

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box

2013 JUN 19 11 2: 01

Form #3

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

AGENCY: West Virginia State Fire Commission TITLE NUMBER: 87

CITE AUTHORITY: W.Va. Code 29-3-5b(c)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 87-5

TITLE OF RULE BEING AMENDED: Certification of Home Inspectors

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.

*Robert S. Sullivan*

Authorized Signature

**FISCAL NOTE FOR PROPOSED RULES**

Certification of Home Inspectors, 87 CSR 05

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia State Fire Commission

Address: 1207 Quarrier Street, 2nd Floor  
Charleston, WV 25301

Phone Number: 304-558-2191 Email: anthony.w.carrico

**Fiscal Note Summary**

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

Proposed Rule will have a slight impact on the agency in the form of increased revenues based on the proposed increase in the certification fee. Based strictly on the current number of home inspectors certified in West Virginia, the agency could see an increase of approximately \$3,500.00.

**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	2,500.00	2,500.00	2,500.00
Current Expenses	300.00	600.00	600.00
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	14,300.00	14,300.00	17,800.00

Certification of Home Inspectors, 87 CSR 05

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

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

Increase in special revenue expected to be approximately \$3,500.00 annually upon implementation. This increase is directly associated with the proposed increase in certification fee from \$100.00 to \$125.00 to offset increased costs (materials, mailing, etc.) since the rule was first implemented in 2006. Largest increase in costs to the agency is mailing and postage, which has continued to rise since 2006, and is anticipated to continue with that trend.

**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.

N/A

Date: June 19 2013

Signature of Agency Head or Authorized Representative

Robert S Sullivan

**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: \_\_\_\_\_

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia State Fire Commission  
1207 Quarrier Street, 2nd Floor  
Charleston, WV 25301  
(304)558-2191

LEGISLATIVE RULE TITLE: Certification of Home Inspectors

1. Authorizing statute(s) citation West Virginia Code 29-3-5b(c)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
March 1, 2013

b. What other notice, including advertising, did you give of the hearing?  
West Virginia Fire Marshal's website

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
April 1, 2013

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)

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

Anthony W. Carrico  
Acting West Virginia Fire Marshal  
1207 Quarrier Street, 2nd Floor  
Charleston, WV 25301  
(304)558-2191 phone  
(304)558-2537 fax  
anthony.w.carrico@wv.gov

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- 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)

Stacy L. Nowicki, Esq  
Assistant Attorney General  
1900 Kanawha Blvd., East  
Building 1, Room E-26  
Charleston, WV 25305  
(304)558-2021

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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

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b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A

West Virginia Fire Commissions Response to Comments on the Certification of Home Inspectors Rule, 87-5

BACKGROUND

During the past several years, significant problems became apparent within this Rule. Most importantly of these was that the Commission lacked authority to actually discipline bad acting home inspectors, and did not provide for any Due Process or hearing for the Certification holder. This revision solves these problems, and closes a “loop-hole” in the renewal process whereby applicants were letting the certification lapse and applying for a new certification to avoid the continuing education credits.

The Commission held “stakeholders” meetings in the draft stages of this rule, to ensure input from the Home Inspectors Association. The resulting product was placed out for comment, and now the Commission responds to the written public comments received as follows:

Errors and Omissions Insurance

The Commission received comments concerning the newly included requirement of errors and omission insurance. After reading the comments, and after discussion, the Commission agrees that the inclusion is not necessary, and has removed the proposed section from the originally filed rule.

Standards for Home Inspectors

The Commission received a comment stating that the Rule was adopting ASCII standards as a hole. This is not the case. Standards are set forth within the rule which are West Virginia only standards. In no manner does the Rule Adopt new standards, it merely clarifys what current standards are.

Technical clean up was done to the rule.

This fairly summarizes the major topics upon which comments were made to the West Virginia State Fire Commission on the Certification of Home Inspectors Rule, 87 W. Va. C.S.R.

5. The Commission considered and weighed all comments received. Moreover, the Commission appreciates all of those individuals and organizations who took the time and made the effort to comment on its Certification of Home Inspectors Rule.

## Racine, Leslie A

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**From:** Bradshaw, Tanya  
**Sent:** Tuesday, April 02, 2013 10:03 AM  
**To:** Racine, Leslie A  
**Subject:** FW: Website Contact Us Form Submitted - Shannon Pettit

For Home Inspector Rule change

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**From:** Fire Marshal [<mailto:support@wvinteractive.com>]  
**Sent:** Monday, April 01, 2013 4:16 PM  
**To:** Bradshaw, Tanya  
**Subject:** Website Contact Us Form Submitted - Shannon Pettit

Fire Marshal

**Shannon Pettit** has been added



[Modify my alert settings](#) [View Shannon Pettit](#) [View Contact](#)

**Title:** Shannon Pettit

**EmailAddress:** [shannon@blakehomeinspections.com](mailto:shannon@blakehomeinspections.com)

**Comments:**

To:

WV State Fire Marshal

It has come to my attention of the possible mandating for home inspectors to purchase E&O insurance. As a newer home inspector let me voice my concerns with this mandate. I know how expensive this insurance is because I have recently purchased it for my own company and with this expense comes added stress and budget concerns to many small businesses such as mine. I believe E&O insurance is a good thing to carry for protection like many other insurances but I do believe that the decision to carry such insurance should fall strictly on the home inspector or the home inspection company and not mandated by any regulatory body. I am afraid that if this mandate is to take place many home inspection companies will have no choice but to shut their doors and with the state of the economy we are in I do not believe this mandate would be a wise decision. I cannot help but to think of the WV State motto "Montani semper liberi" - Mountaineers are always free and that includes a decision such as this. I do however favor criminal background checks and not licensing convicted felons for the profession of home inspector. This profession is about integrity, honor and trustworthiness and any person who shows lack of any of those characteristics should not be considered for this profession. As a homeowner I would not personally want any felon or likes thereof in my home where my family and I feel the securest. A persons home should be treated with the utmost respect and criminal background checks could help weed out some home inspectors that lack the good moral judgment that we all should carry. Make no mistake about it some mandates and regulations are good and some not so. Regulating criminals is a good thing regulating our freedom to make choices not so.

Thank you for your attention to my letter and consideration of my words I know that all decisions are tough so please give thoughtful consideration and prayer to each.

Thank you

Shannon Pettit  
Blake Inspections, LLC  
880 Oxbow Rd.  
Belpre, Ohio 45714  
[shannon@blakehomeinspections.com](mailto:shannon@blakehomeinspections.com)  
304-588-5911

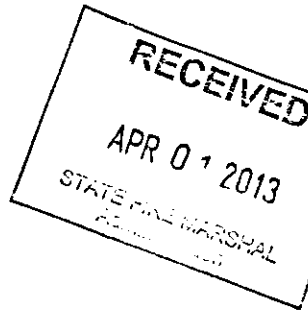
**Closed:** No





CERTIFIED INSPECTOR

Structural Inspections  
Full Home Inspections - WV State Standards  
West Virginia State Certified Inspectors  
Radon Testing  
Mold Testing



Phone: 304/768-5446 Fax: 304/768-5470  
E-mail: sam@advantagehomewv.com  
Web Page: advantagehomewv.com

4 Greenview Drive  
So. Charleston, WV 25309

March 23, 2013

West Virginia State Fire Marshal  
c/o Sterling Lewis Jr.  
1207 Quarrier St. (2nd floor)  
Charleston, WV 25301

RE: Rule Changes to Title 87-5

Dear Mr. Lewis and the Fire Commission

This letter is to inform you of my opinion on the proposed rule changes to Title 87-5. The two proposed changes I would like to address are the mandates for home inspectors to carry Errors & Omissions Insurance and provide background checks prior to being certified or to maintain certification.

I strongly disagree with the State of West Virginia mandating a home inspector carry Errors & Omissions Insurance (E&O). Although my company does carry E&O and I plan on carrying it throughout my career, this is a business decision that should be left up to the individual company. There have been multiple times when my company was not able to obtain E&O for periods of time through no fault of our own. This would have left 6 people unemployed. Of all the parties who are involved with the sale of a home, home inspectors will be the only party required to carry this type of insurance. This would put a larger target on our back than we already have. I believe this mandate will not only reduce the current number of home inspectors in the state but will also reduce the number of inspectors entering into this field due to the added monthly expense. Start up cost versus initial income for a new inspector is grossly lopsided as it is and this will increase the burden on a new inspector.

I agree that all newly licensed home inspectors should be required to provide an approved background check with their initial certification request package to the State Fire Marshal. I also agree that all home inspectors that are currently certified should be required to provide the same background check within a short time frame. I, along with many other home inspectors, currently have access into any home that has been listed by a Realtor. As home inspectors, we are overly trusted as we enter homes without question. All it will take is one incident to reduce the trust we have worked so hard to develop. I understand that it is not the responsibility of the Fire Commission to govern who has access into homes or the reputation of the home inspection industry, but I feel it is important that the Commission only certify an individual who has met strict moral protocol. Although background checks cannot guarantee that an incident will not occur, they will certainly reduce the likelihood.



CERTIFIED INSPECTOR

Structural Inspections  
Full Home Inspections - WV State Standards  
West Virginia State Certified Inspectors  
Radon Testing  
Mold Testing

Phone: 304/768-5446 Fax: 304/768-5470  
E-mail: sam@advantagehomewv.com  
Web Page: advantagehomewv.com

4 Greenview Drive  
So. Charleston, WV 25309

In closing, I feel the home inspection industry in this state has proven to be responsible as we have actively pursued the original certification process, stiffer penalties for misconduct, and background checks. Our job, like yours, is to protect the general public. If we felt the need for home inspectors to be required to carry E&O insurance to protect the general public, we would be at the forefront trying to push this through. The general public needs to have some responsibility when it comes to protecting themselves. They should be required to research the home inspection industry to determine what level of experience they desire rather than relying on the court system and insurance companies as has become the standard in this state.

Thank you in advance for taking the time to consider this matter. I stand behind all other proposed changes to Title 87-5 which, for the most part, will increase the standard of the home inspection industry. At the end of the day, that is the ultimate goal of the West Virginia Association of Home Inspectors (WVAHI).

Very truly yours,

ADVANTAGE HOME &  
ENVIRONMENT INSPECTIONS

Brett Hodgdon BS, EI  
V.P. of WVAHI  
HI License # HI7644961983-0207



## NATIONAL PROPERTY INSPECTIONS

P.O. Box 2229 · Hedgesville, WV 25427-2229  
Phone (304) 754-5144 Fax (304) 754-5980  
Website: www.npiweb.com/buhrman

March 29, 2013

West Virginia State Fire Marshall  
c/o Sterling Lewis Jr.  
1207 Quarrier Street (2<sup>nd</sup> Floor)  
Charleston, WV 25301

Re: Title 87 Changes



Dear Sirs:

Thank you for the opportunity to comment on the proposed changes to Title 87.

I would appreciate your consideration of the following comments:

- In section 1.4 the effective date is eliminated but it is referred to in a later section (5.4.1.b).
- I currently carry Errors and Omissions Insurance and would recommend it to any new home inspector. I think this requirement will help ensure the professionalism of our members while also helping to protect the public.
- The addition of a formal complaint review process is reasonable. The only suggestion I'd make is to advise employers if a complaint has been filed. I'm not sure if you have the ability to distinguish employees from self-employed inspectors but this would be important for those of us with employees.
- Background checks appear to be a growing trend and, in the times we live in, are a reasonable requirement. I would support this requirement.
- Though I agree in general that convicted felons should not be licensed, I believe some consideration should be given to when the felony occurred. If the problem had occurred years in the past, and no "recent" problems are noted, the Fire Marshall's office should have some latitude.
- 

Thank you again for the opportunity to voice our opinions.

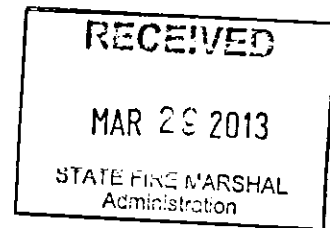
Sincerely,

Richard A. Buhrman  
National Property Inspections  
HI77660852-0806



PO Box 188  
New Manchester, WV 26056

304-670-2537



West Virginia State Fire Marshal  
Sterling Lewis Jr.  
1207 Quarrier St. (2nd floor)  
Charleston, WV 25301

March 26, 2013

Dear Sir,

It is my understanding that CFR 87.5 would mandate Errors and Omissions Insurance for home inspectors in our state. I believe that requiring such insurance would place an undue burden on home inspectors and real-estate buyers and sellers alike. The increased costs of doing business would of necessity be passed along to the consumer. The added cost of additional insurance might cause current inspectors to close their businesses and discourage prospective new home inspectors from ever entering the field. E&O insurance should be the decision of the business owner.

Also, it is the opinion of me and most of my colleagues that background checks be required as part of the application process for home inspectors, and (realizing that there can be extenuating circumstances) that convicted felons be denied certification.

The West Virginia Association of Home Inspectors has always been dedicated to high standards of professionalism, and we are all proud of our businesses. Some of us will make the decision to purchase E & O Insurance. But I believe that it is unnecessary to force this decision on our small businesses.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith L. English". The signature is written in a cursive, flowing style.

Keith L. English

23 March, 2013

West Virginia State Fire Marshal  
c/o Sterling Lewis Jr.  
1207 Quarrier St. (2nd floor)  
Charleston, WV 25301



Dear Mr. Lewis:

RE: **Subject:** Title 87 Proposed Rule Changes

Regarding background checks . . .

Is it not most common when background checks are implemented/required for whatever purpose, they are "run" by the entity requiring the background check -- I've never heard of the "subject" procuring one for submission.

Regardless, IF they are to become a requirement of our certification process; they need to be a one time application requirement, and NOT a part of any renewal process.

Personally, as pertaining to our profession, if required, they should not be provided by the applicant inspector. The application may be worded so the applicant acknowledges and authorizes the certifying entity (ie Fire Marshall's Office) to perform background checking at most. Within the application, the applicant may/should be required to verify "that they have not have been convicted of . . .

Background checks are not for public knowledge -- the confidentiality and possible distribution/sharing is a privacy concern. Perhaps, once a background check is reviewed, and the findings have been noted and utilized, the documentation should be destroyed?

Respectfully,  
Mark

A handwritten signature in black ink, appearing to read "Mark S. Londner", with a long horizontal flourish extending to the right.

Mark S. Londner, ACI, AIA  
LBI HOME & BUILDING INSPECTION  
*Inspections that Educate*  
[www.LBIhome.com](http://www.LBIhome.com)  
540-668-6339  
ASHI Certified Home Inspector  
Virginia Certified Home Inspector  
**West Virginia Certified Home Inspector**  
Maryland Licensed Home Inspector  
[Mark@LBIhome.com](mailto:Mark@LBIhome.com)  
15547 Honey Locust Lane  
Purcellville, Virginia, 20132-2761

*BIM LLC*  
*(dba) Gilbert L Dodson Home Inspections*  
*West Virginia Certified Home Inspector*

907 Hickory Court Martinsburg WV 25401  
304-263-1196 WVHI 70200454-1006



March 24, 2013

West Virginia State Fire Marshall  
C/O Sterling Lewis, JR.  
1207 Quarrier Street  
2nd Floor  
Charleston, WV 25301

Mr. Lewis,

I do not believe E&O insurance should be mandated for home inspectors in West Virginia. No one in the real estate industry is mandated to carry E&O insurance. If home inspectors do carry insurance it should be as a business decision and not as a mandate.

I feel as a mandate it would target the home inspector as the only entity in a real estate transaction that is insured and could potentially lead to unnecessary lawsuits.

This also could potentially prohibit new home inspection businesses from entering the industry as a prohibitive cost and many part time inspectors may leave the business entirely. Furthermore, the lack of choice in insurance carriers in the state of West Virginia along with the mandate would surely lead to extremely high premiums for those of us currently in the inspection industry.

I am in agreement with establishing a policy of requiring background checks and fingerprinting of any and all inspectors to determine eligibility for licensing.

Gilbert L. Dodson

A handwritten signature in black ink, appearing to read "Gilbert L. Dodson". The signature is fluid and cursive, written over the printed name.

Steve Raines  
Raines Home Inspection  
16 Batton Drive  
Ripley, WV, 25271  
(304) 531-8962  
sraines755@gmail.com



3-26-2013

State Fire Marshall  
1207 Quarrior Street  
Charleston, WV 25301

Dear Sir;

In reference to the purchasing of E&O Insurance, it is my opinion this should be a decision that individual inspectors should be able to make. It is an expense that could be unaffordable by many inspectors who are just getting started or who are part time or are in an area that has a small volumn of inspections. I am saying E&O Insurance is something that should be considered only as a business decision, not something that is mandated.

In reference to the background checks, I feel that we live in a time when it is probably necessary for such procedures in order to protect the clients we represent and homeowners. I am also in favor of convicted felons (that have not been determined acceptable by the Fire Commission) not recieve certification as a Home Inspector.

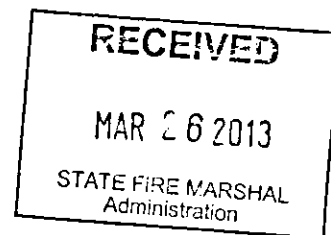
Thank you,

A handwritten signature in black ink, appearing to read "Steve Raines".

Steve Raines  
Raines Home Inspection

March 23, 2013

WV State Fire Commission  
Attn: Sterling Lewis, Jr.  
1207 Quarrier St., 2nd Floor  
Charleston, WV 25301



Dear Fire Marshal,

I am writing you to voice my opinion on the two pressing issues with the new proposed changes to the Home Inspectors law Title 87.

First: A background check for all Home Inspectors is a fantastic idea and I support it 100%. People that have committed a felony have no business being associated with this type of work. We are in way to many homes and have way too many opportunities to give the entire industry a bad name over one person. Anything that I can do to help in this matter I am willing to do.

Second: The requirement for all Home Inspectors to carry E&O insurance will be the end of Home Inspections in the State of West Virginia. We will be the only entities that will be required to carry it in the entire real estate industry. Every Home Inspection will become a law suit just because the lawyers will be able to. They know that most insurance companies will settle out of court if the cost is cheaper than the cost to fight it. We won't have to do anything wrong, it will just be of creating additional income for them. After about six months or a year, the insurance companies will get tired of the frivolous lawsuits and pull out of the state like Allen Ins. Group has already done. Then we all just became unemployed. The whole idea of the Home Inspectors laws was to protect the good people of our state and have guidelines on what we can and cannot do. If this passes in its current form, the Home Inspection industry in the state will cease and the public will be back to having to trust what the seller and realtor are saying about the home.

I want to add that what I am saying is not just lip service but I am a living example of what I am saying. I am involved in two lawsuits just because I have E&O insurance.

They both are because of soil slides on the property that we are not and cannot detect. It is clearly stated in Title 87 that we do not inspect for geological conditions but yet we are brought into suits just because we have E&O and they know they will settle out of court for a sum. Then, our insurance goes up again and the entire cycle continues until the insurance companies pull out of the state.

I carry E&O insurance even though it puts a target on my back to help protect myself and my family. Sadly it has become a financial and emotional nuisance to my business because of the frivolous lawsuits without any merit to them at all. I have to pay to defend myself just because they can file a suit for anything under the sun and hope something sticks. Where does it end???

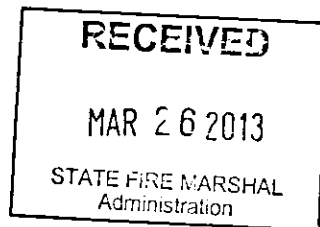
I am strongly against the passing of this change and hope that you will look further into the items I have mentioned and make the safety of West Virginia residence the priority and not the lawyer's incomes.

I am the President of the West Virginia Association of Home Inspectors (WVAHI) but I am speaking to you more as a personal business owner that cares deeply for the public welfare in this great state! I strongly feel this will hurt the residence of this state and ultimately cause irreversible harm.

Please feel free to contact me for further information or any help I can give in these matters.

Sincerely,  
  
Robert Cook

Castle Inspection Services  
WVAHI – President  
304-741-4656



Bob Johnson, RHI, CHI  
PO Box 82  
Hurricane, WV 25526

Dear Sir;

The following comments state my feelings about the upcoming changes that will impact the Home Inspector industry in our State.

**E & O Insurance as a State Requirement:**

This is one area that I feel should be entirely a business decision. I personally chose to make that a business expense from the opening of my business. It has always been a very expensive outlay of money. The cost also raises each year since, if chosen, the past inspections have to be included as there is no legal Statue of Limitations for home inspections in our State. If mandated coverage is instated, we will be at the mercy of Insurers for pricing and a target for lawyers. They have nothing to lose and we always have the chance of losing the deductible if settled out of court, which is always an option for the Insurance Company. I personally feel this would be very devastating for the Home Inspection industry as a whole. Even though it is something I personally carry, I am against mandating E&O Insurance.

**Background Checks:**

I am totally in favor of this. Homeowners now trust us with their possessions, often under aged children, and home with few qualms. One convicted felon could destroy that trust and put a smear on us and you, since the certification process ends there, that could be irreversible.

Thank You,

Bob Johnson, RHI, CHI, Owner  
Closer Look Home Inspections, LLC  
State Certification: HI 28790649-0806  
Email: bob2554@suddenlink.net  
Huntington: (304) 360-6184  
Charleston: (304) 539-6184  
Fax: (304) 562-0054

To the WV State Fire Marshal,  
Sterling Lewis,



**BACK GROUND CHECKS:**

It has come to my understanding that background checks may be mandatory for Home Inspectors in the near future. I think this is a good way to set the standards for the industry. We do spend a lot of time in homes of other people, along with their personal possessions. I feel that it would only help the industry when people know that a felon is not in their home.

**E&O INSURANCE:**

As far as E&O insurance, I think it is in the best interest of the Home Inspector to be covered, But at the same time the extra cost may not be obtainable for some.

Thanks for your time,

Joseph Mullins

A handwritten signature in black ink, appearing to read "J. Mullins". The signature is fluid and cursive, written over the printed name.

Mountain State Home Inspections  
HI8424911-0311  
[www.mountainstatehomeinspections.com](http://www.mountainstatehomeinspections.com)  
PO Box 1319  
Bridgeport, WV 26330  
304-641-1463  
304-842-4911  
Protecting Peace of Mind

# THE COHEN LAW GROUP

*A Professional Corporation*

MARK COHEN

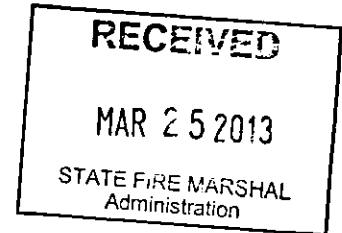
*Of Counsel*

JEFFREY D. COHEN, J.D., LL.M., C.P.A.  
ALSO AT THE COHEN LAW FIRM, P.C.

ALISON L. CHOY KILMER, J.D., M.B.A.

March 19, 2013

West Virginia State Fire Marshal  
c/o Sterling Lewis Jr.  
1207 Quarrier St. (2nd floor)  
Charleston, WV 25301



RE: Title 87 Proposed Rule Changes

To Whom It May Concern:

We represent the International Association of Certified Home Inspectors - InterNACHI. InterNACHI, a 501(c)(6) trade association with more than 9,500 members, is the largest association of home inspectors in North America.

We have reviewed the proposed changes and we are concerned that this appears to be an attempt to adopt wholesale the standards of practice of a smaller trade association, the American Society of Home Inspectors (ASHI).

InterNACHI has its own more comprehensive standards of practice, and you may view these at <http://www.nachi.org/sop.htm>.

We feel the rule changes should allow inspectors to follow the standards of practice of any one of the two major trade associations - InterNACHI or ASHI.

Thank you for your consideration.

Sincerely,  
The Cohen Law Group  
A Professional Corporation

MSC:wth

MARK COHEN

**Carrico, Tony**

---

**From:** Parker Safety Inspection Services, LLC <parkerL218@roadrunner.com>  
**Sent:** Sunday, March 24, 2013 11:16 AM  
**To:** Carrico, Tony  
**Subject:** Proposed Changes to Home Inspection Certification



West Virginia Office of the State Fire Marshall  
Home Inspection Certification Division  
Mr. Anthony Carrico

Dear Sir,

I am writing in the capacity of a trainer for the Home Inspection industry. We feel we are in a unique situation as we observe and train in other states where there is licensing or certification of home inspection professionals, and in states where there are no oversight requirements. We understand that there are two issues being brought to the forefront changing requirements for certification in the State of West Virginia: Background Checks and E&O insurance requirement above the General Liability insurance requirement.

On the issue of the Background Checks, we feel this is an excellent service to the public. Most of the surrounding states where there are oversight requirements have this requirement. Inspectors who wish to inspect across state lines find this is one area in which they must adhere when enjoining in a reciprocity licensing that they did not already have when certified by WVFM. We feel, from a training and a professional inspection point of view this is a good step to take in protecting the public.

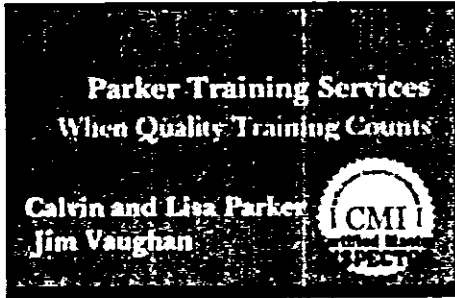
E&O Insurance however, we feel is not in the best interest of the public and certainly not the Inspector. Inspection professionals who choose to have this coverage may already be enrolled. There are companies out there who will allow payment on an inspection by inspection basis. We are always leery of the Insurance Industry forcing coverage's that do not necessarily reap a benefit. Because the Home Inspection Profession is relatively young, and many states still do not regulate it, tracking court cases where the defendant is specifically neglect of a Home Inspector, is non-existent. Furthermore, those cases almost always involve the entire scope of transaction, so Inspectors and other ancillary professionals are named, even though the real issue has nothing to do with their particular part.

Furthermore, most call back issues fall into one of these two categories: Claims of items below \$2500. and claims arising from "Buyer's Remorse". We note to you the claims below \$2500. as most claims are for HVAC systems, or moisture (including roof) issues. Interestingly, though not coincidentally, the most affordable E&O insurance has a \$2500. deductible. Therefore, requiring E&O insurance further burdens the small business owner (most inspectors are sole proprietors) with annual E&O premiums in excess of \$2500 per year, but then the inspector if there is an issue, and it is under \$2500, would be required to hold that burden as well. In today's housing market, having to bear the burden of E&O would put many out of business.

Please be aware of unintended consequences. Many States that initially required E&O have changed to General Liability only because of the lack of affordability and the harm placed on these small

businesses. Perhaps the better effort would be placed in uniform contract language and Buyer expectation education.

Thank you for your kind attention,  
Lisa Parker



Home Inspection Pre-Licensing  
Mold Sampling and Inspection



Continuing Education

740-994-0174

740-994-0488

[info@parker-training.com](mailto:info@parker-training.com)

[www.parker-training.com](http://www.parker-training.com)



## Parker Training Services, LLC

Calvin Parker, Lisa Parker and Jim Vaughan

[www.parker-training.com](http://www.parker-training.com)

[info@parker-training.com](mailto:info@parker-training.com)

740-994-0474

**Pleasant Valley Associates LLC**  
**Home Inspections, Radon & Mold Testing**  
**Bob Hunt**

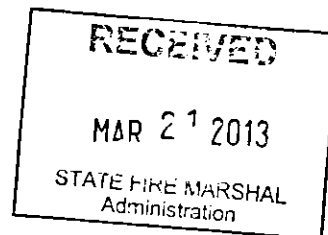
**1822 Pleasant Valley Rd.**  
**304-612-4818**  
bob@pvainspections.com  
HI94947152-0408

**Fairmont, WV 26554**  
**304-816-0220 FAX**  
www.pvainspections.com  
RT000424

FHA Fee Inspector U141

19 March 2013

West Virginia State Fire Marshal  
c/o Sterling Lewis Jr.  
1207 Quarrier St. (2nd floor)  
Charleston, WV 25301



Mr. Lewis and others to whom this concerns:

I am writing to comment on the proposed changes to the law concerning the certification of home inspectors in West Virginia.

First, I wholeheartedly support the concept of background checks for inspectors. This requirement is another step in what I perceive the correct direction to elevate our status in the industry. A one-time check on all existing inspectors and new applicants followed by a timely (3-5 year) interval for rechecking each inspector does not seem to be burdensome and will offer better protection of the public. I am, however, not in favor of the applicant supplying the background check. This should be handled by the Fire Marshal's office or a third party to ensure that no one can alter or tamper with the document. I realize that this is a detail that needs to be worked out in the process of writing the legislation.

Second, I am just as wholeheartedly against requiring E&O insurance for all home inspectors. I feel that this should be a business decision made by each individual inspector or company. I personally carry such insurance because I feel it is in the best interest of my business. However, the cost is quite high and would probably be prohibitive for new or part time inspectors. Equally, as current inspectors retire but wish to keep their certification, such a requirement would also be cost prohibitive. It also concerns me that if an insurance company decides to leave West Virginia, as has happened in the past, are those inspector who had their insurance with that company now out of business? If home inspectors are the only entity in the real estate transaction who are required to carry such insurance, we can expect to be targeted for what some will perceive as easy money to pay for any disputes. It will only take a few cases for everyone's' insurance premiums to skyrocket and for some carriers to no longer provide coverage. There are very few E&O carriers that are admitted carriers; most operate in select states and will have no reticence in leaving a state that is a loss leader. I firmly believe that the decision as to whether to carry E&O insurance should be an individual decision and not a legislative mandate.

Truly,

A handwritten signature in black ink, appearing to read "Robert E Hunt".

Robert E Hunt





Scott R. Langmyer  
Tri-State Home Inspections of Wheeling  
244 Langmyer Farm Drive  
Wheeling, WV 26003

17 March 2013

West Virginia State Fire Marshal  
c/o Sterling Lewis Jr.  
1207 Quarrier St. (2nd floor)  
Charleston, WV 25301



**SUBJ: West Virginia Home Inspector Licensing Legislative Matters**

Dear Mr. Sterling Lewis Jr.,

As a WV state licensed home inspector & an active member of the West Virginia Association of Home Inspectors (WVAHI), I would like to address a few items that are being legislatively considered.

Firstly, regarding background checks for WV Home Inspectors, I am FOR background checks as a prerequisite for obtaining a WV State Home Inspector license. Each new applicant shall submit for a background check upon initial application. For those already licensed as a Home Inspector, they must conform to new rule within a reasonable time period. The background check should be conducted by a third party agency (same agency for all applicants – standard uniformity is a must). That agency should submit results directly to the licensing authority (WV State Fire Marshal). Anything less could and would be challengeable by those looking to harm or influence the home inspection industry or the WVAHI organization.

Secondly, the results of the background check should focus on criminal activity. A felony results in disqualification. Any misdemeanors with theft or violence activity should terminate the candidate from obtaining a license. The focus should be on public protection.

Finally, I am against the requirement for a Home Inspector to obtain/carry Error & Omission (E&O) insurance. This is a business management decision. Requiring E&O insurance will give insurance agencies a guaranteed arena for profit, with no price ceiling and a platform for undesirables to provide false claims against the home inspector for profit motives. It adds nothing to the state's home inspection infrastructure, nothing towards the quality of the inspection or nothing to improve public safety.

In summary, I am FOR background checks if properly conducted, no felonies allowed, no misdemeanors with theft or violence activity and I am strongly AGAINST mandatory E&O requirement that fails to improve the Home Inspection industry/process or public safety. Your time and consideration is greatly appreciated regarding these very important matters. Thank you.

Respectfully,

Scott R. Langmyer  
HI6441011964-0507

Tri-State Home Inspections of Wheeling, LLC

RECEIVED  
MAR 20 2013  
STATE FIRE MARSHAL  
Administration

To the West Virginia State Fire Marshal.

1. As a Home Inspector in West Virginia and a General Contractor along with State certified Radon ,Mold, septic and well inspector . I feel that adding E&O insurance would be another added expense that I can really afford and would not benefit me or others in anyway. I have been doing home inspection since 1986 starting in Maryland and now in West Virginia And I'm proud to be a member of the West Virginia Association of Home Inspectors , In the 27 years I've been doing Inspection work I have Never been asked If we Have E&O coverage. I feel that E&O should be up to the Inspectors and The Company's they work for and not mandated by anyone. This would be an added expense that would not benefit most of us, I see it Causing problems with law suits just because it says Errors and Omission Insurance. So I ask that West Virginia Not make it mandatory.

2.I.m 100% for Background check for felony convictions. I feel strongly That anyone with a felony conviction should not be permitted to receive Certification as a Home Inspector.

Thank you.

*Michael Phillips 3/17/13*  
Michael Phillips  
Creative Construction and Home Inspection  
HI 7055090757-0906  
412 Tanglewood Dr.  
Old Fields WV. 26845

I would like to see for all new Applicants with no experience in the construction field a hands on Inspection with anther Inspector or someone that can evaluate them.



CERTIFIED INSPECTOR  
 Structural Inspections  
 Full Home Inspections - WV State Standards  
 West Virginia State Certified Inspectors  
 Radon Testing  
 Mold Testing

Phone: 304/768-5446 Fax: 304/768-5470  
 E-mail: sam@advantagehomewv.com  
 Web Page: advantagehomewv.com

339 3rd Avenue  
 South Charleston, WV 25303

March 16, 2013



WV State Fire Marshal  
 Attn: Sterling Lewis, Jr.  
 1207 Quarrier St., 2nd Floor  
 Charleston, WV 25301

Reference: Changes to Title #87

Dear WV State Fire Marshal;

There are two (2) Key issues that are now being proposed as changes to the current Title #87 'SERIES 5- CERTIFICATION OF HOME INSPECTORS' that I wish to personally address.

These are as follows:

- The new requirement to maintain 'Error & Omissions Insurance': **Which I strongly Protest.**
- The new requirement to provide a 'Back Ground Check': Which I strongly agree & support.

Additional Discussion:

**E&O Coverage:**

- The new requirement to maintain 'Error & Omissions Insurance' will make Home Inspectors Unemployed for at least short periods of time when they cannot get coverage.
- I know this personally, as my previous Carrier, Allen Insurance Company, who is a major Carrier of Home Inspector Insurance nationally, abruptly cancelled ALL Insurance coverage in West Virginia due to a Court decision that hit them for a half of a Million Dollar, \$500,000.00, decision because their client, the Home Inspector, had the only E&O coverage of all the litigants in the case. As I remember, it took me several weeks to get new coverage, if that happened under this new law, I would have been unemployed for that period of time.
- I also got hit with three frivolous claims in one year where my carrier would not renew my coverage; it then took my broker several weeks to get new E&O coverage. During that period I would have again been unemployed.
- Required E&O coverage for Home Inspectors would make us the only profession within the Real Estate Community that would be required to carry E&O Insurance. They are as follows:

<i>Profession</i>	<i>Required to Carry E&amp;O Insurance</i>
Appraisers	No
Real Estate Agents	No
Professional Engineers	No
Contractors	No

I am a Professional Engineer, Licensed Building contractor, and Licensed Realtor (License on Hold) as well as a Licensed Home Inspector, so I know this for a fact and confirmed the Appraiser requirement with a well know Appraiser in Charleston, WV. The vast majority of these Professionals do carry E&O insurance, but it is a business decision not a mandated requirement. Keep it fare across the board for all the Professionals involved.

-Requiring me to carry E&O insurance as a Home Inspector would make me, the Home Inspector, the Elephant in the Court Room. I would be named as a litigant in every Real Estate Lawsuit where I did a Home Inspection solely because I would have the E&O coverage.  
-Please keep E&O coverage a Business decision, not a mandated requirement.

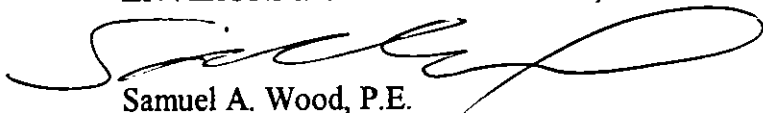
**Back Ground Check:**

-This I support. We are not only in private homes; we are in private homes every day for several hours and some times alone. This is NOT a profession for a convicted Felon.

If you have any additional questions please do not hesitate to call the office at 304-768-5446

Very truly yours,

**ADVANTAGE HOME &  
ENVIRONMENT INSPECTIONS, INC.**



Samuel A. Wood, P.E.  
West Virginia License # 11362  
Ohio License # E\_58665;  
Home Inspector # HI15470848-0806  
General Building Contractor License #WV036715

**ALMOST HEAVEN HOME INSPECTION  
207 PAW PAW AVENUE  
RIVESVILLE, WV 26588**



*Almost Heaven  
Home Inspection*

**March 12, 2013**

**To whom it may concern:**

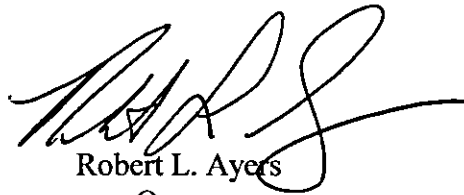
I am writing to comment on the proposed amendments to Title 87. In reference to Item 2.5/f/2: I don't feel that every condition found needs to be evaluated by a professional. Most do, but not all. It should be the inspectors call to make his or her recommendation. I feel the current rule is acceptable without change. I do support the change of wording to condition from violation, as we do not find violations. A couple of examples of conditions that would not require a professional to evaluate, would be battery dead in smoke alarm, or dirty furnace filter. These are routine home owner maintenance items that we should be identifying.

Item 4.4: E&O insurance should be an option left to the individual inspector. I have had E&O insurance since I started my business, but many of my peers choose not to carry it. Several attorneys including Joe Ferry "The Home Inspector Lawyer" recommend not carrying the insurance. If we make the insurance a requirement it could drive the already high cost of the insurance up even further. I personally choose to carry the insurance, but in the back of my mind I do understand if I actually have to file a claim, my insurance company will attempt to settle the claim for an amount less than my deductible and double my premium for years following. If that fails they will try to find a reason to deny my claim. I carry it just as an additional layer of defense, but it is my biggest expense of the year, and question my decision to carry it annually.

Item 8.2.j: I have no idea what this rule is trying to say. Either wording needs to be better or removed. I'm not sure how someone would sign something they didn't actually sign.

As far as background checks for home inspectors, I do support this. There really needs to be some clarity on where we are to get them from and how quick the turn around will be from request to receive. I don't want to be out of business for a couple of months waiting on a background check. Also, I think this should be a one time check to get licensed, and no further checks unless there is a reason to suspect an inspector of committing a felony. I don't feel that most felons should be in the home inspection industry for the obvious reasons of threat to individuals alone in a home they are inspecting, and possible theft issues. I do believe these issues should be clarified prior to amending or adding this requirement.

I appreciate your attention to my opinions on these issues, and the work you do to ensure the credibility of our profession.

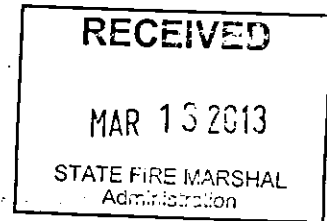
A handwritten signature in black ink, appearing to read 'Rob Ayers', with a long horizontal flourish extending to the right.

Robert L. Ayers  
Owner

State Certification # HI2785548-0710  
[rob@ahhomeinspection.com](mailto:rob@ahhomeinspection.com)  
(304)266-4537

March 11, 2013

Allen's Home Inspections  
225 Big Oak Road  
Princeton, WV 24739



West Virginia State Fire Marshal  
c/o Sterling Lewis Jr.  
1207 Quarrier St. (2<sup>nd</sup>. floor)  
Charleston, WV 25301

Dear Sir;

In reference to resent proposed changes in the qualification for home inspectors on back criminal ground checks and Errors of Omission insurance I'm submitting a few comments.

#### **Criminal Back Ground Check**

In my options criminal back ground check is just the right thing to do, especial in this day and time. I have some concerns of letting the inspector obtain their on criminal back ground check. In this day and time anything can be falsified or forged and from all general appearances it will look very legitimate.

#### **Error of Omission Insurance**

When the WVAHI first tried to get the home inspection bill through the state the E & O insurance was discussed and at that time the general consensus was that if you had E & O insurance it was like putting a target on your head for attorneys to shoot at. I don't think anything has changed.

I know of one inspector in my area has paid claims out of his pocket several times. I not saying he's a great inspector, but if he had E & O insurance he would have been in court more than several times. When insurance companies have to insure every one including reckless and in incompetent inspectors the results will be higher insurance rates for all inspectors. Having E & O insurance won't guaranty the buyers will get a better inspections.

I was call to do an inspection on 4 fairly new houses in this small subdivision. The original contract had built these houses over an area which used to be an old slug pond. The houses had serious problems with the foundation, floor structure and drainage all caused by the original contractor. The home owners were suing the contractor behind their property because of alleged drainage issues causing foundation problems to their houses. I ask the attorney and owners why they didn't suit the original contractor and developer of the subdivision. Their response was the contractor behind the property had insurance policy that cover this type of claim.

We live in a state were a least approximately 60% of the counties outside the city limits doesn't have code enforcement. We as home inspector serve a very important part in our communities' makings houses and building a safer place to dwell at no addition cost to the state and no authority to do so. I don't know how many electrical panels and ground rods have been installed because of my inspections.

We serve a very important need in our area, but I have concerns about the new inspector or the like of new inspectors. We are a group of aging professional that it takes a lot of experience, training, and personal liability to become a good inspector and there aren't a lot of young people knocking the door down to become a home inspectors. The adding cost of E & O insurance could result in fewer inspectors and inspection companies especially in rural counties. The end result will mean larger franchised inspection companies will pick up the business at a higher cost and their inspectors will be required to do a volume business, which doesn't always mean a better inspection. I know of 2 good inspectors in my area that just gave it up and the other inspector does 1 hour inspection so it was easy for him to pick up the business, which isn't necessary, a good thing for our community.

When I was first started my business E & O insurance was approximate 8-10% of my gross income. Continuous education and other professional fees run another 8-10% of my gross. It's hard to believe that approximately 20% of inspection company's gross income goes to just keeping a license.

For the safety and betterment of our rural counties that don't have code enforcement please take this thing into consideration before voting on these changes. It's doesn't make much different to me about the cost of doing business because this will probably be the last year I'll be in business. It does sadden my heart to know buyers and my prior customers in my area will probable receive a 1 hour home inspection that isn't worth the paper it's wrote on.

Respectfully yours,

  
Allen Muzzleman

TITLE 87  
LEGISLATIVE RULE  
STATE FIRE COMMISSION

2013 JUN 10 PM 2:01

SERIES 5  
CERTIFICATION OF HOME INSPECTORS

§87-5-1. General.

1.1. Scope. -- This rule establishes the procedures to be followed to assure that consumers of home inspection services can rely on the competence of home inspectors, as determined by educational and experience requirements and testing. In order to protect consumers, this rule defines home inspection, outlines what must be included in a home inspection, defines unethical conduct by home inspectors and creates penalties for prohibited acts.

1.2. Authority. -- W. Va. Code §29-3-5b(e)(d).

1.3. Filing Date. -- ~~May 5, 2006~~.

1.4. Effective Date. -- ~~August 1, 2006~~.

1.5. Enforcement. -- The State Fire Commission hereby authorizes and directs the State Fire Marshal to administer and enforce the provisions of this rule.

§87-5-2. Necessity of certification; definitions.

2.1. After the effective date of this rule, a person may not perform, offer to perform or engage in home inspection work for compensation or hire within the state of West Virginia unless that person possesses a certificate issued by the State Fire Marshal in accordance with this rule.

2.2. A business entity may not provide home inspection services unless each of the home inspectors employed by the business entity is certified in accordance with the provisions of this rule.

2.3. A business entity may not use, in connection with the name or signature of the business entity, the title "home inspector" or "home inspectors" to describe the business entity's services, unless each of the home inspectors employed by the business entity is certified in accordance with the ~~provision~~ provisions of this rule.

2.4. A person shall not present, call or represent him or herself as able to provide a home inspection for compensation unless certified in accordance with the provisions of this rule.

2.5. As used in this rule, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

a. "Certification" -- Means a valid and current home ~~inspectors~~ inspector certification issued by the State Fire Marshal.

b. "Client" -- Means any person who for a fee engages the services of a certified home inspector for the purpose of obtaining inspection of, and a written report upon, the condition of a residential dwelling.

c. "Compensation" -- Means direct or indirect payment, including the expectation of payment

whether or not actually received.

d. "Component" -- Means a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up a system.

e. "Home Inspection" -- Means a visual analysis for the purpose of providing a professional opinion of the condition of a building and its carports and garages, any reasonable accessible installed components and the operation of the building systems, including the controls normally operated by the owner, for the following components of a residential dwelling of four units or less: heating system, cooling system, electrical system, plumbing system, structural components, foundation, roof covering, exterior and interior components and site aspects as they ~~effect~~ affect the dwelling.

f. "Home Inspection Report" -- Means a written report prepared for compensation and issued after a home inspection to the client. The inspection report shall include, but not be limited to the following:

1. On those systems and components inspected which, in the professional opinion of the inspector, are significantly deficient or are near the end of ~~its~~ their service life and a reason why, if not self evident, ~~the system or component is~~ systems or components are significantly deficient or near the end of ~~its~~ their service life;

2. The inspector's recommendations for further evaluation by a licensed professional to correct or monitor the reported ~~violation~~ condition discovered; and

3. Any systems and components which were present at the time of the inspection but were not inspected, and a reason they were not inspected.

g. "Home Inspector" -- Means any person who is certified pursuant to this rule as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

h. "Readily Accessible" -- Means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action that likely will involve risk to persons or property.

i. "Residential Dwelling" -- Means a structure consisting of from one to ~~two~~ four family dwelling units.

j. "State Fire Commission" -- Means the state agency composed of the appointed State Fire Commissioners and the office of the State Fire Marshal.

k. "State Fire Marshal" -- Means the West Virginia State Fire Marshal and his or her designated representatives.

l. "System" -- Means a combination of interactive or interdependent components assembled to carry out one or more functions.

m. "Technically Exhaustive" -- Means an investigation that involves dismantling, the extensive use of advanced techniques, measurements, instruments, testing, calculations or other means.

### §87-5-3. Exemptions.

3.1. This rule does not apply to, and a certification is not required for, the following persons:

a. A person, employed by a governmental entity, who inspects residential dwellings as part of his or her official duties and responsibilities for that entity;

b. A person performing an inspection of a residential dwelling on behalf of a bank, savings and loan association or credit union for the sole purpose of monitoring the progress of the construction of the dwelling;

c. A person employed as a residential property manager when conducting inspections as part of his or her duties in that position and when that person does not receive separate compensation for the act of inspecting the residences; or

d. A person, regulated in another profession, when acting within the scope of that person's license, registration or certificate.

**§87-5-4. Qualifications for Certification.**

4.1. As an initial requirement and qualification for certification as a home inspector, every applicant:

a. Shall have passed the National Home Inspector Examination offered by the Examination Board of Professional Home Inspectors or other, comparable examination, as determined and designated by the State Fire Marshal; and

b. Shall either present proof of having conducted business as a home inspector for three years prior to the effective date of this rule, or proof of satisfactory completion of at least eighty (80) hours of instruction which, as determined by the State Fire Marshal, directly relates to the performance of professional home inspections.

4.2. Every applicant must have successfully completed high school or its equivalent.

4.3. Every applicant shall present proof of, and shall maintain, general liability insurance in the amount of not less than two hundred fifty thousand dollars (\$250,000.00). The certified home inspector shall forward proof of renewal to the State Fire Marshal's office prior to the expiration date of the policy and the proof of renewal shall cover, at a minimum, the period for which the Home Inspector Certification is issued.

**§87-5-5. Procedure for application.**

5.1. Form of Request. -- Each applicant requesting a home inspector's certification under the provisions of this rule shall, as a condition precedent to the issuance of certification, provide the State Fire Marshal with:

a. A completed application on forms furnished by the State Fire Marshal;

b. A copy of a valid West Virginia business license issued by the West Virginia Department of Tax and Revenue; and

c. Any other documentation required by the State Fire Marshal to ensure compliance with qualifications for certification.

5.2. The State Fire Marshal shall deny a certificate to any person who fails to meet the required minimum qualifications. If a certificate is denied for failure to meet the minimum qualifications, ~~F~~ the applicant shall also forfeit his or her application fee. Any applicant who attains the minimum requirements at a subsequent date shall submit to the State Fire Marshal a new application for certification, application fee and certification fee.

5.3. After review and approval by the State Fire Marshal of an application ~~and approval by the State Fire Marshal~~ and receipt of the certification fee, the State Fire Marshal shall issue the home inspector's certification to the applicant.

5.4. Any applicant who has been denied a license may request a hearing before the State Fire Commission.

#### **§87-5-6. Expiration and Renewal.**

6.1. Expiration. -- All home inspectors' certifications issued by the State Fire Marshal expire on the last day of the anniversary month (twelve months) from the date of issuance of the certification. (i.e., certification issued on August 15, 2003 will expire on August 31, 2004 and on August 31st each successive year).

6.2. Renewal Fee Required. -- Any certified home inspector, in good standing, may renew his or her certificate prior to the expiration date by submitting the authorized renewal certification fee to the State Fire Marshal. It is the individual home inspector's responsibility to submit his or her application for renewal to the State Fire Marshal prior to the expiration date of the current certification.

6.3. Renewal After Expiration. -- ~~Any previously certified home inspector~~ A certified home inspector who has not renewed his or her certificate in accordance with the preceding subsection of this rule shall, if the certification has been expired for three years or less, submit a new renewal application to the State Fire Marshal, along with proof of all required Continuing Education credits for the time period of expired certification and for the last certified period. If the certificate has been expired for greater than three years, the applicant shall submit a new application, with proof that the applicant has met the requirements of § 87-5-4 of this rule, the testing having been completed within the last three years. A person may not perform home inspection work during the period of time his or her certification is expired. A person failing to renew his or her certification shall reapply for the home inspector's certification for which he or she qualifies in accordance with this rule.

6.4. As a condition of renewing any home inspector's certificate, the State Fire Marshal shall require proof of completion of sixteen (16) Continuing Education Units annually. A continuing education unit is defined as 1.0 hours for every fifty minutes of instruction. Upon receipt of the required documentation, the State Fire Marshal shall issue the certification. All continuing education shall be related directly to health, life safety, construction and maintenance of residential properties. Approval for courses shall be determined by the State Fire Marshal or the State Fire Commission.

#### **§87-5-7. Fees.**

The following fees are hereby established and adopted by the State Fire Commission:

7.1. Certification fee -- ~~One hundred (\$100.00) dollar~~ One hundred twenty five dollar (\$125.00) fee per certification.

7.2. Renewal fee -- One hundred (\$100.00) dollar fee per certification annually.

7.3. Application fee -- Twenty-five (\$25.00) dollar fee per application submitted.

7.4. Late renewal fee -- Fifty dollar (\$50.00) fee per year late per certification.

7.4.5 Duplicate certification fee -- A person who has lost or had his or her home inspector's certification destroyed, may submit a duplicate application fee of ten (\$10.00) dollars payable to the State Fire Marshal and a notarized statement stating that the certification was lost or destroyed.

**§87-5-8. Prohibited Acts.**

8.1. The State Fire Marshal may make investigations or conduct hearings to determine whether a violation of this rule has occurred.

8.2. The State Fire Marshal may refuse to grant or may suspend or revoke a home inspector certification upon proof to the satisfaction to the State Fire Marshal that the holder has ~~participated in unfair business practice~~ :

8.2.a. Participated in an unfair business practice;

8.2.b. Conducted an inspection not in conformance with the practices described in this rule;

8.2.c. Perpetrated any fraud or deceit in obtaining or attempting to obtain or renew a certificate of registration or certificate of authorization; been negligent, incompetent or committed an act of misconduct in the practice of Home Inspections;

8.2.d. Failed to comply with any of the provisions of this article or any of the rules promulgated under it;

8.2.e. Been disciplined by another state, territory, the District of Columbia, foreign country, the United States government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those grounds for discipline contained in this article;

8.2.f. Failed within thirty days to provide information requested by the Fire Marshal as a result of a formal or informal complaint to the board, which would indicate a violation of this article;

8.2.g. Knowingly made false statements or signed false statements, certificates or affidavits to induce payment;

8.2.h. Aided or assisted another person in violating any provision of this article or the rules promulgated;

8.2.i. Violated any terms of probation imposed by the Fire Marshal or practiced home inspections while the professional license is suspended, revoked, non-renewed or inactive;

8.2.j. Signed or approved any home inspection not reviewed by the individual actually signing the report.

8.2.k. Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

8.2.l. Provided false testimony or information to the Fire Marshal;

8.2.m. Been habitually intoxicated or addicted to or by the use of drugs or alcohol.

8.3. It shall be considered an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

a. To perform or offer to perform any repairs, or have a vested interest in any company that is to perform repairs, to a structure on which the inspector, or the inspector's company, has prepared a home inspection report within the preceding twelve months;

b. To inspect, for a fee, any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property;

c. To offer or deliver any compensation, inducement or reward to the owner of the inspected property, the broker or agent, or other party who might receive a benefit, for the referral of any business to the inspector or the inspection company; or

d. To accept an engagement to make an inspection or to prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, pre-established findings, or the close of escrow.

**§87-5-9. Effect of Noncompliance; Failure to obtain certification; Penalty.**

9.1. Any person who conducts a home inspection without the required certification is subject to being issued a citation or a civil action for an ~~injunction~~ injunction in the name of the state in the circuit court of the county where the inspection was or is being performed. A circuit court by mandatory or prohibitory injunction may compel compliance with the provisions of this rule, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire Marshal or State Fire Commission. The State Fire Marshal shall be represented in all proceedings instituted pursuant to this section by the attorney general or his or her assistants.

9.2. Any person who conducts or performs home inspections when that person does not have a valid certification issued or recognized by the State Fire Commission may be subject to criminal prosecution under the provisions of W. Va. Code §29-3-27.

**§87-5-10. Reciprocity.**

10.1. Upon payment of the certification fee, application fee and submission to the State Fire Marshal of a completed application as provided by the State Fire Marshal ~~to the State Fire Marshal~~, the State Fire Marshal may issue ~~an a~~ home ~~inspectors~~ inspector certificate to any person who holds a valid certification, license or registration to conduct home inspections, issued by another state or possession of the United States or the District of Columbia that has standards substantially equivalent to, or exceeding, those of this state, as determined by the State Fire Marshal.

**§87-5-11. General Standards of Practice.**

11.1. Home inspectors shall inspect readily accessible installed systems and components of residential dwellings and provide a written report to the client upon completion of the home inspection. These standards do not limit or restrict inspectors from:

- a. Including other services for the inspection of systems or components in addition to those required;
- b. Suggesting repairs to be made, based upon the findings of the home inspection, and recommending that the client seek the opinion of a professional tradesperson with regard to any suggested repairs; or
- c. Excluding systems and components from the inspection if requested by the client.

**§87-5-12. General Limitations.**

12.1. Home inspections, performed in accordance with the general standard of practice defined in section

11 of this rule, shall not be technically exhaustive and will not identify concealed conditions or latent defects.

12.2. The provisions of section 11 of this rule constitute the minimum standard for a home inspector in conducting and submitting reports of home inspections.

12.3. This rule applies to residential dwellings as defined in this rule ~~resale buildings~~.

**§87-5-13. General Exclusions.**

13.1. Home inspectors shall not be required to report or render an opinion on the following items:

- a. The life expectancy of any component or system;
- b. The cause of the need for a repair;
- c. The methods, materials, and costs of corrections;
- d. The suitability of the property for any specialized use;
- e. Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements, special utility, insurance or restrictions;
- f. The market value of the property or its marketability;
- g. The advisability or inadvisability of purchasing the property;
- h. Any component or system that was not inspected;
- i. The absence of pests such as wood damaging organisms, rodents or insects;
- j. Cosmetic items and underground items not permanently installed;
- k. Hidden or latent defects;
- l. Items not visible for inspection;
- m. The presence or absence of mold, mold-like, or microbial, growth or substances;
- n. The presence or absence of hazardous materials; or
- ~~o. The absence of pests such as wood damaging organisms, rodents or insects. However, the home inspector may advise the client of damages to the building and recommend further inspection by a qualified wood destroying insect inspector.~~

13.2. Home inspectors are not required to:

- a. Offer warranties or guarantees of any kind;
- b. Calculate the strength, adequacy, or efficiency of any system or component;
- c. Enter any area or perform any procedure that may damage the property or its components or be dangerous to the home inspector or other persons;

- d. Operate any system or component that is shut down or otherwise inoperable;
- e. Operate any system or component that does not respond to normal operating controls;
- f. Disturb insulation or move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
- g. Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to toxins such as asbestos, radon and lead, carcinogens, noise, contaminants in the building or in soil, water and air;
- h. Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
- i. Predict future condition, including, but not limited to, the failure of any components.
- j. Project operating costs of components;
- k. Evaluate acoustical characteristics of any system or component; or
- l. Inspect special equipment or accessories that are not listed as components to be inspected.

13.3. Home inspectors shall not offer or perform any act or service contrary to law;

**§87-5-14. Structural Components.**

14.1. The home inspector shall inspect; and describe the type of; structural components including:

- a. Foundations;
- b. Floors;
- c. Walls;
- d. Columns or piers;
- e. Ceilings; and
- f. Roofs.

14.2. The home inspector shall describe the type of:

- a. Foundation;
- b. Floor structure;
- c. Wall structure;
- d. Columns or piers;
- e. Ceiling structure; and

f. Roof structure.

14.3. The home inspector shall:

- a. Probe structural components only where deterioration is visible, except where probing would damage any surface;
- b. Enter under floor crawl spaces, basements, and attic spaces, except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected;
- c. Report the methods used to inspect under floor crawl spaces and attics; and
- d. Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

**§87-5-15. Exterior.**

15.1. The home inspector shall inspect:

- a. Wall cladding, flashings and trim;
- b. Entryway doors and a representative number of windows;
- c. Garage door operators;
- d. Decks, balconies, stoops, steps, areaways, porches, and applicable railings;
- e. Eaves, soffit, and fascias; and
- f. Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

15.2 The home inspector shall:

- a. Describe wall cladding materials;
- b. Operate all entryway doors and a representative number of windows;
- c. Operate garage doors manually or by using permanently installed controls for any garage door operator; and
- d. Report whether or not any garage door operator will automatically reverse or stop if equipped with that safety feature.

15.3. The home inspector is not required to inspect or report on:

- a. Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
- b. Fences;
- c. The presence of safety glazing in doors and windows;

- d. Garage door operator remote control transmitters;
- e. Geological conditions;
- f. Soil conditions;
- g. Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment or athletic facilities);
- h. Detached buildings or structures; or
- i. The presence or condition of buried fuel storage tanks.

**§87-5-16. Roofing.**

16.1. The home inspector shall inspect:

- a. Roof coverings;
- b. Roof drainage systems;
- c. Flashings;
- d. Skylights, chimneys and roof penetrations; and
- e. Signs of leaks or abnormal condensation on building components.

16.2. The home inspector shall:

- a. Describe the type of roof covering materials; and
- b. Report the methods used to observe the roofing.

16.3. The home inspector is not required to:

- a. Walk on the roofing; or
- b. Inspect attached accessories including but not limited to solar systems, antennae and lightening lightning arrestors.

**§87-5-17. Plumbing.**

17.1. The home inspector shall inspect:

- a. Interior water supply and distribution systems, including piping materials, supports, insulation; fixtures and faucets; functional flow; leaks; and cross connections.
- b. Interior drain, waste and vent systems, including: traps, drain, waste and vent piping; piping supports and pipe insulation; leaks and functional drainage;
- c. Hot water systems including: water heating equipment; normal operating controls; automatic

safety controls; and chimneys, flues and vents;

d. Fuel storage and distribution systems including interior fuel storage equipment, supply piping, venting and supports; leaks; and

e. Sump pumps.

17.2. The home inspector shall describe:

a. Water supply and distribution piping materials;

b. Drain, waste and vent piping materials;

c. Water heating equipment; and

d. The location of the main water supply shut-off device.

17.3. The home inspector shall operate all plumbing and plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance or winterized equipment.

17.4. The home inspector is not required to:

a. State the effectiveness of anti-siphon devices;

b. Determine whether water supply and waste disposal systems are public or private;

c. Operate automatic safety controls;

d. Operate any valve except water closet flush valves, fixture faucets and hose faucets;

e. Inspect:

1. Water conditioning systems;

2. Fire and lawn sprinkler systems;

3. On-site water supply quantity and quality;

4. On-site waste disposal systems;

5. Foundation irrigation systems;

6. Spas;

7. Swimming pools;

8. Solar water heating equipment; or

9. The system for proper sizing, design or use of proper materials.

**§87-5-18. Electrical.**

18.1. The home inspector shall not be required to inspect any electrical system, component or subcomponent for electrical code compliance.

18.2. The home inspector may submit a professional evaluation concerning:

- a. Service entrance conductors;
- b. Service equipment, ground equipment, main over current device and main and distribution panels;
- c. Amperage and voltage ratings of the service;
- d. Branch circuit conductors, their over-current devices and the compatibility of the amperages and voltages;
- e. The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage and on the dwelling's exterior walls;
- f. The polarity and grounding of all receptacles within six feet (6') of interior plumbing fixtures, and all receptacles in the garage or carport and on the exterior of inspected structures;
- g. The operation of ground fault circuit interrupters or arc fault breakers; ~~and~~
- ~~h. Smoke detectors.~~

18.3. The home inspector shall describe:

- a. Service amperage and voltage;
- b. Service entry conductor materials;
- c. Service type as being overhead or underground; and
- d. The location of main and distribution panels.

18.4. The home inspector shall report any observed aluminum branch circuit wiring.

18.5. The home inspector shall report on the presence or absence of smoke detectors and carbon monoxide detectors and operate their test function, if accessible, except when detectors are part of a central system. Inspectors shall recommend the proper installation of smoke detectors and carbon monoxide detectors per current NFPA standards, and in compliance with West Virginia Code § 29-3-16(a).

18.6. The home inspector is not required to:

- a. Insert any tool, probe, or testing device inside the panels;
- b. Test or operate any over-current device except ground fault circuit interrupters and arc fault breakers;
- c. Dismantle any electrical device or control other than to remove the dead front covers of the main and auxiliary distribution panels; or
- d. Evaluate:

1. Low voltage systems;
2. Security system devices, heat detectors or carbon monoxide detectors;
3. Telephone, security, cable TV, intercoms or other ancillary wiring that is not part of the primary electrical distribution system; or
4. Built-in vacuum equipment.

18.7. The home inspector shall recommend to the client, if ~~an~~ a perceived possible electrical hazard exists, a full electrical system inspection performed by a West Virginia certified electrical inspector as certified pursuant to W. Va. Code; §29-3C-1 et seq.

**§87-5-19. Heating.**

19.1. The home inspector shall inspect permanently installed heating systems including:

- a. Heating equipment;
- b. Normal operating controls;
- c. Automatic safety controls;
- d. Chimney, flues and vents, where readily visible;
- e. Solid fuel heating devices including fireplaces;
- f. Heat distribution systems including fans, pumps, ducts and piping, with associated supports, insulation, air filters, registers, radiators, fan coil units, convectors; and
- g. The presence of an installed heat source in each room.

19.2. The home inspector shall describe:

- a. The energy source; and
- b. The heating equipment and distribution type.

19.3. The home inspector shall operate the systems using normal operating controls.

19.4. The home inspector shall open readily ~~open-able-access~~ accessible panels provided by the manufacturer or installer for routine homeowner maintenance.

19.5. The home inspector is not required to:

- a. Operate heating systems when weather conditions or other circumstances may cause equipment damage;
- b. Operate automatic safety controls;
- c. Ignite or extinguish solid fuel fires and or pilot lights; or

d. Inspect:

1. The interior of flues;
2. Fireplace insert flue connections;
3. Humidifiers;
4. Electronic air filters; or
5. The uniformity or adequacy of heat supplies to the various rooms.

**§87-5-20. Central Air Conditioning.**

20.1. The home inspector shall inspect central air conditioning systems, including the following components:

- a. Cooling and air handling equipment;
- b. Normal operating controls;
- c. Fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, fan coil units; and
- d. The home inspector shall inspect for the presence of an installed cooling source in each room.

20.2. The home inspector shall describe:

- a. Energy sources; and
- b. Cooling equipment type.

20.3. The home inspector shall operate the systems using normal operating controls.

20.4. The home inspector shall open readily ~~open-able~~ openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

20.5. The home inspector is not required to:

- a. Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
- b. Inspect non-central air conditioners; or
- c. Inspect the uniformity or adequacy of cool-air supply to the various rooms.

**§87-5-21. Interiors.**

21.1. The home inspector shall inspect:

- a. Walls, ceiling and floors;

- b. Steps, stairways, balconies and railings;
- c. Countertops and a representative number of cabinets and drawers; and
- d. A representative number of doors and windows.

21.2. The home inspector shall:

- a. Operate a representative number of windows and interior doors; and
- b. Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

21.3. The home inspector is not required to inspect:

- a. Paint, wallpaper and other finish treatments on the interior walls, ceilings and floors;
- b. Carpeting; or
- c. Draperies, blinds or other window treatments.

**§87-5-22. Insulation and Ventilation.**

22.1. The home inspector shall inspect:

- a. Insulation and vapor retarders in unfinished spaces;
- b. Ventilation of attics and foundation areas;
- c. Kitchen, bathroom and laundry venting systems; and
- d. The operation of any readily accessible attic ventilation fan and, when temperature permits, the operation of any readily accessible thermostatic control.

22.2. The home inspector shall describe:

- a. Insulation in unfinished spaces; and
- b. Absence of insulation in unfinished space at conditioned surfaces.

22.3. The home inspector is not required to report on:

- a. Concealed insulation and vapor retarders; or
- b. Venting equipment that is integral with household appliances.

**§87-5-23. Built-In Kitchen Appliances.**

23.1. The home inspector shall inspect and operate the basic functions of the following kitchen appliances:

- a. Every permanently installed dishwasher; through its normal cycle;

- b. Ranges, cook tops and permanently installed ovens;
- c. Trash compactors;
- d. Garbage disposals;
- e. Ventilation equipment or range hoods; and
- f. Permanently installed microwave ovens.

23.2. The home inspector is not required to inspect:

- a. Clocks, timers, self-cleaning oven function, or thermostats for calibration or automatic operation;
- b. Non built-in appliances such as clothes washers and dryers; or
- c. Refrigeration units such as freezers, refrigerators and icemakers.

23.3. The home inspector is not required to operate:

- a. Appliances in use; or
- b. Any appliance that is shut down or otherwise inoperable.

**§87-5-24. Responsibilities of the Home Inspector.**

24.1. A certified home inspector shall submit a written report as to the conditions of the property, on the day of the inspection, to the client within a mutually agreed upon time frame.

24.2. A certified home inspector shall submit an annual summary to the State Fire Marshal of all home inspections performed during the proceeding year, reporting the number, type and county of inspections conducted. This annual report shall be filed with the State Fire Marshal no later than the thirty-first day of January of the following year. The State Fire Marshal may offer standardized forms for use to comply with this section.

24.3. A certified home inspector shall comply with all federal, state and local laws, rules and regulations.

24.4. A certified home inspector shall maintain records of all his or her home inspections for three (3) years from the date the inspection report was provided to the client.

24.5 At all times the certified home inspector shall keep a current address and phone number on record with the West Virginia State Fire Marshal.

**§87-5-25. Display of Certification.**

25.1. While conducting the business of home inspections, home inspectors shall, at all times, have on their person the certification card issued by the State Fire Marshal.

25.2. A certification issued by the State Fire Marshal shall be displayed at the certificate holder's place of business.

25.3. All correspondence, inspection reports and advertisements shall identify the certificate holder with the term "Certified Home Inspector" along with the certification number of the inspector as issued by the State Fire Marshal.

**§87-5-26. Disposition of fees.**

27.1. All fees and moneys received as a result of actions under this rule shall be deposited in the special revenue account created pursuant to W. Va. Code §29-3-12b.

**§87-5-27. Causes for Denial, Probation, Limitation, Discipline, Suspension or Revocation of Certifications of Home Inspectors.**

The Fire Commission may deny an application for license, place a licensee on probation, limit or restrict a license, suspend a license or revoke any license issued by the Commission, upon satisfactory proof that a licensee has or is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §29-3-5b(d) or the rules of the Fire Commission or Fire Marshal. Further, the Fire Marshal, pursuant to the authority given to him pursuant to subsection 1.5 of this rule, may deny an application for license pursuant to the provisions of this rule.

**§87-5-28. Disposition of Complaints.**

28.1. Any person, firm, corporation, member of the Fire Commission, Fire Marshal, or public officer may make a complaint to the Fire Marshal which charges a certified home inspector with a violation of W. Va. Code §29-3-5b(d) or of this rule. The Fire Marshal may provide a form for that purpose, but a complaint may be filed in any written form. In addition to describing the alleged violation which prompted the complaint, the complaint should contain the following:

28.1.1. The name and address of the certified home inspector against whom the complaint is lodged;

28.1.2. The date of inspection;

28.1.3. The name of any person who may have inspected or repaired the home after the alleged incident;

28.1.4. The nature of the alleged violation;

28.1.5. The location of the alleged violation.

28.2. A complaint against a certified home inspector shall allege that such person is, in his or her professional capacity, engaging in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code §29-3-5b(d) or this rule.

28.3. Complainants are immune from liability for the allegations contained in their complaints filed with the Fire Marshal unless the complaint is filed in bad faith or for a malicious purpose.

28.4. The Fire Marshal shall maintain a complaint log which records the receipt of each complaint, its nature and its disposition.

28.5. The Fire Marshal shall maintain a separate file on each complaint received, and each file shall have

a number assigned to it.

28.6. Upon receipt of a complaint, the Fire Marshal shall issue one of the following acknowledgments to the complainant:

28.6.1. That the matter will be reviewed by the Fire Marshal;

28.6.2. That the complaint is outside the jurisdiction of the Fire Commission and Fire Marshal, with suggestions as to how the complainant might best obtain a resolution of his or her problem; or,

28.6.3. That more information will be required in order to adequately review the individual complaint.

28.7. If the Fire Marshal acknowledges the complaint under subsection 28.6.1, or 28.6.3, the Fire Marshal shall send a copy of the complaint, including any supporting documentation, by certified mail to the certified home inspector or applicant in question for his or her written comment, and he or she shall submit a written response to the Fire Marshal within thirty (30) days of the date of such correspondence, or waive the right to do so.

28.8. Requests for comment on complaints sent to certified home inspectors or applicants shall be considered properly served when sent to the last address on file with the Fire Marshal. It is the responsibility of the certified home inspector or applicants to keep the Fire Marshal informed of his or her current address.

28.9. Upon receipt of a certified home inspector's or applicant's comments in response to a complaint, the Fire Marshal shall promptly send a copy of the same, including any supporting documentation, to the complainant.

28.10. After receipt and review of a complaint, unless the complaint is determined to fall within the provisions of subdivision (outside of the jurisdiction) of this rule, the Fire Marshal shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and the validity of the allegations set forth in the complaint. The review of complaints and any view or investigation thereof may, at the discretion of the Fire Marshal, be assigned to a designee, being who shall be a full time employee of the Fire Marshal, or to an ethics investigator, for review and investigation.

28.12. Upon receipt of a complaint the designee or ethics investigator shall, within sixty (60) days, review and investigate the same and provide the Fire Marshal with a report. The report shall contain a statement of the allegations, a statement of facts, and an analysis of the complaint including a description of the inspection, the records reviewed, and interviews conducted, and a statement of the designee's or ethics investigator's findings and recommendations. The Fire Marshal, the designee or ethics investigator shall, upon request of the Fire Marshal, his designee or ethics investigator, be afforded an opportunity to have investigation interviews with the certified home inspector or applicant in question or any other involved parties, a report of which shall be placed in the investigation file.

28.13. To facilitate the disposition of a complaint, the Fire Marshal, his designee, or ethics investigator, may request any person to attend an informal conference at any time prior to the Fire Marshal entering any order with respect to the complaint. The Fire Marshal, his designee or ethics investigator, shall give notice of the conference, which notice shall include a statement of issues to be informally discussed. Statements made at a conference may not be introduced at any subsequent hearing on the merits without the consent of all parties to the hearing. No prejudice shall attach for failure to attend a conference pursuant to a request.

28.14. The Fire Marshal may issue subpoenas and subpoenas duces tecum to complete the Fire Marshal's investigation and to determine the truth or validity of complaints. A designee, or ethics investigator may request that the Fire Marshal issue subpoenas or subpoenas duces tecum. Any such request shall be accompanied by a brief statement specifying the necessity for the same.

28.15. At any point in the course of an investigation or inquiry into a complaint, the Fire Marshal may decide that he or she recommend to the Fire Commission that there is not and will not be sufficient evidence to warrant further proceedings, or that the complaint fails to allege misconduct for which a certified home inspector may be sanctioned by the Fire Commission: Provided, that the Fire Marshal, his designee, or an ethics investigator shall make their respective findings and recommendations to the Fire Commission in writing prior to the Fire Commission dismissing the complaint.

28.16. At any point in the course of an investigation or inquiry, the Fire Marshal may recommend to the Fire Commission that there is sufficient evidence to warrant a finding of probable cause that a violation has occurred. The Fire Marshal, his designee, or an ethics investigator shall make their respective findings and recommendations to the Fire Commission in writing to the Fire Commission, and the Fire Commission shall make a determination whether or not probable cause is found to limit or restrict a license, suspend a license or revoke any license issued by the Fire Commission. If the Fire Commission finds probable cause that a violation may have occurred, a Complaint and Notice of Hearing shall be issued by the Fire Commission as more fully set forth in this section of this rule.

**§87-5-29. Appeal of denial of certification.**

29.1. Any applicant who has had his or her application for a license denied by order of the Fire Marshal may appeal the order within thirty (30) days of that action to the Fire Commission. Provided: that the appeal shall not include cases in which the Fire Marshal denies a license or certificate after an examination to test the knowledge or the ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination. Any applicant who has had his or her application for license denied by order of the Fire Commission may appeal the order within thirty (30) days of that action in accordance with the contested case hearing procedures set forth in W. Va. Code §29A-6-1 et seq. and the rules of the Fire Commission.

**§87-5-30. Hearing Procedure.**

30.1. Any applicant denied a certification who believes such denial was in violation of W. Va. Code §29-3-5b(d) and/or this rule shall be entitled to a hearing on the action denying such license. All hearings held under this rule shall be governed by the procedures set forth in 87 CSR 9, Fire Marshal and Fire Commission Hearing Procedure Rule.