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4

As Engrossed: H3/21/11

A Bill

SENATE BILL 636

5 By: Senator Files
6 By: Representatives Tyler, Rice, Patterson
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE CIVIL JURISDICTION, PENALTIES,
10 AND SCOPE OF THE REAL ESTATE LICENSE LAW; TO MAKE
11 TECHNICAL CORRECTIONS; AND FOR OTHER PURPOSES.
12

Subtitle

14 TO CLARIFY THE CIVIL JURISDICTION,
15 PENALTIES, AND SCOPE OF THE REAL ESTATE
16 LICENSE LAW AND TO MAKE TECHNICAL
17 CORRECTIONS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 17-42-103 is amended to read as follows:

23 17-42-103. Definitions.

24 As used in this chapter:

25 (1) (A) "Associate broker" means an individual who has a broker's
26 license and who is employed by a principal broker, or is associated with a
27 principal broker as an independent contractor, and who participates in any
28 activity described in subdivision ~~(12)~~ (9) of this section while under the
29 supervision of a principal broker or executive broker.

30 (B) ~~However, an~~ An associate broker shall have no
31 supervisory authority over any other licensee;

32 ~~(2) "Board" means the State Board of Private Career Education;~~

33 ~~(3)~~ (2) "Branch office" means a real estate principal broker's
34 office other than his or her principal place of business;

35 ~~(4)~~ (3) "Classroom hour" means a period of at least fifty (50)
36 minutes, but not more than sixty (60) minutes, of actual classroom



1 instruction with the instructor present;

2 ~~(5)~~ “~~Commission~~” means the ~~Arkansas Real Estate Commission~~;

3 ~~(6)~~(4) “Continuing education” means postlicensure education
4 derived from participation in courses in real estate-related subjects ~~which~~
5 that have been approved by the ~~board~~ State Board of Private Career Education
6 or ~~which~~ that are not required to be approved by the board;

7 ~~(7)~~(5) “Continuing education unit” means a period of ten (10)
8 contact hours of actual classroom instruction with the instructor present;

9 ~~(8)~~ “~~Director~~” means the ~~Executive Director of the Arkansas Real~~
10 ~~Estate Commission~~;

11 ~~(9)~~(6)(A) “Executive broker” means an individual who:

12 (i) ~~has~~ Has a broker’s license;

13 (ii) ~~and who is~~ Is employed by a principal broker or
14 associated with a principal broker as an independent contractor; and

15 (iii) ~~who participates~~ Participates in any activity
16 described in subdivision ~~(12)~~(9) of this section while under the supervision
17 of a principal broker.

18 (B) ~~However, an~~ An executive broker may supervise
19 associate brokers and salespersons;

20 ~~(10)~~(A)(7)(A) “Licensee” means an individual who holds any type
21 of license issued by the ~~commission~~ Arkansas Real Estate Commission.

22 (B) ~~and, unless the context clearly requires otherwise,~~
23 ~~shall include~~ “Licensee” includes a principal broker, an executive broker, an
24 associate broker, and a salesperson.

25 ~~(B)~~(C) ~~Nothing in this~~ This chapter ~~shall~~ does not
26 preclude a licensee from:

27 (i) Doing business as a professional corporation
28 under § 4-29-101 et seq.; or

29 (ii) Receiving payment from a real estate firm or
30 principal broker of an earned commission to the licensee’s legal business
31 entity if the licensee earned the commission on behalf of the real estate
32 firm or principal broker;

33 ~~(11)~~(8) “Participate in a real estate auction” means to do any
34 act or conduct ~~done~~ for compensation or the expectation ~~thereof~~ of
35 compensation and designed, intended, or expected to affect the bidding or
36 results of a real estate auction, including, without limitation, serving as

1 an auctioneer or ringman or encouraging, soliciting, or receiving bids;

2 ~~(12)~~(9) "Principal broker" means an individual, while expecting
3 to act or acting for another for a fee, commission, or other consideration,
4 ~~or the expectation thereof~~, who:

5 (A) Sells, exchanges, purchases, rents, or leases real
6 estate;

7 (B) Offers to sell, exchange, purchase, rent, or lease
8 real estate;

9 (C) Negotiates, offers, attempts, or agrees to negotiate
10 the sale, exchange, purchase, rent, or lease of real estate;

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

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

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

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

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

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

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

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

32 (L) Performs any of the ~~foregoing~~ acts described in this
33 subdivision (9) as an employee of or on behalf of the owner of, or any person
34 who has an interest in, real estate;

35 ~~(13)(A)(10)(A)~~ "Real estate" means ~~and include leaseholds or any~~
36 ~~other interest or estate in land and shall include the sale and resale of~~

1 ~~time share units~~ an interest in real property.

2 (B) ~~Unless the context otherwise requires, the words “real~~
 3 ~~estate” and “real property” shall be synonymous~~ “Real estate” includes
 4 without limitation a leasehold, time-share interval, or an interest in real
 5 property that is purchased or sold in connection with the purchase or sale of
 6 all or part of the assets, stock, or other ownership interest of a business
 7 or other organization; and

8 ~~(14)~~(11) “Salesperson” means an individual who:

9 (A) ~~has~~ Has a salesperson’s license;

10 (B) ~~and who is~~ Is employed by a principal broker or is
 11 associated with a principal broker as an independent contractor; and

12 (C) ~~who participates~~ Participates in any activity
 13 described in subdivision ~~(12)~~(9) of this section while under the supervision
 14 of a principal broker or executive broker; and

15 (12) “Unlicensed real estate activity” means offering or
 16 engaging in any practice, act, or operation set forth in subdivision (9) of
 17 this section without a valid active Arkansas license issued by the
 18 commission.

19
 20 SECTION 2. Arkansas Code § 17-42-104(a)(1), concerning the exemptions
 21 from the Arkansas Real Estate Law, is amended to read as follows:

22 (1) ~~Any~~ A person not licensed under this chapter who performs
 23 any of the acts described in ~~§ 17-42-103(12)~~ § 17-42-103(9) with regard to
 24 the property owned, leased, or purchased by him or her;

25
 26 SECTION 3. Arkansas Code § 17-42-105 is amended to read as follows:

27 17-42-105. ~~Criminal~~ Violations and criminal sanctions.

28 (a) ~~Any person acting as a real estate broker or salesperson within~~
 29 ~~this state who does not hold a valid active Arkansas license or who otherwise~~
 30 ~~violates any of the provisions of this chapter shall be guilty of a Class D~~
 31 ~~felony and, upon conviction, punished accordingly.~~ It is unlawful to:

32 (1) Engage in unlicensed real estate activity; or

33 ~~(b)~~(2) Any Violate this chapter:

34 (A) Individually; or

35 (B) As an officer, or agent, of a corporation or member or
 36 agent of a firm, corporation, partnership, copartnership, or association,

1 limited liability company, or other entity by who shall personally
2 participate in or in any way be participating in or being an accessory to any
3 a violation of this chapter by the firm, corporation, partnership,
4 copartnership, association, or corporation limited liability company, or
5 other entity shall be subject to all the penalties prescribed in this section
6 for individuals.

7 ~~(e)~~(b) Any A commissioner of the Arkansas Real Estate Commission, the
8 Executive Director of the Arkansas Real Estate Commission, ~~or other a~~
9 commissioner's designee, the Executive Director's designee, or any licensee
10 residing in the county where the violation occurs may by affidavit institute
11 criminal proceedings for a violation ~~against any violator~~ of this chapter
12 without ~~having to file~~ filing a bond for costs.

13 ~~(d)~~(c) The prosecuting attorney for each county shall prosecute any
14 violation ~~of the provisions~~ of this chapter ~~which~~ that occurs in his or her
15 county.

16 (d) A violation of this chapter is a Class D felony.

17
18 SECTION 4. Arkansas Code § 17-42-106 is amended to read as follows:
19 17-42-106. Injunction.

20 (a) ~~Whenever there is reason to believe that any person, licensed or~~
21 ~~unlicensed, has violated any provision of this chapter, or any order,~~
22 ~~license, decision, demand, or requirement issued or made pursuant to this~~
23 ~~chapter, the Arkansas Real Estate Commission, the Executive Director of the~~
24 ~~Arkansas Real Estate Commission, or other designee~~ If the Arkansas Real
25 Estate Commission has reason to believe that a person has violated a
26 provision of this chapter, the commission or its designee may bring an action
27 in the circuit court of any county in which the person resides or does
28 business to enjoin ~~such a~~ the person from continuing, ~~such violation or~~
29 engaging in, ~~therein~~ or doing any act or acts in furtherance ~~thereof~~ of the
30 violation.

31 ~~(b) Whenever there is reason to believe a person is acting as a real~~
32 ~~estate broker or salesperson in this state without a valid active Arkansas~~
33 ~~license, any licensee within the county where the violation occurs may bring~~
34 ~~an action in the circuit court to enjoin such a person from continuing such a~~
35 ~~violation or engaging therein or doing any act or acts in furtherance~~
36 ~~thereof.~~

1 ~~(e)(b)~~ In any action ~~brought pursuant to~~ under this section, the
 2 circuit court of any county in which the person resides or does business
 3 ~~shall have jurisdiction and authority to~~ may enter ~~such a~~ preliminary
 4 injunction, or a final injunction, or an order for such any other appropriate
 5 relief ~~as may be appropriate.~~

6
 7 SECTION 5. Arkansas Code § 17-42-107(a), concerning suits for real
 8 estate commissions, is amended to read as follows:

9 (a) ~~No~~ An action or suit shall not be instituted, nor recovery be had,
 10 in any court of this state by any person or other legal entity for
 11 compensation for performance of any acts described in ~~§ 17-42-103(12)~~ § 17-
 12 42-103(9) unless at the time of offering to perform and performing any such
 13 act or procuring any promise to contract for the payment of compensation for
 14 any such contemplated act:

15 (1) The person holds an active license under this chapter as a
 16 principal broker; or

17 (2) The person or other legal entity was the owner of the real
 18 estate firm ~~which~~ that contracted for or otherwise performed the acts for the
 19 compensation ~~which~~ that is the subject of the action or suit through either a
 20 principal broker or a person approved by the Arkansas Real Estate Commission
 21 under § 17-42-301(f) while licensed or approved by the commission at the time
 22 of the acts.

23
 24 SECTION 6. Arkansas Code Title 17, Chapter 42, Subchapter 1, is
 25 amended to add an additional section to read as follows:

26 17-42-109. Civil penalties for engaging in unlicensed real estate
 27 activity.

28 (a) If after notice and a hearing in accordance with this chapter and
 29 the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Arkansas
 30 Real Estate Commission finds that a person has engaged in unlicensed real
 31 estate activity, the commission may impose a civil penalty of no more than
 32 five thousand dollars (\$5,000) and assess costs against the person.

33 (b) The fact that a person offers to engage in or offers to perform
 34 any practice, act, or operation set forth in § 17-42-103(9) without a license
 35 is prima facie evidence that the person is engaged in unlicensed real estate
 36 activity.

1 (c) In addition to civil penalties imposed under this section, the
2 commission may require the person engaged in unlicensed real estate activity
3 to reimburse any compensation, fees, or other remuneration collected during
4 the unlicensed real estate activity.

5
6 SECTION 7. Arkansas Code § 17-42-301(b), concerning real estate
7 license requirements, is amended to read as follows:

8 (b) ~~Any~~ A person who directly or indirectly for another with the
9 intention, or on the promise of receiving any valuable consideration, offers,
10 attempts, or agrees to perform any single act described in ~~§ 17-42-103(12)~~ §
11 17-42-103(9), whether as part of a transaction or as an entire transaction,
12 shall be deemed a broker or salesperson within the meaning of this chapter.
13

14 SECTION 8. Arkansas Code § 17-42-301(e), concerning real estate
15 license requirements, is amended to read as follows:

16 (e)(1) Notwithstanding the provisions of this section, a person or
17 other legal entity not licensed by the Arkansas Real Estate Commission may
18 own a real estate firm, provided the employees or agents employed by or
19 associated with the firm who perform real estate activities identified under
20 ~~§ 17-42-103(12)~~ § 17-42-103(9) hold an active license under this chapter.

21 (2) The firm may enter into contracts or otherwise perform
22 activities identified under ~~§ 17-42-103(12)~~ § 17-42-103(9) only through a
23 principal broker and ~~any~~ a licensee employed by or associated with the
24 principal broker that holds an active license issued by the commission at the
25 time of performing the contract or activities.
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30 **APPROVED: 03/31/2011**
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