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State of West Virginia
West Virginia Real Estate Commission
1033 Quarrier Street, Suite 400
Charleston, West Virginia 25301

November 5, 1982

Honorable A. James Manchin
Secretary of State
State of West Virginia
Capitol Building
Charleston, WV 25305

Dear Mr. Manchin:

RE: Refiling of Existing Rules

In compliance with [House Bill 1432] Chapter 29A, Article 2, Section 5, Code of West Virginia, relating to refiling of agency's existing rules in the State register, we hereby certify that the enclosed copies of the Real Estate Commission rules are all of the lawful adopted rules which are in force on the date of this filing.

We will gladly comply if other information is requested.

Yours very truly,

REAL ESTATE COMMISSION

Donald E. Portis

Donald E. Portis
Executive Secretary

DEP:md
Enclosures

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-8-82
Administrative Law Division

REAL ESTATE COMMISSION
ADMINISTRATIVE REGULATIONS

CHAPTER 47-12

SERIES I

(1982)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11-8-82
Administrative Law Division

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ADMINISTRATIVE RULES

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Title 174
Legislative rules

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~
Real Estate Commission

~~Chapter 47-12~~
Series ~~12~~ 1

Subject: Requirements in licensing Real Estate Brokers and Salesmen and the conduct of brokerage business.

Section 1. General

1.01. Scope.--These legislative rules establish general regulations for the filing of applications for real estate brokers and real estate salesmen's licenses and the requirements necessary to renew licenses and otherwise generally for the enforcement and administration of provisions of Chapter 47, Article 12, Code of West Virginia, (1959).

1.02. Authority.--These regulations are issued under authority of West Virginia Code, Chapter 47, Article 12, Section (20g).

1.03. Filing Date.--~~These regulations were filed in the office of the Secretary of State on May 1, 1964, and refiled~~ November 5, 1982.

1.04. Effective.--
November 5, 1982

Section 2. License Fees. [~~47-12-9~~] ~~Adopted 4-2-59~~

2.01. License Year.--The license year begins on July 1, and ends June 30, of each fiscal year. Licenses are issued on an annual basis and fees are not pro-rated for fractional parts of a year.

2.02. Proper Fee.--Each individual application for salesman's or broker's license shall be accompanied by separate check or money order for the proper fee for that particular application.

Where a salesman, who is duly licensed, desires to become a broker, his salesman's certificate shall be surrendered to the Commission by his employer before a broker's certificate is issued. He shall pay the fee for broker's license as set forth under Section 9, of the License Act, and credit shall not be given for the fee paid as salesman.

Section 3. License Certificates. [~~47-12-7~~] ~~Adopted 4-2-59~~

3.01. License Certificates.-- The Commission shall issue to each licensee a license in such form and size as shall be prescribed by the Commission. Said license shall show the name and business address of the licensee and, in case of a real estate salesman's license, shall show the name and business address of the real estate broker by whom he is employed. Each license shall have imprinted thereon the seal of the department and, in addition to the foregoing, shall contain such matter as shall be prescribed by the Commission. The license

of each real estate salesman shall be delivered or mailed to the real estate broker by whom such real estate salesman is employed and shall be kept in the custody and control of such broker.

3.02. Officers of A Corporation.--If a person applying for a broker's license be a member of a partnership or association or an officer of a corporation, the license certificate shall be issued in the name of the firm, and a pocket card shall be issued in the name of the member or officer of said partnership, association or corporation, as is designated in the application, and all other members, officers or employees of the partnership, association or corporation shall pay the salesman's license fee and be licensed and furnished a salesman's pocket card, provided, such individuals do any of the acts set out in Section 2 of the Licensing Act, defining who is a broker and who is a salesman.

Section 4. Branch Offices. ~~[47-12-8]~~ Adopted 4-2-59^e

4.01. Register of Branch Office.--Every registered broker who desires to conduct brokerage transactions at any other place or places than the principal office registered with his own registration, shall annually register, and receive a certificate for each of said branch offices. A mere temporary shelter on a sub-division being sold by the broker for the convenience and protection of salesmen and customers and at which transactions are not closed and salesmen are not permanently assigned there, is not deemed to be a branch office. The permanence, use, character of activities conducted at the office or shelter shall determine whether it must be registered.

4.02. Manager of Branch Office. ~~Adopted 2-16-73~~--A licensed broker shall not employ, as manager of his branch office, a real estate salesman with less than two years actual experience as a licensed real estate salesman.

Section 5. Cancellations and Transfers. ~~[47-12-8]~~ Adopted 4-2-59^e

5.01. Custody of License Certificates.--Brokers shall keep in their custody at all times, the license certificates of each salesman in their employ and shall upon the termination of said employment, return the salesman's license certificate to the Commission for cancellation.

5.02. Transfer of Salesman's License.--In the event a salesman makes application for renewal or transfer of his real estate salesman's license, indicating that he is to be employed by a broker other than the broker under which he is presently employed, or in the event he is applying for a broker's license; he must first notify his present employer and must submit, in addition to his application, a properly executed, sworn statement to this effect, on a form provided by the Commission for this purpose.

5.03. Sworn Statement by Broker.--In the event a licensed real estate salesman makes application for transfer from the employ of one broker to the employ of another, the transfer application shall be accompanied by a sworn statement by the broker in whose employ the applicant desires to enter, certifying that the applicant is to be employed by him.

Section 6. Qualifications for Real Estate Broker's License. ~~[47-12-4]~~ Adopted 9-27-61^e

6.01. Experience Requirement.--The West Virginia Real Estate Broker's License Act, (47-12-4), among other required qualifications, provides that "every applicant for a license as a real estate broker . . . shall have served a bona fide apprenticeship as a licensed real estate salesman for two years or shall produce to the Real Estate Commission satisfactory evidence of real estate experience."

6.02. Apprenticeship.--The Commission defines the word "apprenticeship", as used in the aforesaid statute, to require a broker-salesman relationship wherein the salesman apprentice is taught the methods, techniques and terminology of the real estate business under the guidance and direction of a licensed broker. In order to satisfy the above requirement, an applicant shall show evidence of having applied oneself fully over a period of two years devoted to all aspects of the real estate business.

6.03. Affidavit of Broker.--Experience gained by an applicant through apprenticeship training as a licensed salesman shall evidence such experience by affidavit furnished to the Commission by the broker whose employment the salesman served during this period. (Affidavit shall be submitted on form prepared by the Commission.)

Section 7. Office Signs. ~~[47-12-8] Adopted 4-2-59~~

7.01. Sign Requirement.--All registered real estate brokers, holding an active certificate, shall erect and maintain a sign on or about the entrance of their principal office and all branch offices, which sign shall be easily observed and read by persons about to enter any of said offices. Every such sign shall contain the name of the broker, together with his trade name, if any, beneath which name shall be the word "Broker", all in letters not less than one inch in height. If the broker so desires, the names of salesmen may be placed below the name of the broker.

Section 8. Advertising. ~~[47-12-11] Adopted 2-23-61~~

8.01. Broker Advertising Real Estate.--A broker shall not advertise by linear advertisements or otherwise sell, buy, exchange, rent, lease or mortgage property in a manner indicating that the offer to sell, buy, exchange, rent, lease or mortgage such property is being made by a private party, not engaged in the real estate business, and no advertisement shall be inserted in any publication where only a post office box number, telephone number or street number appears. Every broker when advertising real estate, either through linear advertisements or otherwise, shall state in the advertisement either the individual name or firm name under which the broker operates and the term "Broker" or "Realtor" as the case may be. However, a broker whose firm name is that of a deceased person or that of a person not licensed with the firm, shall place in the ad the name of the broker for the firm and the term "Broker" or "Realtor" as the case may be. Provided, however, that the broker, if he is the owner of the property which he is advertising has all the rights of the non-broker owner.

8.02. Salesmen Prohibited.--Salesmen are prohibited from advertising to purchase any property or offering for sale, rent or lease any property under their own names. Provided, however, that a salesman, if he is the owner of the property which he is advertising, has all the rights of the non-salesman owner.

All advertising of property listed by a broker must be under the direct supervision and in the name of the employing broker.

Section 9. Trade and Fictitious Names. ~~[47-12-7]~~ Adopted 4-2-59 ²

9.01. Use of Trade Name.--An individual broker may use a trade name, and, if so, it must be disclosed in a request for a certificate and be placed upon the certificate. The trade name shall not be that of another broker in the same locality.

9.02. Change of Trade Name. ~~Adopted 11-24-59~~ Notice in writing shall be given to the Commission by each person, partnership, association, or corporation, of any change of trade name. Said notice shall be accompanied by the original license certificate, whereupon the Commission shall issue a new certificate with the new trade name for the unexpired period without fee.

Section 10. Offer of Trade Stamps and Gifts. ~~[47-12-11]~~ Adopted 4-2-59 ²

10.01. Trade Stamps Prohibited.--No real estate broker shall, in the course of his regular business, offer in exchange for the sale or listing of any real estate, trade stamps of the nature that may be redeemed for merchandise.

10.02. Offering of Gifts Prohibited. ~~Adopted 10-29-69~~ A real estate broker or real estate salesman shall not offer door prizes, gifts or anything of value, in exchange for the sale or listing of any real estate; or while attempting to procure a purchaser or prospect calculated or intended to result in a real estate transaction.

Section 11. Location of Office. ~~[47-12-8]~~ Adopted 4-2-59 ²

11.01. Beer Sales.--A broker shall not maintain an office or display a sign, where such office is located in a place of business, where beer or other like beverages are sold. If a real estate office is located adjoining to or in the same building where beer or other like beverages are dispensed, said office shall have a private entrance.

The Commission shall determine that the location of a real estate office is in keeping with the standards of the real estate trade.

Section 12. Renewal of License. ~~[47-12-9]~~ Adopted 4-2-59 ²

12.01. Duty to Renew.-- All licenses expire June 30th of each year, regardless of the date the license was issued. It shall be the duty of all persons licensed as a real estate broker or salesman to register annually with the Commission and renew their license, by paying for each annual registration the fee for license as set forth under Section 9, of the License Act.

12.02. Operating Without License.--Any licensee who does not register as set forth above, but continues to operate wherein a license is required, may be considered to be in violation of the License Act.

12.03. Examination Required.--Any broker or salesman who does not renew his license within ninety days after the effective renewal date shall be required to undergo and successfully pass the written examination before being

issued a license. Any broker or salesman who renews his license within ninety days from the effective renewal date shall not be required to take the examination.

Section 13. Time for Taking Examinations. ~~[47-12-7]~~ Adopted 4-2-59 *e*

13.01. Appear for Examination.--An applicant who is required to take an examination shall appear for and be administered an examination on or before the expiration of one month from the date of the notice that the application has been approved or the application shall be denied without prejudice.

Section 14. Qualifications for Real Estate Salesman's License. ~~[47-12-4]~~ *e*
Adopted 4-2-59 *e*

14.01. Age.--Every applicant for a license as a real estate salesman shall be of the age of 18 years or over.

14.02. Recommendation.--The application for salesman's license shall be accompanied by the recommendation of at least two citizens who are property owners at the time of signing said application and have been property owners for at least twelve months preceding such application, who have known the applicant for two years and are not related to the applicant, certifying that the applicant bears a good reputation for honesty and trustworthiness, and recommending that a license be granted to the applicant.

Section 15. Complaints. ~~[47-12-11]~~ Adopted 4-2-59 *e*

15.01. Filing of Complaint.--Complaints of alleged violations of the Real Estate License Law will be considered only when submitted in writing and in triplicate and setting forth all details of the transaction, giving full names of all persons having knowledge of such transactions, together with specific addresses, dates, amounts involved and other pertinent information. Only in this way can the Commission handle such matters expediently and satisfactorily.

15.02. Filing of Deposits.--When a hearing is scheduled the Commission may require the Complainant to deposit the amount of fifty dollars, payable to the hearing shorthand reporter. The purpose of the deposit is to defray the minimum cost of the proceedings if the Complainant fails or refuses to attend the hearing. If the Complainant is present at the hearing, the deposit shall forthwith be returned to the Complainant.

Section 16. Amended August 25, 1967, to Delete All of Section 16.

Section 17. Trust Funds. ~~[47-12-10]~~ Adopted 4-2-59 *e*

17.01. Maintain Records.--Every broker shall, at all times, maintain in his name or firm name, a separate trust account in a recognized financial institution in which he shall deposit all funds not his own left in his possession, including funds in which he may have some future interest or claim and including, but not limited to, earnest money deposits. In conjunction with said account, he shall maintain at his usual place of business, books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. Said accounts and other records shall be opened to inspection

by the Commission and its duly authorized agents at all times during regular business hours at his usual place of business.

Material discrepancies in said accounts and records shall be considered a violation by the broker of the Licensing Act.

17.02. Salesman with Trust Funds.--Every real estate salesman who receives any funds as defined above, shall immediately, at the first opportunity, pay over or deliver the same to the broker, or employer, under whom he shall be registered as a salesman.

Section 18. Broker's Place of Business. [~~47-12-8~~] Adopted ~~4-2-59~~ 0

18.01. Usual Place of Business.--Usual place of business is defined as the space from which he carries on his business and which he holds forth to the public as his usual place of business. This space may be maintained in the broker's residence, but must be sufficient to maintain the records and accounts required in the above regulation and of sufficient space within which to carry on inspection of said accounts and records as therein provided, without interference by other users of the property.

Section 19. Closing Statements. [~~47-12-18~~] Adopted ~~4-2-59~~ 0

19.01. Deliver to Seller and Buyer.--It shall be mandatory upon every broker to deliver to the seller in every real estate transaction wherein he acts as a real estate broker, at the time such transaction is consummated, a complete, detailed, closing statement showing all of the receipts and disbursements handled by such broker, also to deliver to the buyer a complete statement showing all moneys received in the transaction from such buyer and how and for what the same were disbursed; the broker shall retain true copies of such statements in his files for at least five years.

Section 20. Commingling Defined. [~~47-12-11~~] Adopted ~~4-2-59~~ 0

20.01. Commingling.--Commingling within the meaning of Section 11 of the License Act, is defined as failure to deposit or place trust funds received (1) into a neutral escrow depository or (2) in the hands of principals or (3) in a trust fund account in accordance with Section 18 of the License Act, by the next business day following their receipt. However, it shall not constitute commingling to hold an uncashed check until acceptance of an offer when directed to do so by the buyer or purchaser, and it shall not constitute commingling to hold an uncashed check after acceptance of an offer when directed to do so by the seller or purchaser. The fact that a check is being held in an uncashed form must be specifically disclosed to the seller or purchaser before he accepts the offer.

Section 21. Salesman and Earnest Money. [~~47-12-11~~] Adopted ~~4-2-59~~ 0

21.01. Collection of Money.--No real estate salesman shall collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payments, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker under whom he is licensed, and upon receipt of any such moneys the salesman shall immediately turn it over to his employing broker.

Failure of salesman to comply with this rule will be considered a violation of Section 11, Paragraph (6), of the License Act.

Section 22. Signature of Property Owners. ~~[47-12-5] Adopted 7-1-59~~

22.01. Application of Broker and Salesman.--The Commission shall reserve the right to refuse an application for either a broker or salesman's license wherein the person signing the application as a property owner is that of an employer, a partner, an associate, or anyone affiliated in any connection with the individual, partnership, association, or corporation, wherein the applicant will be employed.

Section 23. Amended July 27, 1973, to Delete All of Section 23.

Section 24. Falsifying Contracts. ~~[47-12-11] Adopted 4-2-59~~

24.01. Misrepresentation.--No broker nor salesman shall represent to a lender or any other interested party, either verbally or through the preparation of a false sales contract, an amount in excess of the true and actual selling price. Such practice constitutes a gross misrepresentation.

Section 25. Procedure for Conduct of Hearing. ~~[47-12-12] Adopted 3-6-64~~

25.01. Procedure.--The following procedure will be observed during the course of any hearing on denial of application for license or suspension or revocation of a license.

1. There being two or more members of the Commission present, the presiding officer will call the Hearing to order and remark for the record the following items:
 - A. That "this is the time and place set for the Hearing in the matter of" (here insert the title of the action as it appears on the Notice of Hearing),
 - B. that "the following members of the West Virginia Real Estate Commission are present" (here insert the names of the Commissioners present),
 - C. "that the Executive Secretary for the Commission is present" (here insert name and state he is present),
 - D. "that the respondent is present, in person and/or by counsel" (here insert the name or names), indicate if such person or his counsel are not present,
 - E. "the Presiding Officer shall ascertain if all persons to appear are present".
2. The Presiding Officer will ask said persons to raise their right hands and shall ask:
"DO YOU SOLEMNLY SWEAR TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH IN THE TESTIMONY YOU ARE TO GIVE DURING THESE PROCEEDINGS?"
3. The Presiding Officer shall then request the Executive Secretary for the Commission to file with the Chairman a verified copy of the complaint and Notice of Hearing as a part of the record and the Chairman shall start the proceeding by summarizing verbally said decision or complaint.
4. The Presiding Officer shall then request legal counsel for respondent to verbally summarize answers to the charges.

5. The Presiding Officer shall proceed with the conduct of the Hearing.
6. The Presiding Officer will proceed with introduction of evidence and calling of witnesses for the Commission.
7. Counsel for respondent may cross-examine in order.
8. When no further questions are posed, the Presiding Officer shall inquire if any Commissioner desires to ask any questions of the witness.
9. When the Presiding Officer shall indicate that he has completed the proceeding on behalf of the Commission, he shall request counsel for the respondent to proceed with introduction of evidence and calling of witnesses on behalf of respondent.
10. The Presiding Officer of the Commission may cross-examine such witnesses in order.
11. When no further questions are posed to respondent's witnesses, the Presiding Officer shall inquire if any Commissioner desires to ask any questions of the witness.
12. When counsel for the respondent shall indicate that he has completed the proceeding on behalf of the respondent, the Presiding Officer shall determine if the Commission desires to call any rebuttal witnesses.
13. When it has been indicated that all testimony has been given and all evidence submitted, the Presiding Officer shall inquire if any Commissioner desires to pose any further questions. When all testimony is entered, the Presiding Officer shall summarize and counsel for respondent shall have right to summarize.
14. The Presiding Officer shall then indicate for the record that the Hearing is terminated and the matter taken under advisement, with proper Notice of Decision to follow.

No case shall be heard except in the presence of at least two Commissioners; any Commissioner not so present shall have a reasonable time, before any decision is rendered, to review the record therein and thereafter participate in the decisions of the Commissioners. Should such absent Commissioner be unable for any reason to review the records of any hearing within a reasonable time, then the other Commissioners may render their decision without the participation of such absent Commissioner.

Section 26. Examination. ~~[47-12-7] Adopted 4-2-59~~^e

26.01. Rules.--The following examination rules will prevail and violation of any part will be considered grounds for disqualification of the applicant:

- (a) Examinees will not be permitted to refer to any notes, books or memoranda.
- (b) All computations must be shown on the blank pages of the examination paper.
- (c) The copying of questions or the making of notes relative thereto is prohibited.
- (d) Examinees will not be permitted to talk or ask questions of another examinee during the course of the examination.

26.02. Re-examination.--An applicant who fails to attain a passing grade on the first examination will be given notice of the failure. A second examination will be scheduled and the applicant will be given written notice when and where to appear.

26.03. Review of Examination.--An applicant for real estate license who fails the examination after two attempts may review the examination papers by making written request to the Commission.

Section 27. Requirements of Broker. ~~[47-12-8]~~ Adopted 3-6-64^e

27.01. Brokers Becoming Licensed Salesmen.--The holder of a broker's license may, during the term of that license, request inactivation of his broker's license, and upon filing the appropriate application and fee be issued a salesman's license. Under this procedure he need not qualify in the salesman's examination. Such salesman may reinstate his broker's license at any future date upon filing the appropriate application and fee. Broker's examination will not be required under this procedure if the broker applicant is the holder of a current salesman's license.

27.02. Brokers Employed By Other Brokers as Salesmen.--Brokers who, by written or oral agreement, are salesman employees of another broker or brokers, and who do not engage in any real estate transactions independent of their employer, will be still considered as a broker by the Commission in respect to all the requirements and responsibilities set forth in the Real Estate Law applying to brokers.

27.03. Brokers Who Rent Desk Space in a Real Estate Office.--A broker who rents desk space within a real estate office and whose business is conducted separately and apart from that of the broker from whom said quarters are rented, shall maintain a sign on the main entrance door or on a wall or window immediately adjacent to said door.

27.04. Broker to Refund Deposit Money.--When for any reason the owner fails, refuses, neglects or is unable to consummate the deal as provided for in the contract and through no fault or neglect of the purchaser, the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and such deposit should be returned to the purchaser at once and the broker should look to the owner for his compensation. (Non-compliance may be violation of Chapter 47-12-1(6).)

Section 28. Court Action. ~~[47-12-17]~~ Adopted 3-6-64^e

28.01. Licensee To Inform Commission of Court Action.--When any real estate broker or salesman is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving real property, and when he is involved in such transaction in his capacity as a licensed agent, it shall be the duty of said broker or salesman to supply to the Real Estate Commission a copy of the complaint, indictment, information, the answer filed, if any, and to advise the Real Estate Commission of the disposition of the case and of the nature and amount of any judgment, verdict, finding or sentence which may be made, entered or imposed therein.

Section 29. Notice of Proposed Rules. ~~[47-12-17]~~ Adopted 3-6-64^e

29.01. Request For Notice.--The Commission shall set a fixed date whereon all rules proposed by the Commission shall be finally acted upon. All interested

persons shall be afforded an opportunity to submit data, objections, suggested amendments, views, evidence and arguments, orally or in writing, concerning the proposed rule or rules. It shall be the duty of interested persons to request notice from the Commission on any proposed rule. Upon receipt of notice given to the Commission, the persons shall be furnished a notice of the proposed rule, containing expressed terms of the proposed rule or an informative summary thereof and a statement of the time, date and place the Commission will act on the proposed rule or rules. The request by any person to receive notice shall be in writing and shall request the Commission to notify him of any rule proposed by the Commission during the calendar year in which the request is made. The Commission shall furnish such notice not less than 30 nor more than 60 days prior to the date fixed wherein the rules will be acted upon.

Section 30. Bad Checks. ~~[47-12-9] Adopted 10-29-69~~

30.01. Bad Checks.--Checks issued by any broker or salesman which are returned marked NSF (Insufficient Funds) or are not honored for any cause, are considered prima facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. If issued in payment of a license or license renewal, and a license is issued on the basis of such payment, such license will be immediately cancelled or revoked. Where a check or checks are incorrectly returned by a bank or other depository because of the bank or depository's error, statement to such effect from the institution will be required before a license will be reissued.