

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Real Estate Commission TITLE NUMBER: 174

CITE AUTHORITY WV Code 47-12-3 & 19

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

TITLE OF RULE BEING AMENDED: Requirements in Licensing Real Estate
Brokers, Associate Brokers and Salespersons and the Conduct of
Brokerage Business.

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

TITLE OF RULE BEING PROPOSED: _____

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



Authorized Signature
Richard E. Strader
Executive Director

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Requirements in Licensing Real Estate Brokers, Associate Brokers, and Salespersons and the Conduct of Brokerage Business

Type of Rule: Legislative Interpretive Procedural

Agency Real Estate Commission

Address 1033 Quarrier Street, Suite 400

Charleston, WV 25301-2315

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

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

3. Objectives of these rules:

To correct problems which were identified in the Performance Review recently conducted and to make technical corrections.

Rule Title: Requirements in Licensing Real Estate Brokers, Associate Brokers, and Salespersons and the Conduct of Brokerage Business

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: 6/24/94

Signature of Agency Head or Authorized Representative

Richard E. Strader

Richard E. Strader, Executive Director
558-3555

DATE: August 15, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Real Estate Commission

LEGISLATIVE RULE TITLE: Requirements in Licensing Real Estate Brokers, Associate Brokers, and Salespersons and the Conduct of Brokerage Business.

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

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

June 24, 1994

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

Notice to all real estate officers, all schools offering mandatory education programs, WV Association of Realtors, previous Executive Director of the Real Estate Commission, and Legislative Post-Audit

c. Date of Hearing(s) July 26, 1994

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

Attached X No comments received

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

August 15, 1994

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

Richard E. Strader, Executive Director

558-3555

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

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

Not Applicable

b. Date of hearing: _____

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

d. Attach findings and determinations and reasons:

Attached



State of West Virginia
Real Estate Commission

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

RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

COMMISSIONERS

VAUGHN L. KIGER, CHAIRMAN
MORGANTOWN
ROBERT P. MCLEAN, VICE CHAIRMAN
BECKLEY
R. MICHAEL SHAW, SECRETARY
PT. PLEASANT

SUMMARY OF PROPOSED LEGISLATIVE RULE

AGENCY: Real Estate Commission

RULE: 174-1

STATUTORY AUTHORITY: WV Code §47-12-3 & 19

SUMMARY

To amend an existing rule by:

1. replacing each occurrence of "salesman" with salesperson".
2. amending 174-1-13.3 to allow the Commission to waive the requirement that an individual who does not renew their license within 90 days after the effective renewal date, must undergo and successfully pass the examination.
3. adding a new subsection - 174-1-25.1.e to require all examinees to present proper identification prior to sitting for the examination.
4. amending 174-1-27.1 to require all licensees to inform the Commission of any litigation, civil or criminal, to which they are a party.
5. amending 174-1-28.1 to specify that any applicant or licensee who issues the Commission a bad check will be afforded a reasonable opportunity to replace the bad check prior to the Commission instituting any action for collection.
6. amending 174-1-30.3.g to specify the record keeping requirements which will apply to all providers of approved continuing education courses.
7. amending 174-1-30.3.h.C to specify the minimum passing score required on the final examination administered in relation to continuing education correspondence courses.



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Real Estate Commission

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STATEMENT OF CIRCUMSTANCES
REQUIRING PROPOSED LEGISLATIVE RULE

AGENCY: Real Estate Commission

RULE: 174-1

STATUTORY AUTHORITY: WV Code §47-12-3 & 19

STATEMENT OF CIRCUMSTANCES

1. To reflect the same terminology used in WV Code §47-12.
2. To correct the problems which were identified in the *Performance Review of the State Real Estate Commission*, conducted by the West Virginia Legislature's Joint Committee on Government Operations, dated January 9, 1994.
3. To make technical corrections to the rule.

TITLE 174
LEGISLATIVE RULES
REAL ESTATE COMMISSION

SERIES 1
**REQUIREMENTS IN LICENSING REAL ESTATE BROKERS, AND
~~SALESMEN~~ ASSOCIATE BROKERS, AND SALESPERSONS AND THE
CONDUCT OF BROKERAGE BUSINESS**

§ 174-1-1. General.

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

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

1.3. Filing Date. --

1.4. Effective Date. --

§ 174-1-2. Definitions.

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

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

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

§ 174-1-3. License Fees.

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

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

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

§ 174-1-4. License Certificates.

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

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

§ 174-1-5. Branch Offices.

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

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

§ 174-1-6. Cancellations And Transfers.

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

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

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

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

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

7.2. Apprenticeship. -- The Commission defines the word "apprenticeship," as used in WV Code 47-12-4 to mean a ~~broker-salesman~~ broker-salesperson relationship wherein the ~~salesman~~ salesperson apprentice is taught the methods, techniques and terminology of the real estate business under the guidance and direction of a licensed broker. In order to satisfy the apprenticeship requirement, the applicant shall submit to the Commission, written documentation outlining the applicant's experience in the real estate business. The documentation must demonstrate that the applicant has gained experience in all aspects of the real estate business equal to that which would be gained by a person engaged in the real estate business on a full time basis during a minimum two year period of time.

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

§ 174-1-8. Office Signs.

8.1. Sign requirement. -- All registered real estate brokers, holding an active certificate, shall erect, and maintain a sign on or about the entrance of their principal office and all branch offices, which shall be easily observed and read by persons about to enter any of the offices. Every sign shall contain the name of the broker, together with his or her trade name; if any, beneath which shall be the word "Broker," all in letters not less than 1 inch in height. If the broker so desires, the names of the ~~salesmen~~ salespersons or associate brokers may be placed below the name of the broker.

§ 174-1-9. Advertising.

9.1. Broker advertising real estate. -- A broker shall not advertise by linear advertisement or otherwise, sell, buy, exchange, rent, lease or mortgage property in a manner indicating that the offer to sell, buy, exchange, rent, lease or mortgage such property is being made by a private party, not engaged in the real estate business. A broker shall not insert an advertisement in any publication where only a post-office box number, telephone number or street number appears. Every broker when advertising real estate, either through linear advertisement or otherwise, shall state in the advertisement either the individual name or firm name under which the broker operates and the term "Broker" or "Realtor" as the case may be. However, a broker whose firm name is that of a deceased person or that of a person not licensed with the firm, shall place his or her name in the ad and the term "Broker" or "Realtor" as the case may be: Provided, that if the broker, is the owner of the property which he or she is advertising, the broker has all the rights of a nonbroker owner.

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

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

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

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

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

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

11.2. Offering of gifts prohibited. -- A ~~real estate broker or real estate salesman licensee~~ shall not offer door prizes, gifts, or anything of value, in exchange for the sale or listing of any real estate or while engaging in any other activity specified in WV Code 47-12-2.

§ 174-1-12. Location Of Office.

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

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

§ 174-1-13. Renewal Of License.

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

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

13.3. Examination required. -- Any licensee who does not renew his or her license within ninety (90) days after the effective renewal date is required to undergo and successfully pass the written examination before being issued a license. Provided, the Commission may waive this requirement if good cause to do so is demonstrated by the licensee. Each request for a waiver will be considered by the Commission on a case by case basis. Any licensee who renews his or her license within ninety (90) days from the effective renewal date is not required to take the examination.

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

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

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

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

d. Non-resident licensees must comply with the continuing education requirement. However, if the non-resident's state or district has a comparable continuing education requirement and recognizes West Virginia continuing education credits as fulfilling that state or district's continuing education requirement, the Commission will accept continuing education credits earned in the other state or district.

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

14.1. Appear for examination. -- An applicant who is required to take an examination shall appear for and be administered an examination on or before the expiration of one (1) month from the date of the notice that the Commission has approved the application or the application will be cancelled and the applicant must reapply.

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

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

15.2. Recommendation. -- The application for ~~salesman's~~ salesperson's license shall be accompanied by the recommendation of at least two (2) citizens who are property owners at the time of signing the application and who have been property owners for at least twelve (12) months preceding application. The citizens must have known the applicant for two (2) years and may not be related to the applicant. They must certify that the applicant bears a good reputation for honesty and trustworthiness, and recommend that a license be granted to the applicant.

§ 174-1-16. Complaints.

16.1. Filing of complaint. -- The Commission will consider complaints of alleged violations of WV Code 47-12 only when they are submitted in writing on forms supplied by the Commission and set forth all details of the transaction, giving full names of all persons having knowledge of such transactions, together with specific addresses, dates, amounts involved and other pertinent information. Only in this way can the Commission handle such matters expediently and satisfactorily.

16.2. Filing of deposits. -- When a hearing is scheduled, the Commission may require the complainant to deposit the amount of fifty dollars (\$50.00), payable to the hearing shorthand reporter. The purpose of the deposit is to defray the minimum cost of the proceedings if the complainant fails or refuses to attend the hearing. If the

complainant is present at the hearing, the deposit shall be immediately returned to the complainant.

§ 174-1-17. Trust Funds.

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

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

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

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

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

§ 174-1-19. Closing Statements.

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

§ 174-1-20. Commingling Defined.

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

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

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

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

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

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

§ 174-1-23. Falsifying Contracts.

23.1. Misrepresentation. -- No licensee shall represent to a lender or any other interested party, either verbally or through the preparation of a false sales contract, an amount in excess of the true and actual selling price. Such practice constitutes a gross misrepresentation. The Commission will consider such practice a violation of WV Code 47-12-11.

§ 174-1-24. Procedure.

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

The Commission shall not hear any case except in the presence of at least two (2) Commissioners. Any Commissioner not present shall have a reasonable time before any decision is rendered, to review the record and thereafter participate in the decision of the Commissioners. Should the absent Commissioner be unable for any reason to review the records of any hearing within a reasonable time, then the other Commissioners may render their decision without the participation of the absent Commissioner.

§ 174-1-25. Examination.

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

- a. Examinees may not refer to any notes, books or memoranda.
- b. The examinee must show all computations on the blank pages of the examination paper.
- c. The copying of questions or the making of notes is prohibited.
- d. Examinees may not talk or ask questions of another examinee during the course of the examination.
- e. All examinees must present identification which contains a current recognizable photograph and their signature. Any examinee who does not present the required identification will be prohibited from sitting for the examination.

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

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

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

§ 174-1-26. Requirements Of Broker.

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

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

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

26.4. Broker to refund deposit money. -- When for any reason the owner fails, refuses, neglects or is unable to consummate the deal as provided for in the contract and through no fault or neglect of the purchaser, the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and the broker shall return the deposit to the purchaser at once and the broker should look to the owner for his or her compensation being held in the trust fund account. The Commission will consider a violation of this rule to be a violation of WV Code 47-12-11.

§ 174-1-27. Court Action.

27.1. Licensee to inform Commission of court action. -- When any licensee is a party to any civil suit or proceeding, ~~either civil or criminal~~, arising out of any transaction involving real property other than actions for eviction or for the collection of back rent, or is a party to any criminal proceeding other than misdemeanor traffic violations, it is the duty of the licensee to supply the Commission with a copy of the petition, complaint, indictment, or information, and the answer filed, if any, and to advise the Commission of the disposition of the case and the nature and amount of any judgment, verdict, finding or sentence ~~which may be made, entered or imposed~~.

§ 174-1-28. Bad Checks.

28.1. Bad checks. -- Checks issued by any applicant or licensee which are returned marked NSF (Insufficient Funds) or are not honored for any cause, ~~are may be~~ considered prima-facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. ~~If issued in payment for a license or license renewal, and a license is issued on the basis of the payment, the Commission will immediately cancel or revoke the license. Where a check or checks are incorrectly returned by a bank or other depository because of the bank's or depository's error, a statement to that effect from the institution is required before the Commission will reissue a license. The Commission will afford the applicant or licensee a reasonable opportunity to replace the bad check with a certified check or money order. In the event the bad check is not cured, the Commission may institute appropriate action to collect the funds including court costs and fees paid to a collection agency. The Commission may refuse to issue or may cancel a license which was sought or obtained by the issuance of a bad check.~~

§ 174-1-29. Agency Disclosure.

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

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

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

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

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

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

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

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

30.2. Pre-License Education.

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

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

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

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

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

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

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

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

f. The Commission will accept pre-license education courses approved by the Real Estate Regulatory Agency of any other licensing jurisdiction in meeting West Virginia pre-license education requirements if the jurisdiction offers the same privilege to West Virginia. The Commission will not give credit for classroom hours earned in excess of the number of hours awarded by the other jurisdiction.

30.3. Continuing Education

a. Guidelines

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

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

C. Program content must be current.

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

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

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

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

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

g. Each course provider approved to offer continuing education courses shall maintain records indicating the student's name and address, the completion date of the course, the course title, and the amount of hours awarded. These records must be maintained for a minimum period of five (5) years and shall be open to inspection by the Commission or its authorized representative. Each approved provider shall annually supply the Commission with a comprehensive list of all students who have completed a course in continuing education at their institution during the fiscal year July 1 through June 30 no later than July 15 of the succeeding fiscal year. Provided, that Post-Secondary

Education Institutions approved under Section 30.1 of this rule, are exempt from this requirement.

h. Correspondence Courses.

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

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

C. A course provider may not issue a certificate of course completion to any student prior to successful completion of the final comprehensive examination. The minimum passing score on the final comprehensive examination shall be 75%.

30.4. Instructors

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

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

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

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

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

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

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

30.5 Promotion of products or services. -- A course provider or instructor may not promote any product or service while offering or conducting any pre-license or continuing education course.

MEETING

WEST VIRGINIA REAL ESTATE COMMISSION
1033 QUARRIER STREET, SUITE 400
CHARLESTON, WEST VIRGINIA 25301

July 26, 1994

The Commission met in special session at 9:00 AM, July 26, 1994, in the Commission Office for the purpose of conducting a public hearing on the proposed amendment of Legislative Rule § 174-1. The notice of public hearing was properly filed on June 24, 1994, with the Secretary of States Office. The following were present:

Vaughn L. Kiger, Chairman
Robert P. McLean, Vice-Chairman
R. Michael Shaw, Secretary
Richard E. Strader, Executive Director
Stuart E. Ellis, Deputy Director
J. F. "Rick" Pekar, Vice-Chair, WV Association of Realtors, License Law Committee
Elizabeth Whelan, Vice-Chair, WV Association of Realtors, License Law Committee

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

Chairman Kiger gave the background information leading to the Commission's decision to amend the rule and then proceeded to give a summary of the changes to the rule, section by section. He also noted that written comments were received from Gary Morningstar concerning the proposed change to § 174-1-27.1.

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

- § 174-1-26.4 *"Broker to refund deposit money. -- When for any reason the owner fails, refuses, neglects or is unable to consummate the deal as provided for in the contract and through no fault or neglect of the purchaser, the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the commission is earned, and the broker shall return the deposit to the purchaser at once and the broker should look to the owner for his or her compensation being held in the trust fund account. The Commission will consider a violation of this rule to be a violation of WV Code 47-12-11".*

It was noted by Secretary Shaw that this section had been considered for substantive change in order to provide specific guidance to brokers when there is a dispute between a seller and buyer concerning whether or not a contract has become void or voidable and who has defaulted. Mr. Pekar and Ms. Whelan both indicated that they felt the section did

need to reflect such a change, but neither one was able to formulate any proposed change. It was decided by the Commission to leave the language of § 174-1-26.4 as it was originally filed. The Commission indicated that in order to effect such a change, that an amendment to WV Code § 47-12 may be more appropriate. The Commission requested Mr. Pekar to forward correspondence to the Commission indicating how he would propose to solve the problem being experienced by the brokers.

§ 174-1-27.1 *"Licensee to inform Commission of court action. -- When any licensee is a party to any suit or proceeding, either civil or criminal, ~~arising out of any transaction involving real property,~~ it is the duty of the licensee to supply the Commission with a copy of the original complaint, indictment, or information, and the answer filed, if any, and to supply a copy of each and every document filed in reference to the action up to and including the final judgment, verdict, finding, or sentence ~~advise the Commission of the disposition of the case and the nature and amount of any judgment, verdict, finding or sentence which may be made, entered or imposed~~".*

Mr. Pekar stated that he felt that the proposed language was too broad and suggested that it be more narrow in scope. The written comments received from Mr. Morningstar also suggested that the language be narrower in scope. After a thorough discussion, The Commission agreed to rewrite the section.

There being no further business, the meeting was adjourned.

The Morningstar Building Co, Inc.

2008 Winchester Pike
Martinsburg, WV 25401
Office (304) 263-6644
Fax (304) 267-0634



RECEIVED

JUL 18 1994

W. VA. REAL ESTATE
COMMISSION

July 14, 1994

Mr. Richard E. Strader, CPA
Executive Director
State of West Virginia
Real Estate Commission
1033 Quarrier St, Suite 400
Charleston, WV 25301-2315

Dear Mr. Strader:

I appreciated your time on the telephone discussing the proposed rule changes I have received from the Secretary of State's office. I am particularly interested in Item 174-1-27, Court Action. Section 27.1 "license to inform Commission of court action", is too broad at this time and would cost unnecessary dollars to businesses such as mine.

As you are aware, The Morningstar Building Co., Inc. has a broker's license in its name. As Vice President and Treasurer, I administer that license. Under your new proposed rules, any suit or proceeding, either civil or criminal, regardless (as I read it) of what the suit is about, would require that notification and/or copies of all scraps of paper concerning that proceeding be sent to the Commission.

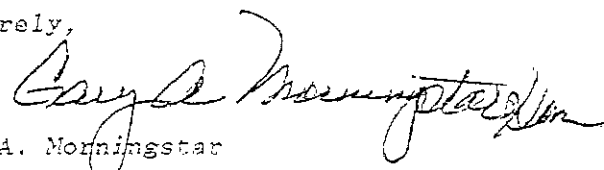
The following illustrates how this could cost unnecessary dollars: The Morningstar Building Co., Inc. sells a system called Basement De-Water. We are a distributorship and the home office is in Illinois. A typical installation may be \$4,000, with one third of the money taken upon contract signing and the remainder paid either at the end of the job or by invoicing. If the homeowner/consumer does not pay, after we attempt collection efforts unsuccessfully, we have to hire an attorney to collect the money. We do not make any UCC filings initially, or take any lien on the property, because the dollar amount involved is not large enough to warrant that kind of additional legal expense. Under Item 174-1-27, if we pursue legal action in this case, we would be required to notify you of the action, and have our attorneys send copies of every document, every scrap of paper, every complaint, and all information to include, I gather, privileged client attorney information. I believe this is burdensome for both of us. It would clutter your files with reams of documents. As we discussed on the telephone, the cost of doing business today includes hiring attorneys for a variety of things.

I believe your intent at removing the broker's license from those in third party transactions and those who are involved in criminal activity is appropriate and I support your efforts. It would seem, Civil suits are a daily routine in our business environment today, and I think there should be extra leeway applied to them in your regulations. Criminal offenses, however, are an entirely different matter. If the individual is convicted, his or her license should be revoked, without question.

When we talked on the phone, I had not looked closely at the date of the public hearing, which is July 26, 1994, at 9AM. I did not want to delay in getting this letter off to you. Because of business duties, I have not had time to draft proposed language; but, as I further consider the item I will attempt to provide additional information. I wanted to put something in your hands so that additional care would be taken before these rules are continued.

Thank you for your time and consideration and I hope to speak to you further about this issue.

Sincerely,


Gary A. Morningstar

GAM/kc

As Originally Filed

174-1-27.1 Licensee to inform Commission of court action. -- When any licensee is a party to any suit or proceeding, either civil or criminal, ~~arising out of any transaction involving real property,~~ it is the duty of the licensee to supply the Commission with a copy of the original complaint, indictment, or information, ~~and the answer filed, if any,~~ and to supply a copy of each and every document filed in reference to the action up to and including the final judgment, verdict, finding, or sentence ~~advise the Commission of the disposition of the case and the nature and amount of any judgment, verdict, finding or sentence which may be made, entered or imposed.~~

As Amended

174-1-27.1 Licensee to inform Commission of court action. -- When any licensee is a party to any civil suit or proceeding, ~~either civil or eriminal,~~ arising out of any transaction involving real property other than actions for eviction or for the collection of back rent, or is a party to any criminal proceeding other than misdemeanor traffic violations, it is the duty of the licensee to supply the Commission with a copy of the petition, complaint, indictment, or information, and the answer filed, if any, and to advise the Commission of the disposition of the case and the nature and amount of any judgment, verdict, finding or sentence ~~which may be made, entered or imposed.~~

Reason For Amendment

This section was amended as a result of comments received and the Commission's determination that the scope of the rule needed to be more narrowly defined.

As Originally Filed

174-1-28.1 Bad checks. -- Checks issued by any applicant or licensee which are returned marked NSF (Insufficient Funds) or are not honored for any cause, are may be considered prima-facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. ~~If issued in payment for a license or license renewal, and a license is issued on the basis of the payment, the Commission will immediately cancel or revoke the license. Where a check or checks are incorrectly returned by a bank or other depository because of the bank's or depository's error, a statement to that effect from the institution is required before the Commission will reissue a license.~~ The Commission will afford the applicant or licensee a reasonable opportunity to replace the bad check with a certified check or money order, after which time the Commission will institute appropriate actions to collect the funds and any associated expenses. The Commission may refuse to issue or may cancel a license which was obtained by the issuance of a bad check.

As Amended

174-1-28.1 Bad checks. -- Checks issued by any applicant or licensee which are returned marked NSF (Insufficient Funds) or are not honored for any cause, are may be considered prima-facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. ~~If issued in payment for a license or license renewal, and a license is issued on the basis of the payment, the Commission will immediately cancel or revoke the license. Where a check or checks are incorrectly returned by a bank or other depository because of the bank's or depository's error, a statement to that effect from the institution is required before the Commission will reissue a license.~~ The Commission will afford the applicant or licensee a reasonable opportunity to replace the bad check with a certified check or money order. In the event the bad check is not cured, the Commission may institute appropriate action to collect the funds including court costs and fees paid to a collection agency. The Commission may refuse to issue or may cancel a license which was sought or obtained by the issuance of a bad check.

Reason For Amendment

To more accurately reflect the effect on an applicant or licensee who issues the Commission a bad check.