

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 2042

By: Representative Drown
By: Senators L. Eads, Files

For An Act To Be Entitled

AN ACT TO CLARIFY PROVISIONS CONCERNING REAL ESTATE
LICENSE EXEMPTIONS; TO AMEND THE LAW CONCERNING THE
INVESTIGATION OF COMPLAINTS BY THE ARKANSAS REAL
ESTATE COMMISSION; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY PROVISIONS CONCERNING REAL
ESTATE LICENSE EXEMPTIONS; AND TO AMEND
THE LAW CONCERNING THE INVESTIGATION OF
COMPLAINTS BY THE ARKANSAS REAL ESTATE
COMMISSION.

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

SECTION 1. Arkansas Code § 17-42-103(5), concerning definitions used throughout real estate license law, is amended to read as follows:

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

SECTION 2. Arkansas Code § 17-42-104(a), concerning exemptions, is amended to read as follows:

(a) This chapter does not apply to:

(1) A person not licensed under this chapter who performs any of the acts described in § 17-42-103(10) ~~with regard to the property owned,~~



~~leased, or purchased by him or her, 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.

SECTION 3. Arkansas Code § 17-42-104, concerning exemptions, is amended to add an additional subsection to read as follows:

(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.

SECTION 4. Arkansas Code § 17-42-312(d)(1)(B), concerning investigations of complaints, is amended to read as follows:

(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 who:

(i) ~~performs~~ 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.

APPROVED: 04/04/2017