

ARKANSAS REGISTER



Proposed Rule Cover Sheet

Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department ARKANSAS DEPARTMENT OF LABOR AND LICENSING

Agency or Division Name ARKANSAS REAL ESTATE COMMISSION

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person Andrea S. Alford, Executive Director

Contact E-mail andrea.alford@arkansas.gov

Contact Phone 501-683-8016 or 8010 (main line)

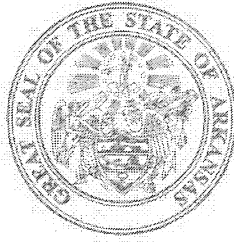
Name of Rule 10.25 - Waiver of Certain Requirements for Principal Brokers

Newspaper Name DEMOCRAT GAZETTE

Date of Publishing December 22-24, 2023

Final Date for Public Comment January 22, 2023

Location and Time of Public Meeting Arkansas Real Estate Commission



STATE OF ARKANSAS
SARAH HUCKABEE SANDERS
GOVERNOR

Request for Governor's Approval of Proposed Rule or Regulation

Department /Agency: ADLL/ Arkansas Real Estate Commission

Short Title of Rule: 10.25 - Waiver of certain requirements for principal

New Rule: ☐ Yes ☐ No

Amendment to Existing Rule: ☐ Yes ☐ No

State Mandate: ☒ Yes ☐ No

Federal Mandate: ☐ Yes ☐ No

If yes, please provide the legal citation of the mandate: Act 31 of 2023

Legal Authority for Rule: A.C.A. 17-42-101 et seq

Proposed Effective Date: January 1, 2024

Emergency Rule: ☐ Yes ☐ No

Expedited Rule Requested: ☐ Yes ☐ No

Summary of Proposed New Rule or Proposed Amendment to Existing Rule:

The proposed amendment to Rule 10 will allow a principal broker employed under the provisions of Act 31 to request a waiver of certain regulatory requirements intended for principal brokers of real estate firms. Rulemaking is required by the Act.

Financial Impact: ☐ Yes ☒ No ☐ Unknown; If yes or unknown, please explain:

Public Hearing Occurred on Rule: ☐ Yes ☒ No

Controversial: ☐ Yes ☒ No

If yes, please explain and provide detail of expected opposition.

Two Rules Repealed: ☐

Exception from the Governor: ☒

First Rule Repealed:

Brief explanation of why repeal is appropriate:

In 2018, AREC repealed any obsolete, repetitive, or unnecessary rules during the rule review process prescribed by Act 781 of 2017. Since that time, the only new or amended rules promulgated have been those similar to the present rule and specifically required by legislation. Therefore, the agency respectfully requests an ☒

Second Rule Repealed:

Brief explanation of why repeal is appropriate:

Documents Required for Approval Process

Please note that the Governor's office will not begin the approval process if any of the following applicable documents are not enclosed with the approval request.

- ☒ BLR Questionnaire
- ☒ BLR Financial Impact Statement
- ☒ Proposed Rule - clean version
- ☐ Mark-Up of Rule, if amended from previous version
- ☒ Copy of Act or Regulation, if Rule is pursuant to State or Federal mandate

Contact Information

Department POC for Rules Process: Andrea S. Alford, Miles Morgan

Department POC for this Rule: Andrea S. Alford, Miles Morgan

NOTE: All documents must be returned to the Governor's Counsel as a single PDF file.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT Arkansas Department of Labor and Licensing
BOARD/COMMISSION Arkansas Real Estate Commission
BOARD/COMMISSION DIRECTOR Andrea S. Alford
CONTACT PERSON Andrea S. Alford, Miles Morgan
ADDRESS 612 S. Summit St., Little Rock, AR 72201
PHONE NO. (501) 683-8016 **EMAIL** andrea.alford@arkansas.gov
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING
Andrea S. Alford, ADLL AREC Executive Director, Miles Morgan
PRESENTER EMAIL(S) andrea.alford@arkansas.gov, miles.morgan@arkansas.gov

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
10.25 - Waiver of certain requirements for principal brokers.
2. What is the subject of the proposed rule? As titled.
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☐

4. Is this rule being filed for permanent promulgation? Yes ☒ No ☐

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes ☐ No ☒

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes ☐ No ☒

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes ☒ No ☐

If yes, please provide the state statute and/or rule citation.

Act 31 of 2023

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes ☐ No ☒

If yes, please list the rules being repealed.

If no, please explain.

In 2018, AREC repealed any obsolete, repetitive, or unnecessary rules during the rule review process prescribed by Act 781 of 2017. Since that time, the only new or amended rules promulgated have been those similar to the present rule, specifically required by legislation.

8. Is this a new rule? Yes ☒ No ☐

Does this repeal an existing rule? Yes ☐ No ☒

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes ☐ No ☒

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

A.C.A. 17-42-203(a); Act 31 of 2023

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes ☒ No ☐

If yes, please provide the year of the act(s) and act number(s).

Act 31 of 2023

11. What is the reason for this proposed rule? Why is it necessary?

Rulemaking is required by Act 31 of 2023 for the purpose of detailing which compliance requirements may be waived for principal brokers operating under the provisions of the exemption in Act 31 of 2023.

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

www.arec.arkansas.gov

13. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: _____

Time: _____

Place: Date, Time and Place TBD upon review and approval by Governor's office and ADLL Secretary

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? January 1, 2024

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes ☐ No ☒

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Arkansas Department of Labor and Licensing

BOARD/COMMISSION Arkansas Real Estate Commission

PERSON COMPLETING THIS STATEMENT Andrea S. Alford, ADLL AREC Executive Director

TELEPHONE NO. (501) 683-8016 **EMAIL** andrea.alford@arkansas.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE 10.25 - Waiver of certain requirements for principal brokers.

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes ☐ No ☒
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes ☒ No ☐
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes ☒ No ☐

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total \$0.00 _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ 0.00 _____

Next Fiscal Year

\$ 0.00 _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ 0.00 _____

Next Fiscal Year

\$ 0.00 _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes ☐ No ☒

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

NOTICE OF PROPOSED RULE AMENDMENT

The Arkansas Real Estate Commission will hold a Public Hearing at 8:30 a.m. on Monday, January 22, 2024, in the Meeting Room of the Arkansas Real Estate Commission building, 612 South Summit Street, Little Rock, Arkansas and/or via a livestream platform for the purpose of receiving public or written comment on the adoption of Proposed New Rule 10.25. Rule 10.25 allows principal brokers employed by a licensed Arkansas residential contractor pursuant to Act 31 of 2023 to request a waiver of certain requirements. Subjects and issues involved are as follows:

Act 31 of 2023 creates a license exemption for the employees of a licensed Arkansas residential construction company. As part of qualifying for the exemption, the licensed Arkansas residential construction company is required to employ a Principal Broker to supervise the activities of the unlicensed employees. The purpose of the Proposed New Rule 10.25 is to allow those Principal Brokers to request a waiver of certain technical requirements that specifically pertain to the business processes of a real estate firm most often owned and directed by the Principal Broker, which differ from those of a licensed residential construction company employing an individual to serve as a Principal Broker under the Act.

Copies of the proposed rule may be obtained by writing the Arkansas Real Estate Commission at 612 South Summit Street, Little Rock, Arkansas 72201-4740. Written data used for arguments to propose rule 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. The meeting will also be made available to participants via livestream. Individuals who wish to attend via livestream can obtain a link by which they may join the meeting at www.arec.arkansas.gov.

PROPOSED NEW RULE

CLEAN COPY

For purposes of promulgating rules pursuant to Act 31 of the 2023 Regular Session of the General Assembly

Rule 10.25 – Waiver of certain requirements for principal brokers.

- (a) Upon written request from a principal broker operating under the exemption contained in Arkansas Code § 17-42-104(a)(11), the executive director may waive certain requirements for principal brokers set forth in Title 17, Chapter 42 of the Arkansas Code and the Commission Rules related to the following:

- (1) Firm name approvals;
- (2) Place of business and signage;
- (3) Branch offices;
- (4) Handling of funds and maintenance of records; and
- (5) Trust funds, trust accounts, and disbursement of trust funds.

(b) The Principal Broker's request should clearly state their justification for requesting the waiver and include a written explanation of the business processes of the Arkansas-licensed residential construction company employing the principal broker pursuant to Arkansas Code § 17-42-104(a)(11)(A)(iv) as those business processes relate to the waiver being requested. The Commission may request additional documentation or information from a principal broker requesting a waiver under this subsection.

(c) The executive director will determine, based upon the information provided, which requirements will be waived by the commission and will communicate the same in writing to the principal broker within thirty (30) days of receipt. The executive director may authorize issuance of a temporary interim license to a principal broker at the time the waiver request and accompanying items are submitted to the commission.

(d)(1) A principal broker whose request for a waiver under this rule is denied, in whole or in part, may request the commission's review of the executive director's determination, provided that any such request for reconsideration is made in writing and received by the commission within thirty (30) days of receipt of the executive director's written notice of determination.

(2) The determination made by the commission in response to a request for review under this rule is not subject to appeal.

(e) A waiver provided under this rule shall not relieve the principal broker of:

(1) The requirement to make open to inspection by the commission all records as required under this chapter; or

(2) The obligation to fulfill all other requirements under Arkansas Real Estate License Law and Commission Rules.

1 State of Arkansas

2 94th General Assembly

3 Regular Session, 2023

A Bill

HOUSE BILL 1147

4
5 By: Representative Vaught

6 By: Senator Hester

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE REAL ESTATE LICENSE LAW; TO
10 CREATE AN EXEMPTION FOR ARKANSAS LICENSED RESIDENTIAL
11 CONSTRUCTION COMPANIES; AND FOR OTHER PURPOSES.

Subtitle

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15 TO AMEND THE REAL ESTATE LICENSE LAW; AND
16 TO CREATE AN EXEMPTION FOR ARKANSAS
17 LICENSED RESIDENTIAL CONSTRUCTION
18 COMPANIES.

19
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. Arkansas Code § 17-42-104(a), concerning exemptions to the
24 Real Estate License Law, is amended to add an additional subdivision to read
25 as follows:

26 (11)(A) A person employed by an Arkansas licensed residential
27 construction company if:

28 (i) The employee provides a written disclosure to
29 any purchaser involved in the possible or actual sale of newly constructed
30 and never occupied residential real estate:

31 (a) Stating that the:

32 (1) Employee is acting exclusively on
33 behalf of his or her employer who is the Arkansas licensed residential
34 construction company; and

35 (2) Purchaser has a right to be
36 represented by his or her own licensed real estate agent or legal counsel;



1 and

2 (b) The employer shall maintain the written
3 disclosure for seven (7) years after delivery;

4 (ii) The primary business activity of the Arkansas
5 licensed residential construction company is not an activity described under
6 § 17-42-103(10);

7 (iii) The employee is not providing real estate
8 services to or on behalf of more than one (1) entity not wholly owned by the
9 Arkansas licensed residential construction company; and

10 (iiv) The Arkansas licensed residential construction
11 company employs a principal broker, as defined under § 17-42-103(10), who
12 shall be responsible for the conduct of any persons identified in this
13 subdivision (a)(11) in the same manner as if such person was a licensee, as
14 defined under § 17-42-103(8).

15 (B) A person or Arkansas licensed residential construction
16 company asserting or utilizing the exemption under subdivision (a)(11)(A) of
17 this section shall have the burden of proving a person is an employee, or is
18 employed by the Arkansas licensed residential construction company as that
19 term is used in state and federal income tax, social security and for other
20 purposes.

21 (C) As used in this section, "Arkansas licensed
22 residential construction company" means:

23 (i) A construction company that:

24 (a) Owns or leases newly constructed and never
25 occupied single family residential real estate;

26 (b) Has the sole business of developing,
27 constructing, or selling newly constructed and never occupied single family
28 residential real estate; and

29 (c) Is licensed in Arkansas; or

30 (ii) An entity wholly owned by the Arkansas licensed
31 residential construction company in connection with the proposed purchase or
32 sale of single family residential real estate that:

33 (a) Is wholly owned by the Arkansas licensed
34 residential construction company or entity;

35 (b) Has the sole business of developing,
36 constructing, or selling newly constructed and never occupied single family

1 residential real estate; and

2 (c) Is licensed in Arkansas.

3
4 SECTION 2. Arkansas Code § 17-42-104, concerning exemptions to the
5 Real Estate License Law, is amended to add an additional subsection to read
6 as follows:

7 (d) The commission may waive certain requirements under § 17-42-101 et
8 seq., for a principal broker employed by an Arkansas residential construction
9 company under this section.

10
11 SECTION 3. DO NOT CODIFY. Rules implementing this act.

12 (a) The Arkansas Real Estate Commission shall promulgate rules
13 necessary to implement this act.

14 (b)(1) When adopting the initial rules to implement this act, the
15 final rule shall be filed with the Secretary of State for adoption under §
16 25-15-204(f):

17 (A) On or before January 1, 2024; or

18 (B) If approval under § 10-3-309 has not occurred by
19 January 1, 2024, as soon as practicable after approval under § 10-3-309.

20 (2) The commission shall file the proposed rule with the
21 Legislative Council under § 10-3-309(c) sufficiently in advance of January 1,
22 2024, so that the Legislative Council may consider the rule for approval
23 before January 1, 2024.

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26 **APPROVED: 2/3/23**
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Sharika Vasquez

From: Legal Ads <legalads@arkansasonline.com>
Sent: Tuesday, December 19, 2023 2:34 PM
To: Sharika Vasquez
Subject: Re: Full Run AD

You don't often get email from legalads@arkansasonline.com. [Learn why this is important](#)

Thanks. Will run Fri 12/22, Sat 12/23, and Sun 12/24.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Sharika Vasquez" <Sharika.Vasquez@arkansas.gov>
To: "legalads" <legalads@arkansasonline.com>
Cc: "Andrea Alford" <Andrea.Alford@arkansas.gov>, "Melissa Goff" <Melissa.Goff@arkansas.gov>
Sent: Tuesday, December 19, 2023 12:35:16 PM
Subject: Full Run AD

Good afternoon,

Please run the attached legal ad beginning **Friday, December 22, 2023, through Sunday, December 24, 2023**. Please forward the invoice to our Accountant at the following address:

Kristen Savage
612 S. Summit
Little Rock, AR 72201

If you have any questions, please let me know.

Thank you,



Sharika Vasquez
Administrative Analyst
Arkansas Real Estate Commission

501.683.8034 (office)
501.683.8020 (Fax)

sharika.vasquez@arkansas.gov

****IMPORTANT AREC REMINDER FOR 2023****

-All licensees must complete 7 hours of CE to renew for 2024, which will include a 1-hour Safety course, as well as 6-hours in REQUIRED courses for licensees. Please see this link for mandatory CE requirements:

https://bit.ly/2023_AREC_CE. CE hours must be completed AND submitted by December 31, 2023, to be considered "on time." You are strongly encouraged to submit CE credit prior to the deadline to ensure proper delivery by December 31, 2023.