



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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12/3/2019 9:37:52 AM

Office of West Virginia  
Secretary Of State

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Real Estate Commission

RULE TYPE: Legislative

TITLE-SERIES: 174-07

RULE NAME: CONSIDERATION OF PRIOR  
CRIMINAL CONVICTIONS IN INITIAL  
LICENSE ELIGIBILITY  
DETERMINATION

CITE AUTHORITY: WV Code 30-40-8

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

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

TITLE 174  
Legislative RULE  
WEST VIRGINIA REAL ESTATE COMMISSION

SERIES 7  
CONSIDERATION OF PRIOR CRIMINAL CONVICTIONS  
IN INITIAL LICENSE ELIGIBILITY DETERMINATION

**§174-7-1. General.**

1.1. Scope. -- This rule establishes procedures for consideration of prior criminal convictions in initial licensure eligibility determination.

1.2. Authority. -- WV 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 final filing date.

**§174-7-2. Definitions.**

2.1. "Commission" means the West Virginia Real Estate Commission established pursuant to W. Va. Code §30-40-4 et seq.

2.2. "Initial license" means obtaining a license in West Virginia for the practice of real estate brokerage services for the first time.

2.3. "License" or "licensure" means the official authorization by the Commission to engage in the practice of real estate.

2.4. "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

**§174-7-3. Rational nexus to the practice of real estate brokerage.**

3.1. The commission may not disqualify an applicant from initial licensure because of a prior criminal conviction (s) that remains unreversed unless that conviction is for a crime(s) that bears a rational nexus to the practice of real estate. In determining whether a criminal conviction bears a rational nexus to a real estate, the commission shall consider at a minimum:

3.1.a. The nature and seriousness of the crime for which the individual was convicted;

3.1.b. The passage of time since the commission of the crimes;

3.1.c. The relationship of the crime(s) to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a licensed salesperson, associate broker or broker; and

3.1.d. Any evidence of rehabilitation or treatment undertaken by the individual.

**§174-7-4. Application after denial.**

4.1. Notwithstanding any other provision of the W. Va. Code to the contrary, if an applicant has been denied licensure because of a prior criminal conviction, the commission shall permit the applicant to apply for initial licensure if:

4.1.a. A period of five years has elapsed from the date of conviction of the disqualifying event or the date of release from incarceration, whichever is later;

4.1.b. The individual has not been convicted of any other crime (s) during the period of time following the disqualifying offense (s); and

4.1.c. The conviction(s) was not for an offense of a violent or sexual nature: *Provided*, that a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the commission on a case by case basis.

**§174-7-5. Petition for licensure eligibility determination.**

5.1. An individual with a criminal record who has not previously applied for licensure may petition the commission at any time for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license.

5.2. The petition shall be submitted on an application form prescribed by the commission and shall include sufficient details about the individual's criminal record to enable the commission to identify the jurisdiction where the conviction occurred, penalties imposed, the date of the conviction, and the specific nature of the conviction.

5.3. The applicant may submit with the petition for licensure eligibility determination, evidence of rehabilitation, letters of reference, and any other information the applicant deems relevant to show fitness and the ability to practice real estate sales.

5.4. The commission shall provide the determination within 60 days of receiving the petition and the applicable fee from the applicant. The fee shall be equal to the Application fee required in WV CSR §174-2-2.