

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 1615

5 By: Representatives Tyler, Rice, Patterson
6 By: Senators Files, R. Thompson
7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH A REAL ESTATE LICENSEE'S
10 RESPONSIBILITIES DURING A REAL ESTATE RELATIONSHIP;
11 AND FOR OTHER PURPOSES.
12
13

Subtitle

15 TO ESTABLISH A REAL ESTATE LICENSEE'S
16 RESPONSIBILITIES DURING A REAL ESTATE
17 RELATIONSHIP.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 17, Chapter 42, Subchapter 1 is amended
23 to add additional sections to read as follows:

24 17-42-109. Agency relationship and duties generally.

25 (a) The common law of agency under Arkansas as supplemented by this
26 section applies to the relationship between a licensee and the licensee's
27 client.

28 (b)(1) In accepting employment by a client, a licensee pledges a
29 primary duty of absolute fidelity to protect and promote the interests of the
30 client or clients.

31 (2) The licensee's duty includes without limitation the
32 obligation to:

33 (A) Use reasonable efforts to further the interest of the
34 client;

35 (B) Exercise reasonable skill and care in representing the
36 client and carrying out the responsibilities of the agency relationship;



1 (C) Perform the terms of the written agency agreement;

2 (D) Follow lawful instructions of the client unless doing
 3 so would expose the licensee to liability from another party to a contract,
 4 lease, or rental agreement;

5 (E) Perform all duties specified in this section in a
 6 manner that demonstrates loyalty to the interests of the client;

7 (F) Comply with all requirements of this section and other
 8 applicable statutes, rules, and regulations;

9 (G) Disclose to the client material facts of the
 10 transaction that the licensee is aware of or should be aware of in the
 11 exercise of reasonable skill and care and that are not confidential
 12 information under a current or prior agency or dual agency relationship;

13 (H) Advise the client to obtain expert advice concerning
 14 material matters when necessary or appropriate;

15 (I) Account in a timely manner for all moneys and property
 16 received in which the client has or may have an interest;

17 (J) Keep confidential all confidential information; and

18 (K) Refrain from disclosing confidential information to a
 19 licensee who is not an agent of the client.

20 (c) The duties required of a licensee under this section may not be
 21 waived by a client.

22
 23 17-42-110. Representing seller or lessor in an agency relationship.

24 (a) When representing a seller or lessor in an agency relationship, a
 25 licensee shall:

26 (1)(A) Use reasonable efforts to obtain a purchase or lease
 27 offer at a price and with terms acceptable to the seller or lessor.

28 (B) Unless requested by the seller or lessor, the licensee
 29 is not obligated to seek additional offers if the property is subject to a
 30 contract of sale, lease, or letter of intent to lease;

31 (2) Accept delivery of and present an offer to the seller or
 32 lessor in a timely manner, regardless of whether or not the property is
 33 subject to a contract of sale, lease, or letter of intent to lease;

34 (3) Within the scope of knowledge required for licensure, but
 35 without violating the limits of the licensee's authority:

36 (A) Answer the seller's or lessor's questions regarding

1 the steps the seller or lessor must take to fulfill the terms of a contract;
 2 and

3 (B) Provide information to the seller or lessor regarding
 4 offers or counteroffers of which the licensee has actual knowledge; and

5 (4) Assist the seller or lessor in developing, communicating,
 6 and presenting offers or counteroffers.

7 (b) A licensee does not breach a duty or an obligation to a seller or
 8 lessor with whom the licensee has an agency relationship by showing
 9 alternative properties to a prospective buyer or by acting as an agent or
 10 subagent for other sellers or lessors.

11 (c) This section does not permit a licensee to perform any act or
 12 service that constitutes the practice of law.

13
 14 17-42-111. Representing buyer or lessee in an agency relationship.

15 (a) When representing a buyer or lessee in an agency relationship, a
 16 licensee shall:

17 (1)(A) Use reasonable efforts to locate a property at a price
 18 and with purchase or lease terms acceptable to the buyer or lessee.

19 (B) Unless requested by the client, the licensee is not
 20 obligated to seek additional purchase or lease possibilities if the buyer or
 21 lessee has contracted to purchase or lease or has extended a letter of intent
 22 to lease suitable property;

23 (2) Within the scope of knowledge required for licensure, but
 24 without violating the limits of the licensee's authority:

25 (A) Answer the buyer's or lessee's questions regarding the
 26 steps the buyer must take to fulfill the terms of any contract; and

27 (B) Provide information to the buyer or lessee regarding
 28 offers or counteroffers;

29 (3) Assist the buyer or lessee in developing, communicating, and
 30 presenting offers or counteroffers; and

31 (4) In a timely manner:

32 (A) Present an offer to purchase or lease to the seller or
 33 lessor or their agent, regardless of whether or not the property is subject
 34 to a contract of sale, lease, or letter of intent to lease; and

35 (B) Accept delivery of and present any counteroffers to
 36 the buyer or lessee.

1 (b) If a dual or multiple agency relationship is disclosed under § 17-
2 42-108, a licensee does not breach a duty or an obligation to the buyer or
3 lessee by:

4 (1) Showing property to other buyers or lessees; or

5 (2) Acting as an agent or subagent for other buyers or lessees
6 or as an agent or subagent for sellers or lessors.

7 (c) This section does not permit a licensee to perform any act or
8 service that constitutes the practice of law.

9
10 17-42-112. Waiver of agency duties.

11 (a) A licensee shall perform the duties required under § 17-42-110 or
12 § 17-42-111 unless the client agrees to waive these duties and signs a waiver
13 of duties statement that contains:

14 (1) A list of the fiduciary duties required of all licensees
15 under § 17-42-109;

16 (2) A list of the duties contained in § 17-42-110 or § 17-42-111
17 set forth in a manner that allows for the parties to indicate each duty that
18 is being waived; and

19 (3) The following language in at least 10-point boldface type:

20 “Agreement to Waive

21 By signing below, I agree that the real estate licensee who represents me
22 will not perform the duties that are initialed above. I also understand that
23 in a proposed real estate transaction, no other real estate licensee will
24 perform the waived duties, and I realize that I may need to hire other
25 professionals such as an attorney.

26 _____ _____

27 Signature of Client Date

28 _____ _____

29 Signature of Licensee Date”

30 (b) If a licensee enters into an agency relationship containing the
31 waivers outlined in this section, all reasonable efforts must be taken to
32 inform other licensees that:

33 (1) Any moneys of others, including without limitation earnest
34 money, advance fees, or security deposits are not to be transmitted or kept
35 by the licensee, notwithstanding other applicable statutes and rules; and

36 (2) A licensee for a buyer or lessee remains authorized to

1 present offers to buy, lease, or rent real property directly to the
2 licensee's principal notwithstanding a:

- 3 (A) Waiver under subsection (a) of this section; or
- 4 (B) Conflicting statute or rule.

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