**18-14-402. Civil remedies.**

(a) (1) If a developer or any other person subject to this chapter violates this chapter or a project instrument, a person or class of persons adversely affected by the violation has a claim for appropriate relief.

(2) Punitive damages or attorney's fees, or both, may be awarded for willful violation of this chapter.

(b) Section 17-42-401 et seq. does not apply to any claims arising from or damages caused by a violation of this chapter, the Real Estate License Law, § 17-42-101 et seq., or rules by a licensee while engaged in a time-share activity.

**18-14-403. Statute of limitations.**

(a) A judicial proceeding in which the accuracy of the public offering statement or validity of a contract of purchase is in issue and a rescission of the contract or damages is sought shall be commenced not later than four (4) years after the date of the contract of purchase, notwithstanding that the purchaser's

terms of payment may extend beyond the period of limitation.

(b) If the enforcement of provisions in the contract of purchase requires the continued furnishing of services and the reciprocal payments to be made by the purchaser, the period of bringing a judicial proceeding will continue for a period of four (4) years for each breach, but the parties may agree to reduce the period of limitation to not less than two (2) years.

#### **18-14-404. Required contents of public offering statements for time-share interests.**

(a) A public offering statement shall be provided to each purchaser of a time-share interest and may be delivered by hard copy or electronically, including a CD, DVD, thumb drive, or other electronic media agreeable to the purchaser. The public offering statement shall fully and accurately disclose:

- (1) The name of the developer, its principal address, and the time-share plan offered in the statement;
  - (2) A general description of the accommodations, including, without limitation, the developer's schedule of commencement and completion of all buildings, accommodations, and amenities or, if completed, that the buildings, accommodations, and amenities have been completed;
  - (3) As to the accommodations offered by the developer in the time-share plan:
    - (A) The types and number of accommodations by location, if applicable;
    - (B) Identification of accommodations that are subject to time-share interests; and
    - (C) The estimated number of accommodations that may become subject to time-share interests;
  - (4) A brief description of the time-share plan;
  - (5) (A) If applicable, the current budget and a projected budget for the time-share interests for one (1) year after the date of the first transfer to a purchaser.
    - (B) The budget shall include, without limitation:
      - (i) A statement of the amount included in the budget as a reserve for repairs and replacement;
      - (ii) The projected common expense liability, if any, by category or expenditures for the time-share interests;
      - (iii) The total annual projected common expense liability for all time-share interests in the time-share plan; and
      - (iv) A statement of any services not shown in the budget that the developer provides or expenses that it pays;
  - (6) Any initial or special fee due from the purchaser at closing with a description of the purpose and method of calculating the fee;
  - (7) A description of any liens, defects, or encumbrances on or affecting the title to any of the time-share interests;
  - (8) A description of any financing offered by the developer;
  - (9) A statement that within five (5) days after execution of a contract of purchase a purchaser may cancel any contract for purchase of time-share interests from the developer;
  - (10) A statement of any pending suits material to the time-share interests of which the developer has actual knowledge;
  - (11) Any restraints on alienation of any number or part of any of the time-share interests;
  - (12) A description of the insurance coverage that is for the benefit of the owners of time-share interests;
  - (13) Any current or expected fees or charges to be paid by time-share interest owners for the use of any facilities related to any of the time-share property;
  - (14) The extent to which financial arrangements have been provided for completion of the promised improvements; and
  - (15) The extent to which a time-share accommodation may become subject to a tax or other lien arising out of claims against other owners of the accommodation.
- (b) (1) If a purchaser is offered the opportunity to subscribe to any program that provides exchanges of time-shares among purchasers in either the same time-sharing plan or other time-sharing plans, or both, the developer shall deliver to the purchaser before the execution of a contract between the purchaser and

the company offering the exchange program, written information concerning the exchange program, which information may be delivered by hard copy or electronically.

(2) The purchaser shall certify in writing to the receipt of the information that includes:

(A) The name and address of the exchange program;

(B) The names of the officers and directors;

(C) Whether the exchange program, or any of its officers or directors, has a legal or beneficial interest in any developer or managing agent for a time-share plan participating in the exchange program and, if so, the name and location of the time-share plan and the nature of the interest;

(D) Unless otherwise stated, a statement that the purchaser's contract with the exchange program is a contract separate and distinct from the purchaser's contract with the developer;

(E) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the time-share project with the exchange program;

(F) Whether the purchaser's membership or participation, or both, in the exchange program is voluntary or mandatory;

(G) A complete and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes may be made;

(H) A complete and accurate description of the procedure to qualify for and carry out exchanges;

(I) A complete and accurate description of the limitations, restrictions, or priorities used in the operation of the exchange program, including limitations on exchanges based on seasonality, accommodation size, or levels of occupancy that are expressed in bold-faced type and if limitations, restrictions, or priorities are not uniformly applied by the exchange program, a clear description of the way in which they are applied;

(J) Whether exchanges are arranged on a space-available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange program;

(K) Whether and under what circumstances, a purchaser, in dealing with the exchange program, may lose the use and occupancy of his or her time-share in any exchange properly applied for without his or her being provided with substitute accommodations by the exchange program;

(L) The fees or range of fees for participation by purchasers in the exchange program, a statement whether such fees may be altered by the exchange company, and the circumstances under which alterations may be made;

(M) The name and address of the site of each accommodation or facility included in the time-share properties that are participating in the exchange program as of the last annual review or audit;

(N) The number of time-share accommodations in each time-share property that are available for occupancy, under the last annual review or audit, and that qualify for participation in the exchange program, expressed in numerical groupings: 1-5, 6-10, 11-20, 21-50, and 51 and over;

(O) The number of purchasers enrolled for each time-share plan participating in the exchange program, under the last annual review or audit, expressed in numerical groupings: 1-100, 101-249, 250-499, 500-999, and 1,000 and over, and a statement of the criteria used to determine those purchasers that are enrolled with the exchange program;

(P) The disposition made by the exchange company of time-shares deposited with the exchange program by purchasers enrolled in the exchange program and not used by the exchange company in making changes;

(Q) The information required in this subdivision (b)(2)(Q) shall be independently reviewed or audited by a certified public accountant or accounting firm according to the standards of the Financial Accounting Standards Board and annually reported:

(i) The number of purchasers currently enrolled in the exchange program;

(ii) The number of accommodations and facilities that have current written affiliation agreements with the exchange program;

(iii) The percentage of confirmed exchanges that are the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for;

(iv) The number of time-share periods for which the exchange program has an outstanding obligation to provide an exchange to a purchaser who relinquished a time-share during the year in exchange for a time-share in any future year; and

(v) The number of exchanges confirmed by the exchange program during the year; and

(R) (i) A statement in boldface type to the effect that the percentage described in subdivision (b)(2)(Q)(iii) of this section is a summary of the exchange requests entered with the exchange program in the period reported.

(ii) The percentage does not indicate a purchaser's probabilities of being confirmed to a specific choice or range of choices, since availability at individual locations may vary.

(c) Each exchange company offering an exchange program to purchasers in this state shall include the statement in subdivision (b)(2)(R) of this section on all promotional brochures, pamphlets, advertisements, or other materials distributed by the exchange company that contains the percentage in subdivision (b)(2)(Q)(iii) of this section.

(d) (1) A developer may satisfy the requirements of this section by delivery to purchasers of materials furnished to the developer by the exchange program if the exchange program has certified to the developer that the materials satisfy the requirements of this section.

(2) A developer has no liability to a person if the materials furnished by the exchange program fail to comply with this section.

#### **18-14-405. Material changes.**

(a) The developer shall amend or supplement the public offering statement to report any material change in the information required by § 18-14-404.

(b) The developer shall use the written materials that are supplied to it by an exchange program for distribution to the time-share interest owners as the materials are received.

#### **18-14-406. Other statutes not applicable.**

(a) A time-share plan in which a public offering statement is prepared under this chapter does not require registration under any of the following:

(1) Arkansas Securities Act, § 23-42-101 et seq.; or

(2) Any other Arkansas statute that requires a public offering statement or substantially similar document for distribution to purchasers.

(b) (1) A time-share plan that fails to restrict the price at which an owner may sell or exchange his or her time-share interest does not by that failure cause the time-share interest to become a security under the Arkansas Securities Act, § 23-42-101 et seq.

(2) An exchange agent offering a time-share interest for exchange is not considered to be offering a security under the Arkansas Securities Act, § 23-42-101 et seq.

#### **18-14-407. Escrow accounts -- Other financial assurances.**

(a) Any deposit made with the purchase or reservation of a time-share interest from a developer shall be placed in a noninterest-bearing escrow account and held in this state, or other jurisdiction that is acceptable to the Arkansas Real Estate Commission, in a designated account by an independent bonded escrow company or in an institution whose accounts are insured by a governmental agency or instrumentality until:

(1) Delivered to the developer at the end of the time for rescission or a later time specified in a contract

or sale;

(2) Delivered to the developer because of the purchaser's default under a contract to purchase the time-share interest; or

(3) Refunded to the purchaser.

(b) (1) In lieu of any escrows required by this section, the commission has the discretion to accept other financial assurances, including a surety bond, or a cash deposit in an amount equal to the escrow requirements of this section.

(2) Interest earned on a surety bond or other deposit while deposited with, or for the benefit of, the commission becomes the property of the commission and is deposited into the Real Estate Recovery Fund in § 17-42-403.

#### **18-14-408. Guarantees for completion of time-share properties.**

(a) (1) If a developer contracts to sell a time-share interest and the construction, furnishings, and landscaping of the time-share property have not been substantially completed according to the representations made by the developer in the disclosures under this chapter, the developer shall pay into an escrow account established and held in this state, in an account designated solely for the purpose, by an independent bonded escrow company, or in an institution whose accounts are insured by a governmental agency or instrumentality, a payment received by the developer from the purchaser towards the sale price until the time-share property is substantially complete.

(2) The escrow agent may invest the escrow funds in securities for the United States, any agency thereof, or in savings or time deposits in institutions insured by an agency of the United States.

(3) Funds are released from escrow as follows:

(A) If a purchaser properly terminates the contract under its terms or this chapter, the funds shall be paid to the purchaser, together with any interest earned;

(B) If the purchaser defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer, together with any interest earned; or

(C) If the funds of a purchaser have not been previously disbursed under subdivision (a)(1) of this section, they may be disbursed to the developer by the escrow agent upon substantial completion of the time-share property.

(4) (A) The developer is not required to comply with subdivision (a)(1) of this section if the commission is satisfied that all of the following conditions are met:

(i) The developer is an Arkansas corporation or a foreign corporation qualified to do business in Arkansas;

(ii) The corporation has been in existence and operated in this state for at least three (3) years; and

(iii) The corporation has net assets within this state of at least three (3) times the cost to complete the time-share property.

(B) The commission may require other assurances as may reasonably be required either to assure completion of the time-share property or to reimburse the purchaser the funds paid to the developer, together with any interest earned.

(5) (A) In lieu of the escrow required by subdivision (a)(1) of this section, the commission may accept other financial assurances, including a performance bond equal to the cost to finish the time-share property.

(B) Interest earned on the performance bond under subdivision (a)(5)(A) of this section, deposit, or other instrument while deposited with or for the benefit of the commission shall become the separate property of the commission and be deposited into the Real Estate Recovery Fund under § 17-42-403.

(b) For the purpose of this section, "substantially completed" means that the amenities, furnishings, appliances, and structural components and mechanical systems of buildings on the real property dedicated to the time-share plan and subject to the project instruments are completed and provided as represented in the public offering statement, that the premises are ready for occupancy, and that the proper governmental authority has issued a certificate of occupancy or its equivalent.

**18-14-409. Mutual rights of cancellation.**

(a) (1) Before transfer of a time-share interest and no later than the date of the sales contract, the developer shall provide the intended purchaser with a copy of the public offering statement and any amendments and supplements to the statement.

(2) The contract is voidable by the purchaser until he or she has received the public offering statement.

(3) The contract is voidable by the purchaser for five (5) days after execution of the contract of sale.

(4) Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded within a reasonable time after receipt of the notice of cancellation under subsection (c) of this section.

(b) Up to five (5) days after execution of the contract of sale, the developer may cancel the contract of purchase without penalty to either party and shall return all payments made within a reasonable time.

(c) If either party elects to cancel a contract under subsection (a) or subsection (b) of this section, he or she may do so by hand-delivering the notice to the other party or by mailing the notice by regular mail to the other party or to his or her agent for service of process, which notice is considered given when deposited in the mail.

**18-14-410. Liens.**

(a) (1) Before a transfer of a time-share interest, the developer shall record or furnish to the purchaser releases of all liens affecting that time-share interest or shall provide a surety bond or other insurance against the lien from a company acceptable to the Arkansas Real Estate Commission; or

(2) An underlying lien shall contain a provision in which the lienholder subordinates its rights to that of a time-share purchaser who fully complies with the contract of sale.

(b) (1) If a lien other than a mortgage or deed of trust becomes effective against more than one (1) time-share interest in a time-share property, a time-share interest owner may get a release of his or her time-share interest from the lien upon payment of the amount of the lien attributable to his or her time-share interest unless a time-share interest owner or his or her predecessor in title agrees otherwise with the lienor.

(2) The payment shall be proportionate to the ratio that the time-share interest owner's liability bears to the liabilities of all time-share interest owners whose interests are subject to the lien.

(3) Upon receipt of payment, the lienholder shall promptly deliver to the time-share interest owner a release of the lien covering that time-share interest.

(4) After payment, the managing entity shall not assess or have a lien against that time-share interest for any part of the expenses incurred with that lien.

**18-14-411. Financial records -- Examination.**

(a) The person or entity responsible for making or collecting common expense assessments or maintenance assessments shall keep detailed financial records.

(b) All financial and other records shall be made reasonably available for examination by any time-share interest owner and his or her authorized agents.

## **SUBCHAPTER 5 – ADVERTISING**

### **SECTION.**

18-14-501. Filing of advertising materials.

18-14-502. False advertising declared unlawful.

18-14-503. Prohibited advertising.

18-14-504. Unfair acts or practices.

18-14-505. Enforcement.

### **18-14-501. Filing of advertising materials.**

(a) All advertising materials proposed for use or used in this state by a person with the offer or sale of a time-share property are subject to the review of the Arkansas Real Estate Commission upon its request.

(b) Advertising materials include:

(1) Promotional brochures, pamphlets, advertisements, or other materials to be distributed to the public concerning the sale of time-shares;

(2) Transcripts of all radio and television advertisements;

(3) Offers of travel, accommodations, meals, or entertainment at no cost or reduced cost;

(4) Direct mail solicitation;

(5) Advertising, including testimonials or endorsements;

(6) Scripts or standardized narrative for use in making telephone solicitations; and

(7) Websites or other electronic media.

### **18-14-502. False advertising declared unlawful.**

(a) It is unlawful for a person with intent, directly or indirectly, to offer for sale or sell time-shares in this state or to authorize, use, direct, or aid in the publication, distribution, or circulation of an advertisement, radio broadcast, telecast, or other electronic media concerning the time-share plan in which the time-share properties are offered that contains a statement, pictorial representation, or sketch that is false or misleading.

(b) This section does not hold the publisher or employee of a newspaper, a job printer, a broadcaster or telecaster, or a magazine publisher, or an employee thereof, liable for the publication referred to in this section unless the publisher, employee, or printer has actual knowledge of its falsity or has an interest as an owner or agent in the time-share plan advertised.

### **18-14-503. Prohibited advertising.**

An advertisement for the offer or sale of time-shares shall not:

(1) Contain a representation concerning the availability of a resale program or rental program offered by or on behalf of the developer or its affiliate unless the resale program or rental program has been made a part of the offering and submitted to the Arkansas Real Estate Commission;

(2) Contain an offer or inducement to purchase that limits the quantity or time of availability, unless the numerical quantity or time applicable to the offer or inducement is clearly and conspicuously disclosed;

(3) Contain a statement concerning the investment merit or profit potential of the time-share, unless the commission has determined that the representation is neither false nor misleading;

(4) Make a prediction of or imply specific or immediate increases in the price or value of the time-share property, nor shall a price increase of a time-share property be promoted unless the developer has authorized and announced the price increase;



(5) Contain statements concerning the availability of time-share interests at a particular minimum price if the number of time-share interests available at that price comprises less than ten percent (10%) of the unsold inventory of the developer, unless the number of time-share interests then for sale at the minimum price is stated in the advertisement;

(6) Contain a statement that the time-share interest being offered for sale can be further divided, unless a full disclosure is included concerning the legal requirements for further division of the time-share interest;

(7) Contain an asterisk or other reference symbol as a means of contradicting or changing the ordinary meaning of a previously made statement in the advertisement;

(8) Misrepresent the size, nature, extent, qualities, or characteristics of the accommodations or facilities that comprise the time-share plan;

(9) Misrepresent the nature or extent of a service incident to the time-share project;

(10) Misrepresent or imply that a facility or service is available for the exclusive use of purchasers or owners if a public right of access or of use of the facility or service exists;

(11) Make a misleading or deceptive representation concerning the contents of the time-share permit, the purchase contract, the purchaser's rights, privileges, benefits, or obligations under the purchase contract or this chapter;

(12) Misrepresent the conditions under which a purchaser or owner may participate in an exchange program; or

(13) Describe a proposed or unfinished private facility over which the developer has no control, unless the estimated date of completion is stated and evidence has been presented to the commission that the completion and operation of the facilities are reasonably assured within the time represented in the advertisement.

#### **18-14-504. Unfair acts or practices.**

(a) It is unlawful for a person to offer by mail, telephone, electronic media, or in person a prize or gift, with the intent to offer a sales presentation for a time-share plan, without also disclosing in a clear and unequivocal way that there will be a sales presentation when making the offer of the prize or gift.

(b) The following unfair acts or practices undertaken by, or omissions of, a person in the operation of a prize or gift promotional offer for a time-share plan are prohibited:

(1) Failing to clearly and conspicuously disclose the rules, terms, and conditions of the promotional program, a description of the prizes offered, if any, and the date that the prize or gift offer will terminate or expire;

(2) (A) Failing to disclose the retail value of the gift or prize and the odds of winning.

(B) The person making the offer shall maintain a sufficient inventory of the gift or prize to be able to equal the reasonable response to the offer;

(3) Failing to obtain the express written or oral consent of individuals before their names are used for a promotional purpose with a mailing to a third person;

(4) (A) Failing to award and distribute at least one (1) of each prize or gift of the value and type represented in the promotional program by the day and year specified in the promotion.

(B) If a promotion promises the award of a prescribed number of each prize, this number of prizes shall be awarded by the date and year specified in the promotion; or

(5) Misrepresenting in any way the odds of receiving a prize or gifts or the rules, terms, or conditions of participation in the promotional program.

#### **18-14-505. Enforcement.**

If the Arkansas Real Estate Commission determines that a person is violating or failing to comply with the requirements of this subchapter, the commission may order the person to cease and desist from the violations and may take enforcement action under § 18-14-201 et seq.

## **SUBCHAPTER 6 – FINANCING**

### **SECTION.**

18-14-601. Financing of time-share plans.

18-14-602. Protection of purchasers from subsequent underlying lien.

#### **18-14-601. Financing of time-share plans.**

(a) In the financing of a time-share plan, the developer and its successors in interest shall retain financial records of the schedule of payments required to be made and the payments made to a person or entity that is the lienholder of an underlying blanket mortgage, deed of trust, contract of sale, or other lien or encumbrance.

(b) Any transfer of the developer's interest in the time-share plan to a third person is subject to the obligations of the developer to the extent the obligations were originally established in written documents recorded in the real estate records and not existing solely from the offering of materials or filings with a governmental authority.

#### **18-14-602. Protection of purchasers from subsequent underlying lien.**

The developer whose project is subjected to an underlying blanket lien or encumbrance subsequent to the transfer of a time-share interest shall protect nondefaulting purchasers from foreclosure by:

(1) Obtaining from the lienholder a nondisturbance clause, subordination agreement, or partial release of the lien for those time-share interests sold; or

(2) Providing a surety bond or insurance against the lien from a company acceptable to the Arkansas Real Estate Commission.

## **SUBCHAPTER 7 – CAMPING SITES**

### **SECTION.**

18-14-701. Definition.

18-14-702. Camping site – Buyer's right to cancel.

18-14-703. Seller to provide notice of cancellation – Form.

#### **18-14-701. Definition.**

As used in this subchapter, "time-share plan" shall have the same meaning as used in § 18-14-102.

#### **18-14-702. Camping site -- Buyer's right to cancel.**

(a) In addition to any other right to revoke an offer, the buyer has the absolute right to cancel a contract or offer for the purchase of a camping site under a time-share plan until midnight of the fifth calendar day after the day that the buyer signs an agreement, excluding Sundays and the holidays under § 1-5-101.

(b) Cancellation occurs if the buyer returns to the seller the notice of cancellation provided by the seller.

(c) The notice of cancellation may be sent by registered mail.

**18-14-703. Seller to provide notice of cancellation -- Form.**

(a) The seller of a camping site under a time-share plan shall furnish to the buyer at the time the buyer signs the sales contract or otherwise agrees to buy the camping site a complete form in duplicate captioned "NOTICE OF CANCELLATION", which is attached to the contract or receipt, is easily detachable, and contains in 10-point bold-face type, the following information and statements:

“NOTICE OF CANCELLATION .....

Enter date of transaction

You are entitled to cancel the agreement or offer at any time before midnight of the fifth day, excluding Sundays and holidays, after the day you signed the agreement or offer. If you cancel, the seller must return to you (1) any payments made; (2) any goods or other property (or a sum equal to the amount of the trade-in allowance given therefore); and (3) any note or other evidence of indebtedness, given by you to the seller under or with the agreement or offer.

**TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR**

**ANY OTHER WRITTEN NOTICE TO .....**

(Name of seller)

.....

(Address of seller's place of business)

**NOT LATER THAN MIDNIGHT OF .....**

(Date)

**I HEREBY CANCEL THIS TRANSACTION .....**

(Date)

.....

(Buyer's signature)".

(b) If seller fails to give both oral and written notice of the buyer's right to cancellation, the cooling-off period does not begin to run until actual notice is given.



# ARKANSAS REAL ESTATE COMMISSION

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## REAL ESTATE REGULATIONS TIME-SHARE REGULATIONS AND FEDERAL FAIR HOUSING SUMMARY

JANUARY 2017

## TABLE OF CONTENTS

### REGULATIONS

	<u>Page</u>
<b>Section 1. Commission Meetings; Appearances; Subpoenas.</b>	
1.1 Meetings of Commission.	6
1.2 Place of regular meetings.	6
1.3 Appearance before Commission.	6
1.4 Director to prepare agenda.	6
1.5 Director to fix salaries.	6
1.6 Subpoenas.	6
<b>Section 2. Director Duties, Authority and Responsibility.</b>	
2.1 Director duties, authority and responsibility.	7
<b>Section 3. Fees; Bad Checks; Refunds.</b>	
3.1 Fees.	7
3.2 Dishonored checks.	8
3.3 Overpayment of fees.	8
<b>Section 4. Application and Examination; Education and Experience Requirements.</b>	
4.1 Applications; education; experience.	8
4.2 Examinations; passing scores; reexaminations.	11
4.3 Examinations; application procedure; time requirements.	12
4.4 No duplication of credit for educational courses.	13
<b>Section 5. Nonresident Licensure.</b>	
5.1 Application.	13
5.2 List of approved jurisdictions.	13
5.3 No hearing on denial.	13
5.4 Written agreements with other jurisdictions.	13
<b>Section 6. Renewal; Inactive Status; Expired Licenses.</b>	
6.1 Renewal applications.	14
6.2 Inactive status renewal.	14
6.3 Expired licenses.	15

## **Section 7. Firm Name; Offices; Signs; Transfers; Change of Address.**

7.1 Firm name approval.	15
7.2 Temporary license.	15
7.3 Place of business; sign.	16
7.4 Branch office.	16
7.5 Termination or transfer.	17
7.6 Change of address; lost license or pocket card.	17
7.7 Death of principal broker; closing of business.	18

## **Section 8. Agency Disclosure.**

8.1 Seller or lessor agents.	18
8.2 Buyer or lessee agents.	18
8.3 Dual agency.	19
8.4 Failure to disclose agency relationship.	19
8.5 Fidelity and honest dealing.	19

## **Section 9. Complaints; Investigations; Hearings.**

9.1 Complaints.	19
9.2 Answers.	20
9.3 Investigation.	20
9.4 Disposition of complaints; appeals from dismissal.	20
9.5 Hearings.	21
9.6 Hearing procedure.	21
9.7 Service.	22
9.8 Attorneys.	22
9.9 Alternate Disciplinary Procedures	22

## **Section 10. Broker Responsibilities; Ethical Requirements; Trust Funds and Accounts; Listing and Offer and Acceptance Agreements; Criminal Convictions.**

10.1 Dealing independently of principal broker.	22
10.2 Expiration date for listing contract.	23
10.3 Membership in trade organization.	23
10.4 Broker responsibilities; executive brokers; part-time brokers.	23
10.5 Advertising.	24
10.6 Knowledge of property.	24
10.7 Handling of funds; maintenance of records.	24
10.8 Trust funds; trust accounts.	25
10.9 Disbursement of trust funds.	27
10.10 Agreements to be written.	27
10.11 Self dealing.	27
10.12 Offers and acceptances.	28
10.13 Listing agreements; signs.	28
10.14 Reporting violations.	28

10.15	Broker's Price Opinion.	29
10.16	Criminal convictions and disciplinary actions.	30
10.17	Violation of law or regulation.	30
10.18	Property management definitions.	30
10.19	Property management agreement.	31
10.20	Tenant agreement.	31
10.21	Property management accounting and recordkeeping.	32
10.22	Property management owner ledgers.	32
10.23	Property management tenant ledgers.	33
10.24	Property management cash receipts.	33

### **Section 11. Continuing Education.**

11.1	Request for waiver or extension.	34
11.2	Renewal of expired license.	34
11.3	Approved courses and instructors.	34
11.4	No duplication of pre-licensing and continuing education credit.	34
11.5	Post-license education requirement.	35

### **Section 12. Interest on Trust Accounts.**

12.1	Interest on trust account program.	35
12.2	Certain interest bearing trust accounts approved.	35

### **Section 13. Time-Share.**

13.1	Registration; renewal: fees	36
13.2	Agents; amendment of registration.	36
13.3	Fictitious name.	36
13.4	Purchase contract; cancellation notice; form, time, procedure.	37
13.5	Record maintenance.	38
13.6	Records; developer and agent; type, time.	38
13.7	Advertising materials.	38
13.8	Financial statements.	38
13.9	Promotional programs; prizes, odds.	39
13.10	"Reasonable Time" defined.	39
13.11	Limitations.	39
13.12	Reservation; deposit refundable.	40
13.13	General regulations apply.	40
13.14	"No Action" letter.	40
13.15	Effective date.	40

### **Section 14. Effective Date; Partial Repealer.**

14.1	Effective date.	40
14.2	Partial repealer.	40

## **Section 15. Real Estate Auction Definitions and Requirements.**

15.1	Definitions.	41
15.2	Nature of auction.	41
15.3	Auctioneer/Seller bidding or purchasing auctioned property.	42
15.4	Auction Advertisements.	43
15.5	Internet auction sale procedure and absentee bids.	43
15.6	Auctioneer to maintain records.	43
15.7	Certain acts prohibited.	43
15.8	Unlicensed real estate activity.	44

## **Section 16. Real Estate Education.**

16.1	Instructor application; education; experience.	44
16.2	School application; association application.	45
16.3	Course approval requirements.	46
16.4	Renewals.	46
16.5	Monitoring.	47
16.6	Third party sponsors.	47
16.7	Distance education.	48
16.8	Course requirements.	48
16.9	Felony reporting requirements.	49
16.10	Maintenance of records; school or association closing.	49



## **SECTION 1. COMMISSION MEETINGS; APPEARANCES; SUBPOENAS.**

### **1.1 Meetings of Commission.**

(a) Regular meetings of the Arkansas Real Estate Commission shall generally be held on the Monday immediately preceding the second Tuesday of each month, and will continue in session until its business is completed insofar as is possible; provided, however, that any regular meeting of the Commission may be set forward, postponed, canceled or adjourned to another day.

(b) Special meetings of the Commission may be called at any time by a majority of the Commission.

### **1.2 Place of regular meetings.**

All regular meetings of the Arkansas Real Estate Commission shall be held in the Commission's offices unless otherwise specified.

### **1.3 Appearance before Commission.**

Any person desiring to appear before the Commission at any of its regular meetings to take up any business within the jurisdiction of the Commission shall, at least fifteen (15) days prior to such meeting, file with the director a written request therefore, in which the nature and purpose of the appearance shall be clearly and concisely stated with sufficient details to fully apprise the Commission of the basis and extent of such business. Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

### **1.4 Director to prepare agenda.**

The director shall arrange the order of business of all meetings of the Commission and shall, at least ten (10) days prior thereto, notify all persons who are to appear before any such meeting the place and approximate time he or she is to appear before the Commission.

### **1.5 Director to fix salaries.**

The director shall fix the salaries of all employees of the Commission within budgetary limitations.

### **1.6 Subpoenas.**

(a) Requests for subpoenas shall be in writing. The person requesting the subpoena has the burden of obtaining and serving the subpoena.

(b) Service of subpoenas issued by the Commission shall be as provided by Rule 45(c) of the Arkansas Rules of Civil Procedure as that rule now exists or as it may be amended from time to time.

(c) The fees and mileage of officers serving subpoenas and of witnesses subpoenaed shall be as provided by Rule 45(d) of the Arkansas Rules of Civil Procedure.

## **SECTION 2. DIRECTOR DUTIES, AUTHORITY AND RESPONSIBILITY.**

### **2.1 Director duties, authority and responsibility.**

(a) The director is the chief executive and administrative officer of the Commission, and, as such, is authorized to do all things necessary and convenient to carry into effect the Arkansas Real Estate License Law and Arkansas Time-Share Law and the regulations promulgated thereunder, subject to the general supervision of the Commission.

(b) All duties, authority and powers given the Commission by law, except rulemaking and adjudicative powers, are hereby delegated to the director, or the director's designee, who shall utilize and perform such duties, powers and authority under the general supervision of the Commission.

## **SECTION 3. FEES; BAD CHECKS; REFUNDS.**

### **3.1 Fees.**

(a) The following fees are established at the amounts indicated:

- (1) Application fee - \$50.00
- (2) Original broker license fee - \$70.00
- (3) Annual renewal broker license fee - \$80.00
- (4) Original salesperson license fee - \$50.00
- (5) Annual renewal salesperson license fee - \$60.00
- (6) Broker expired license fee - \$110.00
- (7) Salesperson expired license fee - \$80.00
- (8) License reissuance fee - \$30.00
- (9) Initial duplicate license fee - \$30.00
- (10) Annual renewal duplicate license fee - \$30.00
- (11) Transfer fee - \$30.00
- (12) Appeal filing fee - \$100.00
- (13) Recovery fund fee - \$25.00
- (14) Examination fee shall be the actual cost charged by the testing service and shall be paid directly to the testing service.

(b) The following fees for real estate education are established at the amounts indicated:

- (1) Original main school license fee - \$500.00
- (2) Annual renewal main school license fee - \$400.00
- (3) Original branch school license fee - \$300.00
- (4) Annual renewal branch school license fee - \$200.00
- (5) Original association license fee - \$200.00
- (6) Annual association license renewal fee - \$100.00
- (7) Principal instructor license application fee - \$250.00
- (8) Annual renewal fee for principal instructor - \$150.00
- (9) Associate instructor license application fee - \$200.00
- (10) Annual renewal fee for associate instructor - \$100.00
- (11) License amendment fee - \$100.00
- (12) License reissuance fee - \$50.00
- (13) Course approval fee - \$100.00

- (14) Annual renewal for course approval fee - \$50.00
- (15) Late renewal fee for license or course approval - \$250.00
- (16) Appeal filing fee - \$100.00

### **3.2 Dishonored checks.**

(a) Any applicant or licensee who shall submit in payment of any fee a check or bank draft which is not honored by the bank shall not be eligible to receive a license from the Commission until such time as such check or bank draft is paid.

(b) The Commission shall charge a fee not to exceed \$25.00 for a dishonored check or bank draft and shall also require such check or bank draft to be made good immediately by the maker. If such person shall be a real estate salesperson, associate broker or executive broker, and shall fail to make such check or bank draft good, the Commission may require payment of such funds from the principal broker with whom such person is licensed.

### **3.3 Overpayment of fees.**

In the event that an applicant or licensee shall submit to the Commission any funds which are in excess of the funds required by the Commission pursuant to Commission rule or state law, the Commission shall refund such overpayment according to the following schedule: If the overpayment is at least \$0.01, and not more than \$10.00, no refund shall be made; if the overpayment shall exceed \$10.00, the Commission shall first deduct \$10.00 for processing the refund check, and shall refund the remainder of the overpayment.

## **SECTION 4. APPLICATION AND EXAMINATION; EDUCATION AND EXPERIENCE REQUIREMENTS.**

### **4.1 Applications; education; experience.**

Applicants for original licensure as a broker or salesperson must apply on forms provided by the Commission, pay the application fee established by these regulations, and meet the following requirements:

(a) Broker applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion within thirty six (36) months immediately preceding the date of the application of a course or courses of instruction in real estate by actual classroom attendance of which at least forty-five (45) hours are in a course developed by the Commission, for a total of not less than sixty (60) classroom hours. Proof of completion of such education requirement shall consist of the original certificate(s), or certified copies thereof, from the school or organization or other documentation satisfactory to the Commission;

(3)(A) Service by the applicant of an active bona fide apprenticeship by holding a valid real estate salesperson's license issued by the Commission, or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state, for a period of not less than twenty four (24) months within the previous forty eight (48) month period immediately preceding the date

of application, which proof may consist of the official license records of the Commission or certified copies of licensure records of the appropriate licensing agency of another state, plus such other documentation as the Commission deems satisfactory to demonstrate that the applicant has gained experience in the real estate business equal to that which would be gained by a person engaged in the real estate business on a full time basis during a minimum two year period of time; Listings, sales or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification; Consideration shall be given to the broker applicant's local real estate market and/or specialized area of real estate practice. Any person whose application for broker license is denied by the executive director may appeal such denial to the Commission provided the request is in writing and received in the office of the Commission not later than sixty (60) days following the date of denial by the executive director.

(B) However, pursuant to Section § 17-42-303 (b)(2) the Commission may waive such experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four months within the previous forty-eight-month period immediately preceding the date of application. Each request for such waiver shall be in writing and shall include such proof as necessary to establish the applicant's eligibility for the waiver. Such proof may consist of the official license records of the Commission, certified copies of license records of the appropriate licensing agency of another state, or such other documentation as the Commission deems satisfactory;

(4) The applicant's affidavit that he/she has no record of unprofessional conduct;

(5) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(b) Salesperson applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion of a course or courses of instruction in real estate by actual classroom attendance or completion of approved correspondence courses of not less than sixty (60) classroom hours, of which at least thirty (30) hours must be in the basic principles of real estate; which proof shall consist of the original certificate(s), or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission;

(3) The applicant's affidavit that he/she has no record of unprofessional conduct;

(4) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(c) (1) The Commission may require each original applicant for a salesperson or broker license, including nonresident applicants applying pursuant to Arkansas Code Ann. § 17-42-305, using forms furnished by and pursuant to instructions provided by the Commission to apply for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and Federal Bureau of Investigation pursuant to Arkansas Code Ann. § 17-42-315.

(2) "Criminal background check" means a state and nation-wide criminal records check conducted by the Arkansas State Police and Federal Bureau of Investigation, including the taking of fingerprints.

(3) Each such applicant shall submit, prior to or with the Application for Real Estate Examination, the form furnished by the Commission authorizing the release of the applicant's criminal background check report to the Commission and shall pay any applicable fees, associated with the State and Federal criminal background checks, pursuant to written instructions provided by the Commission. The release form shall authorize the Identification Bureau of the Arkansas State Police to forward all criminal history

information obtained concerning the applicant in regard to any offense referred to in Arkansas Code Ann. § 17-42-315 to the Commission.

(4) The criminal background check shall be completed within six months immediately preceding the date the Application for Real Estate License Examination is received in the Commission's office, and if not, the application shall be returned to the applicant.

(5) Upon request and proof of identification satisfactory to the Commission the Commission may make the report of any criminal information available to the applicant who is the subject of the report and shall provide the applicant a reasonable time to challenge the accuracy or completeness of the information therein, through the State Identification Bureau pursuant to Arkansas Code Ann. § 12-12-211 and Arkansas Crime Information Center Regulation 7(F).

(6) Should an applicant challenge his/her conviction report, he/she shall notify the Commission in writing. After receipt of such notice, the Commission shall not determine whether an applicant is qualified for the license applied for until the applicant has had reasonable opportunity to challenge said conviction report and shall not process the application until the challenge of said report is resolved by the State Identification Bureau and/or Arkansas Crime Information Center. The applicant shall notify the Identification Bureau to forward to the Commission changes in the applicant's report as a result of any such challenge.

(7) Except as provided in Arkansas Code Ann. § 17-42-315 (g), no person shall receive or hold a license issued by the Commission if the person has been convicted by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court of an offense identified in Ark. Code Ann. § 17-42-315 (f).

(8) After a hearing the Commission may waive a conviction identified in the preceding paragraph, upon application of the applicant, pursuant to the provisions of Ark. Code Ann. § 17-42-315 (g).

(d) (1) Broker applicants who have previously held an Arkansas real estate license shall not be required to:

- (A) complete any pre-license education previously completed by the broker applicant, or
- (B) demonstrate fulfillment of the requirements of Regulation 4.1(a)(3)(A).

(2) Broker applicants who have previously held an Arkansas real estate license shall be required to:

- (A) pay the application fee established by these regulations;
- (B) comply with the requirements of subsection (c) of this section;
- (C) provide an affidavit that he/she has no record of unprofessional conduct and is not holding a suspended or probationary professional license in any state; and
- (D) provide any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(3) The Executive Director may waive the requirement to complete the broker licensure exam and may consider the following when granting a waiver under this subsection:

- (A) the length of time an Arkansas real estate broker license was held; and
- (B) the length of time since the applicant held an Arkansas real estate broker license.

(4) Salesperson applicants who have previously held an Arkansas real estate salesperson license shall not be required to complete any pre-license education.

(5) Salesperson applicants who have previously held an Arkansas real estate license shall be required to:

- (A) pay the application fee established by these regulations;
- (B) comply with the requirements of subsection (c) of this section;
- (C) provide an affidavit that he/she has no record of unprofessional conduct and is not holding a suspended or probationary professional license in any state; and
- (D) provide any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments

entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(6) The Executive Director may waive the requirement to complete all or part of the salesperson licensure exam and may consider the following when granting a waiver under this subsection:

(A) the length of time an Arkansas real estate salesperson license was held; and

(B) the length of time since the applicant held an Arkansas real estate salesperson license.

(7) Broker and salesperson applicants who have previously held an Arkansas real estate license and have been exempted from the exam pursuant to the above must submit proof of satisfactorily completing nine (9) classroom hours or equivalent continuing education units of approved continuing education for each year during which his or her license was expired, not to exceed thirty (30) classroom hours.

(8) Except as provided in this subsection, broker and salesperson applicants who have previously held an Arkansas real estate license must comply with all other requirements of Regulation 4.1.

(e) All classroom hours required by Regulation 4.1(a) and (b) shall be conducted by:

(1) An accredited postsecondary school wherever situated; or

(2) A school or organization licensed by the Commission.

(3) A school or organization approved by a real estate licensing jurisdiction deemed equivalent by the Commission.

(f) The course or courses of instruction requirements of Regulation 4.1(b) may be satisfied by successful completion of such distance education courses as the Commission may by regulation require, giving due consideration to the number of hours necessary to provide instruction in basic competencies required for a salesperson's license.

(g) Both broker and salesperson applicants shall also answer all questions and provide all information requested on the examination application, and shall provide such other information or documentation as the Commission may require.

(h) Applicants that have provided all requirements of Regulation 4.1, may sit for the real estate examination, provided that a state and federal criminal background check, as required by ACA § 17-42-315, has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check. However no license shall be issued upon successful completion of the examination, until receipt and approval by the Commission of the state and federal criminal background check.

(i) All applications expire one (1) year after the date of the application or upon successful completion of the examination, whichever first occurs. Provided, however that the application of an applicant who takes and passes either part of the examination within one (1) year from the date of his application shall not expire until the six (6) months allowed for retaking the failed portion pursuant to Regulation 4.2(c) has expired.

(j) Application fees are non-refundable.

#### **4.2 Examinations; passing scores; reexaminations.**

Applicants for original licensure as a broker or salesperson must pass a written examination to demonstrate competency to act as a real estate licensee in such a way as to safeguard the interests of the public. The examination shall consist of a general part and an Arkansas law part.

(a) For broker applicants a minimum score of seventy (70) on the general part and seventy-five (75) on the Arkansas law part are required. A person who is licensed as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate broker's examination but who is not licensed as a broker may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(b) For salesperson applicants a minimum score of seventy (70) on the general part and seventy (70) on the Arkansas law part are required. A person who is licensed as a salesperson or as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate salesperson's examination but who is not licensed as a salesperson may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(c) An applicant who takes the examination in Arkansas and passes either the Arkansas law part or the general part but fails the other need not again take the part passed if within six (6) months of such initial examination the applicant retakes and passes the part failed. Otherwise, the applicant must retake the entire examination, and must also make new application if more than one (1) year has elapsed since the date of the original application.

(d) (1) An applicant who meets all three (3) of the following requirements will be required to take only the Arkansas law part of the examination:

(i) Has passed a uniform, general, or multi-state part of an examination for a real estate license in another state in which the examination is determined by the Commission to meet generally acceptable standards of real estate testing, and

(ii) The other state requires a minimum passing grade no lower than that required for the general part of the Arkansas examination, and

(iii) The applicant at the time of taking the Arkansas examination is licensed in the other state.

(2) If an applicant meets the first two (2) requirements above, but not the third, the applicant will be required to take only the Arkansas law part of the examination provided that the applicant passed the uniform, general, or multi-state part of the examination in the other state within six (6) months prior to the month in which the applicant takes and passes the Arkansas law part.

(3) An applicant seeking licensure under this Regulation 4.2(d) must furnish such documentation of entitlement thereto as the Commission may require.

#### **4.3 Examinations; application procedure; time requirements.**

(a) The Commission shall announce from time to time the dates and locations of examinations. All applications should be received in the Commission office at least ten (10) days before the examination for which the applicant desires to sit. However, regardless of the date on which the application is received by the Commission, it shall be processed as expeditiously as possible under the circumstances. Once the application is processed, the Commission will send to the applicant a "Certificate of Examination Eligibility." The certificate will include instructions for making examination reservations and will be required for admission at the test center.

(b) An examination fee which shall equal the actual cost of the examination as established by the testing service engaged by the Commission will be collected at the test center. The examination fee shall be made payable to the testing service unless the applicant is otherwise notified by the Commission. The examination fee shall be charged each time an applicant applies to take an examination and is non-refundable.

(c) An applicant shall receive notice upon passing the examination. Each successful broker and salesperson applicant shall pay to the Commission, within ninety (90) days from the date of the successful completion of the examination, the appropriate license fee and recovery fund fee. However, the payment of the recovery fund fee shall be waived for any successful applicant who has previously paid such fee. If a successful applicant shall fail to pay the prescribed fee(s) within ninety (90) days following the date of the examination, the examination results shall be null and void, and the applicant shall be required to make new application and retake the examination, as an original applicant. If the Federal criminal background check has not been received by the commission within ninety (90) days of the date of the

examination, the date may be extended by the commission until receipt of the Federal criminal background check.

#### **4.4 No duplication of credit for educational courses.**

No educational courses or hours submitted as credit toward the pre-licensing education requirement shall be used as credit for the continuing education requirements, and no educational courses or hours submitted for credit toward the continuing education requirements shall be used or counted to satisfy the pre-licensure educational requirements.

### **SECTION 5. NONRESIDENT LICENSURE.**

#### **5.1 Application.**

Upon receipt of an application for nonresident licensure under Section 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-42-305(a)(1)(B)], the director shall determine whether the applicant's resident jurisdiction offers Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by Arkansas.

#### **5.2 List of approved jurisdictions.**

The director may maintain and publish from time to time a list of jurisdictions which have been previously determined to offer Arkansas licensees opportunities for licensure substantially comparable to those offered to that jurisdiction's licensees by Arkansas. If an applicant's jurisdiction is not on the list the director may, upon request, investigate and determine whether it should be.

#### **5.3 No hearing on denial.**

An applicant whose application for licensure under Section 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-42-305(a)(1)(B)] is denied is not entitled to a hearing on such denial.

#### **5.4 Written agreements with other jurisdictions.**

The director is authorized to enter into written agreements with licensing authorities of other jurisdictions to assure opportunities for nonresident licensure in those jurisdictions for Arkansas licensees.



## **SECTION 6. RENEWAL; INACTIVE STATUS; EXPIRED LICENSES.**

### **6.1 Renewal applications.**

(a) Unless renewed as active or inactive, every real estate broker or salesperson license shall expire on December 31 of each calendar year.

(b) Notice to renew licenses will be sent by mail or electronically about July 15 of each year to the firm at which the licensee is licensed or such other address as the Commission has on file for the licensee. Renewal applications accompanied by the required fee must be filed with the Commission no later than September 30. In order to be considered filed with the Commission by the deadline; the renewal applications must bear a U.S. Postal Service postmark of September 30, or be received in the Commission's office on or before September 30. If September 30 falls on a Saturday, Sunday or legal holiday, the Commission shall accept as meeting the filing deadline those renewal applications that bear a U.S. Postal Service postmark of the first business day thereafter, and those applications received in the Commission office on the first day the office is open to the public following such Saturday, Sunday or legal holiday. A renewal application filed after the deadline shall be treated as an application to renew an expired license.

(c) To hold an active license a broker or salesperson shall complete annually seven (7) classroom hours of continuing education approved by the Commission or equivalent continuing education units or equivalent distance education of approved continuing education. One (1) classroom hour, which shall satisfy only one (1) of the seven classroom hours, must focus on how real estate professionals can limit risk to preserve personal safety for agents and consumers.

### **6.2 Inactive status renewal.**

(a) Any licensee who does not wish to engage in the real estate business at the time of renewal may apply to renew as inactive.

(b) Any person who holds a license on inactive status shall notify the Commission in writing within seven (7) days of any change of name or address.

(c) During inactive status a licensee shall not practice as a real estate broker or salesperson in this state without first activating the license.

(d) An inactive license may be activated upon submitting proof of satisfactorily completing seven (7) classroom hours or equivalent continuing education units or equivalent distance education of approved continuing education for each year renewed as inactive, not to exceed thirty (30) classroom hours, and such other information as the Commission may require, including payment of the required fee. One (1) classroom hour, which shall satisfy only one (1) of the total classroom hours required for activation, must focus on how real estate professionals can limit risk to preserve personal safety for agents and consumers. Completion of the continuing education requirement will only satisfy the requirement for the license year in which activated and not for the following year.

(e) All continuing education hours required to activate a license must have been completed in the year in which the license is activated or the preceding calendar year.

(f)(1) The Commission may provide continuing education for licensees under the following circumstances:

(A) If the Executive Director determines that courses are not readily available by classroom delivery for a specific topic which has been identified by the Commission as acceptable for continuing education; or,

(B) If the Executive Director determines that continuing education courses are not readily available by classroom delivery to licensees in a specific geographic area of Arkansas.

(2) When providing continuing education pursuant to this section, the Commission is authorized to incur and pay the reasonable and necessary expenses in connection therewith; and to make reasonable charges for materials provided by the Commission and for services performed in connection with providing the materials. The continuing education courses offered by the Commission shall be open to all licensees unless the content is deemed broker specific, in which case the courses will be open to all brokers.

### **6.3 Expired licenses.**

(a) If an application for the renewal of a license, either active or inactive, and/or the required renewal fee is not received prior to the renewal deadline, such license is deemed to have expired at the end of the renewal period.

(b) A person whose license has expired shall not practice as a real estate broker or salesperson in this state.

(c) Upon reapplication within one (1) year of the last calendar year in which the license was renewed, payment of the required fees, and submission of such additional information as the Commission may require, the license may be reinstated and placed on either active or inactive status for the current license year. However, no license will be issued as active until proof of satisfactory completion of the continuing education requirement as required by Regulation 6.2 is submitted.

(d) Upon successful reapplication the prior year identified as expired will be considered as if inactive for purposes of continuing education requirements.

(e) A former licensee who fails to apply for renewal of an expired license within the prescribed time period shall be regarded as an original applicant.

(f) For purposes of providing notice to and communication with any licensee who permits or has permitted his license to expire and who is the subject of a pending complaint, investigation or hearing pursuant to A. C. A. § 17-42-312, said licensee shall during any such pending complaint, investigation or hearing notify the Commission in writing within seven (7) days of any change of name or address.

## **SECTION 7. FIRM NAME; OFFICES; SIGNS; TRANSFERS; CHANGE OF ADDRESS.**

### **7.1 Firm name approval.**

The Commission shall issue no principal broker's license where the proposed name of the firm is confusingly similar to the name of another firm, is misleading, or would in any way be confusing to the public. It shall be the duty of the principal broker to inquire of the Commission concerning the acceptability of the proposed firm name.

### **7.2 Temporary license.**

No person shall act as a licensee in Arkansas until such person has received from the Commission a current valid license and pocket card stating the name of the firm with which the licensee is affiliated. However, a temporary interim license may be issued pending issuance of the permanent license and pocket card, which temporary interim license shall be valid for a period of not more than thirty (30) days.

### **7.3 Place of business; sign.**

(a) A principal broker shall maintain a place of business and shall display at such place of business a permanently attached sign bearing the name under which the principal broker conducts his/her business, and the words "real estate," "realty," "REALTOR®," "REALTIST" or other words approved by the Commission which clearly indicate to the public the principal broker is engaged in the real estate business. Photographs of the sign and of the front or other part of the building where the sign is displayed shall be furnished to the Commission. A principal broker must display his/her broker's license and the licenses of any executive broker, associate broker or salesperson at the place of business.

(b) The Commission shall accept no sign as meeting this requirement until and unless such sign is permanently attached and clearly visible to the public and displayed in such a manner as to clearly indicate to the public that the principal broker is engaged in the real estate business.

(c) If a principal broker shall establish an office within an office building, the principal broker shall furnish (1) a photograph of the office building directory showing the real estate firm's name, and also (2) a photograph of the firm's office entrance bearing the name of the firm, unless either is nonexistent, in which case the other shall be furnished.

(d) If a principal broker shall move or change any sign of which a photograph has been filed with the Commission, the principal broker shall notify the Commission office immediately in writing of the new location or change and furnish a photograph of the new sign. If the principal broker's business location shall also change, the broker shall comply with Section 15 of Act 690 of 1993 [A.C.A. §17-42-309 and §17-42-310] and applicable regulations.

(e) The principal broker shall furnish both the street address or physical location and the mailing address for the business.

(Amended 8/31/2007)

### **7.4 Branch office.**

(a) All branch offices shall have and display a real estate sign and a duplicate principal broker's license. Principal Brokers who wish to open a branch office shall furnish the Commission a photograph of the branch office sign as previously approved by the Commission bearing the name of the company. If licensees are to be licensed at that branch office, an executive broker shall be designated by the principal broker, to be in charge of the branch office. Such executive broker shall be responsible for any licensee licensed with such branch office pursuant to a written designation of responsibility filed by the principal broker with the Commission on a form provided by the Commission consistent with Regulation 10.4(a)(1), and shall not be gainfully employed or engaged in any non-real estate related field pursuant to Regulation 10.4(e).

(b) If such branch office, maintains its own trust account or separate escrow agent the principal broker shall be responsible and accountable for any and all trust funds received by the branch office and any and all deposits to or disbursements from the trust account.

(c) A principal broker of a licensee that is licensed at the principal broker's place of business or any branch office thereof may authorize that licensee to be issued a duplicate license at the principal broker's place of business or at any branch office where the principal broker holds a duplicate license. Provided, however, a duplicate license shall not be issued at a branch office unless an executive broker has been designated to be in charge of the branch office.

(Amended 1/1/2010)

## **7.5 Termination or transfer.**

(a) Within seven (7) days after the employment or association of a licensee with a principal broker ends, such principal broker shall notify the Commission of such termination and return to the Commission the license and pocket card of the terminated licensee. Such notification shall automatically inactivate the license. Immediately upon termination, the terminated licensee shall deliver to the principal broker his/her pocket card.

(b) The license of a licensee terminated under Regulation 7.5(a) may be transferred to another firm, after the license and pocket card have been returned to the Commission, by the licensee's filing with the Commission a transfer application signed by the new principal broker. Such transfer application must be accompanied by (1) a statement that the licensee is not taking any listings, management contracts, appraisals, lease agreements, or copies of any such documents, or any other pertinent information belonging to the former principal broker or firm, and (2) a transfer fee. At the time the transfer application and the accompanying items are filed, a temporary interim license may be issued.

(c) If an actively licensed broker or salesperson does not wish to continue to engage in the real estate business, such broker or salesperson shall return any license and pocket card in his/her possession to his/her principal broker who shall then return these items to the Commission for inactive status. A broker who closes his/her firm shall remove all signs reflecting the company name and shall return all licenses and pocket cards issued to the principal broker to the Commission office for inactive status. If a real estate firm shall close its office, any real estate salesperson licensed with such principal broker shall be entitled to transfer to a new principal broker upon compliance with the appropriate provisions of the Arkansas Real Estate License Law and Commission regulations.

(d) If the principal broker is deceased, unavailable, or for any reason unwilling or unable to act, then the licensee has the responsibility to notify the Commission in writing of the termination or transfer and of returning the pocket card and license.

(e) A principal broker of a real estate firm or designated executive broker of a branch office, who has no ownership interest in the firm, who is terminated by the firm's owner or designee, shall notify the Commission in writing immediately upon termination. The written notification must include a statement that the principal broker or branch office designated executive broker has been terminated by the owner of the firm or designee, and that the terminated principal broker or executive broker is relinquishing his/her responsibilities as principal broker or branch office designated broker effective the termination date. The respective broker license and pocket card must be returned with the written notification.

If the real estate firm or branch office is not closing, and another principal broker or branch office designated broker is not immediately available to assume responsibilities of the real estate firm or branch office, the owner of the real estate firm may request in writing that the Commission permit the real estate firm to continue operating pursuant to Regulation 7.7.

If the owner of the real estate firm closes the firm and ceases to do business and maintain an office, the principal broker shall notify the commission in writing of said closing, return all licenses and pocket cards to the commission and comply with Regulation 10.7(c).

A principal broker or branch office designated executive broker who has been terminated by the real estate firm owner or designee of a real estate firm that is not closing, and who does not notify the commission in writing, relinquish responsibilities as principal broker or designated branch office executive broker, and return his/her broker license and pocket card to the commission, shall be presumed to be in violation of A.C.A § 17-42-311 and subject to appropriate sanctions.

## **7.6 Change of address; lost license or pocket card.**

(a) Upon any change of name, address or place of business, or upon the loss or misplacement of a license or pocket card, the licensee shall promptly notify the Commission of such change or loss on a

form prescribed by the Commission. Upon receipt of such notice and other information as may be necessary to issue a new license, the Commission shall issue a new license for the unexpired period of the license upon the payment of the license reissuance fee.

(b) All licensees, both active and inactive, shall at all times keep the Commission informed in writing of their personal residence address, physical business address and mailing address.

### **7.7 Death of principal broker; closing of business.**

Upon the death, resignation, termination or incapacity of a principal broker or the closing of a real estate firm, the Commission may in its discretion, based upon the merits and circumstances of each case, permit the real estate firm to continue operating for a period of time under the direction of a person approved by the Commission and subject to time limitations and other conditions imposed by the Commission. Unless otherwise determined by the Executive Director, the time of such approval is to be effective at the time of death, resignation, termination or incapacity of the principal broker.

## **SECTION 8. AGENCY DISCLOSURE.**

### **8.1 Seller or lessor agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a seller or lessor, the licensee shall disclose to a potential buyer or lessee, or to the buyer's or lessee's licensed agent, the licensee's agency relationship with the seller or lessor. Such disclosure shall be made in a timely manner under the particular circumstances so as to avoid to the extent possible eliciting or receiving from the prospective buyer or lessee information which would reasonably be expected to remain confidential and not disclosed to the seller or lessor, such as, for example, information concerning the real estate needs or motivations, negotiating strategies or tactics, or the financial situation of the potential buyer or lessee.

(2) When the disclosure is made to the licensed agent of the buyer or lessee, it is that licensee's duty to convey the disclosure to the buyer or lessee in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.1(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the buyer or lessee signs any document related to the transaction, such as an offer or lease or rental agreement.

### **8.2 Buyer or lessee agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a buyer or lessee, the licensee shall disclose to a potential seller or lessor or to the seller's or lessor's licensed agent, the licensee's agency relationship with the buyer or lessee. Such disclosure shall be made at the first contact with the seller, lessor, or the agent of the seller or lessor.

(2) When the disclosure is made to the licensed agent of the seller or lessor, it is that licensee's duty to convey the disclosure to the seller or lessor in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.2(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the seller or lessor signs any document related to the transaction, such as an offer or lease or rental agreement.

### **8.3 Dual agency.**

(a) A licensee who represents both the seller and buyer in a real estate sale transaction, or both the lessor and tenant in a real estate lease or rental transaction shall make disclosure in the time and manner required by Regulations 8.1 and 8.2 and all parties to the transaction must have given their written consent to such dual representation prior to or at the time of execution of the agency contract, listing contract, property management contract, lease, rental agreement, offer and acceptance contract or other real estate contract.

(b) Notwithstanding Regulation 8.3(a), a licensee shall not accept a commission, rebate, profit, payment, compensation or other valuable consideration in connection with a real estate transaction or real estate activity from any person or entity except the licensed principal broker under whom the licensee is licensed.

### **8.4 Failure to disclose agency relationship.**

A licensee who fails to disclose the licensee's agency relationship in the time and manner required by these regulations shall be subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].

### **8.5 Fidelity and honest dealing.**

(a) In accepting employment as an agent, a licensee pledges to protect and promote the interests of the client or clients. This obligation of absolute fidelity to the interest of the client or clients is primary, but does not relieve a licensee from the equally binding obligation of dealing honestly with all parties to the transaction.

(b) A licensee shall not offer or advertise property without authority and in any offering or advertisement the price quoted must not be other than that agreed upon with the owners as the offering price.

(c) When acting as agent in the sale or management of property, a licensee shall not accept any commission, rebate, profit, payment, compensation or other valuable consideration from any source in connection with the property without full written disclosure to the party represented by the licensee.

(d) A licensee shall not accept compensation from more than one party without full written disclosure to all parties to the transaction.

## **SECTION 9. COMPLAINTS; INVESTIGATIONS; HEARINGS.**

### **9.1 Complaints.**

Complaints against licensees or persons allegedly engaged in unlicensed real estate activity must be in writing, signed by the complainant under oath, dated and filed with the director.

## **9.2 Answers.**

(a) If the director determines that a complaint establishes a prima facie case of a violation of the Arkansas Real Estate License Law or Commission regulations, the director shall send a copy of such complaint to the licensee or person allegedly engaged in unlicensed real estate activity complained against along with instructions concerning the filing of an answer. The director may also send a copy of the complaint to the principal broker of the licensee complained against.

(b) Within twenty (20) days after service of the complaint on the licensee or person allegedly engaged in unlicensed real estate activity, such licensee or person allegedly engaged in unlicensed real estate activity shall file a written answer with the director. The answer shall be dated and shall be signed by the licensee or person allegedly engaged in unlicensed real estate activity under oath. The time for answering may be extended at the discretion of the director or the director's designee.

## **9.3 Investigation.**

The director may conduct such investigation as is deemed warranted either before or after the answer is received, and in conducting such investigation, may take statements from any person thought to have any knowledge of the facts or allegations pertaining to the complaint and may also obtain and review any documents which may relate to the complaint. The director may utilize the subpoena powers of the Commission in connection with the investigation.

## **9.4 Disposition of complaints; appeals from dismissal.**

(a) A complaint which, together with the answer, if any, and the results of any investigation conducted by the director, establishes a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall be presented to and reasonably disposed of by the Commission. Likewise, any investigation initiated and conducted by the director without a formal complaint which results in a determination by the director that there exists a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall also be presented to and reasonably disposed of by the Commission.

(b) (1) Any person whose complaint is dismissed by the director without a hearing may appeal such dismissal to the Commission in the following manner:

(i) The request for appeal must be in writing and received in the offices of the Commission not later than sixty (60) days following the date of dismissal by the director; and

(ii) The request for appeal must be accompanied by the appeal filing fee; and

(iii) The Commission staff shall determine the cost of preparing the record for the Commission's review, which cost shall be paid by the appellant within thirty (30) days after notification of the amount; otherwise the appeal will be dismissed.

(2) Upon submission of the appeal, the Commission shall review the written record and either uphold or overrule the director's decision. The parties may submit written arguments but no new evidence. Any newly discovered evidence must first be presented to the director. If the decision is overruled, the Commission may either order a hearing or request further investigation or documentation of the complaint. If the Commission review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.

(3) Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

## **9.5 Hearings.**

(a) Hearings shall be scheduled for a day certain by the director who shall, at least thirty (30) days prior to such hearing date, send notice to all persons entitled to notice thereof of the place and approximate time of said hearing, a statement of the allegations and charges forming the basis for the hearing, and the provisions of the law or regulations thought to be involved therein. The Commission shall serve notice of said hearing by mailing same addressed to the licensee or person allegedly engaged in unlicensed real estate activity at his or her address last known to the Commission or may, in its discretion, serve the licensee or person allegedly engaged in unlicensed real estate activity by personal delivery of said notice.

(b) Prior to the hearing, the respondent licensee or person allegedly engaged in unlicensed real estate activity involved in the hearing may, by written petition, signed and dated, invoke the aid of the Commission in the procurement of any witness or document the licensee or person allegedly engaged in unlicensed real estate activity may desire to be present at such hearing, provided however, that such petition must be filed with the director at least ten (10) days prior to the hearing date.

(c) All motions concerning or related to the hearing must be in writing and filed at the Commission office no later than ten (10) days before the scheduled hearing date, along with a certificate of the person filing the motion that copies of the motion have been served on the attorney of the other parties who are represented by attorneys, or on the parties themselves if they are not represented by attorneys. Motion for continuance shall be decided by the director. All other motions shall be decided by the Commission or by the hearing officer by delegation of such responsibility by the Commission. Upon delegation and authorization from the Commission, the hearing officer may also conduct pre-hearing conferences.

## **9.6 Hearing procedure.**

(a) At the hearing, the Commissioners shall hear and decide the ultimate issues of both fact and law.

(b) The Commission's hearing officer shall preside over the hearing and regulate procedural aspects of the hearing, including ruling on admissibility of evidence and objections. The hearing officer shall advise the Commission on questions of law.

(c) All persons appearing before the Commission and giving testimony shall first be placed under oath. All testimony given shall be recorded and shall be a part of the record in the case.

(d) At any hearing the respondent licensee or person allegedly engaged in unlicensed real estate activity and complainant may be present in the hearing room during the entire hearing and the respondent licensee or person allegedly engaged in unlicensed real estate activity shall have the right to cross-examine any witness and to examine any document or evidence submitted.

(e) The hearing shall begin with presentation of the case against the respondent licensee or person allegedly engaged in unlicensed real estate activity. Such presentation is ordinarily conducted by the Commission staff counsel. However, upon request, and at the discretion of the Commission, counsel for the complainant may be permitted to participate. At the conclusion of such presentation, the respondent licensee or person allegedly engaged in unlicensed real estate activity may present evidence in defense of the charges, following which rebuttal testimony and evidence may be offered. Closing arguments may be called for or dispensed with at the discretion of the Commission.

(f) The Commission may receive into evidence such affidavits, depositions, certified copies of documents, photocopies of official records and other exhibits as it deems appropriate, whether or not such documents are admissible under formal rules of evidence, together with such other evidence as may be admissible by law. The Commission shall give to such evidence such weight as the Commission shall determine appropriate under the circumstances.

(g) After presentation of all evidence the Commission shall deliberate on the issues and either announce its decision or take the matter under advisement for later decision.



(h) Upon reaching a decision, the Commission shall enter its findings of fact and conclusions of law and an appropriate order shall be prepared and served on the parties.

(i) Once the decision is made, any motion for reconsideration must be filed within fifteen (15) days from the date the decision is first announced, whether orally or in writing, but the filing and pendency of such motion will not delay the appeal time deadlines of the Arkansas Administrative Procedure Act.

### **9.7 Service.**

Service of any notice, order or other document or instrument upon any person shall be complete upon mailing to such person, postage prepaid, in a sealed envelope via the United States Postal Service.

### **9.8 Attorneys.**

An attorney who has entered an appearance in any cause before the Commission shall not withdraw except by leave of the Commission after notice served upon the attorney's client, counsel for the other parties and counsel for the Commission staff.

### **9.9 Alternate Disciplinary Procedures**

- (a) (1) The Executive Director may issue a citation imposing a penalty of \$100 to a licensee who:
  - (A) fails to complete annual continuing education requirements by December 31, including the requirement to submit proof of satisfactory completion thereof to the Commission; or
  - (B) fails to complete the post-license education requirement, including submittal of proof of satisfactory completion thereof to the Commission within the time frame required.
- (2) It is the licensee's responsibility to establish his or her successful completion of an educational requirement through courses acceptable to the Commission.
- (b) The Executive Director may issue a citation imposing a penalty of \$250 each to:
  - (1) A licensee who performs activities requiring an active real estate license while his or her license is expired; and
  - (2) The supervising broker(s) of a licensee who performs activities requiring an active real estate license while his or her license is expired.
- (c) Licensees issued a citation may contest the citation under § 17-42-312(d).

## **SECTION 10. BROKER RESPONSIBILITIES; ETHICAL REQUIREMENTS; TRUST FUNDS AND ACCOUNTS; LISTING AND OFFER AND ACCEPTANCE AGREEMENTS; CRIMINAL CONVICTIONS.**

### **10.1 Dealing independently of principal broker.**

(a) If a principal broker or executive broker learns a salesperson, associate broker or executive broker licensed under such principal broker or executive broker has, without permission of the principal broker or executive broker, engaged in real estate activities independently or through some other broker, it is the duty of the principal broker or executive broker to immediately notify the Commission in writing and forward such licensee's license to the Commission.

(b) Any salesperson, associate broker or executive broker who engages in real estate activities independently or through some other broker without permission from the principal broker or executive broker shall be presumed to be in violation of A.C.A. § 17-42-311 and subject to appropriate sanctions.

## **10.2 Expiration date for agency agreements or contracts.**

A licensee shall put a specific determinable duration or a specific expiration date on all written agency agreements or contracts or any extensions thereof. (Examples: Listing and Buyer Representation Agreements or Contracts)

## **10.3 Membership in trade organization.**

A licensee shall not use terms such as REALTOR®, REALTIST or any other trade name or insignia of membership of any real estate organization of which the licensee is not a member.

## **10.4 Broker responsibilities; executive brokers; part-time brokers.**

(a) (1) A principal broker is generally responsible for all business conducted by the broker's firm and for all of the real estate activities of all of those licensed under or associated with the principal broker, unless the licensee conducted real estate business independently and without permission or authority from the principal broker. If the principal broker learns that a licensee is conducting business independently, that principal broker must comply with Commission Regulation 10.1(a). (Amended 1/1/2010)

(2) A principal broker may delegate supervisory responsibility to another broker by designating such broker as an "executive broker." The executive broker may sign offer and acceptance forms as supervising broker and can be responsible for instructing and supervising salespersons and/or brokers for whom the executive broker is responsible. The executive broker may also be delegated responsibility by the principal broker for administrative procedures required by the Commission, such as signing transfer applications. For each executive broker so designated, the principal broker must complete and file with the Commission an appropriate designation form signed by both the principal broker and the designated executive broker. The designation of an executive broker is effective when filed with the Commission.

(3) Designation of one or more executive brokers does not absolve the principal broker of general responsibility for the conduct of all real estate business conducted by the principal broker's firm, and the principal broker is specifically responsible for the activities of all executive brokers.

(b) Principal brokers and executive brokers have the duty and responsibility to instruct those brokers and salespersons licensed under them with regard to the fundamentals of real estate practice and the ethics of the profession, and to keep them informed and abreast of all changes and developments pertaining to the Arkansas Real Estate License Law and Commission regulations. They shall also exercise strict supervision of the real estate activities of all those licensed under them and for whom they have supervisory responsibility.

(c) Whether or not a principal broker or executive broker has discharged these responsibilities for those licensed under him/her will depend on various factors and circumstances, including, without limitation, the following:

- (1) Frequency and manner of contact and communication;
- (2) Type and frequency of educational and instructional activities;
- (3) Method and frequency of monitoring real estate activities.

(d) (1) The preparation of instruments in connection with a real estate rental or sale and the closing of a sale by a licensee must be performed by or under the specific supervision of the principal broker.

(2) If the principal broker or designated executive broker or their assigned licensee, closes a transaction or selects a third party to close the transaction, it is the responsibility of the principal broker or designated executive broker to ensure that the real estate closing conducted on behalf of the principal broker's or designated executive broker's client(s) is conducted in accordance with the agreement of the buyer and seller. If the buyer and/or seller selects a third party to close the transaction the principal broker or designated executive broker, or their assigned licensee, must provide written closing instructions, on behalf of their client(s), to the third party closing the transaction, and review the client's closing statement, if reasonably available, to insure that the closing is conducted in accordance with the agreement of their client. It is strongly recommended that the principal broker, designated executive broker, or assigned licensee advise the client to contact the closing agent or title insurer about the availability of closing protection.

(e) No broker who is gainfully employed, or who is engaged in a non-real estate related field, may employ any licensee to work under the broker's license issued to such broker. A broker who is employed or who is engaged in any field other than real estate will be presumed to be gainfully employed or engaged in a non-real estate related field. This presumption may be overcome by proof that such employment or engagement is (1) in a real estate related field, and (2) conducted in the same office as the broker's real estate business.

### **10.5 Advertising.**

(a) A licensee may not advertise any property, including the licensee's own property, for sale or rent, or display a real estate sign without including in that advertisement or sign the name of the firm with whom that licensee is licensed.

(b) A principal broker and any persons licensed with said principal broker shall not advertise or otherwise conduct real estate brokerage business under any name other than the name in which the principal broker's license has been issued.

(c) In public advertising a principal broker shall be especially careful to present a true picture and should not permit licensees to use individual names or telephone numbers, unless the licensee's connection with the broker is obvious in the advertisement.

### **10.6 Knowledge of property.**

A licensee shall exert reasonable efforts to ascertain those facts which are material to the value or desirability of every property for which the licensee accepts the agency, so that in offering the property the licensee will be informed about its condition and thus able to avoid intentional or negligent misrepresentation to the public concerning such property.

### **10.7 Handling of funds; maintenance of records.**

(a) (1) A licensee shall immediately deliver to the principal broker any money or other consideration received in connection with a real estate transaction which belongs to others, such as escrow or trust funds, clients' moneys, earnest moneys, rents, advance fees, deposits, etc.

(2) A broker shall deposit all advance fees in the broker's trust account and shall disburse such funds only in accordance with the terms of a written agreement signed by the owner of the funds. If such written agreement is not received within a reasonable time after payment of the advance fee, the fee shall be refunded to the owner.

(3) "Advance fee" means any fee charged for services to be paid in advance of the rendering of such services, including, without limitation, any fee charged for listing, advertising, or offering for sale or lease any real property.

(b) (1) Each principal broker shall maintain complete records of all real estate business handled by that firm. Separate files for each real estate transaction conducted by the firm shall be maintained and shall contain signed copies of any of the following documents which were prepared in connection with the transaction: (i) listing contract, (ii) agency contract, (iii) offers, (iv) offer and acceptance contracts and (v) closing statements, along with any additional documents as may be necessary to make a complete record of each transaction.

(2) Each principal broker shall maintain complete records pertaining to property managed for others. Such records shall include all contracts, financial transactions, receipts, statements, repair estimates and other documents relating to management of the property.

(3) All records required by Regulation 10.7 shall be maintained by the principal broker for three (3) years or such time as may be required by law, whichever is greater, and shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission. All records required by Regulation 10.7 may be maintained in an electronic form provided that a copy of the records can be produced as required by this Regulation.

(c) When a real estate firm ceases to do business and to maintain an office, the last principal broker remaining with the firm shall be responsible for all records of the firm, including the firm's real estate trust account and transaction records, and at the time the real estate firm's office is closed, the principal broker shall immediately notify the Commission of the address and phone number of the place where those records are being maintained. If for any reason that broker delivers custody or responsibility for those records to another person or firm, he/she shall immediately notify the Commission of such transfer and furnish the name, address and phone number of such person or firm.

## **10.8 Trust funds; trust accounts.**

(a) "Trust funds" means and includes money or other things of value not belonging to the principal broker but which are received by the principal broker or any of the principal broker's licensees in connection with a real estate transaction or real estate activity, including, without limitation, clients' moneys, earnest moneys, rents, advance fees, deposits, etc. For purposes of the Arkansas Real Estate License Law and Commission regulations, any funds deposited in a broker's trust account are presumed to be trust funds.

(b) Except as provided in Regulation 10.8(d), a principal broker shall not commingle trust funds with personal funds or other non-trust funds and shall not deposit or maintain trust funds in a personal account or any kind of business account except a specifically designated trust account.

(c) A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties. Except as authorized by Regulations 10.8(i) and 12.2, the trust account shall be non-interest bearing. The name on the account shall include either "trust" or "escrow" and must be located in an institution insured by either the FDIC or some other insuring agency of the federal government.

(d) A principal broker may maintain the broker's own funds in a designated trust account only when they are clearly identified as the broker's deposit and only for the following purposes:

(1) If the bank in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker's funds.

(2) If the bank in which the account is maintained requires a service charge to be paid for the account, the broker may maintain a reasonable amount to cover that service charge in the account in the broker's name, provided, however, that such amount shall not exceed the total of six (6) months service charges.

(e) With regard to each separate trust account, the principal broker shall submit to the Commission in writing the following:

- (1) Name and number of the account.
- (2) Name and address of the bank.
- (3) Date the account was opened.

The principal broker shall keep the Commission informed at all times of the foregoing details of each separate trust account.

(f) In addition to the requirements of Regulation 10.8(e), the principal broker shall submit the same information in writing immediately upon any of the following events or occurrences:

- (1) Commission approval of real estate firm name.
- (2) Change of real estate firm name.
- (3) Designation of new principal broker.
- (4) The account is changed in any respect or closed.

(g) (1) No later than three (3) days following the execution of a real estate contract by both seller and buyer, all trust funds delivered to the principal broker, shall be either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. All other funds delivered to the broker pending performance of any act shall be, no later than three (3) days, either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. Should the third (3<sup>rd</sup>) day be a Saturday, Sunday, or legal holiday, then the third (3<sup>rd</sup>) day is extended to the next day which is not a Saturday, Sunday, or legal holiday. The broker shall maintain an accounting of all funds delivered to the broker and shall keep a signed receipt for any funds the broker delivers to an escrow agent. The broker remains responsible for the funds if the broker selected the escrow agent, but not if the parties selected the escrow agent. A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker.

(2) All trust account bank statements shall be reconciled in writing at least monthly and balanced to the total amount of trust funds deposited in the account which have not been disbursed. Copies of such reconciliations shall be kept by the broker for at least three (3) years or for such time as may be required by law, whichever is greater.

(3) All trust fund records, including bank reconciliations, shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission.

(h) (1) All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit in the licensee's separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.

(2) Provided, however, that a principal broker shall not be responsible for the failure of those licensed under such principal broker to comply with Regulation 10.8(h)(1) as long as the principal broker is in compliance with Regulation 10.4.

(i) Nothing in this Regulation 10.8 shall be deemed to prohibit a broker from maintaining certain funds or deposits in particular transactions in an interest-bearing account when required to do so by law or valid regulation of any governmental agency, nor shall it prohibit a broker from maintaining an interest-bearing

account while participating in the Interest on Real Estate Brokers' Trust Account program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] and Regulations 12.1 and 12.2.

### **10.9 Disbursement of trust funds.**

(a) A principal broker shall not disburse trust funds from the broker's designated trust account contrary to the terms of a contract for the sale or rental of real estate, or other contract pursuant to which the funds were received, and a principal broker shall not fail to disburse trust funds according to the terms of such contract.

(b) Except as otherwise authorized by Regulation 10.8(d), the balance of a principal broker's trust account shall at all times equal the total of the trust funds received for which the broker is accountable.

(c) A principal broker who disburses trust funds from a designated trust account under the following circumstances shall be deemed by the Commission to have fulfilled properly the broker's duty to account for and remit money which the broker is required to maintain and deposit in a designated trust account:

- (1) upon the rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;
- (2) upon the withdrawal of an offer not yet accepted to buy, sell, rent, lease, exchange, or option real estate;
- (3) at the closing of the transaction;
- (4) upon securing a written agreement which is signed by all parties having an interest in the trust funds and is separate from the contract which directs the broker to hold the funds;
- (5) upon the filing of an interpleader action in a court of competent jurisdiction;
- (6) upon the order of a court of competent jurisdiction; or
- (7) upon a reasonable interpretation of the contract which directed the broker to deposit the funds.

(d) When a broker makes a disbursement to which all parties to the contract have not expressly agreed in writing, the broker must immediately notify all parties in writing of the disbursement.

### **10.10 Agreements to be written.**

(a) Except as provided in Regulation 10.10(b), a licensee, for the protection of the public and of all parties with whom the licensee deals, shall see that the exact agreement of the parties regarding real estate is in writing. A licensee shall also see that clients and other parties to the transaction with whom the licensee deals receive copies of such agreements signed by all parties. (Examples: Exclusive agency agreements or contracts, real estate contracts, closing statements, lease agreements, management agreements, financial obligations and commitments, etc.) It is strongly recommended that a licensee obtain written acknowledgment from the buyer and or seller that the buyer and or seller have received said signed copies.

(b) It is strongly recommended that non-exclusive agency agreements or contracts be in writing.

(c) In compliance with the Arkansas Supreme Court decision in the case of Pope County Bar Association, Inc. vs. Suggs, 624 S.W. 2d 828 (1981), real estate forms used by licensees in the regular course of business shall be approved by a licensed Arkansas attorney prior to use. The licensee shall be responsible for providing evidence of such approval by a licensed Arkansas attorney upon request of the Commission.

### **10.11 Self dealing.**

Licensees shall not buy, sell, rent or lease property for themselves or for a corporation, partnership or association in which they have an interest without first making full disclosure to the buyer or seller, as the

case may be, of the exact facts that they are licensed as a real estate broker or salesperson and are buying, renting or leasing the property for their own account or have an interest in the property which they are selling, renting or leasing. All such disclosures must be made in writing before the sales, rental or lease contract is entered into.

#### **10.12 Offers and acceptances.**

(a) All offers received on a specific property shall promptly be presented to the seller by the listing firm or other licensee designated by an authorized representative of the listing firm.

(b) Every offer received must be signed by the licensee who receives it and by that licensee's supervising broker. Every acceptance must be signed by the listing licensee and that licensee's supervising broker. (It is desirable for the supervising brokers of the selling licensee and listing licensee to review and sign each real estate contract before it is submitted to the seller, although that is not always possible. However, such supervising brokers shall review and sign the real estate contract as soon as possible after it is received, and, in all cases, prior to closing.)

#### **10.13 Listing agreements; signs.**

(a) If a firm holds an exclusive listing contract on a parcel of property, the selling licensee shall not contact the seller about showing the property or negotiating the sale without prior permission from the listing firm or other licensee designated by an authorized representative of the listing firm. Any offers received by the selling licensee shall be presented to the firm holding the exclusive listing contract not later than the close of the next business day after receipt of the offer. Likewise, all earnest moneys and deposits shall be forwarded to the listing firm for deposit in the listing firm's trust account. The listing firm or other licensee designated by an authorized representative of the listing firm shall then present the offer to the seller. The selling licensee may accompany the listing licensee with the latter's permission, but shall not contact the seller without prior permission from an authorized representative of the listing firm.

(b) A licensee shall not knowingly enter into an agency agreement or contract when there is reason to believe that there is an existing exclusive agency agreement or contract in force without first communicating with the other principal broker who holds such agreement or contract to confirm its existence. If there is an existing exclusive agency agreement or contract in force, the licensee shall not enter into another agency agreement or contract without first notifying the client in writing to consult with an attorney regarding the risk of being liable for two (2) separate commissions. (Examples: Exclusive Listing and Exclusive Buyer Representation Agreements or Contracts, Property Management Agreements)

(c) Signs offering or advertising a property may be on the property only during the existence of a listing agreement, unless otherwise authorized by the owner.

#### **10.14 Reporting violations.**

It is the duty of each licensee to report in writing to the Commission any information coming to the licensee's knowledge which is or may be (1) a violation of the Arkansas Real Estate License Law; or (2) a violation of the Commission regulations.

## 10.15 Broker's Price Opinion.

(a) A "broker's price opinion" means an estimate prepared by a licensee that details the probable selling price of real estate and provides a varying level of detail about the real estate's condition, market, and neighborhood, and information about sales of comparable real estate. A "market analysis" is similar to a broker price opinion but is usually limited to comparison to other real property currently or recently in the market place; whereas, the preparer of a broker price opinion may utilize other basis for the report. In the preparation or issuance of a broker price opinion or market analysis, usage of the terms "market value", "appraised value" or "appraisal", shall be presumed to be in violation of Ark. Code Ann. § 17-42-110(d) and subject to appropriate sanctions. It is highly recommended that a licensee avoid other general references to "value" of the property when preparing or issuing a broker price opinion or market analysis. A report in which a broker price opinion is prepared or issued by a real estate licensee must include within the body of the written report or in a separate cover letter the following:

- (1) A brief description of the subject property.
- (2) The basis used to determine the broker's price opinion to include any applicable market data and with regard to commercial properties, the computation of capitalization, including the capitalization rate;
- (3) Any assumptions or limiting conditions used to determine the broker price opinion (Examples: repairs, items to be removed from property, zoning change, new or different access other than what is currently available, special financing, hazardous waste, nuisance removal, etc.)
- (4) A disclosure of any existing or contemplated interest of every licensee who prepares or provides the broker price opinion, including, without limitation, the possibility of a licensee representing the seller or lessor, or the buyer or lessee;
- (5) The names and signatures of the licensee who prepared or issued the broker price opinion and of the principal broker or designated executive broker with whom the licensee is associated;
- (6) The name of the real estate firm with whom the licensee who prepared or issued the broker price opinion is licensed; and
- (7) The date of issuance of the broker price opinion;
- (8) In at least 14-point bold type, the following disclaimer:

***Notwithstanding any preprinted language to the contrary, this opinion is not an appraisal of the market value of the property. If an appraisal is desired, the services of a licensed or certified appraiser must be obtained. Pursuant to Ark. Code. Ann. § 17-42-110(d), a broker price opinion or market analysis issued by a real estate licensee shall not contain the terms "market value", "appraised value", or "appraisal".***

***Any reference in the report to a specific marketing time period is for illustrative purposes only and does not obligate the licensee or broker to sell the property within the stated timeframe or act as a representation or guarantee that the property will be sold within such timeframe.***

***Unless otherwise indicated, the broker price opinion assumes without investigation a fee simple title ownership interest without any reservation of minerals, subsurface rights, or otherwise.***

***This broker price opinion report is to be used solely for purposes allowed by state and federal law. If the report is to be used for any purpose not specifically allowed by state and federal law, legal counsel should be consulted.***

(b) A licensee shall furnish to the Principal Broker or Designated Executive Broker with whom the licensee is associated, copies of all broker price opinion reports, including the cover letter described above, which shall be maintained on file in accordance with the record keeping requirements of this chapter.

(c) A licensee may produce or transmit a written broker price opinion electronically to any person entitled to receive it. A broker price opinion that is submitted electronically is subject to any regulations



relating to recordkeeping as adopted pursuant to this chapter, including inclusion of the cover letter required in 1 above.

(d) A principal broker or designated executive broker is responsible for the preparation and issuance of a broker price opinion by any licensee who is associated with the broker unless the broker price opinion was prepared or issued independently and without permission or authority from the broker. If the principal broker or designated executive broker learns that a licensee has prepared or issued a broker price opinion independently, that broker must comply with Commission Regulation 10.1(a) by immediately notifying the Commission in writing and forwarding such licensee's license to the Commission.

#### **10.16 Criminal convictions and disciplinary actions.**

(a) A licensee who is convicted of or pleads guilty or nolo contendere to any crime other than a traffic violation shall make written report thereof to the Commission within thirty (30) days after the conviction or plea. The report shall include the date of the offense and of the conviction or plea, the name and address of the court, the specific crime for which convicted, or to which the plea is entered, the fine, penalty and/or other sanctions imposed, and copies of the charging document and judgment of conviction or other disposition, including probation or suspension of sentence. The report shall also include the licensee's explanation of the circumstances which led to the charge and conviction or plea, along with any other information which the licensee wishes to submit.

(b) A licensee who after the initiation of an investigation, hearing or other administrative action surrenders or who has a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or canceled or who is subjected to any sanctions, including probation, involving such license, permit, certification or registration or who is the subject of sanctions for practicing a profession without a license shall make written report thereof to the Commission within thirty (30) days after such action. The report shall include the date of the action, the name and address of the regulatory agency which has taken the action and copies of documents pertaining thereto. The report shall also include the licensee's explanation of the circumstances which led to the action, along with any additional information the licensee wishes to submit.

(c) An applicant for a real estate license who has been convicted of or pleaded guilty or nolo contendere to any crime other than a traffic violation or who after the initiation of an investigation, hearing or other administrative action has surrendered or has had a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or canceled or who has been subjected to any sanctions, including probation, involving such a license, permit, certification or registration shall furnish the written report referred to in Regulation 10.16 (a) and/or (b) to the Commission at the time the application is submitted if such action has already occurred, otherwise such report shall be made immediately after the action occurs.

#### **10.17 Violation of law or regulation.**

A licensee who violates or fails to comply with any provision of the Arkansas Real Estate License Law or Commission regulations is subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].

#### **10.18 Property management definitions.**

(a) "Audit trail" means a documented history of a financial transaction by which the transaction can be traced to its source.

(b) "Occupant" means a person who rents a property on a nightly basis.

- (c) "Tenant" means a person who rents a property on other than a nightly basis.
- (d) "Property Manager" means a licensed principal broker or designated executive broker who performs property management activities pursuant to A. C. A. § 17-42-103(9)
- (e) This section does not apply to any residential property management program operated or regulated by a federal or state act or agency which includes specific record keeping requirements that the commission determines are substantially equivalent to or greater than that required by this section.

#### **10.19 Property management agreement.**

- (a) A principal broker or designated executive broker must not engage in the management of residential rental real estate without a written, current property management agreement between the owner and the property manager. A property management agreement must include the following:
  - (1) Name, address and other contact information for property owner;
  - (2) The address or legal description of the property to be managed;
  - (3) The duties and responsibilities of the property manager and owner;
  - (4) The authority and power given by the owner to the property manager;
  - (5) The management fees, application fees, screening fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for management of rental real estate including when such compensation is earned and when it will be paid;
  - (6) A description of the monthly statements of accounting the property manager will provide to the owner;
  - (7) The duration of the agreement, rollover provisions, renewal clauses or automatic extensions, if any;
  - (8) The method by which the property management agreement can be terminated and any other terms and conditions of the agreement;
  - (9) Signatures of the property manager or executive broker and property owner; and
  - (10) The date of the agreement.
- (b) The property manager must promptly deliver a legible copy of the fully executed property management agreement, and any addenda or amendments, to the owner.

#### **10.20 Tenant agreement.**

- (a) A property manager shall not lease property he manages without a written agreement with the tenant.
- (b) Each lease or rental agreement for residential real estate managed by the property manager must contain the following:
  - (1) The name and business address of the property manager and his firm;
  - (2) The name, address and other contact information of the tenant;
  - (3) The mailing address or unit number of property being rented or leased;
  - (4) Payment conditions and amounts pertinent to the rental or lease, and the rental or lease term;
  - (5) The amount of and the reason for all funds paid by the tenant to the property manager at the outset of the agreement including funds for rent, security deposits, and any other fees;
  - (6) The location where or entity by whom security deposits will be held;
  - (7) Method by which tenant will be notified in the event of termination of property manager's property management agreement to include handling of tenant's security deposit; and
  - (8) Signatures of the current property manager or current executive broker and tenant.
- (c) A tenant's refusal to sign the lease agreement shall not constitute noncompliance by the property manager with the terms stated herein.

(d) A property manager may not expend any tenant security deposits for payment of any expenses or fees not otherwise allowed by the tenant's rental or lease agreement.

### **10.21 Property management accounting and recordkeeping.**

(a) A property manager must retain records of all deposits in a manner in which they are traceable to the owners' and tenants' ledgers. A property manager must retain records identifying the amount of and purpose of each disbursement entered into the owner's and tenants' ledgers.

(b) The property manager shall disclose to the owner, in writing, the property manager's use of any employees or a business in which the property manager or any persons licensed under him has a pecuniary interest to provide billable services to the owner's property.

### **10.22 Property management owner ledgers.**

(a) A property manager must prepare and maintain at least one separate owner's ledger for each property management agreement, for all monies received and disbursed.

(b) If a property is utilized for nightly rentals, a separate ledger account must be maintained for that property. Each occupant of the property must be identified, including the dates of occupancy and amounts paid.

(c) If a property manager has access to a separate banking or escrow account owned or controlled by the property owner pursuant to a property management agreement, the property manager may maintain either a record of receipts and disbursements or check register in lieu of an owner's ledger.

(d) All owner ledgers must contain the property manager's name, identification of property being managed, and the following information for each deposit of funds:

- (1) The amount of funds received;
- (2) The purpose of the funds and identity of the person who tendered the funds;
- (3) The check number, cash receipt number or a unique series of letters and/or numbers that establish an audit trail to the receipt of funds;
- (4) The date the funds were deposited; and
- (5) The balance of each recorded entry.

(e) For each disbursement of funds, all owner ledgers must contain the following information:

- (1) The date the funds were disbursed;
- (2) The amount of funds disbursed;
- (3) The check number or bank-generated electronic tracking number;
- (4) The payee of the disbursement;
- (5) The purpose of the disbursement; and
- (6) The balance after each recorded entry.

(f) If more than one property is managed for a property owner, each entry for deposit or disbursement must identify the applicable property rather than just the owner. If a property management agreement with an owner allows the property manager to use funds collected for one property to apply to expenses of another property owned by the same owner, an overall compilation/accounting shall be prepared for the owner.

(g) At a minimum, once each month, a report showing all receipts and disbursements for the account of the owner must be provided to the owner. A copy or electronic version of each such report must be available through the property manager's records system.

### **10.23 Property management tenant ledgers.**

(a) A property manager must prepare and maintain at least one tenant's ledger for each unit from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of payment of funds to the property manager.

(b) All tenant ledgers must contain the tenant's name and the legal description or physical address of the property sufficient to distinguish that property from other rental units, or a unique series of letters or numbers that establishes an audit trail.

(c) For each deposit of funds, all tenant ledgers must contain the following information:

(1) The amount of funds received;

(2) The purpose of the funds and identity of the person who tendered the funds;

(3) The check number, cash receipt number or a unique series of letters or number that establishes an audit trail to the receipt of funds;

(4) The date the funds were received; and

(5) The balance after each recorded entry.

(d) For each disbursement of funds, all tenant ledgers must contain the following information:

(1) The date the funds were disbursed;

(2) The amount of funds disbursed;

(3) The check number or bank-generated electronic tracking number;

(4) The payee of the disbursement;

(5) The purpose of the disbursement; and

(6) The balance after each recorded entry.

(e) In lieu of an individual tenant ledger a property manager may prepare and maintain a separate record of the receipt of funds from prospective tenants who do not become tenants after such payment.

### **10.24 Property management cash receipts.**

(a) If a property manager chooses to accept cash, he or his designee must prepare a legible written receipt for any cash funds received under a property management agreement or from a prospective tenant. A copy of the receipt must be maintained in the property manager's records. Cash receipts must be consecutively pre-numbered, be printed in at least duplicate form and must contain:

(1) The date of receipt of cash funds;

(2) The amount of the funds;

(3) The reason for payment or collection of the funds received;

(4) The identity of the property for which the cash funds were received;

(5) The tenant's name;

(6) The payer of the funds if different than the tenant;

(7) The payee of the funds; and

(8) The name and signature of the individual who actually received the cash and prepared the receipt.

## **SECTION 11. CONTINUING EDUCATION.**

### **11.1 Requests for waiver or extension.**

Each request for a waiver of the continuing education requirement under A.C.A. § 17-42-307(c) or extension of time to complete post license education requirement, shall be in writing and shall be supported by clear and convincing evidence. The Commission shall acknowledge each such request and shall announce its decision in writing. If the waiver or extension is granted, the Commission may impose such terms and conditions as it deems appropriate.

### **11.2 Continuing education topics.**

(a) (1) Annually, the Commission shall identify subject matter topics that will be acceptable for continuing education courses for the upcoming license year.

(2) For the annual continuing education requirement the Commission may:

(A) Identify a specific topic of not more than three (3) classroom hours to be included in the annual continuing education requirement; or,

(B) Develop and require a specific curriculum for continuing education courses for licensed brokers or their designees for the annual continuing education.

(b) (1) The Commission may provide continuing education for licensees under the following circumstances:

(A) If the Executive Director, in consultation with the Commissioners, determines that courses are not readily available by classroom delivery for a specific topic which has been identified by the Commission as acceptable for continuing education; or,

(B) If the Executive Director, in consultation with the Commissioners, determines that continuing education courses are not readily available by classroom delivery to licensees in a specific geographic area of Arkansas.

(2) When providing continuing education pursuant to this section, the Commission is authorized to incur and pay the reasonable and necessary expenses in connection therewith; and to make reasonable charges for materials provided by the Commission and for services performed in connection with providing the materials. The continuing education courses offered by the Commission shall be open to all licensees unless the content is deemed broker specific, in which case the courses will be open to all brokers.

### **11.3 Approved courses and instructors.**

Only those courses and instructors which are approved by the Commission or which are exempted from such approval by Section A.C.A. §17-42-503 shall be accepted by the Commission for continuing education credit.

### **11.4 No duplication of pre-licensing and continuing education credit.**

No educational courses or hours submitted as credit toward the prelicensing education requirement shall be used as credit for the continuing education requirements, and no educational courses or hours submitted for credit toward the continuing education requirements shall be used or counted to satisfy the pre-licensure educational requirements.

## **11.5 Post-license education requirements**

- (a) Each salesperson and broker will complete a post-license education course as provided herein.
- (b) Salespersons shall complete an eighteen (18) classroom hour salesperson course.
- (c) Brokers shall complete the thirty (30) classroom hour broker course developed by the Commission.
- (d) All post-license education courses shall be conducted by either the Arkansas Real Estate Commission, a school or organization licensed by the Commission, or post-secondary school accredited by a nationally recognized accrediting agency approved by the U.S. Department of Education wherever situated. All post-license education hours shall be conducted by actual classroom attendance.
- (e) The Arkansas Real Estate Commission will establish the course content for the post-license education courses for new salespersons and brokers.
- (f) The broker or salesperson shall deliver to the Commission the original certificate of completion of the post-license education course, or a copy thereof, from an approved provider, or other documentation satisfactory to the Commission. Said documentation must be received by the Commission no later than the end of the month one (1) year following the date of the broker's or salesperson's initial license. If documentation of an individual's post-license education is not received by the Commission within said time period, the license will be placed on inactive status until the broker or salesperson files satisfactory documentation of his completion of said post-license education course.
- (g) A broker who is initially licensed in that capacity cannot become an executive broker or principal broker until such broker has completed and filed satisfactory documentation of his completion of the post-license broker education course. However, the Commission may temporarily waive this requirement for a real estate broker who has submitted proof of enrollment in an upcoming course acceptable to the Commission.

## **SECTION 12. INTEREST ON TRUST ACCOUNTS.**

### **12.1 Interest on trust account program.**

The Interest on Real Estate Brokers' Trust Account Program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] is hereby established and Arkansas Real Estate Foundation, Inc. is designated as the recipient of funds generated by such program.

### **12.2 Certain interest bearing trust accounts approved.**

Notwithstanding any other Commission regulation to the contrary, a principal broker is authorized to maintain interest bearing trust accounts when required to do so by law or valid regulation of any governmental agency, or while participating in the Interest on Real Estate Brokers' Trust Account Program.

## **SECTION 13. TIME-SHARE.**

### **13.1 Registration; renewal: fees**

(a) Each application for registration of a time-share plan or of an agent thereof shall be made on a form furnished by the Arkansas Real Estate Commission and shall be accompanied by the appropriate filing fee and evidence that a bond in the amount shown below has been placed with a surety company, corporate bond acceptable to the Commission or a cash bond with the Commission.

(b) Each registration shall be renewed annually and shall be filed no later than June 1 beginning with the upcoming renewal period beginning July 1. Such renewal shall be made on a form prescribed by the Commission and accompanied by the appropriate fee.

(c) The following fees are established at the amounts indicated:

- (1) Time-share plan registration fee - \$750.00
- (2) Time-share plan annual renewal fee - \$350.00
- (3) Abbreviated registration application fee - \$500.00
- (4) Abbreviated registration renewal and recertification fee - \$300
- (5) Acquisition agent registration and renewal fee - \$150.00
- (6) Principal broker registration and renewal fee - \$75.00
- (7) Managing agent registration and renewal fee - \$75.00
- (8) Exchange agent registration and renewal fee - \$75.00
- (9) Material change fee - \$150.00

(d) The following bond amounts are established at the amounts indicated:

- (1) Developer's consolidated bond - \$50,000
- (2) Acquisition agent bond - \$10,000
- (3) Principal broker bond - \$10,000
- (4) Managing agent bond - \$10,000

### **13.2 Agents; amendment of registration.**

(a) Each developer shall file with the Commission the name, street address, mailing address, and telephone number of each acquisition agent, managing agent, sales agent and exchange agent and the responsible managing employee for each of said agents associated with each time-share plan. Should any of the information contained in this list change, then the developer shall notify the Commission of such change within two (2) weeks of such change.

(b) A developer shall amend or supplement its registration to report any material change in the information required by Ark. Code Ann. § 18-14-204. Such amendment or supplementation shall be made within forty-five (45) days of the occurrence of the material change. "Material change" means any change which alters the meaning or effect of an instrument or information, or any change which affects the rights or liabilities of any time-share owner or any potential time-share purchaser.

### **13.3 Fictitious name.**

Each developer, acquisition agent, managing agent, sales agent and exchange agent shall register with the Commission each fictitious name, if any, under which that person conducts business. No person shall conduct business which is regulated by the provisions of the Arkansas Time-Share Law under any names other than those registered with the Commission.

**13.4 Purchase contract; cancellation notice; form, time, procedure.**

(a) A purchaser may cancel any contract for the purchase of a time-share interest from a developer within five (5) days after execution of the contract. The purchaser's right to cancel a contract for purchase shall not be waived.

(b) The public offering statement shall be written in clear, plain and concise language. There shall be attached to the front of the public offering statement a notice in duplicate containing the following language in at least 10 point boldface type:

**"IMPORTANT NOTICE**

**I UNDERSTAND THAT IF I SIGN A CONTRACT FOR THE PURCHASE OF A TIME-SHARE INTEREST I HAVE THE RIGHT TO CANCEL THE CONTRACT WITHIN FIVE (5) DAYS AFTER SIGNING THE CONTRACT. I UNDERSTAND THAT CANCELLATION IS WITHOUT PENALTY AND ALL PAYMENTS MADE BY ME BEFORE CANCELLATION SHOULD BE REFUNDED WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOTICE OF CANCELLATION. IF THE FIFTH DAY AFTER THE SIGNING OF THIS CONTRACT IS A SATURDAY, SUNDAY, OR LEGAL HOLIDAY MY RIGHT TO CANCEL IS EXTENDED TO THE NEXT DAY WHICH IS NOT A SATURDAY, SUNDAY, OR LEGAL HOLIDAY.**

**I REALIZE THAT TO CANCEL THIS CONTRACT I MUST MAIL OR DELIVER A WRITTEN NOTICE OF CANCELLATION TO (NAME OF DEVELOPER) AT (DEVELOPER'S ADDRESS).**

**I UNDERSTAND THAT THE ARKANSAS REAL ESTATE COMMISSION NEITHER RECOMMENDS NOR APPROVES THIS OR ANY OTHER TIMESHARE PLAN. I HEREBY ACKNOWLEDGE RECEIPT OF THE ATTACHED PUBLIC OFFERING STATEMENT.**

**(Purchaser's Signature)**

**DATE: \_\_\_\_\_ ”**

The original executed notice shall be retained by the developer and the duplicate copy shall be given to the purchaser. This notice shall contain no other printing or writing thereon.

(c) There shall be included in each contract for the purchase of a time-share interest immediately above the signature line a notice containing the following language in print size larger than the other provisions of the contract (excluding descriptive headings and titles) but no less than 10 point boldface type:

**"NOTICE TO PURCHASER**

**YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT WITHIN FIVE (5) DAYS AFTER YOU SIGN THE CONTRACT. FOR FURTHER INFORMATION, SEE "IMPORTANT NOTICE" ATTACHED TO THE PUBLIC OFFERING STATEMENT."**

(d) Should the fifth day after the execution of the contract for purchase of a time-share interest be a Saturday, Sunday or legal holiday, then the five (5) day cancellation period shall not expire until the end of the next day which is not a Saturday, Sunday or legal holiday. "Legal holiday" means any day designated as a holiday by the President or the Congress of the United States or designated by the laws of this state.

Notice of cancellation shall be properly addressed with sufficient postage prepaid to assure delivery and notice shall be deemed given when postmarked by the United States Postal Service.



### **13.5 Record maintenance.**

Each developer shall assure that any records required to be maintained pursuant to the Arkansas Time-Share Law or regulations promulgated thereunder shall be maintained and made available to the Arkansas Real Estate Commission upon request.

### **13.6 Records; developer and agent; type, time.**

(a) Each developer shall maintain complete records of each sale of any time-share interests in the time-share plan. The records shall be maintained for three (3) years and shall contain complete and detailed records of all escrow accounts required by statute or otherwise maintained; complete records of each sale of any time-share interests, including copies of sales contracts, closing statements, credit disclosure information, executed copies of "Important Notice;" and any other information necessary to make a complete record of each transaction effected by the developer. These records shall be open to inspection by the Arkansas Real Estate Commission.

(b) Each principal broker functioning pursuant to the Real Estate License Law shall maintain complete records of each transaction conducted by his/her firm. Each firm shall maintain signed copies of all offers, signed copies of all closing statements, detailed records of all escrow accounts required by statute or otherwise maintained, and any additional documents as may be necessary to make a complete record of each transaction effected by such firm. All such records shall be maintained for three (3) years and shall be open to inspection by the Arkansas Real Estate Commission.

(c) Each acquisition agent shall maintain complete records of all advertising and/or promotional materials used, names and addresses of all persons who receive prizes, other than the names and addresses of persons who received the prize most frequently awarded, the retail value of all prizes awarded and a statement of the odds of winning each prize. These records shall be maintained for three (3) years following the expiration date of the contest or gift offer and shall be open to inspection by the Arkansas Real Estate Commission.

(d) Each managing agent shall maintain complete records of all time-share plans managed by his/her firm. Each firm shall maintain complete and detailed records of all maintenance fees collected and the disbursement of these fees for repair and maintenance of the accommodations. These records shall include copies of all contracts, agreements, receipts and invoices, and any additional documents as may be necessary to make a complete record of all financial transactions with regard to the management of each accommodation. Each firm shall also maintain complete records of any rental program operated for the benefit of owners of time-share interests. These records shall be maintained for three (3) years and shall be open to inspection by the Arkansas Real Estate Commission.

### **13.7 Advertising materials.**

Advertising materials used in this state shall be maintained for three (3) years by the developer or agent using the materials.

### **13.8 Financial statements.**

Financial statements are required to be submitted to the Commission under Ark. Code Ann. § 18-14-204(a). The statements shall be in accordance with generally accepted accounting principles and be issued by a certified public accountant who shall perform an independent review or audit in accordance with the

applicable standards of the Financial Accounting Standards Board of the American Institute of Certified Public accountants.

### **13.9 Promotional programs; prizes, odds.**

(a) For any promotion, contest, sweepstakes or other prize or gift offer (hereinafter referred to as "promotional program") regarding a time-share plan registered in Arkansas, the developer or acquisition agent or other principal party shall maintain for three (3) years a full and complete description of the promotional program, including but not limited to the following information:

- (1) The duration of the promotional program;
- (2) A description of each prize or gift to be awarded including the retail value of each prize or gift to be awarded and the minimum number of each prize to be awarded;
- (3) A copy of all advertising material to be used;
- (4) A statement of each condition precedent to the receipt of any gift or prize;
- (5) The formula used in computing the odds of winning each prize or category of prizes, if such odds are less than one to one.

(b) Any representation of the odds of winning a prize or gift shall be stated in a straightforward and easily comprehensible manner in whole numbers without the use of decimal points or percentage signs.

(c) All materials which advertise a promotional program shall prominently contain:

- (1) A disclosure of the odds of winning, if such odds are less than one to one;
- (2) A disclosure that a "time-share" sales presentation will be offered or required;
- (3) A disclosure of the qualifications necessary for participation in the promotional program;
- (4) The description and retail value of the prize or gift; and
- (5) If the promotional program involves the participation of other entities or developers, the disclosure that the promotional program has multiple sponsors and is either national, regional or statewide in scope, whichever is applicable.

(d) Within one (1) month of the conclusion of any prize offer in which the odds of receiving the prize are less than 1 to 1, the developer shall determine and maintain on record for three (3) years the total number of offers made and the total number of winning numbers distributed by prize category.

(e) Within one (1) month of the conclusion of any contest, the developer shall compile and record a list of the names and addresses of each person who received each prize, other than the prize most frequently awarded. The list shall identify the prize received by each person.

(f) All records and documents required by this subsection are subject to the review of the Arkansas Real Estate Commission upon its request.

### **13.10 "Reasonable Time" defined.**

"Reasonable time" as used in Ark. Code Ann. § 18-14-409(a) shall be presumed to be thirty (30) days.

### **13.11 Limitations.**

Should the parties agree to reduce the period of limitation as stated in Ark. Code Ann. § 18-14-403, such agreement to reduce shall be a separate and distinct paragraph of the contract and shall be initialed by the parties as though the paragraph were an alteration of the original agreement.

### **13.12 Reservation; deposit refundable.**

Upon receipt of a deposit and acceptance of a reservation pursuant to Ark. Code Ann. § 18-14-202(a), the developer shall notify the purchaser in writing that the deposit is refundable at any time at the purchaser's option and that the acceptance of the deposit does not create a binding obligation.

### **13.13 General regulations apply.**

Rules and Regulations of the Arkansas Real Estate Commission 1.1 through 15.8 inclusive shall regulate the practice and procedure for the Commission for enforcement of the Arkansas Time-Share Law and are hereby adopted and incorporated by reference as though included herein word for word; provided that, for purposes of the Arkansas Time-Share Law Regulations, reference to the real estate license law or Commission regulations, and/or reference to licensees, shall be deemed to include the Arkansas Time-Share Law and Time-Share Regulations; and reference to licensees shall be deemed to include registrants under the Arkansas Time-Share Law.

### **13.14 "No Action" letter.**

Whenever the Commission determines on the basis of the facts presented that no affirmative action is necessary to protect the public interest or prospective purchasers, a letter stating that no action will be taken by the Commission may be issued. Any letter by the Commission that action shall not be taken shall not bind the Commission with regard to its future actions relating to such matters unless the Commission shall specifically set forth in writing its determination to be so bound and the extent and nature thereof. Any such no-action letter shall not affect any right which any purchaser may have under the Arkansas Time-Share Law.

### **13.15 Effective date.**

The effective date of the Time-Share Regulations adopted herein [13.1 - 13.4] shall be the first day of the fourth month following adoption. [Adopted 11-27-84; effective 3-1-85.]

## **SECTION 14. EFFECTIVE DATE; PARTIAL REPEALER.**

### **14.1 Effective date.**

The foregoing regulations numbered 1.1 through 12.2 shall become effective on January 1, 1994.

### **14.2 Partial repealer.**

Previously enacted and currently existing regulations of the Commission numbered 101 through 159 and 201 through 205 are deemed superseded by these regulations 1.1 through 12.2 and are therefore repealed as of January 1, 1994 as to any acts, conduct, transactions or other matters which occur on or after January 1, 1994; provided, however, that any acts, conduct, transactions or other matters which

occur prior to January 1, 1994, which become the subject of a complaint, hearing, action, or determination after January 1, 1994, shall be governed and controlled by Regulations 101 through 159 and 201 through 205.

## **SECTION 15. REAL ESTATE AUCTION DEFINITIONS AND REQUIREMENTS.**

### **15.1 Definitions.**

(a) Absentee bid means a procedure that allows a bidder to participate in the bidding without being physically present.

(b) Absolute Auction means an auction where the real estate is sold to the highest qualified bidder with no minimum bid or limiting conditions. The seller may not bid personally or through an agent, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity. Also known as an auction without reserve.

(c) Auction means a method of selling real estate in a public forum through open and competitive bidding.

(d) Auction agreement means the same as a written listing agreement or written agency agreement for the purposes of this section.

(e) Auction With Reserve means an auction of real estate in which the seller or his agent reserves the right to establish a disclosed or undisclosed minimum bid, to accept or reject any and all bids, and to withdraw the real estate at any time prior to announcement of the completion of the sale by the auctioneer. Also known as reserve auction or as an auction subject to confirmation.

(f) Auctioneer means any individual who holds an active Arkansas Real Estate license pursuant to ACA § 17-42-101 et seq. [and an active Arkansas Auctioneer license pursuant to ACA § 17-17-101 et seq.], who offers, attempts, or agrees to auction real estate or participate in a real estate auction.

(g) Bid means a prospective buyer's indication of offer of a price the prospective buyer is willing to pay to purchase real estate at auction.

(h) Buyer's premium means an advertised percentage of the high bid or flat fee added to the high bid to determine the total contract price to be paid by the buyer.

(i) Internet auction means an auction in which a prospective buyer bids using electronic media. The term also includes an auction in which the auctioneer conducts the auction using electronic media.

(j) Rafter Bid or Puffing of a Bid means a fictitious bid used to increase the final sales price.

(k) Reserve means the minimum price that a seller is willing to accept for a property to be sold at auction.

(l) Shill means a person who falsely pretends to have no association with the auctioneer or seller and gives the impression of being an enthusiastic bidder by puffing of a bid.

### **15.2 Nature of auction and written auction agreement.**

(a) Auction shall be with reserve, unless the real estate is offered without reserve using explicit terms such as "absolute" or "without reserve." In an auction "with reserve," the auctioneer may withdraw the real estate at any time until he/she announces completion of the auction. In an "absolute" auction or auction "without reserve," after the auctioneer calls for bids on real estate, that real estate cannot be withdrawn unless no bid is made within a reasonable time.

(b) The auctioneer shall have a written auction agreement with the owner stating the parties' agreement regarding the terms and conditions of the auction, including whether the auction will be an absolute

auction or auction with reserve and the terms of reserve or conditions on the sale; whether a buyer's premium will be charged the buyer and who will receive the buyer's premium collected, and whether the auctioneer or others on the auctioneer's behalf may bid on or purchase the subject real estate at the auction. The auction agreement shall include the address of the property; the compensation to be received by the auctioneer; and the signatures of all parties. At the time of securing the auction agreement, the auctioneer who obtains it shall give the person or persons signing the agreement a true copy of the agreement. In those cases where the auction is an absolute auction or auction without reserve, the auction agreement or an addendum thereto must include the following statement in 14 point bold-faced type.

**“SELLER ACKNOWLEDGES AND AGREES THAT THE PROPERTY OF SELLER (OR PORTION THEREOF IF CONSPICUOUSLY NOTED ON THIS AGREEMENT BETWEEN AUCTIONEER AND SELLER) IS TO BE SOLD AND CONVEYED TO THE HIGHEST BIDDER AT THE AUCTION SALE REGARDLESS OF PRICE AND WITHOUT SELLER HAVING ANY AUTHORITY OR LEGAL RIGHT TO REFUSE TO CONVEY THE PROPERTY (OR PORTION THEREOF) TO SUCH HIGH BIDDER. SELLER IS STRONGLY ADVISED TO VISIT WITH AN ARKANSAS LICENSED ATTORNEY WITH REGARD TO THE DIFFERENCE IN AN AUCTION WITHOUT RESERVE (SUCH AS THAT INTENDED BY AND TO OCCUR PURSUANT TO THIS AGREEMENT) AND AN AUCTION WITH RESERVE. SELLER IS ALSO STRONGLY ENCOURAGED TO VISIT WITH ANY LIENHOLDER OR SELLER PURSUANT TO ANY INSTALLMENT LAND SALE (OR SIMILAR) CONTRACT WITH REGARD TO THE NATURE OF THIS AUCTION AGREEMENT.”**

(c) A bidder may retract a bid prior to the auctioneer's announcement of completion of the auction, but a bidder's retraction does not revive any previous bid.

(d) Each sale at auction is complete and considered legally binding upon the person making the final winning bid at the moment the auctioneer announces the completion of the sale by the fall of the hammer or in any other customary manner.

### **15.3 Auctioneer/Seller bidding or purchasing auctioned real estate.**

(a) Auctioneer bidding.

(1) The auctioneer shall not bid or otherwise purchase the real estate being auctioned, or permit others to do so on his behalf, unless he has disclosed that he may bid or may purchase the real estate as provided herein.

(2) In a reserve auction, the auctioneer may bid on behalf of the seller after giving notice pursuant to section c below.

(b) Seller bidding.

(1) In an absolute auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned, unless the seller is a party to the dissolution of any marriage, limited liability company, partnership, or corporation, and is bidding as an individual apart from the selling entity and disclosure as required herein has been made to those in attendance at the auction.

(2) In a reserve auction, the auctioneer shall not knowingly permit the seller or others on the seller's behalf to bid on the seller's real estate being auctioned unless the auctioneer has disclosed that the seller or others on the seller's behalf may bid on the real estate being auctioned as provided herein.

(c) Notices.

Immediately prior to opening the bidding on the subject real estate, the auctioneer shall announce to all of those in attendance at the auction, the terms and conditions of the auction, and announce if the seller and/or auctioneer, or others on their behalf may bid on or purchase the real estate being auctioned.

#### **15.4 Auction Advertisements.**

An auctioneer who advertises real estate shall comply with the following requirements:

- (1) Auction advertisements that include real estate must disclose the name of the real estate firm and auctioneer licensed with that firm who will be conducting the auction;
- (2) Advertising real estate for sale at which some parcels will be auctioned with reserve and some parcels will be auctioned without reserve shall clearly and conspicuously indicate this fact to the public.
- (3) An auctioneer shall disclose the existence of any buyer's premium to be charged to a buyer at an auction sale. Such disclosure shall be made in all published advertising and disclosed prior to the start of an auction.

#### **15.5 Internet auction sale procedure and absentee bids.**

In an Internet auction sale or in an auction that allows for absentee bids, the auctioneer must validate a buyer's capability to participate in the sale by obtaining the buyer's name, address, e-mail address, phone number, and ability to legally enter into a contract. In addition, the auctioneer shall obtain an agreement to the terms of the auction procedure from any buyer wishing to participate in the sale.

#### **15.6 Auctioneer to maintain records.**

(a) The Principal Broker of the real estate firm with which the auctioneer is licensed must maintain for a period of three years copies of all agreements, listing contracts, handbills, advertisements, and other pertinent records, including signed closing statements and any auction recordings whether audio, video, or audiovisual if the auction was recorded. The records are subject to review by the commission.

(b) For all auctions that an auctioneer advertises as absolute, a copy of the closing statement signed by the seller and buyer for the real property that was the subject of the absolute auction must be maintained by the principal broker for a period of three years. In the event deed does not transfer for real estate advertised for inclusion in an absolute auction, the transaction file must include a detailed explanation as to why the property was not sold.

#### **15.7 Certain acts prohibited.**

Prohibited acts include the following:

- (1) Knowingly receiving or using a rafter bid, puffing of a bid, or any type of bid rigging such as utilizing the services of a shill;
- (2) Knowingly permitting an unlicensed individual to participate in a real estate auction;
- (3) Knowingly and intentionally misleading the seller, buyer, or bidders in the advertising, conduct, and closing of an auction.
- (4) A continued and flagrant course of misrepresentation or making false promises, either by the auctioneer, an employee of the auctioneer, or by someone acting on behalf of and with the auctioneer's consent.
- (5) Failure to properly make any disclosures or to provide documents or information required by this section.
- (6) Establishing a pattern of practice of advertising auctions that include real estate as "absolute" when the auctioneer knew or should have known that a minimum bid or limiting conditions existed for the properties to be sold.

(7) Establishing a pattern of practice of advertising auctions that include real estate as “absolute” then subsequently cancelling the auctions or converting the auctions to an Auction with Reserve type auction.

(8) Any other conduct, whether of the same or a different character from that specified in this section, whereby the real estate licensee falsely bids or knowingly receives false bids on the property to be sold only for the purpose of raising the price for the seller or auctioneer.

### **15.8 Unlicensed real estate activity.**

Any unlicensed person who participates in a real estate auction; or who makes or offers to make a rafter bid; or who engages in or offers to engage in puffing of a bid; or who acts or offers to act as a shill is prima facie evidence that the person is performing activities listed in Arkansas Code Annotated Section 17-42-103(9) and is thereby engaged in unlicensed real estate activity and as such is subject to the civil penalties set out in Arkansas Code Annotated Section 17-42-109.

## **SECTION 16. REAL ESTATE EDUCATION.**

### **16.1 Instructor applications; education; experience.**

Applicants for original licensure as a Principal or Associate Instructor must apply on forms provided by the Commission, pay the application fee established by these regulations, and meet the following requirements:

(a) Broker pre-license and broker post-license Instructor applicants must provide proof of the following:

(1) Completion of not less than a high school diploma or GED;

(2) Successful completion of the following courses of instruction in real estate, which proof shall consist of the original certificate(s) or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission:

(A) Not less than thirty (30) classroom hours in the basic principles of real estate completed by actual classroom attendance or completion of approved distance education courses;

(B) Not less than sixty (60) classroom hours in broker pre-license education to include not less than forty-five (45) hours of broker pre-license education developed by the Commission, completed by actual classroom attendance;

(C) Not less than eighteen (18) classroom hours in salesperson post-license education and thirty (30) hours in broker post-license education developed by the Commission, completed by actual classroom attendance;

(3) Have in Real Estate five (5) years of work experience within the immediately preceding six (6) years; and

(4) Hold and maintain a current active Arkansas Real Estate Broker License.

(b) Salesperson pre-license Instructor applicants must provide proof of the following:

(1) Completion of not less than a high school diploma or GED;

(2) Successful completion of a course or courses of instruction consisting of not less than thirty (30) classroom hours in the basic principles of real estate completed by actual classroom attendance or completion of approved distance education courses, which proof shall consist of the original certificate(s) or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission;

- (3) Have in Real Estate five (5) years of work experience within the immediately preceding six (6) years; and
- (4) Hold and maintain a current active Arkansas Real Estate Broker License.
- (c) Salesperson post-license Instructor applicants must provide proof of the following:
  - (1) Completion of not less than a high school diploma or GED;
  - (2) Successful completion of the following courses of instruction in real estate, which proof shall consist of the original certificate(s) or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission:
    - (A) Not less than thirty (30) classroom hours in the basic principles of real estate completed by actual classroom attendance or completion of approved distance education courses;
    - (B) Not less than eighteen (18) classroom hours in salesperson post-license education developed by the Commission, completed by actual classroom attendance;
  - (3) Have in Real Estate five (5) years of work experience within the immediately preceding six (6) years; and
  - (4) Hold and maintain a current active Arkansas Real Estate Broker License.
- (d) Continuing education Instructor applicants must provide proof of the following:
  - (1) Completion of not less than a high school diploma or GED;
  - (2) Successful completion of a course or courses of instruction consisting of not less than thirty (30) classroom hours in the basic principles of real estate completed by actual classroom attendance or completion of approved distance education courses, which proof shall consist of the original certificate(s) or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission
  - (3) Have in Real Estate five (5) years of work experience within the immediately preceding six (6) years; and
  - (4) Hold and maintain a current active Arkansas Real Estate Broker License.
- (e) Real estate Guest Speakers must:
  - (1) Have in the subject matter being presented five (5) years of work experience within the immediately preceding six (6) years;
  - (2) Register with the Commission on forms prescribed by the Commission; and
  - (3) Refrain from engaging in product and/or service promotion during class time.
- (f) All Instructors shall demonstrate in a manner satisfactory to the Commission a thorough, accurate and current knowledge of the subject matter being taught.
- (g) The Commission may require Instructor and Administrator attendance at an annual Educator Retreat Workshop and other semi-annual Instructor training workshops.

## **16.2 School applications; association applications.**

Applications for a Main School, Branch School or Association license must be submitted on forms provided by the Commission and accompanied by the application fee established by these regulations and shall meet the following requirements:

- (a) Main and Branch School license applications must include:
  - (1) Name and location of the school
  - (2) Current roster of licensed Instructors and registered Guest Speakers
  - (3) An identified Principal Instructor;
  - (4) A signed statement that the school or association is in compliance with all local, state and federal zoning ordinances and all accessibility requirements established by the Americans with Disabilities Act (ADA); and
  - (5) Copies of school policies to be filed with the Commission regarding course attendance, make-up work and refunds.



- (b) Association license applications must include:
  - (1) Name and location of the Association;
  - (2) An identified Administrator; and
  - (3) Copies of Association policies to be filed with the Commission regarding course attendance, make-up work and refunds.

### **16.3 Course approval requirements.**

Applications for real estate education course approvals must be submitted on forms provided by the Commission and accompanied by the application fee established by these regulations and shall meet the following requirements:

- (a) Salesperson Pre-License Courses:
  - (1) Must include not less than thirty (30) classroom hours in the basic principles of real estate; and
  - (2) May be offered by classroom instruction or approved distance education.
- (b) Broker Pre-License Courses:
  - (1) Must adhere to the Commission's approved broker pre-license education content outline, learning objectives and measurement tools;
  - (2) May not be marketed as examination preparation or "exam prep" courses; and
  - (3) Must be offered by classroom instruction only.
- (c) Salesperson and Broker Post-License Courses:
  - (1) Must adhere to the Commission's approved salesperson and broker post-license education content outlines, learning objectives and measurement tools; and
  - (2) Must be offered by classroom instruction only.
- (d) Continuing Education Courses:
  - (1) Must be based upon subject matter topics identified by the Commission, as established by § 17-42-502;
  - (2) Must include a course outline and learning objectives; and
  - (3) May be offered by classroom instruction or approved distance education.

### **16.4 Renewals.**

(a) The renewal period for school, association and instructor licenses will be May 1 to April 30. Renewal applications accompanied by the required fee must be filed with the Commission no later than March 31. In order to be considered filed with the Commission by the deadline, the renewal applications and accompanying fees must be submitted in completion and must bear a U.S. Postal Service postmark of March 31 or be received in the Commission's office on or before March 31. If March 31 falls on a Saturday, Sunday or legal holiday, the Commission shall accept as meeting the filing deadline those renewal applications that bear a U.S. Postal Service postmark of the first business day thereafter, and those applications received in the Commission office on the first day the office is open to the public following such Saturday, Sunday or legal holiday.

(b) A renewal application filed after the March 31 renewal deadline shall be treated as a late renewal application.

(c) A license renewal not received by April 30 will be considered an original application for licensure upon submittal to the Commission.

(d) The renewal period for real estate education courses will be twelve (12) months from the date of initial course approval.

(1) Where no substantive changes have been made to course content, course renewal applications accompanied by the required fee must be filed with the Commission no later than thirty (30) days prior to the approval's expiration date.

(2) Where substantive changes have been made to course content, course renewal applications accompanied by the required fee must be filed with the Commission no later than sixty (60) days prior to the approval's expiration date.

(e) A course approval renewal application received after the thirty (30) or sixty (60) day deadline shall be treated as a late renewal.

(f) A course approval renewal application submitted to the Commission after the course approval expiration date will be considered an original application for course approval.

### **16.5 Monitoring.**

(a) The Commission or its designee shall periodically monitor all aspects of real estate education offerings. As such, a School or Association's course schedule should at all times be readily available to the Commission.

(b) For any real estate class that is offered and has an attendance of over forty (40) participants, that Instructor or Administrator shall have on file with the Commission an approved monitoring plan. The plan shall be filed prior to the course offering.

(c) Any licensed school associated by name with a real estate firm and whose courses are conducted primarily at that firm's place of business shall have an approved permanent monitoring plan on file with the Commission.

(d) For any real estate class that is offered and has instructional time devoted to luncheons, that Instructor or Administrator shall have on file with the Commission an approved monitoring plan.

(e) For any real estate class that is closed to a specific group of individuals, that Instructor or Administrator shall notify the Commission two (2) weeks prior to the course offering of the date, time and location of the class.

(f) For any real estate class that is offered with a third party sponsor's participation, that Instructor or Administrator shall have on file with the Commission an approved monitoring plan. The plan shall be filed not less than fourteen (14) days prior to the course offering.

(g) Any monitoring plan filed with the Commission should include the following:

(1) Criteria for determining one hundred percent (100%) attendance and course completion by students enrolled in the course;

(2) Methods for monitoring students' attendance and participation;

(3) A copy of the school or association's make-up policy; and

(4) Identification and signature(s) of the Principal Instructor and other person(s) responsible for monitoring the course and students.

### **16.6 Third party sponsors.**

(a) Only Principal Instructors or Instructors designated by the Principal Instructor and approved by the Executive Director may contract with a third party sponsor to offer a continuing education course.

(b) Time committed to product or service promotion shall not be considered instructional time.

(c) Students must be notified in advance of the time during which the third party sponsor will be presenting product or service promotion to the class. Attendance will be neither monitored nor required during that time by this subchapter.

(d) Third party sponsors must sign a statement affirming that their sponsorship of the course is not in violation of RESPA. This statement must accompany the monitoring plan filed with the Commission.

(e) The Principal Instructor should obtain the signature of an authorized representative of the third party sponsor on the monitoring plan filed with the Commission.

### **16.7 Distance education.**

- (a) Schools offering distance education must also offer classroom courses in Arkansas.
- (b) Distance education instructors must meet the requirements listed under Regulation 16.1.
- (c) Distance education instructors must hold the ARELLO® Certified Distance Education Instructor (CDEI) designation.
- (d) For every distance education course, the instructor associated with the course must actively interact with the students completing the course.
- (e) All distance education courses must be ARELLO® certified unless the course content is developed by and the delivery method(s) is approved by the Commission.
- (f) In any distance education course, the student must attest that they personally completed the coursework.

### **16.8 Course requirements.**

- (a) All real estate education courses shall be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom shall:
  - (1) Be of sufficient size to comfortably accommodate all enrolled students;
  - (2) Be adequately equipped with student desks, worktables with chairs or other seating having a writing surface and arranged so that the writing surface is in front of students allowing students to have an unobstructed view of the Instructor and opportunities for interaction;
  - (3) Have adequate light, heat, cooling, ventilation and public address equipment; and
  - (4) Be free of distractions that disrupt class sessions.
- (b) All real estate education courses shall require one hundred percent (100%) attendance for satisfactory completion. Activities of a non-participatory nature shall not qualify as attendance. Therefore, a student's physical presence in the classroom does not, in and of itself, establish satisfactory completion.
- (c) It is the duty of the Principal Instructor or Administrator to immediately notify the Commission in writing of any student or real estate licensee who petitions any person associated with a licensed School or Association to falsify course attendance or completion.
- (d) Make-up policies filed with the Commission will set forth provisions for student absences and tardiness with corresponding methods for making up any course content or assignments missed.
- (e) A school shall issue a certificate of completion to a student who has paid the appropriate fees and complied with all attendance and make-up policy requirements for satisfactory completion of the course.
- (f) Notwithstanding Regulation 16.7(e), nothing in this subchapter shall require an Instructor, a School or an Association to issue a certificate of completion to an individual student who, in the Instructor's opinion, has not satisfactorily completed the course.
- (g) The Commission shall annually establish subject matter topics acceptable for continuing education courses.
- (h) For any topic required by the Commission under § 17-42-514(a)(2), the Commission may establish additional parameters governing course content and delivery.
- (i) All post-license education and broker pre-license education must include learning objectives established by the Commission.

### **16.9 Felony reporting requirements.**

(a) All real estate Instructors and Administrators of licensed Associations must comply with the requirements set forth in Regulation 10.16(a) and (b).

(b) An applicant for a real estate instructor license who has been convicted of or pleaded guilty or nolo contendere to any crime other than a traffic violation or who, after the initiation of an investigation, hearing or other administrative action has surrendered or has had a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or canceled or who has been subjected to any sanctions, including probation, involving such a license, permit, certification or registration shall furnish the written report referred to in Regulation 10.16(a) or (b) to the Commission at the time the application is submitted.

### **16.10 Maintenance of records; school or association closings.**

(a) Each Principal Instructor, school owner or Administrator must maintain complete records of all real estate education business handled by that school or association; for example, enrollment forms, attendance records, certificates of completion, etc.

(b) All records shall be maintained by the Principal Instructor or Administrator for three (3) years or such time as may be required by law, whichever is greater, and shall be open to inspection by and made available to the staff of the Commission at the school or association's location or other location designated by the Commission. All records required by this regulation may be maintained in an electronic form, provided that a copy of the records can be produced as required by this regulation.

(c) When a School or Association ceases to offer real estate education, the last Principal Instructor or Administrator remaining with the School or Association shall be responsible for all records of the School or Association pertaining to real estate education, and at the time the School or Association ceases to offer real estate education, the Principal Instructor or Administrator shall immediately notify the Commission of the address and phone number of the place where those records are being maintained. If for any reason that Instructor or Administrator delivers custody of or responsibility for those records to another person or entity, he/she shall immediately notify the Commission of such transfer and furnish the name, address and phone number of such person or entity.

(d) When a School or Association closes and students have paid for education offerings not yet delivered, the Commission may arrange for completion of those students' education through another licensed Instructor.

(1) The Commission may be assigned by these students all rights and claims that they may have against the School or Association involved.

# **Federal Fair Housing Law**

## **Summary Information**

**Extracted From**

**Federal Register**

**Vol. 54, No. 13**

**“Implementation of the  
Fair Housing Amendments Act of 1988”**

**U.S. Department of Housing and Urban Development Publication  
“Fair Housing - It’s Your Right”  
(HUD Publication: HUD-1260-FHEO)**

### **Federal Fair Housing Laws**

Federal laws that are commonly referred to as “fair housing laws” consist of the:

- Civil Rights Act of 1866
- Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended in 1974 and 1988)
- 14th Amendment to the United States Constitution

### **The Fair Housing Act**

The Fair Housing Act prohibits discrimination in housing because of:

- Race or color
- National origin
- Religion
- Sex
- Familial status (including children under the age of 18 living with parents or legal custodians; pregnant women and people securing custody of children under 18)
- Handicap

### **What Housing Is Covered?**

The Fair Housing Act covers most housing. In some circumstances, the Act exempts owner-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit occupancy to members.

### **Discriminatory Housing Practices - What Is Prohibited?**

**In the Sale and Rental of Housing:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, or national origin or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color religion, sex, familial status, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.

Prohibited actions include but are not limited to:

Failing to accept or consider a bona fide offer.

Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with any person.

Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person.

Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements.

Evicting tenants because of their race, color, religion, sex, handicap, familial status, or national origin or because of the race, color, religion, sex, handicap, familial status, or national origin of a tenant's guest.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.

Prohibited actions include but are not limited to:

Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements.

Failing or delaying maintenance or repairs or sale or rental dwellings.

Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately.

Limiting the use of privileges, services or facilities associated with a dwelling.

Denying or limiting services or facilities in connection with the sale or rental of a dwelling.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking,

negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development.

Prohibited actions which are generally referred to as unlawful steering include but are not limited to:

Discouraging any person from inspecting, purchasing or renting a dwelling.

Discouraging the purchase or rental of a dwelling by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

Communicating to any prospective purchaser that he or she would not be comfortable or compatible with existing residents of a community, neighborhood or development.

Assigning any person to a particular section of a community, neighborhood or development, or to a particular floor of a building.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited actions relating to dwellings include but are not limited to:

Discharging or taking other adverse action against an employee, broker or agent because he or she refused to participate in a discriminatory housing practice.

Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, or national origin, or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, or national origin.

Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling.

Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services or insurance differently.

- It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation or discrimination.

Discriminatory notices, statements and advertisements include, but are not limited to:

Using words, phrases, photographs, illustrations, symbols or forms which convey that dwellings are available or not available to a particular group of persons.

Expressing to agents, brokers, employees, prospective sellers or renters or any other persons a preference for or limitation on any purchaser or renter.

Selecting media or locations for advertising the sale or rental of dwellings which deny particular segments of the housing market information about housing opportunities.

Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising.

- It shall be unlawful, because of race, color, religion, sex, handicap, familial status, or national origin, to provide inaccurate or untrue information about the availability of dwellings for sale or rental.

Prohibited actions include but are not limited to:

Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented.

Representing that covenants or other deed, trust or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, or national origin preclude the sale or rental of a dwelling to a person.

Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person.

Limiting information, by word or conduct, regarding suitably priced dwellings available for inspection, sale or rental.

Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing.

- **Blockbusting:** It shall be unlawful, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a handicap.

Prohibited actions include but are not limited to:

Engaging, for profit, in conduct (including uninvited solicitations for listings) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

Encouraging, for profit, any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

- It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or



conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, or national origin.

Prohibited actions include but are not limited to:

Setting different fees for access to or membership in a multiple listing service.

Denying or limiting benefits accruing to members in a real estate brokers' organization.

Imposing different standards or criteria for membership in a real estate sales or rental organization.

Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings.

**In Mortgage Lending:** No one may take any of the following actions based on race, color, national origin, religion, sex, familial status or handicap:

- Refuse to make a mortgage loan
- Refuse to provide information regarding loans
- Impose different terms or conditions on a loan
- Discriminate in appraising property
- Refuse to purchase a loan or
- Set different terms or conditions for purchasing a loan

**In Addition:** It is illegal for anyone to:

- Threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right
- Advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

### **Additional Protection If A Person Has A Disability**

If a person or someone associated with that person:

Has a physical or mental disability (including hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and mental retardation) that substantially limits one or more major life activities

Has a record of such a disability or

Is regarded as having such a disability

- The landlord may not:

Refuse to let that person make reasonable modifications to the dwelling or common use areas, at that person's expense, if necessary for the handicapped person to use the housing. (Where reasonable, the landlord may permit changes only if the person agrees to restore the property to its original condition when he moves.)

Refuse to make reasonable accommodations in rules, policies, practices or services if necessary for the handicapped person to use the housing.

**Example:** A building with a "no pets" policy must allow a visually impaired tenant to keep a guide dog.

**Example:** An apartment complex that offers tenants ample, unassigned parking must honor a request from a mobility-impaired tenant for a reserved space near her apartment if necessary to assure that she can have access to her apartment.

However, housing need not be made available to a person who is a direct threat to the health or safety of others or who currently uses illegal drugs.

**Requirements for New Buildings:** In buildings that are ready for first occupancy after March 13, 1991, and have an elevator and four or more units:

- Public and common areas must be accessible to persons with disabilities
- Doors and hallways must be wide enough for wheelchairs
- All units must have:
  - An accessible route into and through the unit
  - Accessible light switches, electrical outlets, thermostats and other environmental controls
  - Reinforced bathroom walls to allow later installation of grab bars and
  - Kitchens and bathrooms that can be used by people in wheelchairs

If a building with four or more units has no elevator and will be ready for first occupancy after March 13, 1991, these standards apply to ground floor units.

These requirements for new buildings do not replace any more stringent standards in state or local law.

### **Housing Opportunities for Families**

Unless a building or community qualifies as housing for older persons, it may not discriminate based on familial status. That is, it may not discriminate against families in which one or more children under 18 live with:

- A parent
- A person who has legal custody of the child or children or
- The designee of the parent or legal custodian, with the parent or custodian's written permission

Familial status protection also applies to pregnant women and anyone securing legal custody of a child under 18.

**Exemption:** Housing for older persons is exempt from the prohibition against familial status discrimination if:

- The HUD Secretary has determined that it is specifically designed for and occupied by elderly persons under a federal, state or local government program or
- It is occupied solely by persons who are 62 or older or
- It houses at least one person who is 55 or older in at least 80 percent of the occupied units and adheres to a published policy statement that demonstrates an intent to house persons who are 55 or older.

A transition period permits residents on or before September 13, 1988 to continue living in the housing, regardless of their age, without interfering with the exemption.

**For Further Information:**

The purpose of this information is to summarize certain fair housing laws. The Fair Housing Act and HUD's regulations contain more detail and technical information. If you need a copy of the law or regulations, contact the HUD regional office nearest you or:

Office of Fair Housing and Equal Opportunity, Room 5116  
Department of Housing and Urban Development  
451 Seventh Street, S.W., Washington, D.C. 20410-2000  
(202) 708-2878