

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and filing and the agency decides to prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

5 A.A.R. 3328, October 1, 1999

2. Sections Affected

R4-28-103.
R4-28-701.

Rulemaking Action

Amend
Amend

3. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 32-2107, 41-1073.

Implementing statute: A.R.S. Title 32, Chapter 20, Article 2; § 41-1073(B).

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: John King, Deputy Commissioner

Address: Arizona Department of Real Estate
2910 N. 44th Street, Suite 100
Phoenix, Arizona 85018

Telephone Number: (602) 468-1414, Ext 135

Fax Number: (602) 468-0562

5. An explanation of the rule, including the agency's reasons for initiating the rule:

R4-28-103. Licensing Timeframes. This Section establishes the timeframe parameters for granting or denying a license. The phrase "unless the applicant requests an extension" in subsection (C) was added in the proposed rulemaking to make the language consistent with subsection (B)(3) and Department practice.

R4-28-701. Compensation Sharing; Disclosure. This current Section requires a real estate broker representing a party in a transaction to disclose to all parties in the transaction the identity of any person receiving compensation.

6. An explanation of the substantial change which resulted in this supplemental notice:

Public hearings were held in Phoenix on November 17, 1999 and in Tucson on November 18, 1999. Comments were received from the Arizona School of Real Estate; the Westford College of Real Estate; the Professional Institute of Real Estate; the Arizona Association of Realtors; the Arizona School of Real Estate, Scottsdale; the Tucson Realty & Trust Co., Tucson; ERA A.P. Brown Co., Realtors, Tucson; and the Tucson Association of Realtors. Discussion on the proposed rulemaking resulted in minor and significant changes being made to the proposed rules. It was determined that several changes made as a result of the public comments were substantive and that specific rules needed to be published in a supplemental rulemaking the *Arizona Administrative Register*. The substantive changes are:

R4-28-103. The proposed rulemaking's addition of the phrase, "unless the applicant requests an extension" in subsection (C) provided the Department with wording that was consistent with the rest of the Section. This wording, however, did not provide either the Department or the stakeholder, with verification of an extension. The Department proposes the following amendment to remedy that omission:

If the applicant fails to provide the information identified in the written request the Department shall consider the

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application withdrawn, unless an extension is granted by the Department pursuant to a written request.

R4-28-701. The Department proposed to repeal this Section in the propose rulemaking. It was believed that the public was adequately protected, since most residential transactions include disclosure of commissions in settlement statements, and principals will have signed an employment agreement if they are to compensate a broker.

A public commenter explained that it is almost impossible to disclose all of the parties that might participate in the commission and that it is impractical for the Department to have a rule that is impossible to abide by and more thought should be given to requiring disclose of only certain aspects of the commission.

Another commenter requested that only the employing broker (the brokerage firm) be identified as receiving compensation, not every licensee.

Another commenter opposed the repeal of R4-28-701. This commenter's letter and public hearing testimony acknowledged that *the real estate industry has always required full disclosure to all parties in a transaction. Licensees are constantly being taken to task for concealing information that the buyer or seller felt should have been disclosed. Not requiring the disclosure of real estate commissions flies right in the face of current trends and expectations. . . the present rule requires that "any licensee receiving compensation must be disclosed." . . . Currently federal regulations . . . require full disclosure of all charges in a real estate transaction . . . The rule should read that all compensation received or paid to the employing brokers in a real estate transaction be disclosed to any and all parties in the transaction, before the close of escrow.*

Some commenters believed that the public is adequately protected by current practice in the industry, but agreed that if the final rule required a simple disclosure of the principal brokers in the transaction being paid compensation as a result of the transaction, the commenter did not believe the industry would have any opposition.

A commercial real estate broker and developer said that the Department has historically leaned in the direction of more disclosure not less, so the public is best served by additional or stronger disclosure provisions. The broker/developer also said that advising the parties is a good idea and supports the Commissioner's interpretation of comments to disclose the broker offices that are involved in the transaction.

Based on the written comments and those comments received at the public hearings, the following amendment requiring disclosure of only the brokerage firms (and not every licensee) receiving compensation is being proposed:

A real estate broker ~~representing a party in a transaction~~ shall disclose to all ~~the parties in the transaction, principals,~~ in writing before ~~completion of the transaction close of escrow, the identity of any licensee~~ the name of each employing broker receiving a commission or compensation in the transaction.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

A. Estimated Costs and Benefits to the Arizona Department of Real Estate.

No financial benefits are realized by the implementation of this rulemaking. The Department does not anticipate any additional administrative functions will result from the addition of the distance learning program.

B. Estimated Costs and Benefits to Political Subdivisions.

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. Businesses Directly Affected By the Rulemaking. (Salespersons, brokers, corporations, limited liability companies, partnerships, trusts, managers of real property, real estate schools, real estate teachers.)

The responsibility of a stakeholder to disclose the name of any licensee receiving compensation in a transaction to all parties in a transaction is diminished in this rulemaking. The proposed rulemaking now requires a real estate broker to disclose only the name of each employing broker receiving a commission or compensation in the transaction.

D. Estimated Costs and Benefits to Private and Public Employment.

Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

E. Estimated Costs and Benefits to Consumers and the Public.

Transaction documents will provide notice to consumers that an employing broker is being paid compensation.

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F. *Estimated Costs and Benefits to State Revenues.*

State revenues are not directly affected by the implementation and enforcement of this proposed rulemaking.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: John King, Deputy Commissioner
Address: Arizona Department of Real Estate
2910 N. 44th Street, Suite 100
Phoenix, Arizona 85018
Telephone Number: (602) 468-1414, Ext 135
Fax Number: (602) 468-0562

10. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. Any person may request an oral proceeding on the supplemental proposed rules, or may submit comments, by contacting the person listed in item #9 of the Notice of Supplemental Proposed Rulemaking on or before March 7, 2000. The record will be closed March 9, 2000, after which no comments will be accepted concerning the supplemental proposed rules.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 28. REAL ESTATE DEPARTMENT

ARTICLE 1. GENERAL PROVISIONS

Section

R4-28-103. Licensing Timeframes

ARTICLE 7. COMPENSATION

Section

R4-28-701. Compensation Sharing; Disclosure

ARTICLE 1. GENERAL PROVISIONS

R4-28-103. Licensing Timeframes

- A. No Change.
- B. No Change.
- C. Substantive review. The substantive review timeframe established in Table 1 begins after the application is administratively complete.
 - 1. The Department may schedule an inspection.
 - 2. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review timeframe is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request the Department shall consider the application withdrawn, unless an extension is granted by the Department pursuant to a written request.
 - 3. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period for appealing the denial.

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ARTICLE 7. COMPENSATION

R4-28-701. Compensation Sharing; Disclosure

A real estate broker ~~representing a party in a transaction~~ shall disclose to all ~~the parties in the transaction; principals,~~ in writing before ~~completion of the transaction~~ close of escrow, ~~the identity of any licensee~~ the name of each employing broker receiving a ~~commission or compensation~~ in the transaction.