



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: 174-03  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: 174-03 Requirements for Real Estate Courses, Course Providers and Instructors

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enumerated in section nine, article twelve, chapter forty-seven of this code, shall continue to be effective until withdrawn, revoked or amended;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: 6/26/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2017

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:

This legislative rule establishes the minimum requirements and qualifications necessary for approval and registration of providers, instructors, courses and the content of pre-license education courses and continuing education courses.

Editing is proposed to better reflect the current practice

Regulations were proposed regarding renewal of pre-license and continuing education courses, course providers and instructors to streamline the process.

Pre-license education: The content outline of the Broker course was changed to reflect the content of the new Broker course outline developed by a task force of stakeholders

Required attendance and exam passing scores were changed to reflect the changes in national state education practices. To fulfill the principal purpose of the Commission of protecting the public, regulations are proposed to: audit approved education providers, courses and instructors, and take disciplinary actions against providers and instructors found in violation of the rules

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

All education for the licensing of real estate sales in WV

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<br>Increase/Decrease<br>(use "-") | 2018<br>Increase/Decrease<br>(use "-") | Fiscal Year (Upon<br>Full<br>Implementation) |
| 1. Estimated Total Cost | 0                                      | 0                                      | 0  |

TITLE 174  
LEGISLATIVE RULE  
REAL ESTATE COMMISSION

SERIES 3  
REQUIREMENTS ~~IN~~ FOR APPROVAL AND REGISTRATION  
~~OF~~ REAL ESTATE COURSES, COURSE PROVIDERS AND INSTRUCTORS

**§174-3-1. General.**

~~1.1. Scope. -- This legislative rule establishes the minimum requirements and qualifications necessary for approval and registration of providers, and instructors, courses and the content of pre-license courses education courses.~~

1.1. Scope. -- This legislative rule establishes the minimum requirements and qualifications necessary for approval of real estate courses, course providers and instructors and the regulation of same.

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

1.3. Filing Date. -- ~~June 26, 2003.~~

1.4. Effective Date. -- ~~July 1, 2003.~~

1.5. Sunset provision. -- This rule shall terminate and have no further force or effect upon the expiration of seven (7) years from its effective date.

**§174-3-2. 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. Distance Education. -- The term "Distance Education" means courses of instruction in which instruction takes place through media where the teacher and student are separated by distance and sometimes by time.~~

~~2.3. Licensee. -- The term "licensee" means a broker, an associate broker, and a salesperson as defined in W. Va. Code §30-40-4.~~

~~2.4. Applicant. -- The term "applicant" means any person, partnership, association or corporation who is making application to the Commission for a real estate license.~~

2.1. "Applicant" means any person, partnership, association or corporation who is making application to the Commission under this rule.

2.2. "Approved education provider" means education institution, both accredited post-secondary education institution and proprietary education institution, approved and registered with the Commission to offer Commission approved pre-license and continuing education courses.

2.3. "ARELLO" means the Association of Real Estate License Law Officials.

2.4. "Commission" means the West Virginia Real Estate Commission as authorized by W. Va. Code §30-40-6.

2.5. "Continuing education" means the professional development education as mandated in W. Va. Code §30-40-16 and required to renew a real estate broker or salesperson license on an active status.

2.6. "Distance Education" means courses whereby instruction does not take place in a traditional classroom setting but rather where the teacher and student are separated by distance and sometimes by time, or both, and the instruction takes place through media.

2.7. "Post-Secondary education institution" means any education institution accredited as such by an accrediting agency officially recognized by the United States Department of Education.

2.8. "Pre-license education" means courses mandated in W. Va. Code §30-40-14 as prerequisite to obtain a real estate broker or salesperson license.

2.9. "Primary education provider" means a course developer who has a proprietary interest in the course and may deliver the course and/or market it to secondary providers.

2.10. "Secondary course provider" means an approved provider which obtains a distance education course from a primary provider for the purpose of offering it to licensees.

**§174-3-3. Real estate courses, course providers and instructors.**

3.1. ~~Approval Certification of by~~ Commission. -- Unless exempted by statute, all real estate courses, course providers and instructors must be approved ~~certified~~ by and registered with the Commission prior to advertising or offering or conducting pre-license or continuing education courses, although a provider may advertise a course submitted for approval prior to approval by including a plain, visible statement that the course has not yet been approved by the Commission, a course of education in compliance with the pre-license education requirement provided for in W. Va. Code §30-40-14, or the continuing education requirement provided for in W. Va. Code §30-40-16. Applications for approval shall be on forms prescribed by the Commission and through a process prescribed by the Commission. The required approval fees, set forth in Series 2 of these rules, must be submitted with the application. Application fees are non-refundable. Post-secondary education institutions accredited by an accrediting agency officially recognized by the United States Department of Education are approved providers without having to go through the approval process prescribed by the Commission.

3.2. Renewal; failure to renew.

3.2.a. To remain active, all course, course provider, and instructor approvals shall be renewed on an annual basis. Such renewal shall be on forms and through a process as prescribed by the Commission. The required, non-refundable, renewal application fee, set forth in Series 2 of these rules, must be submitted with the application.

3.2.b. All pre-license course, course provider, and instructor approvals shall be renewed no later than December 31 of each calendar year. Real estate pre-license courses which have not been renewed by this deadline may no longer be offered. Real estate pre-license course providers and instructors, who have not renewed by this deadline, may no longer offer or teach pre-license real estate courses. Any real estate pre-license course, course provider or instructor not renewed by this deadline will need to be approved following the process set out in 3.1 of this rule. Approved and renewed instructors may not teach under a pre-license provider who has not renewed.

3.2.c. All continuing education course, course provider, and instructor approvals shall be renewed no later than June 30 of each fiscal year. The Commission, by policy, may add a grace period and late fee for renewal after June 30. Real estate continuing education courses, which have not been renewed by this deadline, may no longer be offered. Real estate continuing education course providers and instructors, who have not renewed by this deadline, may no longer offer or teach continuing education courses. Any real estate continuing education course, course provider or instructor not renewed by this deadline will need to be approved following the process set out in 3.1 of this rule. Approved and renewed instructors may not teach under a continuing education provider who has not renewed.

3.2.d. To be eligible to renew, all pre-license and continuing education instructors shall complete annual instructor development workshops when offered by the Commission, unless the attendance is waived by the Commission.

3.3. Out-of-state providers. -- Out-of-state education providers must register with the West Virginia Secretary of State prior to offering any education services in the State and take all other necessary steps to legally conduct business in West Virginia prior to their application with the Commission.

~~3.2.3.4.~~ Pre-License education.

3.4.a. The ninety hours (six college credit hours) course prescribed for applicants for a salesperson's license shall consist of:

30 clock hours -- Real Estate Principles and Practice

20 clock hours -- Real Estate Law

20 clock hours -- Real Estate Finance

20 clock hours -- Real Estate Appraisal

3.4.b. The additional ninety hours (six college credit hours) course prescribed for applicants for a broker's license shall also consist of: ~~the same hours in each subject area but shall consist of more in-depth coverage in each subject area.~~

30 clock hours -- Brokerage Operation and Management

25 clock hours -- Human Resources Management and Interpersonal Skills

35 clock hours -- West Virginia-Specific Real Estate for Brokers

~~c. The grading scale for all course providers offering mandatory real estate education shall be:~~

~~A = 95% - 100%~~

~~B = 86% - 94%~~

~~C = 75% - 85%~~

~~D = 71% - 74%~~

~~F = 00% - 70%~~

3.4.c. In order to sit for the real estate examination, the applicant must ~~have earned a grade of A, B or C~~ score 70% or higher in each subject area.

3.4.d. After a student has successfully completed an approved pre-license education course, the approved provider shall supply the student with a certificate of course completion which certifies the student's name and address, 90% attendance but for absences excused in accordance with Commission policy, the course completion date, the number of hours in each subject area, and the score of 70% or higher. ~~letter grade earned.~~

3.4.e. All approved providers shall maintain records indicating the students who have registered for each course, the completion date of the course and the final results of their attendance. These records must be maintained for a minimum period of five (5) years and are subject to inspection by the Commission or its authorized representative. On December 31 of each year, every approved provider shall compile a list of the students completing each class during the previous calendar year and submit the information to the Real Estate Commission prior to January 31 of the succeeding year. ~~Provided, that Post-Secondary Education Institutions approved under Section 3.1 of this rule are exempt from this requirement.~~

3.4.f. The Commission will accept pre-license education courses approved by the real estate regulatory agency of any other licensing jurisdiction in meeting West Virginia pre-license education requirements if the jurisdiction offers the same privilege to West Virginia. The Commission will not give credit for classroom hours earned in excess of the number of hours awarded by the other jurisdiction.

3.4.g. The Commission will prepare and supply a suggested course outline of the material to be taught in the pre-license courses, and will supply supplemental material when the Commission deems it necessary. In addition, the Commission may recommend suggested textbooks to be used in the courses.

### ~~3.3~~3.5. Continuing education.

#### 3.5.a. Guidelines.

~~1.3.5.a.1.~~ 1.3.5.a.1. All continuing education courses ~~should~~ shall cover real estate subjects which the Commission finds relevant to fulfill its statutory duty of protecting the public and contribute directly to the professional competence of the individual.

~~2.3.5.a.2.~~ 2.3.5.a.2. ~~Materials used in programs~~ Course content and all course materials should be developed by qualified individuals for use with specified teaching methods.

~~3.3.5.a.3.~~ 3.3.5.a.3. Program content must be current.

~~b. Providers must submit all course materials to the Commission at the time approval is requested. All continuing education course approvals expire on June 30 of each year. All approved course providers shall make application to the Commission for approval of every continuing education course on forms supplied by the Commission, and each application shall be accompanied by the appropriate registration fee, which is nonrefundable. The application shall be accompanied by a copy of all course materials proposed to be used in the course, a copy of any proposed advertisements, and any other information that may be required by the Commission.~~

3.5.b. Approved providers shall make application to the Commission for approval of every continuing education course. The application shall be accompanied by a copy of all course materials proposed to be used in the course, a copy of any proposed advertisements, and any other information that may be required by the Commission.

3.5.c. The minimum length of a continuing education course will be three (3) hours with each hour ~~equalling~~ equaling fifty (50) minutes of instruction. The Commission shall determine the amount of credit to be awarded for each course.

3.5.d. The Commission ~~will~~ shall approve courses that deal with real estate related subjects, including but not limited to real estate law, agency, ethics, civil rights, equal opportunity, appraisal, contract law, finance, and principal/agent relationships.

3.5.e. When approved ~~audio or video tapes~~ instructional elements (videos, interactive exercises, external links, assessments, etc) are used, the a certified instructor must be present at all times while class is in session.

3.5.f. Instructors of continuing education courses who are also licensees may obtain credit toward the continuing education requirement in the same amount as the number of hours awarded to the students but only for the first time the course is taught. No continuing education credit shall be given for subsequent teaching of the same course.

3.5.g. Each course provider approved to offer continuing education courses shall maintain records indicating the student's name and address, the completion date of the course, the course title, and the ~~amount~~ number of hours awarded. These records must be maintained for a minimum period of five (5) years and shall be open to inspection by the Commission or its authorized representative. Each approved provider shall annually supply the Commission with a comprehensive list of all students who have completed a course in continuing education at their institution during the fiscal year July 1 through June 30 no later than July 15 of the succeeding fiscal year. ~~Provided, that Post-Secondary Education Institutions approved under Section 3.1 of this rule, are exempt from this paragraph.~~

#### 3.6. Distance education ~~Courses.~~

~~1. The Commission will not approve any distance education course that is not structured and cannot be monitored.~~

3.6.a. Real estate pre-license and continuing education may be offered through distance education formats. Real estate courses offered through distance education must be well-structured and allow monitoring.

3.6.b. All distance education courses of both the primary and the secondary provider shall be approved by the Commission in accordance with such policy as shall be adopted by the Commission.

~~2. Each distance education course must, at a minimum, contain a comprehensive final examination consisting of both objective and subjective types of questions in sufficient quantity to assure the student has a thorough knowledge of the course material. In conjunction with submission of the final comprehensive examination to the course provider, the student must execute an affidavit under the penalties of false swearing stating he or she is the individual that completed the final examination, that he or she received no assistance while completing the examination, and that he or she actively studied the material in the course for at least the number of hours specified to be awarded for completion of the course.~~

3.6.c. Each distance education course must contain a comprehensive final exam that includes a sufficient number of questions to assure the student has a thorough knowledge of the course material.

~~3.3.6.d. A course provider may not issue a certificate of course completion to any student prior to successful completion of the final comprehensive examination. The minimum passing score on the final comprehensive examination shall be ~~75%~~ 70%.~~

#### 3.43.7. Instructors of Pre-license and Continuing Education Courses.

~~a. Each instructor shall apply for and be approved prior to instructing any real estate course. Provided, that this requirement not apply to any guest speaker or to any instructor or professor of a post-secondary educational institution that is accredited by an accrediting agency officially recognized by the United States Department of Education.~~

3.7.a. The approval requirement set forth in 3.1. of this rule shall not apply to any guest speaker or to any professor of a post-secondary educational institution teaching real estate or related college courses.

3.7.b. An instructor will be approved by the Commission only if he or she:

3.7.b.1. Is an attorney at law with a minimum of five (5) years of active practice in the area of study he or she proposes to teach;

3.7.b.2. Holds a degree in real estate from an accredited college or university;

3.7.b.3. Is a licensed real estate broker, associate broker, or salesperson with a minimum of five (5) years experience in the area of study he or she proposes to teach;

3.7.b.4. Holds a degree from an accredited college or university and has at least (2) years of teaching experience and possesses a minimum of two hundred (200) classroom hours in the area of study he or she proposes to teach; or

3.7.b.5. Has a minimum of ~~three (3)~~ five (5) years of professional or teaching ~~educational~~ experience ~~as a teacher~~ in the area of study he or she proposes to teach.

3.8. Instructors of distance education courses shall obtain Distance Education Instructor Certification from IDECC (International Distance Education Certification Center) prior to their application for approval by the Commission and must submit verification of the certification.

3.9. All approved pre-license and continuing education instructors shall complete annual instructor development workshops when offered by the Commission, unless the attendance is waived by the Commission.

~~3.5. Promotion of Products or Services Prohibited. — A course provider or instructor may not promote any product or service while offering or conducting any pre-license or continuing education course.~~

3.10. No product or service may be promoted or sold during a real estate pre-license or continuing education offering.

**174-3-4. Audits of approved providers, courses and instructors; Report and response required; Investigations.**

4.1. All approved providers, courses and instructors shall be subject to audit by the Commission or its authorized representative(s) to ensure compliance with the West Virginia Real Estate License Act and the Commission's rules.

4.2. In the event of such an audit, all documentation and information requested and deemed necessary to complete the audit, shall be made available to the Commission or its representative(s). This may include, but is not limited to:

4.2.a. Registrations;

4.2.b. Attendance records;

4.2.c. Course completion records and certificates of course completion;

4.2.d. Advertisements, including information published on social media;

4.2.e. Course materials used in conducting the course; and

4.2.f. Any additional documentation reasonably requested by the Commission.

4.3. The Commission representative(s) may make photocopies of any documentation the approved education provider or instructor has submitted relative to the audit and required to maintain by the Commission.

4.4. The Commission representative(s) conducting the audit shall make report that is provided to the approved provider within sixty (60) days of the audit.

4.5. The Commission will review and approve the written audit report prior to being delivered by certified mail, to the audited real estate course provider or instructor.

4.6. The audited real estate course provider or instructor will receive a written warning and be given a specified amount of time to correct the issues, if found in violation of any of the following:

4.6.a. Does an inadequate job of teaching the curriculum required by the Commission as evidenced by the use of inaccurate, inappropriate or outdated teaching materials and strategies, students' poor performance on the licensing examination, student evaluations, and/or Commission audits. This shall include failing to teach the content contained in the detailed content outline(s) approved by the Commission;

4.6.b. Engages in unprofessional behavior and/or inappropriate conduct in the classroom including but not limited to regular tardiness or disorganization; the use of profanity, ridicule or sarcasm in connection with the subject matter, students; telling offensive jokes; making inappropriate remarks unrelated to the subject matter; or engaging in conduct prohibited by local, state or federal law relating to human rights, anti-discrimination and similar laws;

4.6.c. Fails to display adequate knowledge of the subject matter in the presentation of information or in answering questions related to the subject matter;

4.6.d. Fails to utilize a variety of teaching methods to accommodate visual, auditory and tactile learning styles;

4.6.e. Makes inaccurate comments to students regarding course content or West Virginia real estate law to students which are in conflict with the West Virginia Real Estate License Act, the Commission's rules, or any material contained in a Commission approved course.

4.7. The audited real estate course provider and/or instructor shall submit a written response to the Commission, at the end of the time specified in the written warning, outlining the actions taken to resolve the issues.

4.8. Failure to respond or take the necessary corrective measures may result in non-renewal and/or disciplinary action set forth in this rule.

4.9. The Commission may investigate any approved course provider and/or instructor, regarding matters of concern in the areas set forth in this section.

**174-3-5. Disciplinary Actions for approved Pre-license and Continuing Education Providers and Instructors.**

5.1. The Commission may take disciplinary action(s) against an approved provider or instructor in accordance with the procedural rules of the Commission and other applicable law if found in violation of any of the following:

5.1.a. Is a party to any falsification of any document or other information provided to the Commission;

5.1.b. Publishes or causes to be published any advertisement which is not in compliance with the provisions of the West Virginia Real Estate Licensing Act and the Commission's rules;

5.1.c. Does not comply with any provision of the West Virginia Real Estate Licensing Act or the Commission's rules;

5.1.d. Engages in conduct which constitutes or demonstrates dishonest dealings, bad faith or untrustworthiness;

5.1.e. Awards credit to any student who fails to comply with the attendance requirements as set forth in Commission's rules;

5.1.f. Fails to file with the Commission accurate and complete records as required by these rules or fails to furnish any documents requested by the Commission by the stated deadline;

5.1.g. Does not correct problems identified in a Commission audit report; or

5.1.h. Conducts any course of education without active approval by the Commission;

5.2. Sanctions.

5.2.a. The Commission may impose sanctions against any provider or instructor found to be in violation of any provision of subsection 5.1 of this section in accordance with the general powers and duties of W. Va. Code §30-40-7(l) and any other applicable provisions of the West Virginia Real Estate License Act and the Commission's rules.

5.2.b. A revocation of provider and/or instructor approval shall be for a period of two years. Any provider or instructor whose approval has been revoked shall need to be approved following the process set out in 3.1. of this rule.