



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

July 2, 1993

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Real Estate Appraiser Licensing and Certification Board

RULE: Amendments, Series 2, Amendments for Licensure and Certification

DATE FILED AS AN EMERGENCY RULE: May 28, 1993

DECISION NO. 7-93

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved **in part (Section 7.4 only)**. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

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DECISION

EMERGENCY RULE DECISION (ERD 7-93)

AGENCY: Real Estate Appraiser Licensing and Certification Board
RULE: Amendments, Series 2, Requirements for Licensure and Certification
FILED AS AN EMERGENCY RULE: May 28, 1993

- par. 1 The Real Estate Appraiser Licensing and Certification Board (Board) has filed the above amendments to an existing rule as an emergency rule.
- 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 thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

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par. 6 The Board filed this emergency rule with supporting documents with the Secretary of State May 28, 1993 and with the LRMRC May 28, 1993.

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 in part:

The board shall:

(a) Define by rule the type of education experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;

(d) Define by rule continuing education requirements for the renewal of certification and licenses;

All rules shall be promulgated pursuant to the provisions of §29A-1-1 et seq. of this code.

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:

1. Many appraisers use helpers or trainees, yet the Board has no rules to govern their use. A number of complaints have been filed concerning helpers and the Board has been powerless to act. The Board must have rules in order to ensure that the public interest and welfare is protected.

2. The transitional license was designed as a means of avoiding appraiser shortages in the start-up year of appraisal regulation. It was designed so that appraisers who did not meet all of the qualifications for licensure at the time the appraiser law went into effect (January 1, 1992) would have adequate time to fulfill


the requirements and not be put out of business.

These individuals have since been licensed and now the transitional license is being used by individuals with no background or experience in appraising. This is harmful to the public interest.

3. A voluntary apprentice program is necessary so that individuals have a way to acquire the necessary experience in order to become licensed

4. The original Appraiser Qualifications Board (AQB) criteria, which the Board is mandated to meet, required that states increase the number of classroom education hours required to become a certified residential appraiser from 105 hours to 165 hours, effective January 1, 1994. In April of 1993, the AQB reduced that requirement to 120 hours, effective January 1, 1994. The Board wishes to reduce its requirement from 165 hours to 135 hours, effective January 1, 1994. For the foregoing reasons, these amendments are necessary in order to prevent substantial harm to the public interest and are an emergency in accordance with §29A-3-15(g).

- par. 13 The Board has shown that the Transitional License is now causing an overflow in this area and therefore an emergency.
- par. 14. The Board has failed to show that an emergency exists in any other area of this rule.
- par. 15 Therefore, it is the determination of the Secretary of State that Section 7.4 of this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). However, this is the only change that is being approved as an emergency.
- par. 14 This decision shall be cited as Emergency Rule Decision 7-93 or ERD 7-93 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the West Virginia Real Estate Appraiser Licensing and Certification Board, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

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