

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: REAL ESTATE COMMISSION TITLE NUMBER: 174

CITE AUTHORITY: WV CODE 47-12-19

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: SERIES - 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 RULE BEING FILED AS AN EMERGENCY:

TITLE OF RULE BEING FILED AS AN EMERGENCY:

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

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

THE 1991 REGULAR SESSION OF THE WV LEGISLATURE PASSED S.B.#33 ON MARCH 4, WHICH ADDED A NEW SECTION TO THE REAL ESTATE BROKERS LICENSE ACT (WV CODE 47-12). THIS NEW PROVISION GOES INTO EFFECT 90 DAYS FROM PASSAGE AND REQUIRES ALL REAL ESTATE LICENSEES TO DISCLOSE WHOM THEY ARE REPRESENTING, IN WRITING, TO ALL PARTIES.

Use Additional Sheets If Necessary.

Richard E. Strader

RICHARD E. STRADER
EXECUTIVE DIRECTOR



STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON 25305

GASTON CAPERTON
GOVERNOR

May 29, 1991

Mr. Richard E. Strader
Executive Director
1033 Quarrier Street
Suite 400
Charleston, West Virginia 25301

Dear Mr. Strader:

In compliance with West Virginia Code 5F-2-2(a)(12), I hereby grant to the West Virginia Real Estate Commission, the authority to propose Emergency Legislative Rules in response to passage of Senate Bill #33.

Sincerely,

A handwritten signature in cursive script that reads "Howard Wellman".

Howard Wellman
Executive Assistant

HW/ksl

RECEIVED

JUN 3 1991

W. VA. REAL ESTATE
COMMISSION



State of West Virginia

West Virginia Real Estate Commission

1033 Quarrier Street, Suite 400
Charleston, West Virginia 25301

COMMISSIONERS

VAUGHN L. KIGER, CHAIRMAN
MORGANTOWN

THOMAS A. WARDEN, JR., VICE-CHAIRMAN
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BECKLEY

EXECUTIVE OFFICES
CHARLESTON
PHONE 348-3555

RICHARD E. STRADER
EXECUTIVE SECRETARY

SUMMARY OF PROPOSED LEGISLATIVE RULES

Agency: Real Estate Commission

Subject: Agency Disclosure

Statutory Authority: W.Va. Code 47-12-19

SUMMARY

Agency Disclosure (Section 31)

Agency Disclosure Form: All licensed real estate agents are required to disclose their agency relationship to all parties to a real estate transaction, on the form promulgated by the Commission.

Agents Conduct: Agent of Seller: must disclose agency status to purchaser prior to purchaser signing offer to purchase.

Agent of Purchaser: must disclose agency status to owner prior to showing the property.

Agent of Both: must obtain written consent of both parties.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

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

Type of Rule: 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	\$	\$	\$	\$	\$
Personal Services					
Current Expense			1,000.00		
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

Printing, postage and supplies for informing all licensees of new requirement.

3. Objectives of these rules:

To assure licensees compliance with WV Code 47-12-17(d).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

West Virginia Real Estate Commission
Current FY expenditure of \$1,000.00

B. Economic Impact on Political Subdivisions; Specific Industries;
Specific groups of citizens.

Real Estate Brokers and Salespersons..

Will now be required to maintain adequate supplies of disclosure forms. Three pages for each sales agreement instituted. Ongoing expense for duplicating.

C. Economic Impact on Citizens/Public at Large.

NONE

Date: June 4, 1991

Signature of Agency Head or Authorized Representative

Richard E. Strader

Richard E. Strader, Executive Director

DATE: June 4, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Real Estate Commission

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

1. Date of filing: June 4, 1991
2. Statutory authority for promulgating the emergency rule:
WV Code 47-12-19
3. Date of filing of proposed legislative rule: ~~June 4, 1991~~
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
Amends series I by adding Section 31, "Agency Disclosure."
5. Has the same or similar emergency rule previously been filed and expired?
NO
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare
S.B.#33 placed an additional requirement on all real estate licensees
to disclose their agency status. This requirement goes into effect
June 5, 1991. The regulations will assist in assuring compliance
with this new provision.

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

WV Code 47-12-17(d)

Amendment goes into effect 90 days from passage.

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

These regulations will set forth the proper methods to be
utilized in complying with the amendment to WV Code 47-12.

TITLE 174
LEGISLATIVE RULES
REAL ESTATE COMMISSION

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 brokers and real estate salesman's licenses and the requirements necessary to renew licenses and otherwise generally for the enforcement and administration of provisions of article twelve, chapter forty-seven of the West Virginia Code, (1959).

1.2. Authority. -- W. Va. Code §47-12-20(g)

1.3. Filing Date -- April 4, 1990

1.4. Effective Date. -- April 4, 1990

§174-1-2. License Fees.

2.1. 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.

2.2. 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.

§174-1-3. License Certificates.

3.1. 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.

3.2. 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,** That 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.

§174-1-4. Branch Offices.

4.1. 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 subdivision 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.

4.2. 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.

§174-1-5. Cancellations And Transfers.

5.1. 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.

5.2. 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.

5.3. Sworn statement by broker. -- In the event a licensed real estate salesman makes application for transfer from the employ of one (1) 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.

§174-1-6. Qualifications For Real Estate Broker's License.

6.1. 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 (2) years or shall produce to the Real Estate Commission satisfactory evidence of real estate experience."

6.2. 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 (2) years devoted to all aspects of the real estate business.

6.3. 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.)

§174-1-7. Office Signs.

7.1. 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 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 1 inch in height. If the broker so desires, the names of salesmen may be placed below the name of the broker.

§174-1-8. Advertising.

8.1. 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 nonbroker owner.

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

§174-1-9. Trade And Fictitious Names.

9.1. 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.

9.2. Change of trade name. -- 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.

§174-1-10. Offer Of Trade Stamps And Gifts.

10.1. 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.

10.2. 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 attempting to procure a purchaser or prospect calculated or intended to result in a real estate transaction.

§174-1-11. Location Of Office.

11.1. 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 the 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.

§174-1-12. Renewal Of License.

12.1. Duty to renew. -- All licenses expire June 30 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.

12.2. 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.

12.3. Examination required. -- Any broker or salesman who does not renew his license within ninety (90) 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 (90) days from the effective renewal date shall not be required to take the examination.

12.4. Continuing education. -- Each applicant for the renewal of their license shall furnish evidence with their renewal application stating they have completed in the fiscal year preceding license renewal date seven (7) actual hours of instruction in an approved real estate course. It shall be the responsibility of the broker to see that salesmen in their employ comply with this requirement when renewing license.

This requirement does not apply to real estate brokers or real estate salesmen who held a license on the first day of July, one thousand nine hundred sixty-nine and continuously held a license thereafter nor to those licensees on inactive status.

12.5. Certification of real estate schools.

a. Real estate courses as well as course sponsors (schools) and instructors seeking approval to conduct a course of education in real estate subjects in compliance with the continuing education requirements for both salesmen and broker licenses must be certified by the Commission.

b. Degree granting institutions, colleges and universities accredited by the West Virginia Board of Education are approved schools. Real estate courses satisfactorily completed at these institutions shall be accepted 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 Real Estate Commission.

c. The curriculum of real estate courses taught by each institution shall be consistent 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 and specialized courses in real estate of the institutes, councils and societies of a national or state professional association.

d. The length of a continuing education course is defined as seven (7) actual hours with each hour equaling fifty (50) minutes of instruction given in one session. The length of a correspondence course shall be based upon the number of hours which would be awarded in an equivalent classroom course. When approved audio or video tapes are used, a certified instructor shall be present at all times while class is in session. Continuing education hours shall be obtained in the fiscal year preceding the date required to renew license.

e. Each instructor shall apply for and be issued a letter of certification if he is one of the following:

1. An instructor or professor of a college or university approved as such by the State Board of Education who teaches in subjects dealing with real estate; or

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

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

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

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

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

f. Non-resident. -- A non-resident broker or salesman shall have complied with the

continuing education requirements of this state if their state or district have a comparable continuing education requirement and accords the same privilege to West Virginia brokers and salesmen.

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 student, name of course and date course completed.

h. Inactive status. -- During the time a real estate broker or salesperson's license is on an inactive status, continuing education requirements do not need to be met. When a licensee in an inactive status reverts to active status he/she shall obtain seven (7) hours of continuing education prior to becoming active.

i. Original license. -- Continuing education shall not be required to renew a license that was obtained in the fiscal year preceding the renewal date.

§174-1-13. Time For Taking Examinations.

13.1. 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 application has been approved or the application shall be denied without prejudice.

§174-1-14. Qualifications For Real Estate Salesman's License.

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

14.2. 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

said application and have been property owners for at least twelve (12) months preceding such application, who have known the applicant for two (2) 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.

§174-1-15. Complaints.

15.1. 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.

15.2. 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 forthwith be returned to the Complainant.

§174-1-16. Amended August 25, 1967, To Delete All Of Section 16.

§174-1-17. Trust Funds.

17.1. 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.

17.2. 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.

§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 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.

§174-1-19. Closing Statements.

19.1. 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 (5) years.

§174-1-20. Commingling Defined.

20.1. 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.

§174-1-21. Salesman And Earnest Money.

21.1. 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.

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

22.1. 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.

§174-1-23. Amended July 27, 1973, To Delete All Of Section 23.

§174-1-24. Falsifying Contracts.

24.1. 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.

§174-1-25. Procedure For Conduct Of Hearing.

25.1. 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.

(a) There being two (2) or more members of the Commission present, the presiding officer will call the hearing to order and remark for the record the following items:

(1) 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),

(2) That "the following members of the West Virginia Real Estate Commission are present" (here insert the names of the Commissioners present),

(3) "That the Executive Secretary for the Commission is present" (here insert name and state he is present),

(4) "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,

(5) "The Presiding Officer shall ascertain if all persons to appear are present."

(b) 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"?

(c) 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.

(d) The Presiding Officer shall then request legal counsel for respondent to verbally summarize answers to the charges.

(e) The Presiding Officer shall proceed with the conduct of the hearing.

(f) The Presiding Officer will proceed with introduction of evidence and calling of witnesses for the Commission.

(g) Counsel for respondent may cross-examine in order.

(h) When no further questions are posed, the Presiding Officer shall inquire if any Commissioner desires to ask any questions of the witness.

(i) 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.

(j) The Presiding Officer of the Commission may cross-examine such witnesses in order.

(k) 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.

(l) 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.

(m) 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.

(n) 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 (2) 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.

§174-1-26. Examination.

26.1. 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.

26.2. Reexamination. -- 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.

26.3. 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.

§174-1-27. Requirements Of Broker.

27.1. 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.

27.2. 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.

27.3. 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.

27.4. 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 such deposit should be returned to the purchaser at

once and the broker should look to the owner for his compensation. (Noncompliance may be violation of §47-12-1(6).)

§174-1-28. Court Action.

28.1. 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.

§174-1-29. Notice Of Proposed Rules.

29.1. 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 thirty (30) nor more than sixty (60) days prior to the date fixed wherein the rules will be acted upon.

§174-1-30. Bad Checks.

30.1. 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.

Section 31. Agency Disclosure

- 31.1 Each licensee shall provide to all parties to a real estate transaction, a written notice disclosing which party the licensee is representing as agent. The written notice shall be signed by all parties, made on the form promulgated by the Commission, and a copy maintained in the real estate broker's transaction files. This written notice shall be made prior to any party signing any offer to purchase, to sell, or to exchange real estate wherein a broker's license is required by the statute.
- 31.2 Any licensee acting as agent of a purchaser, shall disclose their agency relationship to the seller or the the broker representing the seller before the earlier of any showing of the property or the first negotiations are initiated. Provided, that if the seller has given prior written permission for the property to be shown by an agent representing the buyer, further notification is not required prior to showing the property.
- 31.3 A real estate broker shall not pay a fee, commission or other valuable consideration to a broker representing another party to the transaction except with the full knowledge of all parties.
- 31.4 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.
- 31.5 A change in a licensee's agency status, that makes an earlier disclosure inaccurate, incomplete or misleading, requires that the licensee prepare a revised disclosure form and to immediately present it to all parties to the transaction. The revised disclosure must be dated and must be acknowledged in writing by all parties.
- 31.6 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt of notice of agency disclosure, the licensee shall set forth, sign and date a written declaration of the facts of the refusal.

NOTICE OF AGENCY RELATIONSHIP

When working with a real estate agent in buying or selling real estate, West Virginia Law requires that you be informed of whom the agent is representing in the transaction.

The agent may represent the seller, the buyer, or both. The party represented by the agent is known as the agent's principal and as such, the agent owes the principal the duty of utmost care, integrity, honesty and loyalty.

Regardless of whom they represent, the agent has the following duties to both the buyer and the seller in any transaction:

- * Diligent exercise of reasonable skill and care in the performance of the agent's duties.
- * A duty of honest and fair dealing and good faith.
- * Must offer all property without regard to race, color, religion, sex, ancestry, physical or mental handicap, national origin or familial status.
- * Must promptly present all written offers to the owner.
- * Must disclose all facts known to the agent materially affecting the value or desirability of the property.
- * Provide copies of all contracts.

The agent is not obligated to reveal to either party any confidential information obtained from the other party which does not involve the affirmative duties set forth above.

Should you desire to have a real estate agent represent you as your agent, you should enter into a written contract that clearly establishes the obligations of both parties. If you have any questions about the roles and responsibilities of a real estate agent, they can provide information upon your request.

In compliance with the Real Estate Brokers License Act of West Virginia, all parties are hereby notified that

(printed name of agent) _____ affiliated with

(firm name) _____ is acting as agent of:

- _____ The Seller, as listing agent or subagent. _____ The Buyer, as the buyer's agent.
 _____ Both Seller and Buyer, with the full knowledge and consent of both parties.

CERTIFICATION			
By signing below, the parties certify that they have read and understand the information contained in this disclosure and have been provided with signed copies prior to signing any contract.			
_____ Seller	_____ Date	_____ Buyer	_____ Date
_____ Seller	_____ Date	_____ Buyer	_____ Date
_____ Seller	_____ Date	_____ Buyer	_____ Date

I certify that I have provided the above named individuals with a copy of this form prior to signing any contract.

Agent's Signature _____

Date _____

*WV Real Estate Commission
 1033 Quarrier Street, Suite 400
 Charleston, WV 25301
 (304) 348-3555*



KEN HECHLER
Secretary of State

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Deputy Secretary of State

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
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DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteers
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE June 26, 1991
ADMINISTRATIVE LAW DIVISION

June 26, 1991

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Real Estate Commission

RULE: Amendments, Series 1, Requirements in Licensing Real Estate Brokers and Salesmen and the Conduct of Brokerage Business

DATE RULE FILED AS AN EMERGENCY RULE: June 4, 1991

DECISION NO. 28-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.



KEN HECHLER
Secretary of State

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Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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(Plus all the volunteer
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DECISION

EMERGENCY RULE DECISION (ERD 28-91)

AGENCY: Real Estate Commission
RULE: Amendments, Series 1, Requirements in Licensing Real Estate Brokers and Salesmen and the Conduct of Brokerage Business

FILED AS AN EMERGENCY RULE: June 4, 1991

- par. 1 The Real Estate Commission (Commission) has filed the above amendments to an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Commission filed this emergency rule with supporting documents with the Secretary of State June 4, 1991 and with the LRMRC June 4, 1991.

par. 7 It is the determination of the Secretary of State that the Commission has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §47-12-19 reads:

§47-12-19. Rules and regulations.

The commission may act by a majority of the members thereof, and authority is hereby given to the commission to adopt, fix and establish all reasonable, fair and impartial rules and regulations in its opinion necessary for the conduct of its business, the holding of hearings before it and otherwise generally for the enforcement and administration of provisions of this article.

par. 9 It is the determination of the Secretary of State that the Commission has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Commission are as follows:

The 1991 Regular Session of the WV Legislature passed SB 33 on March 4, which added a new section to the Real Estate Brokers License Act (WV Code 47-12). This new provision goes into effect 90 days from passage and requires all real estate licensees to disclose whom they are representing, in writing to all parties.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "time limitation" (SB 33).

par. 14 This decision shall be cited as Emergency Rule Decision 28-91 or ERD 28-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Real Estate Commission, the Attorney General and the Legislative Rule Making Review Commission.

Ken Hechler

KEN HECHLER
Secretary of State

Entered _____

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