

## NOTICE OF PROPOSED RULE AMENDMENT

The Arkansas Real Estate Commission will hold a Public Hearing at 9:00 a.m. on Monday, August 10, 2020, in the Meeting Room of the Arkansas Real Estate Commission building, 612 South Summit Street, Little Rock, Arkansas and via a livestream platform for the purpose of receiving public or written comment on the adoption of proposed rules 4.5 and 4.6. Rule 4.5 pertains to the automatic licensure for active duty service members, veterans, and their spouses; Rule 4.6 pertains to pre-licensure criminal background checks and waiver requests. The comment period will end on August 10, 2020. Subjects and issues involved are as follows:

*Act 820 of 2019 requires occupational licensing agencies to provide for automatic licensure for active duty service members, returning military veterans, and their spouses to engage in their chosen professions. The purpose of new rule 4.5 is to grant automatic licensure for a real estate broker or salesperson license for active duty service members, returning military veterans and their spouses.*

*Act 990 of 2019 requires licensing agencies to promulgate rules for applicants for licensure who have criminal background records. The purpose of new rule 4.6 is to allow individuals with criminal background records to file a petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure as a real estate broker or salesperson and whether a waiver may be obtained.*

Copies of the proposed rule may be obtained by writing the Arkansas Real Estate Commission at 612 South Summit Street, Little Rock, Arkansas 72201-4740. Written data used for arguments to proposed rule changes should be submitted to the above address at or prior to the time of the Public Hearing. The Commission may also permit oral testimony or argument at the Public Hearing. All appropriate ADH and otherwise mandated COVID-19 screening and social distancing protocols will be observed, potentially limiting the number of participants admitted to the AREC building; therefore, the meeting will also be made available to participants via livestream. Individuals who wish to attend via livestream can obtain a link by which they may join the meeting on the August Commission Meeting agenda page at <https://arec.arkansas.gov/event/august-commission-meeting/>.

## PROPOSED NEW RULES

### MARK UP VERSION

*For the purposes of promulgating new rules pursuant to requirements of Acts 820 and 990 of the 2019 Regular Session of the General Assembly*

#### Proposed New Rules:

**Section 4.5 – Automatic licensure for active duty service members, returning military veterans and their spouses**

**Section 4.6 – Pre-Licensure Criminal Background Check and Waiver Request**

#### **SECTION 4. APPLICATION AND EXAMINATION; EDUCATION AND EXPERIENCE REQUIREMENTS; AUTOMATIC LICENSURE FOR ACTIVE DUTY SERVICE MEMBERS, RETURNING MILITARY VETERANS, AND THEIR SPOUSES; AND, PRE-LICENSURE CRIMINAL BACKGROUND CHECK AND WAIVER REQUEST.**

##### **4.1 Applications; education; experience.**

Applicants for original licensure as a broker or salesperson must apply on forms provided by the Commission, pay the application fee established by these Regulations, and meet the following requirements:

(a) Broker applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion within thirty six (36) months immediately preceding the date of the application of a course or courses of instruction in real estate by actual classroom attendance or completion of approved distance education of which at least forty-five (45) hours are in a course developed by the Commission, for a total of not less than sixty (60) classroom hours. Proof of completion of such education requirement shall consist of the original certificate(s), or certified copies thereof, from the school or organization or other documentation satisfactory to the Commission;

(3)(A) Service by the applicant of an active bona fide apprenticeship by holding a valid real estate salesperson's license issued by the Commission, or by holding a valid real estate salesperson's license or broker's license issued by the appropriate licensing agency of another state, for a period of not less than twenty four (24) months within the previous forty eight (48) month period immediately preceding the date of application, which proof may consist of the official license records of the Commission or certified copies of licensure records of the appropriate licensing agency of another state, plus such other documentation as the Commission deems satisfactory to demonstrate that the applicant has gained experience in the real estate business equal to that which would be gained by a person engaged in the real estate business on a full time basis during a minimum two year period of time; Listings, sales or other licensed activities may be considered by the commission in determining whether the applicant meets this qualification; Consideration shall be given to the broker applicant's local real estate market and/or specialized area of real estate practice. Any person whose application for broker license is denied by the executive director may appeal such denial to the Commission provided the request is in writing and

received in the office of the Commission not later than sixty (60) days following the date of denial by the executive director.

(B) However, pursuant to Section § 17-42-303 (b)(2) the Commission may waive such experience requirement for a real estate broker applicant who has held an active real estate broker's license for a period of not less than eighteen (18) months or who has experience acceptable to the commission in a field considered real estate related for a period of not less than twenty-four months within the previous forty-eight-month period immediately preceding the date of application. Each request for such waiver shall be in writing and shall include such proof as necessary to establish the applicant's eligibility for the waiver. Such proof may consist of the official license records of the Commission, certified copies of license records of the appropriate licensing agency of another state, or such other documentation as the Commission deems satisfactory;

(4) The applicant's affidavit that he/she has no record of unprofessional conduct;

(5) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(b) Salesperson applicants must provide proof of the following:

(1) Attainment of the age of majority, which proof may consist of a birth certificate or copy thereof, driver's license, or other document or proof of age which is satisfactory to the Commission;

(2) Successful completion of a course or courses of instruction in real estate by actual classroom attendance or completion of approved distance education courses of not less than sixty (60) classroom hours, of which at least thirty (30) hours must be in the basic principles of real estate; which proof shall consist of the original certificate(s), or certified copies thereof, from the school or other organization or other documentation satisfactory to the Commission;

(3) The applicant's affidavit that he/she has no record of unprofessional conduct;

(4) Any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(c) (1) The Commission may require each original applicant for a salesperson or broker license, including nonresident applicants applying pursuant to Arkansas Code Ann. § 17-42-305, using forms furnished by and pursuant to instructions provided by the Commission to apply for a state and federal criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and Federal Bureau of Investigation pursuant to Arkansas Code Ann. § 17-42-315.

(2) "Criminal background check" means a state and nation-wide criminal records check conducted by the Arkansas State Police and Federal Bureau of Investigation, including the taking of fingerprints.

(3) Each such applicant shall submit, prior to or with the Application for Real Estate Examination, the form furnished by the Commission authorizing the release of the applicant's criminal background check report to the Commission and shall pay any applicable fees, associated with the State and Federal criminal background checks, pursuant to written instructions provided by the Commission. The release form shall authorize the Identification Bureau of the Arkansas State Police to forward all criminal history information obtained concerning the applicant in regard to any offense referred to in Arkansas Code Ann. § 17-42-315 to the Commission.

(4) The criminal background check shall be completed within six months immediately preceding the date the Application for Real Estate License Examination is received in the Commission's office, and if not, the application shall be returned to the applicant.

(5) Upon request and proof of identification satisfactory to the Commission the Commission may make the report of any criminal information available to the applicant who is the subject of the report and shall

provide the applicant a reasonable time to challenge the accuracy or completeness of the information therein, through the State Identification Bureau pursuant to Arkansas Code Ann. § 12-12-211 and Arkansas Crime Information Center Regulation 7(F).

(6) Should an applicant challenge his/her conviction report, he/she shall notify the Commission in writing. After receipt of such notice, the Commission shall not determine whether an applicant is qualified for the license applied for until the applicant has had reasonable opportunity to challenge said conviction report and shall not process the application until the challenge of said report is resolved by the State Identification Bureau and/or Arkansas Crime Information Center. The applicant shall notify the Identification Bureau to forward to the Commission changes in the applicant's report as a result of any such challenge.

(7) Except as provided in Arkansas Code Ann. § 17-42-315 (g), no person shall receive or hold a license issued by the Commission if the person has been convicted by any court in the State of Arkansas or of any similar offense by a court in another state or of any similar offense by a federal court of an offense identified in Ark. Code Ann. § 17-42-315 (f).

(8) After a hearing the Commission may waive a conviction identified in the preceding paragraph, upon application of the applicant, pursuant to the provisions of Ark. Code Ann. § 17-42-315 (g).

(d) (1) Broker applicants who have previously held an Arkansas real estate license shall not be required to:

- (A) complete any pre-license education previously completed by the broker applicant, or
- (B) demonstrate fulfillment of the requirements of Regulation 4.1(a)(3)(A).

(2) Broker applicants who have previously held an Arkansas real estate license shall be required to:

- (A) pay the application fee established by these Regulations;
- (B) comply with the requirements of subsection (c) of this section;
- (C) provide an affidavit that he/she has no record of unprofessional conduct and is not holding a suspended or probationary professional license in any state; and
- (D) provide any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(3) The Executive Director may waive the requirement to complete the broker licensure exam and may consider the following when granting a waiver under this subsection:

- (A) the length of time an Arkansas real estate broker license was held; and
- (B) the length of time since the applicant held an Arkansas real estate broker license.

(4) Salesperson applicants who have previously held an Arkansas real estate salesperson license shall not be required to complete any pre-license education.

(5) Salesperson applicants who have previously held an Arkansas real estate license shall be required to:

- (A) pay the application fee established by these Regulations;
- (B) comply with the requirements of subsection (c) of this section;
- (C) provide an affidavit that he/she has no record of unprofessional conduct and is not holding a suspended or probationary professional license in any state; and
- (D) provide any other information or documents related to professional licenses held by the applicant; formal disciplinary actions by regulatory agencies; or, pending lawsuits filed or judgments entered against the applicant for fraud, deceit, dishonesty, misrepresentation, or conversion of property including money belonging to another.

(6) The Executive Director may waive the requirement to complete all or part of the salesperson licensure exam and may consider the following when granting a waiver under this subsection:

- (A) the length of time an Arkansas real estate salesperson license was held; and

(B) the length of time since the applicant held an Arkansas real estate salesperson license.

(7) Broker and salesperson applicants who have previously held an Arkansas real estate license and have been exempted from the exam pursuant to the above must submit proof of satisfactorily completing nine (9) classroom hours or equivalent continuing education units of approved continuing education for each year during which his or her license was expired, not to exceed thirty (30) classroom hours.

(8) Except as provided in this subsection, broker and salesperson applicants who have previously held an Arkansas real estate license must comply with all other requirements of Regulation 4.1.

(e) All classroom hours required by Regulation 4.1(a) and (b) shall be conducted by:

(1) An accredited postsecondary school wherever situated; or

(2) A school or organization licensed by the Commission.

(3) A school or organization approved by a real estate licensing jurisdiction deemed equivalent by the Commission.

(f) The course or courses of instruction requirements of Regulation 4.1 may be satisfied by successful completion of such distance education courses as the Commission may by Regulation require, giving due consideration to the number of hours necessary to provide instruction in basic competencies required for a salesperson's or a broker's license.

(g) Both broker and salesperson applicants shall also answer all questions and provide all information requested on the examination application, and shall provide such other information or documentation as the Commission may require.

(h) Applicants that have provided all requirements of Regulation 4.1, may sit for the real estate examination, provided that a state and federal criminal background check, as required by ACA § 17-42-315, has been sent to the Identification Bureau of the Department of Arkansas State Police for a state and federal criminal background check. However no license shall be issued upon successful completion of the examination, until receipt and approval by the Commission of the state and federal criminal background check.

(i) All applications expire one (1) year after the date of the application or upon successful completion of the examination, whichever first occurs. Provided, however that the application of an applicant who takes and passes either part of the examination within one (1) year from the date of his application shall not expire until the six (6) months allowed for retaking the failed portion pursuant to Regulation 4.2(c) has expired.

(j) Application fees are non-refundable.

#### **4.2 Examinations; passing scores; reexaminations.**

Applicants for original licensure as a broker or salesperson must pass a written examination to demonstrate competency to act as a real estate licensee in such a way as to safeguard the interests of the public. The examination shall consist of a general part and an Arkansas law part.

(a) For broker applicants a minimum score of seventy (70) on the general part and seventy-five (75) on the Arkansas law part are required. A person who is licensed as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate broker's examination but who is not licensed as a broker may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(b) For salesperson applicants a minimum score of seventy (70) on the general part and seventy (70) on the Arkansas law part are required. A person who is licensed as a salesperson or as a broker may not apply and may not take the examination. A person who has passed the Arkansas real estate salesperson's

examination but who is not licensed as a salesperson may apply. However, in addition to meeting other requirements, such a person must furnish an affidavit stating the reason for applying. Such a person may take the examination only with written permission from the director or the director's designee.

(c) An applicant who takes the examination in Arkansas and passes either the Arkansas law part or the general part but fails the other need not again take the part passed if within six (6) months of such initial examination the applicant retakes and passes the part failed. Otherwise, the applicant must retake the entire examination, and must also make new application if more than one (1) year has elapsed since the date of the original application.

(d) (1) An applicant who meets all three (3) of the following requirements will be required to take only the Arkansas law part of the examination:

(i) Has passed a uniform, general, or multi-state part of an examination for a real estate license in another state in which the examination is determined by the Commission to meet generally acceptable standards of real estate testing, and

(ii) The other state requires a minimum passing grade no lower than that required for the general part of the Arkansas examination, and

(iii) The applicant at the time of taking the Arkansas examination is licensed in the other state.

(2) If an applicant meets the first two (2) requirements above, but not the third, the applicant will be required to take only the Arkansas law part of the examination provided that the applicant passed the uniform, general, or multi-state part of the examination in the other state within six (6) months prior to the month in which the applicant takes and passes the Arkansas law part.

(3) An applicant seeking licensure under this Regulation 4.2(d) must furnish such documentation of entitlement thereto as the Commission may require.

#### **4.3 Examinations; application procedure; time requirements.**

(a) The Commission shall announce from time to time the dates and locations of examinations. All applications should be received in the Commission office at least ten (10) days before the examination for which the applicant desires to sit. However, regardless of the date on which the application is received by the Commission, it shall be processed as expeditiously as possible under the circumstances. Once the application is processed, the Commission will send to the applicant a "Certificate of Examination Eligibility." The certificate will include instructions for making examination reservations and will be required for admission at the test center.

(b) An examination fee which shall equal the actual cost of the examination as established by the testing service engaged by the Commission will be collected at the test center. The examination fee shall be made payable to the testing service unless the applicant is otherwise notified by the Commission. The examination fee shall be charged each time an applicant applies to take an examination and is non-refundable.

(c) An applicant shall receive notice upon passing the examination. Each successful broker and salesperson applicant shall pay to the Commission, within ninety (90) days from the date of the successful completion of the examination, the appropriate license fee and recovery fund fee. However, the payment of the recovery fund fee shall be waived for any successful applicant who has previously paid such fee. If a successful applicant shall fail to pay the prescribed fee(s) within ninety (90) days following the date of the examination, the examination results shall be null and void, and the applicant shall be required to make new application and retake the examination, as an original applicant. If the Federal criminal background check has not been received by the commission within ninety (90) days of the date of the examination, the date may be extended by the commission until receipt of the Federal criminal background check.

#### **4.4 [Repealed.]**

#### **4.5 Automatic licensure for active duty service members, returning military veterans and their spouses.**

As used in this subsection, “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

- (a) The Commission shall grant automatic licensure for a broker or salesperson to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:
1. An active duty military service member stationed in the State of Arkansas;
  2. A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or
  3. The spouse of a person under (a) 1 or 2 above.
- (b) The Commission shall grant such automatic licensure upon receipt of all the below:
1. Payment of the initial licensure fee;
  2. Evidence that the individual holds a substantially equivalent license in another state; and
  3. Evidence that the applicant is a qualified applicant under Section (a).

#### **4.6 Pre-Licensure Criminal Background Check and Waiver Request**

(a)(1) Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual’s criminal record will disqualify the individual from licensure and whether a waiver may be obtained.

- (2) The individual must obtain the pre-licensure criminal background check petition form from the Commission.
- (3) The Commission will respond with a decision in writing to a completed petition within a reasonable time.
- (4) The Commission’s response will state the reason(s) for the decision.
- (5) All decisions of the Commission in response to the petition will be determined by the information provided by the individual.
- (6) Any decision made by the Commission in response to a pre-licensure criminal background check petition is not subject to appeal.
- (7) The Commission will retain a copy of the petition and response and it will be reviewed during the formal application process.

(b)(1) If an individual has been convicted of an offense listed in A.C.A. §17-2-102(a), except those permanently disqualifying offenses found in subsection (e), the Commission may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:

- (i) An affected applicant for a license; or
  - (ii) An individual holding a license subject to revocation.
- (2) The Commission may grant a waiver upon consideration of the following, without limitation:
- (i) The age at which the offense was committed;
  - (ii) The circumstances surrounding the offense;
  - (iii) The length of time since the offense was committed;

(iv) Subsequent work history since the offense was committed;

(v) Employment references since the offense was committed;

(vi) Character references since the offense was committed;

(viii) Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.

(c) A request for a waiver, if made by an applicant for original licensure as a broker or salesperson, must be in writing and accompany the completed application and fees.

(d) The Commission will respond with a decision in writing and will state the reasons for the decision.

(e) An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*