

Title 17. Professions, Occupations, and Businesses

Chapter XLI. Arkansas State Board of Architects, Landscape Architects, and Interior Designers, Department of Labor and Licensing

Subchapter A. Generally

Part 231. Procedure

Subpart 1. Rules under the Arkansas Architectural Act, Landscape Architectural Practice Act, Arkansas Interior Designers Title Registration Act, and Notice — Hearings

17 CAR § 23-101. Rules under the practice act.

This exposition of the Rules of Procedure, formulated under the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., does not affect a repeal of the provisions of the act or of its amendments and related laws, except insofar as these Rules of Procedure were formulated under provisions of law that specifically contravene provisions of the act, its amendments, and related laws.

Authority. Arkansas Code § 17-15-203.

17 CAR § 23-102. Notice — Hearing.

Any such rule shall be made or amended only after a hearing upon notice, as set forth in this part.

Authority. Arkansas Code § 17-15-203.

Subpart 2. Prior Rules

17 CAR § 231-201. Prior rules – Valid.

Rules of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers formulated previously are declared to be still in force until amended and certified to the Arkansas Register.

Authority. Arkansas Code § 17-15-203.

Subpart 3. Rule Making

17 CAR § 231-301. Petition for rule making.

(a) In any case of rule-making, every person has a right to seek action from the Arkansas State Board of Architects, Landscape Architects, and Interior Designers in making a rule.

(b) Every person also has the right to seek to cause correction in an incorrect rule.

Authority. Arkansas Code § 17-15-203.

Subpart 4. Order

17 CAR § 231-401. Order – Effective only in writing.

An order of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall be effective only when in writing.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-402. Effective date.

Each order shall contain an effective date and shall concisely state the following:

- (1) Its intent and purpose;
- (2) The grounds on which it is based; and
- (3) The pertinent provision of law.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-403. Order may be effectuated.

(a) An order may be given by service upon or delivery to the person ordered, by mail, with postage prepaid and addressed to the person at his or her principal place of business or his or her home of last address on record with the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(b) An order also may be served by any:

- (1) Officer authorized to serve legal process;
- (2) Member of the board; or
- (3) Employee of the board.

(c) An attempt to serve a notice to the last address of record obtained by the board office shall constitute official notice.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-404. Order formulated upon adjudication.

An order shall be formulated upon each adjudication made by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or its hearing officer.

Authority. Arkansas Code § 17-15-203.

Subpart 5. Declaratory Orders — Rules

17 CAR § 231-501. Declaratory order – Petition for.

Any person who alleges that a rule or its possible application may injure or threaten to injure one's self, one's business, or one's property may file a petition for a declaratory order as to the applicability of any rule to be enforced by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-502. Prompt disposition.

Such petition for a declaratory order shall be considered and a prompt disposition shall be made.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-503. Status.

Declaratory orders shall have the same status as agency orders formulated upon adjudication.

Authority. Arkansas Code § 17-15-203.

Subpart 6. Adjudication

17 CAR § 231-601. Reasonable notice.

All parties shall be afforded an opportunity for hearing after reasonable notice.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-602. Evidence may be presented.

The opportunity shall be afforded all people interested in the action to respond and to present evidence and argument on all issues involved.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-603. Stipulation, settlement, consent, or default not prohibited.

Nothing in this part shall prohibit informal disposition by:

- (1) Stipulation;
- (2) Settlement;
- (3) Consent order; or

(4) Default.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-604. Record.

The record shall include the following:

- (1) All pleadings, motions, and intermediate rulings;
- (2) All evidence received or considered, including, on the request of any party, a transcript of all proceedings or any part thereof;
- (3) A statement of matters officially noticed;
- (4) Offers of proof, objections, and rulings;
- (5) Proposed findings and exceptions; and
- (6) All staff memoranda or data submitted to the hearing officer in connection with any staff consideration of the matter.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-605. Findings of fact.

Findings of fact shall be based exclusively on the evidence received and on matters officially noticed.

Authority. Arkansas Code § 17-15-203.

Subpart 7. Adjudication — Decisions

17 CAR § 231-701. Final decisions.

(a) In every case of adjudication, there shall be a final decision, or order, that shall be in writing (or stated in the record).

(b)(1) The final decision shall include findings of fact and conclusions of law, each separately stated.

(2) The findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying evidence supporting the findings.

(c) If any party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-702. Service of copy — Decision.

Parties shall be served a copy of any decision or orders either personally or by mail.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-703. Exemption.

Where a formal hearing before a hearing officer has been held, at which the parties were given proper notice and at which the opportunity was offered to them to be present in person and by counsel to present testimony, briefs, and argument, a proposal for decision will not be required.

Authority. Arkansas Code § 17-15-203.

Subpart 8. Hearing Officer

17 CAR § 231-801. Appointment and duties.

(a) Where convenient and appropriate, a hearing officer may be appointed to take testimony and prepare the record for the Arkansas State Board of Architects, Landscape Architects, and Interior Designers' consideration.

(b) The hearing officer may conduct hearings at any place within the State of Arkansas.

(c) In the conduct of such hearings, the hearing officer shall preside and have the power and duties of a presiding official as set forth in 17 CAR § 231-805.

(d) The decision on the record made by the hearing officer shall be made by a majority of the members of the board.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-802. Hearing.

In every case of adjudication, and in cases of rule-making, where rules are to be made after hearing, there shall be a hearing.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-803. Right of counsel.

Any person compelled to appear before the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or a hearing officer shall have the right to counsel.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-804. Impartiality.

(a) All members of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers present shall conduct themselves in an impartial manner, and the presiding official may withdraw if he or she deems himself or herself disqualified.

(b) Any party may file an affidavit of personal bias or disqualification, which shall be ruled upon by the board and granted if it is:

- (1) Timely;
- (2) Sufficient; and
- (3) Filed in good faith.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-805. Power and duties of presiding official.

Power and duties:

- (1) Administer oaths and affirmations;
- (2) Maintain order;
- (3) Rule on all questions arising during the course of the hearing;
- (4) Hold conferences for the settlement or simplification of the issues;
- (5) Make or recommend decisions; and
- (6) Regulate and guide the general course of proceedings.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-806. Burden of proof.

The proponent of a rule or order shall have the burden of proof.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-807. Evidence — Excluded and admitted.

- (a) Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.
- (b) Any other evidence, oral or documentary, not privileged, may be received if it is of a type commonly relied upon by reasonable, prudent individuals in the conduct of their affairs.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-808. Objections.

Objections to evidence may be made and shall be noted in the record.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-809. Evidence may be written.

When a hearing can be so expedited (and the interests of the parties will not be prejudiced), any part of the evidence may be received in written form.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-810. Cross examination.

Parties shall have the right to conduct cross-examination as may be required for a full, true disclosure of the facts.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-811. Official notice.

(a) Official notice may be taken of judicially recognizable facts and of generally recognized technical or scientific facts, particularly within the specialized knowledge of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(b) Parties shall be notified of material so noticed (including any staff memoranda or data).

(c) Parties shall be afforded a reasonable opportunity to show the contrary.

Authority. Arkansas Code § 17-15-203.

Subpart 9. Procedure on Denial, Suspension, or Revocation

17 CAR § 231-901. Grounds for discipline.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall have sole authority over architects, landscape architects, and registered interior designers to deny or suspend any license to practice issued by the board or

applied for in accordance with the provisions of the act, or to otherwise discipline a licensee upon the following determination:

(1) That the holder of the registration or certificate of license is practicing in violation of this part or of the proper rules of the examining body governing this part;

(2) That the license or certificate has been obtained by fraud or misrepresentation, or the person named therein has obtained it by fraud or misrepresentation;

(3) That any money, except the regular fees provided for, has been paid for the license or certificate;

(4) That the holder of the license or certificate is falsely impersonating a practitioner or former practitioner of a like or different name or is practicing under an assumed or fictitious name;

(5) That the holder of the license or certificate has been found guilty of a felony;

(6) That the holder of the license or certificate has aided or abetted, in the practice of architecture or landscape architecture, any person not duly authorized to practice architecture or landscape architecture under the provisions of this part;

(7) That the holder of a license or certificate has aided or abetted, in the use of the title "registered interior designer", any person not duly authorized to utilize the title "registered interior designer" under the provisions of this part;

(8) That the holder of the license or certificate has been guilty of fraud or deceit or of gross negligence or misconduct in the practice of architecture;

(9) That the holder of the certificate has been guilty of gross incompetence or recklessness in the designing or construction of buildings;

(10) That the holder of the license or certificate affixed, or permitted to be affixed, his or her seal or name to any plans, specifications, drawings, or related documents that were not prepared by him or her or under his or her responsible supervisory control; or

(11) That the holder of the license or certificate has been judged mentally incapable by a court of competent jurisdiction.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-902. Proceedings.

Proceedings shall be as follows:

(1) Opportunity for licensee or applicant to have a hearing.

(A) Every licensee or applicant for a license shall be afforded notice and an opportunity to be heard before the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(B) The board shall have authority to take any action, the effect of which would be to:

- (i) Deny permission to take an examination for licensing for which application has been duly made;
- (ii) Deny a license after examination for any cause other than failure to pass an examination;
- (iii) Withhold the renewal of a license for any cause;
- (iv) Suspend a license; and/or
- (v) Revoke a license; and

(2) Notice of action or contemplated action by the board — Requests for hearing — Notice of hearing.

(A) When the board contemplates taking any action of a type specified in subdivisions (1)(B)(i) and (ii) of this section, it shall give written notice to the applicant, including a statement:

- (i) That the applicant has failed to satisfy the board with his or her qualifications to be examined or to be licensed, as the case may be;
- (ii) Indicating in what respects the applicant has failed to satisfy the board; and
- (iii)(a) That the applicant may secure a hearing before the board by depositing in the mail within twenty (20) days after service of said notice, a registered letter addressed to the board containing a request for a hearing.

(b) In any proceedings of the board involving the denial of a duly made application to take an examination or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

(B) When the board contemplates taking any action of a type specified in subdivisions (1)(B)(iii) – (v) of this section, it shall give written notice to the licensee that contains a statement indicating:

(i) The general nature of the evidence and detailed allegations of the violations with which the licensee is charged; and

(ii) That a hearing will be held on a certain date, no sooner than twenty (20) days after the mailing of the notice and that, at that hearing, the board will receive evidence.

(C)(i) When the board shall summarily suspend a license pending a hearing as authorized in subdivision (2) of this section, it shall give written notice of the general nature of the evidence and detailed allegations of the violations with which the licensee is charged.

(ii) The notice will contain a statement:

(a) That the board has sufficient evidence that, if not rebutted or explained, will justify revocation of the license by the board;

(b) That indicates the general nature of the evidence against the licensee;

(c) That, based on the evidence indicated, the board has determined that the continuation of practice of the occupation or profession of the licensee will cause an immediate hazard to the public and has, therefore, suspended the license of the licensee, effective as of the date that such notice is served; and

(d) That the board will then set an immediate hearing for a full evidentiary presentation by the licensee and the board.

(D) In any hearing before the board involving the suspension or revocation of a license, the burden shall be on the board to present sufficient evidence to justify the action taken or proposed by the board.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-903. Method of serving notice of hearing.

(a) Any notice required by 17 CAR § 231-902(2) may be served either personally or by an officer authorized by law to serve process, or by registered mail or certified mail, with return receipt requested, directed to the licensee or applicant at his or her last known address, as shown by the records of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers.

(b) If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed.

(c) Where notice is served by registered mail, it shall be deemed to have been served on the date borne by the return receipt, showing delivery of the notice to the addressee or refusal of the addressee to accept the notice.

(d) An attempt to serve notice at the last address of record shall constitute official notice.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-904. Venue of hearing.

(a) Arkansas State Board of Architects, Landscape Architects, and Interior Designers hearings held under the provisions of this part shall be conducted at the board office or elsewhere in Pulaski County.

(b) The hearings may be held anywhere within Arkansas if the person whose license is involved and the board agree that the hearing should be held at some place outside Pulaski County.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-905. Hearings public — Use of hearing office.

(a) All hearings under this subpart shall be open to the public.

(b) At all such hearings, at least a quorum of the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall be present to hear and determine the matter.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-906. Rights of person entitled to hearing.

A person entitled to be heard pursuant to this section shall have the right to:

- (1) Be represented by counsel;
- (2) Present all relevant evidence by means of witnesses and books, papers, and documents;
- (3) Examine all opposing witnesses on any matter relevant to the issues;
- (4) Have subpoenas and subpoenas duces tecum issued to compel the attendance of witnesses and the production of relevant books, papers, and documents upon making written request thereof to the Arkansas State Board of Architects, Landscape Architects, and Interior Designers; and
- (5) Have a transcript of the hearing made at his or her own expense.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-907. Powers of the board in connection with hearing.

In connection with any hearing held pursuant to the provisions of this section, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers or its hearing officer shall have the power to:

- (1) Have counsel to develop the case;
- (2) Administer oaths to develop the case;
- (3) Take testimony;
- (4) Examine witnesses;
- (5) Have a transcript of the hearing made at the expense of the board; and

(6) Direct a continuance of any case.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-908. Rules of evidence.

(a) In proceedings held pursuant to this part, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs.

(b) The board may, at their discretion, exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-909. Fees – Witnesses.

Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-910. Manner and time of rendering a decision.

(a) Within a reasonable time after the decision is rendered, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall serve to the person whose license is involved a written copy of the decision, either personally or by registered mail.

(b) If the decision is sent by registered mail, it shall be deemed to have been served on the date borne on the return receipt.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-911. Service of written decision.

(a) Within a reasonable time after the decision is rendered, the Arkansas State Board of Architects, Landscape Architects, and Interior Designers shall serve to the person whose license is involved a written copy of the decision, either personally or by registered mail.

(b) If the decision is sent by registered mail, it shall be deemed to have been served on the date borne on the return receipt.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-912. Contents of decision.

Contents include the following:

- (1) Findings of fact made by the Arkansas State Board of Architects, Landscape Architects, and Interior Designers;
- (2) Conclusions of law reached by the board;
- (3) The order of the board based upon these findings of fact and conclusions of law; and
- (4) A statement informing the person whose license is involved of his or her right to request a judicial review and the time within which such a request must be made.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-913. Judicial review.

Judicial review of proceedings under this part shall be governed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., or other applicable law.

Authority. Arkansas Code § 17-15-203.

Subpart 10. Judicial Review

17 CAR § 231-1001. Service.

Service shall be had by serving a copy of the petition upon the Arkansas State Board of Architects, Landscape Architects, and Interior Designers and all other parties of record either by personal service or by mail.

Authority. Arkansas Code § 17-15-203.

Subpart 11. Enforcement

17 CAR § 231-1101. Civil action.

The Arkansas State Board of Architects, Landscape Architects, and Interior Designers may institute a civil suit or other legal proceedings that may be required for enforcement of any provisions of Arkansas Code § 17-15-101, et seq., § 17-35-101 et seq., or § 17-36-101 et seq., as amended, and related acts.

Authority. Arkansas Code § 17-15-203.

17 CAR § 231-1102. Criminal action.

If the Arkansas State Board of Architects, Landscape Architects, and Interior Designers has reason to believe that any person has violated any provisions of the act, as amended, or related acts for which criminal prosecution would be in order, it shall so inform the prosecuting attorney in whose district any such purported violation may have occurred.

Authority. Arkansas Code § 17-15-203.