



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**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: Yes
RULE NAME: 174-03 Requirements for Real 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

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/13/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/14/2023

COMMENTS RECEIVED: No

(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:

update rule to match code changes that went into effect June 9, 2023

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

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

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

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

Yes
 Keri Ferro -- 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
REAL ESTATE COMMISSION

SERIES 3
REQUIREMENTS FOR
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 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. -- ~~April 12, 2018~~

1.4. Effective Date. -- ~~July 1, 2018~~

1.5. Sunset provision. -- This rule shall terminate and have no further force or effect upon the expiration of ~~June 30, 2025~~ August 1, 2029.

§174-3-2. Definitions.

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 by Commission. -- Unless exempted by statute, all real estate courses, course providers and instructors must be approved by and registered with the Commission prior to advertising or offering 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. 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 are approved providers and must ~~without having to~~ go through ~~the a modified~~ 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.

3.4. 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 consist of:

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

3.4.c. In order to sit for the real estate examination, the applicant must 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.

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's digital education tracking system or on a form prescribed by the Commission prior to January 31 of the succeeding year.

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.

3.5. Continuing education.

3.5.a. Guidelines.

3.5.a.1. All continuing education courses shall cover real estate subjects which the Commission finds relevant to fulfilling the statutory duty or best practices of licensees, and contribute directly to the professional competence of the individual.

3.5.a.2 Course content and all course materials should be developed by qualified individuals for use with specified teaching methods.

3.5.a.3. Program content must be current.

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 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 may 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 instructional elements (videos, interactive exercises, external links, assessments, etc) are used, the 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 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 report to the Commission's digital continuing education tracking system or on a form prescribed by the Commission ~~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.

3.6. Distance education.

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.

3.6.c. The design and delivery of each distance learning course shall be certified by the Association of Real Estate License Law Officials or by another institution whose certification standards are deemed equivalent by the Commission. The credit hours for a certified distance learning course shall be based

upon the same number of hours that would be credited for an equivalent live course and must include a commission-approved comprehensive assessment.

3.6.d. 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.

3.6.e. The minimum passing score on the final comprehensive examination shall be 70%.

3.7. Instructors of Pre-license and Continuing Education Courses.

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 five (5) years of professional or teaching experience 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 or the individual is an out-of-state instructor who a) is approved by the National Association of Realtors (NAR) or b) holds a Distinguished Real Estate Instructor (DREI) designation.

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 real estate course provider or instructor will receive a written warning and be given a specified amount of time to correct the issues, if there is an audit 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 excessive disorganization; the use of profanity or ridicule; making inappropriate or offensive remarks; 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.