



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Real Estate Commission TITLE-SERIES: 174-07
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: CONSIDERATION OF PRIOR CRIMINAL
CONVICTIONS
CITE STATUTORY AUTHORITY: 30-40-8

The above rule has been authorized by the West Virginia Legislature.

Authorization is cited in (house or senate bill number) §HB 4252

Section §64-9-26 Passed On 3/6/2020 12:00:00 AM

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

July 1, 2020

This rule shall terminate and have no further force or effect from the following date:

July 01, 2025

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. – April 1, 2020

1.4. Effective Date. – July 1, 2020

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon July 1, 2025.

§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.