

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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SECRETARY OF STATE

Form #8

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JUL 18 1991

Legislative Rule Making  
Review Committee

Effective Date

Aug 15, '91

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 3 TITLE OF RULE: Renewal of License or  
certification

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:

The change involved is regarding the language contained in Sec. 190-3-2.2.1.. The previous language included the Board's ability to prorate fees for those applicants who apply before Apr. 1, 1992. This language was written backwards from what was intended by this section. It was intended that the Fees would be prorated only after the date of April 1, 1992. This change reflects the proper intent of the Board. There was also a change made to exempt those person covered by the Transitional license language of series 2 from the requirements of renewal in Sec. 190-3-2 because these person who maintain a transitional license have a different license validation period of either one or two years.

AM. F. C. O. 1/10

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

1991 MAY 23 AM 10: 56

Rule Title: 190

OFFICE OF THE SECRETARY OF STATE

Type of Rule:  Legislative  Interpretive  Procedural

WV Real Estate Appraiser

Agency 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: 5/22/91

Signature of Agency Head or Authorized Representative

Albert C. Quinn  
Assistant Attorney General  
Council for Board.



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.

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

SERIES 3

§ 190-3-1. General.

1.1. Scope - These legislative rules establish the procedures and qualifications for the renewal of a Licensed Residential Real Estate Appraiser license and a Certified General Real Estate Appraiser certification by the West Virginia Real Estate Appraiser Licensing and Certification Board.

1.2. Authority. - W.Va.Code § 37-14-1 et seq., as amended (1991).

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

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

§ 190-3-2. Renewal required.

2.1. Licenses and certifications issued under these regulations for licensed residential real estate appraisers and certified general real estate appraisers shall expire one year from the last day of the month in which they were issued, as indicated on the license or certification: Provided that, following the effective date of these rules, the licenses and certifications issued within the first year by the Board under the provisions of West Virginia Code 37-14-1 et seq. (1991), and these rules, shall be valid until September 31, 1992. Thereafter, all licenses and certifications shall be issued for the period of October to October of the following year. ~~Fees for licensure or certification shall not be pro-rated by the Board until April 1, 1992, thereafter, all application fees shall be paid by the applicant in full.~~ Fees for licensure or certification shall be pro-rated by the Board after April 1, 1992, before April 1, all application fees shall be paid by the applicant in full. Nothing in this section shall be construed to apply to those individuals who qualify and maintain a transitional license as covered by 190-2-6.6.4 of these rules.

§ 190-3-3. Qualifications for renewal.

Continuing education requirements.

3.1. As a condition of renewal, all licensed residential real estate appraisers, resident or non-resident, and all certified general real estate appraisers shall be required to complete continuing education courses satisfactorily within each licensing or certification term.

3.1.1. Continuing education requirements for both licensed real estate appraisers and certified general real estate appraisers.

a. Licensed residential real estate appraisers or certified general real estate appraisers must satisfactorily complete continuing education courses or seminars offered by accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than ten (10) classroom hours during each licensing or certification term.

b. Credit for continuing education shall be awarded for but not limited to the coverage of topics as listed below:

1. Ad valorem taxation;
2. Arbitration;
3. Business courses related to practice or real estate appraisal;
4. Construction estimating;
5. Ethics and standards of professional practice;
6. Land use planning, zoning and taxation;
7. Management, leasing, brokerage timesharing;
8. Property development;
9. Real estate appraisal (valuations/evaluations)
10. Real estate law;
11. Real estate litigation;
12. Real estate financing and investment;
13. Real estate appraisal related computer applications;
14. Real estate securities and syndication;
15. Real property exchange.

c. Licensed real estate appraisers or certified general real estate appraisers may also satisfy continuing education requirements by participation other than as a student in educational processes and programs approved by the Board as substantially equivalent to courses and seminars which have been approved by the Board for continuing education purposes,

to including but not limited to, teaching, program development, or authorship of textbooks.

- d. An appraiser is not required to complete the ten (10) classroom hours of continuing education as a condition for initial license or certification renewal if the time between the effective date on the initial license or certification as an appraiser and the beginning of the initial renewal of license or certification is less than nine (9) months.

3.2. Credit awarded for continuing education may not also be awarded for the classroom hour requirement when an individual seeks a different classification other than that currently held.

3.3. Notice of a satisfactory course completion shall not be issued to any licensee or certified appraiser not attending a minimum of 90% of each of the classroom hours of proscribed course instruction. The applicant for renewal shall be responsible for seeing that his record of attendance and grade received from an approved course be submitted to the Board with his/her application for renewal.

3.4. The institution, organization, licensed real estate school or Board approved entity offering these approved courses, shall fully inform each student of the standards and requirements at the commencement of the course. Said entity shall also maintain and monitor the attendance and grades of students taking its respective offering by an appropriate system of record keeping; submitting to the Board the guidelines utilized by the entity in evaluating and grading the work of the applicant for renewal of license or certification.

3.5. Applicants for renewal of a license or certification shall continue to meet the standards for entry as set forth in § 190-2-5 of these rules.

§ 190-3-4. Policies and procedures of the Board for approving courses, seminars and educational programs of continuing education.

4.1. The Board shall have the authority and duty to evaluate and approve; for the purpose of accepting hours for continuing education of applicants for the renewal of licensure or certification; courses, seminars and their equivalent, taken by the applicant to meet the required number of hours of continued education by his attendance and passing of said course, seminar or its equivalent.

4.2. Credit towards the classroom hour requirement may be granted by the Board only when the length of the educational offering is a minimum of two (2) hours.

4.3. In order for a course, seminar, or other educational program to be approved by the Board, the instructor of that course, seminar or program shall present to the Board a written plan of the class, including but not limited to, a syllabus of the subject areas covered by the course, the attendance requirements, and the method of evaluating the student's knowledge of the subject matter.

4.4. The Board shall determine whether the subject matter covered by the course, seminar or educational program includes those topics listed in sections 190-2-6.6.1.7, 190-2-7.7.1.7, or 190-3-3.3.1.1.b respectively, or any other appropriate topic relating to the area of real estate appraisal activity, determined by the Board to be worthy of hours toward continuing education.

4.5. The Board shall approve or disapprove courses, seminars, educational programs, or instructors, after a determination by the Board that said entity or subject matter does or does not meet the standards of the Board. A list of all approved courses, seminars or educational programs shall be maintained by the Board for the purpose of providing to the applicants for renewal of licensure or certification, notice of whether said course, seminar or educational program's hours will qualify for the requirements of continuing education for the renewal of licensure or certification.

4.6. The Board shall determine whether or not an educational program meets the equivalency standard of an approved course or seminar, pursuant to W. Va. Code § 37-14-36 as amended (1991), by looking at the topic of the program as it relates to the area of real estate appraisal, the amount of time in which the program uses for instruction, and the method by which the applicant for licensure or certification is evaluated during or at the end of the program. The Applicant shall have the responsibility of providing to the Board information on the subject matter, instructor and time of the program, in order for the Board to make a case by case determination of the equivalency value of the program.

4.7. In making a determination concerning the approval of a course, seminar or educational program, the Board shall give consideration to those courses, seminars or programs under the auspices of organizations or associations of professional real estate appraisers which are utilized by such organizations or associations for the purpose of awarding real estate designations or indicating compliance with the continuing education requirement of such organizations or associations.

§ 190-3-5. Procedures for renewal.

5.1. The board will mail a renewal application form to the applicant at the last known home address. This form shall outline the procedures for renewal. Failure to receive the renewal application form shall not relieve the applicant of the obligation to renew.

5.2. Prior to the expiration date shown on the license or certification, each licensee or certified appraiser desiring to renew his/her license or certification, shall return to the Board the completed renewal application form and the appropriate renewal and registry fees as outlined in § 190-3-6 of these regulations, no earlier than one-hundred and twenty (120) days nor later than thirty (30) days prior to the expiration date of the license or certification held. Each applicant shall submit, on forms provided by the Board, satisfactory evidence of the applicant's conformity with the continuing education requirements as described in § 190-3-3.

5.3. If a applicant for a renewal of a license fails to apply for a renewal within the period prescribed in subsection 5.2, said applicant may, within a period of two (2) years following the expiration of said license, obtain a renewal by satisfying all the requirements of renewal and paying the applicable late renewal fee. The board may refuse to renew said applicant's license if during the two (2) year period, the applicant has continued to perform real estate appraisal activities in this state.

5.4. If the Board determines that the applicant for renewal of certification has failed to meet the requirements for renewal of certification through a mistake, misunderstanding, or circumstances beyond the applicant's control, the Board may extend the term of the applicant's certification for a period not to exceed six (6) months upon payment by the applicant of the prescribed fee. If a state certified real estate appraiser fails to renew his/her certification prior to the expiration date or within any period approved by the board, such person may obtain a renewal of his/her certification by satisfying all of the requirements for renewal and filing an application accompanied by a late renewal fee, within two (2) years of the date of his/her certification expiration. The Board may refuse to issue said certification if, during the two (2) year period, the applicant has continued to perform real estate appraiser activities in this state.

5.5. The Board may deny the issuance of a license as a licensed residential real estate appraiser, or a certificate as a state certified real estate appraiser, on any ground enumerated in these rules. Any applicant whose application for renewal of licensure or certification which is denied may demand and shall be afforded a hearing pursuant to § 190-4-3 of these rules.

§ 190-3-6. Fees for renewal.

6.1. Renewal fees are established as follows;

Certified general real estate appraiser	\$525.00;
Licensed residential real estate appraiser	\$325.00;
Registry fee	\$ 25.00.

§ 190-3-7. Board discretion to deny renewal.

7.1. The board may deny renewal of a license or certification within the Board's discretion, upon the same reasons as it may refuse initial licensure or certification. The Board may also deny renewal of a license or certification consistent with the provisions of § 190-3-5.5.3 or § 190-3-5.5.4. The board shall approve or deny each application within ninety days of receipt.

## 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 N.Ya. Bd Accountancy	P.O. Box 2029 Charleston WV	✓
Charles R. Sgama WVA Bd Accountancy	P.O. Box 585 POCA, WV 25159	✓
Norma J. Jandry 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	✓
W. J. [unclear] CPA	PO Box 3263 Charleston WV 25322	No
St. [unclear] WVA		NO
ISKIAN FOX One Valley Bank		NO
Linda Petrella OVB		
[unclear] W.Va. Society of CPAs	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

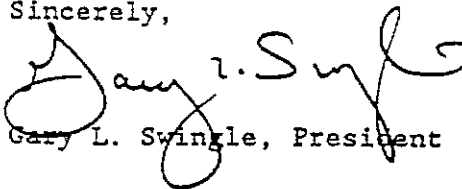
Dear Mr. Galperin:

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:

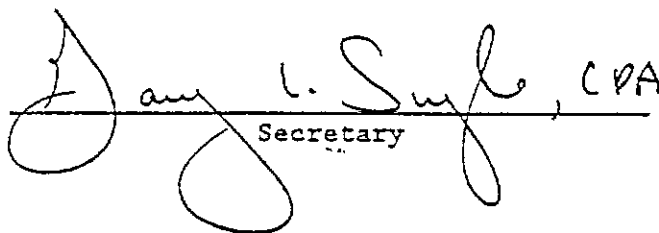
201 L&S Building 812 Quarrier Street



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.

A handwritten signature in cursive script, reading "Jay L. Snyfe, CPA". The signature is written over a horizontal line. Below the line, the word "Secretary" is printed in a small, sans-serif font.

[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 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.

OFFICE OF THE ATTORNEY GENERAL  
MARIO J. PALUMBO

FILED

1991 MAY 23 AM 10:56

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.

  
Agency Head or Authorized Representative

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 3, Renewal of License or Certification

DATE ORIGINALLY FILED AS AN EMERGENCY RULE: May 23, 1991

FILED AS FIRST EMERGENCY AMENDMENT: July 18, 1991

#### DECISION NO. 75-91

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".

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KEN HECHLER  
Secretary of State

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

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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DECISION

EMERGENCY RULE DECISION  
(ERD 75-91)

AGENCY: WV Real Estate Appraiser Licensing and Certification Board  
RULE: New Rule, Series 3, Renewal of License or Certification  
ORIGINALLY FILED AS AN EMERGENCY RULE: May 23, 1991  
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 §37-14-69 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:

The change involved is regarding the language contained in Sec. 190-3-2.2.1. The previous language included the Board's ability to prorate only after the date of April 1, 1992. This change reflects the proper intent of the Board. There was also a change made to exempt language of series 2 from the requirements of renewal in Sec. 190-3-2 because these persons who maintain a transitional license have a different license validation period of either one or two years.

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 75-91 or ERD 75-91 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.



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KEN HECHLER  
Secretary of State

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE

THIS DATE Aug 15, 1991

Entered ADMINISTRATIVE LAW DIVISION