



WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

Building 1, Room MB-49  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0610  
(304) 347-4840  
(304) 347-4919 FAX

email: tanders@mail.wvnet.edu

Senator Mike Ross, Cochair  
Delegate Virginia Mahan, Cochair  
Debra A. Graham, Counsel

November 20, 2002

Joseph A. Altizer, Associate Counsel  
Connie A. Bowling, Associate Counsel  
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Richard E. Strader  
Real Estate Commission  
1033 Quarrier St. Suite 400  
Charleston, WV 25301

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Requirements in Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business, 174CSR1**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
  - (a) as originally filed
  - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

FILED

DEK

ANALYSIS OF PROPOSED LEGISLATIVE RULES

2002 NOV 13 A 10:12

**Agency:** Real Estate Commission

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**Subject:** Requirements in Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business, 174CSR1

PERTINENT DATES

Filed for public comment: June 13, 2002

Public comment period ended: July 14, 2002

Filed following public comment period: July 19, 2002

Filed LRMRC: July 19, 2002

Filed as emergency:

Fiscal Impact: None

NOV 13 2002

ABSTRACT

WEST VIRGINIA  
SECRETARY OF STATE

BRIEF SUMMARY:

1. The rule is amended to conform with the provisions of W. Va. Code §30-40-1, et seq.
2. The rule replaces all references to W. Va. Code §47-12-1, et seq. with the appropriate reference in W. Va. Code §30-40-1, et seq.
3. The rule is amended with certain technical modifications to the rule.
4. The rule is amended by deleting Section 30 relating to real estate courses, course providers and instructors, which is proposed as a new rule.

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 defines terms.

The amended rule redefines the term "Applicant" to mean any person who is making application to the Commission for a license.

Section 3 relates to license fees.

This section provides that the Commission may issue a license annually or bi-annually.

Section 4 relates to license certificates.

The amended rule sets forth certificate provisions for "Brokers" and "Associate Brokers" licenses.

The rule is amended to provide that 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.

Section 5 relates to branch offices.

This section is amended to provide for branch offices and the oversight and management of such offices.

Section 6 relates to cancellations and transfers.

This section amends the provisions for custody of a broker's licenses and transfers of brokers.

Section 7 relates to qualifications for real estate broker's license.

This section is amended to add the following provisions:

- 7.1. Experience requirement. -- "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".

7.3 An applicant shall submit 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.

7.5 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.

Section 9 relates to advertising.

This section is amended to provide for standards for linear advertisement, radio, television, web sites or any other media.

The section is further amended to allow advertising by salespersons and associate brokers only under the direct supervision of and in the name of the employing broker.

Section 10 relates to trade and fictitious names.

The section is amended to add the following *Proviso* to the "Use of trade name": *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.

Section 11 relates to offer of inducements and gifts.

This section is amended to set forth occasions when "inducements and gifts" are proper and when they are improper.

Section 12 relates to location of office.

The rule is amended to provide that the 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, as long as there is adequate space for record keeping and inspections.

Section 13 relates to renewal of license.

This section is amended to provide for changes in license renewals, relating to frequency, dates, and continuing education.

Section 14 relates to examinations.

This section is amended to set forth standards for application, rules for the taking and review of the examination, and payment of licensing fees.

Section 15 relates to complaints.

This section replaces the former section fifteen (now deleted).

The amendment provides that complaints must now include copies of contracts, closing statements, correspondence, and other pertinent documents.

Section 16 relates to trust funds.

This section provides for the collections of money and fees, the maintaining and dispersal of interest bearing trust funds, and the closing of such accounts.

Section 17 relates to commingling.

This section is amended to define commingling 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.

Section 18 relates to closing statements.

This section is amended to assure that both the seller and buyer receive a complete, detailed closing statement.

Section 19 relates to requirement of Broker.

Technical changes.

Section 20 relates to court action.

This section is amended to add to the requirements that each licensee must supply the Commission with a copy of the judgement or final disposition of a case and any warrants issued in the case.

Section 21 relating to bad checks and Section 22 relating to agency disclosure.

Technical changes.

#### AUTHORITY

Statutory authority: W.Va. Code, §30-40-8, which provides, in part, as follows:

(a) The commission may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which are necessary for the conduct of its business, the holding of

hearings and for the general implementation, enforcement and administration of the provisions of this article...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes

VIII. OTHER

None