

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2006 MAR 23 P 2:20

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 §30-40-8

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

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 RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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

Richard E. Strader
Authorized Signature

Richard E. Strader



**State of West Virginia
Real Estate Commission**

300 Capitol Street, Suite 400
Charleston, West Virginia 25301
(304) 558-3555
FAX (304) 558-6442
<www.wvrec.org>

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BECKLEY
RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR

SUMMARY OF PROPOSED LEGISLATIVE RULE

AGENCY: Real Estate Commission
RULE: 174-1
STATUTORY
AUTHORITY: WV Code §30-40-8

SUMMARY

To amend an existing rule by:

1. Amending 174 CSR §1-11, to comply with a request made by the United States Department of Justice. The Department of Justice determined that the language of 174 CSR §1-11 was in violation of the Sherman Anti-Trust Act. The proposed language filed as an emergency rule has been reviewed and approved by the United States Department of Justice.



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**STATEMENT OF CIRCUMSTANCES
REQUIRING PROPOSED LEGISLATIVE RULE**

AGENCY: Real Estate Commission
RULE: 174-1
STATUTORY
AUTHORITY: WV Code §30-40-8

STATEMENT OF CIRCUMSTANCES

1. The United States Department of Justice notified the Real Estate Commission that the provisions of 174 CSR §1-11 was in violation of the Sherman Anti-Trust Act. Therefore, the Real Estate Commission filed an amendment to the existing Rule in order to comply with the United States Department of Justice request. The Emergency Rule was filed on January 31, 2006.
2. After reviewing comments received during the Public Comment Period, which ended March 1, 2006, the Real Estate Commission amended the language of 174 CSR §1-11.3.b as contained in the original Emergency Rule, to specify the time limits applicable to the record keeping requirement.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Requirements in licensing Real Estate Brokers, Associate Brokers, and Salespersons

Type of Rule: Legislative Interpretive Procedural

Agency: Real Estate Commission

Address: 300 Capitol Street, Suite 400
Charleston, WV 25301

Phone Number: 304-558-3555 Email: wvrec@wvrec.org

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The purpose of the rule change is to afford real estate licensees the ability to offer rebates, inducements and other discounts, in compliance with a United States Department of Justice request. There will be no impact on the revenues nor any costs to the State of West Virginia.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Requirements in licensing Real Estate Brokers, Associate Brokers, and Salespers

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

NONE

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

NONE

Date: March 23, 2006

Signature of Agency Head or Authorized Representative

Ronald A. Strader

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: March 23, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
304-558-3555

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 §30-40-8

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
January 31, 2006

b. What other notice, including advertising, did you give of the hearing?
Posted notice and proposed Rule on the Commission's web site.
Notified West Virginia Association of Realtors of the proposed Rule.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
March 3, 2006

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached 5 comments No comments received _____

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

March 23, 2006

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Richard E. Strader, Executive Director
West Virginia Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301

Phone: 558-3555
Fax: 558-6442

Email: Richard.Strader@wvrec.org

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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.

NA

b. Date of hearing or comment period:

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

d. Attach findings and determinations and reasons:

Attached

TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION

FILED

2013 MAR 23 P 2:20

SERIES 1

REQUIREMENTS IN LICENSING REAL ESTATE BROKERS, ASSOCIATE BROKERS, AND SALESPERSONS AND THE CONDUCT OF BROKERAGE BUSINESS

§174-1-1. General.

1.1. Scope. -- This legislative rule establishes 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 W. Va. Code §§30-40-1 et seq.

1.2. Authority. -- W. Va. Code §30-40-8.

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 W. Va. Code §30-40-6.

2.2. Licensee. -- The term "licensee" means a broker, an associate broker, and a salesperson as defined in W. Va. Code §30-40-4.

2.3. Applicant. -- The term "applicant" means any person who is making application to the commission for a 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. The Commission may issue licenses on an annual or biannual basis. Fees are not prorated.

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 salesperson, who is duly licensed, desires to become a broker, his or her employing broker shall surrender his or her 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 in separate rule. The Commission shall not give credit for the fee paid for the 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. A broker's license shall show the broker's name, business name and business address. An associate broker's and salesperson's license shall show the name of the real estate broker by whom he or she is employed.

4.2. Designated Broker -- No broker's license shall be issued in the name of a partnership, association, corporation, or other form of business organization, until the governing body of the business organization executes a subordination resolution which grants full authority to the partner/member/officer acting as the broker for the business organization. The subordination resolution must be submitted on a form provided by the Real Estate Commission and be sworn to and notarized.

§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 place of business must make application for a branch office license 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. -- Every broker who obtains a license for a branch office must designate one associate broker or salesperson as manager of each branch office. A broker shall not employ, as manager of his or her branch office, a real estate salesperson with less than two (2) years actual experience as a licensed real estate salesperson: Provided, That a broker may designate himself or herself as the manager of a branch office if the broker is capable of adequately supervising all associate brokers and salespersons assigned to the branch office.

§174-1-6. Cancellations And Transfers.

6.1. Custody of license certificates. -- The broker shall maintain in his or her custody and control the license certificates of each salesperson and associate broker. Upon the termination of employment, the broker shall immediately notify the salesperson or associate broker and return the license certificate to the Commission for cancellation.

6.2. Change of employing broker by salesperson or associate broker. -- In the event a salesperson or associate broker wishes to transfer his or her real estate license to a broker other than the broker under whom he or she is presently employed, he or she must first notify his or her present employer, in writing, and must submit a properly executed application for change of employing broker 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 salesperson or associate broker makes application for change of employing broker, the 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. -- W. Va. Code §30-40-12 among other required qualifications for a broker's license, provides that "an applicant for a broker's license shall have served an apprenticeship as a licensed salesperson for two years or shall produce evidence satisfactory to the Commission, in its sole discretion, of real estate experience equivalent to two years full-time experience as a licensed salesperson".

7.2. Apprenticeship. -- The Commission defines the word "apprenticeship," as used in W. Va. Code §30-40-12 to mean a broker-salesperson relationship wherein the salesperson apprentice is taught the methods, techniques and terminology of the real estate business under the guidance and direction of a 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. Written Documentation of Experience -- In order for the Commission to determine the experience of an applicant for a broker's license, the applicant shall submit, on forms prepared by the Commission, a complete list of all the real estate transactions in which the applicant has been involved. The information submitted must, at a minimum, cover the current calendar year and the preceding two calendar years.

7.4. Affidavit of Broker. -- Each and every broker, with whom a real estate 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.

7.5. Equivalent Experience -- An applicant for a broker's license may qualify for waiver of all or part of the two year apprenticeship requirement under the following guidelines:

a. Four or more years full-time experience as a licensed real estate appraiser within the last ten years;

b. Four or more years full-time experience as a trust officer handling real property within the last ten years;

c. Four or more years full-time experience as a subdivider, developer, or general contractor who has developed, financed and sold 50 or more lots, residential units or commercial units within the last ten years. To qualify under this provision, the applicant must have been directly involved in all phases of the development activities;

d. Four or more years full-time experience as a loan officer of a bank, lending institution, or mortgage company in a capacity directly related to the financing of real estate within the last ten years, or;

e. Licensed as a real estate broker in another jurisdiction within the past five years. Provided, That if an applicant for a broker's license is licensed in another jurisdiction as a broker at the time the application is submitted to the Commission, he or she shall be granted a full waiver of the apprenticeship requirement.

§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 each branch office, 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 salespersons or associate brokers may be placed below the name of the broker.

§174-1-9. Advertising.

9.1. Advertising by licensees -- When advertising real estate, through linear advertisement, radio, television, web sites or any other media, each advertisement shall include the firm name, the name of the broker, office location information, and the term "Broker" or "Realtor" as the case may be. The names of

associate brokers and salespersons may be included in the advertisement as long as they are clearly identified as such. Provided, That if the licensee is the owner of the property, the licensee has all the rights of an unlicensed person.

9.2. Advertising by salespersons and associate brokers. -- Salespersons and associate brokers may not advertise any property under their own names. All advertising by an associate broker or salesperson must be under the direct supervision of 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. Provided, That a broker that chooses to operate under a franchise agreement shall not be required to register the name of the franchise organization with the Commission and the name of the franchise organization will not be registered by the Commission.

10.2. Change of trade name. -- Each broker 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 Inducements And Gifts: Consumer Rebates, Inducements and Other Discounts.

11.1. ~~No licensee may offer, directly or indirectly, door prizes, gifts, or anything of value, in exchange for the sale or listing of any real estate or while engaged in any other activity regulated by the Commission. Provided, That it shall not be improper for a licensee to:~~ to clients or consumers rebates of commission fees, inducements, or other discounts, if such licensee:

a. ~~Provide a closing gift of nominal value to a party to the transaction, as long as it has not been used as an inducement;~~ Discloses to the client or consumer, in a clear and conspicuous manner, in writing, the terms of any rebate of commission fees, inducement or other discount offered;

b. ~~Discuss or negotiate the compensation the licensee agrees to charge for his or her services; or~~ Discloses to the client or consumer, in a clear and conspicuous manner, in writing, the fair market value of any rebate of commission fees, inducement or other discount offered; and

c. ~~Disseminate information about special terms, conditions or other inducements which are bona fide offers made by a principal to a real estate transaction. Offers the rebates of commission fees, inducements or other discounts only under the direct supervision and in the name of the employing broker.~~

11.2. No licensee may accept, give or charge any form of undisclosed compensation, consideration, rebate, inducement or other discount to a client or consumer.

11.3. Advertisements of lotteries, contests, prizes, certificates, gifts and lots.

a. An advertisement by a licensee that employs lotteries or contests or that offers prizes, certificates, gifts or free lots shall be under the direct supervision and in the name of the employing broker and shall contain:

1. A description of each prize, certificate, gift, lot or other valuable consideration offered;
2. The prerequisites for receiving each prize, certificate, gift, lot or other valuable consideration offered;
3. Limitation on the number of prizes, certificates, gifts, lots or other valuable consideration offered;
4. The fair market value of each prize, certificate, gift or lot offered. If the advertisement is in a print medium, the statement of fair market value shall be in the same size type as the description of the prize, certificate, gift or lot offered. For purposes of this paragraph, "fair market value" is the price or value that a prospective buyer would expect to pay, or be charged for, if he/she were to acquire a similar item of like quality and quantity in a retail outlet that offers the item for sale to the general public; and
5. The odds of winning or receiving each prize, certificate, gift or lot offered. If the advertisement is in a print medium, the statement of odds shall be the same size type as the description of the prize, certificate, gift or lot, and shall appear immediately adjacent to the description.

b. A licensee who offers prizes, certificates, gifts or lots shall maintain records on each offering for five years, and the records shall contain:

1. The number and description of each prize, certificate, gift or lot distributed or awarded;
2. The name and address of each person who received a prize, certificate, gift or lot; and
3. The name and address of each person who responded to the advertisement or solicitation but did not receive a prize, certificate, gift or lot.

c. The Commission will regard the following as unlawful conduct within the meaning of West Virginia Code § 30-40-19(a)(37):

1. Failure to comply with subsection (a) or (b);
2. Failure to disclose the possibility that a particular prize, certificate, gift or lot may not be distributed or awarded;
3. Advertising the availability of a prize, certificate, gift or lot when it is not available for distribution or awarding; and
4. Giving a misleading description of a prize, certificate, gift or lot.

11.4 Nothing contained in this section shall be construed to prohibit a licensee from:

a. Providing a closing gift of nominal value to a party to the transaction, without the approval of the licensee's employing broker;

b. Discussing or negotiating the compensation the licensee agrees to charge for his or her services;

or

c. Disseminating information about special terms, conditions or other offers which are bona fide offers made by a principal to a real estate transaction.

§174-1-12. Location Of Office.

12.1. Usual place of business. -- Usual place of business is defined as the physical location 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 his or her usual place of business in a licensee's residence, but the residence must be sufficient to maintain the records and accounts required in Section 16 of this rule and of sufficient space within which to permit the Commission's inspection of the accounts and records without interference by other users of the property.

12.2. 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 regardless of the date the license was issued. It is the duty of all licensees to register with the Commission and to renew their licenses by paying the renewal fee for a license as set forth under separate rule.

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 W. Va. Code §§30-40-1 et seq.

13.3. Examination required. -- Any licensee who does not renew his or her license by June 15 of the year subsequent to the licensee's expiration shall be required to comply with all the requirements for obtaining an original license.

13.4. Continuing education. -- Each licensee applying for the renewal of his or her license on active status, shall furnish proof, as established by the Commission, showing he or she has completed, during the term of the preceding license, seven (7) hours of instruction in an approved real estate course, for each year covered by the term of the previous license. It is the responsibility of the broker to see that all licensees in his or her employ comply with this requirement prior to applying for a renewal of their licenses.

a. This requirement does not apply to any licensee who qualified to obtain an original license in the fiscal year preceding the annual renewal date. Provided, That if the Commission issues a license that covers more than one fiscal year, the licensee shall be required to submit proof that he or she has completed approved continuing education credits for all years other than the year immediately following the year in which he or she qualified to obtain an original license.

b. A licensee in an inactive status is not required to comply with the continuing education requirement. A licensee on an inactive status who desires to be placed on active status must furnish satisfactory evidence to the commission that he or she has completed the approved continuing professional education that would have been required for active status at the time the license was renewed. The licensee must comply with this requirement prior to being placed on active status.

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

§174-1-14. Examinations.

14.1. Appear for examination. -- An applicant who is required to take an examination shall appear for and be administered an examination at the time and place specified by the Commission. If the applicant fails to appear at the time and place specified by the Commission for the examination, the applicant may be scheduled for the next available examination. If the applicant fails to appear for the next examination, his or her application will be canceled and he or she must then reapply.

14.2. Application for examination -- An application for license shall only be valid for two attempts at passing the examination. Upon the applicant's second unsuccessful attempt at passing the examination, the applicant will be required to submit a new application which shall be valid for two more examinations.

14.3. 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.
- f. All examinees must pay the required examination fee at the time of sitting for the examination.

14.4. Recexamination. -- The Commission will give a notice of failure to an applicant who fails to attain a passing grade on the examination. The Commission will schedule another examination and will give the applicant written notice of when and where to appear.

14.5. Review of examination. -- An applicant for a real estate license who fails the examination after two (2) attempts may review the examination papers, to verify that they were properly graded, by making written request to the Commission.

14.6. Payment of license fee. -- An applicant for a real estate license, upon successfully passing the examination, must pay the required license fee within three months 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 three months. Any applicant that fails to pay the license fee in compliance with this rule, will be required to reapply and successfully pass the examination. Provided, That the Commission may grant a three month extension for time to pay the license fee if good cause to do so is

demonstrated by the applicant. Each request for an extension will be considered on a case by case basis and shall be granted if extenuating facts or circumstances warrant.

§174-1-15. Complaints.

15.1. Filing of Complaint. -- The Commission will consider complaints of alleged violations of W. Va. Code §§30-40-1 et seq. 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, monetary amounts involved, copies of contracts, closing statements, correspondence and other pertinent documents and information. Only in this way can the Commission handle such matters expediently and satisfactorily.

§174-1-16. Trust Funds.

16.1. Maintain records. -- Every 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 trust fund account. The accounts and other records shall be open to inspection by the Commission and its duly authorized representatives 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 W. Va. Code §§30-40-1 et seq. by the broker.

16.2. Salesperson and associate broker with trust funds. -- Every real estate 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 salesperson or associate broker. No real estate 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 salesperson or associate broker shall immediately turn it over to his or her employing broker. The Commission will consider the failure of a salesperson or an associate broker to comply with this rule to be a violation of W. Va. Code §§30-40-1 et seq.

16.3. Interest bearing accounts. -- Trust funds may be deposited into an interest-bearing account under the following conditions:

a. The trust funds must first be deposited into a trust fund account established in compliance with W. Va. Code §30-40-18;

b. The broker must obtain, from all parties to the transaction, a written agreement which must contain, at a minimum:

1. Authorization to remove the funds from the trust fund account for the express purpose of depositing the funds into an interest bearing trust fund account established in compliance with W. Va. Code §30-40-18;

2. Identification of the financial institution, and the type of account to be opened;

3. Identification of who will earn the interest on the funds; and,

4. How and when the interest will be disbursed.

c. No interest, privilege, or other compensation recognized by virtue of establishing or maintaining any interest bearing account established in compliance with this rule shall inure to the benefit of the broker or any other licensee; and

d. Upon closing any interest-bearing account established in compliance with this rule, the total proceeds of the account must be deposited in the broker's trust fund account prior to any disbursements being made.

§174-1-17. Commingling Defined.

17.1. Commingling within the meaning of W. Va. Code §30-40-19 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 by the next business day following receipt. However, it is not commingling to hold an uncashed check until acceptance of an offer when the contract terms clearly require such conduct and it is not commingling to hold an uncashed check after acceptance of an offer when the contract terms clearly require such conduct. Each licensee must make certain that the real estate contract specifically provides for a check to be held in an uncashed form when requested to do so by the seller or purchaser.

§174-1-18. Closing Statements.

18.1. Deliver to Seller and Buyer. -- Every broker shall make certain that the seller and buyer, receive a complete, detailed closing statement showing all of the receipts and disbursements for their side of the transaction.

§174-1-19. Requirements Of Broker.

19.1. Broker becoming licensed 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 payment of the proper fee, be issued a salesperson's license. Under this procedure he or she need not qualify by taking the salesperson's examination. The salesperson may reinstate the broker's license at any future date upon filing the appropriate application and fee, as long as the licensee maintains a current license. A broker's examination is not required under this procedure if the broker applicant is the holder of a current salesperson's license.

19.2. Brokers who rent desk space in a real estate office. -- A broker who rents desk space within a real estate office and whose own brokerage 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, and comply with all other requirements of holding a broker's license.

19.3. 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 broker's compensation may have been earned. The broker shall return the deposit to the purchaser at once and the broker should look to the owner for his or her compensation. The Commission will consider a violation of this subsection to be a violation of W. Va. Code §30-40-19.

§174-1-20. Court Action.

20.1. Licensee to inform Commission of civil action. -- When any licensee is a party to any civil suit or proceeding arising out of any transaction involving real property other than actions for eviction or for the collection of back rent, it is the duty of each licensee to supply the Commission with a copy of the judgement or final disposition of the case.

20.2. Licensee to inform Commission of criminal action. -- When any licensee is a defendant in 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, warrant, 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 made, entered or imposed.

§174-1-21. Bad Checks.

21.1. Bad checks. -- Checks tendered to the commission by any course provider, applicant or licensee which are returned marked NSF (Insufficient Funds) or are not honored for any cause, may be considered prima-facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. The Commission will afford the course provider, 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 shall refuse to issue or shall cancel a license which was sought or obtained by the issuance of a bad check.

§174-1-22. Agency Disclosure.

22.1. 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 contract for representation, offer to purchase, to sell, or to exchange real estate for which a broker's license is required by W. Va. Code §§30-40-1 et seq.

22.2. 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.

22.3. A real estate broker shall provide written notice to all parties prior to paying a portion of his or her compensation to a broker representing another party to the transaction.

22.4. 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.

22.5. 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.

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

FIVE
COMMENTS RECEIVED
DURING
PUBLIC COMMENT PERIOD
WITH AGENCY RESPONSES

Subject: The revisions to the inducements rule

From: TJREBROKER@aol.com

Date: Tue, 31 Jan 2006 16:01:45 EST

To: wvrec@wvrec.org

CC: TJREBROKER@aol.com

I have read the adjustments and changes and I suggest that there should be additional info added to the affect as follows:

When a licensee refers a client to a company, whether it be a moving company or selling a homeowner's policy, for example, and there is a kickback or referral fee involved, or a licensee shares part of his/her compensation, or any other inducements, the licensee must first inform and fully disclose all the facts to all interested parties to the transaction concerning the kickback, referral, rebate, etc., in writing via disclosure. I feel that, both parties to the transaction, seller and buyer should have full disclosure.

Thank you,
Theresa C Johnson
T C Johnson Realty

Theresa C Johnson

Broker/Owner

T C Johnson Realty, Management & Investment

Tel. (561) 386-1709 / (304) 645-6222

tjrebroker@aol.com

www.TCJohnsonRealty.com

Subject: Re: The revisions to the inducements rule

From: West Virginia Real Estate Commission <wvrec@wvrec.org>

Date: Wed, 01 Feb 2006 07:05:02 -0500

To: TJREBROKER@aol.com

It appears that the West Virginia Real Estate License Act may already address your concerns. See WV Code §30-40-19 (a) (14), (26) and (32) .

You may access the Act at: <http://www.wvrec.org/Law05.pdf>

TJREBROKER@aol.com wrote:

I have read the adjustments and changes and I suggest that there should be additional info added to the affect as follows:

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tjrebroker@aol.com

www.TCJohnsonRealty.com

--
West Virginia Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
Phone: 304.558.3555
Fax: 304.558.6442
Web: <www.wvrec.org>

Subject: Re: The revisions to the inducements rule

From: TJREBROKER@aol.com

Date: Wed, 1 Feb 2006 09:30:52 EST

To: wvrec@wvrec.org

I read the Codes you pointed out, but I'm not sure if any identify the point that, it must be disclosed to BOTH parties to a transaction, the Buyer and Seller, not just the Principal. I feel that this is important.

Thank you,

Theresa

Theresa C Johnson

Broker/Owner

T C Johnson Realty, Management & Investment

Tel. (561) 386-1709 / (304) 645-6222

tjrebroker@aol.com

www.TCJohnsonRealty.com

Subject: Notes to new Rules
From: "mhilton" <mhilton@gbrsc.com>
Date: Sat, 4 Feb 2006 16:48:05 -0500
To: <wvrec@wvrec.org>

Good Morning!

Had the pleasure of reading the new rule 174-1-11 - yes I do read!!!

So here goes with comments that come to mind:

Under 11-1.C How do you expect this to look? Example: XYZ Realty, Inc. Offers \$500 Moving Allowance for Listing With Them

or can it read Mary Smith Offers \$500 Moving Allowance for Listing With Her!

Under 11.3. Are Lotteries also to be regulated by the Same State Agency that deals in Bingo, etc. in the State??

Under 11.3.b Should there not be a time limit for keeping records here or is it an infinite period of time we're talking about?

Under 11.4.a Why would you include the term "nominal" here when there is not a reference to any amount or term in any other portion of this ruling?

So these are my initial thoughts - there may be more but enough for now! Have a great week!

Martha Hilton
Sales Consultant
Greenbrier Sporting Club
5 Kate's Mountain Road
White Sulphur Springs, WV 24986
1-304-536-7782 - Direct Line
1-304-536-7762 - Fax Line
1-304-667-7060 - Mobile Line

Subject: Re: Notes to new Rules

From: West Virginia Real Estate Commission <wvrec@wvrec.org>

Date: Mon, 06 Feb 2006 09:46:05 -0500

To: mhilton@gbrsc.com

Thanks for your comments!

I will address your questions in the order you posed them.

11-1-c. The advertising could look something like this: "XYZ Realty, Inc. offers \$500 moving allowance for listing with Mary Smith, salesperson."

11-3-b. Good point. This will be addressed by the Commission.

11-4-a. "Nominal" is included here to allow a salesperson to offer a closing gift without being subject to the broker's supervision.

mhilton wrote:

Good Morning!

Had the pleasure of reading the new rule 174-1-11 - yes I do read!!!

So here goes with comments that come to mind:

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or can it read Mary Smith Offers \$500 Moving Allowance for Listing With Her!

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Martha Hilton
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The Greenbrier Sporting Club 2006 honors include:

- T + L Golf's 2006 America's Top 100 Golf Communities / #20 of 100
 - LINKS 2006 Premier Property and...
- Golfweek's 2006 America's Best Residential Golf Courses

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West Virginia Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
Phone: 304.558.3555
Fax: 304.558.6442
Web: <www.wvrec.org>



U.S. Department of Justice

Antitrust Division

*Liberty Place Building
325 Seventh Street, NW, Suite 300
Washington, DC 20530-0001*

March 3, 2006

Richard E. Strader
Executive Director
West Virginia Real Estate Commission
300 Capital Street, Suite 400
Charleston, West Virginia 25307

Re: C.S.R. §174-1-11

Dear Mr. Strader:

In response to your request for comment, this letter conveys our views on competition issues raised by the proposed Emergency Rule C.S.R. §174-1-11 ("§174-1-11"), which was submitted to the Office of the West Virginia Secretary of State on January 31, 2006. A copy of the proposed version §174-1-11 is attached. (http://www.wvrec.org/174-1_Emerg_06.pdf.) This letter only conveys our views on the inducement provisions of the attached version of §174-1-11 and does not apply to any other version or provision of §174-1-11.

As you are aware, the U.S. Department of Justice has been investigating competition issues raised by state regulations prohibiting rebates, inducements and other discounts offered by real estate brokerage services in a number of states including the State of West Virginia. In response to concerns raised by our investigation, the West Virginia Real Estate Commission unanimously determined that it would no longer enforce its "anti-inducement" rule as previously promulgated in §174-1-11.1. The Commission has approved new language to replace the existing version of §174-1-11.1. See also, U.S. v. Kentucky Real Estate Commission (Civ. Act. 3:05-cv-00188-s (consent decree) (<http://www.usdoj.gov/atr/cases/krec.htm>.) and South Dakota (United States Department of Justice Press Release, South Dakota Real Estate Commission Permits Real Estate Brokers to Offer Rebates and Inducements (Aug. 17, 2005) (http://usdoj.gov/atr/public/press_releases/2005/210637.htm.)

Under the revised §174-1-11.1, West Virginia consumers can expect to benefit from increased competition through broker-offered rebates, incentives and discounts. The predominant form of payment for real estate brokerage services remains the "commission," a percentage of the price paid for the property. Brokers may compete by offering their services at different commission levels. To compete against one another, brokers in other states also frequently offer customers rebates and inducements. Examples of rebates and inducements include cash (whereby the buyer's broker offers some percentage or amount of his or her commission to the buyer), free products and services (such as televisions or home inspections),

discounts or vouchers for other products and services (such as home moving services or home improvement stores), and donations to charities on the customer's behalf.

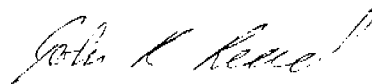
Rebates and inducements benefit both home buyers and sellers. Under the traditional structure of a real estate contract, the seller and seller's broker determine the amount of the commission, and how it is allocated between the seller's and buyer's broker. If the seller's broker also finds the buyer, then that broker keeps the full commission. If, instead, different brokers represent the seller and buyer, the seller's broker pays the commission of the buyer's broker, and the size of that payment is not controlled by the buyer. Being able to offer rebates and inducements allows brokers to compete for the buyer's business by reducing the compensation they receive for representing a buyer. For example, the broker can offer prospective home buyers \$1,000 (payable from the broker's commission) at the time of closing, if the buyers agree to have that broker as their agent. Rebates also benefit sellers. A broker for either the seller or buyer, for example, could offer to rebate a portion of his or her commission to bridge the gap between the offer of the buyer and seller to ensure that a deal is reached at a price acceptable to both sides.

Buyers and sellers may also benefit from inducements, such as free or reduced-priced non-real estate brokerage services, for which a broker may be able to contract at lower prices than would normally be available to buyers and sellers.

More generally, a more competitive and more efficiently-operating marketplace will tend to generate greater benefits for both home sellers and home buyers. All buyers and sellers benefit if the process of selling homes is less expensive. Consequently, allowing non-misleading rebates and inducements is procompetitive and represents an important component of price competition. Such price competition is permitted in most states. Some national discount brokers, for example, advertise rebates and inducements in the many states where they are permitted. Enactment of the revised §174-1-11.1 will ensure that these benefits are available to the citizens of West Virginia.

The West Virginia Real Estate Commission should be commended for taking quick action to address the competition issues raised in the Department of Justice's investigation. We appreciate this opportunity to present our views and would be pleased to address any other questions or comments regarding competition issues.

Sincerely,



John Read
Chief
Litigation III Section

See Attachment

March 3, 2006

Honorable Betty Ireland
WV Secretary of State
State Capitol Complex
Charleston, WV

Dear Secretary Ireland:

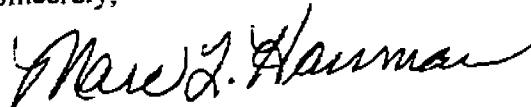
Please file these comments regarding the proposal rule change filed by the Real Estate Commission amending 174 CSR 1-11 to comply with a request made by the United State Department of Justice.

The rule as proposed is intentionally over burdensome. While the inducements or rebates should be clearly disclosed to the client or consumer with the terms and conditions associated with such offers the rule as proposed creates an administrative nightmare and would as a practical matter unduly restrain that which it purportedly allows.

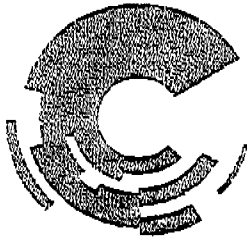
Small businesses in West Virginia constantly struggle to fulfill the many other paper work requirements of doing business and this proposed rule adds yet another burden. Real estate franchises in West Virginia are small businesses that have been unable to fully utilize the franchise network to which they belong due to the existing "anti-inducement" rule.

This proposed amendment to that rule is simply a not very veiled attempt to continue to restrict small businesses from reaching the full potential provided by legitimate franchise operations.

Sincerely,



Marc L. Harman



CENDANT

CENDANT CORPORATION
1 CAMPUS DRIVE
PARSIPPANY, NJ 07054
FAX NUMBER (973) 496-4641

LEGAL DEPARTMENT FACSIMILE COVER SHEET

Richard Strader	<small>FROM:</small> Walter F. Dembiec, Jr.
<small>COMPANY:</small> West Virginia Real Estate Commission	<small>DATE:</small> 3/3/06
FAX: 304.558.6442	<small>SENDER'S E MAIL ADDRESS:</small> Walter.dembiec@cendant.com
<small>TOTAL NO. OF PAGES INCLUDING COVER:</small> 3	<small>SENDER'S PHONE NUMBER:</small> 973.496.5277
<small>RE:</small>	

Walter E. Dembiec, Jr.
Senior Vice President
& General Counsel
Real Estate Franchise Group



March 3, 2006

SENT VIA FACSIMILE: 304-558-6442

Richard Strader
West Virginia Real Estate Commission
300 Capitol Street, Ste. 400
Charleston, WV 25301

Re: Comments on Emergency Rule 174 CSR 1-11: Requirements in licensing Real Estate Brokers, Associate Brokers, and Salespersons ("Cendant") and the conduct of Brokerage Business

Dear Mr. Strader:

These comments are being submitted on behalf of Cendant Corporation, the world's largest franchisor of real estate brokerages, with over 14,000 offices and 300,000 sales associates worldwide. Cendant's real estate brands include Century 21[®], Coldwell Banker[®], Coldwell Banker Commercial[®], ERA[®], and Sotheby's International Realty[®].

While we are pleased that the West Virginia Real Estate Commission is purporting to rescind what we believe to be the various anti-competitive provisions of 174 CSR 1011, we believe that the new recordkeeping requirements proposed under Subsection 174-1-11.3.b.1.-3 will be extremely burdensome to comply with and will ultimately defeat the purpose and the intent of any revised rule.

Specifically, the proposed, revised rule requires that a licensee who offers prizes, certificates or gifts **must maintain records** containing the number and description of each prize, gift or certificate awarded; the name and address of each person who received an award; and the name and address of each person who responded to the advertisement or solicitation but did not receive an award.

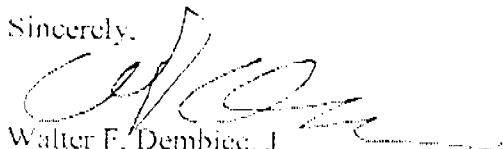
While we don't disagree the inducements and/or rebates should be clearly disclosed to the consumer regarding the terms and conditions associated with such offers, the overly burdensome recordkeeping requirements would, as a practical matter, in our review, continue to unduly restrain trade to the ultimate detriment of the citizens of West Virginia.

In addition, we believe Cendant franchisees in West Virginia will continue to be at a disadvantage under this rule. The burdensome recordkeeping requirements will continue to serve as a barrier to their being able to take full advantage of the rebates and/or

sweepstakes programs that are otherwise an integral component of their franchise package.

Accordingly, Cendant respectfully requests that the Real Estate Commission reconsider these Emergency Rules. We stand ready to discuss our concerns with you in greater detail and would be more than willing to offer more specific suggestions as to how to modify this rule to make it more acceptable and business and consumer friendly.

Sincerely,



Walter F. Dembiec, J.