

MARKUP of Proposed Change to the Regulations of the Residential Contractors Committee:

224-25-5-13. DEFINITIONS

(a) Ownership: When the terms **His** own or **Its** own property is used in the Residential Builder licensing law, it shall mean sole and exclusive right to sell or convey the property.

(b) Qualifying party: A person who has passed the appropriate examination. To act as a “qualifying party” a person must be either: (1) a sole owner; (2) a partner of the partnership; (3) an officer of the corporation who is actively engaged in the day to day activities of the company; (4) a member of the Limited Liability Company who is actively engaged in the day to day activities of the company; (5) a partner of the Limited Liability Partnership who is actively engaged in the day to day activities of the company; or (6) a full time employee.

(c) Full time employee: A person who is an actual employee of the business, not an independent contractor. The person must work, on average, 30 or more hours a week for the business (1500 hours per year), must not be paid as an independent contractor (not receive a “1099” for his earnings but receive a “W-2” for his earnings). A full time employee is not someone who is hired “job to job” as needed. Other factors to be considered in making this determination include, but are not limited to: whether the business pays for workman’s compensation insurance on the individual, whether the business pays payroll taxes on the individual, the amount of control the business has over the activities of the individual, the ownership of the tools used by the individual and, whether the individual maintains his own business separate from the business in question.

(d) Single family residence: Any project consisting of one (1) but not more than four (4) units of new construction for residential occupancy, when the cost of the project is

twenty thousand dollars (\$20,000) or more. This definition does not apply to subcontractors of licensed residential building contractors or to remodeling operations.

(e) Residential Remodeling: Any construction on a single-family residence involving structural changes, improvements, repairs or additions.

(f) Own residence: The term "own residence" as found in Ark. Code Ann. § 17-25-509(c) and Ark. Code Ann. § 17-25-513 means the personal residence, the principal place of abode, the domicile, a residence constructed for the occupancy of the person who owns the property. A residential property offered for sale or rent or sold or rented during construction or within twelve months after substantial completion shall be presumed to have not been constructed as the "own residence" of the owner.

(g) Residential Building Contractor: The term "Residential Building Contractor" as found in Ark. Code Ann. § 17-25-502(2) does not include a developer who has constructed a residential project, if the developer:

(1) Contracts with a properly licensed contractor to perform a turnkey project; and

(2) The licensed contractor gives a written warranty at closing of not less than one year to the buyer of the residence.

SUMMARY of (f): This is a modification of Rule 224-25-5-13 defining "own residence" as contained within Ark. Code Ann. § 17-25-509 and Ark. Code Ann. § 17-25-513. There had been some confusion in the residential building industry as to what is meant by the words "own residence" within the licensing law and this rule will help clarify the meaning to help home builders from accidentally violating the statute.