



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 5 -- NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE OR
A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY **Real Estate Commission**

RULE TYPE **Interpretive** AMENDMENT TO EXISTING RULE **No** TITLE-SERIES **174-**

RULE NAME **Compliance with Requirement that Broker's Trust Fund Accounts be Insured Against Loss**

CITE AUTHORITY **W. Va. Code §29A-3-8**

RULE IS LEGISLATIVE EXEMPT

Yes

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

§29A-3-4

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS

Monday, July 11, 2016

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

**Jerry A Forren -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 174-05



Rule Id: 10118



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TITLE 174
INTERPRETIVE RULE
REAL ESTATE COMMISSION

SERIES 5
COMPLIANCE WITH REQUIREMENT THAT
BROKERS' TRUST FUND ACCOUNTS BE INSURED AGAINST LOSS

§174-5-1. General.

- 1.1. Scope. -- This interpretive rule authorizes the use of a cash sweep product when a broker's trust fund account exceeds the amount that is insured against loss at a financial institution where the broker has a trust fund account.
- 1.2. Authority. -- W. Va. Code §29A-3-8.
- 1.3. Filing Date. -- June 9, 2016.
- 1.4. Effective Date. -- July 11, 2016.

§174-5-2. Definitions.

- 2.1. "Addendum" means the form required to be submitted to the Commission to comply with the provisions of §30-40-18(j) by any Broker utilizing a cash sweep product and opening a cash sweep account in accordance with the provisions of this rule.
- 2.2. "Broker" has the definition set forth in §30-40-4.
- 2.3. "Cash sweep account" means the account that is established by agreement between the broker and a financial institution where the Broker has a trust fund account, which shall be in accordance with the provisions of this rule.
- 2.4. "Cash sweep product" means the product that is contracted for by a financial institution to offer to its depositors that allows for the temporary transfer and custodial deposit of funds from a trust fund account in accordance with the cash sweep account agreement entered into between the broker and a financial institution where the Broker has a trust fund account.
- 2.5. "Commission" has the definition set forth in §30-40-4.
- 2.6. "Excess funds" or "exceed the amount that is insured against loss" means more than the amount that is insured against loss by a financial institution insured against loss by an agency of the federal government which, as of the effective date of this section, is the Federal Deposit Insurance Corporation (FDIC), which insures losses up to \$250,000 of the total amount on deposit by a Broker in that financial institution.
- 2.7. "Relationship institution" means a financial institution where the Broker has both a trust fund account and a cash sweep account and also means the financial institution serving as the custodian of the cash sweep account.

§174-5-3. Commission Findings.

- (a) West Virginia Code §30-40-18(c), which requires that brokers' trust fund account be

federally insured, is an important public policy that is necessary to protect the public interest. However, the FDIC insurance for deposits at a particular financial institution may be insufficient, requiring some brokers to either open additional trust fund accounts at other financial institutions or at times be out of compliance with this important requirement when the balance of the trust fund account exceeds the amount that is insured against loss.

(b) The Commission finds there is a need to allow brokers to have a means for complying with §30-40-18(c) through safe, secure, established banking products that allow for the temporary deposit of excess funds with other insured financial institutions. The Commission finds that a cash sweep product is such a safe, secure and established means for brokers with excess funds to comply with the provisions of §30-40-18(c).

(c) The Commission finds that such accounts comply with the current provisions of West Virginia Code §30-40-18 so long as an appropriate addendum to the Trust Fund Account Statement and Consent to Examine is signed by the broker and the financial institution where the cash sweep account is established.

(d) The Commission finds that brokers with cash sweep accounts may at times require the withdrawal of funds which are on deposit in other financial institutions due to the cash sweep account. West Virginia Code §30-40-18(d) and related rules require that each trust fund account provide for the withdrawal of funds without notice. Since excess funds may at times be deposited in other financial institutions in accordance with the cash sweep account agreement, the relationship institution must agree to advance funds on any check drawn against the broker's trust fund account for which there are sufficient funds in the cash sweep account unless prohibited by applicable law or court order or cannot by reason of force majeure or circumstances beyond the relationship bank's control.

(e) In the event of such advanced payment, the Commission finds that the advance is not a loan, the funds in the cash sweep account are not collateral for a loan, the anticipated debit of the funds in the cash sweep account does not breach the broker's fiduciary obligations in relation to the broker's trust fund account, and the relationship bank's advance to cover a check drawn against the broker's trust fund account with the understanding that the advanced funds will be debited upon receipt of the swept funds deposited elsewhere is not violative of West Virginia Code §30-40-18(f) and related rules.

§174-5-4. Cash Sweep Accounts Generally; Not Exclusive Means of Compliance.

4.1. Any broker with excess funds may utilize a cash sweep product and open a cash sweep account in accordance with this rule.

4.2. Cash sweep accounts shall conform with all provisions of West Virginia Code §30-40-18 and related rules, including West Virginia Code R. §174-1-16.

4.3. Brokers shall submit an Addendum to their Trust Fund Account Statement and Consent to Examine to the Commission within ten (10) business days of entering into an agreement to establish a cash sweep account at a financial institution for which a Trust Fund Account Statement and Consent to Examine is on file with this Commission. This Addendum shall be on a form prescribed by the Commission.

4.4. Nothing in this interpretive rule prohibits the broker from establishing multiple trust fund accounts to meet the insurance requirements of §30-40-18(c).