

ARKANSAS REGISTER

AR. REGISTER DIV.

91 JUN 19 PM 12:54

Transmittal Sheet



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

BY _____

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

For Office
Use Only:

Effective Date 7/15/91 Code Number 076.00.91--002

Name of Agency AR Real Estate Commission

Department _____

Contact Person Roy Bilheimer Telephone 682-2732

Statutory Authority for Promulgating Rules ACTS 423, 278, 1243 and 814 of 1991

Intended
Effective Date

Date

Legal Notice Published 5/6-7-13-14-20-21/91

Emergency

Final Date for Public Comment 6-17-91

20 Days
After Filing

Filed With Legislative Council 6-5-91

Reviewed by Legislative Council 6-26-91

Other

Adopted by State Agency 6-17-91

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance With Act 434 of 1967 As Amended.

SIGNATURE

Executive Secretary

TITLE

June 19, 1991

DATE

QUESTIONNAIRE
ON PROPOSED ADMINISTRATIVE RULES
WHETHER NEW, AMENDATORY OR REPEALING

FILED
AR. REGISTER DIV.

FROM: _____

AGENCY AR Real Estate Commission

DIVISION _____

CONTACT PERSON Roy Bilheimer or Bill Williams

ADDRESS 612 Summit Street, Little Rock, AR 72201

PHONE NUMBER 682-2732

Leave Blank

91 JUN 19 PM 12:56

INSTRUCTIONS

- A. Make copies of this form for future use.
- B. Answer each question completely using layman's language. Use additional sheets if necessary.
- C. If you have a method of indexing your rules, give the proposed citation after "SHORT TITLE OF THIS RULE" below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule to:

Committee on Administrative Rules and Regulations
 Arkansas Legislative Council
 Room 315 State Capitol
 Little Rock, AR 72201

SHORT TITLE OF THIS RULE 131. Hearings - Procedures.

- 1. What is the subject of the proposed rule?
Hearings - Procedures.
- 2. Will this be a new rule or repeal or amend an existing rule? If it is an amendment, state specifically what is amended.
Amendment.
- 3. What State or Federal law or regulation grants the authority for this proposed rule?
ACT 1243 of 1991.
- 4. What is the purpose of this proposed rule? Why is it necessary? To amend current regulation to include provision for issuing subpoena duces tecum when necessary in the conduct of investigating complaints received from members of the public vs Real Estate brokers and/or salespersons and to clarify procedures.
- 5. Will this proposed rule be controversial? If yes, explain nature of controversy.
No.

(OVER)

 * FAILURE TO COMPLETELY ANSWER ALL QUESTIONS COULD RESULT IN PROCESSING DELAYS *

131. Hearings - Procedure.

(a) At any and all meetings of the Commission at which a hearing is to be held on any complaint previously filed, the same shall be set down for a day certain by the Commission, at least 30 days prior to any such hearing date.

(b) The Secretary shall, at least 30 days prior to any such hearing date, send notice to all persons entitled to notice thereof of the place and approximate time of said hearing, a brief and concise statement of the facts forming the basis of the complaint, and the provisions of the law or the rules and regulations thought to be involved therein.

(c) Any licensee complained against and to be heard, or any complaining witness, may, by written petition, signed and dated, invoke the aid of the Commission in the procurement of any witness or document he or she may desire to be present and testify at such hearing, provided such petition is filed with the Secretary at least 7 days prior to such hearing date. Any and all costs anticipated must be deposited with the Secretary at the time of any such request.

(d) Every complaint filed with the Secretary which shall be determined to have established reasonable cause to believe a violation has occurred shall be given a file number by the Secretary and thereafter all written documents pertaining thereto shall bear that assigned file number.

(e) Each and every hearing of the Commission, after being duly called to order, shall begin with a statement by the Chairman or Vice-Chairman, as to the nature of the cause to be heard, an inquiry of the parties present as to whether each is prepared to proceed, and thereafter the cause shall proceed with the presentation of evidence for and on behalf of the complainant. At the conclusion of such evidence the person complained against may then proceed to introduce evidence in contradiction, after which rebuttal testimony may be offered.

(f) Either oral or written argument of the issues raised may be called for or dispensed with at the discretion of the Commission.

(g) The Commission shall file with the Secretary its findings and conclusions as to all hearings and an appropriate Order shall be sent to the licensee involved.

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

(i) The Commission will receive into evidence all affidavits, depositions, certified copies of documents, photocopies of official records and exhibits therewith introduced, 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 just and proper.

(j) Every pleading, motion or other document, and every request to the Commission must be filed with the Secretary in writing, signed, dated and in quintuplicate.

(k) No attorney shall withdraw his appearance in any cause before this Commission except by leave of the Commission after notice served by him on his client and counsel for the Commission.

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ON PROPOSED ADMINISTRATIVE RULES
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AR. REGISTER DIV.
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FROM:
AGENCY
DIVISION
CONTACT PERSON
ADDRESS
PHONE NUMBER

AR Real Estate Commission
Roy Bilheimer or Bill Williamson
612 Summit Street, Little Rock, AR
682-2732

Leave Blank

INSTRUCTIONS BY

- A. Make copies of this form for future use.
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Arkansas Legislative Council
Room 315 State Capitol
Little Rock, AR 72201

SHORT TITLE OF THIS RULE 204. Courses offered by private or Vo-tech schools.

- 1. What is the subject of the proposed rule?
Courses in real estate offered by private and vocational schools shall be deemed acceptable to the Commission provided that the courses and instructors are first approved by the Division.
- 2. Will this be a new rule or repeal or amend an existing rule? If it is an amendment, state specifically what is amended.
Repeal, and renumbering of subsequent regulations. ACT 814 of 1991 provides for course approval by the State Board of Private Career Education.
- 3. What State or Federal law or regulation grants the authority for this proposed rule?
ACT 814 of 1991.
- 4. What is the purpose of this proposed rule? Why is it necessary?
Repeal is necessary to rescind regulation in conflict with ACT 814 of 1991.
- 5. Will this proposed rule be controversial? If yes, explain nature of controversy.
No.

(OVER)

* FAILURE TO COMPLETELY ANSWER ALL QUESTIONS COULD RESULT IN PROCESSING DELAYS *

PROPOSED REVISION OF REGULATIONS 204 and 205

Regulation 204 is revoked and Regulation 205 is renumbered 204.

204. Certificate of Attendance.

The certificate of attendance required by Section 8 of Act 453 of 1987 [Ark. Code Ann. § 17-35-508] shall be in such form and shall contain such information as the Commission shall prescribe.

QUESTIONNAIRE
ON PROPOSED ADMINISTRATIVE RULES
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FROM: _____
 AGENCY: AR Real Estate Commission
 DIVISION: _____
 CONTACT PERSON: Roy Bilheimer or Bill Williamson
 ADDRESS: 612 Summit Street, Little Rock, AR
 PHONE NUMBER: 682-2732

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 SECRETARY OF STATE
 LITTLE ROCK, ARKANSAS

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 Little Rock, AR 72201

SHORT TITLE OF THIS RULE 127. Complaints - Procedure.

- 1. What is the subject of the proposed rule?
Complaints - procedure.
- 2. Will this be a new rule or repeal or amend an existing rule? If it is an amendment, state specifically what is amended.

Amendment. Procedures for appealing complaints dismissed by the Executive Secretary.
- 3. What State or Federal law or regulation grants the authority for this proposed rule?
ACT 278 of 1991.
- 4. What is the purpose of this proposed rule? Why is it necessary?
To establish procedures for appeal of Executive Secretary's decision to dismiss complaints and establish the maximum filing fee as authorized by ACT 278 of 1991.
- 5. Will this proposed rule be controversial? If yes, explain nature of controversy.
No.

(OVER)

 * FAILURE TO COMPLETELY ANSWER ALL QUESTIONS COULD RESULT IN PROCESSING DELAYS *

PROPOSED REVISION OF REGULATION 127

127. Complaints - Procedure.

Any and every complaint which establishes reasonable cause to believe a violation of the real estate license law or Commission regulations has occurred shall be presented to and reasonably disposed of by the Commission, giving due consideration to sufficient and necessary time to investigate and consider the complaint. Any person whose complaint is dismissed by the Executive Secretary without a hearing may appeal such dismissal to the Commission in the following manner:

(a) 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 Executive Secretary; and

(b) The request for appeal must be accompanied by the filing fee of \$100; and

(c) The Commission staff shall determine the cost of preparing the record for the Commission's review, which cost shall be paid by the appellant prior to submission of the appeal to the Commission.

Upon submission of the appeal, the Commission shall review the written record and either uphold or overrule the Executive Secretary's decision. 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.

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.