

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

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

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

AMENDMENT TO AN EXISTING RULE: YES NO

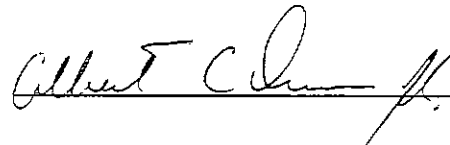
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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

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



DATE: July 17, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Real Estate Appraiser Licensing and Certification Board

LEGISLATIVE RULE TITLE: Legislative filed as emergency

1. Authorizing statute(s) citation W. Va. Code 37-16-1 as amended (1991).

2. a. Date filed in State Register with Notice of Hearing:

May 23, 1991

b. What other notice, including advertising, did you give of the hearing?

letters sent :W. Va. Ass. Realators; W. Va. Banker's Assoc.;

President W.Va. Chapter Appraissal Institute; Legislative Chairman

W.Va Appraissal Institute; President W. Va. Chapter ^N Independant Fee Appraisers

c. Date of hearing(s): July 10, 1991

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

July 17, 1991 a.m.

f. Name and phone number(s) of agency person(s) to contact for additional information:

Si Galprin Executive Secretary for Board

814 Virginia St. East

Charleston, West Virginia 25301

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

MEMORANDUM

TO: Secretary of State
FROM: Real Estate Appraiser Licensing and Certification Board
DATE: July 16, 1991
RE: Public Hearing

=====

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.

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

FILED

MAY 23 AM 10:55

SERIES 4

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 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.

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

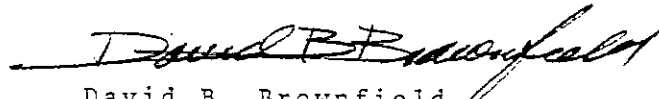
Dear Mr. Galperin:

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,

A handwritten signature in cursive script that reads "Gary L. Swingle".

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:

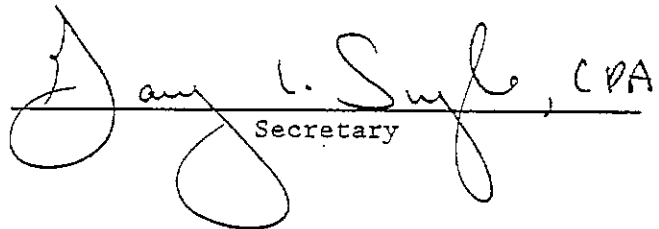
201 L&S Building 812 Quarrier Street



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.


Secretary

[SEAL]

JACKSON & KELLY

ATTORNEYS AT LAW

1600 LAIDLEY TOWER
P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

WRITER'S DIRECT DIAL NO.

340-1289

June 28, 1991

175 EAST MAIN STREET
LEXINGTON, KENTUCKY 40585
TELEPHONE 606-255-9500

202 WEST MAIN STREET
FRANKFORT, KENTUCKY 40601
TELEPHONE 502-227-4000

1701 PENNSYLVANIA AVENUE N.W.
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700 EAST WASHINGTON STREET
CHARLES TOWN, WEST VIRGINIA 25414
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300 FOXCROFT AVENUE
MARTINSBURG, WEST VIRGINIA 25401
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6000 HAMPTON CENTER
MORGANTOWN, WEST VIRGINIA 26505
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256 RUSSELL AVENUE
NEW MARTINSVILLE, WEST VIRGINIA 26155
TELEPHONE 304-455-1751

250 CHARLES STREET
SISTERSVILLE, WEST VIRGINIA 26175
TELEPHONE 304-652-5541

Mr. Larry Puccio, Chairman
West Virginia Real Estate Appraiser
Licensing and Certification Board
Suite 212
814 Virginia Street, East
Charleston, West Virginia 25301

Re: Proposed Legislative Rules - Title 190, Series 2

Dear Chairman Puccio:

We represent the West Virginia Society of Certified Public Accountants ("Society") and have been asked to submit the Society's comments on certain legislative rules proposed by your Board. The Society has existed since 1919 and represents the majority of the certified public accountants practicing in West Virginia. The Society has little comment on the Board's regulation of the real estate appraisal industry as such. Instead, the Society requests the Board to make clear in its rules that practicing certified public accountants are not subject to Board certification or licensure.

Background

West Virginia has closely regulated the public accounting profession since 1911. In 1989, our Legislature reenacted Chapter 30, Article 9, of the West Virginia Code to comprehensively address the profession through the reconstituted State Board of Accountancy. This 1989 legislation makes clear that Society members are engaged in the practice of public accountancy not only when they render traditional opinions with respect to financial statements, but also whenever they engage in any of a variety of activities while holding themselves out as certified public accountants:

"Practice of public accountancy" or "public accounting" means: (i) The giving of an assurance, in a report or otherwise, whether expressly or implicitly; or (ii) in

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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.

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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.