

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1361

5 By: Representatives McGrew, Achor, Andrews, Bentley, Breaux, Duffield, Gazaway, Gramlich, Hawk,
6 Ladyman, McAlindon, McCollum, B. McKenzie, Painter, Ray, J. Richardson, R. Scott Richardson, Rye,
7 Underwood, Womack
8 By: Senator Caldwell
9

For An Act To Be Entitled

11 AN ACT TO AMEND THE REAL ESTATE LICENSE LAW; TO
12 CREATE A PROPERTY MANAGER LICENSE REQUIREMENT; TO
13 AMEND THE LAW CONCERNING THE ARKANSAS REAL ESTATE
14 COMMISSION; AND FOR OTHER PURPOSES.
15
16

Subtitle

18 TO AMEND THE REAL ESTATE LICENSE LAW; TO
19 CREATE A PROPERTY MANAGER LICENSE
20 REQUIREMENT; AND TO AMEND THE LAW
21 CONCERNING THE ARKANSAS REAL ESTATE
22 COMMISSION.
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. DO NOT CODIFY. Legislative findings.

28 The General Assembly finds that:

29 (1) The Arkansas Real Estate Commission currently requires an
30 individual to have a real estate broker license issued through the commission
31 to rent or lease real property on behalf of an owner;

32 (2) The knowledge and skills necessary for a property manager to
33 protect citizens and the business community can be specialized and does not
34 require all of the same skills and knowledge for a real estate broker or
35 salesperson;

36 (3) A property manager license would create a higher quality of



1 property manager in Arkansas with specialized knowledge;

2 (4) The creation of a property manager license would reduce the
 3 education burden on individuals who will not pursue other real estate broker
 4 license activities and potentially create new jobs; and

5 (5) The Arkansas Real Estate Commission is the appropriate entity to
 6 license an individual as a property manager.

7
 8 SECTION 2. Arkansas Code § 17-42-103, concerning the definitions of
 9 Real Estate License Law, is amended to add an additional subdivision to read
 10 as follows:

11 (14) "Property manager" means an individual expecting to act or
 12 acting for another for a fee, commission, or other consideration who:

13 (A) Has a property manager license;

14 (B) Rents or leases real estate;

15 (C) Offers to rent or lease real estate;

16 (D) Negotiates, offers, attempts, or agrees to negotiate
 17 the rent or lease of real estate;

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

20 (F) Advertises or holds himself or herself out as being
 21 engaged in the business of renting or leasing real estate;

22 (G) Assists or directs in the procuring of prospects
 23 calculated to result in the rent or lease of real estate;

24 (H) Assists or directs in the negotiation of any
 25 transaction calculated or intended to result in the rent or lease of real
 26 estate;

27 (I) Engages in the business of charging an advance fee in
 28 connection with any contract whereby he or she undertakes to promote the
 29 lease of real estate either through its listing in a publication issued for
 30 such a purpose or for referral of information concerning the real estate to
 31 brokers, or both; or

32 (J) Performs any of the acts described in this
 33 subdivisions (14)(A)-(I) as an employee of or on behalf of the owner of, or
 34 any person who has an interest in, real estate.

35
 36 SECTION 3. Arkansas Code § 17-42-104(a)(6), concerning exemptions to

1 Real Estate License Law, is amended to read as follows:

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

6 (A) Does not engage in or offer to perform any practice,
 7 act, or operation set forth in § 17-42-103(10) or § 17-42-103(14) other than
 8 receiving a security deposit or payment as permitted by subdivision
 9 (a)(6)(B)(iii) of this section; and

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

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

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

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

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

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

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

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

30
 31 SECTION 4. Arkansas Code § 17-42-107(a), concerning the capacity to
 32 sue and be sued under Real Estate License Law, is amended to read as follows:

33 (a) An action or suit shall not be instituted, nor recovery be had, in
 34 any court of this state by any person or other legal entity for compensation
 35 for performance of any acts described in § 17-42-103(10) or § 17-42-103(14)
 36 unless at the time of offering to perform and performing any such act or

1 procuring any promise to contract for the payment of compensation for any
 2 such contemplated act:

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

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

11 (3) The person holds an active license under this chapter as a
 12 property manager; or

13 (4) The person or other legal entity was the owner of the
 14 property management firm that contracted for or otherwise performed the acts
 15 for the compensation that is the subject of the action or suit through either
 16 a property manager or a person approved by the commission under § 17-42-
 17 301(g) while licensed or approved by the commission at the time of the acts.

18
 19 SECTION 5. Arkansas Code § 17-42-301(a) and (b), concerning license
 20 required by the Arkansas Real Estate Commission and violations of Real Estate
 21 License Law, are amended to read as follows:

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

25 (b) Any person who directly or indirectly for another with the
 26 intention, or on the promise of receiving any valuable consideration, offers,
 27 attempts, or agrees to perform any single act described in § 17-42-103(10) or
 28 § 17-42-103(14), whether as part of a transaction or as an entire
 29 transaction, shall be deemed a broker, property manager, or salesperson
 30 within the meaning of this chapter.

31
 32 SECTION 6. Arkansas Code § 17-42-301(d), concerning license required
 33 by the Arkansas Real Estate Commission and violations of Real Estate License
 34 Law, is amended to read as follows:

35 (d) It shall be unlawful for any person, directly or indirectly, to
 36 act as a real estate broker, property manager, or salesperson without first

1 obtaining a license and otherwise complying with the provisions of this
2 chapter.

3
4 SECTION 7. Arkansas Code § 17-42-301, concerning license required by
5 the Arkansas Real Estate Commission and violations of Real Estate License
6 Law, is amended to add additional subsections to read as follows:

7 (g)(1) Notwithstanding the provisions of this section, a person or
8 other legal entity not licensed by the Arkansas Real Estate Commission may
9 own a property management firm, provided the employees or agents employed by
10 or associated with the firm who perform real estate activities identified
11 under § 17-42-103(14) hold an active license under this chapter.

12 (2) A firm under subdivision (g)(1) of this section may enter
13 into contracts or otherwise perform activities identified under § 17-42-
14 103(14) only through a property manager and a licensee employed by or
15 associated with the property manager that holds an active license issued by
16 the commission at the time of performing the contract or activities.

17 (h) The commission may provide for the continuing temporary operation
18 of a property management firm having all rights under § 17-42-107(a) upon the
19 death, resignation, termination, or incapacity of the property manager or
20 upon the closing of a property management firm, under the direction of a
21 person approved by the commission, subject to time limitations and other
22 conditions imposed by the commission.

23
24 SECTION 8. Arkansas Code § 17-42-303(a), concerning Real Estate
25 License Law education and experience requirements, is amended to add an
26 additional subdivision to read as follows:

27 (3) The maximum number of hours required of an applicant for a
28 property manager's license shall not exceed sixty (60) hours to include
29 property management principles and practices, including without limitation:

30 (A) Three (3) hours of education regarding the Fair
31 Housing Act, 43 USC § 3601 et seq.;

32 (B) Seven (7) hours of property management accounting and
33 record keeping;

34 (C) Seven (7) hours of education regarding the law
35 concerning habitability and tenant rights; and

36 (D) Seven (7) hours of property manager best practices.

1
2 SECTION 9. Arkansas Code § 17-42-304 is amended to read as follows:
3 17-42-304. Fees.

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

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

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

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

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

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

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

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

19 (8) An original property manager license fee not to exceed sixty
20 dollars (\$60.00);

21 (9) A property manager license annual renewal fee not to exceed
22 sixty dollars (\$60.00);

23 (10) A property manager expired license fee not to exceed eighty
24 dollars (\$80.00) per year or fraction thereof;

25 (11) A license reissuance fee not to exceed thirty dollars
26 (\$30.00);

27 ~~(9)~~(12) An initial duplicate license fee not to exceed thirty
28 dollars (\$30.00);

29 ~~(10)~~(13) A duplicate license annual renewal fee not to exceed
30 thirty dollars (\$30.00);

31 ~~(11)~~(14) A transfer fee not to exceed thirty dollars (\$30.00);

32 ~~(12)~~(A)~~(15)~~(A) An examination fee not to exceed seventy-five
33 dollars (\$75.00).

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

1 ~~(13)~~(16) Pursuant to § 17-42-313, an appeal filing fee not to
2 exceed one hundred dollars (\$100);

3 ~~(14)~~(17) A Real Estate Recovery Fund fee not to exceed twenty-
4 five dollars (\$25.00); and

5 ~~(15)~~(18) The actual cost of a state and federal criminal history
6 background check.

7
8 SECTION 10. Arkansas Code § 17-42-307(b)(4), concerning license
9 expiration and renewal under Real Estate License Law, is amended to read as
10 follows:

11 (4) ~~Effective September 30, 2019, the~~ The commission may
12 promulgate rules to add additional hours of continuing education to the
13 annual amount required under subdivision (b)(1)(A) of this section with no
14 statutory maximum for hours of continuing education.

15
16 SECTION 11. Arkansas Code § 17-42-307(c)-(f), concerning license
17 expiration and renewal under Real Estate License Law, are amended to read as
18 follows:

19 (c)(1) A property manager shall complete annually:

20 (A) Not less than six (6) hours of more than seven (7)
21 classroom hours of continuing education required by the commission;

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

24 (C) A course that the commission has determined to
25 demonstrate mastery of an acceptable property management subject.

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

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

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

35 (2) Except as provided in subdivision ~~(e)(1)~~(d)(1) of this
36 section, a person is not subject to the education requirements of this

1 section while the person's license is inactive.

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

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

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

11 (B) Renewal fee.

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

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

19 (ii) Renewal fee.

20 (B) The commission may limit the number of renewal periods
21 in which a license may be renewed on inactive status.

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

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

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

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

36 (2) If the licensee fails to complete the post-licensure

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

5
 6 SECTION 12. Arkansas Code § 17-42-308(a)(2), concerning an inactive
 7 license under Real Estate License Law, is amended to read as follows:

8 (2) The holder of an inactive license shall not practice as a
 9 real estate broker, ~~or~~ salesperson, or property manager in this state without
 10 first activating the license.

11
 12 SECTION 13. Arkansas Code § 17-42-312(a)(1), concerning investigation
 13 of complaints, citations, and penalties under Real Estate License Law, is
 14 amended to read as follows:

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

23
 24 SECTION 14. Arkansas Code § 17-42-312(d)(1)(A) and (B), concerning
 25 investigation of complaints, citations, and penalties under Real Estate
 26 License Law, are amended to read as follows:

27 (A) A penalty of not more than one hundred dollars (\$100)
 28 to a broker, ~~or~~ salesperson, or property manager who:

29 (i) Fails to complete annual education requirements;

30 or

31 (ii) Fails to complete post-licensure education
 32 requirements by the established deadline; or

33 (B) A penalty of not more than two hundred fifty dollars
 34 (\$250) to a broker, salesperson, property manager, or the supervising broker
 35 of a broker, ~~or~~ salesperson, or property manager if a broker, ~~or~~ salesperson,
 36 or property manager:

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

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

7
 8 SECTION 15. Arkansas Code § 17-42-313(a), concerning dismissal of
 9 complaint and appeal under Real Estate License Law, is amended to read as
 10 follows:

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

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

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

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

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

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

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

35
 36 SECTION 16. Arkansas Code § 17-42-314(b), concerning hearings under

1 Real Estate License Law, is amended to read as follows:

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

9
10 SECTION 17. Arkansas Code § 17-42-405(a), concerning additional fees
11 under Real Estate License Law, is amended to read as follows:

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

- 17 (1) Twenty-five dollars (\$25.00) per annual renewal; or
18 (2) An amount sufficient to restore the fund balance to two
19 hundred fifty thousand dollars (\$250,000).

20
21 SECTION 18. Arkansas Code § 17-42-514(a)(1), concerning curricula
22 required by Real Estate License Law, is amended to read as follows:

23 (1) Require not less than six (6) nor more than seven (7)
24 classroom hours of continuing education for real estate broker or salesperson
25 licensees;

26
27 SECTION 19. EFFECTIVE DATE.

28 This act is effective beginning on and after January 1, 2024.

29
30 SECTION 20. DO NOT CODIFY. Rules implementing this act.

31 (a) The Arkansas Real Estate Commission shall promulgate rules
32 necessary to implement this act.

33 (b)(1) When adopting the initial rules to implement this act, the
34 final rules shall be filed with the Secretary of State for adoption under §
35 25-15-204(f):

36 (A) On or before January 1, 2024; or

1 (B) If approval under § 10-3-309 has not occurred by
2 January 1, 2024, as soon as practicable after approval under § 10-3-309.

3 (2) The commission shall file the proposed rules with the
4 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
5 2024, so that the Legislative Council may consider the rule for approval
6 before January 1, 2024.

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