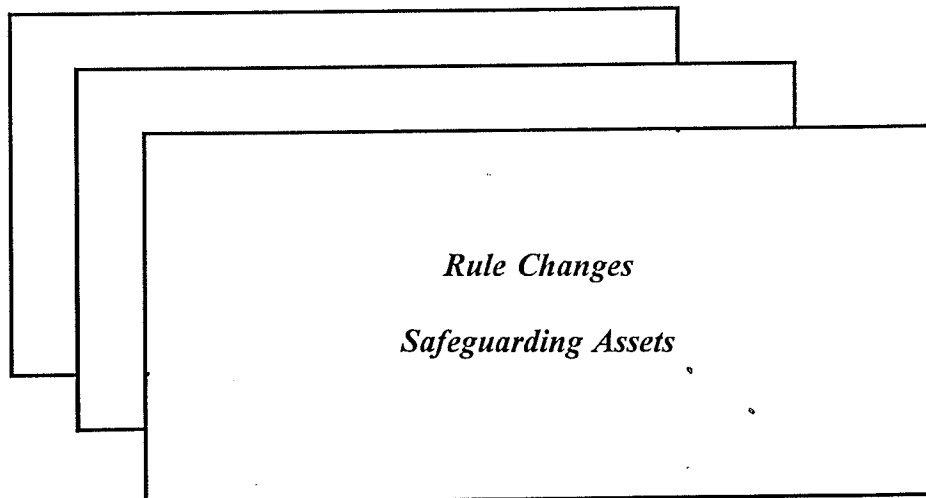


STATE OF WEST VIRGINIA
UPDATE ON PERFORMANCE
EVALUATION

OF THE
REAL ESTATE COMMISSION



OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation & Research Division
CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305

PE94-16-16

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Antonio E. Jones, Ph.D.
Director

January 6, 1995

The Honorable A. Keith Wagner
State Senate
Box 446
Jaeger, West Virginia 24844

The Honorable Joe Martin
House of Delegates
Building 1, Room 213E
1900 Kanawha Blvd. East
Charleston, West Virginia 25305

Gentlemen:

This is an update on the Real Estate Commission which we will report to the Joint Committee on Government Operations on Sunday, January 8, 1995. The issues covered herein are the "Rule Changes and Safeguarding Assets."

Let us know if you have questions.

Sincerely,



Antonio E. Jones

AEJ/wsc

Enclosure

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This is an update of the Preliminary Review of the Real Estate Commission dated January 9, 1994. This update provides (1) problems identified; (2) Recommendations; (3) Compliance with recommendations. A complete copy of proposed rules containing amendments conforming to the recommendations made by PERD are in Appendix A.

I.

PROBLEM IDENTIFIED: The following finding concerning the safeguarding of assets was noted in the 1987 audit has been corrected in part, but still continues during renewal time.

"During the time of our review, we observed large numbers of renewal forms with checks attached which were stacked in unsecured areas of the commission office over a period of several weeks. The commission's policy of not placing checks in the safe until the renewal has been entered in the computer and depositing receipts only after the license has been issued is an unsound business practice which could result in a loss of revenues through fire or theft, and appears to be directly related to the number of checks returned to the commission because of 'insufficient funds'."

Currently, all checks that accompany forms for renewals and other fees remain with the form until the information is input into the computer. Checks are then put into the safe until deposited in the bank. All cash is put into the safe upon being opened by the staff. The only time a problem occurs, according to the Executive Director, is during the renewal period when large amounts of mail come into the office. During this time, it is not possible for the staff to process all of the paperwork in one day, especially if the mail is delivered late. Checks are not left lying around, but there is still the possible loss from theft or fire. The reason this seems to be a problem is the safe is not large enough to handle the volume of mail that the office receives during the renewal period. There is no way to provide an accurate total on how much money would not be safeguarded during the renewal period; however, the size of the deposit during this time would indicate that it would exceed \$1000.00 in checks and perhaps cash.

RECOMMENDATION #1: We recommend four different ways to alleviate this problem:

A. Stagger the renewal dates with brokers and salespersons renewing their licenses on the anniversary of receiving their license, or having quarterly renewal dates.

B. Go to the lockbox system used by other state agencies. This system would route the mail away from the Real Estate Commission's office completely. Renewal applications would go through the Board of Investments, or the

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lockbox could be contracted with a local bank. Additional employee hours may be realized and used to improve other functions of the Commission. This system could possibly help with the following problem of bad checks, because checks would be deposited faster and collected from the licensee's accounts before a problem would occur with insufficient funds.

C. Purchase a larger safe that would hold the volume of mail received during renewal time.

D. Open the mail and making a copy of the checks attached and then putting the checks in the safe.

Either of these four methods used independently or used in conjunction with another would possibly help in solving this reoccurring problem. For example, the Commission could use the lockbox system with a staggered renewal date. Although the Commission meets the WV Code requirements regarding deposits, daily deposits would help the deposited moneys earn more interest. Other agencies have to deposit daily to comply with Section 2 of Chapter 12, Article 2 of the WV Code. The Real Estate Commission is only required by Chapter 47, Article 12, Section 10, to deposit monthly, but makes deposits semi-monthly.

COMPLIANCE: The Real Estate Commission accepted recommendation C., which involved purchasing a larger safe to hold the large volume of mail the Commission receives during renewal time. PERD has verified by visitation that the Commission has purchased a larger safe.

II.

PROBLEM IDENTIFIED: During the previous audit it was found that a problem was occurring with bad checks and non-compliance with Section 30.1 of the Administrative Regulations (currently 28.1). The rule stated in part:

"Bad Checks - checks issued by a broker or salesman which are returned marked NSF (nonsufficient funds) or are not honored for any cause, are considered prima facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. If issued in payment of a license or license renewal, and a license is issued on the basis of such payment, such license will be immediately cancelled or revoked."

The Commission still does not immediately enforce this regulation. The reason for this, according to the Executive Director, is cost effectiveness. To enforce the rule, a hearing must be held which results in added cost to the Commission. Prior to Mr. Strader becoming the Executive Director, the Commission did have problems with returned checks. However, upon

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receipt of a bad check, the staff now sends out a letter notifying the person and requesting payment in the form of a certified check or money order. The individual is given two weeks to respond. If no payment is received, another notice is sent. If, after an additional two weeks, no response is received regarding the second notice, the matter is turned over to a collection agency. This process usually results in payment from active licensees. Thus far, the current Executive Director has not had to enforce the rule on licensure revocation. In addition, the policy of semi-monthly deposits allows checks to be deposited faster. In the prior audit it was noted that checks were held for several months, which probably accounted for many of the bad checks that the Commission processed.

RECOMMENDATION #2: We recommend the Commission either enforce or amend the administrative rule. The Executive Director is using a sound method to collect bad checks; however, a rule still exists requiring the Commission to revoke a license when the rule is violated. The rule could be amended to include the present method of collecting bad checks or the Commission could simply not issue a license until a check has cleared the bank.

COMPLIANCE: The Commission amended administrative rule 28.1 to read:

28.1 Bad checks. -- Checks issued by any applicant or licensee which are returned marked NSF (Nonsufficient 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 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 may refuse to issue or may cancel a license which was sought or obtained by the issuance of a bad check.

This change incorporates the PERD recommendation to amend the rule to reflect a method of collecting on the bad check.

III.

PROBLEM IDENTIFIED: The 1987 audit also noted that the Commission did not require any form of identification for a person to take the licensure exam other than the letter sent notifying the individual of the test date and location. The Commission still does not require any form of ID for entrance into any exam. When questioned about this practice, the Executive Director

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responded by saying "the Commission thus far has never had a problem with impersonators trying to sit for the exam. By requiring an ID, it would take longer to check individuals in and lengthen the time spent by both the staff and the persons testing at the exam location." Mr. Strader added that if impersonators become a problem, the policy will be changed.

RECOMMENDATION #3: We recommend the Commission institute a policy or an administrative rule requiring some sort of identification for entrance to a licensing exam. While the Commission feels that it has not had a problem in the past with impersonators taking the exam, there is no way of telling if they do have a problem. The potential for fraudulent persons taking the exam exists. Other agencies who administer examinations, such as the Department of Employment Security giving the civil service test, do not seem to have a problem with requiring an ID.

COMPLIANCE: The Commission amended this rule to state:

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.

This meets the requirement and sufficiently solves the problem identified.

IV.

PROBLEM IDENTIFIED: Another finding from the last audit which has not been corrected is the renewal of licenses after the renewal date and the 90 day grace period. The current rule regarding renewal requires any salesperson or broker who does not renew their license within 90 days of the effective renewal period to take the exam again before a license may be issued. There are 50 instances listed in the Commission minutes that show persons during the 90 and 91 fiscal years were allowed to renew without meeting this requirement. It seems that these delinquent renewals are taken on a case by case basis. (See e.g. "Commission Minutes" Oct 23, 1990; Nov, 90; Dec, 90; Feb, 91; March, 91; Oct 22, 1991; Nov 19, 1991; and, Renewal Extended Oct 13, 1992)

RECOMMENDATION #4: We recommend the Commission begin following its own rules regarding delinquent renewals by requiring the offenders to take the licensure exam. Continuously bending the rule only shows the licensees that the administrative rules may be ignored and the Commission will take no action against them.

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COMPLIANCE: The Commission did not use our recommendation of simply enforcing the rule. They did however amend the rule to read:

13.3 Examination required.-- Any licensee who does not renew his or her license within ninety (90) days after the effective renewal date is required to undergo and successfully pass the written examination before being issued a license. Provided, the Commission may waive this requirement if good cause to do so is demonstrated by the licensee. Each request for a waiver will be considered by the Commission on a case by case basis. Any licensee who renew his or her license within ninety (90) days from the effective renewal date is not required to take the examination.

The Commission feels there are circumstances in many cases that need to be reviewed before refusing to renew a persons license. The PERD agrees and feels that this change to the rule sufficiently solves the problem by allowing brokers and agents to apply for waivers provided that the waivers are granted in a fair and consistent manner.

V.

PROBLEM IDENTIFIED: In reviewing the minutes of commission meetings and the legislative rules promulgated by the Commission, a finding was noted pertaining to the duty of licensees to report the pendency of civil or criminal proceedings to which they are a party.

"27.1. Licensee to inform Commission of court action. -- When any licensee is a party to any suit or proceeding, either civil or criminal, arising out of any transaction involving real property, it is the duty of the licensee to supply the Commission with a copy of the complaint, indictment, 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 which may be made, entered or imposed" (Emphasis supplied.)

This rule requires licensees to disclose information concerning civil or criminal proceedings related to a real estate transaction, but enforcement of the rule is very difficult and many cases go undetected by the Commission. In reviewing minutes of the Commission meetings, it is clear that licensees do not always report the fact of the pendency of proceedings nor do they report the conclusion of such proceedings. Mr. Strader explained that many civil cases are settled by insurance companies even though a broker or salesperson does not feel that he or she has done anything wrong. It seems that it is often cheaper for insurance companies to settle and avoid the expense of going to court. Also, it is impossible for the Commission to be aware of every

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case involving a broker or real estate salesperson unless the licensee volunteers the information or the Commission finds out by accident from another source.

RECOMMENDATION #5: We recommend the Commission implement a method to enforce this rule. Furthermore, this rule was promulgated by the Commission prior to the passage of the amendments (in 1993) expanding the authority of the Commission to take disciplinary action against Licensees engaging in any untrustworthy or dishonest conduct or who have been convicted of a felony or other crimes not necessarily related to a real estate transaction. Therefore, since the Commission now has such authority, the rule should be amended or the Commission has to develop and implement some type of system, with audit points, to timely track both the commencement and the outcome of both civil and criminal proceedings involving allegations for which the Commission may consider disciplinary action against a licensee.

COMPLIANCE: The Commission has complied in part by making the following improvements to the administrative rule:

27.1 Licensee to inform Commission of court 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, or is a party to 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, 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.

Enforcing this rule is difficult due to the court system not reporting the involvement of agents and brokers in litigation proceedings. The Commission does have a question on it applications and annual renewal forms asking applicants if they have been a party to any of these proceedings. In addition, the Commission conducts internal audits of brokers and checks for involvement of agents in legal proceedings. Furthermore, the professional nature of the industry compels many agents to report to the Commission the involvement of other agents/brokers in legal proceeding.

VI.

PROBLEM IDENTIFIED: A vacancy on the Commission occurred January 22, 1992, when Thomas Warden a Republican resigned. A replacement was not named by the Governor until October 17, 1993. Currently, there is no stipulation in Chapter 47, Article 12, of the West

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Virginia Code (WVC) as to how soon a replacement is to be named when a vacancy occurs on the Commission. Although the Commission was able to function with the two remaining Democratic members, the vacancy which remained unfilled for nearly two years could have hampered the ability of the Commission to function properly. During the time of the vacancy the statutes governing the Commission were revised extensively without the input of the third member who represents the "public generally."

RECOMMENDATION #6: An amendment should be made to Chapter 47, Article 12 specifying that a replacement be named by the Governor within 60 days after a vacancy occurs.

COMPLIANCE: The Commission does not have authority to appoint its own members.

VII.

PROBLEM IDENTIFIED: The time sheets accounting for the Commission members time spent on Commission business appear vague and unclear as to the time actually spent, the type of work performed and where performed. Section 3a, of Chapter 47, Article 12 stated the following for the period of this preliminary review:

§47-12-3 (1992 replacement volume) "Each member of the commission shall receive as full compensation for his services the sum of one hundred dollars per day for each full day actually spent on the work of the commission and his actual and necessary expenses incurred in the performance of duties pertaining to his office." (emphasis supplied)

Upon examination of the member's reports, which are supposed to account for the time spent on Commission business, it would appear that Commission members were paid the full amount of compensation for telephone calls, meetings and reviewing Commission material in their offices. However, there is no way to tell how much time was spent on each activity listed, because

Commission members did not indicate the actual amount of time spent on work performed. This lack of accountability gives a very bad impression of how the Commission members are compensated.

This office cannot dispute the days listed for compensation because there are no times listed. In the past the Commission members were paid "traditionally for three days" each month. Only in the last few years has this seemed to change. (see appendix B). A 1993 amendment, (not in effect during this review period), to §47-12-3 now allows the Commissioners to be paid "for each day or portion thereof engaged in the discharge of official duties." This amendment also changes the compensation rate from \$100 to \$50 per day; however, one Commissioner has

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already claimed 19 days for July and August 1993. The number of days compensated use to average only 36 days per year.

RECOMMENDATION #7: We recommend the following possible changes to §47-12-3:

A. The Commission change the time sheets by requiring an entry of actual time spent, as well as a clear indication of what work was performed for each entry.

B. The Commission limit the amount of days a member may be compensated for each year.

COMPLIANCE: The Commission accepted recommendation A. and changed the Commissioners time sheets by requiring entries of time spent on activities for the Commission. PERD feels this is a fair change since the code now allows payments "for each day or portion thereof" provided, that payments to Commissioners for only portions of days are fair and reasonable i.e. such as times totalling three to four hours.

APPENDIX A.

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #4

FILED

Oct 12 2 06 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: WV Real Estate Commission TITLE NUMBER: 174

CITE AUTHORITY WV Code 47-12-3&19

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: I

TITLE OF RULE BEING AMENDED: Requirements in Licensing Real Estate Brokers,
Associate Brokers and Salespersons and the Conduct of Brokerage Business.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE
FILED WITH THE SECRETARY OF STATE.



Authorized Signature
Richard E. Strader
Executive Director

TITLE 174
LEGISLATIVE RULES
REAL ESTATE COMMISSION

FILED

OCT 12 2 08 PM '94

SERIES 1
REQUIREMENTS IN LICENSING REAL ESTATE BROKERS, AND
SALESMEN ASSOCIATE BROKERS, AND SALESPERSONS AND THE
CONDUCT OF BROKERAGE BUSINESS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 174-1-1. General.

1.1. Scope. -- ~~These~~ This legislative rules ~~establishes~~ general regulations 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 ~~article twelve, chapter forty seven of the West Virginia~~ WV Code § 47-12-1 et seq., (1959).

1.2. Authority. -- WV Code §§ 47-12-3 and 19.

1.3. Filing Date. --

1.4. Effective Date. --

§ 174-1-2. Definitions.

2.1. Commission. -- The term "Commission" means the West Virginia Real Estate Commission as authorized by WV Code § 47-12-3.

2.2. Licensee. -- The term "licensee" means a broker, an associate broker, and a ~~salesman~~ salesperson as defined in WV Code § 47-12-2.

2.3. Applicant. -- The term "applicant" means any person, partnership, association or corporation who is making application to the Commission for a real estate 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 issues licenses ~~Licenses are issued~~ on an annual basis and fees are not prorated for fractional parts of a year.

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 ~~salesman~~ salesperson, who is duly licensed, desires to become a broker, his or her employing broker shall surrender his or her ~~salesman's~~ 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 under WV Code § 47-12-9. The Commission shall not give credit for the fee paid for the ~~salesman's~~ 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. The license shall show the name and business address of the licensee and, in case of a real estate ~~salesman's~~ salesperson's license, shall show the name of the real estate broker by whom he or she is employed. Each license shall be imprinted with the seal of the Commission and, shall contain such information as the Commission prescribes. The Commission shall deliver or mail the license of each real estate ~~salesman~~ salesperson and associate broker to the real estate broker by whom the licensee is employed, and the broker shall keep it in his or her custody and control.

4.2. Officers of a corporation. -- If a person applying for a broker's license is a member of a partnership or association or an officer of a corporation, the Commission shall issue the broker's license certificate in the name of the firm. All other members, officers or employees of the partnership, association or corporation who engage in any of the acts defined in WV Code § 47-12-2 must become licensed as an associate broker or ~~salesman~~ salesperson.

§ 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 office must register the branch office information annually 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. -- A licensed broker shall not employ, as manager of his or her branch office, a real estate ~~salesman~~ salesperson with less than two (2) years actual experience as a licensed real estate ~~salesman~~ salesperson.

§ 174-1-6. Cancellations And Transfers.

6.1. Custody of license certificates. -- The broker shall keep the license certificates of each ~~salesman~~ salesperson and associate broker in his or her custody at all times. Upon the termination of employment, the broker shall immediately return the license certificate to the Commission for cancellation.

6.2. Transfer of ~~salesman's~~ salesperson's or associate broker's license. -- In the event a ~~salesman~~ salesperson or associate broker wishes to transfer his or her real estate license, to a broker other than the broker under which he or she is presently employed, he or she must first notify his or her present employer and must submit a properly executed application to the Commission 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 ~~salesman~~ salesperson or associate broker makes application for transfer of his or her license to the employ of another broker, the transfer 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. -- WV Code § 47-12-4 among other required qualifications for a broker's license, provides that "every applicant for a license as real estate broker... shall have served a bona fide apprenticeship as a licensed real estate ~~salesman~~ salesperson for two (2) years or shall produce to the Real Estate Commission satisfactory evidence of real estate experience."

7.2. Apprenticeship. -- The Commission defines the word "apprenticeship," as used in WV Code § 47-12-4 to mean a broker-~~salesman~~ salesperson relationship wherein the ~~salesman~~ salesperson apprentice is taught the methods, techniques and terminology of the real estate business under the guidance and direction of a licensed 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. Affidavit of broker. -- Each and every broker, with whom a real estate ~~salesman~~ 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.

§ 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 all branch offices, 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 ~~salesmen~~ salespersons or associate brokers may be placed below the name of the broker.

§ 174-1-9. Advertising.

9.1. Broker advertising real estate. -- A broker shall not advertise by linear advertisement or otherwise, sell, buy, exchange, rent, lease or mortgage property in a manner indicating that the offer to sell, buy, exchange, rent, lease or mortgage such property is being made by a private party, not engaged in the real estate business. A broker shall not insert an advertisement in any publication where only a post-office box number, telephone number or street number appears. Every broker when advertising real estate, either through linear advertisement or otherwise, shall state in the advertisement either the individual name or firm name under which the broker operates and the term "Broker" or "Realtor" as the case may be. However, a broker whose firm name is that of a deceased person or that of a person not licensed with the firm, shall place his or her name in the ad and the term "Broker" or "Realtor" as the case may be: Provided, that if the broker, is the owner of the property which he or she is advertising, the broker has all the rights of a nonbroker owner.

9.2. ~~Salesmen~~ Salespersons and associate brokers prohibited. -- ~~Salesmen~~ Salespersons and associate brokers may not advertise to purchase any property or offer to sell, rent, or lease any property under their own names: Provided, that if a ~~salesman~~ salesperson or associate broker is the owner of the property which he or she is advertising, the ~~salesman~~ salesperson or associate broker has all the rights of an owner. All advertising of property listed by a broker, must be under the direct supervision 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.

10.2. Change of trade name. -- Each person, partnership, association or corporation, 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 Trade Stamps And Gifts.

11.1. Trade stamps prohibited. -- No real estate broker shall offer in exchange for the sale or listing of any real estate, trade stamps of the nature that may be redeemed for merchandise.

11.2. Offering of gifts prohibited. -- A ~~real estate broker or real estate salesman licensee~~ shall not offer door prizes, gifts, or anything of value, in exchange for the sale or listing of any real estate or while engaging in any other activity specified in WV Code § 47-12-2.

§ 174-1-12. Location Of Office.

12.1. 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 of each year regardless of the date the license was issued. It is the duty of all licensees to register annually with the Commission and to renew their licenses by paying the annual renewal fee for a license as set forth under WV Code § 47-12-9.

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 WV Code § 47-12-1 et seq.

13.3. Examination required. -- Any licensee who does not renew his or her license within ninety (90) days after the effective renewal date is required to undergo and successfully pass the written examination before being issued a license. Provided, the Commission may waive this requirement if good cause to do so is demonstrated by the licensee. Each request for a waiver will be considered by the Commission on a case by case basis. Any licensee who renews his or her license within ninety (90) days from the effective renewal date is not required to take the examination.

13.4. Continuing education. -- Each licensee applying for the renewal of his or her license shall furnish proof with his or her renewal application showing he or she has completed, in the fiscal year preceding the license renewal date, seven (7) hours of instruction in an approved real estate course. It is the responsibility of the broker to see that all licensees in his or her employ comply with this requirement prior to renewing their licenses.

a. This requirement does not apply to any licensee who held a license on the first day of July, one thousand nine hundred sixty-nine and continuously thereafter.

b. This requirement does not apply to any licensee who qualified to obtain an original license in the fiscal year preceding the annual renewal date.

c. During the time a licensee is on inactive status, the licensee does not need to comply with the continuing education requirement. When a licensee on inactive status reverts to active status he or she shall obtain seven (7) hours of continuing education prior to being placed on active status.

d. Non-resident licensees must comply with the continuing education requirement. However, if the non-resident's state or district has a comparable continuing education requirement and recognizes West Virginia continuing education credits as fulfilling that state or district's continuing education requirement, the Commission will accept continuing education credits earned in the other state or district.

§ 174-1-14. Time For Taking Examinations.

14.1. Appear for examination. -- An applicant who is required to take an examination shall appear for and be administered an examination on or before the expiration of one (1) month from the date of the notice that the Commission has approved the application or the application will be cancelled and the applicant must reapply.

§ 174-1-15. Qualifications For ~~Real Estate Salesman's~~ Salesperson's License.

15.1. Age. -- Every applicant for a license as a ~~real estate salesman~~ salesperson shall be eighteen (18) years of age or over.

15.2. Recommendation. -- The application for ~~salesman's~~ a salesperson's license shall be accompanied by the recommendation of at least two (2) citizens who are property owners at the time of signing the application and who have been property owners for at least twelve (12) months preceding application. The citizens must have known the applicant for two (2) years and may not be related to the applicant. They must certify that the applicant bears a good reputation for honesty and trustworthiness, and recommend that a license be granted to the applicant.

§ 174-1-16. Complaints.

16.1. Filing of complaint. -- The Commission will consider complaints of alleged violations of WV Code § 47-12-1 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 and other pertinent information. Only in this way can the Commission handle such matters expediently and satisfactorily.

16.2. Filing of deposits. -- When a hearing is scheduled, the Commission may require the complainant to deposit the amount of fifty dollars (\$50.00), payable to the hearing shorthand reporter. The purpose of the deposit is to defray the minimum cost of the proceedings if the complainant fails or refuses to attend the hearing. If the

complainant is present at the hearing, the deposit shall be immediately returned to the complainant.

§ 174-1-17. Trust Funds.

17.1. Maintain records. -- Every broker shall maintain in his or her name or firm name, a separate trust account in a recognized financial institution in which the broker shall deposit all funds not his or her own left in his or her possession, including funds in which the broker may have some future interest or claim and including but not limited to earnest money deposits. In conjunction with the account, the 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 account. The accounts and other records shall be open to inspection by the Commission and its duly authorized agents 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 WV Code § 47-12-1 et seq. by the broker.

17.2. ~~Salesman~~ Salesperson and associate broker with trust funds. -- Every real estate ~~salesman~~ 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 ~~salesman~~ salesperson or associate broker.

§ 174-1-18. Broker's Place Of Business.

18.1. Usual place of business. -- Usual place of business is defined as the space 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 this space in the broker's residence, but the space must be sufficient to maintain the records and accounts required in Section 17 of this rule and of sufficient space within which to carry on inspection of the accounts and records without interference by other users of the property.

§ 174-1-19. Closing Statements.

19.1. Deliver to seller and buyer. -- Every broker shall deliver to the seller in every real estate transaction wherein he or she acts as a real estate broker, at the time such transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by the broker. The broker shall also deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the moneys were disbursed. The broker shall retain true copies of the statements in his or her files for at least five (5) years.

§ 174-1-20. Commingling Defined.

20.1. Commingling. -- Commingling within the meaning of WV Code § 47-12-11 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 in accordance with WV Code § 47-12-18 by the next business day following their receipt. However, it is not commingling to hold an uncashed check until acceptance of an offer when directed to do so by the buyer or purchaser, and it is not commingling to hold an uncashed check after acceptance of an offer when directed to do so by the seller or purchaser. The broker must specifically disclose the fact that a check is being held in an uncashed form to the seller or purchaser before he or she accepts the offer.

§ 174-1-21. Handling Of Trust Money By ~~Salesman~~ Salesperson And Associate Broker.

21.1. Collection of money. -- No real estate ~~salesman~~ 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 ~~salesman~~ salesperson or associate broker shall immediately turn it over to his or her employing broker.

The Commission will consider the failure of a ~~salesman~~ salesperson or an associate broker to comply with this rule to be a violation of WV Code § 47-12-11.

§ 174-1-22. Signature Of Property Owners.

22.1. Application of broker, associate broker and ~~salesman~~ salesperson. -- The Commission shall reserve the right to refuse an application for either a broker, associate broker or ~~salesman's~~ salesperson's license wherein the person signing the application as a property owner is that of an employer, a partner, an associate or anyone affiliated in any manner with the individual or the partnership, association or corporation where the applicant will be employed.

§ 174-1-23. Falsifying Contracts.

23.1. Misrepresentation. -- No licensee shall represent to a lender or any other interested party, either verbally or through the preparation of a false sales contract, an amount in excess of the true and actual selling price. Such practice constitutes a gross misrepresentation. The Commission will consider such practice a violation of WV Code § 47-12-11.

§ 174-1-24. Procedure.

24.1. Procedure. -- The Commission will observe the provisions of WV Code § ~~29a-5~~ 29A-1 et seq. during the course of any hearing on denial of an application for a license or the suspension or revocation of a license.

The Commission shall not hear any case except in the presence of at least two (2) Commissioners. Any Commissioner not present shall have a reasonable time before any decision is rendered, to review the record and thereafter participate in the decision of the Commissioners. Should the absent Commissioner be unable for any reason to review the records of any hearing within a reasonable time, then the other Commissioners may render their decision without the participation of the absent Commissioner.

§ 174-1-25. Examination.

25.1. 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.

25.2. Reexamination. -- The Commission will give a notice of failure to an applicant who fails to attain a passing grade on the first examination. The Commission will schedule a second examination and will give the applicant written notice of when and where to appear.

25.3. Review of examination. -- An applicant for a real estate license who fails the examination after two (2) attempts may review the examination papers by making written request to the Commission.

25.4. Payment of license fee. -- An applicant for a real estate license, upon successfully passing the examination, must pay the required license fee within ninety (90) days 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 ninety (90) days. The Commission will require the applicant to reapply and successfully pass the examination in the event the applicant wishes to obtain a real estate license.

§ 174-1-26. Requirements Of Broker.

26.1. Brokers becoming licensed ~~salesmen~~ 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 fee be issued a ~~salesman's~~ salesperson's license. Under this procedure he or she need not qualify in the ~~salesman's~~ salesperson's examination. The resulting ~~salesman~~ salesperson may reinstate the broker's license at any future date upon filing the appropriate application and fee. A broker's examination is not required under this procedure if the broker applicant is the holder of a current ~~salesman's~~ salesperson's license.

26.2. Brokers employed by other brokers as ~~salesmen~~ salesperson. -- Brokers who, by written or oral agreement, are ~~salesmen~~ salesperson employees of another broker or brokers, and who do not engage in any real estate transactions independent of their employer, are still considered a broker by the Commission in respect to all the requirements and responsibilities set forth in WV Code § 47-12-1 et seq.

26.3. Brokers who rent desk space in a real estate office. -- A broker who rents desk space within a real estate office and whose 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.

26.4. 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 commission is earned, and the broker shall return the deposit to the purchaser at once and the broker should look to the owner for his or her compensation being held in the trust fund account. The Commission will consider a violation of this ~~rule~~ subsection to be a violation of WV Code § 47-12-11.

§ 174-1-27. Court Action.

27.1. Licensee to inform Commission of court action. -- When any licensee is a party to any civil suit or proceeding, ~~either civil or criminal~~, arising out of any transaction involving real property other than actions for eviction or for the collection of back rent, or is a party to 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, 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 ~~which may be made, entered or imposed~~.

§ 174-1-28. Bad Checks.

28.1. Bad checks. -- Checks issued by any applicant or licensee which are returned marked NSF (Insufficient Funds) or are not honored for any cause, are may be considered prima-facie evidence of untrustworthiness or incompetency in such a manner to endanger the interest of the public. ~~If issued in payment for a license or license renewal, and a license is issued on the basis of the payment, the Commission will immediately cancel or revoke the license. Where a check or checks are incorrectly returned by a bank or other depository because of the bank's or depository's error, a statement to that effect from the institution is required before the Commission will reissue a license.~~ The Commission will afford the 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 may refuse to issue or may cancel a license which was sought or obtained by the issuance of a bad check.

§ 174-1-29. Agency Disclosure.

29.1. 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 offer to purchase, to sell, or to exchange real estate for which a broker's license is required by § WV Code 47-12-1 et seq.

29.2. 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. Provided, that if the seller has given prior written permission for the property to be shown by an agent representing the buyer, the licensee is not required to provide further notification prior to showing the property.

29.3. A real estate broker shall provide written notice to all parties prior to paying a fee, commission or other valuable consideration to a broker representing another party to the transaction.

29.4. 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.

29.5. 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.

29.6. In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt of notice of agency disclosure, the licensee shall sign and date a written declaration setting forth the facts of the refusal.

§ 174-1-30. Real Estate Courses, Course Providers and Instructors.

30.1. Certification of Commission. -- All real estate courses, course providers and instructors must be certified by the Commission prior to offering or conducting a course of education in compliance with the pre-license education requirement as defined in WV Code §§ 47-12-4(3) and (4) or the continuing education requirement as defined in WV Code § 47-12-7a. Post-Secondary Education Institutions accredited by an accrediting agency officially recognized by the United States Department of Education are approved providers.

30.2. 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 30.1 of this rule are exempt from this ~~requirement~~ paragraph.

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.

30.3. Continuing Education

a. Guidelines

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

B. Materials used in programs should be developed by qualified individuals for use with specified teaching methods.

C. 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. The application shall be accompanied by a copy of all course materials proposed to be used in the course, a copy of any proposed advertisement 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 law, 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 30.1 of this rule, are exempt from this ~~requirement~~ paragraph.

h. Correspondence Courses.

A. The Commission will not approve any correspondence course that is not structured and cannot be monitored.

B. Each correspondence 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.

C. 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%.

30.4. Instructors

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:

A. 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;

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

C. Is a licensed real estate broker with a minimum of five (5) years experience in the area of study he or she proposes to teach;

D. 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

E. 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.

30.5 Promotion of products or services. -- A course provider or instructor may not promote any product or service while offering or conducting any pre-license or continuing education course.