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RED BOOK

WV LAW CODE 30-
40

WEST VIRGINIA REAL ESTATE LICENSE ACT
WV Code §30-40

§30-40-1. Legislative findings.

The Legislature hereby finds and declares that the practice of real estate brokerage is a privilege and any person engaged in the professional practice of real estate brokerage should possess the requisite experience and training and be subject to adequate regulation and control. As a matter of public policy, it is necessary to protect the public interest from the unauthorized, unqualified and unregulated practice of real estate brokerage through enactment of this article and to regulate the granting of such privileges and their use. This article shall be liberally construed to carry out these purposes.

§30-40-2. Short title.

This article shall be known and may be cited as the "West Virginia Real Estate License Act".

§30-40-3. License required.

It shall be unlawful for any person to engage in or carry on, directly or indirectly, or to advertise or hold himself or herself out as engaging in or carrying on the business or act in the capacity of a real estate broker, associate broker or salesperson within this state without first obtaining a license as provided for in this article.

§30-40-4. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Applicant" means any person who is making application to the commission for a license.

(b) "Associate broker" means any person who qualifies for a broker's license, but who is employed or engaged by a licensed broker to engage in any activity regulated by this article, in the name of and under the direct supervision of the licensed broker.

(c) "Broker" means any person who for compensation or with the intention or expectation of receiving or collecting compensation:

(1) Lists, sells, purchases, exchanges, options, rents, manages, leases or auctions any interest in real estate; or

(2) Directs or assists in the procuring of a prospect calculated or intended to result in a real estate transaction; or

(3) Advertises or holds himself or herself out as engaged in, negotiates or attempts to negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.

(d) "Commission" means the West Virginia real estate commission as established in section six of this article.

(e) "Compensation" means fee, commission, salary or other valuable consideration, in the form of money or otherwise.

(f) "Designated broker" means a person holding a broker's license who has been appointed by a partnership, association, corporation, or other form of business organization engaged in the real estate brokerage business, to be responsible for the acts of the business and to whom the partners, members, or board of directors have delegated full authority to conduct the real estate brokerage activities of the business organization.

(g) "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.

(h) "Inactive" means a licensee who is not authorized to conduct any real estate business and is not required to comply with any continuing education requirements.

(i) "License" means a license to act as a broker, associate broker or salesperson.
(j) "Licensee" means a person holding a license.
(k) "Member" means a commissioner of the real estate commission.
(l) "Real estate" means any interest or estate in land and anything permanently affixed to land.

(m) "Salesperson" means a person employed or engaged by or on behalf of a broker to do or deal in any activity included in this article, in the name of and under the direct supervision of a broker, other than an associate broker.

§30-40-5. Scope of practice; exceptions.

(a) The practice of real estate brokerage includes acting in the capacity of a broker, associate broker or salesperson as defined in section four of this article.

(b) The practice of real estate brokerage does not include the activities normally performed by an appraiser, mortgage company, lawyer, engineer, contractor, surveyor, home inspector or other professional who may perform an ancillary service in conjunction with a real estate transaction.

(c) The provisions of this article do not apply to:

(1) Any person acting on his or her own behalf as owner or lessor of real estate.

(2) The regular employees of an owner of real estate, who perform any acts regulated by this article, where the acts are incidental to the management of the real estate: *Provided*, That the employee does not receive additional compensation for the act and does not perform the act as a vocation.

(3) Attorneys-at-law: *Provided*, That attorneys-at-law shall be required to submit to the written examination required under section twelve of this article in order to qualify for a broker's license: *Provided, however*, That an attorney-at-law who is licensed as a real estate broker prior to the first day of July, one thousand nine hundred eighty is exempt from the written examination required under section twelve of this article.

(4) Any person holding, in good faith, a valid power of attorney from the owner or lessor of the real estate.

(5) Any person acting as a receiver, trustee, administrator, executor, guardian, conservator or under the order of any court or under the authority of a deed of trust or will.

(6) A public officer while performing his or her official duties.

(7) Any person acquiring or disposing of any interest in timber or minerals, or acquiring or disposing of properties for easements and rights-of-ways for pipelines, electric power lines and stations, public utilities, railroads or roads.

(8) Any person employed exclusively to act as the management or rental agent for the real estate of one person, partnership or corporation.

(9) Any person properly licensed pursuant to the provisions of article two-c, chapter nineteen of this code when conducting an auction, any portion of which contains any leasehold or estate in real estate, only when the person so licensed is retained to conduct an auction by:

(A) A receiver or trustee in bankruptcy;

(B) A fiduciary acting under the authority of a deed of trust or will; or

(C) A fiduciary of a decedent's estate.

(10) Any person employed by a broker in a noncommissioned secretarial or clerical capacity who may in the normal course of employment, be required to:

(A) Disseminate brokerage preprinted and predetermined real estate sales and rental information;

(B) Accept and process rental reservations or bookings for a period not to exceed thirty consecutive days in a manner and procedure predetermined by the broker;

(C) Collect predetermined rental fees for the rentals which are to be promptly

tendered to the broker;

(D) Make appointments on behalf of the broker or licensed salesperson with buyers and sellers of real estate and potential buyers and sellers of real estate; or

(E) Any combination thereof.

§30-40-6. Commission created; membership; appointment and removal of members; qualifications; terms; organization.

(a) The West Virginia real estate commission is hereby continued. The members of the commission in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) (1) Commencing with the terms beginning with the first day of July, two thousand two, the commission shall consist of five persons appointed for terms of four years by the governor with the advice and consent of the Senate. Four commissioners must be licensed under the provisions of this article and one commissioner must be a citizen member who is not licensed under the provisions of this article.

(2) Each licensed commissioner, at the time of his or her appointment, must have been licensed and practiced in this state as a real estate broker, associate broker or salesperson as his or her primary vocation for a period of not less than ten years immediately preceding the appointment. Each commissioner must have been a resident of this state for at least six years prior to his or her appointment and must remain a resident during the appointment term. No more than four commissioners shall belong to the same political party.

(3) The appointment of three licensed commissioners, whether for a full term or to fill a vacancy, shall be made by the governor with the advice and consent of the Senate. The appointment of one licensed commissioner, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees selected by the West Virginia association of realtors. If the appointment is for a full term, the nominations must be submitted to the governor not later than three months prior to the date on which the appointment becomes effective. If the appointment is to fill a vacancy, the nominations must be submitted to the governor within thirty days after a request for the nominations has been made by the governor to the West Virginia association of realtors. If the association fails to submit nominations in accordance with the requirements of this section, the governor may make the appointment without the nominations.

(c) Any commissioner immediately and automatically forfeits his or her membership on the commission if he or she has his or her license to practice as a real estate broker, associate broker or salesperson suspended or revoked by the board, is convicted of a felony under the laws of this state or of the United States, becomes a nonresident of this state, or holds any elective public office or becomes a member of any political committee.

(d) No member of the commission may be removed from office by the governor except for official misconduct, incompetency, neglect of duty, gross immorality or other good cause, but then only in the manner prescribed by law for the removal by the governor of state elective officials.

(e) No member of the commission may serve more than two consecutive full terms and any member having served two full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(f) The governor shall designate one member of the commission as chairman and the members shall choose a vice chairman and a secretary, each of whom shall continue to serve in their respective capacity until replaced.

(g) Three members shall constitute a quorum for the conduct of official business.

(h) Each commissioner shall receive the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Each commissioner shall be reimbursed for his or her actual and necessary expenses for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

§30-40-7. General powers and duties.

The commission has all the powers set forth in article one of this chapter and in addition:

- (a) May sue and be sued in its official name as an agency of this state;
- (b) Shall employ an executive director and shall fix his or her compensation subject to the general laws of this state. The commission shall determine the duties of the executive director as it shall consider necessary and appropriate to discharge the duties imposed by the provisions of this code;
- (c) Shall employ or contract with such other investigators, hearing examiners, attorneys, consultants, clerks and assistants as the commission considers necessary and determine the duties and fix the compensation of such investigators, clerks and assistants subject to the general laws of this state;
- (d) Shall have the authority to issue subpoenas and subpoenas duces tecum through any member, its executive director or any duly authorized representative;
- (e) Shall prescribe, examine and determine the qualifications of any applicant for a license;
- (f) Shall provide for an appropriate examination of any applicant for a license;
- (g) May enter into agreements with other jurisdictions whereby the license issued by another jurisdiction may be recognized as successfully qualifying a nonresident for a license in this state;
- (h) Shall issue, renew, deny, suspend, revoke or reinstate licenses and take disciplinary action against any licensee;
- (i) May investigate or cause to be investigated alleged violations of the provisions of this article, the rules promulgated hereunder and the orders or final decisions of the commission;
- (j) Shall conduct hearings or cause hearings to be conducted upon charges calling for the discipline of a licensee or for the suspension or revocation of a license;
- (k) May examine the books and records relating to the real estate business of a licensee if the licensee is charged in a complaint of any violation of this article, commission rule or any order or final decision issued by the commission: *Provided*, That such examination shall not extend beyond the specific violation charged in the complaint;
- (l) May impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, restitution, require additional education, censure, denial of future license, downgrade of license, reprimand or order the return of compensation collected from an injured consumer;
- (m) Shall meet at least once each calendar year at such place and time as the commission shall designate and at such other times and places as it considers necessary to conduct commission business;
- (n) Shall publish an annual directory of licensees in compliance with the provisions of section thirteen, article one, chapter thirty of this code;
- (o) May sponsor real estate-related educational seminars, courses, workshops or

institutes, may incur and pay the necessary expenses and may charge a fee for attendance;

(p) May assist libraries, institutions and foundations with financial aid or otherwise in providing texts, sponsoring studies, surveys and programs;

(q) May perform compliance audits on real estate brokerage offices, education providers or any other person regulated by the commission;

(r) May provide distance education courses for applicants for a license sufficient to meet the educational requirements contained in subsections (a) and (b), section fourteen of this article; and

(s) Shall take all other actions necessary and proper to effectuate the purposes of this article.

§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.

§30-40-9. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the commission shall be deposited into the treasury of the state, at least once each month, into a special revenue fund known as the "real estate license fund" which is continued.

(b) Except as may be provided in section ten, article one of this chapter, the commission shall retain the amounts in the special revenue fund from year to year and no funds collected under this article may be used by the commission for any purpose other than the administration and enforcement of this article. No compensation or expense incurred under this article is a charge against the general revenue fund.

(c) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the general revenue fund of the state treasury.

§30-40-10. Civil liability for commission members; liability limitations of person reporting to commission.

(a) Members of the commission shall be immune from individual civil liability for actions taken in good faith and without malice, within the scope of their duties as commission members.

(b) Any person who reports or otherwise provides evidence of violations of this article, the commission's rules, orders or final decisions to the commission or other law-enforcement agency, is not liable for making the report if it is made without malice and in the reasonable belief that the report is warranted by the facts known to him or her at the time.

§30-40-11. Application for license.

The commission shall only issue an original license to an applicant if he or she:

(a) Submits an application, in writing, in a form prescribed by the commission which must contain, but is not limited to:

- (1) The applicant's social security number;
- (2) The recommendation of at least two persons who:
 - (A) Are property owners at the time of signing the application;
 - (B) Have been property owners for at least twelve months preceding the signing of the application;
 - (C) Have known the applicant for at least two years;
 - (D) Are not related to the applicant;
 - (E) Are not affiliated with the applicant as an employer, partner or associate or with the broker that will employ the applicant;
 - (F) Believe the applicant bears a good reputation for honesty, trustworthiness and fair dealing; and
 - (G) Believe the applicant is competent to transact the business of a real estate broker, associate broker or salesperson, as the case may be, in a manner that would protect the interest of the public.

(3) A clear record indicating all jurisdictions where the applicant holds or has held any professional license.

(4) A clear record indicating if the applicant has been convicted of any criminal offense or if there is any criminal charge pending against the applicant, or a member or officer of the brokerage business, at the time of application.

(b) Is at least eighteen years of age.

(c) Is a high school graduate or the holder of an equivalency diploma.

(d) Is trustworthy, of good moral character and competent to transact the business of a broker, associate broker or salesperson.

(e) Has paid the appropriate fee, if any, which must accompany all applications for original license or renewal.

(f) Has submitted to a state and national criminal history record check, as set forth in this subsection: Provided, That an applicant for a license who is an attorney at law may submit a letter of good standing from the Clerk of the Supreme Court of Appeals of West Virginia in lieu of submitting to a state and national criminal history record check.

- (1) This requirement is found not to be against public policy.
- (2) The criminal history record check shall be based on fingerprints submitted to the West Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.
- (3) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:
 - (A) Submitting fingerprints for the purposes set forth in this subsection; and
 - (B) Authorizing the commission, the West Virginia State Police and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.
- (4) The results of the state and national criminal history record check may not be released to or by a private entity except:
 - (A) To the individual who is the subject of the criminal history record check;
 - (B) With the written authorization of the individual who is the subject of the criminal history record check; or
 - (C) Pursuant to a court order.
- (5) The criminal history record check and related records are not public records for the purposes of chapter twenty-nine-b of this code.
- (6) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.
- (7) Before implementing the provisions of this subsection, the commission shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code. The rules shall set forth the requirements and procedures for the criminal history check and must be consistent with standards established by the Federal Bureau of Investigation and the National Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, et seq.

§30-40-12. Qualifications for broker's license.

- (a) An applicant for a broker's license shall:
 - (1) 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;
 - (2) Submit satisfactory evidence of having completed the required education course as provided for in section fourteen of this article;
 - (3) Successfully pass the examination or examinations provided by the commission.
- (b) No broker's license shall be issued in the name of a corporation, association or partnership except through one of its members or officers.
- (c) No broker's license shall be issued in the name of a corporation, association or partnership unless each member or officer, who will engage in the real estate business, obtains a license as a real estate salesperson or associate broker.

§30-40-13. Qualifications for salesperson's license.

- An applicant for a salesperson's license shall:
- (1) Submit satisfactory evidence of having completed the required education course as provided in section fourteen of this article.
 - (2) Successfully pass the examination or examinations provided by the commission.

§30-40-14. Prelicense education.

- (a) Applicants for a broker's license shall provide evidence satisfactory to the commission that he or she has completed at least one hundred eighty clock-hours, equivalent to twelve college semester credit hours, in a course or courses approved by the commission: *Provided*, That an applicant for a broker's license who holds a salesperson's license in this state shall only be required to provide evidence that he or she has completed

ninety clock-hours, equivalent to six college semester hours, in a course or courses approved by the commission.

(b) Applicants for a salesperson's license shall provide evidence satisfactory to the commission that he or she has completed ninety clock-hours, equivalent to six college semester credit hours, in a course or courses approved by the commission.

(c) Any course required by subsection (a) or (b) of this section must have been completed during the five-year period preceding the date of application in order to be accepted by the commission.

§30-40-15. Licensing nonresidents.

(a) The commission may recognize a valid license issued by another jurisdiction as satisfactorily qualifying a nonresident person to obtain a comparable license in this state: *Provided*, That the nonresident has qualified for original license in his or her jurisdiction of residence by examination and by complying with all the provisions for obtaining an original license in that jurisdiction and the jurisdiction affords the same privilege to licensees of this state.

(b) In order to obtain a license in this state, a nonresident applicant must:

(1) Submit the appropriate application and fee, if any;

(2) Sign a statement that the applicant has read the real estate license law and rules of this state and agrees to abide by those provisions in all brokerage activity conducted in this state;

(3) Cause the real estate licensing body of the applicant's resident jurisdiction to furnish a certification of licensure which shall contain a clear record of any disciplinary actions;

(4) Cause the real estate licensing body of any other jurisdiction where the applicant currently holds or has held a real estate license to furnish a certification of licensure which shall contain a clear record of any disciplinary actions;

(5) File with the commission an irrevocable written designation that appoints the executive director of the commission to act as the nonresident licensee's agent, upon whom all judicial and other process or legal notices directed to the licensee may be served. The designation must stipulate and agree that service upon the executive director is equivalent to personal service upon the licensee. A copy of the designation of appointment, certified by the seal of the commission, may be admitted into evidence with the same force and affect as the original. The executive director shall mail a copy of any process or legal notice immediately upon receipt, by certified mail, to the last known business address of the licensee. No judgment by default may be taken in any action or proceeding until after thirty days of mailing and then only upon certification by the executive director that a copy of the judicial, other process or legal notice was mailed as required; and

(6) File with the commission, a bond in the penalty of two thousand dollars if the applicant wishes to maintain an active license in this state. The bond must be issued by a recognized surety and must be for the benefit of and to indemnify any person in this state who may have a cause of action against the principal.

§30-40-16. Continuing professional education.

(a) Every licensee shall complete seven hours of continuing professional education for each fiscal year, with each hour equaling fifty minutes of instruction.

(b) Upon application for the renewal of a real estate license on active status, each licensee must furnish satisfactory evidence, as established by the commission, that he or she has completed seven hours of approved continuing professional education during the term of the previous license: *Provided*, That if the commission issues a license certificate for a period of more than one fiscal year, each licensee must furnish satisfactory evidence

that he or she has completed the equivalent of seven hours of continuing professional education for each year covered by the term of the previous license.

(c) When a licensee in an inactive status makes application to revert to an active status, he or she 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.

(d) Approval from the commission shall be obtained by each provider and instructor and for any course prior to any advertising or offering of the course.

(e) Real estate-related continuing education courses provided by or approved by the real estate appraiser licensing and certification board, the department of highways, the West Virginia state bar or other agency of this state shall be recognized as approved by the commission.

(f) If approved in advance by the commission, distance education courses may be used to satisfy the continuing education requirement.

(g) Any licensee holding a license on the first day of July, one thousand nine hundred sixty-nine, and continuously thereafter, shall be exempt from the continuing professional education requirement.

§30-40-17. Place of business; branch offices; display of certificates; custody of license certificates; change of address; change of employer by a salesperson or associate broker; license certificates; term of license.

(a) Every person holding a broker's license under the provisions of this article shall:

(1) Have and maintain a definite place of business within this state, which shall be a room or rooms used for the transaction of real estate business and any allied business. The definite place of business shall be designated in the license certificate issued by the commission and the broker may not transact business at any other location, unless such other location is properly licensed by the commission as a branch office: *Provided*, That a nonresident broker who maintains a definite place of business in his or her jurisdiction of residence may not be required to maintain an office in this state if said jurisdiction offers the same privilege to licensed brokers of this state;

(2) Conspicuously display his or her broker's license in the main office and the license of each associate broker and salesperson employed by the broker who is primarily working from the main office;

(3) Conspicuously display his or her branch office license in each branch office and the license of each associate broker and salesperson employed by the broker who is primarily working from each branch office;

(4) Make application to the commission before changing the address of any office or within ten days after any change;

(5) Maintain in his or her custody and control the license of each associate broker and salesperson employed by him or her; and

(6) Promptly return the license of any associate broker or salesperson whose employment with the broker is terminated.

(b) Every person holding an associate broker's or salesperson's license under the provisions of this article shall:

(1) Conduct real estate brokerage activities only under the direct supervision and control of his or her employing broker, which shall be designated in the license certificate;

(2) Promptly make application to the commission of any change of employing broker: *Provided*, That it shall be unlawful to perform any act contained in this article, either directly or indirectly, after employment has been terminated until the associate broker or salesperson has made application to the commission for a change of employing broker and the application is approved.

- (c) The commission shall issue a license certificate which shall:
- (1) Be in such form and size as shall be prescribed by the commission;
 - (2) Be imprinted with the seal of the commission and shall contain such other information as the commission may prescribe: *Provided*, That a salesperson's and an associate broker's license shall show the name of the broker by whom he or she is employed;
 - (3) In the case of an active licensee, be mailed or delivered to the broker's main office address;
 - (4) In the case of an inactive licensee, be held in the commission office;
 - (5) Be valid for a period that coincides with the fiscal year beginning on the first day of July and ending on the thirtieth day of June and may be issued for a period covering more than one fiscal year at the discretion of the commission: *Provided*, That nothing contained herein shall authorize any person to transact real estate business prior to becoming properly licensed.

§30-40-18. Trust fund accounts.

(a) Every person licensed as a broker under the provisions of this article who does not immediately deliver all funds received, in relation to a real estate transaction, to his or her principal or to a neutral escrow depository shall maintain one or more trust fund accounts in a recognized financial institution and shall place all funds therein: *Provided*, That nothing contained herein shall require a broker to maintain a trust fund account if the broker does not hold any money in trust for another party.

(b) Funds that must be deposited into a trust fund account include, but are not limited to, earnest money deposits, security deposits, rental receipts, auction proceeds and money held in escrow at closing.

(c) Each trust fund account must be established at a financial institution which is insured against loss by an agency of the federal government and the amount deposited therein cannot exceed the amount that is insured against loss.

(d) Each trust fund account must provide for the withdrawal of funds without notice.

(e) No trust fund account may earn interest or any other form of income, unless specifically authorized by commission rule.

(f) The broker may not commingle his or her own funds with trust funds and the account may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that would violate his or her fiduciary obligations in relation to the trust funds: *Provided*, That nothing contained herein prevents the broker from depositing a maximum of one hundred dollars of his or her own money in the trust fund account to maintain a minimum balance in the account.

(g) No financial institution, in which a trust fund account is established under the provisions of this article, shall require a minimum balance in excess of the amount authorized in subsection (f) of this section.

(h) The broker shall be the designated trustee of the account and shall maintain complete authority and control over all aspects of each trust fund account, including signature authority: *Provided*, That only one other member or officer of a corporation, association or partnership, who is licensed under the provisions of this article, may be authorized to disburse funds from the account: *Provided, however*, That if disbursements from a trust fund account require two signatures, one additional member or officer may be a signatory as provided in this section.

(i) The broker shall, at a minimum, maintain records of all funds deposited into the trust fund account, which shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, to whom the money belongs, for whose account the money was received and other pertinent information concerning the

transaction. All records shall be open to inspection by the commission or its duly authorized representative at all times during regular business hours at the broker's place of business.

(j) The broker shall cause the financial institution wherein a trust fund account is maintained, to execute a statement, prepared by the commission, which shall include, but is not limited to:

- (1) Exact title of the account as registered by the financial institution;
- (2) The account number of the trust fund account;
- (3) Identification of all persons authorized to make withdrawals from the account;
- (4) Name and address of the financial institution;
- (5) Title of the person executing the statement on behalf of the financial institution;
- (6) Date the statement was executed; and

(7) Certification that the financial institution will notify the real estate commission if any checks drawn against the account are returned for insufficient funds and that the financial institution does not require a minimum balance in excess of the amount authorized in subsection (f) of this section.

(k) The broker shall execute a statement authorizing the commission, or its duly authorized representative, to make periodic inspections of the trust fund account and to obtain copies of records from any financial institution wherein a trust fund account is maintained. A copy of any authorization shall be accepted by any financial institution with the same force and effect as the original.

(l) The broker shall notify the commission, within ten days, of the establishment of or any change to a trust fund account.

(m) Nothing provided in this section creates any duty or obligation on a financial institution to monitor the activities of a broker designated as trustee of a trust fund account, except for those duties or obligations specifically provided in subsection (g) of this section and subdivision (7), subsection (j) of this section.

§30-40-19. Refusal, suspension or revocation of a license.

(a) The commission shall have full power to refuse a license for reasonable cause or to revoke, suspend or impose any other sanction against a licensee if the licensee:

(1) Obtains, renews or attempts to obtain or renew a license, for himself, herself or another, through the submission of any application or other writing that contains false, fraudulent or misleading information;

(2) Makes any substantial misrepresentation;

(3) Makes any false promises or representations of a character likely to influence, persuade or induce a person involved in a real estate transaction;

(4) Pursues a course of misrepresentation or makes false promises or representations through agents or any medium of advertising or otherwise;

(5) Uses misleading or false advertising;

(6) Uses any trade name or insignia of membership in any organization in which the licensee is not a member;

(7) Acts for more than one party in a transaction without the knowledge and written consent of all parties for whom he or she acts;

(8) Fails, within a reasonable time, to account for or to remit moneys or other assets coming into his or her possession, which belong to others;

(9) Commingles moneys belonging to others with his or her own funds;

(10) Advertises or displays a "for sale", "for rent" or other such sign on any property without an agency relationship being established or without the owner's knowledge and written consent;

(11) Advertises any property on terms other than those authorized by the owner;

(12) Fails to disclose, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, buyer or both;

(13) Fails to voluntarily furnish copies of the notice of agency relationship, listing contract, sale contract, lease contract or any other contract to each party executing the same;

(14) Pays or receives any rebate, profit, compensation, commission or other valuable consideration, resulting from a real estate transaction, to or from any person other than the licensee's principal: *Provided*, That this subsection may not be construed to prevent the sharing of compensation or other valuable consideration between licensed brokers;

(15) Induces any person to a contract to break the contract for the purpose of substituting a new contract with a third party;

(16) Accepts compensation as a salesperson or associate broker for any act specified in this article from any person other than his or her employer who must be a broker;

(17) Pays compensation to any person for acts or services performed either in violation of this article or the real estate licensure laws of any other jurisdiction;

(18) Pays a compensation to any person knowing that they will pay a portion or all of that which is received, in a manner that would constitute a violation of this article if it were paid directly by a licensee of this state;

(19) Violates any of the provisions of this article, any rule or any order or final decision issued by the commission;

(20) Procures an attorney for any client or customer, or solicits legal business for any attorney at law;

(21) Engages in the unlawful or unauthorized practice of law as defined by the supreme court of appeals of West Virginia;

(22) Commits or is a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or other device whereby any other person relies upon the word, representation or conduct of the licensee;

(23) Continues in the capacity of or accepts the services of any broker, associate broker or salesperson who is not properly licensed;

(24) Fails to disclose any information within his or her knowledge or to produce any document, book or record in his or her possession for inspection of and copying by the commission or its duly authorized representatives;

(25) Accepts other than cash or its equivalent as earnest money or other deposit unless this fact is disclosed in the contract to which the deposit relates;

(26) Accepts, takes or charges any undisclosed compensation on expenditures made by or on behalf of the licensee's principal;

(27) Discriminates against any person involved in a real estate transaction which is in violation of any federal or state antidiscrimination law, including any fair housing law;

(28) Fails to preserve for five years following its consummation, records relating to any real estate transaction;

(29) Fails to maintain adequate records on the broker's "trust fund account";

(30) In the case of a broker, fails to adequately supervise all associate brokers and salespersons employed by him or her;

(31) Breaches a fiduciary duty owed by a licensee to his or her principal in a real estate transaction;

(32) Directs any party to a real estate transaction in which the licensee is involved, to any lending institution for financing with the expectation of receiving a financial incentive, rebate or other compensation, without first obtaining from his or her principal the signed

acknowledgment of and consent to the receipt of the financial incentive, rebate or other compensation;

(33) Represents to any lending institution, or other interested party either verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon;

(34) Fails to disclose to an owner the licensee's true position if he or she directly or indirectly through a third party, purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase the property;

(35) Lends a broker's license to any person, including a salesperson, or permits a salesperson to operate as a broker;

(36) Has been convicted in a court of competent jurisdiction in this or any other jurisdiction of forgery, embezzlement, obtaining money under false pretense, bribery, larceny, extortion, conspiracy to defraud, any other similar offense, a crime involving moral turpitude, or a felony;

(37) Engages in any act or conduct which constitutes or demonstrates bad faith, incompetency or untrustworthiness, or dishonest, fraudulent or improper dealing;

(38) Induces any person to alter, modify or change another licensee's fee or commission for brokerage services, without that licensee's prior written consent;

(39) Negotiates a real estate transaction directly with any person that is represented exclusively by another broker, unless the conduct is specifically authorized by the other broker;

(40) Obtains, negotiates or attempts to obtain or negotiate a contract whereby the broker is entitled to a commission only to the extent that the sales price exceeds a given amount, commonly referred to as a net listing;

(41) Fails or refuses, on demand, to furnish copies of a document to a person whose signature is affixed to the document;

(42) In the case of an associate broker or salesperson, represents or attempts to represent a broker other than his or her employing broker;

(43) Fails to reduce a bona fide offer to writing;

(44) Guarantees, or authorizes or permits another licensee to guarantee, future profits which may result from a real estate transaction;

(45) Is disciplined by another jurisdiction if at least one of the grounds for that discipline is the same as or equivalent to one of the grounds for discipline in this article; or

(46) Engages in any other act or omission in violation of professional conduct requirements of licensees established by legislative rule of the commission.

(b) The provisions of this section shall be liberally construed in order to carry out the objectives and purposes of this article.

(c) As used in this section:

(1) The words "convicted in a court of competent jurisdiction" mean a plea of guilty or nolo contendere entered by a person or a verdict of guilt returned against a person at the conclusion of a trial;

(2) A certified copy of a conviction order entered in a court is sufficient evidence to demonstrate a person has been convicted in a court of competent jurisdiction.

(d) Every person licensed by the commission has an affirmative duty to report, in a timely manner, any known or observed violation of this article or the rules, orders or final decisions of the commission.

(e) The revocation of a broker's license shall automatically suspend the license of every associate broker and salesperson employed by the broker: *Provided*, That the commission shall issue a replacement license for any licensee so affected to a new employing broker, without charge, if a proper application is submitted to the commission

during the same license term.

(f) A licensee whose license has been revoked shall be ineligible to apply for a new license until after the expiration of two years from the date of revocation.

§30-40-20. Complaints; investigation.

(a) The commission may upon its own motion and shall upon the filing of a complaint setting forth a cause of action under this article or the rules promulgated thereunder, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license, or the imposition of sanctions against a licensee.

(b) The commission shall consider complaints which are submitted in writing and set forth the details of the transaction.

(c) Upon initiation or receipt of the complaint, the commission shall provide a copy of the complaint to the licensee for his or her response to the allegations contained in the complaint. The accused party shall file an answer within twenty days of the date of service. Failure of the licensee to file a timely response may be considered an admission of the allegations in the complaint: *Provided*, That nothing contained herein shall prohibit the accused party from obtaining an extension of time to file a response, if the commission, its executive director or other authorized representative permits the extension.

(d) The commission may cause an investigation to be made into the facts and circumstances giving rise to the complaint and any person licensed by the commission has an affirmative duty to assist the commission, or its authorized representative, in the conduct of its investigation.

(e) After receiving the licensee's response and reviewing any information obtained through investigation, the commission shall determine if probable cause exists that the licensee has violated any provision of this article or the rules.

(f) If a determination that probable cause exists for disciplinary action, the commission may hold a hearing in compliance with section twenty-one of this article or may dispose of the matter informally through a consent agreement or otherwise.

§30-40-21. Hearings; judicial review; cost of proceedings.

(a) Hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and the commission's rules.

(b) Hearings shall be held at a time and place determined by the commission, but in no event less than thirty days after the notice of hearing is given.

(c) Any member has the authority to administer oaths and to examine any person under oath.

(d) If, after hearing, the commission determines the licensee has violated any provision of this article, or the commission's rules, a formal decision shall be prepared which contains findings of fact, conclusions of law and specifically lists the disciplinary actions imposed.

(e) The commission may elect to have an administrative law judge or hearing examiner conduct the hearing. If the commission makes this election, the administrative law judge or hearing examiner, at the conclusion of a hearing, shall prepare a proposed order which shall contain findings of fact and conclusions of law. The commission may request that disciplinary actions imposed be a part of the proposed order, or may reserve this obligation for its consideration. The commission may accept, reject or modify the decision of the administrative law judge or hearing examiner.

(f) Any person adversely affected by any decision or final order made by the commission, after a hearing, is entitled to judicial review by the circuit court of the county where the hearing was held.

(g) In addition to any other sanction imposed, the commission may require a licensee to pay the costs of the proceeding.

§30-40-22. Penalties for violations.

(a) Any person violating a provision of this article or the commission's rules is guilty of a misdemeanor. Any person convicted of a first violation shall be fined not less than one thousand dollars nor more than two thousand dollars, or confined in the county or regional jail not more than ninety days, or both fined and confined;

(b) Any person convicted of a second or subsequent violation shall be fined not less than two thousand dollars nor more than five thousand dollars, or confined in the county or regional jail for a term not to exceed one year, or both fined and confined;

(c) Any corporation, association or partnership convicted of a first violation of this article or the commission's rules, shall be fined not less than two thousand dollars nor more than five thousand dollars;

(d) Any corporation, association or partnership convicted of a second or subsequent violation, shall be fined not less than five thousand dollars nor more than ten thousand dollars;

(e) Any officer, member, employee or agent of a corporation, association or partnership, shall be subject to the penalties herein prescribed for individuals;

(f) Each and every day a violation of this article continues shall constitute a separate offense;

(g) In addition to the penalties herein provided, if any person receives compensation for acts or services performed in violation of this article, he or she shall also be subject to a penalty of not less than the value of the compensation received nor more than three times the value of the compensation received, as may be determined by a court of competent jurisdiction. Any penalty may be recovered by a person aggrieved as a result of a violation of this article.

(h) The penalties provided in this section do not apply to a violation of the duties or obligations of a financial institution under the certification required by subdivision (7), subsection (j), section eighteen of this article by a financial institution providing trust fund account services to a broker.

§30-40-23. Single act evidence of practice.

One act by any person in consideration of receiving compensation, or with the expectation or intention of receiving such compensation, or upon the promise of receiving compensation for any act or service contained in this article shall constitute and consider the person a broker, associate broker or salesperson subject to the provisions of this article.

§30-40-24. Injunctions; criminal proceedings.

(a) Whenever the commission or other interested person believes that any person has engaged, is engaging or is about to engage in any act that constitutes a violation of this article, the commission or other interested person may make application to any court of competent jurisdiction for an order enjoining the acts or services. Upon a showing that the person has engaged in or is about to engage in any act which violates this article, an injunction, restraining order or another appropriate order may be granted by the court without bond.

(b) Whenever the commission, its executive director or its authorized representative has reason to believe that any person has knowingly violated a provision of this article, the commission or its authorized representative may bring its information to the prosecuting attorney in the county where the violation has occurred who shall cause appropriate criminal proceedings to be brought.

(c) Whenever any other interested person has reason to believe that any person has knowingly violated a provision of this article, such person may bring its information to the attention of the appropriate law-enforcement officer who may cause an investigation to be

made in order for appropriate criminal proceedings to be brought.

§30-40-25. Collection of compensation.

No person may bring or maintain any action in any court of this state for the recovery of compensation for the performance of any act or service for which a broker's license is required, without alleging and proving that he or she was the holder of a valid broker's license at all times during the performance or rendering of any act or service: *Provided*, That an associate broker or salesperson shall have the right to institute suit in his or her own name for the recovery of compensation from his or her employing broker for acts or services performed while in the employ of said employing broker.

§30-40-26. Duties of licensees.

Every broker, associate broker and salesperson owes certain inherent duties to the consumer which are required by virtue of the commission granting a license under this article. The duties include, but are not limited to:

(a) At the time of securing any contract whereby the broker is obligated to represent a principal to a real estate transaction, every licensee shall supply a true legible copy of the contract to each person signing the contract.

(b) Any contract in which a broker is obligated to represent a principal to a real estate transaction shall contain a definite expiration date, and no provision may be included in any contract whereby the principal is required to notify the broker of his or her intention to cancel the contract after the definite expiration date.

(c) No provision may be inserted in any contract for representation that would obligate the person signing the contract to pay a fee, commission or other valuable consideration to the broker, after the contract's expiration date, if the person subsequently enters into a contract for representation with a different broker.

(d) Every licensee shall disclose in writing, on the notice of agency relationship form promulgated by the commission, whether the licensee represents the seller, the buyer or both. The disclosure shall be made prior to any person signing any contract for representation by a licensee or a contract for the sale or purchase of real estate.

(e) Every licensee shall promptly deliver to his or her principal, every written offer received.

(f) Every licensee shall make certain that all the terms and conditions of a real estate transaction are contained in any contract prepared by the licensee.

(g) At the time of securing the signature of any party to a contract, the licensee shall deliver a true copy of the contract to the person whose signature was obtained.

(h) Upon the final acceptance or ratification of any contract, the licensee shall promptly deliver a true copy to each party that has signed the contract.

§30-40-27. Duration of existing licenses.

Any valid license issued by the commission to a broker, associate broker or salesperson pursuant to the provisions of article twelve, chapter forty-seven of this code prior to the effective date of this article shall continue to be valid until the thirtieth day of June, two thousand two.

§30-40-28. Repealed.

Chapter 32, Acts of the Legislature, Regular Session, 2010

**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 21, 2014

1.4. Effective Date. -- April 21, 2014

§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.

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

**SERIES 2
SCHEDULE OF FEES**

§174-2-1. General.

1.1. Scope. -- This legislative rule establishes the fees to be charged by the Commission.

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

1.3. Filing Date. -- April 21, 2014

1.4. Effective Date. -- June 30, 2014

§174-2-2. Schedule of fees.

2.1 Examination fee / Reexamination -- \$25.00, if the examination is administered by the Real Estate Commission.

2.2 Examination fee / Reexamination fee -- Up to \$150.00, not to exceed the actual cost to conduct the examination if the examination is provided by an accredited examination provider.

2.3 Original application fee -- \$25.00.

2.4 Broker / Associate broker license -- \$150.00, per year.

2.5 Salesperson license -- \$75.00, per year.

2.6 Branch office license -- \$150.00, per year.

2.7 Broker / Associate Broker renewal -- \$150.00, per year, payable by the fifteenth day of June.

2.8 Salesperson's renewal fee -- \$75.00, per year, payable by the fifteenth day of June.

2.9 Branch office renewal -- \$150.00 payable by the fifteenth day of June.

2.10 Change of Employing Broker -- \$10.00

2.11 Duplicate license -- \$10.00

2.12 Certification -- \$10.00

2.13 Change of name -- \$10.00

2.14 Change of office address -- \$10.00

2.15 Late renewal fee – \$10.00, in addition to the required renewal fee, for each renewal application postmarked between July 1, and September 30 of the year in which due.

2.16 Reinstatement fee – \$50.00, in addition to the required renewal fee, for each renewal application postmarked between October 1, and December 31 of the year in which due.

2.17 Reinstatement fee – \$100.00, in addition to the required renewal fee, for each renewal application postmarked between January 1, and June 15 of the year subsequent to the year in which due.

2.18 Roster of active licensees – \$100.00, one county – \$5.00

2.19 Course Provider registration fee for each continuing education course – \$50.00, per year.

2.20 Returned check charge – \$25.00.

2.21 Copies of public records – \$0.25 per page plus staff time, if applicable, but only if the total charge equals or exceeds \$5.00.

Failure to pay any of the fees required under this rule is just cause for revocation of or refusal to issue or renew a license.

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

**SERIES 3
REQUIREMENTS IN 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, instructors, courses and the content of pre-license education courses and continuing education courses.

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

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

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

§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.

§174-3-3. Real Estate Courses, Course Providers and Instructors.

3.1. Certification of Commission. -- All real estate courses, course providers and instructors must be certified by and registered with the Commission prior to offering or conducting 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. Post-Secondary Education Institutions accredited by an accrediting agency officially recognized by the United States Department of Education are approved providers.

3.2. Pre-License Education.

a. The ninety hour (six credit hour) 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

b. The additional ninety hour (six credit hour) 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.

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

A = 95%-100% D = 71%-74%

B = 86%- 94% F = 00%-70%

C = 75%- 85%

In order to sit for the real estate examination, the applicant must have earned a grade of A, B or C in each subject area.

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, the course completion date, the number of hours in each subject area, and the letter grade earned.

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.

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.

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. Continuing Education.

a. Guidelines

1. All continuing education courses should contribute directly to the professional competence of the individual.

2. Materials used in programs should be developed by qualified individuals for use with specified

teaching methods.

3. Program content must be current.

b. A provider 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.

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

d. The Commission will 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.

e. When approved audio or video tapes are used, a certified instructor must be present at all times while class is in session.

f. Instructors of continuing education courses 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 credit shall be given for subsequent teaching of the same course.

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 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.

h. Distance Education Courses.

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

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. 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%.

3.4. 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 shall 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.

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

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;

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

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;

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

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

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.

**TITLE 174
PROCEDURAL RULE
WEST VIRGINIA REAL ESTATE COMMISSION**

**SERIES 4
PROCEDURE FOR THE INVESTIGATION AND RESOLUTION OF COMPLAINTS
AND CONTESTED CASE HEARINGS**

§174-4-1. General.

1.1. Scope. -- This rule specifies a procedure for the investigation and resolution of complaints against real estate brokers, associate brokers and salespersons and the conduct of contested case hearings.

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

1.3. Filing Date. -- March 21, 2007.

1.4. Effective Date. – April 20, 2007.

§174-4-2. Definitions.

The following words and phrases as used in this rule have the following meanings, unless the context otherwise requires:

2.1. “Commission” means the West Virginia real estate commission.

2.2. “Executive Director” means the executive director of the West Virginia real estate commission

2.3. “License” means a license to act as a broker, associate broker or salesperson.

2.4. “Licensee” means a person holding a license.

§174-4-3. Causes for Denial of Licenses or Discipline of Licensees.

3.1. The Commission may deny an application for license, place a licensee on probation, limit or restrict a license, suspend or revoke any license, or otherwise discipline any licensee in accordance with these rules and W. Va. Code § 30-40-1, et seq., upon satisfactory proof that a licensee has been convicted of a felony or is engaged in conduct, or committed other acts, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of W. Va. Code § 30-40-1, et seq., or the rules of the Commission.

§174-4-4. Disposition of Complaints.

4.1. The Commission may upon its own motion and shall upon the filing of a complaint by any person setting forth a cause of action under W. Va. Code § 30-40-1, et seq., or the rules promulgated thereunder, ascertain the facts and if warranted hold a hearing to determine whether disciplinary action should be imposed against a licensee.

4.2. The Commission will consider complaints of alleged violations of W. Va. Code § 30-40-1, et seq., and the rules promulgated thereunder, 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.

4.3. Upon initiation or receipt of the complaint, the Commission shall provide a copy of the complaint to the licensee for his or her response to the allegations contained in the complaint. The accused party shall file an answer within twenty days of the date of service. Failure of the licensee to file a timely response may be considered an admission of the allegations in the complaint: *Provided*, That nothing contained herein shall prohibit the accused party from obtaining an extension of time to file a response, if the Commission, its Executive Director or other authorized representative permits the extension.

4.4. Requests for a response to the allegations contained in a complaint, or requests for additional information will be considered properly served when sent to the licensee's last known address. It is the responsibility of the licensee or applicant to keep the Commission informed of his or her current address.

4.5. After receiving the licensee's response to the complaint and reviewing any information obtained through investigation, the Commission shall determine if probable cause exists that the licensee has violated any provision of W. Va. Code § 30-40-1, et seq., the rules promulgated thereunder, or any order or final decision issued by the Commission.

4.6. Investigation of complaints

4.6.a. The Commission may, upon receipt of a complaint or upon its own motion, review and investigate alleged acts or omissions which the Commission reasonably believes constitute cause for disciplinary action. In order to determine if probable cause exists for a hearing on a complaint, the Executive Director, investigator(s) designated by Commission staff, or the chairperson of the Commission shall cause an investigation to be made into the allegations of the complaint. If the Commission determines that the complaint does not present facts which constitute a basis for disciplinary action, the Commission shall take no further action.

4.6.b. In connection with the investigation of a complaint, the Commission is authorized to subpoena witnesses, books, papers, records and any other evidence to help it determine whether a contested case proceeding should be instituted.

4.6.c. Every licensee has an affirmative duty to assist the Commission, or its authorized representative, in investigations performed by the Commission.

4.6.d. Upon completion of the investigation, the Commission may:

4.6.d.1. Order the matter to be further investigated;

4.6.d.2. Allow the licensee, who is the subject of the complaint, an opportunity to appear before the Commission for an informal discussion regarding the facts and circumstances of the alleged violations;

4.6.d.3. Determine there is no probable cause to believe a disciplinary violation has occurred and close the case; or

4.6.d.4. Determine there is probable cause to believe that a disciplinary violation has occurred and proceed with a contested case hearing or dispose of the matter through a consent agreement or otherwise.

§174-4-5. Contested Case Hearing.

5.1. Hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and the Commission's rules.

5.2. Hearings shall be held at a time and place determined by the Commission, but in no event less than thirty days after the notice of hearing is given.

5.3. Any member of the Commission has the authority to administer oaths and to examine any person under oath.

5.4. If, after hearing, the Commission determines the licensee has violated any provision of W. Va. Code § 30-40-1, et seq., the Commission's rules or any order or final decision issued by the Commission, a formal decision shall be prepared which contains findings of fact, conclusions of law and specifically lists the disciplinary actions imposed.

5.5. The Commission may elect to have an administrative law judge or hearing examiner conduct the hearing.

5.5.a. In such cases where the Commission elects to utilize an administrative law judge or hearing examiner, the administrative law judge or hearing examiner shall:

5.5.a.1. Be in control of the proceedings as presiding officer,

5.5.a.2. Have the authority to administer oaths,

5.5.a.3. Have the authority to admit or exclude testimony or other evidence, and

5.5.a.4. Have the authority to rule on all motions and objections.

5.5.b. At the conclusion of a hearing, the administrative law judge or hearing examiner shall prepare a proposed order which shall contain findings of fact and conclusions of law. The Commission may request that the administrative law judge or hearing examiner additionally prepare and submit proposed disciplinary action, if any and where warranted, to be taken against the licensee in the proposed order. The Commission may accept, reject or modify the proposed decision of the administrative law judge or hearing examiner.

5.6. Contested case hearings shall be recorded either by mechanical or electrical means or by certified shorthand reporters. Contested case hearings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription to be charged to the requesting party. The recording, stenographic notes or transcription of oral proceedings shall be filed with and maintained by the Commission for at least five years.

§174-4-6. Subpoena Powers.

6.1. Commission subpoenas for books, papers, records, and other evidence will be issued to a party upon request. Subpoenas for witnesses may also be obtained. The Executive Director of the Commission, or other representative designated by the Commission, shall issue all subpoenas for both parties upon reasonable cause shown. The request must specify the documents sought to be obtained and the full names and addresses of the witnesses whose testimony is sought.

6.2. Discovery procedures shall consist of those procedures authorized under the State Administrative Procedure Act found in W. Va. Code § 29A-5-1, et seq.

6.3. In the event of a refusal to obey a subpoena, either party or the Commission may petition the circuit court for its enforcement. If a proper showing is made, the circuit court shall order the person to obey the subpoena; if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

§174-4-7. Conduct of Hearing.

7.1. If a licensee, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the Commission or presiding officer may proceed to conduct the hearing (or may enter such other order or judgement deemed appropriate) and the licensee shall be bound by the results of such hearing to the same extent as if the licensee were present.

7.2. Before testimony is presented, the record shall show the identity of any Commission members present, of the presiding officer, and of the primary parties and their representatives, and shall reflect that all testimony is being recorded. The licensee may challenge any member of the Commission for cause prior to the commencement of the hearing; the members of the Commission (with the challenged member abstaining) shall decide by the majority vote whether cause exists and whether the challenged member shall participate in the hearing. The Commission or presiding officer shall set dates, times and rules for hearings and shall rule on all issues. Hearings shall generally be conducted in the following order, subject to modification at the discretion of the

Commission or presiding officer:

7.2.a. The Presiding Officer may read a summary of the charges and answers thereto, and other responsible pleadings filed by the licensee prior to the hearing.

7.2.b. The Assistant Attorney General representing the State's interest before the Commission may make a brief opening statement, which may include a summary of charges and the witnesses and documents to support such.

7.2.c. The licensee shall be offered the opportunity to make an opening statement.

7.2.d. The presentation of evidence on behalf of the State, including a summary at the close of the evidence on behalf of the State.

7.2.e. The presentation of evidence on behalf of the licensee.

7.2.f. Rebuttal evidence on behalf of the State, if any.

7.2.g. Rebuttal evidence on behalf of the licensee, if any.

7.2.h. Closing arguments, if any, by all interested parties on behalf of the Commission and on behalf of the licensee.

7.3. The Commission may grant immunity from disciplinary action to a witness, but only upon a majority vote of the Commission members present. If the hearing is being presided over by an administrative law judge or hearing examiner, the administrative law judge or hearing examiner, shall have authority to grant immunity from disciplinary action before the Commission to a witness. The official record of the hearing shall include the reasons for granting the immunity.

7.4. Admissibility of evidence at the hearing shall be governed by the terms of the West Virginia Administrative Procedure Act. Copies of documents offered as evidence at the hearing shall be provided to opposing parties. Copies must also be furnished to members of the Commission. Notwithstanding the foregoing, to the extent the licensee believes he or she is being asked to reply to accusations, charges, innuendoes, or facts for the first time in the hearing, the licensee shall be afforded the opportunity to respond to any such evidence to the Commission either in writing or at a subsequent scheduled meeting of the Commission; the Assistant Attorney General assigned to prosecute the case before the Commission shall, however, be allowed to continue to present evidence during the hearing.

7.5. When a majority of the Commission presides over the reception of evidence at the hearing, the decision is a final decision.

7.6. Upon the motion of the Commission or any party assigning error or omission in any part of any transcript, the Commission or its appointed administrative law judge or hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and/or revised as appropriate so as to make

it conform to the truth.

§174-4-8. Disposition.

8.1. At the conclusion of any contested case hearing the Commission or presiding officer shall make Findings of Fact and Conclusions of Law and may:

8.1.a. Dismiss the charges. In the event the charges are dismissed, and before a decision by the Commission is reported, the file shall be confidential;

8.1.b. Impose one or more sanctions as considered appropriate in the circumstances for the discipline of a licensee. Available sanctions include, but are not limited to, denial of a license or renewal thereof, administrative fine not to exceed one thousand dollars per day per violation, probation, revocation, suspension, reexamination, restitution, require additional education, censure, denial of future license, downgrade of license, reprimand, impose all costs associated with the investigation and prosecution of the licensee upon the licensee, order the return of compensation collected from an injured consumer, or any other sanction pursuant to W. Va. Code § 30-40-1, et seq.

§174-4-9. Final Decision.

9.1. The final decision of the Commission shall be filed with the Executive Director. A copy of the decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's last known address or may be served in the manner of original notices upon the licensee.

§174-4-10. Judicial Review.

10.1. Any person adversely affected by any decision or final order made by the Commission, after a hearing, is entitled to judicial review by the circuit court of the county where the hearing was held.

§174-4-11. Application for Reinstatement.

11.1. Any person whose license or certification has been revoked or suspended by the Commission may apply to the Commission for reinstatement in accordance with the terms of the order of revocation or suspension. If an order of revocation does not establish terms upon which reinstatement might occur, an initial application for reinstatement may not be made until two (2) years has elapsed from the date the order becomes effective, and successive applications shall be made no more often than once every two (2) years.

§174-4-12. Publication of Decisions.

12.1. Final decisions of the Commission relating to disciplinary actions, including consent agreements and consent orders, may be transmitted to the appropriate professional association(s), other licensing jurisdictions, news media and other interested persons or organizations.