

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 2042

5 By: Representative Drown
6 By: Senators L. Eads, Files
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY PROVISIONS CONCERNING REAL ESTATE
10 LICENSE EXEMPTIONS; TO AMEND THE LAW CONCERNING THE
11 INVESTIGATION OF COMPLAINTS BY THE ARKANSAS REAL
12 ESTATE COMMISSION; AND FOR OTHER PURPOSES.
13

Subtitle

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15 TO CLARIFY PROVISIONS CONCERNING REAL
16 ESTATE LICENSE EXEMPTIONS; AND TO AMEND
17 THE LAW CONCERNING THE INVESTIGATION OF
18 COMPLAINTS BY THE ARKANSAS REAL ESTATE
19 COMMISSION.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code § 17-42-103(5), concerning definitions used
26 throughout real estate license law, is amended to read as follows:

27 (5) "Continuing education" means postlicensure education derived
28 from participation in courses in real estate-related subjects that have been
29 approved by the ~~State Board of Private Career Education~~ Arkansas Real Estate
30 Commission or that are not required to be approved by the ~~board~~ commission;
31

32 SECTION 2. Arkansas Code § 17-42-104(a), concerning exemptions, is
33 amended to read as follows:

34 (a) This chapter does not apply to:

35 (1) A person not licensed under this chapter who performs any of
36 the acts described in § 17-42-103(10) ~~with regard to the property owned,~~



1 ~~leased, or purchased by him or her, as:~~

2 (A) An owner of an individual freehold or leasehold
 3 interest in real estate;

4 (B) In the case of a corporation, limited liability
 5 company, limited partnership or other entity recognized by law holding a
 6 freehold or leasehold interest in the real estate under subdivision (a)(1)(A)
 7 of this section, a member, manager, partner, or officer who has authority to
 8 make management decisions affecting the overall policy of the entity
 9 regarding real estate activities involving only the interest of the owner;

10 (C) An individual attempting to acquire for his or her own
 11 use a freehold or leasehold interest in real estate; or

12 (D) In the case of a corporation, limited liability
 13 company, limited partnership, or other entity recognized by law intending to
 14 acquire a freehold or leasehold interest in real estate under subdivision
 15 (a)(1)(C) of this section, a member, manager, partner or officer who has
 16 authority to make management decisions affecting the overall policy of the
 17 entity;

18 (2) An attorney in fact under a duly executed and recorded power
 19 of attorney from the owner or lessor authorizing the final consummation by
 20 performance of any contract for the sale, lease, or exchange of real estate,
 21 provided that the attorney in fact does not receive or have an expectation of
 22 receiving a fee, commission, or other consideration, directly or indirectly,
 23 for performing the act;

24 (3) An attorney at law in the performance of his or her duties
 25 as an attorney at law;

26 (4) A person acting as a receiver, trustee in bankruptcy,
 27 administrator, executor, or guardian, or while acting under a court order or
 28 under the authority of a will or of a trust instrument;

29 (5) A person acting as a resident manager when the resident
 30 manager resides on the premises and is engaged in the leasing of real
 31 property in connection with his or her employment;

32 (6) A person employed only at a salaried or hourly rate to
 33 engage in the leasing of real property for or on behalf of a licensed
 34 principal broker, the real estate firm of a licensed principal broker, or an
 35 owner of real estate, if the person:

36 (A) Does not engage in or offer to perform any practice,

1 act, or operation set forth in § 17-42-103(10) other than receiving a
2 security deposit or payment as permitted by subdivision (a)(6)(B)(iii) of
3 this section; and

4 (B) Performs only one (1) or more of the following
5 functions:

6 (i) Delivering a lease application, lease, or an
7 amendment to a lease application or lease to any person;

8 (ii) Receiving a lease application, lease, or an
9 amendment to a lease application for delivery to the principal broker, real
10 estate firm, or owner;

11 (iii) Receiving a security deposit, rental payment,
12 or any related payment for delivery to and made payable to the principal
13 broker, real estate firm, or owner;

14 (iv) Acting under the direct written instructions of
15 the principal broker, real estate firm, or owner:

16 (a) Showing a rental unit to any person; or

17 (b) Assisting in the execution of a preprinted
18 lease or rental agreement containing terms established by the principal
19 broker, real estate firm, or owner; or

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

23 (7) An officer or employee of a federal agency or state
24 government, or any political subdivision, in the performance or conduct of
25 his or her official duties;

26 (8) A multiple listing service wholly owned by a nonprofit
27 organization or association of real estate licensees;

28 (9) An officer of a corporation, a member or manager of a
29 limited liability company, a partner of a partnership, or the equivalent of
30 an officer of another form of business entity acting with respect to real
31 property owned or leased by the entity or an affiliated entity under common
32 ownership or in connection with the proposed purchase, sale, rental, or
33 leasing of real property by the entity or affiliate if the acts are not
34 performed by the officer, member, or partner for or in expectation of a
35 commission or other compensation resulting solely from a successful
36 transaction; or

1 (10) A person employed primarily at a salaried or hourly rate by
 2 a corporation, limited liability company, partnership, or other business
 3 entity acting with respect to real property owned or leased by the entity or
 4 an affiliated entity under common ownership or in connection with the
 5 proposed purchase, sale, rental, or leasing of real property by the entity or
 6 affiliate if the:

7 (A) Acts are not performed by the employee for or in
 8 expectation of a commission or other compensation resulting solely from a
 9 successful transaction;

10 (B) Primary business activity of both the entity and
 11 affiliated entity is not ownership or acquisition of real estate; and

12 (C) Employee is not providing real estate services to or on
 13 behalf of more than one (1) entity not affiliated by common ownership.
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15 SECTION 3. Arkansas Code § 17-42-104, concerning exemptions, is amended
 16 to add an additional subsection to read as follows:

17 (c) A person or entity shall not under any circumstance qualify for an
 18 exemption under this section if the person or entity:

19 (1) Obtains an equitable interest in real estate with knowledge
 20 that the interest was obtained on behalf of a person or entity that intends
 21 to gain an interest in the real estate other than that of ownership; or

22 (2) Strategically circumvents the requirement for licensure
 23 thereby eliminating remedies available to consumers through the commission.
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25 SECTION 4. Arkansas Code § 17-42-312(d)(1)(B), concerning
 26 investigations of complaints, is amended to read as follows:

27 (B) A penalty of not more than two hundred fifty dollars
 28 (\$250) to a broker, salesperson, or the supervising broker of a broker or
 29 salesperson if a broker or salesperson who:

30 (i) ~~performs~~ Performs activities that require an
 31 active real estate license while his or her license is expired; or

32 (ii) Advertises, publishes, or otherwise distributes
 33 information about real property or real estate brokerage business or
 34 activities in violation of this chapter or rules adopted under this chapter.
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36 APPROVED: 04/04/2017