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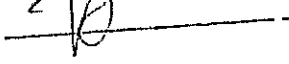
ARKANSAS REAL ESTATE COMMISSION

MEMBER NATIONAL ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS

612 Summit Street
Little Rock, AR 72201-4700

AN REGISTER DIV.
93 AUG 18 PM 3:18

W. J. "BILL" McCUEN
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

BY 

TELEPHONE NUMBERS

Licensing Department
and Administration
(501) 682-AREC (2732)

Investigation Department
(501) 682-2736

Fax
(501) 682-2729

076.00.93-002

August 18, 1993

The Honorable W. J.. "Bill" McCuen
Secretary of State of Arkansas
State Capitol
Little Rock, Arkansas 72201

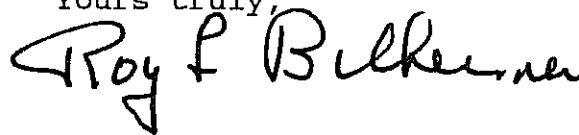
Attention: Ms. Tonya Springer
Publishing Assistant - Arkansas Register

Dear Sir:

This letter is written to transmit a copy of Proposed Regulations for Act 690 of 1993 which will be considered for adoption by this Commission at a Public Hearing to be held September 7, 1993. A copy of the Notice of Proposed Rule Making concerning these proposed regulations is attached.

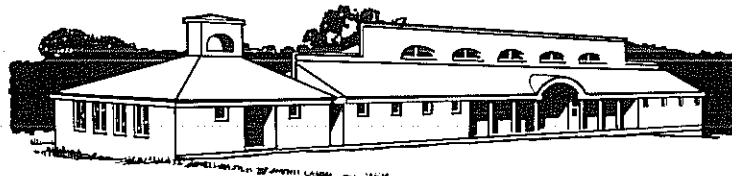
Because of the amendment to the Administrative Procedure Act, Act 932 of 1989, we have been advised by Senior Assistant Attorney General Tom Gay that it may be necessary to file the proposed rules and regulations with the Secretary of State.

Yours truly,



RB/jj

Copy: Tom Gay, Esq.



ARKANSAS REGISTER



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AR. REGISTER DIV.

93 AUG 18 PM 3: Transmittal Sheet

W.J. "BILL" McCUEN
SECRETARY OF STATE
LITTLE ROCK, ARKANSAS

BY [Signature]

W.J. "Bill" McCuen
Secretary of State
State Capitol
Little Rock, Arkansas 72201-1094

For Office
Use Only:

Effective Date 1/1/94 Code Number 076.00.93-002

Name of Agency AR Real Estate Commission

Department _____

Contact Person Jewele M. Jones Telephone 682-2732

Statutory Authority for Promulgating Rules Act 690 of 1993

Intended
Effective Date

Date

Legal Notice Published 8/8-14/1993

Emergency

Final Date for Public Comment 9/7/93

20 Days
After Filing

Filed With Legislative Council _____

Reviewed by Legislative Council _____

Other 1/1/94

Adopted by State Agency _____

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached ~~Rules Were Adopted~~ ^{Proposed Rules Will Be Considered}
For Adoption At ~~In Compliance With Act 434 of 1967 As Amended.~~

A Public Hearing
September 7, 1993
Pursuant To

[Signature]
SIGNATURE

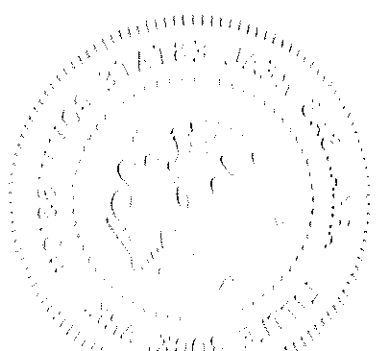
Executive Secretary

TITLE

August 18, 1993

DATE

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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION



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NOTICE OF PROPOSED RULE MAKING

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The Arkansas Real Estate Commission will hold a public hearing at 9:00 A.M. on Tuesday, September 7, 1993, in the Meeting Room of the Arkansas Real Estate Commission Building, 105121 Summit Street, Little Rock, Arkansas, for the purpose of receiving public comment on the adoption of proposed regulations to replace existing regulations to be effective January 1, 1994. The Arkansas Real Estate Commission proposes to adopt the proposed regulations which will set forth the Commission's policies and procedures to implement Act 690 of 1993.

Subjects and issues involved are as follows:

- Section 1. Commission Meetings; Appearances; Subpoenas.
Establishes time and place of Commission's regular meetings; establishes procedure for issuance of subpoenas and for voluntary appearances at meetings.
- Section 2. Director Duties, Authority and Responsibility.
Establishes duties, authority and responsibility of Executive Director of Commission, and delegates to Director much of Commission's authority.
- Section 3. Fees; Bad Checks; Refunds.
Establishes various fees pertaining to licensure, and establishes fees and procedures for dishonored checks and for processing refunds.
- Section 4. Application and Examination; Education and Experience Requirements.
Establishes procedures and requirements for application and examination for licensure, including prelicensure education and experience requirements, passing scores for examinations, reexaminations, time requirements and limits for applications, examinations, reexaminations and issuance of license.
- Section 5. Nonresident Licensure.
Establishes procedure for nonresident licensure, authorizes Director to investigate and determine whether applicant's jurisdiction qualifies and authorizes Director to enter into agreements with other jurisdictions.
- Section 6. Renewal; Inactive Status; Expired Licenses.
Establishes procedure and requirements for renewal of licenses and for placing licenses on inactive status; provides time limit for maintaining inactive status and for renewing expired licenses.
- Section 7. Firm Name; Offices; Signs; Transfers; Change of Address.
Establishes procedures and requirements for firm name approval, temporary interim licenses, places of business, signs, branch offices, change of address, termination or transfer of license; provides for limited continuation of real estate business upon death or incapacity of principal broker.
- Section 8. Agency Disclosure.
Establishes time, manner and procedure for disclosing agency relationships in a real estate transaction and consequences for failure to make such disclosure. Requires agent to deal honestly with all parties.

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Section 9. Complaints; Investigations; Hearings.

Establishes procedures and requirements for filing complaints and answers, for appealing dismissal of complaint, and for conducting investigations and hearings.

Section 10. Broker Responsibilities; Ethical Requirements; Trust Funds and Accounts; Listing and Offer and Acceptance Agreements; Criminal Convictions.

Establishes responsibilities and ethical requirements for brokers and salespersons; establishes guidelines and requirements for handling trust funds and maintenance of trust accounts; regulates advertising; establishes requirements for listings and other agreements and for offer and acceptance contracts; provides for reporting of criminal convictions and disciplinary proceedings against applicants and licensees.

Section 11. Continuing Education.

Establishes procedure for requesting waiver of continuing education requirement and establishes requirements for continuing education course approval and acceptance.

Section 12. Interest on Trust Accounts.

Establishes interest on real estate brokers' trust account program and authorizes interest bearing trust accounts in certain circumstances.

Section 13. Effective Date and Partial Repealer.

Establishes January 1, 1994 as effective date for new regulations and repeals all existing regulations except to the extent that they will continue to apply to acts, conduct, occurrences or events which occurred prior to the effective date of the new regulations.

Copies of the proposed regulations may be obtained at no charge by calling or writing the Arkansas Real Estate Commission at 612 Summit Street, Little Rock, Arkansas 72201, telephone (501) 682-2732. Written data used for arguments to proposed regulation changes should be submitted to the above address at or prior to the time of the public hearing. The Commission may also permit oral testimony or argument at the public hearing.

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1 connection with any matter pending before the Commission for
2 administrative adjudication except upon notice and opportunity for
3 all parties to participate.

4 **1.4 Director to Prepare Agenda.**

5 The Director shall arrange the order of business of all meetings
6 of the Commission and shall, at least ten (10) days prior thereto,
7 notify all persons who are to appear before any such meeting the
8 place and approximate time he or she is to appear before the
9 Commission.

10 **1.5 Director to Fix Salaries.**

11 The Director shall fix the salaries of all employees of the
12 Commission within budgetary limitations.

13 **1.6 Subpoenas.**

14 (a) Requests for subpoenas shall be in writing. The person
15 requesting the subpoena has the burden of obtaining and serving the
16 subpoena.

17 (b) Service of subpoenas issued by the Commission shall be as
18 provided by Rule 45(c) of the Arkansas Rules of Civil Procedure as
19 that rule now exists or as it may be amended from time to time.

20 (c) The fees and mileage of officers serving subpoenas and of
21 witnesses subpoenaed shall be as provided by Rule 45(d) of the
22 Arkansas Rules of Civil Procedure.

1 **SECTION 2. DIRECTOR DUTIES, AUTHORITY AND RESPONSIBILITY.**

2 **2.1 Director Duties, Authority and Responsibility.**

3 (a) The Director is the chief executive and administrative
4 officer of the Commission, and, as such, is authorized to do all
5 things necessary and convenient to carry into effect the Arkansas
6 Real Estate License Law and Arkansas Time-Share Act and the
7 regulations promulgated thereunder, subject to the general
8 supervision of the Commission.

9 (b) All duties, authority and powers given the Commission by
10 law, except rulemaking and adjudicative powers, are hereby
11 delegated to the Director, or the Director's designee, who shall
12 utilize and perform such duties, powers and authority under the
13 general supervision of the Commission.

1 SECTION 3. FEES; BAD CHECKS; REFUNDS.

2 3.1 Fees.

3 The following fees are established at the amounts indicated:

- 4 a) Application fee - \$50.00
- 5 b) Original broker license fee - \$60.00
- 6 c) Annual renewal broker license fee - \$60.00
- 7 d) Original salesperson license fee - \$40.00
- 8 e) Annual renewal salesperson license fee - \$40.00
- 9 f) Broker expired license fee - \$90.00
- 10 g) Salesperson expired license fee - \$60.00
- 11 h) License reissuance fee - \$30.00
- 12 i) Initial duplicate license fee - \$30.00
- 13 j) Annual renewal duplicate license fee - \$30.00
- 14 k) Transfer fee - \$30.00
- 15 l) Appeal filing fee - \$100.00
- 16 m) Recovery fund fee - \$25.00
- 17 n) Examination fee shall be the actual cost charged by the
- 18 testing service and shall be paid directly to the testing service.

19 3.2 Dishonored Checks.

- 20 (a) Any applicant or licensee who shall submit in payment of any
- 21 fee a check or bank draft which is not honored by the bank shall
- 22 not be eligible to receive a license from the Commission until such
- 23 time as such check or bank draft is paid.

1 (b) The Commission shall charge a fee not to exceed \$25.00 for
2 a dishonored check or bank draft and shall also require such check
3 or bank draft to be made good immediately by the maker. If such
4 person shall be a real estate salesperson, associate broker or
5 executive broker, and shall fail to make such check or bank draft
6 good, the Commission may require payment of such funds from the
7 principal broker with whom such person is licensed.

8 **3.3 Overpayment of Fees.**

9 In the event that an applicant or licensee shall submit to the
10 Commission any funds which are in excess of the funds required by
11 the Commission pursuant to Commission rule or state law, the
12 Commission shall refund such overpayment according to the following
13 schedule: If the overpayment is at least \$0.01, and not more than
14 \$10.00, no refund shall be made; if the overpayment shall exceed
15 \$10.00, the Commission shall first deduct \$10.00 for processing the
16 refund check, and shall refund the remainder of the overpayment.

1 SECTION 4. APPLICATION AND EXAMINATION; EDUCATION AND EXPERIENCE
2 REQUIREMENTS.

3 4.1 Applications; Education; Experience.

4 Applicants for original licensure as a broker or salesperson must
5 apply on forms provided by the Commission, pay the application fee
6 established by these Regulations, and meet the following
7 requirements:

8 (a) Broker applicants must provide proof of the following:

9 (1) Attainment of the age of majority, which proof may consist of
10 a birth certificate or copy thereof, driver's license, or other
11 document or proof of age which is satisfactory to the Commission;

12 (2) Successful completion within thirty six (36) months
13 immediately preceding the date of the application of a course or
14 courses of instruction in real estate by actual classroom
15 attendance or completion of approved correspondence courses for not
16 less than sixty (60) classroom hours, which proof shall consist of
17 the original certificate(s), or certified copies thereof, from the
18 school or organization or other documentation satisfactory to the
19 Commission;

20 (3) Service by the applicant of an active bona fide
21 apprenticeship by holding a valid real estate salesperson's license
22 issued by the Commission, or by holding a valid real estate
23 salesperson's license or broker's license issued by the appropriate
24 licensing agency of another state, for a period of not less than
25 twenty four (24) months within the previous forty eight (48) month
26 period immediately preceding the date of application, which proof

1 may consist of the official license records of the Commission or
2 certified copies of licensure records of the appropriate licensing
3 agency of another state, or such other documentation as the
4 Commission deems satisfactory;

5 (4) The applicant's affidavit that he/she has no record of
6 unprofessional conduct;

7 (5) The statements of five (5) adult residents of the applicant's
8 home state who have known the applicant for at least five (5) years
9 that the applicant has a good reputation for honesty, trust-
10 worthiness and integrity sufficient to safeguard the interests of
11 the public;

12 (6) Any other information or documents required by the
13 Commission.

14 (b) Salesperson applicants must provide proof of the following:

15 (1) Attainment of the age of majority, which proof may consist of
16 a birth certificate or copy thereof, driver's license, or other
17 document or proof of age which is satisfactory to the Commission;

18 (2) Successful completion of a course or courses of instruction
19 by actual classroom attendance or completion of approved
20 correspondence courses of not less than sixty (60) classroom hours,
21 of which at least thirty (30) hours must be in the basic principles
22 of real estate; which proof shall consist of the original
23 certificate(s), or certified copies thereof, from the school or
24 other organization or other documentation satisfactory to the
25 Commission;

26 (3) The applicant's affidavit that he/she has no record of
27 unprofessional conduct;

1 (4) The statements of five (5) adult residents of the applicant's
2 home state who have known the applicant for at least five (5) years
3 that the applicant has a good reputation for honesty, trustworthi-
4 ness and integrity sufficient to safeguard the interests of the
5 public;

6 (5) Any other information or documents required by the
7 Commission.

8 (c) All classroom hours required by Regulation 4.1(a) and (b)
9 shall be conducted by:

10 (1) An accredited postsecondary school wherever situated; or

11 (2) A school or organization licensed by the State Board of
12 Private Career Education.

13 (d) The course or courses of instruction requirements of
14 Regulation 4.1(a) and (b) may be satisfied by successful completion
15 of such correspondence courses as the Commission may by regulation
16 require, giving due consideration to the correspondence conversion
17 from the number of hours necessary to provide instruction in basic
18 competencies required for a broker's license or salesperson's
19 license, as the case may be, and to the advice and recommendations
20 of the State Board of Private Career Education.

21 (e) Both broker and salesperson applicants shall also answer all
22 questions and provide all information requested on the examination
23 application, and shall provide such other information or
24 documentation as the Commission may require.

25 (f) All requirements of Regulation 4.1 shall be completed before
26 the applicant will be entitled to take the examination.

1 (g) All applications expire one (1) year after the date of the
2 application or upon successful completion of the examination,
3 whichever first occurs. Provided, however that the application of
4 an applicant who takes and passes either part of the examination
5 within one (1) year from the date of his application shall not
6 expire until the six (6) months allowed for retaking the failed
7 portion pursuant to Regulation 4.2(c) has expired.

8 (h) Application fees are non-refundable.

9 **4.2 Examinations; Passing Scores; Reexaminations.**

10 Applicants for original licensure as a broker or salesperson must
11 pass a written examination to demonstrate competency to act as a
12 real estate licensee in such a way as to safeguard the interests of
13 the public. The examination shall consist of a general part and an
14 Arkansas law part.

15 (a) For broker applicants a minimum score of seventy (70) on the
16 general part and seventy five (75) on the Arkansas law part are
17 required. A person who is licensed as a broker may not apply and
18 may not take the examination. A person who has passed the Arkansas
19 real estate broker's examination but who is not licensed as a
20 broker may apply. However, in addition to meeting other require-
21 ments, such a person must furnish an affidavit stating the reason
22 for applying. Such a person may take the examination only with
23 written permission from the Director or the Director's designee.

24 (b) For salesperson applicants a minimum score of seventy (70) on
25 the general part and seventy (70) on the Arkansas law part are
26 required. A person who is licensed as a salesperson or as a broker
27 may not apply and may not take the examination. A person who has
28 passed the Arkansas real estate salesperson's examination but who

1 is not licensed as a salesperson may apply. However, in addition
2 to meeting other requirements, such a person must furnish an
3 affidavit stating the reason for applying. Such a person may take
4 the examination only with written permission from the Director or
5 the Director's designee.

6 (c) An applicant who takes the examination in Arkansas and passes
7 either the Arkansas law part or the general part but fails the
8 other need not again take the part passed if within six (6) months
9 of such initial examination the applicant retakes and passes the
10 part failed. Otherwise, the applicant must retake the entire
11 examination, and must also make new application if more than one
12 (1) year has elapsed since the date of the original application.

13 (d) (1) An applicant who meets all three (3) of the following
14 requirements will be required to take only the Arkansas law part of
15 the examination:

16 (i) Has passed a uniform, general, or multi-state part of an
17 examination for a real estate license in another state in which the
18 examination is determined by the Commission to meet generally
19 acceptable standards of real estate testing, and

20 (ii) The other state requires a minimum passing grade no lower
21 than that required for the general part of the Arkansas
22 examination, and

23 (iii) The applicant at the time of taking the Arkansas
24 examination is licensed in the other state.

25 (2) If an applicant meets the first two (2) requirements above,
26 but not the third, the applicant will be required to take only the
27 Arkansas law part of the examination provided that the applicant

1 passed the uniform, general, or multi-state part of the examination
2 in the other state within six (6) months prior to the month in
3 which the applicant takes and passes the Arkansas law part.

4 (3) An applicant seeking licensure under this Regulation 4.2(d)
5 must furnish such documentation of entitlement thereto as the
6 Commission may require.

7 4.3 Examinations - Application Procedure - Time Requirements.

8 (a) The Commission shall announce from time to time the dates and
9 locations of examinations. All applications should be received in
10 the Commission office at least ten (10) days before the examination
11 for which the applicant desires to sit. However, regardless of the
12 date on which the application is received by the Commission, it
13 shall be processed as expeditiously as possible under the circum-
14 stances. Once the application is processed, the Commission will
15 send to the applicant a "Certificate of Examination Eligibility."
16 The certificate will include instructions for making examination
17 reservations and will be required for admission at the test center.

18 (b) An examination fee which shall equal the actual cost of the
19 examination as established by the testing service engaged by the
20 Commission will be collected at the test center. The examination
21 fee shall be made payable to the testing service unless the
22 applicant is otherwise notified by the Commission. The examination
23 fee shall be charged each time an applicant applies to take an
24 examination and is non-refundable.

25 (c) An applicant shall receive notice upon passing the
26 examination. Each successful broker and salesperson applicant
27 shall pay to the Commission, within ninety (90) days from the date
28 of the successful completion of the examination, the appropriate
29 license fee and recovery fund fee. However, the payment of the

1 recovery fund fee shall be waived for any successful applicant who
2 has previously paid such fee. If a successful applicant shall fail
3 to pay the prescribed fee(s) within ninety (90) days following the
4 date of the examination, the examination results shall be null and
5 void, and the applicant shall be required to make new application
6 and retake the examination, as an original applicant.

7 **4.4 No Duplication of Credit for Educational Courses.**

8 No educational courses or hours submitted as credit toward the
9 prelicensing education requirement shall be used as credit for the
10 continuing education requirements, and no educational courses or
11 hours submitted for credit toward the continuing education
12 requirements shall be used or counted to satisfy the prelicensure
13 educational requirements.

1 **SECTION 5. NONRESIDENT LICENSURE.**

2 **5.1 Application.**

3 Upon receipt of an application for nonresident licensure under
4 Section 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-35-
5 305(a)(1)(B)], the Director shall determine whether the applicant's
6 resident jurisdiction offers Arkansas licensees opportunities for
7 licensure substantially comparable to those offered to that
8 jurisdiction's licensees by Arkansas.

9 **5.2 List of Approved Jurisdictions.**

10 The Director may maintain and publish from time to time a list of
11 jurisdictions which have been previously determined to offer
12 Arkansas licensees opportunities for licensure substantially
13 comparable to those offered to that jurisdiction's licensees by
14 Arkansas. If an applicant's jurisdiction is not on the list the
15 Director may, upon request, investigate and determine whether it
16 should be.

17 **5.3 No Hearing on Denial.**

18 An applicant whose application for licensure under Section
19 11(a)(1)(B) of Act 690 of 1993 [A.C.A. §17-35-305(a)(1)(B)] is
20 denied is not entitled to a hearing on such denial.

21 **5.4 Written Agreements With Other Jurisdictions.**

22 The Director is authorized to enter into written agreements with
23 licensing authorities of other jurisdictions to assure oppor-
24 tunities for nonresident licensure in those jurisdictions for
25 Arkansas licensees.

1 **SECTION 6. RENEWAL; INACTIVE STATUS; EXPIRED LICENSES.**

2 **6.1 Renewal Applications.**

3 Notice to renew licenses will be sent by mail about July 15 of
4 each year to the firm at which the licensee is licensed or such
5 other address as the Commission has on file for the licensee.
6 Renewal applications accompanied by the required fee must be filed
7 with the Commission no later than September 30. In order to be
8 considered filed with the Commission by the deadline, the renewal
9 applications must bear a U.S. Postal Service postmark of September
10 30, or be received in the Commission's office on or before
11 September 30. If September 30 falls on a Saturday, Sunday or legal
12 holiday, the Commission shall accept as meeting the filing deadline
13 those renewal applications that bear a U.S. Postal Service postmark
14 of the first business day thereafter, and those applications
15 received in the Commission office on the first day the office is
16 open to the public following such Saturday, Sunday or legal
17 holiday. A renewal application filed after the deadline shall be
18 treated as an application to renew an expired license.

19 **6.2 Inactive Status Renewal.**

20 (a) Any licensee who does not wish to engage in the real estate
21 business at the time of renewal may apply for inactive status.

22 (1) A licensee who renews a license on inactive status for the
23 license year 1994 or later may renew for two (2) consecutive
24 renewals from the date the license was originally inactivated. If
25 such licensee does not activate the license before the third (3rd)
26 renewal deadline, the licensee shall be regarded as an original
27 applicant.

1 (2) A licensee whose license was renewed on inactive status for
2 the license year 1993 or before may renew on inactive status for a
3 total of five (5) consecutive renewals from the date the license
4 was originally inactivated. If such licensee does not activate the
5 license before the sixth (6th) renewal deadline, the licensee shall
6 be regarded as an original applicant.

7 (b) The limitations of Regulation 6.2(a)(1) and (2) shall be
8 increased by the amount of time during inactive status that the
9 licensee:

10 (1) Holds an active real estate license in another state; or

11 (2) Is employed by the federal, state, county or local government
12 in a capacity in which the holding of an active real estate license
13 would not be in the public interest; or

14 (3) Is employed as a full-time instructor at either an accredited
15 postsecondary school or a school or organization licensed by the
16 State Board of Private Career Education whose course of instruction
17 is deemed by the Commission to satisfy the educational requirements
18 of the Arkansas Real Estate License Law.

19 (c) It shall be the responsibility of any person who renews a
20 license on inactive status to promptly notify the Commission in
21 writing of any change of name or address.

22 6.3 Expired Licenses.

23 (a) If an application for the renewal of a license, either active
24 or inactive, is not filed prior to the renewal deadline, such
25 license is deemed to have expired at the end of the renewal period.

1 (1) For licenses which expired at the end of license year 1993 or
2 later, upon re-application within three (3) years of the last
3 calendar year in which the licensee held an active license and
4 payment of the required fees and submission of such additional
5 information as the Commission may require, the licensee may be
6 relicensed without submitting to an examination.

7 (2) For licenses which expired prior to 1993, upon reapplication
8 within five (5) years of the last calendar year in which the
9 licensee held an active license and payment of the required fees
10 and submission of such additional information as the Commission may
11 require, the former licensee may be relicensed without submitting
12 to an examination.

13 (b) A former licensee who fails to apply for renewal of an
14 expired license within the prescribed time period shall be regarded
15 as an original applicant.

1 SECTION 7. FIRM NAME; OFFICES; SIGNS; TRANSFERS; CHANGE OF
2 ADDRESS.

3 7.1 Firm Name Approval.

4 The Commission shall issue no principal broker's license where
5 the proposed name of the firm is confusingly similar to the name of
6 another firm, is misleading, or would in any way be confusing to
7 the public. It shall be the duty of the principal broker to
8 inquire of the Commission concerning the acceptability of the
9 proposed firm name.

10 7.2 Temporary License.

11 No person shall act as a licensee in Arkansas until such person
12 has received from the Commission a current valid license and pocket
13 card stating the name of the firm with which the licensee is
14 affiliated. However, a temporary interim license may be issued
15 pending issuance of the permanent license and pocket card, which
16 temporary interim license shall be valid for a period of not more
17 than thirty (30) days.

18 7.3 Place of Business; Sign.

19 (a) A principal broker shall maintain a place of business and
20 shall display at such place of business a permanently attached sign
21 bearing the name under which the principal broker conducts his/her
22 business, and the words "real estate", "realty", "REALTOR®",
23 "REALTIST" or other words approved by the Commission which clearly
24 indicate to the public the principal broker is engaged in the real
25 estate business. Photographs of the sign and of the front or other
26 part of the building where the sign is displayed shall be furnished

1 to the Commission. A principal broker must display his/her
2 broker's license and the licenses of any executive broker,
3 associate broker or salesperson at the place of business.

4 (b) The Commission shall accept no sign as meeting this
5 requirement until and unless such sign is permanently attached and
6 clearly visible to the public and displayed in such a manner as to
7 clearly indicate to the public that the principal broker is engaged
8 in the real estate business.

9 (c) If a principal broker shall establish an office within an
10 office building, the principal broker shall furnish (1) a
11 photograph of the office building directory showing the real estate
12 firm's name, and also (2) a photograph of the firm's office
13 entrance bearing the name of the firm, unless either is
14 nonexistent, in which case the other shall be furnished.

15 (d) If a principal broker shall move or change any sign of which
16 a photograph has been filed with the Commission, the principal
17 broker shall notify the Commission office immediately in writing of
18 the new location or change and furnish a photograph of the new
19 sign. If the principal broker's business location shall also
20 change, the broker shall comply with Section 15 of Act 690 of 1993
21 [A.C.A. §17-35-309 and §17-35-310] and applicable Regulations.

22 (e) The principal broker shall furnish both the street address or
23 physical location and the mailing address for the business.

24 7.4 Branch Office.

25 (a) Any place of business from which a licensee engages or
26 participates in any activity listed in Section 3 of Act 690 of 1993
27 [A.C.A. §17-35-103] or which otherwise requires a real estate

1 license is a branch office. A "place of business" is a location at
2 which transaction records and files are kept on a regular basis.

3 (b) All branch offices shall have and display a real estate sign
4 and a principal broker's license. Brokers who wish to obtain a
5 branch office license shall furnish the Commission a photograph of
6 the office sign bearing the name of the company and the words
7 "Branch", "Branch Office", or some other variation which must
8 include the word "Branch". If licensees are to be assigned to that
9 branch office, a second duly qualified and licensed full time
10 principal broker, in addition to the main office principal broker,
11 must be in charge of the branch office. Such principal broker
12 shall be viewed as if such broker were a separate firm and shall be
13 responsible for any licensee licensed with such branch office. Any
14 licensee employed by or affiliated with such branch office shall
15 perform only the acts contemplated to be done as an executive
16 broker, associate broker or salesperson.

17 (c) If such branch office is located outside the community of the
18 main office, the branch office principal broker, if such principal
19 broker receives trust funds, shall either maintain its own trust
20 account or separate escrow agent for all such trust funds. The
21 branch office principal broker shall be responsible and accountable
22 for any and all trust funds received by the branch office and any
23 and all deposits to or disbursements from the trust account. The
24 main office principal broker may, however, be a signatory on such
25 an account, and may direct handling of the account.

26 (d) A license will not be granted to a licensee who operates in
27 a different geographical location from that of the principal
28 broker, and if a licensee is assigned to operate in a different
29 geographical location from that of the main office principal

1 broker, then the provisions of this regulation with regard to the
2 establishment of a branch office shall apply, if such location is
3 a "place of business" as defined by Regulation 7.4(a).

4 7.5 Termination or Transfer.

5 (a) Within seven (7) days after the employment or association of
6 a licensee with a principal broker ends, such principal broker
7 shall notify the Commission of such termination and return to the
8 Commission the license and pocket card of the terminated licensee.
9 Such notification shall automatically inactivate the license.

10 (b) The license of a licensee terminated under Regulation 7.5(a)
11 may be transferred to another firm, after the license and pocket
12 card have been returned to the Commission, by the licensee's filing
13 with the Commission a transfer application signed by the new
14 principal broker. Such transfer application must be accompanied by
15 (1) a statement that the licensee is not taking any listings,
16 management contracts, appraisals, lease agreements, or copies of
17 any such documents, or any other pertinent information belonging to
18 the former principal broker or firm, and (2) a transfer fee. At
19 the time the transfer application and the accompanying items are
20 filed, a temporary interim license may be issued.

21 (c) If an actively licensed broker or salesperson does not wish
22 to continue to engage in the real estate business, such broker or
23 salesperson shall return any license and pocket card in his/her
24 possession to his/her principal broker who shall then return these
25 items to the Commission for inactive status. A broker who closes
26 his/her firm shall remove all signs reflecting the company name and
27 shall return all licenses and pocket cards issued to the principal
28 broker to the Commission office for inactive status. If a real
29 estate firm shall close its office, any real estate salesperson

1 licensed with such principal broker shall be entitled to transfer
2 to a new principal broker upon compliance with the appropriate
3 provisions of the Arkansas Real Estate License Law and Commission
4 Regulations.

5 (d) If the principal broker is deceased, unavailable, or for any
6 reason unwilling or unable to act, then the licensee has the
7 responsibility to notify the Commission in writing of the
8 termination or transfer and of returning the pocket card and
9 license.

10 **7.6 Change of Address; Lost License or Pocket Card.**

11 (a) Upon any change of name, address or place of business, or
12 upon the loss or misplacement of a license or pocket card, the
13 licensee shall promptly notify the Commission of such change or
14 loss on a form prescribed by the Commission. Upon receipt of such
15 notice and other information as may be necessary to issue a new
16 license, the Commission shall issue a new license for the unexpired
17 period of the license upon the payment of the license reissuance
18 fee.

19 (b) All licensees, both active and inactive, shall at all times
20 keep the Commission informed in writing of their personal residence
21 address, physical business address and mailing address.

22 **7.7 Death of Principal Broker; Closing of Business.**

23 Upon the death or incapacity of a principal broker or the closing
24 of a real estate firm for any reason, including bankruptcy, the
25 Commission may in its discretion, based upon the merits and
26 circumstances of each case, permit the real estate firm to continue
27 operating for a period of time not to exceed one hundred eighty
28 (180) days under the supervision of a person approved by the
29 Commission and subject to conditions prescribed by the Commission.

1 **SECTION 8. AGENCY DISCLOSURE.**

2 **8.1 Seller or Lessor Agents.**

3 (a) (1) In any real estate transaction in which a licensee is
4 acting solely as agent for a seller or lessor, the licensee shall
5 disclose to a potential buyer or lessee, or to the buyer's or
6 lessee's licensed agent, the licensee's agency relationship with
7 the seller or lessor. Such disclosure shall be made in a timely
8 manner under the particular circumstances so as to avoid to the
9 extent possible eliciting or receiving from the prospective buyer
10 or lessee information which would reasonably be expected to remain
11 confidential and not disclosed to the seller or lessor, such as,
12 for example, information concerning the real estate needs or
13 motivations, negotiating strategies or tactics, or the financial
14 situation of the potential buyer or lessee.

15 (2) When the disclosure is made to the licensed agent of the
16 buyer or lessee, it is that licensee's duty to convey the
17 disclosure to the buyer or lessee in a timely manner.

18 (b) In all cases, disclosure shall be in writing, but may
19 initially be made orally and reduced to writing at a convenient
20 time subject to the requirements of Regulation 8.1(c). Evidence of
21 the disclosure shall be maintained by the licensee.

22 (c) In all cases, however, such disclosure must be made before
23 the buyer or lessee signs any document related to the transaction,
24 such as an offer or lease or rental agreement.

1 **8.2 Buyer or Lessee Agents.**

2 (a) (1) In any real estate transaction in which a licensee is
3 acting solely as agent for a buyer or lessee, the licensee shall
4 disclose to a potential seller or lessor or to the seller's or
5 lessor's licensed agent, the licensee's agency relationship with
6 the buyer or lessee. Such disclosure shall be made at the first
7 contact with the seller, lessor, or the agent of the seller or
8 lessor.

9 (2) When the disclosure is made to the licensed agent of the
10 seller or lessor, it is that licensee's duty to convey the
11 disclosure to the seller or lessor in a timely manner.

12 (b) In all cases, disclosure shall be in writing, but may
13 initially be made orally and reduced to writing at a convenient
14 time subject to the requirements of Regulation 8.2(c). Evidence of
15 the disclosure shall be maintained by the licensee.

16 (c) In all cases, however, such disclosure must be made before
17 the seller or lessor signs any document related to the transaction,
18 such as an offer or lease or rental agreement.

19 **8.3 Dual Agency.**

20 (a) A licensee who represents both the seller and buyer in a real
21 estate sale transaction, or both the lessor and tenant in a real
22 estate lease or rental transaction shall make disclosure in the
23 time and manner required by Regulations 8.1 and 8.2 and all parties
24 to the transaction must have given their written consent to such
25 dual representation prior to or at the time of execution of the
26 agency contract, listing contract, property management contract,
27 lease, rental agreement, offer and acceptance contract or other
28 real estate contract.

1 (b) Notwithstanding Regulation 8.3(a), a licensee shall not
2 accept a commission, rebate, profit, payment, compensation or other
3 valuable consideration in connection with a real estate transaction
4 or real estate activity from any person or entity except the
5 licensed principal broker under whom the licensee is licensed.

6 **8.4 Failure to Disclose Agency Relationship.**

7 A licensee who fails to disclose the licensee's agency
8 relationship in the time and manner required by these regulations
9 shall be subject to sanctions under Section 17 of Act 690 of 1993
10 [A.C.A. §17-35-312].

11 **8.5 Fidelity and Honest Dealing.**

12 (a) In accepting employment as an agent, a licensee pledges to
13 protect and promote the interests of the client or clients. This
14 obligation of absolute fidelity to the interest of the client or
15 clients is primary, but does not relieve a licensee from the
16 equally binding obligation of dealing honestly with all parties to
17 the transaction.

18 (b) A licensee shall not offer or advertise property without
19 authority and in any offering or advertisement the price quoted
20 must not be other than that agreed upon with the owners as the
21 offering price.

1 **SECTION 9. COMPLAINTS; INVESTIGATIONS; HEARINGS.**

2 **9.1 Complaints.**

3 Complaints against licensees must be in writing, signed by the
4 complainant under oath, dated and filed with the Director.

5 **9.2 Answers.**

6 (a) If the Director determines that a complaint establishes a
7 prima facie case of a violation of the Arkansas Real Estate License
8 Law or Commission Regulations, the Director shall send a copy of
9 such complaint to the licensee complained against along with
10 instructions concerning the filing of an answer. The Director may
11 also send a copy of the complaint to the principal broker of the
12 licensee complained against.

13 (b) Within twenty (20) days after service of the complaint on the
14 licensee, such licensee shall file a written answer with the
15 Director. The answer shall be dated and shall be signed by the
16 licensee under oath. The time for answering may be extended at the
17 discretion of the Director or the Director's designee.

18 **9.3 Investigation.**

19 The Director may conduct such investigation as is deemed
20 warranted either before or after the answer is received, and in
21 conducting such investigation, may take statements from any person
22 thought to have any knowledge of the facts or allegations
23 pertaining to the complaint and may also obtain and review any
24 documents which may relate to the complaint. The Director may
25 utilize the subpoena powers of the Commission in connection with
26 the investigation.

1 9.4 Disposition of Complaints; Appeals from Dismissal.

2 (a) A complaint which, together with the answer, if any, and the
3 results of any investigation conducted by the Director, establishes
4 a prima facie violation of the Arkansas Real Estate License Law or
5 Commission Regulations shall be presented to and reasonably
6 disposed of by the Commission. Likewise, any investigation
7 initiated and conducted by the Director without a formal complaint
8 which results in a determination by the Director that there exists
9 a prima facie violation of the Arkansas Real Estate License Law or
10 Commission Regulations shall also be presented to and reasonably
11 disposed of by the Commission.

12 (b) (1) Any person whose complaint is dismissed by the Director
13 without a hearing may appeal such dismissal to the Commission in
14 the following manner:

15 (i) The request for appeal must be in writing and received in
16 the offices of the Commission not later than sixty (60) days
17 following the date of dismissal by the Director; and

18 (ii) The request for appeal must be accompanied by the appeal
19 filing fee; and

20 (iii) The Commission staff shall determine the cost of preparing
21 the record for the Commission's review, which cost shall be paid by
22 the appellant within thirty (30) days after notification of the
23 amount, otherwise the appeal will be dismissed.

24 (2) Upon submission of the appeal, the Commission shall
25 review the written record and either uphold or overrule the
26 Director's decision. The parties may submit written arguments but
27 no new evidence. Any newly discovered evidence must first be
28 presented to the Director. If the decision is overruled, the

1 Commission may either order a hearing or request further
2 investigation or documentation of the complaint. If the Commission
3 review results in a hearing being ordered on the complaint, both
4 the filing fee and the cost of preparing the record shall be
5 refunded to the appellant.

6 (3) Provided, however, that a person may not appear before
7 the Commission in connection with any matter pending before the
8 Commission for administrative adjudication except upon notice and
9 opportunity for all parties to participate.

10 9.5 Hearings.

11 (a) Hearings shall be scheduled for a day certain by the Director
12 who shall, at least thirty (30) days prior to such hearing date,
13 send notice to all persons entitled to notice thereof of the place
14 and approximate time of said hearing, a statement of the
15 allegations and charges forming the basis for the hearing, and the
16 provisions of the law or regulations thought to be involved
17 therein.

18 (b) Prior to the hearing, the respondent licensee involved in the
19 hearing may, by written petition, signed and dated, invoke the aid
20 of the Commission in the procurement of any witness or document the
21 licensee may desire to be present at such hearing, provided
22 however, that such petition must be filed with the Director at
23 least ten (10) days prior to the hearing date.

24 (c) All motions concerning or related to the hearing must be in
25 writing and filed at the Commission office no later than ten (10)
26 days before the scheduled hearing date, along with a certificate of
27 the person filing the motion that copies of the motion have been
28 served on the attorney of the other parties who are represented by
29 attorneys, or on the parties themselves if they are not represented

1 by attorneys. Motion for continuance shall be decided by the
2 Director. All other motions shall be decided by the Commission or
3 by the Hearing Officer by delegation of such responsibility by the
4 Commission. Upon delegation and authorization from the Commission,
5 the Hearing Officer may also conduct pre-hearing conferences.

6 9.6 Hearing procedure.

7 (a) At the hearing, the Commissioners shall hear and decide the
8 ultimate issues of both fact and law.

9 (b) The Commission's Hearing Officer shall preside over the
10 hearing and regulate procedural aspects of the hearing, including
11 ruling on admissibility of evidence and objections. The Hearing
12 Officer shall advise the Commission on questions of law.

13 (c) All persons appearing before the Commission and giving
14 testimony shall first be placed under oath. All testimony given
15 shall be recorded and shall be a part of the record in the case.

16 (d) At any hearing both the respondent licensee and complainant
17 may be present in the hearing room during the entire hearing and
18 the respondent licensee shall have the right to cross examine any
19 witness and to examine any document or evidence submitted.

20 (e) The hearing shall begin with presentation of the case against
21 the respondent licensee. Such presentation is ordinarily conducted
22 by the Commission staff counsel. However, upon request, and at the
23 discretion of the Commission, counsel for the complainant may be
24 permitted to participate. At the conclusion of such presentation,
25 the respondent licensee may present evidence in defense of the
26 charges, following which rebuttal testimony and evidence may be
27 offered. Closing arguments may be called for or dispensed with at
28 the discretion of the Commission.

1 (f) The Commission may receive into evidence such affidavits,
2 depositions, certified copies of documents, photocopies of official
3 records and other exhibits as it deems appropriate, whether or not
4 such documents are admissible under formal rules of evidence,
5 together with such other evidence as may be admissible by law. The
6 Commission shall give to such evidence such weight as the Commis-
7 sion shall determine appropriate under the circumstances.

8 (g) After presentation of all evidence the Commission shall
9 deliberate on the issues and either announce its decision or take
10 the matter under advisement for later decision.

11 (h) Upon reaching a decision, the Commission shall enter its
12 findings of fact and conclusions of law, and an appropriate Order
13 shall be prepared and served on the parties.

14 (i) Once the decision is made, any motion for reconsideration
15 must be filed within fifteen (15) days from the date the decision
16 is first announced, whether orally or in writing, but the filing
17 and pendency of such motion will not delay the appeal time dead-
18 lines of the Arkansas Administrative Procedure Act.

19 9.7 Service.

20 Service of any notice, order or other document or instrument upon
21 any person shall be complete upon mailing to such person, postage
22 prepaid, in a sealed envelope via the United States Postal Service.

23 9.8 Attorneys.

24 An attorney who has entered an appearance in any cause before the
25 Commission shall not withdraw except by leave of the Commission
26 after notice served upon the attorney's client, counsel for the
27 other parties and counsel for the Commission staff.

1 SECTION 10. BROKER RESPONSIBILITIES; ETHICAL REQUIREMENTS; TRUST
2 FUNDS AND ACCOUNTS; LISTING AND OFFER AND ACCEPTANCE
3 AGREEMENTS; CRIMINAL CONVICTIONS.

4 10.1 Dealing Independently of Principal Broker.

5 If a principal broker or executive broker learns a salesperson,
6 associate broker or executive broker licensed under such principal
7 broker or executive broker has, without permission of the principal
8 broker or executive broker, engaged in real estate activities
9 independently or through some other broker, it is the duty of the
10 principal broker or executive broker to immediately notify the
11 Commission in writing and forward such licensee's license and
12 pocket card to the Commission.

13 10.2 Expiration Date for Listing Contract.

14 A licensee shall put a specific determinable duration or a
15 specific expiration date on all written listing contracts, or any
16 extensions thereof.

17 10.3 Membership in Trade Organization.

18 A licensee shall not use terms such as REALTOR®, REALTIST or any
19 other trade name or insignia of membership of any real estate
20 organization of which the licensee is not a member.

21 10.4 Broker Responsibilities; Executive Brokers; Part-Time Brokers.

22 (a) (1) A principal broker is generally responsible for all
23 business conducted by the broker's firm and for all of the real
24 estate activities of all of those licensed under or associated with
25 the principal broker. A principal broker may delegate supervisory
26 responsibility to another broker by designating such broker as an

1 "executive broker". The executive broker may sign Offer and
2 Acceptance forms as supervising broker and can be responsible for
3 instructing and supervising salespersons and/or brokers for whom
4 the executive broker is responsible. The executive broker may also
5 be delegated responsibility by the principal broker for
6 administrative procedures required by the Commission, such as
7 signing transfer applications.

8 (2) For each executive broker so designated, the principal
9 broker must complete and file with the Commission an appropriate
10 designation form signed by both the principal broker and the
11 designated executive broker. Both the principal broker and the
12 executive broker will maintain complete and accurate records
13 identifying licensees for whose activities the executive broker is
14 responsible, and such records shall indicate for each such licensee
15 the specific dates such responsibility was applicable. The
16 designation of an executive broker is effective when filed with the
17 Commission.

18 (3) Designation of one or more executive brokers does not
19 absolve the principal broker of general responsibility for the
20 conduct of all real estate business conducted by the principal
21 broker's firm, and the principal broker is specifically responsible
22 for the activities of all executive brokers.

23 (b) Principal brokers and executive brokers have the duty and
24 responsibility to instruct those brokers and salespersons licensed
25 under them with regard to the fundamentals of real estate practice
26 and the ethics of the profession, and to keep them informed and
27 abreast of all changes and developments pertaining to the Arkansas
28 Real Estate License Law and Commission Regulations. They shall

1 also exercise strict supervision of the real estate activities of
2 all those licensed under them and for whom they have supervisory
3 responsibility.

4 (c) Whether or not a principal broker or executive broker has
5 discharged these responsibilities for those licensed under him/her
6 will depend on various factors and circumstances, including,
7 without limitation, the following:

8 (1) Frequency and manner of contact and communication;

9 (2) Type and frequency of educational and instructional
10 activities;

11 (3) Method and frequency of monitoring real estate
12 activities.

13 (d) (1) The preparation of instruments in connection with a real
14 estate rental or sale and the closing of a sale by a licensee must
15 be performed by or under the specific supervision of the principal
16 broker.

17 (2) It is generally the responsibility of the principal
18 broker of the listing firm to ensure that the real estate closing
19 is conducted properly and in accordance with the agreement of the
20 buyer and seller. In those cases where the listing principal
21 broker is excluded from participating in the closing, such
22 principal broker must nevertheless make all reasonable efforts to
23 fulfill this responsibility, and shall give written instructions to
24 the closing agent.

25 (e) No broker who is gainfully employed, or who is engaged in a
26 non-real estate related field, may employ any licensee to work
27 under the broker's license issued to such broker. A broker who is
28 employed or who is engaged in any field other than real estate will
29 be presumed to be gainfully employed or engaged in a non-real

1 estate related field. This presumption may be overcome by proof
2 that such employment or engagement is (1) in a real estate related
3 field, and (2) conducted in the same office as the broker's real
4 estate business.

5 **10.5 Advertising.**

6 (a) A licensee may not advertise any property, including the
7 licensee's own property, for sale or rent, or display a real estate
8 sign without including in that advertisement or sign the name of
9 the firm with whom that licensee is licensed or affiliated.

10 (b) A principal broker shall not advertise or otherwise conduct
11 real estate brokerage business under any name other than the name
12 in which the principal broker's license has been issued.

13 (c) In public advertising a principal broker shall be especially
14 careful to present a true picture and should not permit licensees
15 to use individual names or telephone numbers, unless the licensee's
16 connection with the broker is obvious in the advertisement.

17 **10.6 Knowledge of Property.**

18 A licensee shall exert reasonable efforts to ascertain those
19 facts which are material to the value or desirability of every
20 property for which the licensee accepts the agency, so that in
21 offering the property the licensee will be informed about its
22 condition and thus able to avoid intentional or negligent
23 misrepresentation to the public concerning such property.

24 **10.7 Handling of Funds; Maintenance of Records.**

25 (a) (1) A licensee shall immediately deliver to the principal
26 broker any money or other consideration received in connection with
27 a real estate transaction which belongs to others, such as escrow
28 or trust funds, clients' monies, earnest monies, rents, advance
29 fees, deposits, etc.

1 (2) A broker shall deposit all advance fees in the broker's
2 trust account and shall disburse such funds only in accordance with
3 the terms of a written agreement signed by the owner of the funds.
4 If such written agreement is not received within a reasonable time
5 after payment of the advance fee, the fee shall be refunded to the
6 owner.

7 (3) "Advance fee" means any fee charged for services to be
8 paid in advance of the rendering of such services, including,
9 without limitation, any fee charged for listing, advertising, or
10 offering for sale or lease any real property.

11 (b) (1) Each principal broker shall maintain complete records of
12 all real estate business handled by that firm. Separate files for
13 each real estate transaction conducted by the firm shall be
14 maintained and shall contain signed copies of any of the following
15 documents which were prepared in connection with the transaction:
16 (i) listing contract, (ii) agency contract, (iii) offers, (iv)
17 offer and acceptance contracts and (v) closing statements, along
18 with any additional documents as may be necessary to make a
19 complete record of each transaction.

20 (2) Each principal broker shall maintain complete records
21 pertaining to property managed for others. Such records shall
22 include all contracts, financial transactions, receipts,
23 statements, repair estimates and other documents relating to
24 management of the property.

25 (3) All records required by Regulation 10.7 shall be
26 maintained by the principal broker for three (3) years or such time
27 as may be required by law, whichever is greater, and shall be open
28 to inspection by and made available to the investigative staff of
29 the Commission at the firm's office or other location designated by
30 the Commission.

1 (c) When a real estate firm ceases to do business and to
2 maintain an office, the last principal broker remaining with the
3 firm shall be responsible for all records of the firm, including
4 the firm's real estate trust account and transaction records, and
5 at the time the real estate firm's office is closed, the principal
6 broker shall immediately notify the Commission of the address and
7 phone number of the place where those records are being maintained.
8 If for any reason that broker delivers custody or responsibility
9 for those records to another person or firm, he/she shall
10 immediately notify the Commission of such transfer and furnish the
11 name, address and phone number of such person or firm.

12 **10.8 Trust Funds; Trust Accounts.**

13 (a) "Trust funds" means and includes money or other things of
14 value not belonging to the principal broker but which are received
15 by the principal broker or any of the principal broker's licensees
16 in connection with a real estate transaction or real estate
17 activity, including, without limitation, clients' monies, earnest
18 monies, rents, advance fees, deposits, etc. For purposes of the
19 Arkansas Real Estate License Law and Commission Regulations, any
20 funds deposited in a broker's trust account are presumed to be
21 trust funds.

22 (b) Except as provided in Regulation 10.8(d), a licensee shall
23 not commingle trust funds with personal funds or other non-trust
24 funds and shall not deposit or maintain trust funds in a personal
25 account or any kind of business account except a specifically
26 designated trust account.

1 (c) A principal broker who receives trust funds shall either
2 maintain a separate trust account or shall have an escrow agent for
3 all such trust funds. The principal broker of the firm shall be
4 solely responsible and accountable for all trust funds received by
5 the firm and all deposits to or disbursements from the trust
6 account. The principal broker shall also be responsible and
7 accountable for any funds delivered to an escrow agent selected by
8 the principal broker, but shall not be responsible for funds
9 delivered to an escrow agent selected by the parties. Except as
10 authorized by Regulations 10.8(i) and 12.2, the trust account shall
11 be non-interest bearing. The name on the account shall include
12 either "trust" or "escrow" and must be located in an institution
13 insured by either the FDIC or some other insuring agency of the
14 federal government.

15 (d) A principal broker may maintain the broker's own funds in a
16 designated trust account only when they are clearly identified as
17 the broker's deposit and only for the following purposes:

18 (1) If the bank in which the account is maintained
19 designates a specific minimum balance that must be maintained in
20 order to keep the account open, the broker may maintain that amount
21 in the account designated as the broker's funds.

22 (2) If the bank in which the account is maintained requires
23 a service charge to be paid for the account, the broker may
24 maintain a reasonable amount to cover that service charge in the
25 account in the broker's name, provided, however, that such amount
26 shall not exceed the total of six (6) months service charges.

27 (e) With regard to each separate trust account, the principal
28 broker shall submit to the Commission in writing the following:

- 1 (1) Name and number of the account.
- 2 (2) Name and address of the bank.
- 3 (3) Date the account was opened.

4 The principal broker shall keep the Commission informed at all
5 times of the foregoing details of each separate trust account.

6 (f) In addition to the requirements of Regulation 10.8(e), the
7 principal broker shall submit the same information in writing
8 immediately upon any of the following events or occurrences:

- 9 (1) Commission approval of real estate firm name.
- 10 (2) Change of real estate firm name.
- 11 (3) Designation of new principal broker.
- 12 (4) The account is changed in any respect or closed.

13 (g) (1) Within one (1) working day following acceptance of an
14 offer by the seller, all trust funds shall be either deposited in
15 the trust account or delivered to the broker's escrow agent. All
16 other funds delivered to the broker pending performance of any act
17 shall be, within one (1) working day, either deposited in the trust
18 account or delivered to the broker's escrow agent. If the broker
19 delivers funds to an escrow agent, the broker shall maintain an
20 accounting of all such funds and shall keep in the broker's file a
21 signed receipt from the escrow agent. The broker remains respon-
22 sible for the funds if the broker selected the escrow agent, but
23 not if the parties selected the escrow agent. A broker shall at
24 all times keep detailed records of all funds coming into the
25 broker's possession and all disbursements made by the broker.

1 (2) All trust account bank statements shall be reconciled in
2 writing at least monthly and balanced to the total amount of trust
3 funds deposited in the account which have not been disbursed.
4 Copies of such reconciliations shall be kept by the broker for at
5 least three (3) years or for such time as may be required by law,
6 whichever is greater.

7 (3) All trust fund records, including bank reconciliations,
8 shall be open to inspection by and made available to the investi-
9 gative staff of the Commission at the firm's office or other
10 location designated by the Commission.

11 (h) (1) All security deposits made under a rental or lease
12 agreement shall be deposited in the principal broker's trust
13 account, including those deposits made on property owned by any
14 licensee licensed under the principal broker unless the licensee
15 who owns the property has a written agreement with the tenant
16 providing that the licensee may keep the security deposit in the
17 licensee's separate account. A copy of any such agreement shall be
18 furnished to the principal broker by the licensee.

19 (2) Provided, however, that a principal broker shall not be
20 responsible for the failure of those licensed under such principal
21 broker to comply with Regulation 10.8(h)(1) as long as the
22 principal broker is in compliance with Regulation 10.4.

23 (i) Nothing in this Regulation 10.8 shall be deemed to prohibit
24 a broker from maintaining certain funds or deposits in particular
25 transactions in an interest-bearing account when required to do so
26 by law or valid regulation of any governmental agency, nor shall it
27 prohibit a broker from maintaining an interest-bearing account
28 while participating in the Interest on Real Estate Brokers' Trust
29 Account program authorized by Section 24 of Act 690 of 1993 [A.C.A.
30 §17-35-601 et seq.] and Regulations 12.1 and 12.2.

1 **10.9 Disbursement of Trust Funds.**

2 (a) A principal broker shall not disburse trust funds from the
3 broker's designated trust account contrary to the terms of a
4 contract for the sale or rental of real estate, or other contract
5 pursuant to which the funds were received, and a principal broker
6 shall not fail to disburse trust funds according to the terms of
7 such contract.

8 (b) Except as otherwise authorized by Regulation 10.8(d), the
9 balance of a principal broker's trust account shall at all times
10 equal the total of the trust funds received for which the broker is
11 accountable.

12 (c) A principal broker who disburses trust funds from a
13 designated trust account under the following circumstances shall be
14 deemed by the Commission to have fulfilled properly the broker's
15 duty to account for and remit money which the broker is required to
16 maintain and deposit in a designated trust account:

17 (1) upon the rejection of an offer to buy, sell, rent,
18 lease, exchange, or option real estate;

19 (2) upon the withdrawal of an offer not yet accepted to buy,
20 sell, rent, lease, exchange, or option real estate;

21 (3) at the closing of the transaction;

22 (4) upon securing a written agreement which is signed by all
23 parties having an interest in the trust funds and is separate from
24 the contract which directs the broker to hold the funds;

25 (5) upon the filing of an interpleader action in a court of
26 competent jurisdiction;

1 (6) upon the order of a court of competent jurisdiction; or

2 (7) upon a reasonable interpretation of the contract which
3 directed the broker to deposit the funds.

4 (d) When a broker makes a disbursement to which all parties to
5 the contract have not expressly agreed in writing, the broker must
6 immediately notify all parties in writing of the disbursement.

7 **10.10 Agreements to be Written.**

8 (a) Except as provided in Regulation 10.10(b), a licensee, for
9 the protection of the public and of all parties with whom the
10 licensee deals, shall see that the exact agreement of the parties
11 regarding real estate is in writing, and that copies of such
12 agreements are placed in the hands of all parties involved.
13 (Examples: Offer and acceptance contracts, closing statements,
14 lease agreements, management agreements, financial obligations and
15 commitments, etc.)

16 (b) It is strongly recommended that listing agreements be in
17 writing.

18 **10.11 Self Dealing.**

19 Licensees shall not buy, sell, rent or lease property for
20 themselves or for a corporation, partnership or association in
21 which they have an interest without first making full disclosure to
22 the buyer or seller, as the case may be, of the exact facts that
23 they are licensed as a real estate broker or salesperson and are
24 buying, renting or leasing the property for their own account or
25 have an interest in the property which they are selling, renting or
26 leasing. All such disclosures must be made in writing before the
27 sales, rental or lease contract is entered into.

1 **10.12 Offers and Acceptances.**

2 (a) All offers received on a specific property shall promptly be
3 presented to the seller by the listing firm or other licensee
4 designated by an authorized representative of the listing firm.

5 (b) Every offer received must be signed by the licensee who
6 receives it and by that licensee's supervising broker. Every
7 acceptance must bear the names, but not necessarily the signatures,
8 of the listing licensee and the listing licensee's supervising
9 broker. (It is desirable for the supervising broker of the
10 licensee who receives an offer to review and sign each offer before
11 it is submitted to the seller, although that is not always
12 possible. However, such supervising broker shall review and sign
13 the offer as soon as possible after it is received, and, in all
14 cases, prior to closing.)

15 **10.13 Listing Agreements; Signs.**

16 (a) If a firm holds an exclusive listing contract on a parcel of
17 property, the selling licensee shall not contact the seller about
18 showing the property or negotiating the sale without prior permis-
19 sion from the listing firm or other licensee designated by an
20 authorized representative of the listing firm. Any offers received
21 by the selling licensee shall be presented to the firm holding the
22 exclusive listing contract not later than the close of the next
23 business day after receipt of the offer. Likewise, all earnest
24 monies and deposits shall be forwarded to the listing firm for
25 deposit in the listing firm's trust account. The listing firm or
26 other licensee designated by an authorized representative of the
27 listing firm shall then present the offer to the seller. The
28 selling licensee may accompany the listing licensee with the
29 latter's permission, but shall not contact the seller without prior
30 permission from an authorized representative of the listing firm.

1 (b) A licensee shall not accept an exclusive listing contract on
2 a parcel of property when there is reason to believe there exists
3 another listing contract on the property without first
4 communicating with the other principal broker about such listing.
5 If there is an exclusive listing contract, the licensee shall not
6 take a listing on the property without first disclosing in writing
7 to the seller the possibility of the seller's liability for two (2)
8 separate sales commissions.

9 (c) Signs offering or advertising a property may be on the
10 property only during the existence of a listing agreement, unless
11 otherwise authorized by the owner.

12 10.14 Reporting Violations.

13 It is the duty of each licensee to report in writing to the
14 Commission any information coming to the licensee's knowledge which
15 is or may be (1) a violation of the Arkansas Real Estate License
16 Law; or (2) a violation of the Commission Regulations.

17 10.15 Out of State Property.

18 Licensees who propose to engage in sales of a promotional nature
19 in Arkansas of property located outside of Arkansas, must submit to
20 the Commission full particulars regarding such property and the
21 proposed terms of sale, and they must comply with such rules,
22 restrictions, and conditions pertaining thereto as the Commission
23 may impose. All expenses incurred by the Commission in
24 investigating such property and the proposed sale thereof in
25 Arkansas shall be paid by the applying licensee to the Commission.
26 No licensee shall in any manner refer to the Commission, or to any
27 agent, representative or employee thereof, in selling, offering for
28 sale, advertising, or otherwise promoting the sale, mortgage or

1 lease of any such property, nor make any representation whatsoever
2 that such property has been inspected, approved or otherwise passed
3 on by the Commission or by a Commission agent, representative or
4 employee.

5 **10.16 Criminal Convictions and Disciplinary Actions.**

6 (a) A licensee convicted of any crime other than a traffic
7 violation shall make written report thereof to the Commission
8 within thirty (30) days after the conviction. The report shall
9 include the date of the offense and of the conviction, the name and
10 address of the convicting court, the specific crime for which
11 convicted, the fine, penalty and/or other sanctions imposed, and
12 copies of the charging document and judgment of conviction. The
13 report shall also include the licensee's explanation of the
14 circumstances which led to the charge and conviction, along with
15 any other information which the licensee wishes to submit.

16 (b) A licensee who has a professional, vocational or
17 occupational license, permit, certification or registration denied,
18 revoked, suspended or cancelled shall make written report thereof
19 to the Commission within thirty (30) days after such action. The
20 report shall include the date of the action, the name and address
21 of the regulatory agency which has taken the action and copies of
22 documents pertaining thereto. The report shall also include the
23 licensee's explanation of the circumstances which led to the
24 action, along with any additional information the licensee wishes
25 to submit.

26 (c) An applicant for a real estate license who has been
27 convicted of or pleaded guilty or nolo contendere to any crime
28 other than a traffic violation or who has had a professional,
29 vocational or occupational license, permit, certification or

1 registration denied, revoked, suspended or cancelled shall furnish
2 the written report referred to in Regulation 10.16 (a) and/or (b)
3 to the Commission at the time the application is submitted if such
4 action has already occurred, otherwise such report shall be made
5 immediately after the action occurs.

6 **10.17 Violation of Law or Regulation.**

7 A licensee who violates or fails to comply with any provision of
8 the Arkansas Real Estate License Law or Commission Regulations is
9 subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A.
10 §17-35-312].

1 **SECTION 11. CONTINUING EDUCATION.**

2 **11.1 Waiver of Continuing Education Requirement.**

3 Each request for a waiver under Section 23(1)(b) of Act 690 of
4 1993 [A.C.A. §17-35-501(b)] shall be in writing and shall be
5 supported by clear and convincing evidence. The Commission shall
6 acknowledge each such request and shall announce its decision in
7 writing. If the waiver is granted, the Commission may impose such
8 terms and conditions as it deems appropriate.

9 **11.2 Renewal of Expired License.**

10 A person who applies to renew an expired license under Section
11 13 of Act 690 of 1993 [A.C.A. §17-35-307(b)] will be considered to
12 be in the same status as a person holding an inactive license.

13 **11.3 Approved Courses.**

14 Only those courses which are approved by the State Board of
15 Private Career Education or which are exempted from such approval
16 by Section 23(4) of Act 690 of 1993 [A.C.A. §17-35-504] shall be
17 accepted by the Commission for continuing education credit.

18 **11.4 No Duplication of Prelicensing and Continuing Education**
19 **Credit.**

20 No educational courses or hours submitted as credit toward the
21 prelicensing education requirement shall be used as credit for the
22 continuing education requirements, and no educational courses or
23 hours submitted for credit toward the continuing education
24 requirements shall be used or counted to satisfy the prelicensure
25 educational requirements.

1 **SECTION 12. INTEREST ON TRUST ACCOUNTS.**

2 **12.1 Interest on Trust Account Program.**

3 The Interest on Real Estate Brokers' Trust Account Program
4 authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-35-601 et
5 seq.] is hereby established and Arkansas Real Estate Foundation,
6 Inc. is designated as the recipient of funds generated by such
7 program.

8 **12.2 Certain Interest Bearing Trust Accounts Approved.**

9 Notwithstanding any other Commission Regulation to the contrary,
10 a principal broker is authorized to maintain interest bearing trust
11 accounts when required to do so by law or valid regulation of any
12 governmental agency, or while participating in the Interest on Real
13 Estate Brokers' Trust Account Program.

1 **SECTION 13. EFFECTIVE DATE; PARTIAL REPEALER.**

2 **13.1 Effective Date.**

3 The foregoing regulations numbered 1.1 through 12.2 shall become
4 effective on January 1, 1994.

5 **13.2 Partial Repealer.**

6 Previously enacted and currently existing regulations of the
7 Commission numbered 101 through 159 and 201 through 205 are deemed
8 superseded by these regulations 1.1 through 12.2 and are therefore
9 repealed as of January 1, 1994 as to any acts, conduct,
10 transactions or other matters which occur on or after January 1,
11 1994; provided, however, that any acts, conduct, transactions or
12 other matters which occur prior to January 1, 1994, which become
13 the subject of a complaint, hearing, action, or determination after
14 January 1, 1994, shall be governed and controlled by Regulations
15 101 through 159 and 201 through 205.

