

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2002 JUL 19 P 2:25

OFFICE 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 §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.


Authorized Signature

SCANNED

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: July 19, 2002

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Real Estate Commission
1033 Quarrier Street, Suite 400
Charleston, WV 25301

Phone: 304-558-3555

LEGISLATIVE RULE TITLE: Title 174, Series 1 - 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:
June 13, 2002

b. What other notice, including advertising, did you give of the hearing?
Notice to all real estate offices that the rule had been proposed.
Notice to all providers of prelicense and continuing education courses.
Posting of the proposed rule on the Commission's Web Site.

c. Date of Public Hearing(s) *or* Public Comment Period ended:
Public Comment Period: July 14, 2002

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)

July 19, 2002

- 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

WV Real Estate Commission

1033 Quarrier Street, Suite 400

Charleston, WV 25301

Phone: 304-558-3555

Fax: 304-558-6442

Email: <wvrec@wvrec.state.wv.us>

- 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.

N/A

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



**State of West Virginia
Real Estate Commission**

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

**RICHARD E. STRADER, CPA
EXECUTIVE DIRECTOR**

COMMISSIONERS

**VAUGHN L. KIGER, CHAIRMAN
MORGANTOWN**

**ROBERT P. MCLEAN, VICE CHAIRMAN
BECKLEY**

**JOHN H. REED, III, SECRETARY
HURRICANE**

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 each section to conform to the provisions of WV Code §30-40.
2. Replacing each reference to WV Code §47-12 with the appropriate reference in WV Code §30-40.
3. Technical modifications to the rule.
4. Delete section 30 relating to real estate courses, course providers and instructors, which is being proposed as a new rule.



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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. Passage of Senate Bill #453 repealed the previous real estate license act, which was located in WV Code §47-12, and created the current real estate license act in WV Code §30-40.



APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 174, Series 1 - Requirements in Licensing Real Estate Brokers, Associate

Type of Rule: X Legislative _____ Interpretive _____ Procedural

Agency: Real Estate Commission

Address: 1033 Quarrier Street, Suite 400

Charleston, WV 25301

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0.00	0.00	0.00	0.00	0.00
PERSONAL SERVICES	0.00	0.00	0.00	0.00	0.00
CURRENT EXPENSE	0.00	0.00	0.00	0.00	0.00
REPAIRS & ALTERATIONS	0.00	0.00	0.00	0.00	0.00
EQUIPMENT	0.00	0.00	0.00	0.00	0.00
OTHER	0.00	0.00	0.00	0.00	0.00

2. Explanation of Above Estimates:
No increased costs are projected to result from implementation of this rule.

3. Objectives of These Rules:
To promulgate rules required by the passage of Senate Bill #453, which moved the real estate license act into Chapter 30 of State Code.

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

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 19, 2002

Signature of Agency Head or Authorized Representative:

Richard E. Strader

TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION

FILED

SERIES 1

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

2007 JUL 19 P 2:26
OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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 WV Code § ~~47-12-1~~ 30-40-1 et seq.

1.2. Authority. -- W. Va. Code §§ ~~47-12-3 and 19: 30-40-8~~

1.3. Filing Date. -- ~~April 5, 1995~~

1.4. Effective Date. -- ~~May 1, 1995~~

§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~~ 30-40-6.

2.2. Licensee. -- The term "licensee" means a broker, an associate broker, and a salesperson as defined in WV Code § ~~47-12-2~~ 30-40-4.

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.~~ 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 ~~issues licenses on an~~ may issue licenses on an annual or biannual basis. ~~and fees~~ 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 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 ~~under WV Code §47-12-9 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. ~~The A broker's license shall show the broker's name, business name and business address, of the licensee, and, in case of a real estate~~ An associate broker's and 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 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 salesperson.~~ 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 office place of business must make application for a register the branch office license 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. -- Every broker who obtains a license for a branch office must designate one associate broker or salesperson as manager of each branch office. A licensed 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 ~~keep~~ the license certificates of each salesperson and associate broker ~~in his or her custody at all times.~~ 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. Transfer of salesperson's or associate broker's license. -- 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 which 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 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 salesperson or associate broker makes application for change of employing broker 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~~ 30-40-12 among other required qualifications for a broker's license, provides that ~~"every applicant for a license as real estate broker... shall have served a bona fide apprenticeship as a licensed real estate salesperson for two (2) years or shall produce to the Real Estate Commission satisfactory evidence of real estate experience."~~ "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 WV Code §~~47-12-4~~ 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 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 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 calender year and the preceding two calender years.

7-37.4. 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 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 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.

~~9.1. 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. Advertising by salespersons and associate brokers prohibited. -- 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 salesperson or associate broker is the owner of the property which he or she is advertising, the salesperson or associate broker has all the rights of an owner: All advertising by an associate broker or salesperson of property listed by a broker, 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 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 Inducements 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:~~

~~4 11.2. Offering of gifts prohibited. -- A 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:~~

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:

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;

b. Discuss or negotiate the compensation the licensee agrees to charge for his or her services; or

c. Disseminate information about special terms, conditions or other inducements 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 17 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.

~~12.1.2. 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 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 licenses by paying the annual renewal fee for a license as set forth under ~~WV Code § 47-12-9~~ 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 WV Code § ~~47-12 30-40-1~~ et seq.

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.~~ by June 15 of the year subsequent to the license'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, with his or her renewal application showing he or she has completed, during the term of the preceding license, in the fiscal year preceding the license renewal date, 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 renewing applying for a renewal of 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 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.

~~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.

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.

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

§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 at the time and place specified by the Commission. 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. 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.

14.2. 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.

14.3. Reexamination. -- 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.

14.4. 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.

14.5. 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. Qualifications For Salesperson's License:

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

~~15.2. Recommendation. -- The application for a 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.~~

§174-1-46 15. Complaints.

~~16.1. 15.1. Filing of Complaint. -- The Commission will consider complaints of alleged violations of WV Code § 47-12 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.

~~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.~~

§174-1-47 16. Trust Funds.

~~47.4. 16.1. 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 trust fund account. The accounts and other records shall be open to inspection by the Commission and its duly authorized agents 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 WV Code § 47-12 30-40-1 et seq. by the broker.~~

~~47.2. 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 WV 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 WV 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 account;

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.

§174-1-48 ~~17~~. Broker's Place Of Business: Commingling Defined.

~~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.~~

17.1. Commingling within the meaning of WV 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.

§174-1-49 ~~18~~. Closing Statements.

~~49.4. 18.1. Deliver to Seller and Buyer. -- Every broker shall make certain that deliver to the seller and buyer, receive a complete, detailed closing statement showing all of the receipts and disbursements for their side of the transaction, 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 Salesperson And Associate Broker:~~

~~—21.1. Collection of money. -- 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 WV Code §47-12-11.

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

~~—22.1. Application of broker, associate broker and salesperson. -- The Commission shall reserve the right to refuse an application for either a broker, associate broker or 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-4 et seq. 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 a 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 19. Requirements Of Broker.

26.4. 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 in the by taking the salesperson's examination. The resulting 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.

~~26.2. Broker employed by other broker as salesperson. -- Brokers who, by written or oral agreement, are 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 § 47-12-1 et seq.~~

26.3 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.

~~26-4~~ 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 commission is broker's compensation may have been 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 subsection to be a violation of WV Code § ~~47-12-11~~ 30-40-19.

§174-1-27 20. Court Action.

~~27-1~~ 20.1. Licensee to inform Commission of ~~court~~ 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 ~~or is a party defendant to 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.

§ 174-1-28 21. Bad Checks.

~~28-1~~ 21.1. Bad checks. -- Checks ~~issued~~ 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 ~~may~~ shall refuse to issue or ~~may~~ shall cancel a license which was sought or obtained by the issuance of a bad check.

§174-1-29 22. Agency Disclosure.

~~29-1~~ 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 WV Code § ~~47-12-1~~ 30-40-1 et seq.

~~29:2 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. ~~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 22.3.~~ A real estate broker shall provide written notice to all parties prior to paying a fee, commission or other valuable consideration portion of his or her compensation to a broker representing another party to the transaction.

~~29:4 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.

~~29:5 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.

~~29:6 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.

~~§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 = 60%-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 paragraph.~~

~~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 paragraph.~~

~~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.~~



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**COMMENTS RECEIVED
AND
RESPONSE TO COMMENTS RECEIVED**

AGENCY: Real Estate Commission

RULE: 174-1

STATUTORY
AUTHORITY: WV Code §30-40-8

COMMENTS RECEIVED

One written comment was received during the public comment period. A copy of the correspondence is attached.

RESPONSE TO COMMENTS RECEIVED

After a review of the comments received, the Commission determined that no change was needed to the proposed rule.



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JUL 1 2002

W.VA. REAL ESTATE
COMMISSION 6/29/02

A SOLID NAME IN REAL ESTATE

Real Estate Commission
1033 quarrier St Suit 400
Charleston WV 25301-3215

Dear Commission,

Please consider the following comments on your newly proposed Legislative Rule changes.

Paragraph 9.1 appears to indicate that all advertisements shall include the company name, brokers name, office location, and the term broker or realtor. I was under the impression that the intent of the paragraph is to protect the public from "blind ads" where it is not shown that the advertiser is a broker, and could appear to be the owner. I felt the previous language adequately protected the public while being dynamic enough for various advertising formats. The volume of information needed under the new language would be prohibitive in classified ads; trivial items such as pens, shirts, hats, etc...; Small high cost or limited space display ads; and real estate signs. Also while we have a chance to address this paragraph, the term realtor refers to a membership organization to which non-brokers may belong. The term broker is the clearest term to define the activities under which the advertiser operates.

Paragraph 9.2, have owners that are licensed sales people lost the right to advertise properties they own as for sale by owner without meeting the guidelines of 9.1? Or does the language in 9.1 cover all licensees ability to advertise as owners?

Paragraph 18.1, The duty of a broker to make certain that every buyer and seller receive a closing statement appears to require us to perform duties that are increasingly outside the scope of our ability. Due to the recent privacy act, many banks and lawyers are requiring the signatures on a consent to disclose form to allow us to receive a settlement statement. Making it likely that the situation will arise when a buyer or seller refuses to sign such a document. Many larger mortgage companies are closing transactions now, and they refuse to allow involvement of the broker on any side that the broker does not represent. I think that in most cases settlements are now handled by parties who are either licensed attorneys, title companies, or banks. All of these parties are regulated by the state as to their actions. I would ask that the commission consider the option of wording this paragraph so the broker is responsible to deliver detailed statements of settlement charges only if they are acting as the "closing agent"

Paragraph 22.1, The paragraph covers an important issue in our business. However the implementation can be extremely difficult in some situations. For example a buyers agent sends an offer to a sellers agents office. The offers I have received like this tend to include only the buyers agent's Notice of Agency. In some situations it is impractical to provide the listing agents Notice of Agency to the buyer, prior to them signing the offer with the buyer's agent. We of course must present all written offers; so in this situation we are caught between two important laws/regulations. I would like to see a guide line to help better address these situations.

Paragraph 16.3, Life is complicated enough, I have never had anyone reduce the amount of earnest money or complain in anyway that I am aware of that they would not be earning interest. If the real estate industry starts to advertise interest bearing trust earnest money contracts I feel that an amount of time and resources will be devoted to accounting for our business operations, that could be dedicated to listing and selling for our clients and customers.

Thank you for the opportunity to discuss your proposed regulations. Please contact me to discuss any of the items further.

Thanks,


Oak Hall
Broker



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AMENDMENTS MADE TO PROPOSED RULE
AND
REASON FOR AMENDMENT

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

One amendment was made to the proposed rule by the Real Estate Commission. The title of CSR §174-1-11 **Offer of Trade Stamps and Gifts**, was amended to read as follows: **Offer of Inducements and Gifts**.

The original title of this section included the words "trade stamps" which was first promulgated at a time when Top Value Stamps and S&H Green Stamps were in common use by merchants. The Commission amended the rule to remove the words "Trade Stamps" because they are no longer used.