

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1361

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

For An Act To Be Entitled

AN ACT TO AMEND THE REAL ESTATE LICENSE LAW; TO
CREATE A PROPERTY MANAGER LICENSE REQUIREMENT; TO
AMEND THE LAW CONCERNING THE ARKANSAS REAL ESTATE
COMMISSION; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE REAL ESTATE LICENSE LAW; TO
CREATE A PROPERTY MANAGER LICENSE
REQUIREMENT; AND TO AMEND THE LAW
CONCERNING THE ARKANSAS REAL ESTATE
COMMISSION.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

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

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

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



property manager in Arkansas with specialized knowledge;

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

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

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

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

(A) Has a property manager license;

(B) Rents or leases real estate;

(C) Offers to rent or lease real estate;

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

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

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

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

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

(I) Engages in the business of charging an advance fee in connection with any contract whereby he or she undertakes to promote the 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

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

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

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

(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, a licensed property manager, 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) or § 17-42-103(14) 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, property manager, 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, property broker, or owner;

(iv) Acting under the direct written instructions of the principal broker, real estate firm, property broker, 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, property manager, or owner; or

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

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

(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) or § 17-42-103(14) 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;

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

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

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

(a) No person shall practice or represent himself or herself as a real estate broker, property manager, 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) or § 17-42-103(14), whether as part of a transaction or as an entire transaction, shall be deemed a broker, property manager, or salesperson within the meaning of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 9. Arkansas Code § 17-42-304 is amended to read as follows:
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) An original property manager license fee not to exceed sixty dollars (\$60.00);
- (9) A property manager license annual renewal fee not to exceed sixty dollars (\$60.00);
- (10) A property manager expired license fee not to exceed eighty dollars (\$80.00) per year or fraction thereof;
- (11) A license reissuance fee not to exceed thirty dollars (\$30.00);
- ~~(9)~~(12) An initial duplicate license fee not to exceed thirty dollars (\$30.00);
- ~~(10)~~(13) A duplicate license annual renewal fee not to exceed thirty dollars (\$30.00);
- ~~(11)~~(14) A transfer fee not to exceed thirty dollars (\$30.00);
- ~~(12)~~(A)~~(15)~~(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)~~(16) Pursuant to § 17-42-313, an appeal filing fee not to exceed one hundred dollars (\$100);

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

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

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

(4) ~~Effective September 30, 2019, the~~ 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.

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

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

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

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

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

(2) A licensee who satisfies subdivision (c)(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.

(d)(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 ~~(e)(1)~~(d)(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 ~~(e)(1)~~(d)(1) of this section if a licensee is unable to complete the continuing education due to extenuating circumstances.

~~(d)(1)~~(e)(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, or property manager 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:

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

(ii) 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)(f)~~ 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)~~(g)(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.

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

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

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

(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 salesperson, or property manager regardless of whether the transaction was for his or her own account or in his or her capacity as a broker, ~~or~~ salesperson, or property manager.

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

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

(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, or property management~~ business or activities in violation of this chapter or rules adopted under this chapter.

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

(a) Any person whose complaint against a licensed real estate broker, ~~or salesperson, or property manager~~ 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.

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

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

(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, or property manager 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.

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

(a) In addition to the other fees provided for in this chapter and rules of the Arkansas Real Estate Commission, each licensed real estate broker, ~~and~~ salesperson, and property manager 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).

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

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

SECTION 19. EFFECTIVE DATE.

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

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

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

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

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

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

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