



## **ARKANSAS REAL ESTATE COMMISSION**

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

**October 2017**

ARKANSAS CODE ANNOTATED  
§17-42-101, ET SEQ.  
§18-14-101, ET SEQ.

**\*\*\* CURRENT THROUGH THE 2017 REGULAR SESSION AND UPDATES \*\*\***

**\*\*\* FROM THE ARKANSAS CODE REVISION COMMISSION\*\*\***

**\*\*\*OCTOBER 2017\*\*\***

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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 (10) 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 Arkansas Real Estate Commission or that are not required to be approved by the commission;

(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) as:

(A) An owner of an individual freehold or leasehold interest in real estate;

(B) In the case of a corporation, limited liability company, limited partnership or other entity recognized by law holding a freehold or leasehold interest in the real estate under subdivision (a)(1)(A) of this section, a member, manager, partner or officer who has authority to make management decisions affecting the overall policy of the entity regarding real estate activities involving only the interest of the owner;

(C) An individual attempting to acquire for his or her own use a freehold or leasehold interest in real estate; or

(D) In the case of a corporation, limited liability company, limited partnership, or other entity recognized by law intending to acquire a freehold or leasehold interest in real estate under subdivision (a)(1)(C) of this section, a member, manager, partner, or officer who has authority to make management decisions affecting the overall policy of the entity;

(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.

(c) A person or entity shall not under any circumstance qualify for an exemption under this section if the person or entity:

(1) Obtains an equitable interest in real estate with knowledge that the interest was obtained on behalf of a person or entity that intends to gain an interest in the real estate other than that of ownership; or

(2) Strategically circumvents the requirement for licensure thereby eliminating remedies available to consumers through the commission.

#### **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 – Members.
- 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.
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- 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 shall 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 an application fee and examination fee as the commission may require under § 17-42-304.

(4) (A) Applicants that have provided all required information and documentation to the commission may sit for the licensing examination, if 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) A real estate license shall not be issued until the applicant has successfully completed the licensing examination and 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 licensing 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 licensing examination, the date may be extended by the commission until receipt of the federal criminal background check.

(ii) A real estate license shall not be issued until receipt and approval by the commission of the state and federal criminal background checks.

(2) The applicant's failure to pay the license fee and Real Estate Recovery Fund fee within the ninety-day period under subdivision (b)(1)(B)(i) of this section shall invalidate the licensing examination results, and the applicant shall be required to make new application and retake the licensing 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 seven (7) classroom hours of continuing education required by the commission with at least one (1) classroom hour focusing on personal safety precautions for real estate agents;
  - (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.
- (4) Effective September 30, 2019, the commission may promulgate rules to add additional hours of continuing education to the annual amount required under subdivision (b)(1)(A) of this section with no statutory maximum for hours of continuing education.
- (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:

- (i) Performs activities that require an active real estate license while his or her license is expired;

or

(ii) Advertises, publishes, or otherwise distributes information about real property or real estate brokerage business or activities in violation of this chapter or rules adopted under this chapter.

(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

(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) 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 licensing examination required by § 17-42-302(a)(4) while awaiting the results of a background check prescribed by this section.

(B) A license shall not be issued to an applicant until the commission receives and approves the state and federal criminal background checks.

(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) nor more than seven (7) 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.

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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.