



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Real Estate Commission TITLE-SERIES: 174-01
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 174-01 Licensing Real Estate Brokers, Associate Brokers and Salespersons and the Conduct of Brokerage Business

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 30-40-8

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§30-40-8. Rule-making authority.

- (a) The commission may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which are necessary for the conduct of its business, the holding of hearings and for the general implementation, enforcement and administration of the provisions of this article, including, but not limited to, establishing, administering and governing the following:
- (1) Fees for applications, examinations, licenses, renewal of licenses, changes to licenses requiring reissuance, courses, investigations, copies of records, license certifications and other fees considered necessary by the commission, none of which shall be prorated or refundable: Provided, That the fee schedule in effect prior to enactment of this article, enumerated in section nine, article twelve, chapter forty-seven of this code, shall continue to be effective until withdrawn, revoked or amended;
 - (2) The minimum requirements and qualifications necessary for approval by the commission of providers, instructors and the course content of any prelicense education course required in section fourteen of this article;
 - (3) The experience required of an applicant;
 - (4) The minimum standards for licensure;
 - (5) The standards for examinations;
 - (6) The minimum requirements and qualifications necessary for approval by the commission of providers, instructors and courses of continuing professional education required by section sixteen of this article;
 - (7) Continuing professional education requirements for licensees, including any exemptions;
 - (8) Renewal of licenses;

- (9) Use of firm or trade name;
- (10) Denying, suspending, revoking or reinstating a license;
- (11) Form and use of contracts used in a real estate transaction;
- (12) Notification required to clients or customers of agency relationship;
- (13) Professional conduct requirements; and
- (14) Any other purpose to carry out the requirements of this article or to protect the public interest.

(b) All rules in effect as of the passage of this article previously promulgated by the commission pursuant to article twelve, chapter forty-seven of this code will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this article are interpreted to mean provisions of this article

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/23/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/24/2017

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

None

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Requirements in Licensing Brokers, Associate Brokers, Salespersons and the Conduct of Brokerage business.

Added provisions to clarify and simplify the application and testing process. Included a clarification of the requirement for licensing non-residents related to taking the state portion (WV Law and Regulations) of the licensing examination.

Added:

Deceased or Incapacitated Responsible Broker

Sweep accounts

Licensees duty to report other actions

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

All Real Estate Licensing

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Little to none

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

Little to none

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
	0	0	0

TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION

SERIES 1

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

~~§174-1-1. General.~~

~~1.1. Scope.— This legislative rule establishes general rules for the filing of applications for real estate licenses and the requirements necessary to renew licenses and for the enforcement and administration of the provisions of W. Va. Code §§30-40-1 et seq.~~

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

~~1.3. Filing Date.— April 6, 2007.~~

~~1.4. Effective Date.— April 6, 2007.~~

~~§174-1-2. Definitions.~~

~~2.1. Commission.— The term "Commission" means the West Virginia Real Estate Commission as authorized by W. Va. Code §30-40-6.~~

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

~~2.3. Applicant.— The term "applicant" means any person who is making application to the commission for a license.~~

~~§174-1-3. License Fees.~~

~~3.1. License year.— The license year begins on July 1 and ends June 30 of each fiscal year. The Commission may issue licenses on an annual or biannual basis. Fees are not prorated.~~

~~3.2. Proper fee.— Each application for a license shall be accompanied by a separate check or money order for the proper fee for that particular application. When a salesperson, who is duly licensed, desires to become a broker, his or her employing broker shall surrender his or her salesperson's certificate to the Commission before a broker's certificate is issued. He or she shall pay the fee for the broker's license as set forth in separate rule. The Commission shall not give credit for the fee paid for the salesperson's license.~~

~~§174-1-4. License Certificates.~~

~~4.1. License certificates.— The Commission shall issue to each licensee a license in such form and size as shall be prescribed by the Commission. A broker's license shall show the broker's name, business name and business address. An~~

~~associate broker's and salesperson's license shall show the name of the real estate broker by whom he or she is employed.~~

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

~~§174-1-5. Branch Offices.~~

~~5.1. Register of branch office.—Every licensed broker who desires to conduct brokerage transactions at any location other than the principal place of business must make application for a branch office license and pay the required fee in order to receive a license certificate for each branch office. A mere temporary shelter on a subdivision being sold by the broker, for the convenience and protection of licensees and customers, and at which transactions are not closed and licensees are not permanently assigned is not considered to be a branch office. The permanence, use, and character of activities conducted at the office or shelter shall determine whether it must be registered.~~

~~5.2. Manager of Branch Office.—Every broker who obtains a license for a branch office must designate one associate broker or salesperson as manager of each branch office. A broker shall not employ, as manager of his or her branch office, a real estate salesperson with less than two (2) years actual experience as a licensed real estate salesperson: Provided, That a broker may designate himself or herself as the manager of a branch office if the broker is capable of adequately supervising all associate brokers and salespersons assigned to the branch office.~~

~~§174-1-6. Cancellations And Transfers.~~

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

~~6.2. Change of employing broker by salesperson or associate broker.—In the event a salesperson or associate broker wishes to transfer his or her real estate license to a broker other than the broker under whom he or she is presently employed, he or she must first notify his or her present employer, in writing, and must submit a properly executed application for change of employing broker on a form provided by the Commission for this purpose, and pay the required fee.~~

~~6.3. Sworn statement by broker.—In the event a real estate salesperson or associate broker makes application for change of employing broker, the application shall include a sworn statement by the broker in whose employ the applicant desires to enter certifying that the applicant is to be employed by him or her.~~

~~§174-1-7. Qualifications For Real Estate Broker's License.~~

~~7.1. Experience requirement.—W. Va. Code §30-40-12 among other required qualifications for a broker's license, provides that "an applicant for a broker's license shall have served an apprenticeship as a licensed salesperson for two years or shall produce evidence satisfactory to the Commission, in its sole discretion, of real estate experience equivalent to two years full time experience as a licensed salesperson".~~

~~7.2. Apprenticeship.—The Commission defines the word "apprenticeship," as used in W. Va. Code §30-40-12 to mean a broker-salesperson relationship wherein the salesperson apprentice is taught the methods, techniques and terminology of the real estate business under the guidance and direction of a broker.~~

~~In order to satisfy the apprenticeship requirement, the applicant shall submit to the Commission, written documentation outlining the applicant's experience in the real estate business. The documentation must demonstrate that the applicant has gained experience in all aspects of the real estate business equal to that which would be gained by a person engaged in the real estate business on a full time basis during a minimum two year period of time.~~

~~7.3. Written Documentation of Experience.—In order for the Commission to determine the experience of an applicant for a broker's license, the applicant shall submit, on forms prepared by the Commission, a complete list of all the real estate transactions in which the applicant has been involved. The information submitted must, at a minimum, cover the current calendar year and the preceding two calendar years.~~

~~7.4. Affidavit of Broker.—Each and every broker, with whom a real estate salesperson has been employed, shall furnish the Commission with an affidavit attesting to the applicant's experience and qualifications. The broker shall submit the affidavit on a form prepared by the Commission.~~

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

- ~~a. Four or more years full time experience as a licensed real estate appraiser within the last ten years;~~
- ~~b. Four or more years full time experience as a trust officer handling real property within the last ten years;~~
- ~~c. Four or more years full time experience as a subdivider, developer, or general contractor who has developed, financed and sold 50 or more lots, residential units or commercial units within the last ten years. To qualify under this provision, the applicant must have been directly involved in all phases of the development activities;~~
- ~~d. Four or more years full time experience as a loan officer of a bank, lending institution, or mortgage company in a capacity directly related to the financing of real estate within the last ten years, or;~~
- ~~e. Licensed as a real estate broker in another jurisdiction within the past five years. Provided, That if an applicant for a broker's license is licensed in another jurisdiction as a broker at the time the application is submitted to the Commission, he or she shall be granted a full waiver of the apprenticeship requirement.~~

~~§174-1-8. Office Signs.~~

~~8.1. Sign requirement.—All registered real estate brokers, holding an active certificate, shall erect, and maintain a sign on or about the entrance of their principal office and each branch office, which shall be easily observed and read by persons about to enter any of the offices. Every sign shall contain the name of the broker, together with his or her trade name, if any, beneath which shall be the word "Broker," all in letters not less than 1 inch in height. If the broker so desires, the names of the salespersons or associate brokers may be placed below the name of the broker.~~

~~§174-1-9. Advertising.~~

~~9.1. Advertising by licensees.—When advertising real estate, through linear advertisement, radio, television, web sites or any other media, each advertisement shall include the firm name, the name of the broker, office location information, and the term "Broker" or "Realtor" as the case may be. The names of associate brokers and salespersons may be included in the advertisement as long as they are clearly identified as such. Provided, That if the licensee is the owner of the property, the licensee has all the rights of an unlicensed person.~~

~~9.2. Advertising by salespersons and associate brokers.—Salespersons and associate brokers may not advertise any property under their own names. All advertising by an associate broker or salesperson must be under the direct supervision of and in the name of the employing broker.~~

~~**§174-1-10. Trade And Fictitious Names.**~~

~~10.1. Use of trade name.—An individual broker may use a trade name. Any broker who wishes to use a trade name must disclose the trade name in an application for license and upon approval by the Commission, the trade name will be placed upon the broker's license certificate. The trade name shall not be the same as that currently being used by another broker in the same locality. A broker shall not use any trade name not registered with the Commission. Provided, That a broker that chooses to operate under a franchise agreement shall not be required to register the name of the franchise organization with the Commission and the name of the franchise organization will not be registered by the Commission.~~

~~10.2. Change of trade name.—Each broker shall notify the Commission in writing of any change of trade name. The notice shall be made on a form supplied by the Commission and accompanied by the original license certificate and proper fee. The Commission shall issue a new certificate with the new trade name for the unexpired period.~~

~~**§174-1-11. Offer Of Consumer Rebates, Inducements and Other Discounts.**~~

~~11.1. A licensee may offer, directly or indirectly, to clients or consumers rebates of commission fees, inducements, or other discounts, if such licensee:~~

- ~~a. Discloses to the client or consumer, in a clear and conspicuous manner, in writing, the terms of any rebate of commission fees, inducement or other discount offered;~~
- ~~b. Discloses to the client or consumer, in a clear and conspicuous manner, in writing, the fair market value of any rebate of commission fees, inducement or other discount offered; and~~
- ~~c. Offers the rebates of commission fees, inducements or other discounts only under the direct supervision and in the name of the employing broker.~~

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

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

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

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

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

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

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

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

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

- ~~a. Providing a closing gift of nominal value to a party to the transaction, without the approval of the licensee's employing broker;~~
- ~~b. Discussing or negotiating the compensation the licensee agrees to charge for his or her services; or~~
- ~~c. Disseminating information about special terms, conditions or other offers which are bona fide offers made by a principal to a real estate transaction.~~

~~§174-1-12. Location Of Office.~~

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

~~12.2. Beer sales.— A broker shall not maintain an office or display a sign, where beer or other alcoholic beverages are sold. If a real estate office is located adjoining to or in the same building where beer or other alcoholic beverages are dispensed, the office shall have a private entrance. The Commission shall determine if the location of a real estate office is in keeping with the standards of the real estate trade.~~

~~§174-1-13. Renewal Of License.~~

~~13.1. Duty to renew.— All licenses expire June 30 regardless of the date the license was issued. It is the duty of all licensees to register with the Commission and to renew their licenses by paying the renewal fee for a license as set forth under separate rule.~~

~~13.2. Operating without license.— Any licensee who does not register as required by this section, but continues to operate when a license is required, is in violation of W. Va. Code §§30-40-1 et seq.~~

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

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

- a. ~~This requirement does not apply to any licensee who qualified to obtain an original license in the fiscal year preceding the annual renewal date. Provided, That if the Commission issues a license that covers more than one fiscal year, the licensee shall be required to submit proof that he or she has completed approved continuing education credits for all years other than the year immediately following the year in which he or she qualified to obtain an original license.~~
- b. ~~A licensee in an inactive status is not required to comply with the continuing education requirement. A licensee on an inactive status who desires to be placed on active status must furnish satisfactory evidence to the commission that he or she has completed the approved continuing professional education that would have been required for active status at the time the license was renewed. The licensee must comply with this requirement prior to being placed on active status.~~
- c. ~~Non-resident licensees must comply with the continuing education requirement. However, if the non-resident's jurisdiction has a comparable continuing education requirement and recognizes West Virginia continuing education credits as fulfilling that jurisdiction's continuing education requirement, the Commission will accept continuing education credits earned in the other jurisdiction.~~

~~§174-1-14. Examinations.~~

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

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

~~14.3. Rules.— The following examination rules will prevail and violation of any rule is grounds for disqualification of the applicant:~~

- a. ~~Examinees may not refer to any notes, books or memoranda.~~
- b. ~~The examinee must show all computations on the blank pages of the examination paper.~~
- c. ~~The copying of questions or the making of notes is prohibited.~~
- d. ~~Examinees may not talk or ask questions of another examinee during the course of the examination.~~
- e. ~~All examinees must present identification which contains a current recognizable photograph and their signature. Any examinee who does not present the required identification will be prohibited from sitting for the examination.~~
- f. ~~All examinees must pay the required examination fee at the time of sitting for the examination.~~

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

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

~~14.6. Payment of license fee.— An applicant for a real estate license, upon successfully passing the examination, must pay the required license fee within three months from the date of sitting for the examination. The Commission will~~

~~cancel the application of any applicant who does not pay the required license fee within three months. Any applicant that fails to pay the license fee in compliance with this rule, will be required to reapply and successfully pass the examination. Provided, That the Commission may grant a three month extension for time to pay the license fee if good cause to do so is demonstrated by the applicant. Each request for an extension will be considered on a case by case basis and shall be granted if extenuating facts or circumstances warrant.~~

~~§174-1-15. Complaints.~~

~~15.1. Filing of Complaint.— The Commission will consider complaints of alleged violations of W. Va. Code §§30-40-1 et seq. only when they are submitted in writing on forms supplied by the Commission and set forth all details of the transaction, giving full names of all persons having knowledge of such transactions, together with specific addresses, dates, monetary amounts involved, copies of contracts, closing statements, correspondence and other pertinent documents and information. Only in this way can the Commission handle such matters expediently and satisfactorily.~~

~~§174-1-16. Trust Funds.~~

~~16.1. Maintain records.— Every broker shall maintain at the broker's usual place of business, for a minimum of five (5) years, books, records, contracts, closing statements, bank records, and other necessary documents so that the Commission may determine the adequacy of the trust fund account. The accounts and other records shall be open to inspection by the Commission and its duly authorized representatives at all times during regular business hours at the broker's usual place of business. The Commission will consider material discrepancies in the accounts and records a violation of W. Va. Code §§30-40-1 et seq. by the broker.~~

~~16.2. Salesperson and associate broker with trust funds.— Every real estate salesperson and associate broker who receives any trust funds shall immediately, or at the first opportunity, pay over or deliver the trust funds to the broker, under whom he or she is registered as a salesperson or associate broker. No real estate salesperson or associate broker shall collect any money in connection with any real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker under whom he or she is licensed. Upon receipt of any trust money, the salesperson or associate broker shall immediately turn it over to his or her employing broker. The Commission will consider the failure of a salesperson or an associate broker to comply with this rule to be a violation of W. Va. Code §§30-40-1 et seq.~~

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

- ~~a. The trust funds must first be deposited into a trust fund account established in compliance with W. Va. Code §30-40-18;~~
- ~~b. The broker must obtain, from all parties to the transaction, a written agreement which must contain, at a minimum:

 - ~~1. Authorization to remove the funds from the trust fund account for the express purpose of depositing the funds into an interest bearing trust fund account established in compliance with W. Va. Code §30-40-18;~~
 - ~~2. Identification of the financial institution, and the type of account to be opened;~~
 - ~~3. Identification of who will earn the interest on the funds; and,~~
 - ~~4. How and when the interest will be disbursed.~~~~
- ~~c. No interest, privilege, or other compensation recognized by virtue of establishing or maintaining any interest bearing account established in compliance with this rule shall inure to the benefit of the broker or any other licensee; and~~
- ~~d. Upon closing any interest bearing account established in compliance with this rule, the total proceeds of the account must be deposited in the broker's trust fund account prior to any disbursements being made.~~

~~§174-1-17. Commingling Defined.~~

~~17.1. Commingling within the meaning of W. Va. Code §30-40-19 is defined as failure to deposit or place trust funds received in: (1) a neutral escrow depository or (2) the hands of principals or (3) a trust fund account by the next business day following receipt. However, it is not commingling to hold an uncashed check until acceptance of an offer when the contract terms clearly require such conduct and it is not commingling to hold an uncashed check after acceptance of an offer when the contract terms clearly require such conduct. Each licensee must make certain that the real estate contract specifically provides for a check to be held in an uncashed form when requested to do so by the seller or purchaser.~~

~~§174-1-18. Closing Statements.~~

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

~~§174-1-19. Requirements Of Broker.~~

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

~~19.2. Brokers who rent desk space in a real estate office.— A broker who rents desk space within a real estate office and whose own brokerage business is conducted separately and apart from that of the broker from whom the desk space is rented, shall maintain a sign on the main entrance door or on a wall or window immediately adjacent to the door, and comply with all other requirements of holding a broker's license.~~

~~19.3. Broker to refund deposit money.— When for any reason the owner fails, refuses, neglects or is unable to consummate the deal as provided for in the contract and through no fault or neglect of the purchaser, the real estate transaction cannot be completed, the broker has no right to any portion of the deposit money which was deposited by the purchaser, even though the broker's compensation may have been earned. The broker shall return the deposit to the purchaser at once and the broker should look to the owner for his or her compensation. The Commission will consider a violation of this subsection to be a violation of W. Va. Code §30-40-19.~~

~~§174-1-20. Court Action.~~

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

~~20.2. Licensee to inform Commission of criminal action.— When any licensee is a defendant in any criminal proceeding other than misdemeanor traffic violations, it is the duty of the licensee to supply the Commission with a copy of the petition, complaint, warrant, indictment, or information, and the answer filed, if any, and to advise the Commission of the disposition of the case and the nature and amount of any judgment, verdict, finding or sentence made, entered or imposed.~~

~~§174-1-21. Bad Checks.~~

~~21.1. Bad checks.— Checks tendered to the commission by any course provider, applicant or licensee which are returned marked NSF (Insufficient Funds) or are not honored for any cause, may be considered prima facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. The Commission will afford the course provider, applicant or licensee a reasonable opportunity to replace the bad check with a certified check or money order. In the event the bad check is not cured, the Commission may institute appropriate action to collect the funds including court costs and fees paid to a collection agency. The Commission shall refuse to issue or shall cancel a license which was sought or obtained by the issuance of a bad check.~~

~~§174-1-22. Agency Disclosure.~~

~~22.1. Each licensee shall provide a written notice disclosing which party the licensee is representing as agent to all parties to a real estate transaction. The required written notice shall be signed by all parties, and the real estate broker shall maintain a copy of the notice in his or her transaction files. The licensee shall execute this written notice prior to any party signing any contract for representation, offer to purchase, to sell, or to exchange real estate for which a broker's license is required by W. Va. Code §§30-40-1 et seq.~~

~~22.2. Any licensee acting as agent of a buyer, shall disclose his or her agency relationship to the seller, or the broker representing the seller, prior to any showing of the property or the initiation of negotiations which ever occurs first.~~

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

~~22.4. A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller.~~

~~22.5. If change in a licensee's agency status makes an earlier disclosure inaccurate, incomplete or misleading, the licensee shall prepare a revised disclosure form and immediately present it to all parties to the transaction. The revised disclosure must be dated and must be acknowledged in writing by all parties.~~

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

~~§174-1-23. Applications.~~

~~— 23.1. Applicants for an original broker, associate broker or salesperson license shall furnish fingerprints to the State Police, or its assigned agent, for the purpose of performing a national criminal history records checks by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation.~~

~~— 23.1.a The fingerprints shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation.~~

~~— 23.1.b. The applicant shall furnish any additional information required to complete the criminal history records checks.~~

~~— 23.2. The Applicant shall pay the associated fees for the fingerprinting and criminal history records check.~~

~~— 23.3. The criminal history records required by this section shall have been requested no more than three months prior to the application for license being filed with the Commission.~~

~~— 23.4. Applicants are solely responsible for reconciling with any reporting agency a challenge to the accuracy or completeness of information provided by the West Virginia State Police, the Federal Bureau of Investigation or other agencies reporting information to the Commission. The applicant is solely responsible for providing the Commission with proof of any error and correction thereof by any reporting agency.~~

~~— 23.5. If the applicant provides adequate proof of any error and correction thereof by any reporting agency, the Commission shall reconsider the application of that applicant.~~

~~— 23.6. To be qualified for licensure, the results of the criminal history records checks must be unremarkable and verified by a source acceptable to the Commission other than the applicant.~~

~~— 23.7. The Commission may deny licensure to an applicant who fails or refuses to submit the criminal history records checks.~~

~~— 23.8. The Commission shall maintain confidential records and reports pertaining to criminal record checks in a separate file which is only accessible to personnel authorized by the State Police to receive such records and reports.~~

~~— 23.9. Records received as part of the criminal history record check shall be maintained by the Commission for a period of two years subsequent to the Commission's final action on the application, and then disposed of by shredding.~~

§174-1-1. General.

1.1. Scope. -- This legislative rule establishes general rules for the filing of applications for real estate licenses and the requirements necessary to renew licenses and for the enforcement and administration of the provisions of W. Va. Code §§30-40-1 et seq.

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect upon the expiration of five (5) years from its effective date.

1.6. This legislative rule repeals and replaces WV 174CSR1 “Documents Filed in the Secretary of State’s Office” filed April 21, 2014 and effective April 21, 2014.

§174-1-2. Definitions.

2.1. “Advertise, advertisement, advertising” or similar means print media, yard signs, billboards, radio, television, internet, social media, or any other advertising medium utilized by anyone engaged or employed by a brokerage;

2.2. “Applicant” means any person who is making application to the Commission for a license.

2.3. “Apprenticeship” is a broker qualification required by W. Va. Code §30-40-12 and means a broker-salesperson relationship wherein the salesperson apprentice is taught the methods, techniques and terminology of the real estate business under the guidance and direction of a broker.

2.4. “Commingling” or “commingle” or similar means a fiduciary or other person entrusted with the management of another’s funds mixes the trust funds with that of non-trust funds.

2.5. “Commission” means the West Virginia Real Estate Commission as authorized by W. Va. Code §30-40-6.

2.6. “Responsible broker” means the designated broker as defined in W. Va. Code §30-40-4 or the broker doing business as a sole proprietor who employs or engages and supervises other licensees.

2.7. “Employing broker” as used in the Commission’s statute and rules is the same as the responsible broker regardless of whether the licensees are working as independent contractors or employees.

2.8. “Licensee” means a broker, an associate broker, or a salesperson as defined in W. Va. Code §30-40-4.

2.9. “Usual place of business” means the physical location from which a broker carries on his or her business and which the broker holds forth to the public as his or her usual place of business.

§174-1-3. License Year and Fees.

3.1. License year. -- The license year begins on July 1 and ends June 30 of each fiscal year. The Commission may issue licenses on an annual or biannual basis. Fees are not prorated.

3.2. Proper fee. -- Each application for a license shall be accompanied by a separate check or money order for the proper fee for that particular application as set forth in Series 2 of the Commission's rules. When a salesperson who is duly licensed desires to become a broker, his or her responsible broker shall surrender his or her salesperson's license certificate to the Commission before a broker's certificate is issued. He or she shall pay the fee for the broker's license as set forth in Series 2 of these rules. The Commission shall not give credit for the fee paid for the salesperson's license.

§174-1-4. Licensure; Examination Required; Application and Licensure Fees.

4.1. Application. -- To apply for a real estate license, an applicant shall utilize forms prescribed by the Commission and meet the following requirements in addition to the statutory requirements.

4.1.a. Provide a license certification from every state where the licensee has been or is currently licensed;

4.1.b. Pay the application fee set forth in Series 2 of the Commission's rules; and

4.1.c. Pass the licensing examination(s) prescribed by the Commission.

4.2. Third-party provider. -- The Commission may contract with an independent testing service provider to develop and/or administer the examination(s), in which case the examination fee shall be paid directly to the provider.

4.3. Valid duration of approval; re-application. -- An approval for taking the examination shall only be valid for three (3) months from the date of approval and for no more than two (2) attempts at passing the examination. Upon the expiration of three (3) months or the examinee's second unsuccessful attempt at passing the examination, whichever comes first, the examinee will be required to submit a new application which shall be valid for three (3) months and for two (2) more examinations.

4.4. Examination Rules. -- The following rules apply to all examinations, and violation of any rule is grounds for disqualification of the applicant from taking the test and may be grounds for further disqualification:

4.4.a. Examinees may not refer to any notes, books or memoranda.

4.4.b. The examinee must show all computations on paper provided at the examination site.

4.4.c. The copying of questions or the making of notes is prohibited.

4.4.d. All examinees must present identification which contains a current recognizable photograph and their signature. Any examinee who does not present the required identification will be prohibited from taking the examination.

4.4.e. All examinees must pay the required examination fee at the time of registering for the examination.

4.5. Reexamination. -- An examinee who fails to attain a passing grade on the examination will receive a notice of failure and a score report containing diagnostic scoring information. Reexamination is available in accordance with this section.

4.6. Review of examination. -- An examinee who fails the examination(s) after two (2) attempts may request a review to verify that everything was properly handled, by making written request to the testing service provider.

4.7. Payment of license fee. -- An applicant for a real estate license, upon successfully passing the required examination(s) must pay the required license fee within three (3) months from the date of passing the exam(s). The Commission will cancel the application of any applicant who does not pay the required license fee within three (3) months. Any applicant that fails to pay the license fee in compliance with this rule, will be required to reapply and successfully pass the examination(s). The Commission may grant a one-time extension up to three (3) months to pay the license fee if good cause to do so is demonstrated by the applicant. Each request for an extension will be considered on a case by case basis and shall be granted if extenuating facts or circumstances warrant.

4.8. Multiple concurrent licenses. -- Licensees who choose to be affiliated with more than one brokerage must have a license and license certificate for each brokerage. These additional licenses have no additional requirements other than the payment of the appropriate license fee.

§174-1-5. Background Checks.

5.1. Applicants for a broker, associate broker or salesperson license shall furnish fingerprints to the State Police, or its assigned agent, for the purpose of performing a national criminal history records checks by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation.

5.1.a. The fingerprints shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation.

5.1.b. The applicant shall furnish any additional information required to complete the criminal history records checks.

5.2. The Applicant shall pay the associated fees for the fingerprinting and criminal history records check.

5.3. The criminal history records required by this section shall have been requested no more than three (3) months prior to the application for license being filed with the Commission. The records expire three (3) months after the date the application is received by the Commission.

5.4. Applicants are solely responsible for reconciling with any reporting agency a challenge to the accuracy or completeness of information provided by the West Virginia State Police, the Federal Bureau of Investigation or other agencies reporting information to the Commission. The applicant is solely responsible for providing the Commission with proof of any error and correction thereof by any reporting agency.

5.5. If the applicant provides adequate proof of any error and correction thereof by any reporting agency, the Commission shall reconsider the application of that applicant.

5.6. An applicant whose background check reveals a criminal history must provide additional information, which history and information will be reviewed by the Commission. Such applicants must be approved by the Commission in order to be eligible for the examination.

5.7. The Commission may deny licensure to an applicant who fails or refuses to submit to the criminal history records check.

5.8. The Commission shall maintain confidential records and reports pertaining to criminal record checks in a separate file which is only accessible to personnel authorized by the State Police to receive such records and reports.

5.9. Records received as part of the criminal history record check shall be maintained by the Commission for a period of two (2) years subsequent to the Commission's final action on the application-and then disposed of by shredding.

§174-1-6. Qualifications for Broker's License.

6.1. Apprenticeship requirement. -- In order to satisfy the apprenticeship requirement, the applicant shall submit to the Commission written documentation outlining the applicant's experience in the real estate business. The documentation must demonstrate that the applicant has gained experience in all aspects of the real estate business equal to that which would be gained by a person engaged in the real estate business on a full time basis during a minimum two (2) year period of time.

6.2. Written documentation of experience. -- In order for the Commission to determine the experience of an applicant for a broker's license, the applicant shall submit, on forms prescribed by the Commission, a complete list of all the real estate transactions in which the applicant has been involved. The information submitted must, at a minimum, cover the current calendar year and the preceding two (2) calendar years.

6.3. Affidavit of broker. -- Each and every responsible broker who has engaged or employed a salesperson applying for a broker's license shall furnish the Commission with an affidavit attesting to the applicant's experience and qualifications. Each such broker shall submit the affidavit on a form prescribed by the Commission. If a former responsible broker is deceased or for other good cause cannot submit the affidavit, the broker applicant may apply for a waiver of this requirement on the form prescribed by the Commission.

§174-1-7. Licensing Non-Residents.

7.1. Non-residents with no current real estate license in the state in which they completed the pre-license education work and passed a comprehensive licensing examination may seek licensure in the manner set forth in Section 4 of these rules.

7.2. Applicants with a current license, whether active or inactive, in the state in which they completed the pre-license education work and passed a comprehensive licensing examination may seek licensure without meeting the requirements of Section 4 if they meet the requirements of W. Va. Code §30-40-15 and this rule.

7.3. The license status for every state in which the non-resident applicant was licensed or is currently licensed shall be evidenced by a certification of licensure obtained from the regulatory body of each state of licensure within 60 days prior to submitting an application for a license in West Virginia.

7.4. For a non-resident salesperson or broker license, at a minimum the certification of licensure from each state shall show:

7.4.a. Name and address of the licensee;

7.4.b. Status of license (current, active, inactive, renewed, expired, etc.);

7.4.c. Type of license (salesperson, broker, associate broker);

7.4.d. Date of initial license and expiration date;

7.4.e. Period of time the license has been active and inactive;

7.4.f. The way the license was obtained (by examination or by reciprocity);

7.4.g. Type of examination(s) -- national and state or only state;

7.4.h. Record of any disciplinary actions against the licensee; and

7.4.i. Any additional information the Commission may require.

7.5. Applicants may apply only for the same level of license as the one they obtained by examination in their state of initial licensure.

7.6. West Virginia-specific examination.

7.6.a. Applicants are required to pass the state-specific portion of the licensing examinations for salesperson or broker.

7.6.b. An examination fee shall be paid for each scheduled examination unless the applicant reschedules in accordance with the policies of the examiner provider.

7.6.c. Applicants who fail the state-specific examination may retake it by following the procedures set forth in Section 4.3 of this rule.

7.7. Non-resident applicants must apply for and pay the required license fee within three (3) months of passing the exam(s).

§174-1-8. Renewal of License; Continuing Education Requirement; Late Fees; Failure to Renew; Cancellation.

8.1. Expiration; duty to renew. -- All licenses expire on June 30 regardless of the date the license was issued. It is the duty of all licensees to renew their licenses by paying the renewal fee for a license as set forth in Series 2 of these rules.

8.2. Late fees. -- Upon payment of the appropriate renewal and late fees set forth in Series 2 of the Commission's rules, an expired license may be renewed during the then current year on or before June 15th.

8.3. Failure to renew; examination required. -- Any licensee who does not renew his or her license by June 15 of the year subsequent to the year in which the license expired shall be required to comply with all the requirements for obtaining a license, including the examination requirement.

8.4. Continuing education. -- Each licensee applying for the renewal of his or her license on active status shall complete seven (7) hours of instruction in an approved real estate course for each year covered by the term of the previous license. It is the responsibility of the broker to confirm that all licensees under his or her supervision comply with this requirement prior to the submission of their license renewal application.

8.5. Exemptions.

8.5.a. Recent Examinees. -- A licensee who qualified for licensure by passing both the national and state licensing examinations during the fiscal year of his or her first required renewal is exempt from the continuing education requirement that renewal year if the licensee renews on or before June 30 of that fiscal year.

8.5.b. Multi-Year License. -- If the Commission issues a license that covers more than one fiscal year, the licensee shall be required to submit proof that he or she has completed approved continuing education credits for all years other than the year immediately following the year in which he or she qualified to obtain the license.

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

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

8.6. The courses taken to satisfy the then-current continuing education requirement shall not be the same as courses taken for the previous license renewal.

8.7. The Commission may audit the continuing education of any licensee, at which time the licensee must provide proof of the continuing education completed for renewal.

§174-1-9. License Certificates: Issuance, Cancellation and Transfer.

9.1 License certificate. -- The Commission shall issue to each licensee a license certificate in such form and size as shall be prescribed by the Commission. Each license certificate shall include the name of the brokerage for which the licensee is authorized to conduct real estate transactions and such additional information as may be deemed necessary by the Commission or required by law.

9.2. Inactive status. -- License certificates shall reflect when a license had been placed on inactive status, and all licenses on inactive status shall be maintained in the custody and control of the Commission.

9.3. Custody and return of inactive license certificates. -- The responsible broker shall maintain in his or her custody and control the active license certificates of each salesperson and associate broker. Upon the separation of a licensee from the current responsible broker, the responsible broker shall immediately return the license certificate to the Commission for appropriate action and notify the salesperson or associate broker of same.

9.4. Change of responsible broker by salesperson or associate. -- In the event a salesperson or associate broker seeks to transfer from his or her current responsible broker to another responsible broker, he or she must first notify his or her current responsible broker in writing, submit a properly executed application for change of responsible broker on the form prescribed by the Commission, and pay the fee set forth in Series 2 of the Commission's rules.

9.5. Sworn statement by new broker. -- In the event a salesperson or associate broker makes an application for change of responsible broker, the application shall include a sworn statement by the new responsible broker confirming the transfer.

9.6. Change of licensee contact information. -- Each licensee shall notify the Commission in writing of any change in name, personal address, and phone and email address of record within thirty (30) days of the change or prior to June 30, whichever comes first. A change of name must be submitted on the form prescribed by the Commission and accompanied with the fee set forth in Series 2 of the Commission's rules.

§174-1-10. Special Provisions for Brokers.

10.1. Designated broker. -- To be designed as a broker for a partnership, association, corporation, or other form of business organization, the governing body of the business organization must execute a subordination resolution which grants full authority to the partner/member/officer acting as the broker for the business organization. The subordination resolution must be submitted on a form prescribed by the Commission and be sworn to and notarized.

10.2. Broker becoming licensed salesperson. -- The holder of a broker's license may, during the term of that license, request inactivation of the broker's license and upon filing the appropriate application and payment of the proper fee, be issued a salesperson's license. Under this procedure he or she need not qualify by taking the salesperson's examination. The former broker may reinstate the broker's license at any future date without taking the broker's examination upon filing the appropriate application and fee, as long as the broker applicant is the holder of an active salesperson's license.

10.3. Records. -- Every broker shall maintain all records required by the Commission for a minimum of five (5) years. Required records include but are not limited to books, contracts, closing documents, trust account records, and other documents necessary for the Commission to conduct its audits and investigations. These records may be kept in any electronic format that is accessible to the Commission. The records shall be provided to the Commission upon request and shall also be open to inspection by the Commission through its duly authorized representative(s) at the broker's usual place of business and at all times during regular business hours. The broker shall provide sufficient space to permit the Commission's inspection of the records without interference by other users of the property.

10.4. Change of address. -- Each broker shall notify the Commission in writing of any change of company address within ten (10) days after the change. The notice shall be made on a form prescribed by the Commission and accompanied by the license certificate and the fee set forth in Section 2 of the Commission's rules. The Commission shall issue a new certificate with the new address.

10.5. Notice of payment to co-brokers. -- A broker shall provide written notice to all parties prior to paying a portion of his or her compensation to a broker representing another party to the transaction.

10.6. Broker's right to earnest money. -- When for any reason a seller fails, refuses, neglects or is unable to consummate the transaction as provided for in the contract and, through no fault or neglect of the purchaser, the real estate transaction cannot be completed, the broker has no right to any portion of the earnest money paid by the purchaser except by agreement of the parties or by court order.

§174-1-11. Deceased or Incapacitated Responsible Broker.

11.1. In the event of death or other incapacity of the responsible broker:

11.1.a. Sole proprietor broker. -- The Commission may, in its discretion based upon the specific circumstances, permit an associate broker or a designated salesperson licensed with the sole proprietor broker to complete and close the then-existing business of that broker, including taking contracts then signed to closing, for a temporary period not to exceed six (6) months from the date of Commission approval of a non-broker licensee to serve in that capacity. The sole proprietor's licensees may also transfer to a new broker.

11.1.b. Designated broker. -- The partnership, association, corporation, or other form of business organization, the governing body of the business organization must execute a new subordination resolution which names a successor broker for the business organization. The subordination resolution must be submitted on a form prescribed by the Commission and be sworn to and notarized prior to the transaction of any real estate business.

§174-1-12. Trade and Franchise Names.

12.1. Use of trade or franchise name. -- An individual broker may use a trade name which is the name of the brokerage and not the name of the broker's business organization. Any broker who operates under a trade name must include the trade name in the broker license application and, upon approval by the Commission, the trade name will be placed upon the broker's license certificate in addition to the business organization's name. The trade name shall not be the same as that currently being used by another broker in the same locality unless such restriction is prohibited by law. A broker shall not use any trade name not set forth on the license certificate. The Commission does not require brokers who choose to operate under a franchise agreement to register the name of the franchise organization.

12.2. In the event a broker uses a licensed trade name, the company name required on all advertising must be the trade name which appears on the broker's license.

12.3. Change of trade name. -- Each broker shall notify the Commission in writing of any change in the name of the broker's business organization name or trade name within thirty (30) days of such change. The notice shall be made on a form prescribed by the Commission and accompanied by the license certificate and the fee set forth in Section 2 of the Commission's rules. The Commission shall issue a new certificate with the new tradename.

§174-1-13. Office Signs.

13.1. Sign requirement. -- All brokers holding an active license shall erect and maintain a sign on or about the entrance of their principal office and each branch office, which shall be easily observed and read by persons about to enter any of the offices. Every sign shall prominently display the name of the broker, the term "Broker" and the company name, if any, all in letters not less than 1 inch in height. If the broker so desires, the names of the salespersons or associate brokers may be placed below the name of the broker.

13.2. Brokers who rent desk space in a real estate office. -- A broker who rents desk space within a real estate office and whose own brokerage business is conducted separate and apart from that of the broker from whom the desk space is rented shall maintain a sign on the main entrance door or on a wall or window immediately adjacent to the door, and comply with all other requirements of holding a broker's license.

§174-1-14. Branch Offices.

14.1. License required; exception. -- Every licensed broker who desires to conduct brokerage transactions at any location other than his or her principal place of business under the same brokerage name must make application for a branch office license and pay the required fee in order to receive a license certificate for each branch office. A temporary shelter in a subdivision being sold by the broker, for the convenience and protection of licensees, clients and customers and at which transactions are not closed and licensees are not permanently assigned, is not considered to be a branch office. The permanence, use and character of activities conducted at the office or shelter shall determine whether it must be registered.

14.2. Manager of branch office. -- Every broker who obtains a license for a branch office must designate one associate broker or salesperson as manager of each branch office. A broker may act as the manager of a branch office if the broker is capable of adequately supervising all associate brokers and salespersons assigned to that branch office. If the broker chooses to appoint a manager of a branch office, the licensee must be an active licensee and have at least two (2) years actual experience.

§174-1-15. Trust Funds and Accounts.

15.1. Commingling Prohibited. -- In order to prevent the commingling of trust funds with other funds, brokers are required to deposit all trust funds into one or more trust accounts established in accordance with W. Va. Code §30-40-18, which accounts may be audited by the Commission through its authorized representative.

15.2. Funds received by salesperson or associate broker. -- Every salesperson and associate broker who receives any trust funds shall immediately or by the next business day following receipt pay over or deliver the trust funds to the responsible broker. No salesperson or associate broker shall collect any money in connection with any real estate transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the responsible broker.

15.3. Deposit of trust funds. -- Unless otherwise directed or allowed in the signed purchase agreement, every broker who receives any trust funds shall immediately or by the next business day following receipt deposit the trust funds in the broker's trust account.

15.4. Interest bearing trust account. -- Trust funds may be transferred from a non-interest-bearing trust account into an interest-bearing trust account only under the following conditions:

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

15.4.a.1. Authorization to remove the funds from the trust fund account for the express purpose of depositing the funds into an interest-bearing trust fund account;

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

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

15.4.a.4. How and when the interest will be disbursed.

15.4.b. No interest, privilege, or other compensation received or obtained by virtue of establishing or maintaining any interest-bearing trust account shall benefit the broker or any other licensee.

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

15.5. Sweep accounts. -- For brokers with excess funds, which means trust account funds in excess of the amount that is insured against loss by the broker's financial institution, the federal insurance requirement set forth in West Virginia Code §30-40-18(c) may be complied with either through the use of multiple trust accounts at various financial institutions or the use of a cash sweep account established at a financial institution for which a Trust Fund Account Statement and Consent to Examine is on file with this Commission in accordance with the following requirements:

15.5.a. Addendum required.

15.5.a.1. An addendum in the form prescribed by the Commission must be signed by the broker and the financial institution and made a part of the Trust Fund Account Statement and Consent to Examine; and

15.5.a.2. A copy of the Addendum must be submitted to the Commission within ten (10) business days of entering into the agreement to establish the cash sweep account.

15.5.b. Ability to advance funds required. The broker's relationship institutions, which are (1) the financial institution where the broker has both a trust fund account and a cash sweep account and (2) the financial institution serving as the custodian of the cash sweep account, 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 they cannot by reason of force majeure or circumstances beyond the relationship banks' control.

Inasmuch as the advanced payment is not a loan and 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 does not violate West Virginia Code §30-40-18(f) and this rule.

§174-1-16. Agency Consent and Disclosure.

16.1. Agency form required. -- The notice of agency relationship and consent form prescribed by the Commission discloses the party or parties the licensee is representing to all parties to the real estate transaction. A notice of agency relationship and consent form shall be signed by the licensee and the client at the time the agency relationship is created. Prior to the initiation of negotiations, each licensee's agency form shall be signed by all parties. The broker shall provide a copy to each person executing an agency form and shall maintain a copy of each signed form in the transaction file.

16.2. Dual agency. -- A licensee may not be the agent for both the buyer and the seller without first obtaining the written consent of both the buyer and the seller.

16.3. Corrected form. -- If change in a licensee's agency status makes an earlier disclosure inaccurate, incomplete or misleading, the licensee shall prepare a corrected form and immediately present it to all parties to the transaction. The corrected form must be dated and must be acknowledged in writing by all parties.

§174-1-17. Advertising.

17.1. Advertising of property or specific services. -- Each advertisement shall include the following information: the company name, the name of the responsible broker and the term "Broker," the physical address of a licensed office location, and the phone number of record. This information must be prominently displayed. The names of associate brokers and salespersons shall not be included in the advertising unless the associate brokers and salespersons are clearly identified as such.

17.2. Broker supervision. -- No salesperson, associate broker or team shall advertise any property under his, her or their own name without the name of the responsible broker. All advertising by an associate broker, salesperson or team must be under the direct supervision of and in the name of the responsible broker.

17.3. Business cards and other promotional items. -- Advertising which is not for a specific property or service must include the name of the responsible broker and the term "Broker" along with such other information as may be included by the licensee.

17.4. Internet advertising. -- The information required in section 9.1 of this rule must appear on the home page or the screen that is first seen by the viewer.

17.5. Exemption for property owner. -- A licensee who is the owner of the property has all the rights of an unlicensed person with regard to that property.

§174-1-18. Offer of Consumer Rebates, Inducements and Other Discounts.

18.1. A licensee may offer, directly or indirectly, to clients or customers rebates, inducements, or other discounts, if such licensee:

18.1.a. Discloses to the client or customer, in a clear and conspicuous manner and in writing, the terms of any rebate, inducement or other discount offered;

18.1.b. Discloses to the client or customer, in a clear and conspicuous manner, and in writing, the fair market value of any rebate, inducement or other discount offered; and

18.1.c. Offers the rebates, inducements or other discounts only under the direct supervision and in the name of the responsible broker.

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

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

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

18.3.a.1. A description of each prize, certificate, gift, lot or other valuable consideration offered;

18.3.a.2. The prerequisites for receiving each prize, certificate, gift, lot or other valuable consideration offered;

18.3.a.3. Limitation on the number of prizes, certificates, gifts, lots or other valuable consideration offered;

18.3.a.4. The fair market value of each prize, certificate, gift or lot offered. If advertised, the statement of fair market value shall be in the same size type as the description of the prize, certificate, gift or lot offered. For purposes of this paragraph, "fair market value" is the price or value that a prospective buyer would expect to pay, or be charged for, if he/she were to acquire a similar item of like quality and quantity in a retail outlet that offers the item for sale to the general public; and

18.3.a.5. The odds of winning or receiving each prize, certificate, gift or lot offered. If advertised, the statement of odds shall be the same size type as the description of the prize, certificate, gift or lot and shall appear immediately adjacent to the description.

18.3.b. A licensee who offers prizes, certificates, gifts or lots shall maintain records on each offering for five (5) years, and the records shall contain:

18.3.b.1. The number and description of each prize, certificate, gift or lot distributed or awarded;

18.3.b.2. The name and address of each person who received a prize, certificate, gift or lot; and

18.3.b.3. The name and address of each person who responded to the advertisement or solicitation but did not receive a prize, certificate, gift or lot.

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

18.3.c.1. Failure to comply with subsection (a) or (b);

18.3.c.2. Failure to disclose the possibility that a particular prize, certificate, gift or lot may not be distributed or awarded;

18.3.c.3. Advertising the availability of a prize, certificate, gift or lot when it is not available for distribution or awarding; and

18.3.c.4. Giving a misleading description of a prize, certificate, gift or lot.

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

18.4.a. Providing a closing gift of nominal value to a party to the transaction, which may be done without the approval of the licensee's responsible broker;

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

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

§174-1-19. Investigations and Complaints.

19.1. W. Va. Code §30-40-20 and Series 4 of the Commission's rules, as well as other provisions of West Virginia law relating to licensing boards and administrative agencies, set forth various procedures for investigations by the Commission and the filing, processing and resolution of complaints. Complaints may be initiated upon motion by the Commission or filed by licensees or the public.

19.2. Filing of complaints by licensees or the public. -- Complaints filed by licensees or the public must be submitted in writing on forms prescribed by the Commission and must sufficiently provide the information requested on the form.

§174-1-20. Licensee's Duty to Report Other Actions.

20.1 Licensee to inform Commission of disciplinary action by other licensing jurisdiction. -- When any licensee who holds a license in another jurisdiction is found to be in violation of that jurisdiction's license law, it is the duty of the licensee to supply the Commission with a copy of the complaint, any answer(s) filed, and all documents which show the disposition of the matter, including the judgment, findings and sanctions imposed against the licensee. This information must be submitted within thirty (30) days of the disposition.

20.2. Licensee to inform Commission of civil action. -- When any licensee is a party to any civil suit or proceeding arising out of any transaction involving real property other than actions for eviction or for the collection of back rent, it is the duty of the licensee to supply the Commission with a copy of the judgment or final disposition of the case prior to the date of the licensee's next renewal.

20.3. Licensee to inform Commission of criminal action. -- When any licensee is a defendant in any criminal proceeding other than misdemeanor traffic violations, it is the duty of the licensee to supply the Commission, within thirty (30) days of the notice of the criminal offense, with a copy of the petition, complaint, warrant, indictment, or information,

and the answer filed, if any. The licensee shall also advise the Commission of the disposition of the case and the nature and amount of any judgment, verdict, finding or sentence made, entered or imposed within thirty (30) days of such disposition.