

**ALC – Occupational Licensing Review Subcommittee
Occupational Entity Questionnaire**

**Real Estate Commission
Division of Occupational and Professional Licensing Boards and Commissions
Department of Labor and Licensing**

1. Would consumers be at risk of substantial harm if Arkansas did not have this occupational authorization? What instances of specific and substantial harm have been documented in the past year?

Yes, consumers would be at risk of substantial harm if Arkansas did not require licensure or registration for real estate agents, educators, and time-share entities. The following table represents issues identified in all complaints received since January 2021, in order from most to least common.

# of Complaints	Complaint Issues
28	Property Description/Conditions/Repairs
22	Ethics/Improper Activities
19	Agency/Misrepresentation/Failure to Protect
12	Contract Issues
11	Handling of funds
11	Unlicensed Activity
10	Advertising/False Advertising/Misrepresentation
8	Rental Property Management
7	Independent/Self Dealing/Conflicts of Interest
4	Criminal or Unprofessional Conduct
2	Time-Share

Below are a few examples of disciplinary actions and/or Recovery Fund awards issued by the Commission since 2021:

* A Principal Broker performing property management activities commingled rent monies with non-trust account funds. The broker allowed his license to expire and continued to practice. At termination of the property management agreement, the expired broker failed to properly account for and remit rent and security deposit monies to the owner and/or tenants.

* A listing agent learned from a third party that the listed property's septic system may have been improperly sized. The listing agent did not follow up on this information. The buyer was unaware of the septic system issue until after closing. The Commission found the agent and their Principal Broker failed to exert reasonable effort to ascertain material facts and failed to protect the interests of both their seller client and their buyer client. The Buyer made a Recovery Fund claim of \$11,780, which the Commission awarded and ordered paid by the listing agent and their Principal Broker.

* The following Recovery Fund claim was heard in 2021, after earlier disciplinary findings. A listing agent substantially misrepresented material facts regarding the subject which adversely affected the buyers' intended use of the property. The listing agent and the Principal Broker failed to properly reduce the agreement of the parties to writing, failed to protect and promote the interest of their seller-client, and failed to ascertain facts material to the buyers' desirability of the subject property. The Principal Broker failed to properly supervise their listing agent. The Commission awarded and ordered damages to be paid to the buyers in the sum of \$6,521.37 by the listing agent and Principal Broker.

2. How many complaints were made to the occupational entity by consumers being harmed by unauthorized practitioners? What specific action was taken by the occupational entity?

There have been 11 unlicensed activity complaints since January 2021, all of which are currently under investigation. In 2020, the Commission took action against 4 individuals for engaging in unlicensed time-share activity. The unlicensed Respondents represented themselves as being engaged in brokerage activities, specifically the sale, exchange or purchase of time-share interests, which requires an Arkansas real estate license. The Respondents entered the state to meet with time-share owners and promised to assist the owners in transferring their time-share interests. The Complainant owners paid the Respondents through the Respondents' LLC for the transfer of their time-share interests. The Respondents neither secured the transfers for the owners nor refunded the fees to the owners. The Commission ordered a penalty of \$5,000 assessed to each of four respondents. The Respondents were ordered, jointly and severally, to pay restitution totaling \$14,830 to the two complainants.

3. How many complaints were made to the occupational entity by consumers being harmed by authorized practitioners? What specific action was taken by the occupational entity?

In 2021, AREC received 106 total complaints. To date in 2022, AREC has received 29 complaints. 101 investigations are ongoing, with 27 cases completed in 2022. Currently, AREC has 19 Formal Hearings recommended or pending, 5 Consent Orders pending, and 18 dismissals recommended.

4. Were any applicants who otherwise met authorization requirements denied an authorization in the past year? If so, why?

Four applicants were denied a waiver by the Commission based on a disqualifying offense or record of unprofessional conduct. Eight applicants are required to request a waiver for licensure for a disqualifying offense and have not yet requested the waiver. The Commission receipted 3,129 applications in 2021, and 1,074 applications year-to-date in 2022.

5. How much does the occupational entity collect annually in fees, and what are annual expenses? How much money does the occupational entity have in reserves?

Annual fee revenue is approximately \$1.46mil. Annual expenses are approximately \$1.2mil. As of March 31, 2022, the Commission's General Fund cash balance is \$2.129mil. The Recovery Fund cash balance is \$911,693.

6. If the occupational entity has a positive amount in reserves, when was the last time reserve funds were used? For what purpose?

FY2018-2019 – Capital Outlay for licensing database management system developed to spec for AREC by DIS, and purchase of 1 new vehicle to replace an older vehicle retired from the agency's 2-vehicle fleet.

7. Does the occupational entity have any other sources of revenue? Could occupational authorization fees be reduced without causing the occupational entity to be underfunded?

Licensing fees are the agency's primary source of revenue, with minor amounts of revenue provided by interest on Treasury investments and various miscellaneous fees (<1%). Due to the fluctuations in license numbers as the real estate market ebbs and flows, a reduction in license fees could result in underfunding during an eventual downturn or slowing of the market. For the Fiscal Years 2009 – 2021, the agency ended the fiscal with a decrease to its General Fund cash balance six times (FY10-FY13, FY18-FY19). The period FY18-FY19 can be attributed to the above-mentioned Capital Outlay expenditures. The period FY10-FY13 corresponds to the recession and a consistent decrease in total licensee numbers.

8. How many applicants for the occupational authorization fail each year? Does the occupational entity track how many applicants that do not progress are veterans, women, or minorities?

On average, approximately 66% of candidate applicants will fully complete the license application process. Factors influencing attrition vary, but include without limitation: loss of interest, life change, career change, disqualifying offenses in criminal background, failure to complete education, failure to sit for the exam and failure to pass the exam. While the agency records applicants' demographic information and uniformed service status and can report on that data, we do not actively track the number of applicants in those categories who do not progress to licensure.

9. Can applicants complete the training requirements for this occupational authorization with vocational or non-traditional education (e.g., apprenticeships)? What percentage of applicants complete apprenticeships?

All education requirements for salespersons and brokers can be completed with licensed Arkansas schools, and all education requirements can be offered via distance education. The pre-license and post-license education requirements can also be met with comparable education taken in another jurisdiction or a college-level real estate course(s). Apart from the 1-hour real estate safety requirement, the annual continuing education requirement can be met with comparable education from another jurisdiction or through attendance at qualified seminars or conferences.

The only two licenses that have an experience requirement are: Real Estate Broker and Real Estate Instructor (Principal or Associate). Real Estate Brokers are required to demonstrate 2 years of experience as an active salesperson. This is experience gained while actively licensed as a Real Estate Salesperson and under the supervision of a Principal Broker. Real Estate Instructors are required to hold a current active Broker license and have 5 years of real estate experience; however, that experience requirement can be gained in a variety of settings and is not tied to the Broker license requirement.

10. In what ways would removal of the occupational authorization or reduction of occupational authorization requirements be harmful to current authorization holders?

The most critical challenge AREC faces in protecting the public is a lack of adequate broker supervision. This challenge ranges in scope from ill-equipped brokers who are unable to properly supervise licensees, to brokers whose brokerage business models place licensee supervision secondary to the broker's own production, to brokers who simply fail to supervise their licensees. Without drawing too strong a correlation between a reduction in license requirements and licensee competency, it is not unreasonable to deduce that reductions would result in less competent licensees entering the profession. This would increase the burden on supervising brokers, as less qualified licensees require more training and supervision. The problem of broker supervision would be further exacerbated by removing or reducing the current requirements intended to ensure supervising brokers possess the qualifications necessary to protect the public.

Another ongoing problem in the real estate profession is that of well-trained and knowledgeable licensees being forced to compensate for the actions of less competent licensees in order to protect their clients and ensure a successful transaction. An example of this would be where a buyer's agent is failing in their duty of care to their buyer, and the listing agent, who naturally wants to ensure a successful close for their seller, is required to do things the buyer's agent would normally do, such as facilitating inspection and repair negotiations or ensuring that the buyer is on track for closing. Licensees often refer to this as having to do the job of "the agent across the table".

Removing or reducing licensure requirements would widen the gap between competent real estate professionals and those who are unwilling to fulfill their fiduciary duties, and it would expose consumers to risk and even harm as a result.