

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

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FILED  
1991 MAY 23 AM 10:55  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #7

NOTICE OF AN EMERGENCY RULE

Board. West Virginia Real Estate Appraiser Licensing and Certification Board  
AGENCY: \_\_\_\_\_ TITLE NUMBER: \_\_\_\_\_ 190

CITE AUTHORITY: West Virginia Code, Section 37-14-6 as amended (1991)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES\_\_\_\_, NO<sup>X</sup>\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series \_\_\_\_\_ 194

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

PROVISIONS FOR COMPLAINTS, INVESTIGATIONS AND HEARINGS

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

West Virginia Code § 37-14-1 et seq as amended (1991), entitled the "Real Estate Appraiser Licensing and Certification Act", established by law the requirement that all real estate appraisal activity that was to be performed in this state, was to be performed by only those appraisers who are to be licensed or certified by the Real Estate Appraiser Licensing and Certification Board which was created by the Act. This Board was empowered to establish policies and procedures for the licensing and certification of real estate appraisers pursuant to legislative rules adopted by the Board. These proposed legislative rules are to function as emergency rules in order to allow the Board to operate and meet the deadline of January 1, 1992, the date with which the Board has determined will be effective date of the Act, pursuant to the authority vested in the Board by W. Va. Code § 37-14-3 as amended (1991). The Board needs to enact emergency rules in order for it to meet its statutorily created duties.

Use Additional Sheets If Necessary.

*Albert C. ...* AAB  
Council for Board

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 190

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  
Assistant Attorney General  
Council for Board.

FILED

DATE: May 23, 1991

1991 MAY 23 AM 10:55

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA

FROM: West Virginia Real Estate Appraiser Licensing and Certification Board

SECRETARY OF STATE

EMERGENCY RULE TITLE: 190

1. Date of filing: May 23, 1991

2. Statutory authority for promulgating the emergency rule: W. Va. Code Section 37-14-1 et seq. as amended (1991)

3. Date of filing of proposed legislative rule: May 23, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

New language

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

The Board is a new board created pursuant to legislative enactments and therefore, needs to adopt the attached emergency rules, in order to establish policies, guidelines and procedures for its functioning in licensing or certifying real estate appraisers.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Title XI Federal Institutions Reform, Recovery and Inforcement Act of 1989,...  
W. Va. Code Section 37-14-3 as amended (1991) - July 1, 1991

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

Pursuant to the board's authority derived from W. Va. Code Section 37-14-3  
All real estate appraisal activity performed in this state must be done  
by either licensed or certified appraisers as issued by the board. If  
the board does not file emergency rules with the Secretary of State's Office,  
then the board has no rules or regulations governing their issuance of  
licenses' or certifications. The legislative rules also establish standards  
for the practice of professional real estate appraisers.

*Albert C. Quinn Jr.*  
*Assistant Attorney General*  
*Counsel for Board*

OFFICE OF THE ATTORNEY GENERAL  
MARIO J. PALUMBO

MEMORANDUM

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.

 / Counsel for Board  
Agency Head or Authorized Representative

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

FILED

1991 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 or 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.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE June 26, 1991  
ADMINISTRATIVE LAW DIVISION

June 26, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

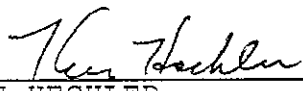
AGENCY: WV Real Estate Appraiser Licensing and Certification Board

RULE: New Rule, Series 4, Provisions for Complaints, Investiga-  
tions and Hearings

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

DECISION NO. 32-91

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.

  
\_\_\_\_\_  
KEN HECHLER  
Secretary of State

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Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

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Director, Corporations

SHEREE COHEN  
Special Assistant

(Plus all the volunteer  
help we can get)

#### DECISION

#### EMERGENCY RULE DECISION (ERD 32-91)

AGENCY: WV Real Estate Appraiser Licensing and Certification Board  
RULE: New Rule, Series 4, Provisions for Complaints, Investiga-  
tions and Hearings

FILED AS AN EMERGENCY RULE: May 23, 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 May 23, 1991 and with the LRMRC May 23, 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:

West Virginia Code §37-14-1 et seq. as amended (1991), entitled "Real Estate Appraiser Licensing and Certification Act", established by law the requirement that all real estate appraisal activity that was to be performed in this state, was to be performed by only those appraisers who are to be licensed or certified by the Real Estate Appraiser Licensing and Certification Board which was created by the Act. This Board was empowered to establish policies and procedures for the licensing and certification of real estate appraisers pursuant to legislative rules adopted by the Board. These proposed legislative rules are to function as emergency rules in order to allow the Board to operate and meet the deadline of January 1, 1992, the date with which the Board has determined will be effective date of the Act, pursuant to the authority vested in the Board by W. Va. Code §37-14-3 as amended (1991). The Board needs to enact emergency rules in order for it to meet its statutorily created duties.



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). . . "time limitation" and "prevent substantial harm to public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 32-91 or ERD 32-91 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.



\_\_\_\_\_  
KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE June 26, 1991  
ADMINISTRATIVE LAW DIVISION