

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

CITE AUTHORITY W. Va. Code 37-14-6 as amended (1991)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: Series 2

TITLE OF RULE BEING AMENDED: Requirements of Licensure and Certification

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Albert C. Quinn  
Council for Board

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  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

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.

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

SERIES 2

§ 190-2-1. General.

1.1. Scope - These rules establish the requirements for an applicant to become a licensed or certified real estate appraiser in the state of West Virginia by the West Virginia Real Estate Appraiser Licensing and Certification Board.

1.2. Authority - W.Va. Code § 37-14-3 as amended (1991).

1.3. Filing Date - \_\_\_\_\_.

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

§ 190-2-2. Real Estate appraiser license required.

2.1. Beginning the first day of January, one thousand nine hundred ninety-two, it is unlawful for any person, for compensation or valuable consideration, to prepare a valuation appraisal or a valuation appraisal report relating to real estate or real property in this state without first being licensed or certified as provided in this article. This section shall not be construed to apply to persons who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. 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.

2.2. Notwithstanding the provisions of subsection (a) herein, the Board may, by emergency rule, extend the date for complying with the provisions of this article in accordance with any extensions which may be provided under applicable federal law, except that the date for compliance set by emergency rule may not be extended beyond the thirty-first day of December, one thousand nine hundred ninety-one.

2.3. The following individuals are not required to be licensed, certified or registered by the Board:

2.3.1. A licensed real estate broker or salesperson who, in the ordinary course of his/her business, gives an opinion to a potential buyer, seller or third party, as to the recommended listing price of a piece of real estate, when said advice or opinion is not referred to as an appraisal, no opinion is given as to the value of the real estate, and no fee is charged.

2.3.2. A casual or drive-by inspection of real estate in connection with a consumer loan secured by said real estate, when the inspection is not referred to as an appraisal report, no opinion is rendered as to the value of the real estate, and no fee is charged;

2.3.3. An employee who renders an opinion as to the value of real estate for his full-time employer, for his employer's use only, and performed in the regular course of the employee's position, when the opinion is not referred to as an appraisal report and no fee is charged;

2.3.4. Appraisals of personal property, including but not limited to jewelry, household furnishings, vehicles, and manufactured homes not attached to real estate;

2.3.5. Any officer or employee of the United States or the State of West Virginia or a political subdivision thereof, when the officer or employee is performing his official duties: Provided, such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in West Virginia or any subdivision thereof in connection with the appraisal of real estate: Provided however, this exception shall not apply with respect to federally related transactions as defined in Title XI of the United States Code, entitled "Financial Institutions Reform, Recovery, and Enforcement Act of 1989."

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 evaluation; 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.

§ 190-2-3. Classification of licensure and certification.

There shall be two classifications of real estate appraisers:

3.1. State licensed residential real estate appraiser. -- The state licensed residential real estate appraiser classification shall consist of those persons who meet the requirements for licensure that relate to the appraisal of residential real estate of one to four units, when the value of the property appraised is less than one million dollars, a net operating income capitalization analysis is not required by the terms of the assignment, and, if the value of the property appraised is over two hundred fifty thousand dollars, the appraisal is non-complex; and to the appraisal of nonresidential real estate when the value of the property appraised is less than one hundred thousand dollars.

3.2. State certified general real estate appraiser. -- The state certified general real estate appraiser classification shall consist of those persons who meet the requirements for certification relating to the appraisal of all types of real estate.

3.3. Each application for licensure or certification and each application to take an examination shall specify the classification being applied for and, if applicable, the class of licensure or certification previously granted.

§ 190-2-4. Adoption of Appraisal Foundation criteria

4.1. Pursuant to West Virginia Code § 37-14-30 as amended (1991), all applicants for licensure or certification as a real estate appraiser shall satisfy the education, experience and examination criteria established by the Appraisal Qualifications Board of the Appraisal Foundation which have been adopted by this Board.

§ 190-2-5. General qualifications for licensure or certification.

5.1. Every applicant to the Board who wishes to be classified as a licensed residential real estate appraiser or a certified general real estate appraiser shall have the following qualifications:

5.1.1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a licensed or certified real estate appraiser in such a manner as to safeguard the interests of the public.

5.1.2. Except as provided for in § 190-2-6.6.4, the applicant shall meet the current education and experience requirements and submit an application to the Board or its agent prior to the time the applicant is approved to sit for the licensing or certification examination. Applications for licensure or certification must be complete within twelve months of the date of the receipt of the application and fee by the Board.

5.1.3. The applicant shall be in good standing as a real estate appraiser in every jurisdiction where licensed or certified. The applicant may not have had an occupational or professional license or certification which has been suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure or certification in West Virginia.

5.1.4. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction, of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

5.1.5. The applicant shall be at least 18 years of age.

5.1.6. Applicants for licensure or certification who do not meet the requirements set forth in the above subsections 5.1.3 and 5.1.4 may be approved for licensure or certification following consideration of their application by the Board.

§ 190-2-6. Additional qualifications for licensed residential real estate appraisers.

An applicant for a license as a licensed residential real estate appraiser shall meet the following requirements in addition to those set forth in § 190-2-5 of these regulations:

6.1. Education.

6.1.1. The applicant shall have successfully completed seventy-five (75) classroom hours of courses in subjects related to real estate appraisal of which a minimum of fifteen (15) hours shall include coverage of the Uniform Standards of Professional Appraisal Practice.

6.1.2. Credit towards classroom hours will only be granted where the length of the educational offering is at least fifteen (15) hours and the individual successfully completes an examination concerning that offering.

6.1.3. Credit towards classroom hours may be obtained from the following: Provided that, the courses have been registered with and approved by the Board:

- a. Accredited colleges or universities;
- b. Community or junior Colleges;
- c. Real estate appraisal or real estate related organizations;
- d. Local, state or federal agencies, boards or commissions;
- e. Proprietary schools;
- f. Adult distributive or marketing educational programs;

- g. Any other entity which has received prior approval by the Board.

6.1.4. Credit towards classroom hours may be awarded to teachers of appraisal courses, however, a teacher may not receive both education and experience credit for the same classroom hour. A teacher may obtain credit for the classroom hour or experience, but not both.

6.1.5. There is no time limit for when qualifying education credit must have been obtained.

6.1.6. The Board may grant credit for courses where the applicant obtained credit from the course provider by challenge examination without attending the courses, provided, that such credit was granted by the course provider prior to July 1, 1990, and provided further, that the Board is satisfied with the quality of the challenge examination that was administered by the course provider.

6.1.7. Various appraisal courses may be credited toward the seventy-five (75) classroom hour requirement if the applicant can show that their education involved coverage of all of the following topics, with particular emphasis on the appraisal of one to four unit residential properties:

- a. Influences on real estate value;
- b. Legal considerations in appraisal;
- c. Types of value;
- d. Economic principles;
- e. Real estate markets and analysis;
- f. Valuation process;
- g. Property description;
- h. Highest and best use analysis;
- i. Appraisal statistical concepts;
- j. Sales comparison approach;
- k. Cost approach;
- l. Site value;
- m. Income approach;
  - gross rent multiplier analysis
  - estimation of income and expenses
  - operating expense ratios
- n. Valuation of partial interests;
- o. Appraisal standards and ethics.

6.1.8. The applicant shall submit to the Board a listing of those courses for which he/she claims meet the education credit requirement, on a form to be prescribed by the Board. In addition, the applicant shall submit proof that he/she completed the course if such proof is

available. The applicant shall submit proof of the completion of a course claimed for credit if that course was completed after July 1, 1991.

6.2. Experience.

6.2.1. The applicant shall have a minimum of two thousand (2000) hours of appraisal experience. Hours may be treated as cumulative in order to achieve the required 2000 hours.

6.2.2. The applicant shall execute an affidavit as a part of the application for licensure, attesting to his/her experience in the field of real estate appraisal, on log forms provided by the Board with the application, and, shall also comply with the procedure for calculation of experience set forth in § 190-2-8 of these rules.

6.3. Examination.

6.3.1. The applicant shall have registered for and passed a written examination administered by the Board or by a testing service acting on behalf of the board prior to the issuance of his initial license.

6.4. Transitional license.

6.4.1. The applicant may take the exam and be issued a transitional license as a state licensed residential real estate appraiser as long as: (1) the applicant meets either the education or experience requirements for licensure; (2) all other criteria is satisfied; (3) the applicant passes the examination; and (4) the educational deficiency is corrected within one (1) year of licensure, or the experience deficiency is corrected within two (2) years of the issuance of the transitional license.

§ 190-2-7. Additional qualifications for certified general real estate appraisers.

An applicant for a classification as a certified general real estate appraiser shall meet the following requirements in addition to those set forth in § 2.4 of these regulations:

7.1. Education.

7.1.1. The applicant shall have successfully completed one hundred sixty-five (165) classroom hours of courses in subjects related to real estate appraisal of which a minimum of fifteen (15) hours shall include coverage of the Uniform Standards of Professional Appraisal Practice.

7.1.2. Credit towards classroom hours will only be granted where the length of the educational offering is at least fifteen (15) hours and the individual successfully completes an examination concerning that offering.

7.1.3. Credit towards classroom hours may be obtained from the following: Provided that, the courses have been registered with and approved by the Board:

- a. Accredited colleges or universities;
- b. Community or junior colleges;
- c. Real estate appraisal or real estate related organizations;
- d. Local, state or federal agencies, boards or commissions;
- e. Proprietary schools;
- f. Adult distributive or marketing education programs;
- g. Any other entity which has received prior approval by the Board.

7.1.4. Credit toward classroom hours may be awarded to teachers of appraisal courses, however, a teacher may not receive both education and experience credit for the same classroom hour. A teacher may obtain credit for the classroom hour or experience, but not both.

7.1.5. There is no time limit for when qualifying education credit must have been obtained.

7.1.6. The Board may grant credit for courses where the applicant obtained credit from the course provider by challenge examination without attending the courses, provided that such credit was granted by the course provider prior to July 1, 1990, and provided further that the Board is satisfied with the quality of the challenge examination that was administered by the course provider.

7.1.7. Various appraisal courses may be credited toward the one hundred sixty-five (165) classroom hour requirement if the applicant can show that their education involved coverage of all of the following topics, with particular emphasis on the appraisal of non-residential properties:

- a. Influences on real estate value;
- b. Legal considerations in appraisal;
- c. Types of value;
- d. Economic principles;
- e. Real estate markets and analysis;
- f. Valuation process;

- g. Property description;
- h. Highest and best use analysis;
- i. Appraisal math and statistics;
- j. Sales comparison approach;
- k. Site value;
- l. Cost approach;
- m. Income approach;
  - estimation of income and expenses
  - operating statement ratios
  - direct capitalization
  - cash flow estimates
  - measures of cash flow
  - discounted cash flow analysis
- n. Valuation of partial interests;
- o. Appraisal standards and ethics;
- p. Narrative report writing.

7.1.8. The applicant shall submit to the Board a listing of those courses for which he/she claims meet the education credit requirement, on a form to be prescribed by the Board. In addition, the applicant shall submit proof that he/she completed the course if such proof is available. The applicant shall submit proof of the completion of a course claimed for credit if that course was completed after July 1, 1991.

## 7.2. Experience.

7.2.1. The applicant shall have a minimum of two (2) calendar years experience as a real estate appraiser within the five year period immediately preceding application for certification. Within that five (5) year period, at least one-half (1000 hours) of the appraisal experience required must be in non-residential appraisal assignments. Two thousand (2000) hours of experience is deemed to be the equivalent of two (2) years of experience.

7.2.2. The applicant shall execute an affidavit as a part of the application for certification, attesting to his experience in the field of real estate appraisal, upon log forms provided by the Board with the application. This affidavit must consist of a detailed list of the real estate appraisal reports or file memoranda for each year of which experience is claimed by the applicant. Upon request, the applicant shall provide the Board a sample of appraisal reports which the applicant has prepared in the course of his/her practice.

7.2.3. At the time of filing an application for original or renewal of certification, each applicant shall sign a pledge to comply with the standards of professional

appraisal practice and the ethical rules that are established by the Board. Each applicant must also certify that he understands the types of misconduct as described in § 190-4-6 of these rules and that disciplinary proceedings may be initiated against him/her for such misconduct.

### 7.3. Examination.

7.3.1. The applicant shall have registered for and passed a written examination administered by the Board or by a testing service acting on behalf of the Board prior to the issuance of his initial certification.

### § 190-2-8. Procedure for calculation of experience by the Board.

8.1. An applicant for residential real estate appraiser licensing must provide evidence satisfactory to the Board that the applicant possesses the equivalent of two (2) years of appraisal experience. 2000 hours of experience is deemed to be the equivalent of two (2) years of experience. Maximum experience hours for residential real estate appraiser licensing may be awarded as follows.

- 8.1.1. A maximum of twelve hours of credit may be awarded for a complex residential appraisal.
- 8.1.2. A maximum of four hours of credit may be awarded for a complex residential field review.
- 8.1.3. A maximum of two hours of credit may be awarded for a complex residential desk review.
- 8.1.4. A maximum of six hours of credit may be awarded for a non-complex residential appraisal.
- 8.1.5. A maximum of two hours of credit may be awarded for a non-complex residential field review.
- 8.1.6. A maximum of three hours of credit may be awarded for a non-complex residential desk review.
- 8.1.7. Credit for appraisals of non-residential properties shall be awarded as provided in subsection (a) of this section.
- 8.1.8. Each applicant must have a minimum of 2,000 hours.

8.2. An applicant for general real estate appraiser certification must provide evidence satisfactory to the Board that the applicant possesses the equivalent of two (2) years of appraisal experience within the five (5) year period immediately preceding the filing of the application for certification. 2,000 hours of experience is deemed to be the equivalent of two (2) years of experience. Fifty percent, or 1,000 hours must be in non-residential appraisal work. Residential is defined as one to four units. Maximum experience credits for general real estate appraiser certification may be awarded as follows:

- 8.2.1. A maximum of thirty-two hours of credit may be awarded for a complex non-residential appraisal.
- 8.2.2. A maximum of six hours of credit may be awarded for a complex non-residential field review.
- 8.2.3. A Maximum of three hours of credit may be awarded for a complex non-residential desk review.
- 8.2.4. A maximum of eight hours of credit may be awarded for a non-complex non-residential appraisal.
- 8.2.5. A maximum of four hours of credit may be awarded for a non-complex non-residential field review.
- 8.2.6. A Maximum of two hours of credit may be awarded for a non-complex non-residential desk review.
- 8.2.7. Hours for appraisal of residential properties shall be awarded as provided in subsection (b) of this section.
- 8.2.8. Each applicant must have a minimum of 2,000 hours of credit.
- 8.2.9. No more than 1,000 hours may be awarded for experience in appraising residential properties.

8.3. If an applicant for licensure or certification feels that he/she has performed any real estate appraisals under unique circumstances, or that the applicant has expended a greater amount of hours in the performance of an appraisal than the provisions of § 8.1 or § 8.2 allow for experience credit; that applicant may provide the Board with a separate log, other than that log provided for in § 190-2-6.6.2.2 and § 190-2-7.7.2.2, detailing the amount of actual hours spent on that appraisal, with sufficient details and proof of the credit hours of experience that the applicant feels he / she should be awarded by the Board.

8.4. For the purpose of this section only: a non-complex appraisal is one having the following characteristics:

- 8.4.1. There is an active market of essentially identical properties;
- 8.4.2. Adequate data is available to the appraiser;
- 8.4.3. Adjustments to comparable sales are not large in the aggregate, specifically not exceeding the trading range found in the market of essentially identical properties; and
- 8.4.4. For residential property, the contract price falls within the market norm (median sales price) of homes in the neighborhood.

8.5. For the purpose of this section only: a complex appraisal for non-residential property is one that relied to any significant degree on all three approaches to value (cost, sales comparison and income) or was an appraisal which did not have the characteristics of a non-complex appraisal. A complex appraisal for residential property is one that relied to any significant

degree on at least two of the three approaches to value, with one approach being the sales comparison approach, or was an appraisal which did not have the characteristics of a non-complex appraisal.

8.6. Each signer (coauthor) of an appraisal report accepting responsibility for the report shall be awarded full credit for the appraisal. Each appraisal having ~~four~~ three or more signers accepting responsibility for the report shall be awarded credit for an appraisal based on the appropriate hours divided by the number of signers.

8.7. All appraisals submitted or claimed for experience credit are subject to verification by the Board. Applicants may not claim experience hours for appraisals which are not supported by written reports or file memoranda. On request, the applicant shall furnish the board copies of appraisal reports and file memoranda supporting the experience hours sought by the applicant. Appraisal reports and file memoranda submitted to the Board shall be treated as confidential to the extent permitted by law.

8.8. Review appraisal experience must be matched hour for hour by experience in preparing appraisal reports other than as a review appraisal. Matching appraisal experience may be awarded for appraisal reports prepared at any time in the applicant's career.

§ 190-2-9. Qualifications for licensure or certification by reciprocity.

Every applicant to the Board for a license or certification by reciprocity shall have met the following qualifications:

9.1. An individual who is currently licensed or certified as a real estate appraiser in another jurisdiction may obtain a West Virginia real estate appraiser license or certification by providing documentation that the applicant has met educational, experience and examination requirements that are substantially equivalent to those required in West Virginia for the appropriate level of licensure or certification: Provided that, such other jurisdiction extends the same reciprocal consideration to all West Virginia licensed or certified appraisers in good standing in this state. All reciprocal applicants shall be required to pass the West Virginia appraiser law and regulation section of the licensing examination prior to licensure or certification, and have paid to the Board the appropriate ~~application fee~~ fees provided for by § 190-2-11.11.2.

9.2. The applicant shall be at least 18 years of age.

9.3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the West Virginia real estate appraiser license laws and the regulations of the Real Estate Appraiser Board.

9.4. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure or certification in West Virginia.

9.5. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate appraiser in such a manner as to safeguard the interest of the public.

9.6. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction, of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

9.7. Applicants for licensure or certification who do not meet the requirements set forth in § 9.4 or § 9.6 may be approved for licensure or certification following consideration by the Board.

§ 190-2-10. Qualifications for temporary licensure or certification as a licensed residential real estate appraiser or certified general real estate appraiser.

10.1. An individual who is currently licensed or certified as a real estate appraiser in another jurisdiction may obtain a temporary West Virginia real estate appraiser's ~~license or certification~~ permit as required by Section 1121 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989. Provided, That every applicant shall file an application on an appropriate form of the Board and also an irrevocable consent notice that service of process upon him/her may be made by delivery of the process to the Secretary of State if an action arises out of the temporary work of said applicant in this State, and the plaintiff cannot, in the exercise of due diligence, serve applicant personally.

10.2. The appraiser's certification or license issued by another state shall be recognized as equivalent to a West Virginia license or certification provided that:

10.2.1. The appraiser's business is of a temporary nature, and is limited to one specific assignment.

10.2.2. The education, experience and general examination requirements completed in the jurisdiction of original licensure or certification is deemed to be substantially equivalent to those required for the appropriate level of licensure or certification in West Virginia.

10.2.3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the West Virginia real estate appraiser license law and the regulations of the Real Estate Appraiser Board.

10.2.4. The applicant shall be in good standing as a licensed or certified real estate appraiser in every jurisdiction where licensed or certified; the applicant may not have had any occupational or professional license or certification which has been suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in West Virginia.

10.2.5. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate appraiser in such a matter as to safeguard the interest of the public.

10.2.6. The applicant may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction, of a misdemeanor involving moral turpitude or of any felony. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

10.2.7. Applicants for licensure or certification who do not meet the requirements set forth in § 10.2.4 and § 10.2.6 may be approved for licensure or certification following consideration by the Board.

10.2.8. The applicant shall be at least 18 years of age.

10.3. The temporary ~~license or certification~~ permit issued under the provisions of this section shall be expressly limited to the authority of the registrant to perform the specific contract of appraising which is the basis for the temporary ~~license or certification~~ permit.

10.4. Each temporary ~~license or certification~~ permit obtained shall expire upon the completion of the appraisal work which is the basis of the ~~license or certification~~ permit or after a period of six (6) months, whichever shall occur first.

§ 190-2-11. Application and registration fees.

11.1. All application fees for licenses, certifications and registrations are non-refundable.

11.2. Application fees for original licenses, certifications and registrations are as follows:

- 11.2.1. A license application fee of fifty dollars;
- 11.2.2. A license examination fee of fifty dollars;
- 11.2.3. A license fee of three hundred twenty-five dollars;
- 11.2.4. A delinquent license fee of an additional one hundred dollars;
- 11.2.5. A registration fee for temporary practice of one hundred dollars;
- 11.2.6. A certification application fee of seventy-five dollars;
- 11.2.7. A certification examination fee of fifty dollars;
- 11.2.8. A certification fee of five hundred twenty-five dollars;
- 11.2.9. A delinquent certification fee of an additional one hundred dollars;
- 11.2.10. The board shall collect from individuals who perform or seek to perform appraisal transactions where required by federal law, an annual registry fee in the amount of \$ 25.00, in order to enable the board to transfer the necessary fees to the Federal Financial Institution Examination Council on an annual basis.

11.3. All fees and revenues collected by the board pursuant to these regulations shall be deposited in a special fund that shall be used solely for the purposes of paying the expenses incurred in connection with the administration of this article.

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.

## 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 Accountancy	P.O. Box 2029 Charleston WV	✓
Charles R. Sigman WVA Bd Accountancy	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 Soc. of CPAs	Jackson + Kelly P.O. Box 553 Charleston WV 25322	✓
D. J. Grosser Jr. CSA	PO Box 3363 Charleston WV 25322	No
J. Jackson Taylor WVA		NO
ISKIAN FOX Ohio Valley Bank		NO
Linda Petrella OVB		
Roberta Proctor WVA Bd Accountancy	P.O. Box 1 Charleston, WV 25241	No



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

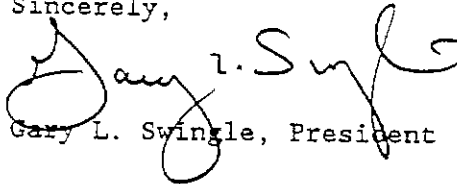
Dear Mr. Galperin:

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:

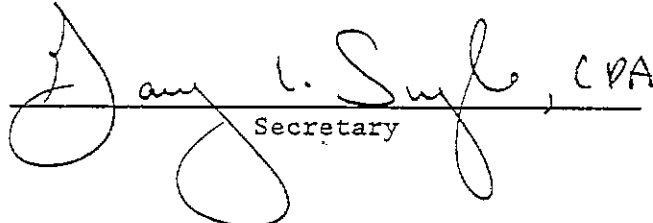
201 L&S Building 812 Quarrier Street



STATE OF WEST VIRGINIA  
WEST VIRGINIA BOARD OF ACCOUNTANCY  
CHARLESTON, WEST VIRGINIA 25301  
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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

ATTORNEYS AT LAW

1600 LADLEY TOWER

P. O. BOX 553

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June 28, 1991

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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

## 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  
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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

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

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.

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