

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Dietz**

A Bill

HOUSE BILL 1425

For An Act To Be Entitled

"ARKANSAS REAL ESTATE LICENSE LAW"

Subtitle

"ARKANSAS REAL ESTATE LICENSE LAW"

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

SECTION 1. The legislature finds that it is necessary to regulate the practice of real estate brokers and salespersons in order to protect the public health, safety and welfare. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public.

SECTION 2. No person shall practice or represent himself or herself as a real estate broker or salesperson without first applying for and receiving a license to practice under this act. 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 Section 3, Subsection (12) of this act, whether as part of a transaction or as an entire transaction, shall be deemed a broker or salesperson within the meaning of this act. The commission of a single act by a person required to be licensed under this act and not so licensed shall constitute a violation of this act. It shall be unlawful for any person, directly or indirectly, to act as a real estate broker or salesperson without first obtaining a license and otherwise complying with the provisions of this act.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Associate Broker" shall mean an individual who has a broker's

1 license and who is employed by a principal broker, or is associated with a
2 principal broker as an independent contractor and who participates in any
3 activity described in Subsection (12) of this Section while under the
4 supervision of a principal broker or executive broker; provided, however, that
5 an associate broker shall have no supervisory authority over any other
6 licensee.

7 (2) "Branch Office" shall mean a real estate principal broker's office
8 other than his or her principal place of business.

9 (3) "Board" shall mean State Board of Private Career Education.

10 (4) "Classroom Hour" shall mean a period of at least fifty (50)
11 minutes, but not more than sixty (60) minutes, of actual classroom instruction
12 with the instructor present;

13 (5) "Commission" shall mean the Arkansas Real Estate Commission.

14 (6) "Continuing Education" shall mean post licensure education derived
15 from participation in courses in real estate-related subjects, which have been
16 approved by the Board or which are not required to be approved by the Board;

17 (7) "Continuing Education Unit" or "CEU" shall mean a period of ten (10)
18 contact hours of actual classroom instruction with the instructor present;

19 (8) "Director" shall mean the Executive Director of the Arkansas Real
20 Estate Commission.

21 (9) "Executive Broker" shall mean an individual who has a broker's
22 license and who is employed by a principal broker or associated with a
23 principal broker as an independent contractor and who participates in any
24 activity described in Subsection (12) of this Section while under the
25 supervision of a principal broker; provided, however, that an executive broker
26 may supervise associate brokers and salespersons.

27 (10) "Licensee" shall mean an individual who holds any type of license
28 issued by the Commission, and unless the context clearly requires otherwise,
29 shall include principal broker, executive broker, associate broker and
30 salesperson. Nothing in this act shall preclude a licensee from doing
31 business as a professional corporation pursuant to Ark. Code Ann., Sec.
32 4-29-101 et seq.

33 (11) "Participate in a real estate auction" shall mean any act or
34 conduct done for compensation or the expectation thereof and designed,
35 intended or expected to affect the bidding or results of a real estate

1 auction, including, without limitation, serving as an auctioneer or ringman,
2 or encouraging, soliciting or receiving bids.

3 (12) Principal Broker shall mean an individual while acting for another
4 for a fee, commission, or other consideration, or the expectation thereof,
5 who:

6 (a) Sells, exchanges, purchases, rents, or leases real estate.

7 (b) Offers to sell, exchange, purchase, rent or lease real
8 estate.

9 (c) Negotiates, offers, attempts or agrees to negotiate the sale,
10 exchange, purchase, rental or leasing of real estate.

11 (d) Lists, offers, attempts or agrees to list real estate for
12 sale, lease, or exchange.

13 (e) Auctions, offers, attempts or agrees to auction real estate,
14 or participates in a real estate auction.

15 (f) Buys, sells, offers to buy or sell or otherwise deals in
16 options on real estate or improvements thereon.

17 (g) Collects, offers, attempts or agrees to collect rent for the
18 use of real estate.

19 (h) Advertises or holds himself out as being engaged in the
20 business of buying, selling, exchanging, renting or leasing real estate.

21 (i) Assists or directs in the procuring of prospects, calculated
22 to result in the sale, exchange, lease or rental of real estate.

23 (j) Assists or directs in the negotiation of any transaction
24 calculated or intended to result in the sale, exchange, leasing or rental of
25 real estate.

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

31 (l) Performs any of the foregoing acts as an employee of, or on
32 behalf of, the owner of, or any person who has an interest in, real estate.

33 (13) "Real Estate" shall mean and include leaseholds or any other
34 interest or estate in land and shall include the sale and resale of time-share
35 units. Unless the context otherwise requires, the word "real estate" and "real

1 property" shall be synonymous.

2 (14) "Salesperson" shall mean an individual who has a salesperson's
3 license and who is employed by a principal broker or is associated with a
4 principal broker as an independent contractor and who participates in any
5 activity described in Subsection 12 of this Section while under the
6 supervision of a principal broker or executive broker.

7

8 SECTION 4. The provisions of this act shall not apply to:

9 (1) Any person not licensed under this act who performs any of the acts
10 described in Section 3, Subsection (12) of this act with regard to the
11 property owned, leased, or purchased by him or her.

12 (2) An attorney in fact under a duly executed and recorded power of
13 attorney from the owner or lessor authorizing the final consummation by
14 performance of any contract for the sale, lease or exchange of real estate,
15 provided that the attorney in fact receives no fee, commission, or other
16 consideration, and has no expectation thereof, directly or indirectly, for
17 performing any such act.

18 (3) An attorney at law in the performance of his or her duties as an
19 attorney at law.

20 (4) Any person acting as receiver, trustee in bankruptcy,
21 administrator, executor, or guardian, or while acting under a court order or
22 under the authority of a will or of a trust instrument.

23 (5) Any person acting as the resident manager when such resident
24 manager resides on the premises and is engaged in the leasing of real property
25 in connection with his or her employment.

26 (6) Any officer or employee of a federal agency, the state government
27 or any political subdivision thereof in the performance or conduct of his or
28 her official duties.

29 (7) Any multiple listing service wholly owned by a nonprofit
30 organization or association of real estate licensees.

31 (8) Any real estate broker licensed by the Arkansas Real Estate
32 Commission on or before January 1, 1985, who is engaged in the sale of real
33 estate by auction only is authorized to employ real estate salespersons to
34 work under the license of the broker even though the broker is employed in a
35 non-real estate-related field and is only a part-time broker.

1 (9) An officer of a corporation or a general partner of a partnership
2 with respect to real property owned or leased by the corporation or
3 partnership, or in connection with the proposed purchase or leasing of real
4 property by the corporation or partnership, provided that such acts are not
5 performed by the officer or partner for or in expectation of special
6 compensation and provided further that such acts are not performed as a
7 vocation of the officer or partner.

8

9 SECTION 5.

10 (1) Creation - Members

11 (a) The Arkansas Real Estate Commission as previously created and
12 established shall continue in existence.

13 (b) The Commission shall consist of five (5) members appointed by
14 the Governor for a term of three years, whose terms shall begin on January 1
15 and end on December 31 of the third year, or when their respective successors
16 are appointed and qualified.

17 (i) Three (3) members shall have been licensed real estate
18 brokers or licensed real estate salespersons for not less than five (5) years
19 prior to the nomination. The Governor shall appoint members to fill vacancies
20 from a list of four (4) nominees submitted by the Arkansas Realtors
21 Association.

22 (ii) Two (2) members shall not be actively engaged in or
23 retired from the business of real estate. One shall represent consumers, and
24 one shall be sixty (60) years of age or older, and shall represent the
25 elderly. Both shall be appointed from the state at large, subject to
26 confirmation by the Senate, but shall not be required to be appointed from a
27 list submitted by the Arkansas Realtors Association. The two (2) positions
28 may not be held by the same person. Both shall be full voting members but
29 shall not participate in the grading of examinations.

30 (c) Each commissioner shall receive as full compensation for his
31 services the sum of fifty dollars (\$50.00) per day for each day actually spent
32 on the work of the Commission and his actual and necessary traveling expenses
33 incurred in the performance of the duties pertaining to his office.

34 (d) The persons previously appointed and now serving as
35 Commissioners under existing law shall continue to serve the remainder of

1 their respective terms, except that their terms are hereby extended to
2 December 31 of the same calendar year in which they are presently scheduled to
3 expire.

4 (2) Organization - Employees

5 (a) Immediately upon the qualification of the member appointed in
6 each year, the Commission shall meet and organize by selecting from its
7 members a chairman and vice chairman. A simple majority shall constitute a
8 quorum. The Commission shall meet as often as necessary or desirable in order
9 to conduct its business.

10 (b) The Commission shall employ an Executive Director and such
11 staff as may be necessary to carry out the provisions of this act and to put
12 into effect the rules and regulations the Commission may promulgate. The
13 Commission shall fix the salaries of employees.

14 (3) Powers and duties.

15 (a) The Commission may do all things necessary and convenient for
16 carrying into effect the provisions of this act and may from time to time
17 promulgate necessary or desirable rules and regulations.

18 (b) The Commission shall have power to administer oaths.

19 (c) The Commission shall adopt a seal with such design as it may
20 prescribe engraved thereon.

21 (d) Copies of all records and papers in the office of the
22 Commission, certified and authenticated by the Commission, shall be received
23 in evidence in all courts equally and with like effect as the original.

24 (e) The Commission shall annually publish a list of the names and
25 addresses of all active licensees licensed by it under the provisions of this
26 act, and of all persons whose licenses have been suspended or revoked during
27 that period, together with other information relative to the enforcement of
28 the provisions of this act, as it may deem of interest to the public.

29 (f) The Commission may conduct or assist in conducting real
30 estate institutes and seminars and incur and pay the reasonable and necessary
31 expenses in connection therewith, which institutes or seminars shall be open
32 to all licensees.

33 (g) The Commission is authorized to make reasonable charges for
34 materials provided by the Commission and for services performed in connection
35 with providing materials.

1 (4) Disposition of funds.

2 (a) Except as otherwise provided herein, all fees, charges, fines
3 and penalties collected by the Commission shall be deposited in a fund to be
4 known as the Arkansas Real Estate Commission Fund.

5 (b) The Commission is empowered to expend funds appropriated from
6 the Arkansas Real Estate Commission Fund for the requirements, purposes, and
7 expenses of the Commission under the provisions of this act, upon voucher
8 signed by the Executive Director or Deputy Executive Director of the
9 Commission and countersigned by the Chairman or Vice Chairman thereof.

10 (5) Subpoenas and subpoenas duces tecum.

11 (a) The Arkansas Real Estate Commission shall have the power to
12 issue subpoenas and subpoenas duces tecum in connection with both its
13 investigations and hearings.

14 (b) A subpoena duces tecum may require any book, writing,
15 document, or other paper or thing which is germane to an investigation or
16 hearing conducted by the Commission, to be transmitted to the Commission.

17 (c) Service of a subpoena shall be as provided by law for the
18 service of subpoenas in civil cases in the circuit courts of this state, and
19 the fees and mileage of officers serving the subpoenas and of witnesses
20 appearing in answer to the subpoenas shall be the same as provided by law for
21 proceedings in civil cases in the circuit courts of this state.

22 (d) In the event a person shall have been served with a subpoena
23 or subpoena duces tecum as herein provided and fails to comply therewith, the
24 Commission may apply to the circuit court of the county in which the
25 Commission is conducting its investigation or hearing for an order causing the
26 arrest of the person and directing that the person be brought before the
27 court. The court shall have the power to punish the disobedient person for
28 contempt as provided by law in the trial of civil cases in the circuit courts
29 of this state.

30 (e) The Commission shall issue a subpoena or subpoena duces tecum
31 upon the request of any party to a hearing before the Commission. The fees
32 and mileage of the officers serving the subpoena and of the witness shall be
33 paid by the party at whose request a witness is subpoenaed.

34

35 SECTION 6.

1 The Executive Director shall have such duties, authority, and
2 responsibility as the Commission may designate, or as necessarily implied
3 herein.

4

5 SECTION 7.

6 The Commission shall have authority to establish, charge and collect the
7 following fees:

- 8 1) An application fee not to exceed \$50.00;
- 9 2) Original broker license fee not to exceed \$60.00;
- 10 3) Annual renewal broker license fee not to exceed \$60.00;
- 11 4) Original salesperson license fee not to exceed \$40.00;
- 12 5) Annual renewal salesperson license fee not to exceed \$40.00;
- 13 6) Broker expired license fee not to exceed \$90.00 per year or fraction
14 thereof;
- 15 7) Salesperson expired license fee not to exceed \$60.00 per year or
16 fraction thereof;
- 17 8) License reissuance fee not to exceed \$30.00;
- 18 9) Initial duplicate license fee not to exceed \$30.00;
- 19 10) Annual renewal duplicate license fee not to exceed \$30.00;
- 20 11) Transfer fee not to exceed \$30.00;
- 21 12) An examination fee not to exceed \$75.00; provided, however, the
22 Commission, at its discretion, may direct each applicant to pay the actual
23 costs of the examination fee directly to a testing service engaged by the
24 Commission to administer the examination;
- 25 13) Appeal (pursuant to Section 19) filing fee not to exceed \$100.00;
- 26 14) Recovery Fund fee not to exceed \$25.00.

27

28 SECTION 8.

29 No action or suit shall be instituted, nor recovery be had, in any court
30 of this state by any person for compensation for performance of any acts
31 described in Section 3, Subsection (12) of this act unless such person was
32 duly licensed under this act as a principal broker at the time of offering to
33 perform any such act or procuring any promise to contract for the payment of
34 compensation for any such contemplated act. No salesperson, executive broker
35 or associate broker may sue in his or her own capacity for the recovery of a

1 fee, commission, or compensation for services as a salesperson, executive
2 broker or associate broker unless the action is against the principal broker
3 with whom he or she is licensed or was licensed at the time the act was
4 performed.

5

6 SECTION 9.

7 (a) The Commission shall issue a license to any applicant who meets the
8 following requirements:

9 (1) Attainment of the age of majority;

10 (2) Successful completion of educational requirements prescribed
11 by this act;

12 (3) Successful completion of experience requirements prescribed
13 by this act;

14 (4) Successful completion of an examination administered or
15 approved by the Commission;

16 (5) Demonstrates no record of unprofessional conduct;

17 (6) Evidence of good reputation for honesty, trustworthiness, and
18 integrity sufficient to safeguard the interests of the public;

19 (b) The Commission shall determine what constitutes adequate proof of
20 meeting the above requirements, and shall deny a license to any applicant who
21 fails to meet such requirements, or who fails to pay the appropriate fees.

22

23 SECTION 10.

24 (1) The Commission shall establish educational requirements for
25 licensure, including the standards and procedures for approval of educational
26 programs, subject to the following conditions:

27 (a) The maximum number of educational hours to be required of an
28 applicant for a broker's license shall not exceed one hundred and twenty (120)
29 hours within the thirty-six (36) months immediately preceding the date of
30 application.

31 (b) The maximum number of hours required of an applicant for a
32 salesperson's license shall not exceed ninety (90) hours, at least thirty (30)
33 hours of which shall be in the basic principles of real estate.

34 (2) The Commission shall establish the experience requirement for
35 licensure for an applicant for a broker's license subject to the following

1 conditions:

2 (a) Serve an active, bona fide apprenticeship by holding a valid
3 real estate salesperson's license issued by the Arkansas Real Estate
4 Commission, or by holding a valid real estate salesperson's license or
5 broker's license issued by the appropriate licensing agency of another state,
6 for a period of not less than twenty-four (24) months within the previous
7 forty-eight (48) month period immediately preceding the date of application.

8

9 SECTION 11.

10 (a) In order to be licensed in Arkansas nonresidents must:

11 (1) Either (A) meet the requirements of Section 10 of this act,
12 or (B) show satisfactory proof of current active licensure in the applicant's
13 resident jurisdiction, which must be a jurisdiction that offers Arkansas
14 licensees opportunities for licensure substantially comparable to those
15 offered to that jurisdiction's licensees by this act;

16 (2) Pay any required fees;

17 (3) Sign a statement that the applicant has read the Arkansas
18 real estate license law and regulations and agrees to abide by their
19 provisions in all real estate activity.

20 (4) Affiliate with a resident or nonresident principal broker
21 licensed by the Commission if a salesperson or associate broker. If a
22 nonresident licensee terminates the affiliation with a principal broker
23 licensed by the Commission, the license of such nonresident shall
24 automatically be terminated until such nonresident places the license on
25 inactive status or affiliates with another broker licensed by the Commission.

26 (5) Cause the licensing body of the applicant's resident
27 jurisdiction to furnish to the Commission a certification of licensure and
28 copies of the records of any disciplinary actions taken against the
29 applicant's license in that or other jurisdictions. Disciplinary action by
30 any other lawful licensing authority may be grounds for denial of license to a
31 nonresident or for suspension or revocation of a license issued to a
32 nonresident; or for other appropriate disciplinary action authorized by this
33 act;

34 (6) File with the Executive Director a designation in writing
35 that appoints the Executive Director to act as the licensee's agent, upon whom

1 all judicial and other process or legal notices directed to such licensee may
2 be served. Service upon the Executive Director shall be equivalent to
3 personal service upon the licensee. Copies of such appointment, certified by
4 the Executive Director, shall be deemed sufficient evidence thereof and shall
5 be admitted in evidence with the same force and effect as the original thereof
6 might be admitted. In such written designation, the licensee shall agree that
7 any lawful process against the licensee which is served upon the Executive
8 Director shall be of the same legal force and validity as if served upon the
9 licensee and that the authority shall continue in force so long as any
10 liability remains outstanding in this jurisdiction. The Executive Director
11 shall mail a copy of any such process or notice by certified mail to the last
12 known business address of the licensee;

13 (7) Agree in writing to cooperate with any investigation
14 initiated by the Commission by promptly supplying any documents the Commission
15 may request and by personally appearing at the Commission's offices or other
16 location in this state as the Commission may request. If notice is sent by
17 certified mail to the last known business address of a nonresident licensee
18 directing the licensee to produce documents or to appear for an interview and
19 the licensee fails to comply with that request, the Commission may impose on
20 the nonresident licensee any disciplinary sanction permitted by this act.

21 (b) The Commission in its discretion may enter into written agreements
22 with similar licensing authorities of other jurisdictions as may be
23 necessitated by the laws of those jurisdictions to assure for Arkansas
24 licensees nonresident licensure opportunities comparable to those afforded to
25 nonresidents by this act.

26 (c) The Commission may deny licensure under Subsection (a)(1)(B) hereof
27 to an applicant whose resident licensure is in a jurisdiction which the
28 Commission deems does not have educational or experience requirements at least
29 equal to those of Arkansas.

30

31 SECTION 12.

32 (1) Applications for licensure must be submitted on forms provided by
33 the Commission. The Commission may require any information and documentation
34 needed to determine if the applicant meets the criteria for licensure as
35 provided in this act. Each applicant shall pay such application fee and

1 examination fee as the Commission may require pursuant to Section 7 of this
2 act.

3 (2) An applicant who successfully completes the examination shall,
4 within 90 days from the date of the examination, pay such license fee and
5 Recovery Fund fee as the Commission may require pursuant to Section 7 of this
6 act. The applicant's failure to pay the license fee and Recovery Fund fee
7 within that ninety (90) day period shall invalidate the examination results
8 and the applicant shall be required to make new application and retake the
9 examination as an original applicant.

10

11 SECTION 13.

12 (1) Every license, both active and inactive, shall expire on December
13 31 of each year.

14 (2) (a) For each active licensee, the Commission shall issue a new
15 license for each ensuing year, in the absence of any reason or condition which
16 might warrant the refusal of a license, upon receipt of a written request no
17 later than September 30 of each year upon forms provided by the Commission
18 together with the annual fee therefor.

19 (b) (i) For any broker or salesperson who does not wish to engage
20 in the real estate business, the license shall be renewed on inactive status
21 in the absence of any reason or condition which might warrant the refusal of a
22 license, upon receipt of the written request of the applicant no later than
23 September 30 of each year upon forms provided by the Commission together with
24 the annual fee therefor.

25 (ii) However, the Commission may limit the number of
26 renewal periods which a license may be renewed on inactive status.

27 (iii) The renewal fee for inactive status shall be the same
28 as for renewal of an active license.

29 (3) (a) If any person to whom a valid license may have been issued
30 permits the license to expire for a period not in excess of that established
31 by the Commission, the Commission shall issue to the person a current license
32 without requiring the person to submit to any examination if the person
33 furnishes such information as the Commission requires, including proof of
34 completion of appropriate continuing education requirements, and pays such fee
35 as the Commission requires.

1 (b) An application for renewal filed after September 30 of any
2 year shall be treated as an application to renew an expired license.

3

4 SECTION 14.

5 (1) A licensee may place his or her license on inactive status. The
6 holder of an inactive license shall not practice as a real estate broker or
7 salesperson in this state without first activating the license.

8 (2) An inactive license which is not renewed shall be treated as an
9 expired license pursuant to Section 14 of this act.

10 (3) Inactive licenses may be activated upon compliance with
11 requirements established by the Commission, including payment of appropriate
12 fees.

13 (4) The provisions relating to disciplinary action against a licensee
14 shall be applicable to an inactive or expired license.

15

16 SECTION 15.

17 (1) (a) Every principal broker shall maintain a place of business and
18 shall display a permanently attached sign bearing the name under which the
19 broker conducts his or her real estate business and the words _real estate_,
20 _realty_, or other words approved by the Commission which clearly indicate to
21 the public that the broker is engaged in the real estate business.

22 (b) If a principal broker maintains a branch office, a duplicate
23 license shall be issued upon payment by the principal broker of such initial
24 fee, and, thereafter, renewal fee as the Commission may require pursuant to
25 Section 7 of this act. Provided, however, a duplicate license shall not be
26 issued for a branch office at which an executive broker or associate brokers
27 or salespersons are assigned unless such branch office has its own principal
28 broker.

29 (2) When a licensee changes his or her (i) name, (ii) place of
30 business, or (iii) address shown on the license, or loses a license or pocket
31 card, he or she shall promptly notify the Commission of such change or loss.
32 Upon receipt of such notice and payment of the relevant fee, the Commission
33 shall reissue the license.

34 (3) It is the responsibility of each licensee to keep the Commission
35 notified of his or her mailing address, both home and business, at all times.

1 (4) (a) The licenses of the principal broker and all licensees
2 employed by or associated with him or her shall be retained by the
3 principal broker and conspicuously displayed in his or her place of
4 business.

5 (b) Upon the termination of a licensee's employment by or
6 association with a principal broker, the licensee shall promptly deliver his
7 or her pocket card to the principal broker, and the principal broker shall
8 promptly notify the Commission of such termination and return to the
9 Commission the license and pocket card of the terminated licensee, which
10 shall automatically inactivate the license. If the pocket card is
11 unavailable, the principal broker shall promptly so notify the Commission in
12 writing.

13 (c) A license inactivated under this section may be transferred
14 to another principal broker upon application of the licensee, payment of the
15 relevant fee, and submission of a statement that he or she is not taking any
16 listings, management contracts, appraisals, lease agreements, or copies of
17 any such documents, or any other pertinent information belonging to the
18 licensee's previous principal broker.

19

20 SECTION 16.

21 In every real estate transaction involving a licensee, the licensee
22 shall clearly disclose to all parties or their agents which party he or she is
23 representing. The timing, method and other requirements of such disclosure
24 shall be established by the Commission, and the Commission shall also
25 determine the consequences of failure to make disclosure in accordance with
26 such requirements.

27

28 SECTION 17.

29 (a) The Commission may, on its own motion, and shall, upon the verified
30 complaint in writing of any person, provided the complaint and any evidence,
31 documentary or otherwise, presented in connection therewith shall make out a
32 prima facie case, investigate the actions of any person engaged in the
33 business or acting in the capacity of a real estate broker or real estate
34 salesperson regardless of whether the transaction was for his or her own
35 account or in his or her capacity as broker or salesperson. *If the complaint*

1 fails to state a prima facie case or if after investigation the Executive
2 Director determines there is insufficient proof of a violation of this act,
3 the Executive Director shall dismiss the complaint. If, however, the
4 Executive Director determines there is sufficient proof of a violation of this
5 act, the licensee shall be notified of the charges against him or her and
6 ordered to appear for a hearing. If the licensee is found to have violated
7 this act, the Commission may impose any one or more of the following
8 sanctions:

9 (1) Suspension, revocation, or denial of a license or the renewal
10 thereof;

11 (2) A penalty not to exceed \$1,000.00 for each violation;

12 (3) Completion of appropriate educational programs or courses;

13 (4) Successful completion of an appropriate licensing
14 examination;

15 (5) Conditions or restrictions upon the licensee's license or
16 practice; or

17 (6) Such other requirements or penalties as may be appropriate to
18 the circumstances of the case, and which would achieve the desired
19 disciplinary purposes, but which would not impair the public welfare and
20 morals.

21 (b) The Commission is authorized to file suit in either the Circuit
22 Court of Pulaski County or the circuit court of any county in which the
23 defendant resides or does business to collect any penalty assessed pursuant to
24 this act if such penalty is not paid within the time prescribed by the
25 Commission.

26 (c) Where deemed appropriate the Commission may suspend the imposition
27 of any sanctions imposed upon appropriate terms and conditions.

28 (d) The following acts, conduct or practices are prohibited and any
29 licensee found guilty shall be subject to disciplinary action as provided
30 above:

31 (1) Obtaining a license by means of fraud, misrepresentation or
32 concealment;

33 (2) Violating any of the provisions of this act or any rules or
34 regulations adopted pursuant thereto or any order issued thereunder;

35 (3) Being convicted of any crime involving moral turpitude, fraud,

1 dishonesty, untruthfulness, or untrustworthiness; provided, that for the
2 purposes of this section being convicted shall include all instances in which
3 a plea of guilty or nolo contendere is the basis for the conviction, and all
4 proceedings in which the sentence has been deferred or suspended, and a
5 certified copy of the final judgment of any court of competent jurisdiction
6 in such matter shall be conclusive evidence in any hearing under this act;

7 (4) Making any substantial misrepresentation.

8 (5) Making, printing, publishing, distributing, or causing,
9 authorizing, or knowingly permitting the making, printing, publication or
10 distribution of false statements, descriptions or promises of such character
11 as to reasonably induce, persuade, or influence any person to act thereon;

12 (6) Failing, within a reasonable time, to account for or to remit
13 any monies coming to his possession which belong to others;

14 (7) Committing any act involving moral turpitude, fraud,
15 dishonesty, untruthfulness or untrustworthiness;

16 (8) Acting for more than one party in a transaction without the
17 knowledge of all parties for whom he or she acts; or accepting a commission or
18 valuable consideration for the performance of any of the acts specified in
19 this act from any person except the licensed principal broker under whom he or
20 she is licensed.

21 (9) Acting as a broker or salesperson while not licensed with a
22 principal broker, representing or attempting to represent a broker other than
23 the principal broker with whom he or she is affiliated without the express
24 knowledge and consent of such principal broker, or representing himself or
25 herself as a salesperson or having a contractual relationship similar to that
26 of a salesperson with anyone other than a licensed principal broker.

27 (10) Advertising in a false, misleading, or deceptive manner;

28 (11) Being unworthy or incompetent to act as a real estate broker
29 or salesperson in such manner as to safeguard the interests of the public;

30 (12) Paying a commission or valuable consideration to any person
31 for acts or services performed in violation of this act, including paying a
32 commission or other valuable consideration to an unlicensed person for
33 participation in a real estate auction;

34 (13) Any other conduct whether of the same or a different
35 character from that hereinbefore specified which constitutes improper,

1 fraudulent, or dishonest dealing.

2 (e) Any license obtained through mistake or inadvertence shall be
3 subject to revocation.

4 (f) A licensee whose license is revoked pursuant to this Section shall
5 be eligible to apply for a new license after the expiration of two years from
6 the date of revocation.

7

8 SECTION 18.

9 (a) Any person whose complaint against a licensed real estate broker or
10 salesperson is dismissed by the Executive Director without a hearing may
11 appeal such dismissal to the Commission subject to and in accordance with the
12 following provisions:

13 (1) The request for appeal must be in writing and received in the
14 office of the Commission not later than sixty (60) days following the date of
15 dismissal by the Executive Director.

16 (2) The request for appeal must be accompanied by such filing fee
17 as the Commission may require pursuant to Section 7 of this act.

18 (3)(A) The appellant must also pay the cost of preparing the
19 record for the Commission's review, which cost shall be determined by the
20 Commission. Such costs must be paid by the appellant within thirty (30) days
21 after notification of the amount, otherwise the appeal will be dismissed.

22 (B) Provided, however, that if the Commission's review
23 results in a hearing being ordered on the complaint, both the filing fee and
24 the cost of preparing the record shall be refunded to the appellant.

25 (C) Any person who is indigent and unable to pay either the
26 filing fee or the cost of the record, or both, may file a pauper's oath in
27 such form as required by the Commission, and if the Commission determines that
28 the appellant is indeed indigent, the filing fee or cost of the record, or
29 both, shall be waived.

30 (b) All appeals duly perfected pursuant to the foregoing provision
31 shall be presented to and decided by the Commission on the written record.
32 Such decision may be to affirm the Executive Director's dismissal, to order
33 additional investigation, or to order a hearing on the complaint.

34

35 SECTION 19.

1 (1) Proceedings under Section 18 above and hearings on denials of
2 licenses shall be conducted pursuant to Ark. Code Ann., Section 25-15-201 et
3 seq., the Arkansas Administrative Procedure Act.

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

10

11 SECTION 20.

12 (1) Any person acting as a real estate broker or salesperson within
13 this state who does not hold a valid active Arkansas license or otherwise
14 violating any of the provisions of this act shall be guilty of a *Class D*
15 felony and, *upon conviction, punished accordingly.*

16 (2) Any officer or agent of a corporation or member or agent of a firm,
17 partnership, copartnership, or association who shall personally participate in
18 or in any way be accessory to any violation of this act by the firm,
19 partnership, copartnership, association, or corporation shall be subject to
20 all the penalties prescribed in this section for individuals.

21 (3) Any Commissioner, the Commission's Executive Director or other
22 designee or any licensee residing in the county where the violation occurs may
23 by affidavit institute criminal proceedings against any violator of this act
24 without having to file a bond for costs.

25 (4) The prosecuting attorney for each county shall prosecute any
26 violation of the provisions of this act which occurs in his or her county.

27

28 SECTION 21.

29 (1) Whenever there is reason to believe that any person, licensed or
30 unlicensed, has violated any provision of this act, or any order, license,
31 decision, demand or requirement issued or made pursuant to this act, the
32 Commission, the Commission's Executive Director or other designee may bring an
33 action in the chancery court of *any county in which the person resides or does*
34 *business* to enjoin such person from continuing such violation or engaging
35 therein or doing any act or acts in furtherance thereof.

1 (2) Whenever there is reason to believe a person is acting as a real
2 estate broker or salesperson in this state without a valid active Arkansas
3 license, any licensee within the county where the violation occurs may bring
4 an action in the chancery court to enjoin such person from continuing such
5 violation or engaging therein or doing any act or acts in furtherance thereof.

6 (3) In any action brought pursuant to this section the chancery court
7 shall have jurisdiction and authority to enter such preliminary or final
8 injunction or such other relief as may be appropriate.

9

10 SECTION 22.

11 (1) The provisions of this Section shall apply only to:

12 (a) Licensees who were licensed at the time of the occurrence of
13 the acts or violations complained of; and

14 (b) Acts or violations which occur after December 31, 1979.

15 (2) Nothing in this Section shall be construed to limit or restrict in
16 any manner other civil or criminal remedies which may be available to any
17 person.

18 (3) There is created and established the Real Estate Recovery Fund,
19 which shall be maintained and administered by the Arkansas Real Estate
20 Commission as provided in this Section.

21 (4) (a) The Commission shall set the fees at such amount as it deems
22 necessary to initially establish the fund and to reestablish the fund at the
23 beginning of each annual renewal period. However, the fee shall not exceed
24 the limits set forth in Subsection 5 of this Section.

25 (b) The assets of the fund may be invested and reinvested as the
26 Commission may determine, with the advice of the State Board of Finance.

27 (c) Any amounts in the fund may be used by the Commission for the
28 following additional purposes:

29 (i) To fund educational seminars and other forms of
30 educational projects for the use and benefit generally of licensees;

31 (ii) To fund real estate chairs or courses at various state
32 institutions of higher learning for the purpose of making such courses
33 available to licensees and the general public;

34 (iii) To fund research projects in the field of real
35 estate; and

1 (iv) To fund any and all other educational and research
2 projects of a similar nature having to do with the advancement of the real
3 estate field in Arkansas.

4 (5) (a) In addition to the other fees provided for in this act and
5 Commission regulations, each licensed real estate broker and salesperson shall
6 pay to the Commission for the benefit of the fund a fee as the Commission may
7 require, not to exceed the lesser of:

8 (i) Twenty-five dollars (\$25.00) per annual renewal; or

9 (ii) An amount sufficient to restore the fund balance to
10 two hundred fifty thousand dollars (\$250,000.00).

11 (b) Likewise, each person who becomes a licensee for the first
12 time shall at that time pay to the Commission for the benefit of the fund such
13 fee as the Commission may require, not to exceed twenty-five dollars (\$25.00).

14 (c) No fees collected under the provisions of this Section may be
15 expended from the fund except for the purposes set forth in this Section.

16 (6) (a) In any disciplinary hearing before the Commission which involves
17 any licensee who has allegedly violated any provision of this act or
18 Commission regulations, the Commission shall first determine whether a
19 violation has occurred.

20 (b) If so, the Commission shall then determine the amount of
21 damages, if any, suffered by the aggrieved party or parties. However, damages
22 shall be limited to actual damages in accordance with Subsection 7 of this
23 Section.

24 (c) The Commission shall then direct the licensee to pay that
25 amount to the aggrieved party or parties.

26 (d) If that amount has not been paid within thirty (30) days
27 following entry of the Commission's final order in the matter and the order
28 has not been appealed to the circuit court, then the Commission shall, upon
29 request, pay from the fund to the aggrieved party or parties the amount
30 specified. However, the Commission shall not:

31 (i) Pay in excess of ten thousand dollars (\$10,000) for any
32 one (1) violation or continuing series of violations, *regardless of the number*
33 *of licensees who participated in such violation or continuing series of*
34 *violations;*

35 (ii) Pay an amount in excess of the fund balance.

1 (e) The question of whether or not certain violations constitute
2 a continuing series of violations shall be a matter solely within the
3 discretion and judgment of the Commission.

4 (f) Nothing within this section shall obligate the fund for any
5 amount in excess of a total of fifty thousand dollars (\$50,000) with respect
6 to:

7 (i) The acts of any one (1) licensee, or

8 (ii) *Any group of related claims.*

9 (g) *Whether or not a claim is one of a group of related claims*
10 shall be a matter solely within the discretion and judgment of the Commission.

11 (h) When unsatisfied or pending claims are such that they exceed
12 the limits payable under Paragraph (f) of this Subsection, the Commission
13 shall be the sole determinant of how the available funds shall be allocated
14 among such claims.

15 (7) (a) The Commission's jurisdiction and authority to award damages to
16 an aggrieved party pursuant to Subsection 6 of this Section is limited to
17 actual, compensatory damages. The Commission shall not award punitive or
18 exemplary damages, nor shall it award interest on damages.

19 (b) Likewise, the appellate jurisdiction of the circuit court is
20 limited to the awarding of actual, compensatory damages.

21 (c) The circuit court shall have no authority or jurisdiction to
22 assess punitive or exemplary damages under this Section.

23 (d) The circuit court's jurisdiction over the fund shall be
24 limited to appeals from the Commission's order.

25 (e) The circuit court shall have no jurisdiction or authority to
26 order payments from the fund in any amount in excess of either:

27 (i) The amount determined by the Commission; or

28 (ii) The limits set forth in Subsection 6 of this Section.

29 (8) (a) An appeal may be taken to the circuit court from a final order
30 of the Commission in accordance with the Arkansas Administrative Procedure
31 Act, Section 25-15-201 et seq.

32 (b) An appeal shall automatically stay that portion of the
33 Commission order which directs the payment of damages, and neither the
34 licensee nor the Commission shall be obligated to pay the damages to the
35 aggrieved party or parties until such time as the appeal is finally decided,

1 whether in the circuit court or the Arkansas Supreme Court.

2 (9) Upon the payment by the Commission of any amount of money under the
3 provisions of Subsection 6 of this Section:

4 (i) The recipients of the payment, to the extent of the payment,
5 shall assign to the Commission all rights and claims that they may have
6 against the licensee involved;

7 (ii) The Commission shall be subrogated to all of the rights of
8 the recipients of the payment, to the extent of the payment; and

9 (iii) In addition to any other disciplinary action taken against
10 the licensee on the merits of the hearing, his or her license shall be
11 immediately suspended until he or she has completely reimbursed the Commission
12 for the payment plus interest at a rate to be determined by the Commission,
13 which rate shall not exceed ten percent (10%) per annum.

14

15 SECTION 23.

16 (1) (a) As a condition precedent to renewal or activation of licenses,
17 licensees shall meet the following requirements:

18 (i) Licensees on inactive status are not required to comply
19 with this subchapter during their inactive status. Prior to activation of a
20 license on inactive status, the licensee shall satisfactorily complete six (6)
21 classroom hours, or equivalent continuing education units (CEUs), or
22 equivalent correspondence work, of continuing education. However, that will
23 satisfy the requirements only for that particular license year and not for the
24 following license year.

25 (ii) Persons licensed as real estate brokers or
26 salespersons shall successfully complete six (6) classroom hours, or
27 equivalent continuing education units (CEUs), or equivalent correspondence
28 work, of continuing education annually. Those persons shall be deemed to have
29 successfully completed the continuing education requirements for the licensing
30 year following the year in which first licensed in Arkansas.

31 (iii) Provided the course or courses consist of no less
32 than six (6) classroom hours, or equivalent continuing education units
33 (CEUs), of real estate related subjects and otherwise comply with the minimum
34 requirements of this Section, and further provided that evidence of such
35 compliance satisfactory to the Commission is submitted in form, manner, and

1 content prescribed by the Commission:

2 (A) A nonresident licensee may meet the Arkansas
3 continuing education requirements by taking courses which meet the continuing
4 education requirements of his or her resident state for the licensing year in
5 question; and

6 (B) A licensee may meet the continuing education
7 requirements of this Section by attending an accredited and recognized
8 out-of-state college or university during the licensing year in question.

9 (b) The Commission may waive all or part of the requirements of
10 Subsection (a) of this Section for any licensee who submits satisfactory
11 evidence of inability to meet the continuing education requirements due to
12 health reasons or other hardship or extenuating circumstances beyond the
13 licensee's control.

14 (c) Licenses for persons who apply for renewal of their licenses
15 and who do not provide to the Commission evidence of meeting the continuing
16 education requirements, but who have otherwise met all requirements for
17 license renewal, shall be placed on inactive status until the evidence is
18 provided to the Commission.

19 (2) (a) The Commission may establish the continuing education curriculum
20 by identifying subject matter topics. The Commission may identify specific
21 topics of not more than one hour to be included in continuing education
22 courses. The Commission shall not require licensees to complete specific
23 courses within the subject matter topics. Changes in the curriculum shall be
24 applicable beginning with the license renewal period subsequent to the
25 curriculum change.

26 (b) The Board shall approve continuing education courses and may
27 approve only those continuing education courses which meet the criteria
28 prescribed by the Commission. In establishing such criteria, the Commission
29 shall give due consideration to the advice and recommendations of the Board.

30 (c) The Board shall determine the classroom hour equivalency of
31 correspondence courses.

32 (3) The following do not qualify as continuing education:

33 (a) Courses of instruction designed to prepare a student for
34 passing the real estate broker or salesperson examinations, except as provided
35 in Subsection (1) (a) of this Section;

1 (b) Offerings in mechanical skills, office and business skills
2 including, but not limited to: typing, speed-reading, memory improvements,
3 language, report writing, personal motivation, salesmanship, and sales
4 psychology;

5 (c) Sales promotions or other meetings held in conjunction with
6 the general business of the licensee;

7 (d) Time devoted to breakfast, luncheons, and dinners; and

8 (e) The same course may not be used to meet the continuing
9 education requirement twice during the same license year.

10 (4) The following courses and their instructors are not required to
11 obtain the approval of the Board in order to qualify as continuing education
12 courses in this Section:

13 (a) Courses in real estate-related subjects offered by the
14 National Association of Realtors, the National Association of Real Estate
15 Brokers, or their societies, institutes, or councils;

16 (b) Courses in real estate-related subjects offered by the
17 Commission.

18 (5) (a) Except as provided in this Section, instructors in continuing
19 education courses shall file credentials with the Board showing the necessary
20 specialized preparation, training, and experience to ensure competent and
21 qualified instruction.

22 (b) Instructors shall meet at least one (1) of the following
23 requirements:

24 (i) A bachelor's degree in the field in which the
25 instructor is to teach; or

26 (ii) A valid teaching credential or certificate from
27 Arkansas or another state authorizing the holder to teach in the field of
28 instruction being offered; or

29 (iii) Five (5) years of full-time experience in a
30 profession, trade, or technical occupation in the field of instruction being
31 offered.

32 (6) (a) Credit shall be earned on the basis of attendance.

33 (b) (i) A certificate of attendance, which states the name
34 of the student, the name of the school or sponsor of the course, the date the
35 course was completed, and the number of classroom hours of instruction covered

1 by the individual course, and such other information as the Commission may
2 require shall be presented to each attendee upon completion of the course.
3 Either a copy of the certificate or other proof of satisfactory completion of
4 the course acceptable to the Commission shall be furnished to the Commission
5 by the licensee. It is the licensee's responsibility to establish his or her
6 successful completion of a continuing education course.

7 (ii) No certificate of attendance shall be issued to a
8 licensee who is absent for more than ten percent (10%) of the classroom hours.

9 (7) The Commission or its designee is authorized to attend and monitor
10 any courses of instruction offered or to be offered as meeting the
11 requirements of this act.

12

13 SECTION 24.

14 (1) (a) The Commission is hereby authorized and empowered, subject to
15 the following restrictions and limitations, to establish a program authorizing
16 and permitting the collection of interest on real estate brokers' trust
17 accounts and the disbursement of such interest by the depository institutions
18 involved to an Arkansas nonprofit corporation for use for such tax exempt
19 purposes as hereinafter set forth.

20 (b) Participation in the program shall be completely voluntary
21 with each broker rather than mandatory.

22 (2) (a) All real estate brokers participating in this program shall
23 post a notice at least four inches by seven inches (4" x 7") stating that they
24 participate in the interest on real estate brokers' trust accounts program.

25 (b) Said notice shall be displayed prominently and shall contain
26 information concerning the purposes for which the interest accumulating on the
27 account shall be used, and shall state: If funds belonging to you are
28 deposited in this firm's trust account, any interest earned therefrom will be
29 forwarded by the depository bank to a nonprofit organization which will
30 dispense the funds to provide for economic development, research, education,
31 and such other public service purposes as may be determined by the recipient
32 corporation selected by the Commission.

33 (3) (a) The recipient of the funds generated by such program shall be
34 such Arkansas nonprofit corporation as the Commission shall designate. The
35 corporation shall be tax exempt as defined by Section 501(c) (3) of the

1 Internal Revenue Code. Such corporation shall be governed by a board of
2 directors consisting of not fewer than five (5) nor more than fifteen (15)
3 members. At least sixty percent (60%) of the total number of directors shall
4 be appointed by the Commission and the remainder by the Arkansas REALTORS
5 Association.

6 (b) The funds generated by the program shall be used for economic
7 development, research, education, and such other public service purposes as
8 may be determined by the recipient corporation specified in this section.

9
10 SECTION 25.

11 This act shall be known as the Real Estate License Law.

12
13 SECTION 26.

14 This act shall become effective on January 1, 1994.

15
16 SECTION 27. If any provision of this act or the application thereof to
17 any person or circumstance is held invalid, such invalidity shall not affect
18 other provisions or applications of the act which can be given effect without
19 the invalid provision or application, and to this end the provisions of this
20 act are declared to be severable.

21
22 SECTION 28. All provisions of this act of a general and permanent
23 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
24 Code Revision Commission shall incorporate the same in the Code.

25
26 SECTION 29. (a) Effective January 1, 1994, Chapter 35 of Title 17 of
27 the Arkansas Code is repealed.

28 (b) All laws and parts of laws in conflict herewith are repealed
29 effective January 1, 1994.

30 /s/Rep. Dietz
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