

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #8

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Effective Date

JUL 18 1991

Legislative Rule Making  
Review Committee

Aug 15, 1991

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY West Virginia Real Estate Appraiser Licensing TITLE NUMBER: 190  
and Certification Board

DATE EMERGENCY RULE WAS ORIGINALLY FILED: May 23, 1991

IS THIS THE FIRST EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

Yes

IS THIS THE SECOND EMERGENCY AMENDMENT TO THE ORIGINALLY FILED EMERGENCY RULE:

DATE OF FIRST EMERGENCY AMENDMENT: \_\_\_\_\_

SERIES NUMBER OF RULE: Series 1 TITLE OF RULE Rules and regulations  
of the Real Estate Appraiser Licensing and Certification Board

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS: According to statute, the original wording of Sec. 190-1-4 was incorrect. The Board is amending this section so that it reads correct with the duties imposed by statute. The Board must issue a pocket card to both licensed and certified appraisers and is requiring both of these individuals to place their title and number on any documents that they sign. There was also a change to reflect a change in wording by adding the third paragraph to Sec. 4.1 and changing the word may to MUST in the third paragraph of Sec. 4.2. These amendments will make it easier for the board to monitor the actions of its licensees and to protect the interests of the public by providing a system of better accountability.

Use Additional Sheets If Necessary.

/   
Signature / Council Board

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES FILED

Rule Title: 190

1991 MAY 23 AM 10:57

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

Agency: WV Real Estate Appraiser Licensing and Certification Board Address Suite 212, 814 Virginia St. E. Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	157,000.	117,000.00
Personal Services				43,000.	48,500.00
Current Expense				63,000.	48,000.00
Repairs and Alterations				0.	0.0
Equipment				2,000.	2,000.00
Other				48,500.0	18,500.00

2. Explanation of above estimates:

Next year will be the first full year of operation. All funds are generated by fees that are received from applications from the board for licensure or certification. The expenses are estimates of the cost incurred in the operation of the board through meetings, equipment purchases such as a computer, expense reimbursements, printing fees, and attorneys fees.

3. Objectives of these rules:

The objective is to allow the board to fulfill its statutorily created obligation of licensing and certifying real estate appraisers pursuant to W. Va. Code Section 34-14-1 et seq. as amended (1991). These duties include the issuance of licenses and certifications, charging of fees, investigations and hearings.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

The citizens of this State who will require real estate appraisal services will be required to engage only licensed real estate appraisers for all real estate appraising. Those licensed to perform appraisal work will be required to submit an application fee, annual fees for renewal and examination fees to the board. Financial institutions, as of January 1, 1992, will no longer be able to approve real estate mortgages without the utilization of licensed real estate appraisers.

C. Economic Impact on Citizens/Public at Large.

The annual fees which are to be paid by licensed or certified real estate appraisers will in all likelihood be passed on the public in the price of appraisals.

Date: 5/23/91

Signature of Agency Head or Authorized Representative

Albert C. Jones, III  
Assistant Attorney General  
Council for Bond.

DATE: July 17, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Real Estate Appraiser Licensing and Certification Board

LEGISLATIVE RULE TITLE: Legislative filed as emergency

1. Authorizing statute(s) citation W. Va. Code 37-16-1 as amended (1991).

2. a. Date filed in State Register with Notice of Hearing:

May 23, 1991

b. What other notice, including advertising, did you give of the hearing?

letters sent :W. Va. Ass. Realtors; W. Va. Banker's Assoc.;

President W.Va. Chapter Appraisal Institute; Legislative Chairman

W.Va Appraisal Institute; President W. Va. Chapter Independent Fee Appraisers

c. Date of hearing(s): July 10, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received                     

e. Date you filed in State Register ~~the agency approved~~ proposed Legislative Rule following ~~public hearing~~:  
(be exact)

July 17, 1991 a.m.

f. Name and phone number(s) of agency person(s) to contact for additional information:

Si Galprin Executive Secretary for Board

814 Virginia St. East

Charleston, West Virginia 25301

FILED

DATE: May 23, 1991

1991 MAY 23 AM 10:57

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF THE ATTORNEY GENERAL

FROM: West Virginia Real Estate Appraiser Licensing and Certification Board

EMERGENCY RULE TITLE: 190

1. Date of filing: May 23, 1991

2. Statutory authority for promulgating the emergency rule: W. Va. Code Section 37-14-1 et seq. as amended (1991)

3. Date of filing of proposed legislative rule: May 23, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
New language

5. Has the same or similar emergency rule previously been filed and expired?  
No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The Board is a new board created pursuant to legislative enactments and therefore, needs to adopt the attached emergency rules, in order to establish policies, guidelines and procedures for its functioning in licensing or certifying real estate appraisers.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Title XI Federal Institutions Reform, Recovery and Inforcement Act of 1989,  
W. Va. Code Section 37-14-3 as amended (1991) - July 1, 1991

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Pursuant to the board's authority derived from W. Va. Code Section 37-14-3  
All real estate appraisal activity performed in this state must be done  
by either licensed or certified appraisers as issued by the board. If  
the board does not file emergency rules with the Secretary of State's Office,  
then the board has no rules or regulations governing their issuance of  
licenses" or certifications. The legislative rules also establish standards  
for the practice of professional real estate appraisers.

*Albert C. Quinn Jr.*  
*Assistant Attorney General*  
*Counsel for Board*

TITLE 190  
LEGISLATIVE RULES  
WEST VIRGINIA REAL ESTATE APPRAISER  
LICENSING AND CERTIFICATION BOARD

SERIES 1

§ 190-1-1. General.

1.1. Scope - These legislative rules establish definitions, meeting dates and times, and various other provisions dealing with the licensing and certification of real estate appraisers by the West Virginia Real Estate Appraiser Licensing and Certification Board; along with standards of conduct and penalties for real estate appraisers.

1.2. Authority. - W. Va. Code § 37-14-6 as amended (1991).

1.3. Filing date. - \_\_\_\_\_.

1.4. Effective date. - \_\_\_\_\_.

§ 190-1-2. Definitions.

2.1. The following words and terms, when used in these regulations, unless a different meaning is provided or is plainly required by the context, shall have the following meanings: Provided, those additional definitions contained in West Virginia Code § 37-14-2 as amended (1991) are hereby incorporated by reference into these regulations by the Board.

2.1.1. "Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the West Virginia Board of Directors or Board of Trustees, or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

2.1.2. "Adult distributive or marketing education programs" means those programs offered at schools approved by the West Virginia Board of Directors or Board of Trustees, or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

2.1.3. "Appraiser Qualification Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

2.1.4. "Classroom hour" means 50 minutes out of each 60 minute segment of classroom instruction. A "classroom hour" shall

not be credited to any time spent in the performance of a home study program or correspondence course.

2.1.5. "Experience" as used in these rules includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate counseling, highest and best use analysis, feasibility analysis/study, and teaching of appraisal courses.

2.1.6. "Independent appraisal service" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

2.1.7. "Licensee" means any individual holding a license issued by the Real Estate Appraiser Board to act as a licensed residential real estate appraiser.

2.1.8. "Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare for the citizens of its domain.

2.1.9. "Proprietary School" means a privately owned school, under the authority of a local, state or federal government agency, board or commission, offering appraisal or appraisal related courses.

2.1.10. "Real estate appraisal or real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States, and where its educational courses or seminars meet standards set forth by the organization.

2.1.11. "Registrant" means any nonresident applicant who has registered with the Board and who desires to perform a temporary contract of real estate appraisal within this state.

2.1.12. "Specialized appraisal service" means an engagement to provide appraisal service which does not fall within the definition of "independent appraisal service". The term may include valuation, appraisals, analysis assignments and review assignments. Regardless of the intention of the client or employer, if the appraiser is, in fact, perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion or conclusion.

2.1.13. "Uniform Standards of Professional Appraiser Practice" means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

2.1.14. "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

§ 190-1-3. Real Estate Appraiser Licensing and Certification Board created, meeting dates, times.

3.1. West Virginia Code § 37-14-5 as amended (1991), established the Real Estate Appraiser Licensing and Certification Board (herein referred to as Board). The Board shall meet every third Wednesday of the second month of each calendar quarter at a time to be determined by the Board.

§ 190-1-4. Licenses.

4.1. The Board shall issue to each licensed real estate appraiser, a document stating that such license has been issued pursuant to West Virginia Law and specifying the license's expiration date. The Board shall also issue a pocket card with the name and license number of the respective applicant, in a size and form that the Board adopts. All licensed real estate appraisers governed by these rules shall place their respective title and license number on any and all statements of qualifications, contracts or other instruments, including advertising media. Said pocket card remains the property of the Board and must be surrendered at any time upon request.

4.2. The Board shall also issue a certificate to all individuals classified as a certified real estate appraiser evidencing such certification and the expiration date. A certificate issued under this section shall bear a certificate number assigned to the individual by the Board, to be placed on any certified appraisal report performed by the appraiser, immediately below his / her title. Said certificate number ~~may~~ must also be placed on all statements of qualification, contracts or other instruments, including advertising medium. The Board shall also issue a pocket card with the name and certification number included, to each certified real estate appraiser.

4.3. The Board shall maintain for public inspection during regular Board office hours, a complete and properly indexed record of all applications for licensure or certification received, and licenses or certifications issued, renewed, revoked, cancelled or suspended. A copy of such record shall be made available to the public upon application and the payment of a reasonable fee determined by the Board.

§ 190-1-5. Standards of professional appraisal practice.

5.1. Each real estate appraiser licensed or certified under these rules shall comply with the generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of appraisal practice are currently evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation. After the holding of a public hearing, the Board may make modifications of or additions to these uniform standards.

§ 190-1-6. Collection of appraisal fees.

6.1. No person engaged in the business of real estate appraising shall bring any action in any court in this state to collect compensation for the performance of real estate appraisal services for which service a license or certification is required unless said person can prove that he/she was the holder of a valid real estate appraiser license or certification at the time of the performance of the service.

§ 190-1-7. Penalty.

7.1. An individual acting as a licensed real estate appraiser without first obtaining the appropriate license shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00). Said individual shall also be ineligible to obtain a valid license for a period of one year from the date of the conviction: Provided that, the Board may grant a license to such person within such one-year period upon application and payment of fees; upon a finding of extenuating circumstances; and after an administrative hearing thereon.

7.2. Any person acting as a certified real estate appraiser without first obtaining a valid certification is guilty of a misdemeanor and, upon conviction, shall be fined not more than two thousand five hundred dollars (\$2500.00), imprisoned in the county jail for not more than one year, or both.

7.3. If any individual receives money or anything else of value as a fee, commission, compensation or profit while in violation of these rules, said individual shall, in the addition to those penalties mentioned above, be subject to a penalty not less than the amount of the remuneration received nor more than three times such sum, as determined by the court, which penalty may be enforced in a court of competent jurisdiction by any person aggrieved by the violation.

§ 190-1-8. Roster.

8.1. The Board shall annually publish a roster of all persons licensed and certified pursuant to these rules. A copy of said register shall be made available to the public, upon application to the Board, and the payment of a reasonably set fee to be determined by the Board.

OFFICE OF THE ATTORNEY GENERAL FILED  
MARIO J. PALUMBO

1991 MAY 23 AM 10:57

MEMORANDUM

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TO: W. Va. Secretary of State

DATE: 05/23/91

FROM:

West Virginia Real Estate Appraiser Licensing and Certification Board.

RE:

Title 190 Legislative Rules, Series 1 through 4 Summary of Proposed Rules.

The legislative rules that are proposed by the Real Estate Appraiser Licensing and Certification Board are rules which establish policies, standards and provisions that will enable the Board to accept applications from individuals wishing to become either licensed or certified as real estate appraisers in the State of West Virginia. In order for real estate appraisers to practice their profession after December 31, 1991; the date in which the Board has determined that the Real Estate Appraiser Licensing and Certification Act will take effect; the Board must follow the provisions that they have developed in these rules for the licensing and certifying of those applicants.

These legislative rules also establish definitions and procedures for the Board to operate in its day to day activities as a professional licensing board. These rules establish the procedures, policies and grounds by which real estate appraiser licenses and certifications may be renewed; procedures for the Board to follow when it is in receipt of complaints; when it needs to conduct hearings or investigations; or when the Board needs to take some disciplinary action regarding the activity of a real estate appraiser under its jurisdiction who has violated established ethical and/or professional standards.

 / *Quinn*  
Agency Head or Authorized Representative

## SIGN-IN SHEET

Public Hearing

Appendix 'A'

WEST VIRGINIA  
REAL ESTATE APPRAISER LICENSING  
AND CERTIFICATION BOARDDATE July 10, 1991

Name/ Representing	Address	Do You Wish to Speak (✓)
Mary Swingle V.A. Bd Accountant	P.O. Box 2029 Charleston WV	✓
Charles R. Sigma VVA Bd Accountant	P.O. Box 585 Poet, WV 25159	✓
Norm Daniels President WVA Society of CPAs	PO 313 Charleston W.Va. 25321	No
Phil Melick WV Soc. of CPAs	Jackson + Kelly P.O. Box 553 Charleston WV 25322	✓
W. J. ... CPA	PO Box 3763 [Box 47] ...	No
William ... WVA		NO
SKIAN FOX One Valley Bank		NO
Linda Petrella OVB		
Linda ... WVA	W.D. ... [Charleston WV] 25241	No

July 2, 1991

Si Galperin, Executive Director  
West Virginia Real Estate Appraisal  
and Certification Board  
Suite 212  
814 Virginia Street East  
Charleston, WV 25361

RE: Comments to Proposed Rules


Dear Mr. Galperin:

We are concerned that the requirements to become a Certified General Appraiser are too stringent. The requirement of at least 1000 hours of non-residential property may prevent or deter appraisers from attempting to become certified in the future. They are not allowed to do part of these hours after licensing as do the licensed appraisers.

While we fully agree with most of the requirements, we do not wish to limit the number of applicants who might wish to become certified in the future.

Please convey our comments to the Board at their July 10, 1991 meeting.

Very Truly Yours,

  
David B. Brownfield  
Vice President

DBB/lrw



STATE OF WEST VIRGINIA  
WEST VIRGINIA BOARD OF ACCOUNTANCY  
CHARLESTON, WEST VIRGINIA 25301  
1-304/348-3557

July 5, 1991

Mr. Si Galperin  
West Virginia Real Estate Appraiser  
Licensing and Certification Board  
Suite 212  
814 Virginia Street, East  
Charleston, West Virginia 25301

Dear Mr. Galperin:

Enclosed is a copy of a resolution which the West Virginia State Board of Accountancy adopted at its June 25, 1991, meeting.

As the new President of the West Virginia State Board of Accountancy, I will be attending the hearing to be held by the West Virginia Real Estate Appraiser Licensing and Certification Board next Wednesday, July 10. Another member of our Board, Mr. Charles Sigman, will also be attending this hearing on behalf of the West Virginia State Board of Accountancy. We will be attending this meeting as fellow regulators in the State of West Virginia to express our concern over the possible duplicate regulation of public accountants and certified public accountants by our two regulatory boards. Our Board believes that certain business valuation services and other services performed by certified public accountants and public accountants as part of their public accounting services might be construed to be also under the regulatory authority of your Board. Our suggestion to your proposed rules would specifically state that West Virginia's public accountants would not be required to be certified or registered by your Board.

Mr. Sigman and I can answer any questions you might have on this resolution at next week's hearing. Please feel free to call me before that time if you have any further questions. My business telephone number is 346-0441.

Sincerely,

A handwritten signature in cursive script that reads "Gary L. Swingle".

Gary L. Swingle, President

GLS/mlw

cc: West Virginia Board of Accountancy  
Charles Sigman

201 L&S Building 812 Quarrier Street



STATE OF WEST VIRGINIA  
WEST VIRGINIA BOARD OF ACCOUNTANCY  
CHARLESTON, WEST VIRGINIA 25301  
1-304/348-3557

R E S O L U T I O N

At a regular meeting of the West Virginia State Board of Accountancy held pursuant to proper notice and at which a quorum of said Board was present, the following motion was made by Cleve Meador, duly seconded and unanimously adopted:

WHEREAS, The West Virginia Real Estate Appraiser Licensing and Certification Board has proposed certain legislative rules (Title 190, Series 2) regarding the scope of its regulatory authority over the real estate appraisal profession; and

WHEREAS, said rules, as proposed, may arguably be construed to reach certain activities within the scope of the practice of public accountancy as regulated by this Board; and

WHEREAS, W. Va. Code § 37-14-3(a) provides that nothing in the Real Estate Appraisal Licensing and Certification Act "shall be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which he or she is licensed"; and

WHEREAS, it is in the mutual interest of the public accounting and real estate appraisal professions, as well as those members of the public that they serve, to avoid unnecessary duplicative regulation of the practice of public accounting by both this Board and the West Virginia Real Estate Appraiser Licensing and Certification Board;

NOW, THEREFORE, be it

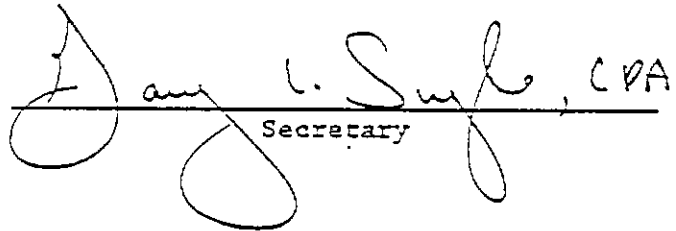
RESOLVED, that the Chairman of this Board or his designee be authorized and directed to propose on behalf of this Board by written and/or oral comment to the West Virginia Real Estate Appraiser Licensing and Certification Board the following addition to § 190-2-2 of the proposed rules:



STATE OF WEST VIRGINIA  
WEST VIRGINIA BOARD OF ACCOUNTANCY  
CHARLESTON, WEST VIRGINIA 25301  
1-304/348-3557

2.3.6 A person engaged in the practice of public accountancy as defined in W. Va. Code § 30-9-2, including the performance of a business valuation; Provided, that this exception shall not apply to federally related transactions as defined in the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", 12 U.S.C. § 3331, et seq.

I hereby certify that the foregoing resolution was adopted by the West Virginia State Board of Accountancy this 25th day of June, 1991.

  
Secretary

[SEAL]

## JACKSON & KELLY

Mr. Larry Puccio, Chairman  
June 28, 1991  
Page 2

the case of a person holding himself out as a certificate holder, the performance of or offering to perform any service involving the use of accounting or auditing skills, including, but not limited to, management advisory or consulting services, the preparation of tax returns, the rendering of tax services, the keeping of books of account and related accounting records and the preparation of financial statements without the expression of an assurance . . .

W. Va. Code § 30-9-2 (emphasis added).

This broad definition of public accounting is appropriate. The profession today requires of its practitioners competence not only in the preparation and analysis of financial statements, but also in a variety of "management advisory or consulting services" (to use the words of the statute) in which Society members routinely engage under the close scrutiny of the State Board of Accountancy. Related statutory provisions and the rules and regulations promulgated by the State Board of Accountancy impose on certified public accountants educational (including continuing education) and other requirements. In short, State regulation of the public accounting profession is active, stringent, and comprehensive, as it should be.

The Legislature was sensitive to this established regulation of public accounting when it enacted a year later the Real Estate Appraisal Licensing and Certification Act ("Act"), W. Va. Code § 37-14-1, et seq. Section 37-14-3(a) of the Act provides in part:

Nothing in this article, however, shall be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which he or she is licensed.

While the Legislature in § 37-14-4 provided a number of express exceptions to licensure and certification requirements, it did not enumerate in that provision the "any other laws" referred to in § 37-14-3(a). Rather, the Board was provided extensive rule making authority in § 37-14-6. It is these Board rules -- filed with the Secretary of State on May 23, 1991 -- to which the Society proposes three specific modifications.

# JACKSON & KELLY

Mr. Larry Puccio, Chairman  
June 28, 1991  
Page 3

## Business Valuation

Society members are occasionally called upon in the practice of their profession to evaluate the worth of various businesses, the assets of which may include real property. In order to clarify that these business valuations do not fall within the provisions of the Act, the Society suggests that § 190-2-2 of the proposed rules be amended as follows:

2.3.6. A person who performs any assessment as to the value of a business, commonly referred to as a "business valuation."

The proposed subsection would simply clarify that business valuation is not part of the regulated real estate appraisal industry.

## Express Exception for Public Accounting

The Society also asks that the Board amplify the statutory exception in § 37-14-3(a) of the Act by adding to § 190-2-2 of the rules a specific subsection regarding the public accounting profession:

2.3.7. A person engaged in the practice of public accountancy as defined in W. Va. Code § 30-9-2; Provided, that this exception shall not apply to federally related transactions as defined in the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989," 12 U.S.C. § 3331, et seq.

The proviso is necessary to ensure that West Virginia law continues to satisfy the 1989 federal legislation that addressed perceived abuses in the real estate appraisal industry. It appears that Board licensure or certification is absolutely required in certain instances specifically addressed by Congress, and we note that a similar proviso has already been included in § 190-2-2.3.5 of the proposed rules.

Other states have already confronted duplicative regulation of public accounting by expressly excepting the profession from laws like the Act. We attach for the Board's consideration the pertinent provision from the Oklahoma Certified Real Estate Appraisers Act. The changes proposed by the Society are consistent with the Oklahoma approach and will

Citation	Rank(R)	Page(P)	Database	Mode
OK ST T. 59 s 858-702	R 1 OF 3	P 1 OF 2	OK-ST	T
59 Okl.St. Ann. s 858-702				

OKLAHOMA STATUTES ANNOTATED  
COPR. (c) WEST 1991 No Claim to Orig. Govt. Works  
TITLE 59. PROFESSIONS AND OCCUPATIONS  
CHAPTER 20.--OKLAHOMA REAL ESTATE LICENSE CODE  
ARTICLE VII. CERTIFIED REAL ESTATE APPRAISERS ACT

s 858-702. Application of Act

A. This act [FN1] shall not apply to any appraisal or appraiser involving any transaction or proceeding which does not involve FEDERALLY RELATED TRANSACTIONS covered by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. [FN2]

B. Certified public accountants, licensed in the States or other U.S. jurisdictions, who perform appraisals of real estate incidental to the performance of professional services they provide to clients are excluded from the licensing and certification provisions of the Oklahoma Certified Real Estate Appraisers Act [FN3] unless the appraisal is related to a federal transaction covered by the Financial Institutions, Reform, Recovery and Enforcement Act of 1986.

MEMORANDUM

TO: Secretary of State

FROM: Real Estate Appraiser Licensing and Certification Board

DATE: July 16, 1991

RE: Public Hearing

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The Board conducted a public hearing concerning its proposed rules that have been filed as emergency rules on May 25, 1991. This public hearing was preceded by various letters that were sent to various heads of societies and organizations that might be concerned with the passage of these rules and regulations. The only attendance and commentary that took place at the hearing on July 10, 1991, was from those individuals listed on the attendance sheet who represented the field of public accountancy and who addressed the relationship between the Board of Public Accountancy and this Board.

The comments that were received were identical to those comments that were previously included in two letters from the West Virginia Society of Public Accountants and the West Virginia Board of Accountancy. These letters have been attached for the complete content of their respective arguments. The thrust of the conversation at the hearing revolved around whether or not the Real Estate Appraiser Licensing and Certification Board could exert jurisdiction over public accountants who perform "business evaluations". The Board asked questions of those present and determined from their answers and from advice of counsel that it would be best if the rules in question were to contain an exemption for those persons already licensed by the Board of Accountancy and who do accounting work.

The exemption that was written into the rules of the Board was done so because of the language of W. Va. Code § 37-14-3 which states in essence that the passage of this respective act shall not prohibit any person from engaging in any activity for which he/she is licensed. It appears that public accountants do perform a small amount of work that could be perceived as constituting an "appraisal" of real estate, therefore, it would be best to allow the two respective Boards to police their own constituent's activities and not to allow this Board to assert jurisdiction in the field of public accountancy. If that border of what constitutes accounting work is crossed; after a review of the definition of public accountancy in W. Va. Code § 30-9-2, then this Board would be able to address the situation at that time.

The exemption which was adopted came from a recommendation of the Board of Accountancy and is worded as follows:

2.3.6 A person engaged in the practice of public accountancy as defined in W. Va. Code § 30-9-2, including the performance of a business valuation: Provided, that this exemption shall not apply to federally related transactions as defined in the "Financial Institutions Reform, Recovery, and Enforcement Act of 1989", 12 U.S.C. § 3331 et seq.

It is felt that the addition of this exemption into the Board's rules and regs would best serve the intent of the legislature by creating both boards to act in a separate manner and to exert jurisdiction over a different field of licensed professional persons respectively.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

August 15, 1991

#### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: WV Real Estate Appraiser Licensing and Certification Board

RULE: New Rule, Series 1, Rules & Regulations of the Real Estate Appraiser Licensing and Certification Board

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: May 23, 1991  
FILED AS FIRST EMERGENCY AMENDMENT: July 18, 1991

DECISION NO. 73-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Aug 15, 1991  
ADMINISTRATIVE LAW DIVISION

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help we can get)

#### DECISION

#### EMERGENCY RULE DECISION (ERD 73-91)

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RULE: New Rule, Series 1, Rules and Regulations of the Real Estate Appraiser Licensing and Certification Board  
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FIRST EMERGENCY AMENDMENT FILED: July 18, 1991

- par. 1 The WV Real Estate Appraiser Licensing and Certification Board (Board) has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule; along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

- par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State July 18, 1991 and with the LRMRC July 18, 1991.
- par. 7 It is the determination of the Secretary of State that the Board has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- WV Code §37-14-6 reads:

The board shall:

- (a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;
- (b) Establish examination specifications as prescribed herein and provide or procure appropriate examinations;
- (c) Approve or disapprove applications for certification and licensure;
- (d) Define by rule continuing education requirements for the renewal of certification and licenses;
- (e) Censure, suspend or revoke licenses and certification as provided in this article;
- (f) Hold meetings, hearings and examinations in places and at times as it shall designate;
- (g) Establish procedures for submitting, approving and disapproving applications;
- (h) Maintain an accurate registry of the names and addresses of all persons certified or issued a license to practice under this article;
- (i) Maintain accurate records on applicants and licensed or certified real estate appraisers;
- (j) Issue to each licensed or certified real estate appraiser a pocket card with the name and license or certification number on each in the size and form it may approve. The license or certification pocket card shall remain the property of the state of West Virginia, and upon suspension or revocation of the license to practice pursuant to this article, shall be returned immediately to the commission;
- (k) Deposit all fees collected by the commission in the state treasury. The state treasurer shall deposit the fees to the credit of the West Virginia appraiser licensing and certification board and shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account shall not exceed the moneys credited to it;
- (l) Hire employees to assist in the discharge of the duties imposed upon it by this article subject to the policies and standards of the department of administration. No employee of the commission may be a paid employee of any real estate association, group or real estate dealers, brokers, appraisers or lenders;

(m) Perform any other functions and duties as may be necessary in carrying out the provisions of this article. All rules shall be promulgated pursuant to the provisions of §29A-1-1 et seq. of this code. Emergency rules are specifically authorized upon the effective date of this article and prior to the first day of July, 1991. The members of the board shall be immune from any civil action or criminal prosecuting for initiating or assisting in any lawful investigation of the actions of, or participating in any disciplinary proceeding concerning a licensed or certified real estate appraiser pursuant to this article: Provided, That such action is taken without malicious intent and in the reasonable belief that the action was taken pursuant to the powers and duties vested in the members of the board under this article.

par. 9 It is the determination of the Secretary of State that the Board has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Board are as follows:

According to statute, the original wording of Sec. 190=4 was incorrect. The Board is amending this section so that it reads correct with the duties imposed by statute. The Board must issue a pocket card to both licensed and certified appraisers and is requiring both of these individuals to place their title and number on any documents that they sign. There was also a change to reflect a change in wording by adding the third paragraph to Sec. 4.1 and changing the word may to MUST in the third paragraph of Sec. 4.2. These amendments will make it easier for the board to monitor the actions of its licensees and to protect the interests of the public by providing a system of better accountability.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 73-91 or ERD 73-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the WV Real Estate Appraiser Licensing and Certification Board, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
Entered \_\_\_\_\_ THIS DATE Aug 15, 1991  
ADMINISTRATIVE LAW DIVISION