

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.

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.

MEMORANDUM

TO: Secretary of State
FROM: Real Estate Appraiser Licensing and Certification Board
DATE: July 16, 1991
RE: Public Hearing

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.

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 (✓)
Gary Swingle W.Va. Bd Accounting	P.O. Box 2029 Charleston WV	✓
Charles R. Sogman WVA Bd Accounting	P.O. Box 585 POCA, WV 25159	✓
Norm Daniels President W.Va. Society of CPAs	PO 313 Charleston, W.Va. 25321	No
Phil Melick WV Sec. of CPAs	Jackson + Kelly P.O. Box 553 Charleston WV 25322	✓
W. J. Crum CPA	P.O. Box 3363 Charleston WV 25322	No
S. Jackson Taylor WVA		NO
ISKIAN FOX One Valley Bank		NO
Linda Petrella OVB		
Patricia Massey W.Va. Bd Accounting	P.O. Box 1 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

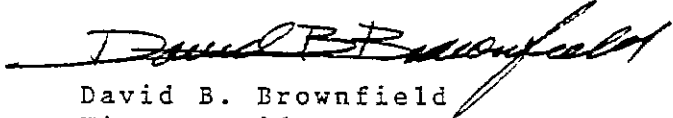
Dear Mr. Galperin:

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

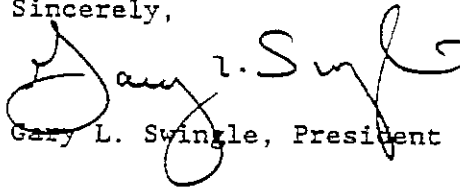
Dear Mr. Galperin:

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,


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

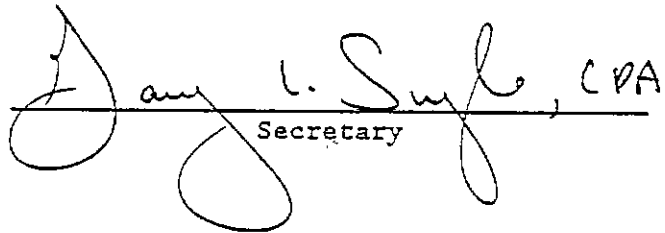
RESOLVED, that the Chairman of this Board or his designee be authorized and directed to propose on behalf of this Board by written and/or oral comment to the West Virginia Real Estate Appraiser Licensing and Certification Board the following addition to § 190-2-2 of the proposed rules:



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]

Citation
OK ST T. 59 s 858-702
59 Okl.St. Ann. s 858-702

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OKLAHOMA STATUTES ANNOTATED
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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.

JACKSON & KELLY

ATTORNEYS AT LAW

RECEIVED

1600 LADLEY TOWER

P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

300 FOXDROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
TELEPHONE 304-283-8800

6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
TELEPHONE 304-599-3000

256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

250 CHARLES STREET
SISTERSVILLE, WEST VIRGINIA 26175
TELEPHONE 304-652-5541

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

340-1289

June 28, 1991

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40595
TELEPHONE 502-255-9500

202 WEST MAIN STREET
FRANKFORT, KENTUCKY 40601
TELEPHONE 502-227-4000

1701 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202-956-7690

700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
TELEPHONE 304-728-6088

Mr. Larry Puccio, Chairman
West Virginia Real Estate Appraiser
Licensing and Certification Board
Suite 212
814 Virginia Street, East
Charleston, West Virginia 25301

Re: Proposed Legislative Rules - Title 190, Series 2

Dear Chairman Puccio:

We represent the West Virginia Society of Certified Public Accountants ("Society") and have been asked to submit the Society's comments on certain legislative rules proposed by your Board. The Society has existed since 1919 and represents the majority of the certified public accountants practicing in West Virginia. The Society has little comment on the Board's regulation of the real estate appraisal industry as such. Instead, the Society requests the Board to make clear in its rules that practicing certified public accountants are not subject to Board certification or licensure.

Background

West Virginia has closely regulated the public accounting profession since 1911. In 1989, our Legislature reenacted Chapter 30, Article 9, of the West Virginia Code to comprehensively address the profession through the reconstituted State Board of Accountancy. This 1989 legislation makes clear that Society members are engaged in the practice of public accountancy not only when they render traditional opinions with respect to financial statements, but also whenever they engage in any of a variety of activities while holding themselves out as certified public accountants:

"Practice of public accountancy" or "public accounting" means: (i) The giving of an assurance, in a report or otherwise, whether expressly or implicitly; or (ii) in

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Mr. Larry Puccio, Chairman
June 28, 1991
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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.

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Mr. Larry Puccio, Chairman
June 28, 1991
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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