

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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

AGENCY: Real Estate Commission TITLE NUMBER: 174

CITE AUTHORITY WV Code 47-12-3 & 19

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

TITLE OF RULE BEING AMENDED: Requirements in licensing real estate
brokers and salesmen and the conduct of brokerage business

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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.

Richard E. Strader

Richard E. Strader
Executive Director

6.00



State of West Virginia

West Virginia Real Estate Commission

1033 Quarrier Street, Suite 400
Charleston, West Virginia 25301-2315
(304) 558-3555
FAX (304) 558-6442

RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

COMMISSIONERS

VAUGHN L. KIGER, CHAIRMAN
MORGANTOWN

ROBERT P. McLEAN, SECRETARY
BECKLEY

SUMMARY OF PROPOSED LEGISLATIVE RULE

AGENCY: REAL ESTATE COMMISSION

RULE: 174-1

STATUTORY AUTHORITY: WV CODE 47-12-3 & 19

SUMMARY

To amend an existing rule by deleting all of section 13.5, "Certification of Real Estate Schools", and creating a new section 30, "Real Estate Courses, Course Sponsors and Instructors". Also, included are technical changes to other sections of this rule.

REAL ESTATE COURSES, COURSE SPONSORS AND INSTRUCTORS (Section 30)

All courses, course sponsors and instructors must be approved by the Commission prior to offering any pre-license or continuing education course. The rule specifies subject areas, record retention requirements and general procedures to be followed in offering mandatory real estate education courses.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Requirements in licensing brokers and salesmen and the conduct of brokerage business.

Type of Rule: X Legislative Interpretive Procedural

Agency Real Estate Commission Address
1033 Quarrier Street, Suite 400, Charleston, WV 25301

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

No increased costs will be incurred by the Agency as a result of implementation of this rule.

3. Objectives of these rules:

To enumerate the duties and responsibilities of all schools and instructors offering real estate education in compliance with WV Code 47-12-4 (pre-license education) and 47-12-7a (continuing education).

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.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 21, 1992

Signature of Agency Head or Authorized Representative

Richard E. Strader

DATE: SEPTEMBER 4, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: REAL ESTATE COMMISSION

LEGISLATIVE RULE TITLE: Requirements in licensing real estate brokers and salesmen and the conduct of brokerage business.

1. Authorizing statute(s) citation WV Code 47-12-3 & 19

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

July 21, 1992

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

Attached Notice of the Public Hearing was mailed on July 23, 1992, to the WV Association of Realtors, all licensed real estate offices, and all schools offering pre-license and continuing education courses.

c. Date of hearing(s): August 25, 1992

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)

September 4, 1992

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

Richard E. Strader, Executive Director

558-3555

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.

N/A

- 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 _____

TITLE 174
LEGISLATIVE RULES
REAL ESTATE COMMISSION

RECEIVED
1992 SEP -4 11:26
OFFICE OF THE COMMISSIONER
DEPARTMENT OF REVENUE

SERIES 1
REQUIREMENTS IN LICENSING REAL ESTATE BROKERS AND
SALESMEN AND THE CONDUCT OF BROKERAGE BUSINESS

§ 174-1-1. General.

1.1. Scope. -- These legislative rules establish general regulations for the filing of applications for real estate licenses and the requirements necessary to renew licenses and for the enforcement and administration of the provisions of article twelve, chapter forty-seven of the West Virginia Code, (1959).

1.2. Authority. -- WV Code § 47-12-3 and 19.

1.3. Filing Date. --

1.4. Effective Date. --

§ 174-1-2. Definitions.

2.1. Commission. -- The term "Commission" means the West Virginia Real Estate Commission as authorized by WV Code 47-12-3.

2.2. Licensee. -- The term "licensee" means a broker, an associate broker, and a salesman as defined in WV Code 47-12-2.

2.3. Applicant. -- The term "applicant" means any person, partnership, association or corporation who is making application to the Commission for a real estate license.

§ 174-1-3. License Fees.

3.1. 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 prorated for fractional parts of a year.

3.2. Proper fee. -- Each application for a license shall be accompanied by a separate check or money order for the proper fee for that particular application.

When a salesman, who is duly licensed, desires to become a broker, his or her employing broker shall surrender his or her salesman's certificate to the Commission before a broker's certificate is issued. He or she shall pay the fee for the broker's license as set forth under WV Code 47-12-9. The Commission shall not give credit for the fee paid for the salesman's license.

§ 174-1-4. License Certificates.

4.1. License certificates. -- The Commission shall issue to each licensee a license in such form and size as shall be prescribed by the Commission. The 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 or she is employed. Each license shall be imprinted with the seal of the Commission and, shall contain such information as the Commission prescribes. The Commission shall deliver or mail the license of each real estate salesman and associate broker to the real estate broker by whom the licensee is employed, and the broker shall keep it in his or her custody and control.

4.2. Officers of a corporation. -- If a person applying for a broker's license is a member of a partnership or association or an officer of a corporation, the Commission shall issue the broker's license certificate in the name of the firm. All other members, officers or employees of the partnership, association or corporation who engage in any of the acts defined in WV Code 47-12-2 must become licensed as an associate broker or salesman.

§ 174-1-5. Branch Offices.

5.1. Register of branch office. -- Every licensed broker who desires to conduct brokerage transactions at any location other than the principal office must register the branch office information annually and pay the required fee in order to receive a license certificate for each branch office. A mere temporary shelter on a subdivision being sold by the broker, for the convenience and protection of licensees and customers, and at which transactions are not closed and licensees are not permanently assigned is not considered to be a branch office. The permanence, use, and character of activities conducted at the office or shelter shall determine whether it must be registered.

5.2. Manager of branch office. -- A licensed broker shall not employ, as manager of his branch office, a real estate salesman with less than two (2) years actual experience as a licensed real estate salesman.

§ 174-1-6. Cancellations And Transfers.

6.1. Custody of license certificates. -- The broker shall keep the license certificates of each salesman and associate broker in his or her custody at all times.

Upon the termination of employment, the broker shall immediately return the license certificate to the Commission for cancellation.

6.2. Transfer of salesman's or associate broker's license. -- In the event a salesman or associate broker wishes to transfer his or her real estate license, to a broker other than the broker under which he or she is presently employed, he or she must first notify his or her present employer and must submit a properly executed application to the Commission on a form provided by the Commission for this purpose and pay the required fee.

6.3. Sworn statement by broker. -- In the event a real estate salesman or associate broker makes application for transfer of his or her license to the employ of another broker, the transfer application shall include a sworn statement by the broker in whose employ the applicant desires to enter certifying that the applicant is to be employed by him or her.

§ 174-1-7. Qualifications For Real Estate Broker's License.

7.1. Experience requirement. -- WV Code 47-12-4 among other required qualifications, provides that "every applicant for a license as real estate broker... shall have served a bona fide apprenticeship as a licensed real estate salesman for two (2) years or shall produce to the Real Estate Commission satisfactory evidence of real estate experience."

7.2. Apprenticeship. -- The Commission defines the word "apprenticeship," as used in WV Code 47-12-4 to mean 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 apprenticeship requirement, the applicant shall submit to the Commission, written documentation outlining the applicant's experience in the real estate business. The documentation must demonstrate that the applicant has gained experience in all aspects of the real estate business equal to that which would be gained by a person engaged in the real estate business on a full time basis during a minimum two year period of time.

7.3. Affidavit of broker. -- Each and every broker, with whom a real estate salesman has been employed, shall furnish the Commission with an affidavit attesting to the applicant's experience and qualifications. The broker shall submit the affidavit on a form prepared by the Commission.

§ 174-1-8. Office Signs.

8.1. 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 shall be easily observed and read by persons about to enter any of the offices. Every sign shall contain the name of the broker, together with his trade name, if any, beneath which shall be the word "Broker," all in letters not less

than 1 inch in height. If the broker so desires, the names of the salesmen or associate brokers may be placed below the name of the broker.

§ 174-1-9. Advertising.

9.1. Broker advertising real estate. -- A broker shall not advertise by linear advertisement 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. A broker shall not insert an advertisement 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 advertisement 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 his or her name in the ad and the term "Broker" or "Realtor" as the case may be: Provided, that if the broker, is the owner of the property which he or she is advertising, the broker has all the rights of a nonbroker owner.

9.2. Salesmen and associate brokers prohibited. -- Salesmen and associate brokers may not advertise to purchase any property or offer to sell, rent, or lease any property under their own names: Provided, that if a salesman or associate broker is the owner of the property which he or she is advertising, the salesman or associate broker has all the rights of an owner. All advertising of property listed by a broker, must be under the direct supervision and in the name of the employing broker.

§ 174-1-10. Trade And Fictitious Names.

10.1. Use of trade name. -- An individual broker may use a trade name. Any broker who wishes to use a trade name must disclose the trade name in an application for license and upon approval by the Commission, the trade name will be placed upon the broker's license certificate. The trade name shall not be the same as that currently being used by another broker in the same locality. A broker shall not use any trade name not registered with the Commission.

10.2. Change of trade name. -- Each person, partnership, association or corporation, shall notify the Commission in writing of any change of trade name. The notice shall be made on a form supplied by the Commission and accompanied by the original license certificate and proper fee. The Commission shall issue a new certificate with the new trade name ~~ef~~ for the unexpired period.

§ 174-1-11. Offer Of Trade Stamps And Gifts.

11.1. Trade stamps prohibited. -- No real estate broker shall offer in exchange for the sale or listing of any real estate, trade stamps of the nature that may be redeemed for merchandise.

11.2. Offering of gifts prohibited. -- 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 engaging in any other activity specified in WV Code 47-12-2.

§ 174-1-12. Location Of Office.

12.1. Beer sales. -- A broker shall not maintain an office or display a sign, where beer or other alcoholic beverages are sold. If a real estate office is located adjoining to or in the same building where beer or other alcoholic beverages are dispensed, the office shall have a private entrance.

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

§ 174-1-13. Renewal Of License.

13.1. Duty to renew. -- All licenses expire June 30 of each year regardless of the date the license was issued. It is the duty of all licensees to register annually with the Commission and to renew their license by paying the annual renewal fee for license as set forth under WV Code 47-12-9.

13.2. Operating without license. -- Any licensee who does not register as required by this section, but continues to operate when a license is required, is in violation of WV Code 47-12.

13.3. Examination required. -- Any licensee who does not renew his or her license within ninety (90) days after the effective renewal date is required to undergo and successfully pass the written examination before being issued a license. Any licensee who renews his or her license within ninety (90) days from the effective renewal date is not required to take the examination.

13.4. Continuing education. -- Each licensee applying for the renewal of his or her license shall furnish proof with their renewal application showing they have completed, in the fiscal year preceding the license renewal date, seven (7) hours of instruction in an approved real estate course. It is the responsibility of the broker to see that all licensees in his or her employ comply with this requirement prior to renewing their licenses.

This requirement does not apply to any licensee who held a license on the first day of July, one thousand nine hundred sixty-nine and continuously thereafter. ~~This requirement does not apply to any licensee who is on inactive status.~~

During the time a licensee is on inactive status, the licensee does not need to comply with the continuing education requirements. When a licensee on inactive status reverts to active status he or she shall obtain seven (7) hours of continuing education prior to being placed on active status.

This requirement does not apply to any licensee who qualified to obtain an original license in the fiscal year preceding the annual renewal date.

A non-resident licensee shall have complied with the continuing education requirements of this state if their state or district has a comparable continuing education requirement and accords the same privilege to West Virginia residents.

~~13.5. Certification of real estate schools.~~

~~a. All real estate courses, course sponsors (schools) and instructors must be certified by the Commission prior to the conducting of a course of education in real estate subjects in compliance with the continuing education requirement as defined in WV Code 47-12-7a.~~

~~b. Degree granting institutions, colleges and universities accredited by the West Virginia Board of Education are approved schools. The Commission shall accept real estate courses satisfactorily completed at these institutions to the extent of number of classroom hours involved in real estate subjects. Continuing legal education courses approved by the West Virginia State Bar are also approved by the Commission.~~

~~e. The Commission will approve courses only if the course deals with the following subjects: real estate ethics, appraisal, civil rights, equal opportunity, anti-trust, real estate law, contract law, real estate finance, principal and agent relationship or other real estate related subject. Courses in real estate offered by the institutes, councils and societies of a national or state professional association are also approved by the Commission.~~

~~d. The length of a continuing education course is defined as seven (7) hours with each hour equaling fifty (50) minutes of instruction. The Commission will determine the amount of continuing education credit to be awarded for completion of a correspondence course. When approved audio or video tapes are used, a certified instructor shall be present at all times while class is in session. Licensees shall obtain continuing education hours in the fiscal year preceding the date required to renew their license.~~

~~e. Each instructor shall apply for and be issued a letter of certification if he or she:~~

~~1. Is an instructor or professor of a college or university approved by the State Board of Education and who teaches in subjects dealing with real estate; or~~

~~2. Is an attorney at law with a minimum of five (5) years of active practice in the area of study he or she proposes to teach; or~~

~~3. Holds a degree in real estate from an accredited college or university; or~~

~~4. Is a licensed real estate broker with a minimum of five (5) years experience in the areas of study he or she proposes to teach; or~~

~~5. Holds a degree from an accredited college and has at least two (2) years of teaching experience and possesses a minimum of two hundred classroom hours in the area of study he or she proposes to teach; or~~

~~6. Has a minimum of three (3) years of professional or educational experience as a teacher in the area of study he or she proposes to teach.~~

~~f. Non resident. — A non resident licensee shall have complied with the continuing education requirements of this state if their state or district has a comparable continuing education requirement and accords the same privilege to West Virginia residents.~~

~~g. Registering school and course. — Each school or institution shall apply to the Real Estate Commission in writing, outlining the real estate course content. Upon approval, the Commission will issue a Letter of Certification. Each school or institution shall furnish to each student that completes the required course, a certificate stating the name of the student, the name of the course and the date the course was completed.~~

~~h. Inactive status. — During the time a licensee is on inactive status, the licensee does not need to comply with the continuing education requirements. When a licensee on inactive status reverts to active status he or she shall obtain seven (7) hours of continuing education prior to being placed on active status.~~

~~i. Original license. — Continuing education is not required to renew a license that was obtained in the fiscal year preceding the renewal date.~~

§ 174-1-14. Time For Taking Examinations.

14.1. 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 (1) month from the date of the notice that the Commission has approved the application or the application will be cancelled and the applicant must reapply.

§ 174-1-15. Qualifications For Real Estate Salesman's License.

15.1. Age. -- Every applicant for a license as a real estate salesman shall be eighteen (18) years of age or over.

15.2. Recommendation. -- The application for salesman's license shall be accompanied by the recommendation of at least two (2) citizens who are property owners at the time of signing the application and who have been property owners for at least twelve (12) months preceding application. The citizens must have known the applicant

for two (2) years and may not be related to the applicant. They must certify that the applicant bears a good reputation for honesty and trustworthiness, and recommend that a license be granted to the applicant.

§ 174-1-16. Complaints.

16.1. Filing of complaint. -- The Commission will consider complaints of alleged violations of WV Code 47-12 only when they are submitted in writing on forms supplied by the Commission and set 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.

16.2. Filing of deposits. -- When a hearing is scheduled, the Commission may require the complainant to deposit the amount of fifty dollars (\$50.00), 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 be immediately returned to the complainant.

§ 174-1-17. Trust Funds.

17.1. Maintain records. -- Every broker shall maintain in his or her name or firm name, a separate trust account in a recognized financial institution in which the broker shall deposit all funds not his or her own left in his or her possession, including funds in which the broker may have some future interest or claim and including but not limited to earnest money deposits. In conjunction with the account, the broker shall maintain at the broker's usual place of business, for a minimum of five (5) years, books, records, contracts, closing statements, bank records, and other necessary documents so that the Commission may determine the adequacy of the account. The accounts and other records shall be open to inspection by the Commission and its duly authorized agents at all times during regular business hours at the broker's usual place of business.

The Commission will consider material discrepancies in the accounts and records a violation of WV Code 47-12 by the broker.

17.2. Salesman and associate broker with trust funds. -- Every real estate salesman and associate broker who receives any trust funds shall immediately, or at the first opportunity, pay over or deliver the trust funds to the broker, under whom he or she is registered as a salesman or associate broker.

§ 174-1-18. Broker's Place Of Business.

18.1. Usual place of business. -- Usual place of business is defined as the space from which a broker carries on his or her business and which the broker holds forth to the

public as his or her usual place of business. The broker may maintain this space in the broker's residence, but the space must be sufficient to maintain the records and accounts required in Section 17 of this rule and of sufficient space within which to carry on inspection of the accounts and records without interference by other users of the property.

§ 174-1-19. Closing Statements.

19.1. Deliver to seller and buyer. -- Every broker shall deliver to the seller in every real estate transaction wherein he or she 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 the broker. The broker shall also deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the moneys were disbursed. The broker shall retain true copies of the statements in his or her files for at least five (5) years.

§ 174-1-20. Commingling Defined.

20.1. Commingling. -- Commingling within the meaning of WV Code 47-12-11 is defined as failure to deposit or place trust funds received in: (1) a neutral escrow depository or (2) the hands of principals or (3) a trust fund account in accordance with WV Code 47-12-18 by the next business day following their receipt. However, it is not commingling to hold an uncashed check until acceptance of an offer when directed to do so by the buyer or purchaser, and it is not commingling to hold an uncashed check after acceptance of an offer when directed to do so by the seller or purchaser. The broker must specifically disclose the fact that a check is being held in an uncashed form to the seller or purchaser before he or she accepts the offer.

§ 174-1-21. Handling Of Trust Money By Salesman And Associate Broker.

21.1. Collection of money. -- No real estate salesman or associate broker shall collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker under whom he or she is licensed. Upon receipt of any trust money, the salesman or associate broker shall immediately turn it over to his or her employing broker.

The Commission will consider the failure of a salesman or an associate broker to comply with this rule to be a violation of WV Code 47-12-11.

§ 174-1-22. Signature Of Property Owners.

22.1. Application of broker, associate broker and salesman. -- The Commission shall reserve the right to refuse an application for either a broker, associate 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 manner with the individual or the partnership, association or corporation where the applicant will be employed.

§ 174-1-23. Falsifying Contracts.

23.1. Misrepresentation. -- No licensee 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. The Commission will consider such practice a violation of WV Code 47-12-11.

§ 174-1-24. Procedure.

24.1. Procedure. -- The Commission will observe the provisions of WV Code 29a-5 during the course of any hearing on denial of an application for a license or the suspension or revocation of a license.

The Commission shall not hear any case except in the presence of at least two (2) Commissioners. Any Commissioner not present shall have a reasonable time before any decision is rendered, to review the record and thereafter participate in the decision of the Commissioners. Should the 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 the absent Commissioner.

§ 174-1-25. Examination.

25.1. Rules. -- The following examination rules will prevail and violation of any rule is grounds for disqualification of the applicant:

- a. Examinees may not refer to any notes, books or memoranda.
- b. The examinee must show all computations on the blank pages of the examination paper.
- c. The copying of questions or the making of notes is prohibited.
- d. Examinees may not talk or ask questions of another examinee during the course of the examination.

25.2. Reexamination. -- The Commission will give a notice of failure to an applicant who fails to attain a passing grade on the first examination. The Commission will schedule a second examination and will give the applicant written notice of when and where to appear.

25.3. Review of examination. -- An applicant for real estate license who fails the examination after two (2) attempts may review the examination papers by making written request to the Commission.

25.4. Payment of license fee. -- An applicant for a real estate license, upon successfully passing the examination, must pay the required license fee within ninety (90) days from the date of sitting for the examination. The Commission will cancel the application of any applicant who does not pay the required license fee within ninety (90) days. The Commission will require the applicant to reapply and successfully pass the examination in the event the applicant wishes to obtain a real estate license.

§ 174-1-26. Requirements Of Broker.

26.1. Brokers becoming licensed salesmen. -- The holder of a broker's license may, during the term of that license, request inactivation of the broker's license, and upon filing the appropriate application and fee be issued a salesman's license. Under this procedure he or she need not qualify in the salesman's examination. The resulting salesman may reinstate the broker's license at any future date upon filing the appropriate application and fee. A broker's examination is not required under this procedure if the broker applicant is the holder of a current salesman's license.

26.2. Brokers employed by other brokers as salesmen. -- Brokers who, by written or oral agreement, are salesmen employees of another broker or brokers, and who do not engage in any real estate transactions independent of their employer, are still considered a broker by the Commission in respect to all the requirements and responsibilities set forth in the WV Code 47-12 et seq.

26.3. Brokers who rents 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 the desk space is rented, shall maintain a sign on the main entrance door or on a wall or window immediately adjacent to the door.

26.4. 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 the broker shall return the deposit to the purchaser at once and the broker should look to the owner for his compensation. The Commission will consider a violation of this rule to be a violation of WV Code 47-12-11.

§ 174-1-27. Court Action.

27.1. Licensee to inform Commission of court action. -- When any licensee is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving real property, and when he or she is involved in such transaction in his or her

~~capacity as a licensed agent~~; it is the duty of the licensee to supply the Commission with a copy of the complaint, indictment, information, and the answer filed, if any, and to advise the Commission of the disposition of the case and the nature and amount of any judgment, verdict, finding or sentence which may be made, entered or imposed.

§ 174-1-28. Bad Checks.

28.1. Bad checks. -- Checks issued by any licensee 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 for a license or license renewal, and a license is issued on the basis of the payment, the Commission will immediately cancel or revoke the license. Where a check or checks are incorrectly returned by a bank or other depository because of the bank's or depository's error, a statement to that effect from the institution is required before the Commission will reissue a license.

§ 174-1-29. Agency Disclosure.

29.1. Each licensee shall provide a written notice disclosing which party the licensee is representing as agent to all parties to a real estate transaction. The required written notice shall be signed by all parties, and the real estate broker shall maintain a copy of the notice in his or her transaction files. The licensee shall execute this written notice prior to any party signing any offer to purchase, to sell, or to exchange real estate for which a broker's license is required by WV Code 47-12.

29.2. Any licensee acting as agent of a buyer, shall disclose his or her agency relationship to the seller, or the broker representing the seller, prior to any showing of the property or the initiation of negotiations which ever occurs first. Provided, that if the seller has given prior written permission for the property to be shown by an agent representing the buyer, the licensee is not required to provide further notification prior to showing the property.

29.3. A real estate broker shall provide written notice to all parties prior to paying a fee, commission or other valuable consideration to a broker representing another party to the transaction.

29.4. A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller.

29.5. If change in a licensee's agency status makes an earlier disclosure inaccurate, incomplete or misleading, the licensee shall prepare a revised disclosure form and immediately present it to all parties to the transaction. The revised disclosure must be dated and must be acknowledged in writing by all parties.

29.6. In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt of notice of agency disclosure, the licensee shall sign and date a written declaration setting forth the facts of the refusal.

§ 174-1-30. Real Estate Courses, Course Providers and Instructors.

30.1. Certification of Commission. -- All real estate courses, course providers and instructors must be certified by the Commission prior to offering or conducting a course of education in compliance with the pre-license education requirement as defined in WV Code §47-12-4(3),(4) or the continuing education requirement as defined in WV Code §47-12-7a. Post-Secondary Education Institutions accredited by an accrediting agency officially recognized by the United States Department of Education are approved providers.

30.2. Pre-License Education.

a. The ninety hour (six credit hour) course prescribed for applicants for a salesperson's license shall consist of:

30 clock hours - Real Estate Principles and Practice
20 clock hours - Real Estate Law
20 clock hours - Real Estate Finance
20 clock hours - Real Estate Appraisal

b. The additional ninety hour (six credit hour) course prescribed for applicants for a broker's license shall also consist of the same hours in each subject area but shall consist of more in-depth coverage in each subject area.

c. The grading scale for all course providers offering mandatory pre-license real estate education shall be:

<u>A = 95%-100%</u>	<u>D = 71%-74%</u>
<u>B = 86%- 94%</u>	<u>F = 00%-70%</u>
<u>C = 75%- 85%</u>	

In order to sit for the real estate examination, the students must earn a grade of A, B or C in each subject area.

d. After a student has successfully completed an approved pre-license education course, the approved provider shall supply the student with a certificate of course completion, which certifies the student's name, address, the course completion date, the number of hours in each subject area and the letter grade earned.

e. All approved providers shall maintain records indicating the students who have registered for each course, the completion date of the course and the final results of their attendance. These records must be maintained for a minimum period of five (5) years and shall be subject to inspection by the Commission or its authorized representative. On December 31 of each year, every approved provider shall compile a list of the students completing each class covering the previous calendar year and submit the information to the Real Estate Commission prior to January 31 of the succeeding year. Provided, that Post-Secondary Education Institutions approved under Section 30.1 of this rule are exempt from this requirement.

f. Pre-license education courses approved by the Real Estate Regulatory Agency of any other licensing jurisdiction will be accepted in meeting West Virginia pre-license education requirements if the jurisdiction offers the same privilege to West Virginia licensees, but only to the extent of the number of classroom hours earned.

30.3. Continuing Education

a. Guidelines

A. All continuing education courses should contribute directly to the professional competence of the individual.

B. Materials used in programs should be developed by qualified individuals for use with specified teaching methods.

C. Program content must be current.

b. All course materials must be submitted to the Commission at the time approval is requested. All continuing education course approvals will expire on June 30 of each year. All approved course providers shall be required to make application to the Commission for approval of every continuing education course on forms supplied by the Commission. The application shall be accompanied by a copy of all course materials proposed to be used in the course, a copy of any proposed advertisement and any other information that may be required by the Commission.

c. The minimum length of a continuing education course will be three (3) hours with each hour equalling fifty (50) minutes of instruction. The Commission shall determine the amount of credit to be awarded for each course.

d. The Commission will approve courses that deal with real estate related subjects including but not limited to law, ethics, civil rights, equal opportunity, appraisal, contract law, finance, and principal/agent relationships.

e. When approved audio or video tapes are used, a certified instructor must be present at all times while class is in session.

f. Instructors of continuing education courses may obtain credit toward the continuing education requirement in the same amount as the number of hours awarded to the students but only for the first time the course is taught. No credit shall be given for subsequent teaching of the same course.

g. Each course provider approved to offer continuing education courses shall maintain records indicating the student's name and address, the completion date of the course, the course title, and the amount of hours awarded. These records shall be open to inspection by the Commission or its authorized representative. Each approved provider shall annually supply the Commission with a comprehensive list of all students who have completed a course in continuing education at their institution covering the fiscal year July 1 through June 30 no later than July 15 of the succeeding fiscal year. Provided, that Post-Secondary Education Institutions approved under Section 30.1 of this rule, are exempt from this requirement.

h. Correspondence Courses.

A. The Commission will not approve any correspondence course that is not structured and cannot be monitored.

B. Each correspondence course must, at a minimum, contain a comprehensive final examination consisting of both objective and subjective types of questions in sufficient quantity to assure the student has a thorough knowledge of the course material. In conjunction with submission of the final comprehensive examination to the course provider, the student must execute an affidavit under the penalties of false swearing stating they are the individual that completed the final examination, that they received no assistance while completing the examination and that they actively studied the material in the course for at least the number of hours specified to be awarded for completion of the course.

C. No certificate of course completion shall be issued to any student prior to successful completion of the final comprehensive examination.

30.4. Instructors

a. Each instructor shall apply for and be approved prior to instructing any real estate course. Provided, that this requirement shall not apply to any guest speaker or to any instructor or professor of a Post-Secondary Educational Institution that is accredited by an accrediting agency officially recognized by the United States Department of Education.

b. An instructor will be approved by the Commission only if he or she:

A. Is an attorney at law with a minimum of five (5) years of active practice in the area of study he or she proposes to teach; or

B. Holds a degree in real estate from an accredited college or university; or

C. Is a licensed real estate broker with a minimum of five (5) years experience in the area of study he or she proposes to teach; or

D. Holds a degree from an accredited college or university and has at least (2) years of teaching experience and possesses a minimum of two hundred (200) classroom hours in the area of study he or she proposes to teach; or

E. Has a minimum of three (3) years of professional or educational experience as a teacher in the area of study he or she proposes to teach.



State of West Virginia
West Virginia Real Estate Commission

1033 Quarrier Street, Suite 400
Charleston, West Virginia 25301-2315
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FAX (304) 558-6442

COMMISSIONERS

VAUGHN L. KIGER, CHAIRMAN
MORGANTOWN

ROBERT P. McLEAN, SECRETARY
BECKLEY

RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

Date: September 4, 1992

To: Legislative Rule Making Review Committee

From: Real Estate Commission

Re: Attachments filed with proposed rule

1. Notice mailed to the West Virginia Association of Realtors, all licensed real estate offices, and all currently approved course providers.

Written responses received as a result of the notice:

2. J. Jackson Pauley, Executive Vice-President, West Virginia Association of Realtors
3. Edith Lombardo, Charleston College
4. Deborah Spruce, Spruce School of Real Estate

5. Letter mailed to all who attended the public hearing.

Written responses received as a result of the letter:

6. Deborah Spruce, Spruce School of Real Estate
7. J. Jackson Pauley, Executive Vice-President, West Virginia Association of Realtors
8. James D. Lilly, Jr.

9. Summary of the Public Hearing and the Commission's determinations.



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West Virginia Real Estate Commission

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RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

COMMISSIONERS

VAUGHN L. KIGER, CHAIRMAN
MORGANTOWN

ROBERT P. McLEAN, SECRETARY
BECKLEY

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

DATE OF PUBLIC HEARING: AUGUST 25, 1992

TIME OF HEARING: 9:00 AM

RULE: 174-1

The Public Hearing will be held in the WV Real Estate Commission Office. Both oral and written comments will be accepted. Written comments may be mailed to the Real Estate Commission Office at the above address.

SUMMARY

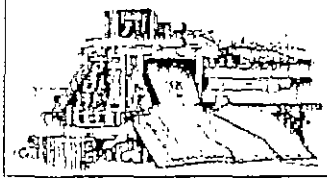
To amend an existing rule by deleting all of section 13.5, "Certification of Real Estate Schools", and creating a new section 30, "Real Estate Courses, Course Sponsors and Instructors". Also, included are technical changes to other sections of this rule.

REAL ESTATE COURSES, COURSE SPONSORS AND INSTRUCTORS (Section 30)

All courses, course sponsors and instructors must be approved by the Commission prior to offering any pre-license or continuing education course. The rule specifies subject areas, record retention requirements and general procedures to be followed in offering mandatory real estate education courses.

--Copies of the proposed rule may be obtained at a cost of \$2.00 plus .10¢ per page by contacting:

Secretary of State's Office
Administrative Law Division
Bldg. 1, Suite 157 K
1900 Kanawha Blvd., East
Charleston, WV 25305-0771
(304) 558-6000



Charleston College

August 21, 1992

Mr. Richard Strader
Executive Director
West Virginia Real Estate Commission
1033 Quarrier Street
Charleston, West Virginia 256301

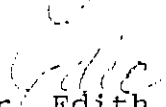
Dear Richard:

Thank you for taking the time to speak with me yesterday about the proposed changes to the licensing law. I would like to speak with you about these changes.

Victor and I had planned on coming to the hearing to be held in your office on Tuesday. However, after our telephone conversation yesterday I thought that that might not be necessary. My intention was to phone you today to discuss my questions. The day passed, however, without that opportunity. I am, therefore, attaching herewith a list of questions, comments and concerns for your consideration. I would like to speak with you about these on Monday but that is unlikely since I will be in Braxton County all day functioning as an educational consultant to that school system. If the opportunity does become available I will phone you from Braxton County on Monday. Otherwise, Victor and I will be at your office on Tuesday morning.

Thanks for all of your help.

Sincerely,


Dr. Edith Lombardo
Academic Dean

RECEIVED

AUG 24 1992

W. VA. REAL ESTATE
COMMISSION

ATTACHMENT - 3

Questions, Concerns, & Comments
On Proposed Changes

174-1-30 Real Estate Courses, Course Sponsors and Instructors.

b. The additional ninety hour (six credit hour) course prescribed for applicants for a broker's license shall also consist of the same hours in each subject area but shall consist of more in-depth coverage in each subject area.

QUESTION: Will there be an operational definition of "in-depth"?

30.3 Continuing Education

All course materials must be submitted to the Commission at the time approval is requested. All continuing education course approvals will expire on December 31 of each year. All course sponsors shall be required to make application to the Commission for approval of every continuing education course on forms supplied by the Commission. The application shall be accompanied by a copy of all course materials proposed to be used in the course, a copy of any proposed advertisement and any other information that may be required by the Commission.

COMMENTS: An expiration of December 31 will be difficult. The continuing education year is essentially the "license year" July 1 to June 30. Thus, a continuing education course is marketed during that license year. With a December 31 expiration a course would need to be renewed in the middle of the license year. Since licensees sign up for a course after July 1 then the correspondence course sold to them would of necessity need to be completed prior to its expiration date of December 31 rather than the natural cut off date of June 30 which is the end of the time for license renewal. There is also a conflict automatically created when one also tries to comply with 30.3 g. In that regulation you specify the need to have lists of students who complete a course in the license year rather than the calendar year.

If the "advertisements" must be approved in advance it will be a considerable amount of work for the Commission. We send about six mailings out each year, we keep an ad in the KANAWHA VALLEY GUIDE TO REAL ESTATE 26 times per year etc.

d. The Commission will approve courses that deal with real estate related subjects including but not limited to law, ethics, civil rights, equal opportunity, appraisal, contract law, finance, and principal/agent relationships. Courses in real estate offered by the institutes, councils and societies of a state or national professional association are approved courses.

Comment: This practice of automatically approving courses for institutes, councils and societies of a state or national professional association is outrageously unfair. It makes the assumption that such group have a 100% rate of quality and that the quality of other course providers is suspect. Having earned many degrees and taken many courses by state and national providers I can assure you that this assumption is faulty. The motivation of such groups is not altruism but money. And, to keep them from having to submit their courses seems terribly unfair and perhaps worthy of a test case to measure its legality.

e. When approved audio or video tapes are used, a certified instructor must be present at all times while class is in session.

Questions: Can audio or video tapes be utilized in conjunction with written materials without the presence of an instructor?

h. Correspondence Courses.

1. The Commission will not approve any correspondence course that is not structured and cannot be monitored.

Question: Will there be an operational definition of "structured"?
What are some of the ways that one would monitor a correspondence course?

2. each correspondence course must, at a minimum, contain a comprehensive final examination consisting of both objective and subjective types of questions in sufficient quantity to assure the student has a thorough knowledge of the course material. The course material or the final examination must not be structured in any manner that would allow the student to obtain the answers without a thorough study of the material contained in the course. The minimum passing score on the final examination shall be 75%. No credit shall be awarded for the time spent completing the final examination. In conjunction with submission of the final comprehensive examination to the course sponsor for grading, the student must execute a statement under the penalties of perjury stating they are the individual that completed the final examination, that they received no assistance while completing the examination and that they actively studied the material in the course for at least the number of hours specified to be awarded for completion of the course.

Comment: Test construction requires a great deal of skill. Actually, most trained educators are not very successful at it. In fact, text book publishers hire professionals who understand test administration to construct "test banks" to provide with instructor's manuals for text books. "The course material or the final examination must not be structured in any manner that would allow the student to obtain the answers without a thorough study of the material contained in the course." This sentence should be deleted entirely. It will keep excellent methodology from being utilized. Less restrictive wording may protect the integrity of the program without losing the methodology.

30.4 Instructors

a. Each instructor shall apply for and be approved prior to instructing any real estate course. Provided, that this requirement shall not apply to any guest speaker or to any instructor or professor of a Post-Secondary Educational Institution that is accredited by an accrediting agency officially recognized by the United States Department of Education.

Comment and Question: Will there be an operational definition of guest speaker, instructor or professor? It appears to me that this regulation places two sets of standards. One standard is on the Post-Secondary Educational Institution. These institutions looking to increase enrollments hire space to persons to present a course. Those persons are not lettered or accredited but rather are sharing their profits with the school. The government would with this clause be competing with other approved providers. The instructors of the other providers would need to meet criteria from which the "instructors" who are utilizing the Post-Secondary institutions would be exempt by this regulation. I believe there is precedence in the courts regarding this matter and this would be found to be unpermissible.

30.4.b.3 Is a licensed real estate broker with a minimum of five years experience in the area of study he or she proposes to teach;

Question: Why specify "five years experience in the area of study he or she proposes to teach"? Isn't 5 years of real estate brokerage experience sufficient? Why the restriction? What motivates it? Will current instructors be "grandfathered" in? Will these criteria be utilized for societies, associations and Post-Secondary schools?

SPRUCE SCHOOL OF REAL ESTATE
5212 B HACCORRELE AVENUE
CHARLESTON, WEST VIRGINIA 25304

- 30.2a THE REPORTING DATE IS IN THE MIDDLE OF OUR LICENSE YEAR. THIS COULD BE ADJUSTED TO FIT THE LICENSING YEAR.
- 30.3. ALL CONTINUED EDUCATION COURSE APPROVALS WILL EXPIRE ON DECEMBER 31 OF EACH YEAR. THIS AGAIN IS IN THE MIDDLE OF OUR LICENSE YEAR, AND OUR CONTINUED EDUCATION REQUIREMENT YEAR. THIS COULD BE ADJUSTED TO FIT THE LICENSING YEAR ALSO.
- 30.3.1 COURSES IN REAL ESTATE OFFERED BY THE INSTITUTES, COUNCILS AND SOCIETIES OF A STATE OR NATIONAL PROFESSIONAL ASSOCIATION ARE APPROVED COURSES. WITH THIS POLICY, THE CURRENT SCHOOLS ARE IN COMPETITION WITH THE STATE AND OTHER UNKNOWN FACTORS. THIS IS UNFAIR COMPETITION. THIS IS ALSO TAKING REVENUE FROM THE POCKETS OF THE SCHOOLS WHO HAVE TO PAY LICENSING FEES, WHO ARE REQUIRED TO HAVE A MINIMUM NETW OF \$35,000 AND WHO ARE REGULATED BY THE STATE. THIS COULD BE CONSTRUED TO BE UNCONSTITUTIONAL. THESE ORGANIZATIONS CAN VERY EASILY UNDERSSELL THE EXISTING SCHOOLS DUE TO THE FACT THAT THEY HAVE NO OVERHEAD. NOR DO THESE ORGANIZATIONS OR THE INSTRUCTORS THEREIN NECESSARILY FIT INTO THE CRITERIA OF AN APPROVED INSTRUCTOR AS DESCRIBED IN 30.4 1-5. IT IS MY UNDERSTANDING THAT THE BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM IS ALSO PREPARING TO ADDRESS THIS MATTER.
- 30.4 INSTRUCTORS SHOULD BE LIMITED TO THOSE HAVING OBTAINED A SCHOOL PERMIT AND THEIR APPROVED INSTRUCTORS.



State of West Virginia
West Virginia Real Estate Commission

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RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

COMMISSIONERS

VAUGHN L. KIGER, CHAIRMAN
MORGANTOWN

ROBERT P. McLEAN, SECRETARY
BECKLEY

August 26, 1992

The West Virginia Real Estate Commission wishes to extend their sincere appreciation for your attendance at the recent public hearing and for the comments and suggestions you offered. Be assured that your input will be considered when the Commission adopts the final regulation.

Prior to filing the final regulation, the Commission directed me to ask for your assistance on the question of how to regulate the completion of correspondence courses. As you know, the proposed regulation is written to require a comprehensive written examination at the conclusion of the course material. This was one of the subjects that was discussed at length during the meeting with no consensus being reached. Would you please assist the Commission by responding to the following question:

How would you monitor the correspondence courses to assure completion? If you feel testing is appropriate, then state how it would be accomplished and the guidelines that you think should be included in the regulation. If you feel that testing is inappropriate, then state how completion of the course would be assured and state what you feel should be included in the regulation.

Please take into consideration as you formulate your response that the Commission has decided that testing of seminar attendees is not an option.

Again thank you for your assistance and I would appreciate receiving your comments no later than September 2, 1992. The Commission will then be able to proceed with this regulation.

Sincerely,

Richard E. Strader
Executive Director

RES/tf

Enclosure

ATTACHMENT - 5

SPRUCE SCHOOL OF REAL ESTATE
5212-B MACCORKLE AVENUE S.E.
CHARLESTON, WV 25304
(304) 925-0388

RECEIVED

September 1, 1992

SEP 2 1992

Richard E. Strader
West Virginia Real Estate Commission
1033 Quarrier Street, Suite 400
Charleston, WV 25304

**W.VA. REAL ESTATE
COMMISSION**

RE: Completion Assurance of 7 hour Correspondence Course

Dear Mr. Strader:

May I begin by expressing my sincere appreciation to the Commission and you for your willingness to receive and consider suggestions from those in attendance at the recent public hearing. It is extremely important for me to feel that I can pick up the phone, stop by or attend the public meetings in order to discuss problems as well as learn any and all changes within our industry.

It is my understanding that the 90 hour Correspondence Course and completion of same is not a problem area. If this is true, why not model the 7 hour Correspondence Course after it. I believe the "test" is the key.

As I discussed at the meeting, the first year the 7 hours was required I included a test with my course. My test was not a pass/fail test but a required test nonetheless. The questions were prepared so that the student had to read or at least closely review the material in order to complete the test. Most students were not offended by it, however some did complain as to why I required a test when other schools did not. The majority of students taking the course, upon completion, commented on what an informative and interesting course it was, (maybe because they had to read it). The course was on Dual Agency which fell in line with the Commission requiring the Agency Relationship form with each transaction.

This past year I conformed to most of the other schools and did not require a test. I can say this, the licensees are definitely looking for the fastest and easiest way to obtain their 7 hours. They are missing the importance of the requirement, which I believe is to further their education and keep them abreast of changes within our industry, which

ATTACHMENT - 6

in turn will uphold the integrity and professionalism of our industry.

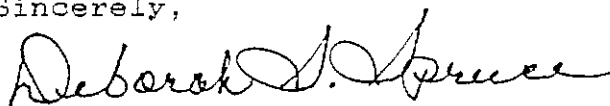
Why not test them, and require a passing grade just as you do on your 90 hours. This might make them realize that it is a privilege to hold a West Virginia Real Estate Sales or Brokers License. It might also accomplish what the law originally intended-Continued Education. It would be just as easy for the school instructors to provide the Commission with a grade sheet, as with the 90 hours, as opposed to the certification sheets.

I must also include, I strongly feel that the West Virginia Real Estate Commission should support the Real Estate Schools as vehemently as they regulate them. The Real Estate Schools, or at least mine is in a situation of peaks and valleys. School prices have not been raised from the approximate price of \$300 since the beginning of the schools. The schools have one function-Educate and prepare the students to begin a new career in one of the largest industries in our country today. It is very important to me that the students and licensees realize the importance and pride that accompany a Real Estate License.

Licensees, once out in the market place today tend to bend some rules while completely forgetting others. It is just as important to dust the cobwebs off all licensees and insist on accurate and professional service. I feel that this will only occur within the schools. Outside entities teaching Continued Education are normally teaching for other reasons than Education. Also, without accredited instructors regulated and trained in our industry, licensees may be getting incorrect or bad instruction. This will eventually degrade our profession, the Commission and your employment. Are the Banks or Attorneys, who are teaching these courses on their own, regulated by our West Virginia Real Estate License Law? Have they ever even seen the "Red Book"? How can these people who are not licensed be set loose to inflict their type of education on the licensees of our State?

I do sincerely hope the Commission will see the error in this area and make efforts to correct them and uphold the integrity of our industry and keep our schools in business. We can not compete with "free" courses or "free lunches" if we are to continue striving for the highest level of professionalism in our industry.

Sincerely,



Deborah S. Spruce, Broker/Instructor



1111 Republic Building
Martinsburg, West Virginia 26150
Phone: 304-261-1111
Fax: 304-261-1111
West Virginia Real Estate Commission
1900 Lincoln Building

September 2, 1992

Richard E. Strader, CPA
Executive Director
West Virginia Real Estate Commission
1033 Quarrier Street, Suite 400
Charleston, West Virginia 25301-2315

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SEP 2 1992

**W. VA. REAL ESTATE
COMMISSION**

Dear Mr. Strader:

Thank you for the additional opportunity to comment on the proposed rule of the Commission concerning regulation of correspondence courses for continuing education credit.

The Association is involved in continuing education through seminar presentations only. We believe that such presentations provide the most beneficial forum for adult learning. The student may directly question the presenter and have any misunderstood facts fully explained. The classroom setting also provides a focus on the subject that is not interrupted by extraneous factors - telephones, family, etc. A professionally presented group seminar provides a learning experience not achievable through the written word only.

The Association, representing real estate licensees who choose to subscribe to a code of ethics, accepts the responsibility of providing the highest level of quality continuing education. The Association monitors its seminars for full compliance with time requirements of the state code and regulations of the Commission. Seminars sponsored by the Association are selected through a committee review process. The Committee is a team of professionals in real estate who know the needs for education within a prescribed curriculum. Presenters are engaged on the basis of their qualifications and their proven ability to communicate the subject.

We recognize a need for alternate educational opportunities for licensees as provided through correspondence courses. However, the student of correspondence courses should not be short-changed in quality of the material; and most importantly, the public must not be short-changed in services of the licensee. Continuing education is intended for better service to the public.

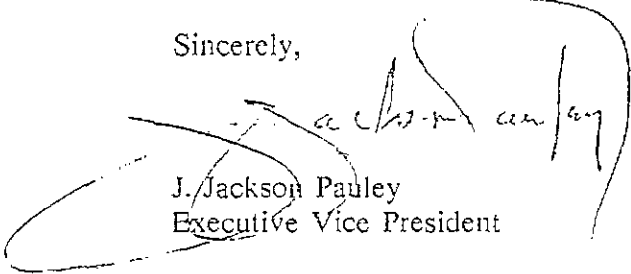
We support the Commission's proposed regulations concerning correspondence courses, including the testing of students. Testing is a fair measure of course completion and an equitable substitute for the stop watch timing of seminar presentations. Testing is required by most professions that permit correspondence courses to meet educational requirements. An additional verification for time involvement of the student could be provided by signature under oath.

Richard E. Strader
West Virginia Real Estate Commission
Page 2

As an aid to the student of a correspondence course, we suggest that course providers be required to accept telephone questions from their students. Such telephone contact could not replace the advantage of face-to-face dialogue, but would help in the education process.

We hope that our comments are of value to you.

Sincerely,



J. Jackson Pauley
Executive Vice President

James D. Lilly Jr.

REAL ESTATE APPRAISAL SERVICE

P.O. Box 1007
BECKLEY, WEST VIRGINIA 25802
(304) 253-3314

August 31, 1992

West Virginia Real Estate Commission
1033 Quarrier Street
Charleston, West Virginia 25301-2315

Attn: Richard E. Strader, CPA
Executive Director

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SEP 2 1992

W.VA. REAL ESTATE
COMMISSION

Dear Mr. Strader:

I assume the reason for requiring testing for correspondence courses is to discourage the unscrupulous providers of course material; e.g., those who, for a fee, provide the course material and the certificate of completion simultaneously. Ironically, those who accept the arrangement are as unprofessional and unscrupulous as the provider. Even if testing is required, these same providers of course material can provide not only the material and the certificate of completion, but a test with enough correct answers marked to ensure all who can sign their name to the test, will pass. Testing in and of itself is not the answer, but as you point out, monitoring.

It would appear testing of a correspondence course is a small price to pay for the trade off of not having to attend in person.

Ideally, all those taking a correspondence course from a particular provider would meet at some central location, or a number of regional locations to sit for the test, monitored, and administered by an impartial party. This, of course, would defeat the purpose of the correspondence course.

Perhaps a broker or sales person, not likely to be taking a correspondence course, from each of our 55 counties could be appointed by the West Virginia Real Estate Commission to administer and monitor the test in exchange for having their license fee waived an/or paid by the Commission. At least no one individual

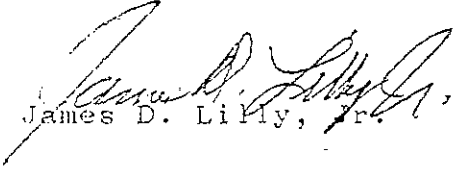
ATTACHMENT - 8

would have to travel outside their county to take the test.

Probably the only practical solution is to have the correspondence course provider; 1) Submit course material to the commission for approval; 2) Submit the test to the commission for approval; and 3) provide the commission with the individual test scores, names, addresses, and phone numbers.

I see no simple solution to the apparent problem of certain providers of correspondence courses taking advantage of the system, and by requiring testing, the providers would at least be put on notice, the West Virginia Real Estate Commission is holding them accountable for their actions. As previously stated, the test is a reasonable trade off for the convenience of not having to attend, in person, a continuing education course or seminar.

Yours very truly,



James D. Lilly, Jr.

JDLJr/bp

The Commission met in Special Session at 9:00 AM August 25, 1992, in the Commission office for the purpose of conducting a public hearing on the proposed amendment of Legislative Rule 174-1. The notice of public hearing was properly filed on July 21, 1992, with the Secretary of State's Office. There being present the following:

Vaughn L. Kiger, Chairman
Robert P. McLean, Secretary
Richard E. Strader, Executive Director
J. Jackson Pauley, West Virginia Association of Realtors
William Bunch, Real Estate Career Center
John S. Stacy, Citizens Real Estate
Edith Lombardo, Charleston College
Victor Lombardo, Charleston College
Debbie Spruce, Spruce School of Real Estate
James D. Lilly, Jr.

Chairman Kiger called the meeting to order and welcomed those present, after which he introduced all participants.

Chairman Kiger gave the background information leading to the Commission's decision to amend the rule and then asked Richard Strader to give a synopsis of each paragraph of Section 30.

Mr. Strader gave an overview of each Subsection, Paragraph, and Subparagraph of Section 30 - Real Estate Courses, Course Providers and Instructors. Each part that was being moved from subsection 13.5 to new Section 30 was identified as such and all new language was noted.

It was noted by Chairman Kiger that written comments had been received from the West Virginia Association of Realtors, Edith Lombardo, and Deborah Spruce.

Chairman Kiger then opened the floor for comments. A summary of those comments by Section Number follows:

174-1-30.1 "Post-Secondary Education Institutions accredited by an accrediting agency officially recognized by the United States Department of Education are approved providers." Ms. Lombardo felt this was unfair to proprietary schools. Since Post-Secondary Institutions have been approved by the United States Government as meeting their requirements, the

Commission feels as though it would be redundant to subject the Colleges and Universities to an additional approval. In addition, the only requirement placed on proprietary schools by the Commission is that they supply proof of being properly registered and licensed by the Higher Education Central Office, State College and University Systems of West Virginia.

174-1-30.2.b The word "in-depth" used to define the content of the additional 90 hour course for real estate brokers was questioned by Ms. Lombardo. The word was used in the regulation so both 90 hour requirements could not be fulfilled by attending the same course.

174-1-30.2.e The regulation, as originally filed, stated that each pre-license education course provider must submit a list of students attending each course, that covers the calendar year. Ms. Spruce questioned the calendar year basis. Mr. Bunch suggested that the word "attending" be replaced by the word "completing". The Commission explained that calendar year reporting would not create any burden since testing is not structured around the fiscal year. The Commission accepted Mr. Bunch's suggestion to change the wording.

174-1-30-3.b "All continuing education course approvals will expire on December 31 of each year." Ms. Lombardo, Mr. Bunch, and Ms. Spruce requested this expiration date be changed to June 30. The Commission agreed with the suggestion and changed the date to June 30.

174-1-30.3.d "Courses in real estate offered by the institutes, councils, and societies of a state or national professional association are approved courses." Ms. Lombardo and Ms. Spruce stated they felt this was unfair. Mr. Pauley said the West Virginia Association of Realtors would have no objection to this sentence being deleted. The Commission deleted the sentence in its entirety.

174-1-30.3.h.B This paragraph adds the requirement that any person completing a continuing education course by correspondence would need to successfully complete an examination prior to earning credit.

for the course. Ms. Lombardo and Mr. Bunch disliked this added requirement because the course provider would need to grade the examination. Ms. Spruce stated she had no problem with the regulation as written.

174-1-30.4.a Instructors or professors of a Post-Secondary Education Institution that is accredited by an accrediting agency officially recognized by the United States Department of Education would not need to be approved by the Real Estate Commission. Ms. Spruce and Ms. Lombardo felt this automatic approval is unfair to proprietary schools. Accredited Post-Secondary institutions have been approved as meeting the U. S. Government requirements in their staffing decision so the Commission feels that it would be redundant to subject these institutions to an additional approval.

174-1-30.4.b.C One of the categories used to judge an instructors qualification to teach an approved real estate course is that he or she be a license broker with a minimum of five (5) years experience in the area of study he or she proposes to teach. Ms. Lombardo questioned the validity of this guideline. The Commission explained that just because an individual has been a licensed real estate broker does not signify they are competent to act as an instructor in every field associated with real estate (e.g. EPA Regulations, Land Use Planning, Appraisal Techniques, etc.).

Chairman Kiger thanked all of those who attended the meeting for their input and suggestions.

The Commission then directed the Executive Director to write a letter to all those persons who had attended the hearing, to thank them for their attendance. As part of the letter, the Commission requested further input from the individuals concerning how they would like to see the correspondence courses monitored.

There being no further business at this time, the special session was recessed until after the responses to the letters were received.

The Special Session was reconvened at 11:45 AM, Thursday, September 3, 1992, via a conference call consisting of Vaughn L. Kiger, Chairman, Robert P. McLean,

Secretary, and Richard E. Strader, Executive Director to make a final determination on 174-1-30.3.h.B.

It was noted by Mr. Strader that written correspondence had been received from the following:

Deborah S. Spruce, Spruce School of Real Estate
J. Jackson Pauley, EVP, WV Association of Realtors
James D. Lilly, Jr.

Mr. Strader confirmed that both of the Commissioners had received copies of these letters.

After considerable discussion, the Commission decided to delete the following sentences from 174-1-30,3,h,B: "The course material or the final examination must not be structured in any manner that would allow the student to obtain the answers without a thorough study of the material contained in the course. The minimum passing score on the final examination shall be 75%. No credit shall be awarded for the time spent completing the final examination." The Commission deleted this language to allow the course providers the right to determine what constitutes "successful completion".

There being no further business, the meeting was adjourned.