

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

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FILED

1991 MAY 23 AM 10:55

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

Board: Real Estate Appraiser Licensing and Certification Board
AGENCY: _____ TITLE NUMBER: 190
RULE TYPE: Legislative _____; CITE AUTHORITY W. Va. Code 37-14-1 et seq as amended (1991)

AMENDMENT TO AN EXISTING RULE: YES _____ NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 4

TITLE OF RULE BEING PROPOSED: _____

PROVISIONS FOR COMPLAINTS, INVESTIGATIONS AND HEARINGS

DATE OF PUBLIC HEARING: July 10, 1991 TIME: 10:00 a.m.

LOCATION OF PUBLIC HEARING: 814 Virginia St. East

Charleston, W.Va. 25301

Fourth Floor Conference room

COMMENTS LIMITED TO: ORAL _____, WRITTEN _____, BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: West Virginia Real Estate

Appraiser Licensing and
Certification Board

814 Virginia Street, East
Suite 212

Charleston, West Virginia 25301

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Albert C. [Signature]
Counsel for Board
Assistant Attorney General

2.00

OFFICE OF THE ATTORNEY GENERAL FILED
MARIO J. PALUMBO

1991 MAY 23 AM 10:55

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, polices 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 it's jurisdiction who has violated established ethical and/or professional standards.


Agency Head or Authorized Representative

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES FILED

1991 MAY 23 AM 10:55

Rule Title: 190

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Type of Rule: Legislative Interpretive Procedural

Agency WV Real Estate Appraiser
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: 5/23/91

Signature of Agency Head or Authorized Representative

Albert C. Quinn, Jr.
Assistant Attorney General
Council for Board.

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

FILED

MAY 23 AM 10:55

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 4

§ 190-4-1. General.

1.1. Scope - These legislative rules establish the procedures and policies concerning investigations, hearings and disciplinary actions taken by the West Virginia Real Estate Appraiser Licensing and Certification Board involving licensed or certified real estate appraisers

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

1.3. Filing date. - _____.

1.4. Effective date. - _____.

§ 190-4-2. Investigations by the Board.

2.1. The Board may upon its own motion or upon written complaint by any aggrieved person, initiate an investigation to be made with respect to an alleged violation of any acts falling under § 190-4-5 of these rules, by any applicant for a license or any licensee. If the investigation discloses a probable violation of said subsection, then a formal complaint shall be filed. The Board shall have the appropriate power to deny, suspend or revoke a licence; issue a formal reprimand; or impose a fine not to exceed the sum of five hundred dollars (\$500.00) against an applicant or licensee, if after hearing and notice, the Board finds that the applicant or licensee has violated any of the provisions of § 190-4-5.

2.2. The Board may upon its own motion or upon written complaint by any aggrieved person, initiate an investigation of the actions of any applicant for certification or recertification, with respect to an alleged violation of the provisions of § 190-4-5 or § 190-4-6 of these rules. The Board may revoke or suspend the certification; discipline a certified appraiser; or deny an application for certification for violation of any of the provisions of § 190-4-5 or § 190-4-6 after the preparation of a formal complaint. The accused party shall file an answer within twenty (20) days of service of said complaint. The accused may admit, deny or otherwise plead to the allegations contained in the complaint. Failure to make a response within the twenty (20) day period shall be deemed an admission of the charges in the complaint. There complaint shall be followed by a hearing on the matter within a period of not less than thirty (30) days and no more than ninety (90) days from the date the file is received by the chairperson of the Board, unless good cause is shown.

§ 190-4-3. Hearings/Notice.

3.1. Subject to subsection 3.3 of this section, notice and a hearing shall be provided in advance of the entry of any order of the Board. Such notice shall be given to the person with respect to whom the hearing is to be conducted. The hearings shall be conducted in accordance with the provisions of article five [§ 29A-5-1 et seq.], chapter twenty-nine-a of the West Virginia Code. The time and place of said hearing shall be determined by the Board, but said hearing shall take place not less than ten (10) nor more than thirty (30) days after notice is given. A hearing may be continued by the Board itself or upon good cause shown. At the hearing, the accused may represent himself or be represented by an attorney admitted to practice before any circuit court of this state.

3.2. The Board shall have the power and authority to issue subpoenas and subpoenas duces tecum, administer oaths and examine witnesses in connection with any subject relating to duties imposed upon or powers vested in the Board.

3.3. Whenever the Board determines that extraordinary circumstances exist, it may enter an order taking any action permitted by these rules, without notice or hearing. Immediately upon the entering of said order, certified copies shall be served upon all person affected thereby and upon subsequent demand, such person shall be entitled to a hearing at the earliest possible date.

3.4. Upon an investigation by the Board and the issuance of a formal complaint against the actions of a certified real estate appraiser, a hearing shall be held at a time and place determined by the Board. If the Board determines after the hearing that the accused is in violation of any of the provisions of these rules, the Board shall review the proceeding and prepare Findings of Fact and Conclusions of Law and take any action that it deems appropriate. Any party adversely affected by any order of the Board made after a hearing shall be entitled to judicial review of said order as provided by § 190-4-4.

§ 190-4-4. Judicial review.

4.1. Any party who is affected by an adverse ruling of the Board as a result of a hearing provided for by these rules shall be entitled to a judicial review in the manner provided in article five [29A-5-1 et seq.], chapter twenty-nine-a of the West Virginia Code.

4.2. Any party adversely affected by a final judgment of a circuit court following judicial review may seek review to the Supreme Court of Appeals in the manner provided in article six [§

29A-6-1 et seq.], chapter twenty-nine-a of the West Virginia Code.

§ 190-4-5. Prohibited acts of licensed real estate appraisers.

The following acts shall be grounds for discipline by the Board:

5.1. Procuring or attempting to procure a license under these rules by knowingly making a false statement, submitting false information or making a material misrepresentation in an application filed with the Board, or procuring or attempting to procure a license through fraud or misrepresentation;

5.2. Paying money other than the fees provided for by these rules to any member of the Board or employee of the Board in order to attempt to procure a license;

5.3. An act or omission in the practice of real estate appraising which consists of dishonesty, misrepresentation or fraud with the intent to substantially benefit the licensee, another person, or with the intent to injure another person;

5.4. Entry of a final judgement in a civil or criminal court of law against the licensee on grounds of fraud, misrepresentation or deceit in the making of an appraisal of real estate;

5.4. Conviction of a crime, including the entering of a plea of nolo contendere to a charged crime, which is substantially related to the qualifications, functions or duties of a person developing real estate appraisals and/or communicating real estate appraisals to others. In a disciplinary proceeding based upon a civil judgment, the licensee shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the judgment;

5.5. Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or any testimony concerning professional qualifications;

5.6. Violation of any section of these rules; any section of the West Virginia Code, chapter 37, known as the Real Estate Appraiser Licensing and Certification Act; or any other rule formulated by the Board;

5.7. Violation of an order of the Board as a result of any administrative hearing or related findings of fact;

5.8. Violation of the confidential nature of government record to which a licensee has gained access to by virtue of his

employment, contract or engagement in appraisal work with a government agency; or

5.9. Acceptance of a fee for performing an independent appraisal service, when in fact, the fee was or is contingent upon the licensee reporting a predetermined analysis, opinion or conclusion, or was contingent upon the analysis, opinion, conclusion or evaluation reached, or upon the consequences resulting from the appraisal assignment.

§ 190-4-6. Prohibited acts of certified general real estate appraisers.

The following acts shall be grounds for discipline by the Board:

6.1. Procuring or attempting to procure state certification pursuant to the provision of these rules by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the Board, or procuring or attempting to procure state certification through any form of fraud or misrepresentation;

6.2. Paying money, other than the fees provided for in this article, to the Board or any employee of the Board, in order to procure state certification;

6.3. Violation of any section of these rules; any section of West Virginia Code, chapter 37, known as the Real Estate Appraiser Licensing and Certification Act; or any other rule formulated by the Board;

6.4. Failure or refusal, without good cause, to exercise reasonable diligence in developing, preparing or communicating an appraisal report; or

6.5. Negligence or incompetence in developing, preparing or communicating an appraisal report.

6.6. Any violation of § 190-4-5 can also be a violation of this subsection.

2.00