

## NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety, or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for one 180-day period if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

### NOTICE OF EMERGENCY RULEMAKING

#### TITLE 12. NATURAL RESOURCES

#### CHAPTER 5. STATE LAND DEPARTMENT

#### PREAMBLE

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|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R12-5-413                          | Amend                           |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 37-132(A)(1)  
Implementing statute: A.R.S. § 37-132(B)(2)
- 3. The effective date of the rules:**  
May 23, 2003
- 4. Is this rulemaking a renewal of a previous emergency rulemaking?**  
Yes  
**If yes, the Register citation to previous notices of emergency rulemaking:**  
Notice of Emergency Rulemaking: 8 A.A.R. 5151, December 20, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**

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- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

A.R.S. § 37-132(B)(2) authorizes the State Land Commissioner to use private real estate brokers to assist in any sale or long-term lease of state land. The Department is authorized to pay, within certain parameters, a commission to licensed real estate brokers or their agents for their services associated with the successful selling or long-term commercial leasing of state properties at public auction. The commission is to be paid from fees collected from selling and administrative expenses collected pursuant to A.R.S. § 37-108(A)(10)(a).

Pursuant to rule R12-5-413(B), "...the commission paid shall be the amount collected pursuant to A.R.S. § 37-108(A)(10)(a)." (Emphasis added.) The amendment provides that "... the commission shall be paid from the fees collected under A.R.S. § 37-108(A)(10)(a)." (Emphasis added.)

The Arizona State Land Department finds that rule R12-5-413(B), as written, restricts the Commissioner's ability to provide appropriate commissions to brokers in keeping with economic trends in the real estate business and consistent with the services provided in a transaction. It also limits the Department's ability to return fee revenues to the state's general fund.

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To provide fair and equitable broker fees, the Commissioner needs to be able to assess the amount of work required of a broker relating to a proposed sale or long-term lease and offer a commission appropriate to 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 summary of the economic, small business, and consumer impact:**

In 1993, the Arizona Legislature enacted A.R.S. § 37-132(B)(2) which, (1) authorized the State Land Commissioner to use private real estate brokers to assist in any sale or long-term lease of state land, and (2) authorized the Department to pay a broker's commission (within certain parameters) for their services. The broker's commission fee is authorized to be paid from selling and administrative fees collected pursuant to A.R.S. § 37-108(A)(10).

The rule requires the commission paid to be the amount collected pursuant to A.R.S. § 37-108(A)(10)(a). This inflexibility does not allow the State Land Commissioner to establish a broker's commission commensurate to the amount of work, on the brokers part, anticipated with a specific sales or long-term lease being offered. The broker's role in securing a successful bidder in a sale is different than securing a successful lessee for a long-term lease. In its simplest form, the broker's role in a sale is to notify a potential client of the Department's proposed sale, provide information, and have the client be the successful bidder. In a long-term lease, the broker must be familiar with the lease and its terms that are being offered, secure an interested lessee, negotiate lease terms where possible and have the client be the successful bidder at the lease auction.

The impact of the rule amendment will be primarily on the licensed real estate brokers in the state whose commissions will be tailored to fit the proposed sale or lease. The impact may also be felt by the Department as brokers may not consider the commissions on smaller sales as lucrative enough to warrant their time, and thus, the Department would not be able to capitalize on the services of the brokers to market its properties on smaller sales.

Flexibility in the rule will also allow the commissioner to adjust the amount of commission offered to reflect the economic conditions affecting the state. Based on a four-year trend (FY99-FY02) the Department estimates approximately \$500,000 in fees could be returned to the state's general fund annually with the rule amendment. Currently, the Department receives general fund appropriations to finance its operations including the costs of appraising, selling, and long-term leasing of Trust lands.

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

Not applicable

**10. Incorporations by reference and their location in the rules:**

None

**11. An explanation of the situation justifying the rule's making as an emergency rule:**

The Arizona State Land Department finds that the rule, as written, restricts the Commissioner's ability to provide appropriate commissions to brokers in keeping with economic trends in the real estate business and consistent with the services provided in a transaction. The rule also limits the Department's ability to return fee revenues to the state's general fund.

The amendment will make it clear that not all the fees collected pursuant to A.R.S. § 37-108(A)(10)(a) need to be paid to the broker and will allow a significant portion of those fees to be returned to the general fund. Because of the economic impact of the amendment, adoption as an emergency is justified pursuant to A.R.S. § 41-1026(a)(4) and (5).

**12. The date of the Attorney General's approval of the emergency rule:**

May 23, 2003. Effective pursuant to A.R.S. § 41-1032.

**13. The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 4. SALES

Section

R12-5-413. Real Estate Broker Commissions

ARTICLE 4. SALES

**R12-5-413. Real Estate Broker Commissions**

- A. No change
  - 1. No change

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- 2. No change
- 3. No change
- 4. No change
- 5. No change
- B.** If a commission is offered for the sale or long-term commercial lease of state land at public auction, the commission shall be paid from the amount fees collected ~~pursuant to~~ under A.R.S. § 37-108(A)(10)(a).
- C.** No change
- D.** No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- E.** No change
  - 1. No change
  - 2. No change
- F.** No change
- G.** No change
- H.** No change
  - 1. No change
  - 2. No change