

**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

Form #2

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2009 JUN 30 PM 3:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

RULE TYPE: Procedural CITE AUTHORITY: 30-38

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Investigative and Hearing Procedure

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 2009 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

WV Real Estate Appraiser Licensing & Certification Board

2110 Kanawha Blvd., East Suite 101

Charleston, WV 25311

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

BRIEF SUMMARY OF PROPOSED RULE

The proposed modifications to the rule serve to clarify the purpose, composition, and authority of the West Virginia Real Estate Appraiser Licensing and Certification Board's Standards Committee; and serve to clarify the Board's complaint, investigation, and contested case hearing procedure.

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TITLE 190
PROCEDURAL RULE
WEST VIRGINIA REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 4
INVESTIGATIVE AND HEARING PROCEDURES

§190-4-1. General.

1.1. Scope. -- This procedural rule establishes the investigative and hearing procedures to be followed by the board when there is a complaint filed against an appraiser.

1.2. Authority. -- W. Va. Code §§30-38-13; 30-38-14; 30-38-15.

1.3. Filing Date. -- February 18, 2004.

1.4. Effective Date. -- March 19, 2004.

§190-4-2. Definitions.

2.1. "Appraisal" shall mean an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property.

2.2. "Appraisal Report" shall mean any communication, written or oral, of an appraisal.

2.3. "Appraiser" shall mean any person who holds a State real estate appraiser license or State certification as a real estate appraiser issued to him or her under W. Va. Code §30-38 et seq, or has submitted himself or herself to jurisdiction hereunder to applying for and exercising a temporary permit thereunder.

2.4. "Board" shall mean the Real Estate Appraiser Licensing and Certification Board established under W. Va. Code §30-38 et seq.

2.5. "Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice (USPAP), published by the appraisal foundation, which are incorporated by reference and on file with the board and the office of the Secretary of State for use by all appraisers in the preparation of appraisal reports. This incorporation by reference contains no future additions or amendments. A copy of the USPAP may be obtained from the appraisal foundation.

§190-4-3. Causes for Denial of Licenses or Discipline of Licensees.

3.1. The board may deny an application for license, place a licensee on probation, limit or restrict a license, suspend or revoke any license, or otherwise discipline any licensee in accordance with these rules and W. Va. Code §30-38-1, et seq., upon satisfactory proof that a licensee has been convicted of a felony or is engaged in conduct, or committed other acts, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §30-38-1, et seq., or the rules of the board.

§190-4-4. Standards Committee.

4.1. The members of the standards committee shall be appointed by the chairperson of the board. The standards committee shall consist of at least four individuals, but no more than seven individuals. The chairperson of the board shall be the chairperson of the standards committee.

4.2. At least one member of the standards committee shall be an actively licensed certified general real estate appraiser; and at least one member of the standards committee shall not be a member of the board.

4.3. At the request of the board, the standards committee shall review and, if deemed necessary, investigate, or otherwise cause the investigation of, complaints submitted to the board against licensees.

4.4. The standards committee may contract with any appropriate person(s) or appoint a member of the standards committee to conduct an investigation of a complaint.

§190-4-5. Disposition:

~~5.1. By a majority vote of the members hearing the contested matter, the board shall make findings of fact and conclusions of law and may take one (1) or more of the following actions:~~

~~5.1.a. Dismiss the charges. In the event the charges are dismissed, and before a decision by the board is reported, the file shall be confidential.~~

~~5.1.b. Suspend or revoke the appraiser's license or certification.~~

~~5.1.c. Impose a period of probation, either with or without conditions.~~

~~5.1.d. Require reexamination for State licensing or certification as an appraiser.~~

~~5.1.e. Require additional professional education or continuing education.~~

~~5.1.f. Issue a public or private censure, warning or formal reprimand.~~

~~5.1.g. Issue a consent order.~~

~~5.1.h. Impose a fine not to exceed \$500.00.~~

§190-4-3. Powers and Proceedings: §190-4-5. Disposition of Complaints.

~~3-1: 5.1.~~ Except as otherwise specifically provided herein, the enforcement proceedings under this Rule shall be conducted in accordance with the contested case hearing procedures of the West Virginia Administrative Procedure Act as adopted in this State, and the board shall have all the powers granted therein.

~~3-2: 5.2.~~ A complaint which alleges that the appraiser has violated a rule of professional conduct promulgated by the board shall be lodged with the board. The complaint process may be instituted by any person, including members of the board, by written complaint, or on an affidavit form prescribed by the board, and filed with the board. The board may, upon its own motion, file a formal complaint against an appraiser.

5.3. Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee for his or her response to the allegations contained in the complaint. The accused party shall file an answer within twenty days of the date of service. Failure of the licensee to file a timely response may be considered an admission of the allegations in the complaint: Provided, That nothing contained herein shall prohibit the accused party from obtaining an extension of time to file a response, if the Board, its Executive Director or other authorized representative permits the extension.

5.4. Requests for a response to the allegations contained in a complaint, or requests for additional information will be considered properly served when sent to the licensee's last known address. It is the responsibility of the licensee or applicant to keep the board informed of his or her current address.

~~3.3. Investigating complaints:~~

~~3.3.a. 5.5. The board may, upon receipt of a written complaint or upon its own motion, review and investigate alleged acts or omissions which the board reasonably believes constitute cause for disciplinary action. The board may refer the review and investigation of the complaint to the standards committee referred to in paragraph (b) below. In order to determine if probable cause exists for a hearing on a complaint, the investigator(s) designated by board staff, the standards committee or the chairperson of the board, shall cause an investigation to be made into the allegations of the complaint. If the board determines that the complaint does not present facts which constitute a basis for disciplinary action, the board shall take no further action.~~

~~3.3.b. A standards committee shall be appointed by the chairperson. The committee will consist of at least four individuals. Two shall be board members and at a minimum two shall be certified general appraisers. Nothing shall preclude the two board members from also being the two required certified general appraisers. The standards committee will consist of at least two other individuals, who are not members of the board, appointed by the chairperson. The standards committee shall review and investigate the facts of the complaint and determine whether there is a basis for disciplinary action. The committee may contract with an appropriate person or appoint a member of the committee to conduct the investigation.~~

~~3.3.c. 5.6. In connection with the investigation of a complaint, both the board and the standards committee is are authorized to subpoena witnesses, books, papers, records and any other evidence to help it determine whether a contested case proceeding should be instituted.~~

~~3.4. 5.7. The board or the standards committee, if it considers it advisable may grant the appraiser an opportunity to appear before the board or the standards committee for a voluntary informal discussion of the facts and circumstances of an alleged violation. An informal discussion constitutes a part of the investigation of a pending disciplinary case and the facts discussed at the informal discussion may be considered by the board or the standards committee in the event the matter proceeds to a contested case hearing. The board or the standards committee may seek a consent order at the time of the informal discussion.~~

~~3.3.d. 5.7.a. Upon completion of the investigation, the board may:~~

~~3.3.d.1. 5.7.a.1. Order the matter to be further investigated;~~

~~3.3.d.2. 5.7.a.2. Allow the appraiser, who is the subject of the complaint, an opportunity to appear before the standards committee or the board for an informal discussion regarding the circumstances of the alleged violation;~~

~~3.3.d.3. 5.7.a.3. Determine there is no probable cause to believe a disciplinary violation has~~

occurred, and close the case; or

~~3.3.d.4. 5.7.a.4.~~ Determine there is probable cause to believe that a disciplinary violation has occurred and proceed with a contested case hearing or dispose of the matter through a consent agreement or otherwise.

5.8. In the event the standards committee investigates a complaint on behalf of the board, at the conclusion of the committee investigation, the standards committee shall develop and provide to the board a recommendation relating to the disposition of the complaint. In the discretion of the board, and by majority vote, the board may accept or reject the standards committee's recommendation.

~~3.5. The board may negotiate a settlement and enter into a consent order with an appraiser. A representative of the board, designated by the chairperson, and an assistant attorney general may agree to negotiate a settlement. The proposed consent order may be presented to the board for approval and shall be binding if approved by the board and signed by the chairperson of the board and appraiser. Consent to negotiation by the appraiser constitutes waiver of notice and opportunity to be heard, as set forth in the West Virginia Administrative Procedure Act, during the settlement negotiations. Thereafter, the assistant attorney general is authorized to discuss informal settlement with the chairperson of the board.~~

~~3.6. 5.9. The board, in its discretion, may enter into a consent agreement. A representative of the board designated by the chairperson, and an assistant attorney general may agree to negotiate a consent agreement. The proposed consent agreement must be presented to the board for approval and shall be binding if approved by the board and signed by the chairperson of the board and the appraiser. Failure of the appraiser to abide by the agreement shall constitute grounds for prosecution.~~

~~3.7. In the event of a contested case hearing, the board shall deliver to the parties a notice of hearing. The notice of hearing shall fix the time and place for hearing and shall contain those notice terms as required by the West Virginia Administrative Procedure Act. The notice shall also contain a statement requiring the appraiser to submit an answer of the type specified in Section 3.9 hereof within twenty (20) days after receipt of the notice of hearing. A written notice of hearing, together with a statement of charges, shall be personally delivered or mailed to the appraiser by certified mail, return receipt requested, at least thirty (30) days before the hearing date. In all cases, hearings noticed to be held no less than thirty (30) days or more than ninety (90) days from the date of service of the notice of hearing shall be deemed to comply with the provision of W.Va. Code §30-38 et seq.~~

~~3.8. The statement of charges shall be prepared by the assistant attorney general and shall set forth the acts or omissions with which the appraiser is charged, including standards of professional practice and professional conduct rule(s), W. Va. Code §30-38 et seq., or any rules of the board alleged to have been violated, and shall be in sufficient detail to enable the preparation of the appraiser's defense.~~

~~3.9. The answer shall contain the following information:~~

~~3.9.a. the name, address and telephone number of the appraiser;~~

~~3.9.b. specific statement regarding any or all allegations in the complaint which shall be in the form of admissions or denial, and may also contain explanation, remarks or statement of mitigating circumstances; and~~

~~3.9.c. any additional facts or information the appraiser deems relevant to the investigation and which may be of assistance in the ultimate determination of the case.~~

3.10. Every statement of charges and notice of hearing sought by the board shall be prepared, reviewed and approved by the Office of the State Attorney General, which shall be responsible for the legal representation of the public interest in all proceedings. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case, but shall represent the public interest. Another assistant of the Office of the State Attorney General may be provided to represent the board in the case of a contested hearing.

~~§190-4-4. Contested Hearing Case.~~

4.1. A hearing may be conducted before a majority of the board members. If the board so elects, an administrative law judge or hearing examiner may act, in lieu of the board, and present findings of fact and conclusions of law to the board and the board can accept or reject such findings. The administrative law judge or hearing examiner shall be an attorney licensed to practice law in the State of West Virginia. The administrative law judge or hearing examiner shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections.

4.1.a. The presiding officer and/or other board members shall have the right to conduct direct examination of the witnesses at any stage of each witness' testimony.

4.1.b. The hearing shall be open to the public.

4.1.c. Contested proceedings shall be recorded either by mechanical or electrical means or by certified shorthand reporters. Contested proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription to be charged to the requesting party. The recording, stenographic notes, or transcription or oral proceedings shall be filed with and maintained by the board for at least five (5) years from the date of the decision.

4.1.d. Subpoena Powers.

4.1.d.1. Board subpoenas for books, papers, records, and other evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive director of the board shall issue all subpoenas for both parties upon reasonable cause shown. The request, which may be verbal or written, must specify the documents sought to be obtained and the full names and addresses of the witnesses whose testimony is sought.

4.1.d.2. Discovery procedures shall consist of those procedures authorized under the State Administrative Procedure Act found in W. Va. Code §29A-5-1 et seq.

4.1.d.3. In the event of a refusal to obey a subpoena, either party or the board may petition the circuit court for its enforcement. If proper showing is made, the circuit court shall order the person to obey the subpoena; if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

4.1.e. If an appraiser, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the board and presiding officer may proceed to conduct the hearing (or may enter such other order or judgement as the board deems appropriate) and the appraiser shall be bound by the results of such hearing to the same extent as if the appraiser were present.

4.1.f. Before testimony is presented, the record shall show the identity of any board members

present, of the presiding officer, and of the primary parties and their representatives, and shall reflect that all testimony is being recorded. The appraiser may challenge any member of the board for cause prior to the commencement of the hearing; the members of the board (with the challenged member abstaining) shall decide by the majority vote whether cause exists and whether the challenged member shall participate in the hearing. The board shall set dates, times and rules for hearings and shall rule on all issues. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board:

4.1.f.1. The presiding officer, administrative law judge or hearing examiner may read a summary of the charges and answers thereto, and other responsible pleadings filed by the appraiser prior to the hearing.

4.1.f.2. The assistant attorney general representing the State's interest before the board may make a brief opening statement, which shall include a summary of charges and the witnesses and documents to support such:

4.1.f.3. The appraiser shall be offered the opportunity to make an opening statement, which shall include the names of any witnesses the appraiser desires to call in defense:

4.1.f.4. The presentation of evidence on behalf of the State, including a summary at the close of the evidence on behalf of the State:

4.1.f.5. The presentation of evidence on behalf of the appraiser:

4.1.f.6. Rebuttal evidence on behalf of the State, if any:

4.1.f.7. Rebuttal evidence on behalf of the appraiser, if any:

4.1.f.8. Closing arguments, first on behalf of the State, then on behalf of the appraiser, and then on behalf of the State, if any:

4.1.g. The presiding officer, or if appointed, the hearing examiner, shall have authority to grant immunity from disciplinary action before the board to a witness, but only upon unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity:

4.1.h. Admissibility of evidence at the hearing shall be governed by the terms of the West Virginia Administrative Procedure Act. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies must also be furnished to members of the board. Notwithstanding the foregoing, to the extent the appraiser believes he/she is being asked to reply to accusations, charges, innuendoes, or facts for the first time in the hearing, the appraiser shall be afforded the opportunity to respond to any such evidence to the board either in writing or at a subsequent scheduled meeting of the board; the assistant attorney general assigned to prosecute the case before the board shall, however, be allowed to continue to present evidence during the hearing:

4.1.i. When a majority of the board presides over the reception of evidence at the hearing, the decision is a final decision:

4.2. Upon the motion of the board or any party assigning error or omission in any part of any transcript, the board or its appointed hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and/or revised

as appropriate so as to make it conform to the truth.

~~4.3. It is desirable, but not always necessary, that a transcript of the hearing shall be provided to all members of the board for review at least ten (10) days before the vote is taken on its decision in any licensure or licensure disciplinary matter and by a majority vote of those present of the board the necessity of a transcript may be waived.~~

§190-4-6. Contested Case Hearing and Disposition.

6.1. Hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and the board's rules.

~~3-7: 6.2. In the event of a contested case hearing, The board shall deliver to the parties a notice of hearing. The notice of hearing shall fix the time and place for hearing and shall contain those notice terms as required by the West Virginia Administrative Procedure Act. The notice shall also contain a statement requiring the appraiser to submit an answer of the type specified in Section 3-9 hereof to the complaint within twenty (20) days after receipt of the notice of hearing. A written notice of hearing, together with a statement of charges, shall be personally delivered or mailed to the appraiser by certified mail, return receipt requested, at least thirty (30) days before the hearing date. In all cases, hearings noticed to be held no less than thirty (30) days or more than ninety (90) days from the date of service of the notice of hearing shall be deemed to comply with the provision of W.Va. Code §30-38 et seq.~~

~~3-8: 6.3. The statement of charges shall be prepared by the assistant attorney general and shall set forth the acts or omissions with which the appraiser is charged, including standards of professional practice and professional conduct rule(s), W. Va. Code §30-38 et seq., or any rules of the board alleged to have been violated, and shall be in sufficient detail to enable the preparation of the appraiser's defense.~~

~~3-9: 6.4. The answer shall contain the following information:~~

~~3-9.a: 6.4.a. the name, address and telephone number of the appraiser;~~

~~3-9.b: 6.4.b. specific statement regarding any or all allegations in the complaint which shall be in the form of admissions or denial, and may also contain explanation, remarks or statement of mitigating circumstances; and~~

~~3-9.c: 6.4.c. any additional facts or information the appraiser deems relevant to the investigation and which may be of assistance in the ultimate determination of the case.~~

6.5. Discovery procedures shall consist of those procedures authorized under the State Administrative Procedure Act found in W. Va. Code §29A-5-1, et seq.

6.6. Hearings shall be held at a time and place determined by the board, but in no event less than thirty days after the notice of hearing is given.

6.7. Any member of the board has the authority to administer oaths and to examine any person under oath.

6.8. If a licensee, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the board or presiding officer may proceed to conduct the hearing (or may enter such other order

or judgement deemed appropriate) and the licensee shall be bound by the results of such hearing to the same extent as if the licensee were present.

6.9. Before testimony is presented, the record shall show the identity of any board members present, of the presiding officer, and of the primary parties and their representatives, and shall reflect that all testimony is being recorded. The licensee may challenge any member of the board for cause prior to the commencement of the hearing; the members of the board (with the challenged member abstaining) shall decide by the majority vote whether cause exists and whether the challenged member shall participate in the hearing. The board or presiding officer shall set dates, times and rules for hearings and shall rule on all issues. Hearings shall generally be conducted in the following order, subject to modification at the discretion of the board or presiding officer:

6.9.a. The presiding officer may read a summary of the charges and answers thereto, and other responsible pleadings filed by the licensee prior to the hearing.

6.9.b. The assistant attorney general representing the State's interest before the board may make a brief opening statement, which may include a summary of charges and the witnesses and documents to support such.

6.9.c. The licensee shall be offered the opportunity to make an opening statement.

6.9.d. The presentation of evidence on behalf of the State, including a summary at the close of the evidence on behalf of the State.

6.9.e. The presentation of evidence on behalf of the licensee.

6.9.f. Rebuttal evidence on behalf of the State, if any.

6.9.g. Rebuttal evidence on behalf of the licensee, if any.

6.9.h. Closing arguments, if any, by all interested parties on behalf of the board and on behalf of the licensee.

6.10. The board may grant immunity from disciplinary action to a witness, but only upon a majority vote of the board members present. If the hearing is being presided over by an administrative law judge or hearing examiner, the administrative law judge or hearing examiner shall have authority to grant immunity from disciplinary action before the board to a witness. The official record of the hearing shall include the reasons for granting the immunity.

6.11. Admissibility of evidence at the hearing shall be governed by the terms of the West Virginia Administrative Procedure Act. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies must also be furnished to members of the board. Notwithstanding the foregoing, to the extent the licensee believes he or she is being asked to reply to accusations, charges, innuendoes, or facts for the first time in the hearing, the licensee shall be afforded the opportunity to respond to any such evidence to the board either in writing or at a subsequent scheduled meeting of the board; the assistant attorney general assigned to prosecute the case before the board shall, however, be allowed to continue to present evidence during the hearing.

6.12. When a majority of the board presides over the reception of evidence at the hearing, the decision is a final decision.

6.13. Upon the motion of the board or any party assigning error or omission in any part of any transcript, the board or its appointed administrative law judge or hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and/or revised as appropriate so as to make it conform to the truth.

6.14. At the conclusion of any contested case hearing the board or presiding officer shall make Findings of Fact and Conclusions of Law and may:

6.14.a. Dismiss the charges. In the event the charges are dismissed, and before a decision by the board is reported, the file shall be confidential;

6.14.b. Impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, reexamination, restitution, require additional education, censure, denial of future license, downgrade of license, reprimand, impose all costs associated with the investigation and prosecution of the licensee upon the licensee, or any other sanction pursuant to W. Va. Code §30-38-1, et seq.

6.15. The board may elect to have an administrative law judge or hearing examiner conduct the hearing.

6.15.a. In such cases where the board elects to utilize an administrative law judge or hearing examiner, the administrative law judge or hearing examiner shall:

6.15.a.1. Be in control of the proceedings as presiding officer.

6.15.a.2. Have the authority to administer oaths.

6.15.a.3. Have the authority to admit or exclude testimony or other evidence, and

6.15.a.4. Have the authority to rule on all motions and objections.

6.15.b. At the conclusion of a hearing, the administrative law judge or hearing examiner shall prepare a proposed order which shall contain findings of fact and conclusions of law. The board may request that the administrative law judge or hearing examiner additionally prepare and submit proposed disciplinary action, if any and where warranted, to be taken against the licensee in the proposed order. The board may accept, reject or modify the proposed decision of the administrative law judge or hearing examiner.

6.16. Contested case hearings shall be recorded either by mechanical or electrical means or by certified shorthand reporters. Contested case hearings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription to be charged to the requesting party.

§190-4-7. Subpoena Powers.

7.1. Board subpoenas for books, papers, records, and other evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The executive director of the board, or other representative designated by the board, shall issue all subpoenas for both parties upon reasonable cause shown. The request must specify the documents sought to be obtained and the full names and addresses of the witnesses whose testimony is sought.

7.2 In the event of a refusal to obey a subpoena, either party or the board may petition the circuit court

for its enforcement. If a proper showing is made, the circuit court shall order the person to obey the subpoena; if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

~~§190-4-6.~~ **§190-4-8. Final Decision.**

~~6.1.~~ 8.1. The final decision of the board shall be filed with the executive director. A copy of the decision and order shall immediately be sent by certified mail, return receipt requested, to the appraiser's last known post office address or may be served in the manner of original notices upon the appraiser.

~~§190-4-7.~~ **Ex Parte Communications:**

~~7.1.~~ Ex parte communications and other matters tending to prejudice a contested case hearing are prohibited by the West Virginia Administrative Procedure Act. In keeping with this provision, the following minimal requirements are applicable:

~~7.1.a.~~ Neither the assistant attorney general nor the appraiser may communicate ex parte with the board members concerning an issue under consideration in the hearing:

~~7.1.b.~~ Individuals assigned to render a proposed or final decision or to make findings of fact or conclusions of law shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, except upon notice and opportunity for all parties to participate. Such individuals may, however, communicate with members of the board and its executive director and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending, factually-related case involving the same parties:

~~7.1.c.~~ In any case, where it becomes necessary to communicate with a party on matters noted above, notice shall be given to all parties and a date, time, and place set for a discussion of the matter:

~~§190-4-8.~~ **§190-4-9. Judicial Review.**

~~8.1.~~ 9.1. Judicial review of the board's decision may be sought in accordance with the terms of the West Virginia Administrative Procedure Act.

~~§190-4-9.~~ **§190-4-10. Application for Reinstatement.**

~~9.1.~~ 10.1. Any person whose license or certification has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension. If the order of revocation or suspension does not establish terms upon which reinstatement might occur, an initial application for reinstatement may not be made until one (1) year has elapsed from the date the order becomes effective, and successive applications shall be made no more often than once every two (2) years.

~~§190-4-10.~~ **§190-4-11. Public Records and Publication of Decisions.**

~~10.1.~~ 11.1. The board shall maintain and keep open for public inspection during office hours a complete and properly indexed record of all applications for license or certification received, licenses and certificates issued, licenses and certificates renewed, and licenses and certificates revoked, canceled or suspended under the provisions of this act. A copy of any such record shall be made available to the public, upon application to the board, at such reasonable price per copy as may be fixed by the board.

~~10.2:~~ 11.2. Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders, may be transmitted to the appropriate professional association(s), other states, and news media.

~~§190-4-11. Quasi-Judicial Immunity:~~

~~11.1. Members of the board shall be entitled to quasi-judicial immunity from suit for their actions as such members of the board:~~

~~§190-4-12. Standards of professional appraisal practice:~~

~~12.1. Each real estate appraiser licensed or certified shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the 2004 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the appraisal foundation:~~

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Investigative and Hearing Procedures

Type of Rule: Legislative Interpretive Procedural

Agency: WV Real Estate Appraiser Licensing & Certification Board

Address: 2110 Kanawha Blvd., East Suite 101
Charleston, WV 25311

Phone Number: 304-558-3919 Email: knotts@mail.wvnet.edu

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This measure will have no impact on costs and revenues of the Board.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Investigative & Hearing Procedures

Rule Title: Investigative and Hearing Procedures

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Not applicable

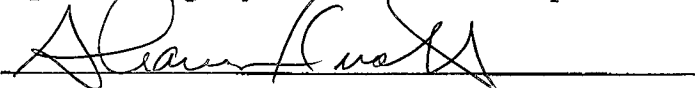
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The rule brings the Board into compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice, as promulgated and required by the federal Appraisal Subcommittee, as created by Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. Also, hearing procedures have been updated.

Date: 6/30/09

Signature of Agency Head or Authorized Representative



THE FACTS AND CIRCUMSTANCES OF THE RULE ARE AS FOLLOWS:

As currently in effect, the procedural rule is confusing to licensees and lay persons, overly complicated, and in certain provisions potentially contradictory.

To ensure that the due process rights of licensees are maintained, and that Board procedure is properly understood, the Board believes it is necessary to clarify the Board's complaint, investigation, and contested case hearing procedure, as well as to clarify the function and authority of the Board's Standards Committee.