

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: WEST VIRGINIA REAL ESTATE COMMISSION TITLE NUMBER: 174

AMENDMENT TO AN EXISTING RULE: YES , 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 NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SENATE BILL 1

SECTION 64-9-23 (b), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 2, 1992

Richard E. Strader

Richard E. Strader
Executive Director

4.40



VALLEY VIEW
REALTY, INC.

PT 3 BOX 1269
HARRERS FERRY, WV 25425
BUS (304) 535-8323

August 12, 1991

Mr. Ken Heckler
Administrative Law Division
Secretary of State
Charleston, WV 25301

*A suggestion
to
this office*

Dear Mr. Heckler:

Re: WV Code 47-12-19-Series I
Requirements in Licensing Real
Estate Brokers and Salesmen and
the Conduct of Business

We suggest the rule governing "Notice of Agency Relationship"
be amended or written to say.

"The Notice of Agency Relationship may be incorporated into a
printed listing agreement and sales agreement if the wording is
approved by the West Virginia Real Estate Commission.

A suggested wording of this notice is as follows:

The parties confirm that the:

1. Listing broker has acted as the seller's ____ / buyer's ____ / agent.
2. Selling broker has acted as the seller's ____ / buyer's ____ / agent.
3. 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.
- * 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.

Respectfully,

Susanne Heger
Susanne Heger, GRI
Associate Broker

cc: Mr. Richard Strader



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

1.2. Authority. -- ~~W.Va. Code §47-12-20(g)~~ WV Code §47-12-3 and 19.

1.3. Filing Date. -- ~~April 4, 1990~~

1.4. Effective Date. -- ~~April 4, 1990~~

§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.

~~§174-1-2.~~ §174-1-3. License Fees.

~~2.1.~~ 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.

~~2.2.~~ 3.2. Proper Fee. -- Each ~~individual~~ application for a ~~salesman's or broker's~~ license shall be accompanied by a separate check or money order for the proper fee for that particular application.

~~Where~~ When a salesman, who is duly licensed, desires to become a broker, his or her employing broker ~~salesman's certificate~~ shall be surrendered ~~his or her salesman's certificate~~ to the Commission ~~by his employer~~ before a broker's certificate is issued. He or she shall pay the fee for the broker's license as set forth under ~~Section 9 of the License Act and credit~~ WV Code 47-12-9. The Commission shall not be given credit for the fee paid ~~as salesman for the salesman's license.~~

~~§174-1-3.~~ §174-1-4. License Certificates.

~~3.1.~~ 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. ~~Said~~ 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 ~~have be~~ be imprinted with thereon the seal of the ~~department~~ Commission and, ~~in addition to the foregoing,~~ shall contain such ~~matter~~ information as the Commission shall be prescribed prescribes. ~~by the Commission.~~ The Commission shall deliver or mail the license of each real estate salesman and associate broker shall be delivered or mailed to the real estate broker by whom such the licensee real estate salesman is employed, and shall be kept in the custody and control of such broker. the broker shall keep it in his or her custody and control.

~~3.2.~~ 4.2. Officers of a corporation. -- If a person applying for a broker's license is ~~be~~ a member of a partnership or association or an officer of a corporation, the Commission shall issue the broker's 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 who engage in any of the acts defined in WV Code 47-12-2 must become licensed as an associate broker or salesman. ~~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.~~ §174-1-5. Branch Offices.

~~4.1.~~ 5.1. Register of branch office. -- Every ~~registered licensed~~ broker who desires to conduct brokerage transactions at any location ~~other place~~ ~~or places~~ than the principal office ~~registered with his own registration,~~ ~~shall~~ must register the branch office information annually and pay the required fee in order to ~~register and receive a license 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 licensees ~~salesmen~~ and customers, and at which transactions are not closed and licensees ~~salesmen~~ are not permanently assigned ~~there,~~ is not ~~deemed 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.

~~4.2.~~ 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.

~~§174-1-5.~~ §174-1-6. Cancellations and Transfers.

~~5.1.~~ 6.1. Custody of license certificates. -- The brokers shall keep the license certificates of each salesman and associate broker in his or her ~~their~~ custody at all times. ~~the license certificates of each salesman~~ in their employ and shall Upon the termination of ~~said~~ employment, the broker shall immediately return the salesman's license certificate to the Commission for cancellation.

~~5.2.~~ 6.2. Transfer of salesman's or associate broker's license. -- In the event a salesman or associate broker makes application for renewal or wishes to transfer of his or her real estate salesman's license, to a ~~indicating that he is to be employed by a broker other than the broker under which he or she is presently employed, or in the event he is applying for a broker's license,~~ he or she must first notify his or her present employer and must submit, in addition to his application, a properly executed application to the Commission ~~sworn statement to this effect,~~ on a form provided by the Commission for this purpose and pay the required fee.

~~5.3.~~ 6.3. Sworn statement by broker. -- In the event a licensed real estate salesman or associate broker makes application for transfer of his or her license ~~from the employ of one (1) broker to the employ of another broker,~~ the transfer application shall include ~~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 or her.~~

~~§174-1-6.~~ §174-1-7. Qualifications For Real Estate Broker's License.

~~6.1.~~ 7.1. Experience requirement. -- ~~The West Virginia Real Estate Broker's License Act, (47-12-4),~~ 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."

~~6.2.~~ 7.2. Apprenticeship. -- The Commission defines the word "apprenticeship," as used in WV Code 47-12-4 ~~the aforesaid statute,~~ to mean ~~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.~~ 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.

~~6.3.~~ 7.3. 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.)~~ 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.

~~§174-1-7.~~ §174-1-8. Office Signs.

~~7.1.~~ 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 ~~sign~~ shall be easily observed and read by persons about to enter any of the ~~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 the salesmen or associate brokers may be placed below the name of the broker.

~~§174-1-8.~~ §174-1-9. Advertising.

~~§1.~~ 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 ~~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 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 ~~the name of the broker for the firm~~ and the term "Broker" or Realtor" as the case may be: Provided, however, that if the broker, if he is the owner of the property which he or she is advertising, the broker has all the rights of ~~the~~ a nonbroker owner.

~~§2.~~ 9.2. Salesmen and associate brokers prohibited. -- Salesmen and associate brokers may not ~~are prohibited from advertising~~ advertise to purchase any property or offering for sales, to sell, rent, or lease any property under their own names: Provided, however, that if a salesman or associate broker if he is the owner of the property which he or she is advertising, the salesman or associate broker has all the rights of ~~the~~ an ~~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.~~ §174-1-10. Trade And Fictitious Names.

~~§1.~~ 10.1. Use of trade name. -- An individual broker may use a trade name. ~~and, if so, it~~ Any broker who wishes to use a trade name must be disclosed the trade name in a an application for license ~~request for a~~ certificate 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 ~~that of~~ another broker in the same locality. A broker shall not use any trade name not registered with the Commission.

~~9.2.~~ 10.2. Change of trade name. -- ~~Notice in writing shall be given to the Commission by~~ Each person, partnership, association or corporation, shall notify the Commission in writing of any change of trade name. ~~Said~~ The notice shall be made on a form supplied by the Commission and accompanied by the original license certificate and proper fee. ~~whereupon~~ The Commission shall issue a new certificate with the new trade name for the unexpired period. ~~without fee.~~

~~§174-1-10.~~ §174-1-11. Offer Of Trade Stamps And Gifts.

~~10.1.~~ 11.1 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.~~ 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 attempting to procure a purchaser or prospect calculated or intended to result in a real estate transaction.~~ or while engaging in any other activity specified in WV Code 47-12-2.

~~§174-1-11.~~ §174-1-12. Location Of Office.

~~11.1.~~ 12.1. 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 alcoholic ~~like~~ beverages are sold. If a real estate office is

located adjoining to or in the same building where ~~the~~ beer or other alcoholic ~~like~~ beverages are dispensed, ~~said~~ the office shall have a private entrance.

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

~~§174-1-12.~~ §174-1-13. Renewal Of License.

~~12.1.~~ 13.1 Duty to renew. -- All licenses expire June 30 of each year regardless of the date the license was issued. It ~~shall be~~ is the duty of all licensees ~~persons licensed as a real estate broker or salesman~~ to register annually with the Commission and to renew their license by paying ~~for each the~~ annual renewal ~~registration~~ the fee for license as set forth under ~~Section 9, of the License Act.~~ WV Code 47-12-9.

~~12.2.~~ 13.2 Operating without license. -- Any licensee who does not register as required by this section, ~~set forth above,~~ but continues to operate when ~~wherein~~ a license is required, ~~may be considered to be~~ is in violation of ~~the License Act.~~ WV Code 47-12.

~~12.3.~~ 13.3 Examination required. -- Any licensee ~~broker or salesman~~ who does not renew his or her license within ninety (90) days after the effective renewal date ~~shall be~~ is required to undergo and successfully pass the written examination before being issued a license. Any licensee ~~broker or salesman~~ who renews his or her license within ninety (90) days from the effective renewal date ~~shall~~ is not ~~be~~ required to take the examination.

~~12.4.~~ 13.4. Continuing education. -- Each licensee applying ~~applicant~~ for the renewal of his or her ~~their~~ license shall furnish proof ~~evidence~~ with their renewal application ~~stating~~ showing they have completed, in the fiscal year preceding the license renewal date, seven (7) ~~actual~~ hours of instruction in an approved real estate course. It is ~~shall be~~ the

responsibility of the broker to see that ~~salesmen~~ all licensees in his or her ~~their~~ employ comply with this requirement ~~when~~ prior to renewing their licenses.

This requirement does not apply to any licensee ~~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. This requirement does not apply to any licensee who is on inactive status.

~~12.5.~~ 13.5. Certification of real estate schools.

a. All real estate courses, as well as course sponsors (schools) and instructors ~~seeking approval~~ 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 requirements for both salesmen and broker licenses must be certified by the Commission, 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 ~~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 Commission will approve courses only if the course deals with the following subjects: 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 or other real estate related subject. ~~and specialized~~ Courses in real estate offered by ~~of 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. ~~given in one session. The length of a~~ The Commission will determine the amount of continuing education credit to be awarded for completion 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. Licensees shall obtain continuing education hours ~~shall be obtained~~ 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: ~~is one of the following:~~

1. Is an instructor or professor of a college or university approved ~~as such~~ 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 ~~Be~~ 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 ~~Have~~ 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 ~~Have~~ 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 ~~broker or salesman~~ shall have complied with the continuing education requirements of this state if their state or district has ~~have~~ a comparable continuing education requirement and accords the same privilege to West Virginia residents. ~~brokers and salesman.~~

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

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

~~§174-1-13.~~ §174-1-14. Time For Taking Examinations.

~~13.1.~~ 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 ~~has been approved or the application shall be denied without prejudice.~~ or the application will be cancelled and the applicant must reapply.

~~§174-1-14.~~ §174-1-15. Qualifications For Real Estate Salesman's License.

~~14.1.~~ 15.1. Age. -- Every applicant for a license as a real estate salesman shall be ~~of the age of~~ eighteen (18) years of age or over.

~~14.2.~~ 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 said application and who have been property owners for at least twelve (12) months preceding ~~such~~ application. The citizens must ~~who~~ have known the applicant for two (2) years and may ~~are not be~~ related to the applicant. They must 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.~~ 174-1-16. Complaints.

~~15.1.~~ 16.1. Filing of complaint. — The Commission will consider complaints of alleged violations of the Real Estate License Law WV Code 47-12 will be considered only when they are submitted in writing on forms supplied by the Commission ~~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.~~ 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 ~~forthwith~~ be immediately 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 or her name or firm name, a separate trust account in a recognized financial institution in which ~~he the broker~~ shall deposit all funds not his or her own left in his or her possession, including funds in which ~~he the broker~~ may have some future interest or claim and including but not limited to earnest money deposits. In conjunction with ~~the said~~ account, ~~he the broker~~ shall maintain ~~at his the broker's~~ usual place of business, books, records, contracts and other necessary documents so that the Commission may determine the adequacy of ~~the said~~ account. ~~may be determined at any time.~~ ~~Said~~ The 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 the broker's ~~his~~ usual place of business.

The Commission will consider material discrepancies in the said accounts and records shall be considered a violation of WV Code 47-12 by the broker.
~~of the Licensing Act.~~

17.2. Salesman and associate broker with trust funds. -- Every real estate salesman and associate broker who receives any trust funds ~~as defined above,~~ shall immediately, or at the first opportunity, pay over or deliver the trust funds ~~same~~ to the broker, ~~or employer,~~ under whom he or she is ~~shall~~ ~~be~~ 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 ~~he~~ carries on his or her business and which the broker ~~he~~ holds forth to the public as his or her usual place of business. The broker may maintain this space ~~may be maintained~~ in the broker's residence, but the space must be sufficient to maintain the records and accounts required in Section 17 of this rule ~~the above regulation~~ and of sufficient space within which to carry on inspection of ~~the 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 ~~shall~~ ~~to 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 such~~ broker . The broker shall also ~~to deliver~~ to the buyer a complete statement showing all moneys received in the transaction from ~~the such~~ buyer and how and for what the ~~same moneys~~ were disbursed . The broker shall retain true copies of the such 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 ~~Section 11 of the License Act,~~ is defined as failure to deposit or place trust funds received in: (1) ~~into~~ a neutral escrow depository or (2) ~~in~~ the hands of principals or (3) ~~in~~ a trust fund account in accordance with WV Code 47-12-18 ~~Section 18 of the License Act,~~ by the next business day following their receipt. However, it ~~shall is~~ is 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 is~~ is not ~~constitute~~ 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 ~~must be specifically disclosed~~ to the seller or purchaser before he or she accepts the offer.

§174-1-21. ~~Salesman And Earnest Money.~~ 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, payments, 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. ~~and Upon receipt of any trust such moneys, 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 will to be considered a violation of Section 11, Paragraph (6), of the License Act. 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 ~~connection~~ with the individual or the 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.~~ §174-1-23. Falsifying Contracts.

~~24.1.~~ 23.1. Misrepresentation. — No licensee 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. The Commission will consider such practice a violation of WV Code 47-12-11.

~~§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.~~

§174-1-24. 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.

~~E174-1-26.~~ E174-1-25. Examination.

~~26.1.~~ 25.1. Rules. -- The following examination rules will prevail and violation of any rule is ~~part~~ will be considered grounds for disqualification of the applicant:

(a) Examinees may ~~will~~ not be permitted to refer to any notes, books or memoranda.

(b) The examinee must show 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 may not ~~will not be permitted to~~ talk or ask questions of another examinee during the course of the examination.

~~26.2.~~ 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. ~~will be given notice of the failure.~~ The Commission will schedule a second examination will be scheduled and will give the applicant ~~will be given~~ written notice of when and where to appear.

~~26.3.~~ 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.

~~§174-1-27.~~ §174-1-26. Requirements Of Broker.

~~27.1.~~ 26.1. Brokers becoming licensed salesmen. -- The holder of a broker's license may, during the term of that license, request inactivation of ~~his~~ 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 ~~Such~~ salesman may reinstate ~~his~~ the broker's license at any future date upon filing the appropriate application and fee. A broker's examination is ~~will~~ not be required under this procedure if the broker applicant is the holder of a current salesman's license.

~~27.2.~~ 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 ~~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.~~ WV Code 47-12 et seq.

~~27.3.~~ 26.3. 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 ~~the~~ the desk space is rented, shall maintain a sign on the main entrance door or on a wall or window immediately adjacent to ~~said~~ the door.

~~27.4.~~ 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 ~~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)).~~ The Commission will consider a violation of this rule to be a violation of WV Code 47-12-11.

~~§174-1-28.~~ §174-1-27. Court Action.

~~28.1.~~ 27.1. Licensee to inform Commission of court action. -- When any licensee ~~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 or she is involved in such transaction in his or her capacity as a licensed agent, ~~it shall be~~ is the duty of ~~said broker or salesman~~ the licensee to supply ~~to the Real Estate Commission~~ with a copy of the complaint, indictment, information, and 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.~~ §174-1-28. Bad Checks.

~~30.1.~~ 28.1. Bad checks. -- Checks issued by any licensee 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~~ for a license or license renewal, and a license is issued on the basis of ~~such~~ the payment, the Commission ~~such license will be immediately cancelled or revoked.~~ 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~~ that effect from the institution ~~will be~~ is required before the Commission will reissue a license. ~~will be reissued.~~

~~§174-1-31.~~ §174-1-29. Agency Disclosure

~~31.1.~~ 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. ~~a written notice disclosing which party the licensee is representing as agent.~~ The required written notice shall be signed by all parties, ~~made on the form promulgated by the Commission,~~ and the real estate broker shall maintain a copy of the notice in his or her transaction files. ~~a copy maintained in the real estate broker's transaction files.~~ The licensee shall execute this written notice shall be made prior to any party signing any offer to purchase, to sell, or to exchange real estate for which ~~wherein a broker's license is required by the statute.~~ WV Code 47-12.

~~31.2.~~ 29.2. Any licensee acting as agent of a buyer, purchaser, shall disclose ~~their~~ his or her agency relationship to the seller, or the broker representing the seller, prior to ~~before the earlier of~~ any showing of the property or the initiation of negotiations which ever occurs first. ~~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, the licensee further notification is not required to provide further notification prior to showing the property.

~~31.3.~~ 29.3. A real estate broker shall provide written notice to all parties prior to paying ~~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.~~ 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.

~~31.5.~~ 29.5. ~~If a change~~ in a licensee's agency status, ~~that~~ makes an earlier disclosure inaccurate, incomplete or misleading, ~~requires that~~ the licensee shall 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.~~ 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 ~~set forth~~ sign and date a written declaration setting forth ~~of the facts of the refusal.~~

Bill Real Est. Comm., Brokers Licensing 174-1

H. B. 4324

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the
Committee on Government Organization then the Judiciary)

10 A BILL to amend and reenact section twenty-three, article nine,
11 chapter sixty-four of the code of West Virginia, one thousand
12 nine hundred thirty-one, as amended, relating to authorizing
13 the real estate commission to promulgate legislative rules
14 relating to the requirements in licensing real estate brokers
15 and salesmen and the conduct of brokerage businesses.

16 Be it enacted by the Legislature of West Virginia:

17 That section twenty-three, article nine, chapter sixty-four
18 of the code of West Virginia, one thousand nine hundred thirty-
19 one, as amended, be amended and reenacted, to read as follows:

20 ARTICLE 9. AUTHORIZATION FOR MICELLANEOUS AGENCIES AND BOARDS TO
21 PROMULGATE LEGISLATIVE RULES.

22 §64-9-23. Real estate commission.

23 (a) The legislative rules filed in the state register on the
24 fourth day of December, one thousand nine hundred eighty-nine,

1 modified by the real estate commission to meet the objections of
2 the legislative rule-making review committee and refiled in the
3 state register on the eighth day of January, one thousand nine
4 hundred ninety, relating to the real estate commission (renewal
5 of license - continuing education), are authorized.

6 (b) The legislative rules filed in the state register on the
7 twenty-fifth day of July, one thousand nine hundred ninety-one,
8 modified by the real estate commission to meet the objections of
9 the legislative rule-making review committee and refiled in the
10 state register on the twenty-first day of November, one thousand
11 nine hundred ninety-one, relating to the real estate commission
12 (requirements in licensing real estate brokers and salesmen and
13 the conduct of brokerage businesses) are authorized.

14

15 - NOTE: The purpose of this bill is to authorize the Real
16 Estate Commission to promulgate legislative rules relating to the
17 requirements in licensing real estate brokers and salesmen and
18 the conduct of brokerage businesses.

19
20 Strike-throughs indicate language that would be stricken from
21 the present law, and underscoring indicates new language that
22 would be added.

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DEC 30 1992



W. VA. REAL ESTATE COMMISSION

STATE OF WEST VIRGINIA

SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

TO: ~~Donald E. Davis~~

AGENCY: Real Estate Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: December 29, 1992

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1 TITLE: 174 Real Estate Commission

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Richard E. Strader

TITLE OF PERSON SIGNING: Executive Director

DATE: 1-6-93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

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OFFICE OF THE
ATTORNEY GENERAL