

**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.

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1147

By: Representative Vaught
By: Senator Hester

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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

(a) Stating that the:

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

(2) Purchaser has a right to be
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.

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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