

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

SENATE BILL 208

By: Senator Files
By: Representative Biviano

For An Act To Be Entitled

AN ACT TO CLARIFY THE AUTHORITY OF THE ARKANSAS REAL ESTATE COMMISSION; TO PROVIDE ALTERNATE DISCIPLINARY PROCEDURES FOR A REAL ESTATE LICENSEE; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE AUTHORITY OF THE ARKANSAS REAL ESTATE COMMISSION AND TO PROVIDE ALTERNATE DISCIPLINARY PROCEDURES FOR A REAL ESTATE LICENSEE.

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

SECTION 1. Arkansas Code § 17-42-312 is amended to read as follows:

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 ~~licensee~~ person shall be notified of the charges against him or her and ordered to appear for a hearing.

(4) ~~If the licensee is found to have violated~~ 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 ~~not to exceed~~ of not more than one thousand dollars (\$1,000) for each violation;

(C) ~~Require completion~~ Completion of appropriate educational programs or courses;

(D) ~~Require successful~~ Successful completion of an appropriate licensing examination;

(E) ~~Place conditions~~ Conditions or restrictions upon the ~~licensee's~~ person's license or practice; or

(F) ~~Such~~ Payment of restitution, damages, or other requirements or penalties as may be appropriate to the circumstances of the case ~~and which~~ that would:

(i) ~~achieve~~ Achieve the desired disciplinary purposes, ~~but which would not impair the public welfare and morals,~~ 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 ~~either the~~ Pulaski County Circuit Court or the circuit court of ~~any the~~ the county ~~in which~~ where the defendant resides or does business to collect ~~any a~~ a penalty assessed ~~pursuant to~~ under this chapter if the penalty is not paid ~~within the time prescribed~~ as ordered by the commission or the executive director.

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

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

(A) A penalty of not more than one hundred dollars (\$100) to a broker or salesperson who:

(i) Fails to complete annual education requirements;

or

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

(B) A penalty of not more than two hundred fifty dollars (\$250) to a broker, salesperson, or the supervising broker of a broker or salesperson if a broker or salesperson performs activities that require an active real estate license while his or her license is expired.

(2) The citation shall include:

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

(B) The specific violation and related statute, regulation, or rule;

(C) The time and date the citation is issued;

(D) The amount of the penalty;

(E) The deadline of thirty (30) days from issuance of the citation and procedure to either:

(i) Pay the citation without further penalty; or

(ii) Dispute the citation;

(F) A statement that the amount of the penalty and the findings of the executive director as to the facts are considered accurate, conclusive, finally adjudicated, and nonappealable if a verified written complaint contesting the citation is not filed within thirty (30) days of the citation's issuance; and

(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.

APPROVED: 02/19/2013