

6.3 Expired licenses.

(a) If an application for the renewal of a license, either active or inactive, and/or the required renewal fee is not received prior to the renewal deadline, such license is deemed to have expired at the end of the renewal period.

(b) A person whose license has expired shall not practice as a real estate broker or salesperson in this state.

(c) Upon reapplication within one (1) year of the last calendar year in which the license was renewed, payment of the required fees, and submission of such additional information as the Commission may require, the license may be reinstated and placed on either active or inactive status for the current license year. However, no license will be issued as active until proof of satisfactory completion of the continuing education requirement as required by Regulation 6.2 is submitted.

(d) Upon successful reapplication the prior year identified as expired will be considered as if inactive for purposes of continuing education requirements.

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

(f) For purposes of providing notice to and communication with any licensee who permits or has permitted his license to expire and who is the subject of a pending complaint, investigation or hearing pursuant to A. C. A. § 17-42-312, said licensee shall during any such pending complaint, investigation or hearing notify the Commission in writing within seven (7) days of any change of name or address.

SECTION 9. COMPLAINTS; INVESTIGATIONS; HEARINGS.

9.1 Complaints.

Complaints against licensees or persons allegedly engaged in unlicensed real estate activity must be in writing, signed by the complainant under oath, dated and filed with the director.

9.2 Answers.

(a) If the director determines that a complaint establishes a prima facie case of a violation of the Arkansas Real Estate License Law or Commission regulations, the director shall send a copy of such complaint to the licensee or person allegedly engaged in unlicensed real estate activity complained against along with instructions concerning the filing of an answer. The director may also send a copy of the complaint to the principal broker of the licensee complained against.

(b) Within twenty (20) days after service of the complaint on the licensee or person allegedly engaged in unlicensed real estate activity, such licensee or person allegedly engaged in unlicensed real estate activity shall file a written answer with the director. The answer shall be dated and shall be signed by the licensee or person allegedly engaged in unlicensed real estate activity under oath. The time for answering may be extended at the discretion of the director or the director's designee.

9.3 Investigation.

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

9.4 Disposition of complaints; appeals from dismissal.

(a) A complaint which, together with the answer, if any, and the results of any investigation conducted by the director, establishes a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall be presented to and reasonably disposed of by the Commission. Likewise, any investigation initiated and conducted by the director without a formal complaint which results in a determination by the director that there exists a prima facie violation of the Arkansas Real Estate License Law or Commission regulations shall also be presented to and reasonably disposed of by the Commission.

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

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

- (ii) The request for appeal must be accompanied by the appeal filing fee; and
 - (iii) The Commission staff shall determine the cost of preparing the record for the Commission's review, which cost shall be paid by the appellant within thirty (30) days after notification of the amount; otherwise the appeal will be dismissed.
- (2) Upon submission of the appeal, the Commission shall review the written record and either uphold or overrule the director's decision. The parties may submit written arguments but no new evidence. Any newly discovered evidence must first be presented to the director. If the decision is overruled, the Commission may either order a hearing or request further investigation or documentation of the complaint. If the Commission review results in a hearing being ordered on the complaint, both the filing fee and the cost of preparing the record shall be refunded to the appellant.
- (3) Provided, however, that a person may not appear before the Commission in connection with any matter pending before the Commission for administrative adjudication except upon notice and opportunity for all parties to participate.

9.5 Hearings.

- (a) Hearings shall be scheduled for a day certain by the director who shall, at least thirty (30) days prior to such hearing date, send notice to all persons entitled to notice thereof of the place and approximate time of said hearing, a statement of the allegations and charges forming the basis for the hearing, and the provisions of the law or regulations thought to be involved therein. The Commission shall serve notice of said hearing by mailing same addressed to the licensee or person allegedly engaged in unlicensed real estate activity at his or her address last known to the Commission or may, in its discretion, serve the licensee or person allegedly engaged in unlicensed real estate activity by personal delivery of said notice.
- (b) Prior to the hearing, the respondent licensee or person allegedly engaged in unlicensed real estate activity involved in the hearing may, by written petition, signed and dated, invoke the aid of the Commission in the procurement of any witness or document the licensee or person allegedly engaged in unlicensed real estate activity may desire to be present at such hearing, provided however, that such petition must be filed with the director at least ten (10) days prior to the hearing date.
- (c) All motions concerning or related to the hearing must be in writing and filed at the Commission office no later than ten (10) days before the scheduled hearing date, along with a certificate of the person filing the motion that copies of the motion have been served on the attorney of the other parties who are represented by attorneys, or on the parties themselves if they are not represented by attorneys. Motion for continuance shall be decided by the director. All other motions shall be decided by the Commission or by the hearing officer by delegation of such responsibility by the Commission. Upon delegation and authorization from the Commission, the hearing officer may also conduct pre-hearing conferences.

9.6 Hearing procedure.

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

- (b) The Commission's hearing officer shall preside over the hearing and regulate procedural aspects of the hearing, including ruling on admissibility of evidence and objections. The hearing officer shall advise the Commission on questions of law.
- (c) All persons appearing before the Commission and giving testimony shall first be placed under oath. All testimony given shall be recorded and shall be a part of the record in the case.
- (d) At any hearing the respondent licensee or person allegedly engaged in unlicensed real estate activity and complainant may be present in the hearing room during the entire hearing and the respondent licensee or person allegedly engaged in unlicensed real estate activity shall have the right to cross-examine any witness and to examine any document or evidence submitted.
- (e) The hearing shall begin with presentation of the case against the respondent licensee or person allegedly engaged in unlicensed real estate activity. Such presentation is ordinarily conducted by the Commission staff counsel. However, upon request, and at the discretion of the Commission, counsel for the complainant may be permitted to participate. At the conclusion of such presentation, the respondent licensee or person allegedly engaged in unlicensed real estate activity may present evidence in defense of the charges, following which rebuttal testimony and evidence may be offered. Closing arguments may be called for or dispensed with at the discretion of the Commission.
- (f) The Commission may receive into evidence such affidavits, depositions, certified copies of documents, photocopies of official records and other exhibits as it deems appropriate, whether or not such documents are admissible under formal rules of evidence, together with such other evidence as may be admissible by law. The Commission shall give to such evidence such weight as the Commission shall determine appropriate under the circumstances.
- (g) After presentation of all evidence the Commission shall deliberate on the issues and either announce its decision or take the matter under advisement for later decision.
- (h) Upon reaching a decision, the Commission shall enter its findings of fact and conclusions of law and an appropriate order shall be prepared and served on the parties.
- (i) Once the decision is made, any motion for reconsideration must be filed within fifteen (15) days from the date the decision is first announced, whether orally or in writing, but the filing and pendency of such motion will not delay the appeal time deadlines lines of the Arkansas Administrative Procedure Act.

9.7 Service.

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

9.8 Attorneys.

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