

WEST VIRGINIA
REAL ESTATE LICENSE ACT
AND
LEGISLATIVE RULES

CODE OF WEST VIRGINIA
CHAPTER 30, ARTICLE 40



ISSUED BY THE
WEST VIRGINIA
REAL ESTATE COMMISSION

300 CAPITOL STREET, SUITE 400
CHARLESTON, WEST VIRGINIA 25301

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COMMISSION FOREWORD

The West Virginia Real Estate License Act (WV Code §30-40-1 et seq.) has the principal purpose of protecting the public against unscrupulous practices of real estate salespersons. The law mandates that the Real Estate Commission shall do all things necessary and convenient for carrying into effect the provisions of WV Code §30-40-1 et seq., and may from time to time promulgate reasonable, fair and impartial rules and regulations. To comply with this mandate the Commission has promulgated legislative rules Title 174 Series 1, Series 2, Series 3, Series 4, Series 6, Series 7 and Interpretative Series 5.

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West Virginia Real Estate Commission
300 Capitol Street, Suite 400
Charleston, WV 25301
(304)-558-3555
(304)558-6442 Fax
rec.wv.gov

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West Virginia Real Estate License Act

§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: Provided, That no disciplinary action may be brought against a licensee upon any complaint that is filed more than two years after the acts or omissions alleged in the complaint or, where the licensee is alleged to have engaged in fraud, deceit or misrepresentation, more than two years after the date at which the complaint discovered, or through reasonable diligence should have discovered, the alleged unprofessional conduct. Time limits for the filling of a complaint shall be tolled during any period in which material evidence necessary for the commission's evaluation or use is unavailable to the commission due to an ongoing criminal investigation or prosecution.

(b) All complaints must be submitted in writing and must fully describe the acts or omissions constituting the alleged unprofessional conduct.

(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

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**LEGISLATIVE RULE
REAL ESTATE COMMISSION**

SERIES 1

**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 19, 2021

1.4. Effective Date. -- July 1, 2021

1.5. Sunset Provision. - This rule shall terminate and have no further force or effect upon August 1, 2026.

1.6. This legislative rule repeals and replaces WV 174CSR1 "Documents Filed in the Secretary of State's Office" filed April 21, 2014 and effective April 21, 2014.

§174-1-2. Definitions.

2.1. "Advertise, advertisement, advertising" or similar means print media, yard signs, billboards, radio, television, internet, social media, or any other advertising medium utilized by anyone engaged or employed by a brokerage;

2.2. "Applicant" means any person who is making application to the Commission for a license.

2.3. "Apprenticeship" is a broker qualification required by W. Va. Code §30-40-12 and means 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.

2.4. "Commingling," "commingle," or similar means the mixing of trust funds with non-trust funds by a fiduciary or other person entrusted with the management of another's funds.

2.5. "Commission" means the West Virginia Real Estate Commission as authorized by W. Va. Code §30-40-6.

2.6. "Responsible broker" means the designated broker as defined in W. Va. Code §30-40-4 or the broker doing business as a sole proprietor who employs or engages and supervises other licensees.

2.7. "Employing broker" as used in the Commission's statute and rules means the responsible broker regardless of whether the licensees are working as independent contractors or employees.

2.8. "Licensee" means a broker, an associate broker, or a salesperson as defined in W. Va. Code §30-40-4.

2.9. "Usual place of business" means 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.

2.10. "Team" includes any group of two or more associate brokers and/or salespersons, and other non-licensed professionals, affiliated with the same responsible broker or company.

§174-1-3. License Year and 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 as set forth in Series 2 of the Commission's rules. When a salesperson who is duly licensed desires to become a broker, his or her responsible broker shall surrender his or her salesperson's license 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 Series 2 of these rules. The Commission shall not give credit for the fee paid for the salesperson's license.

§174-1-4. Licensure; Examination Required; Application and Licensure Fees.

4.1. Application. -- To apply for a real estate license, an applicant shall utilize forms prescribed by the Commission and meet the following requirements in addition to the statutory requirements.

4.1.a. Provide a license certification from every state where the licensee has been or is currently licensed;

4.1.b. Pay the application fee set forth in Series 2 of the Commission's rules; and

4.1.c. Pass the licensing examination(s) prescribed by the Commission.

4.2. Third-party provider. -- The Commission may contract with an independent testing service provider to develop and/or administer the examination(s), in which case the examination fee shall be paid directly to the provider.

4.3. Valid duration of approval; re-application. -- An approval for taking the examination shall only be valid for three (3) months from the date of approval and for no more than two (2) attempts at passing the examination. Upon the expiration of three (3) months or the examinee's second unsuccessful attempt at passing the examination, whichever comes first, the examinee will be required to submit a new application which shall be valid for three (3) months and for two (2) more examinations.

4.4. Examination Rules. -- The following rules apply to all examinations, and violation of any rule is grounds for disqualification of the applicant from taking the test and may be grounds for further disqualification:

4.4.a. Examinees may not refer to any notes, books or memoranda.

4.4.b. The examinee must show all computations on paper provided at the examination site.

4.4.c. The copying of questions or the making of notes is prohibited.

4.4.d. 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 taking the examination.

4.4.e. All examinees must pay the required examination fee at the time of registering for the examination.

4.5. Reexamination. -- An examinee who fails to attain a passing grade on the examination will receive a notice of failure and a score report containing diagnostic scoring information. Reexamination is available in accordance with this section.

4.6. Review of examination. -- An examinee who fails the examination(s) after two (2) attempts may request a review to

verify that everything was properly handled, by making written request to the testing service provider.

4.7. Payment of license fee. -- An applicant for a real estate license, upon successfully passing the required examination(s) must pay the required license fee within three (3) months from the date of passing the exam(s). The Commission will cancel the application of any applicant who does not pay the required license fee within three (3) 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(s). The Commission may grant a one-time extension up to three (3) months 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.

4.8. Multiple concurrent licenses. -- Licensees who choose to be affiliated with more than one brokerage must have a license and license certificate for each brokerage. These additional licenses have no additional requirements other than the payment of the appropriate license fee.

§174-1-5. Background Checks.

5.1. Applicants for a 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.

5.1.a. The fingerprints shall be accompanied by a signed authorization for the release of information to the West Virginia Real Estate Commission by the Criminal Investigation Bureau and the Federal Bureau of Investigation.

5.1.b. The applicant shall furnish any additional information required to complete the criminal history records checks.

5.2. The Applicant shall pay the associated fees for the fingerprinting and criminal history records check.

5.3. The criminal history records required by this section shall have been requested no more than three (3) months prior to the application for license being filed with the Commission. The records expire three (3) months after the date the application is received by the Commission.

5.4. 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.

5.5. 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.

5.6. An applicant whose background check reveals a criminal history must provide additional information, which history and information will be reviewed by the Commission. Such applicants must be approved by the Commission in order to be eligible for the examination.

5.7. The Commission may deny licensure to an applicant who fails or refuses to submit to the criminal history records check.

5.8. 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.

5.9. Records received as part of the criminal history record check shall be maintained by the Commission for a period of two (2) years subsequent to the Commission's final action on the application-and then disposed of by shredding.

§174-1-6. Qualifications for Broker's License.

6.1. Apprenticeship requirement. -- 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 (2) year period of time.

6.2. 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 prescribed 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 (2) calendar years.

6.3. Affidavit of broker. -- Each and every responsible broker who has engaged or employed a salesperson applying for a broker's license shall furnish the Commission with an affidavit attesting to the applicant's experience and qualifications. Each such broker shall submit the affidavit on a form prescribed by the Commission. If a former responsible broker is deceased or for other good cause cannot submit the affidavit, the broker applicant may apply for a waiver of this requirement on the form prescribed by the Commission.

§174-1-7. Licensing Non-Residents.

7.1. Non-residents with no current real estate license in the state in which they completed the pre-license education work and

passed a comprehensive licensing examination may seek licensure in the manner set forth in Section 4 of these rules.

7.2. Applicants with a current license, whether active or inactive, in the state in which they completed the pre-license education work and passed a comprehensive licensing examination may seek licensure without meeting the requirements of Section 4 if they meet the requirements of W. Va. Code §30-40-15 and this rule.

7.3. The license status for every state in which the non-resident applicant was licensed or is currently licensed shall be evidenced by a certification of licensure obtained from the regulatory body of each state of licensure within 60 days prior to submitting an application for a license in West Virginia.

7.4. For a non-resident salesperson or broker license, at a minimum the certification of licensure from each state shall show:

7.4.a. Name and address of the licensee;

7.4.b. Status of license (current, active, inactive, renewed, expired, etc.);

7.4.c. Type of license (salesperson, broker, associate broker);

7.4.d. Date of initial license and expiration date;

7.4.e. Period of time the license has been active and inactive;

7.4.f. The way the license was obtained (by examination or by reciprocity);

7.4.g. Type of examination(s) -- national and state or only state;

7.4.h. Record of any disciplinary actions against the licensee; and

7.4.i. Any additional information the Commission may require.

7.5. Applicants may apply only for the same level of license as the one they obtained by examination in their state of initial licensure.

7.6. West Virginia-specific examination.

7.6.a. Applicants are required to pass the state-specific portion of the licensing examinations for salesperson or broker.

7.6.b. An examination fee shall be paid for each scheduled examination unless the applicant reschedules in accordance with the policies of the examiner provider.

7.6.c. Applicants who fail the state-specific examination may retake it by following the procedures set forth in Section 4.3 of this rule.

7.7. Non-resident applicants must apply for and pay the required license fee within three (3) months of passing the exam(s).

§174-1-8. Renewal of License; Continuing Education Requirement; Late Fees; Failure to Renew; Cancellation.

8.1. Expiration; duty to renew. -- All licenses expire on June 30 regardless of the date the license was issued. It is the duty of all licensees to renew their licenses by paying the renewal fee for a license as set forth in Series 2 of these rules.

8.2. Late fees. -- Upon payment of the appropriate renewal and late fees set forth in Series 2 of the Commission's rules, an expired license may be renewed during the then current year on or before June 15.

8.3. Failure to renew; examination required. -- Any licensee who does not renew his or her license by June 15 of the year subsequent to the year in which the license expired shall be required to comply with all the requirements for obtaining a license, including the examination requirement.

8.4. Continuing education. -- Each licensee applying for the renewal of his or her license on active status shall complete 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 confirm that all licensees under his or her supervision comply with this requirement prior to the submission of their license renewal application.

8.5. Exemptions.

8.5.a. Recent Examinees. -- A licensee who qualified for licensure by passing both the national and state licensing examinations during the fiscal year of his or her first required renewal is exempt from the continuing education requirement that renewal year if the licensee renews on or before June 30 of that fiscal year.

8.5.b. Multi-Year License. -- 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 the license.

8.5.c. Inactive status. -- A licensee on 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.

8.5.d. Non-resident licensees. -- 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.

8.6. The courses taken to satisfy the then-current continuing education requirement shall not be the same as courses taken for the previous license renewal.

8.7. The Commission may audit the continuing education of any licensee, at which time the licensee must provide proof of the continuing education completed for renewal.

§174-1-9. License Certificates: Issuance, Cancellation and Transfer.

9.1 License certificate. -- The Commission shall issue to each licensee a license certificate in such form and size as shall be prescribed by the Commission. Each license certificate shall include the name of the brokerage for which the licensee is authorized to conduct real estate transactions and such additional information as may be deemed necessary by the Commission or required by law.

9.2. Inactive status. -- License certificates shall reflect when a license had been placed on inactive status, and all licenses on inactive status shall be maintained in the custody and control of the Commission.

9.3. Custody and return of inactive license certificates. -- The responsible broker shall maintain in his or her custody and control the active license certificates of each salesperson and associate

broker. Upon the separation of a licensee from the current responsible broker, the responsible broker shall immediately return the license certificate to the Commission for appropriate action and notify the salesperson or associate broker of same.

9.4. Change of responsible broker by salesperson or associate. -- In the event a salesperson or associate broker seeks to transfer from his or her current responsible broker to another responsible broker, he or she must first notify his or her current responsible broker in writing, submit a properly executed application for change of responsible broker on the form prescribed by the Commission, and pay the fee set forth in Series 2 of the Commission's rules.

9.5. Sworn statement by new broker. -- In the event a salesperson or associate broker makes an application for change of responsible broker, the application shall include a sworn statement by the new responsible broker confirming the transfer.

9.6. Change of licensee contact information. - Each licensee shall notify the Commission in writing of any change in name, personal address, and phone and email address of record within thirty (30) days of the change or prior to June 30, whichever comes first. A change of name must be submitted on the form prescribed by the Commission and accompanied with the fee set forth in Series 2 of the Commission's rules.

§174-1-10. Special Provisions for Brokers.

10.1. Designated broker. -- To be designated as a broker for a partnership, association, corporation, or other form of business organization, the governing body of the business organization must execute 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 prescribed by the Commission and be sworn to and notarized.

10.2. 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 former broker may reinstate the broker's license at any future date without taking the broker's examination upon filing the appropriate application and fee, as long as the broker applicant is the holder of an active salesperson's license.

10.3. Records. -- Every broker shall maintain all records required by the Commission for a minimum of five (5) years. Required records include but are not limited to books, contracts, closing documents, trust account records, and other documents necessary for the Commission to conduct its audits and investigations. These records may be kept in any electronic format that is accessible to the Commission. The records shall be provided to the Commission upon request and shall also be open to inspection by the Commission through its duly authorized representative(s) at the broker's usual place of business and at all times during regular business hours. The broker shall provide sufficient space to permit the Commission's inspection of the records without interference by other users of the property.

10.4. Change of address. -- Each broker shall notify the Commission in writing of any change of company address within ten (10) days after the change. The notice shall be made on a form prescribed by the Commission and accompanied by the license certificate and the fee set forth in Section 2 of the Commission's rules. The Commission shall issue a new certificate with the new address.

10.5. Notice of payment to co-brokers. -- A 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.

10.6. Broker's right to earnest money. -- When for any reason a seller fails, refuses, neglects or is unable to consummate the transaction 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 earnest money paid by the purchaser except by agreement of the parties or by court order.

§174-1-11. Deceased or Incapacitated Responsible Broker.

11.1. In the event of death or other incapacity of the responsible broker:

11.1.a. Sole proprietor broker. -- The Commission may, in its discretion based upon the specific circumstances, permit an associate broker or a designated salesperson licensed with the sole proprietor broker to complete and close the then-existing business of that broker, including taking contracts then signed to closing, for a temporary period not to exceed six (6) months from the date of Commission approval of a non-broker licensee to serve in that capacity. The sole proprietor's licensees may also transfer to a new broker.

11.1.b. Designated broker. -- The partnership, association, corporation, or other form of business organization, the governing body of the business organization must execute a new subordination resolution which names a successor broker for the business organization. The subordination resolution must be submitted on a form prescribed by the Commission and be sworn to and notarized prior to the transaction of any real estate business.

§174-1-12. Trade and Franchise Names.

12.1. Use of trade or franchise name. -- An individual broker may use a trade name which is the name of the brokerage and not the name of the broker's business organization. Any broker who operates under a trade name must include the trade name in the

broker license application and, upon approval by the Commission, the trade name will be placed upon the broker's license certificate in addition to the business organization's name. The trade name shall not be the same as that currently being used by another broker in the same locality unless such restriction is prohibited by law. A broker shall not use any trade name not set forth on the license certificate. The Commission does not require brokers who choose to operate under a franchise agreement to register the name of the franchise organization.

12.2. In the event a broker uses a licensed trade name, the company name required on all advertising must be the trade name which appears on the broker's license.

12.3. Change of trade name. -- Each broker shall notify the Commission in writing of any change in the name of the broker's business organization name or trade name within thirty (30) days of such change. The notice shall be made on a form prescribed by the Commission and accompanied by the license certificate and the fee set forth in Section 2 of the Commission's rules. The Commission shall issue a new certificate with the new tradename.

§174-1-13. Office Signs.

13.1. Sign requirement. -- All brokers holding an active license 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 prominently display the name of the broker, the term "Broker" and the company name, if any, 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.

13.2. 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 separate 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.

§174-1-14. Branch Offices.

14.1. License required; exception. -- Every licensed broker who desires to conduct brokerage transactions at any location other than his or her principal place of business under the same brokerage name 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 temporary shelter in a subdivision being sold by the broker, for the convenience and protection of licensees, clients 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.

14.2. 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 may act as the manager of a branch office if the broker is capable of adequately supervising all associate brokers and salespersons assigned to that branch office. If the broker chooses to appoint a manager of a branch office, the licensee must be an active licensee and have at least two (2) years actual experience.

§174-1-15. Trust Funds and Accounts.

15.1. Commingling Prohibited. -- In order to prevent the commingling of trust funds with other funds, brokers are required to deposit all trust funds into one or more trust accounts established in accordance with W. Va. Code §30-40-18, which accounts may be audited by the Commission through its authorized representative.

15.2. Funds received by salesperson or associate broker. -- Every salesperson and associate broker who receives any trust funds shall immediately or by the next business day following receipt pay over or deliver the trust funds to the responsible broker. No salesperson or associate broker shall collect any money in connection with any real estate transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the responsible broker.

15.3. Deposit of trust funds. -- Unless otherwise directed or allowed in the signed purchase agreement, every broker who receives any trust funds shall immediately or by the next business day following receipt deposit the trust funds in the broker's trust account.

15.4. Interest bearing trust account. -- Trust funds may be transferred from a non-interest-bearing trust account into an interest-bearing trust account only under the following conditions:

15.4.a. The broker must obtain, from all parties to the transaction, a written agreement which must contain, at a minimum:

15.4.a.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;

15.4.a.2. Identification of the financial institution and the type of account to be opened;

15.4.a.3. Identification of who will earn the interest on the funds; and

15.4.a.4. How and when the interest will be disbursed.

15.4.b. No interest, privilege, or other compensation received or obtained by virtue of establishing or maintaining any

interest-bearing trust account shall benefit the broker or any other licensee.

15.4.c. Upon closing any interest-bearing trust account established in compliance with this sub-section, the total proceeds of the account must be deposited in the broker's trust fund account prior to any disbursements being made.

15.5. Sweep accounts. -- For brokers with excess funds, which means trust account funds in excess of the amount that is insured against loss by the broker's financial institution, the federal insurance requirement set forth in West Virginia Code §30-40-18(c) may be complied with either through the use of multiple trust accounts at various financial institutions or the use of a cash sweep account established at a financial institution for which a Trust Fund Account Statement and Consent to Examine is on file with this Commission in accordance with the following requirements:

15.5.a. Addendum required.

15.5.a.1. An addendum in the form prescribed by the Commission must be signed by the broker and the financial institution and made a part of the Trust Fund Account Statement and Consent to Examine; and

15.5.a.2. A copy of the Addendum must be submitted to the Commission within ten (10) business days of entering into the agreement to establish the cash sweep account.

15.5.b. Ability to advance funds required. The broker's relationship institutions, which are (1) the financial institution where the broker has both a trust fund account and a cash sweep account and (2) the financial institution serving as the custodian of the cash sweep account, must agree to advance funds on any check drawn against the broker's trust fund account for which there are sufficient funds in the cash sweep account unless prohibited by applicable law or court order or they cannot by

reason of force majeure or circumstances beyond the relationship banks' control.

Inasmuch as the advanced payment is not a loan and the funds in the cash sweep account are not collateral for a loan, the anticipated debit of the funds in the cash sweep account does not breach the broker's fiduciary obligations in relation to the broker's trust fund account and does not violate West Virginia Code §30-40-18(f) and this rule.

§174-1-16. Agency Consent and Disclosure.

16.1. Agency form required. -- The notice of agency relationship and consent form prescribed by the Commission discloses the party or parties the licensee is representing to all parties to the real estate transaction. A notice of agency relationship and consent form shall be signed by the licensee and the client at the time the agency relationship is created prior to the initiation of negotiations, each licensee's agency form shall be signed by all parties. The broker shall provide a copy to each person executing an agency form and shall maintain a copy of each signed form in the transaction file. All members of a team must be listed on or attached to any Notice of Agency Relationship form signed by a team member.

16.2. Dual agency. -- A licensee may not be the agent for both the buyer and the seller without first obtaining the written consent of both the buyer and the seller.

16.3. Corrected form. -- If change in a licensee's agency status makes an earlier disclosure inaccurate, incomplete or misleading, the licensee shall prepare a corrected form and immediately present it to all parties to the transaction. The corrected form must be dated and must be acknowledged in writing by all parties.

§174-1-17. Advertising.

17.1. Advertising of property or specific services. - Each advertisement shall include the following information: the company name, the name of the responsible broker and the term "Broker," the physical address of a licensed office location, and phone number. The names of associate brokers and salespersons shall not be included in the advertising unless the associate brokers and salespersons are clearly identified as such.

17.2. Broker supervision. - No salesperson, associate broker or team shall advertise any property under his, her or their own name without the name of the responsible broker. All advertising by an associate broker, salesperson or team must be under the direct supervision of and in the name of the responsible broker. An advertisement for specific property or service by a team is not required to include the name of each team member, or the name of each team member whose photograph may be included in the advertisement, but shall include all of the following information:

17.2.a. The company name, the name of the responsible broker, and the term "Broker" displayed in equal prominence with the team name and with the name of the associate broker or salesperson in the advertisement;

17.2.b. The name of at least one associate broker or salesperson who is a team member, and the term "Associate Broker" or "Salesperson" to identify each associate broker or salesperson whose name is included in the advertisement, as such information appears on his or her license;

17.2.c. The term "Non-Licensed" to identify each team member who does not hold a current valid license and whose name is included in the advertisement; and

17.2.d. Phone number.

17.3. Business cards and other promotional items. Advertising which is not for a specific property or service must include the licensee name, company name and contact information.

17.4. Internet advertising. -- The information required in section 17.1 and 17.2 of this rule must appear on the home page or the screen that is first seen by the viewer. This information must be accessible with no more than two mouse clicks when advertising on social media.

17.5. Exemption for property owner. - A licensee who is the owner of the property has all the rights of an unlicensed person with regard to that property.

§174-1-18. Offer of Consumer Rebates, Inducements and Other Discounts.

18.1. A licensee may offer, directly or indirectly, to clients or customers rebates, inducements, or other discounts, if such licensee:

18.1.a. Discloses to the client or customer, in a clear and conspicuous manner and in writing, the terms of any rebate, inducement or other discount offered;

18.1.b. Discloses to the client or customer, in a clear and conspicuous manner; and in writing, the fair market value of any rebate, inducement or other discount offered; and

18.1.c. Offers the rebates, inducements or other discounts only under the direct supervision and in the name of the responsible broker.

18.2. No licensee may accept, give or charge any form of undisclosed compensation, consideration, rebate, inducement or other discount to a client or customer.

18.3. Advertisements of lotteries, contests, prizes, certificates, gifts and lots.

18.3.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 responsible broker and shall contain:

18.3.a.1. A description of each prize, certificate, gift, lot or other valuable consideration offered;

18.3.a.2. The prerequisites for receiving each prize, certificate, gift, lot or other valuable consideration offered;

18.3.a.3. Limitation on the number of prizes, certificates, gifts, lots or other valuable consideration offered;

18.3.a.4. The fair market value of each prize, certificate, gift or lot offered. If advertised, 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

18.3.a.5. The odds of winning or receiving each prize, certificate, gift or lot offered. If advertised, 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.

18.3.b. A licensee who offers prizes, certificates, gifts or lots shall maintain records on each offering for five (5) years, and the records shall contain:

18.3.b.1. The number and description of each prize, certificate, gift or lot distributed or awarded;

18.3.b.2. The name and address of each person who received a prize, certificate, gift or lot; and

18.3.b.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.

18.3.c. The Commission will regard the following as unlawful conduct within the meaning of West Virginia Code §30-40-19(a)(37):

18.3.c.1. Failure to comply with subsection (a) or (b);

18.3.c.2. Failure to disclose the possibility that a particular prize, certificate, gift or lot may not be distributed or awarded;

18.3.c.3. Advertising the availability of a prize, certificate, gift or lot when it is not available for distribution or awarding; and

18.3.c.4. Giving a misleading description of a prize, certificate, gift or lot.

18.4. Nothing contained in this section shall be construed to prohibit a licensee from:

18.4.a. Providing a closing gift of nominal value to a party to the transaction, which may be done without the approval of the licensee's responsible broker;

18.4.b. Discussing or negotiating the compensation the licensee agrees to charge for his or her services; or

18.4.c. Disseminating information about special terms, conditions or other offers which are bona fide offers made by a principal to a real estate transaction.

§174-1-19. Investigations and Complaints.

19.1. W. Va. Code §30-40-20 and Series 4 of the Commission's rules, as well as other provisions of West Virginia law relating to licensing boards and administrative agencies, set forth various procedures for investigations by the Commission and the filing, processing and resolution of complaints. Complaints may be initiated upon motion by the Commission or filed by licensees or the public.

19.2. Filing of complaints by licensees or the public. -- Complaints filed by licensees or the public must be submitted in writing on forms prescribed by the Commission and must sufficiently provide the information requested on the form.

§174-1-20. Licensee's Duty to Report Other Actions.

20.1 Licensee to inform Commission of disciplinary action by other licensing jurisdiction. -- When any licensee who holds a license in another jurisdiction is found to be in violation of that jurisdiction's license law, it is the duty of the licensee to supply the Commission with a copy of the complaint, any answer(s) filed, and all documents which show the disposition of the matter, including the judgment, findings and sanctions imposed against the licensee. This information must be submitted within thirty (30) days of the disposition.

20.2. 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 the

licensee to supply the Commission with a copy of the judgment or final disposition of the case prior to the date of the licensee's next renewal.

20.3. 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, within thirty (30) days of the notice of the criminal offense, with a copy of the petition, complaint, warrant, indictment, or information, and the answer filed, if any. The licensee shall also 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 within thirty (30) days of such disposition.

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

SERIES 2

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Section 1.	General.
Section 2.	Schedule of Fees.

**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 12, 2018

1.4. Effective Date. - July 1, 2018

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

§174-2-2. Schedule of fees.

2.1. Salesperson/Broker license application fee: \$25.00.

2.2. Examination fees: Up to \$150.00 for each examination taken, which, in the event of a third-party examination provider, shall not exceed the negotiated fee agreed to by the examination provider.

2.3. Licensure fees:

2.3.a. broker or associate broker license fee: \$150.00 for the initial and any subsequent license;

2.3.b. salesperson license fee: \$75.00 for the initial and any subsequent license; and

2.3.c. branch office license fee: \$150.00.

2.4. Annual license renewal fees:

2.4.a. broker / associate broker fee: \$150.00;

2.4.b. salesperson fee: \$75.00; and

2.4.c. branch office fee: \$150.00.

2.5. Late renewal fees in addition to the required license renewal fee:

2.5.a. For each license renewal paid or postmarked from July 1 through September 30 after the renewal fee was due: \$50.00;

2.5.b. For each license renewal paid or postmarked from October 1 through December 31 after the renewal fee was due: \$75.00;

2.5.c. For each license renewal paid or postmarked from January 1 through June 15 after the renewal fee was due: \$100.00.

2.5.d. Licenses not renewed on or before June 15 after the renewal fee was due cannot be renewed.

2.6. Change of employing broker fee: \$20.00.

2.7. Duplicate license fee: \$10.00.

2.8. Certification of licensure fee: \$20.00.

2.9. Change of licensee name fee: \$10.00.

2.10. Change of company name fee - \$10.00 for each license changed.

2.11. Change of office address fee: \$20.00.

2.12. Pre-license education approval fees:

2.12.a. Provider: \$75.00 initial approval fee and \$50.00 annual renewal fee thereafter.

2.12.b. Course: \$150 initial approval fee and \$100.00 annual renewal fee thereafter.

2.12.c. Instructor: \$75.00 initial approval fee and \$50.00 annual renewal fee thereafter.

2.13. Continuing education approval fees:

2.13.a. Provider: \$50.00 initial approval fee and \$35.00 annual renewal fee thereafter.

2.13.b. Course: \$75.00 initial approval fee and \$50.00 annual renewal fee thereafter.

2.13.c. Instructor: \$50.00 initial approval fee and \$35.00 annual renewal fee thereafter.

2.14. Roster of active licensees: All counties - \$100.00; \$5.00 per county.

2.15. Returned check fee: \$25.00 or the actual charge incurred by the Commission, whichever is greater.

2.16. Copies of public records fee: \$1.00 per page only if the total charge equals or exceeds \$5.00.

2.17. Transaction fee.

2.17.a. For transactions available on-line via the Commission's website, a transaction fee will be added equal to the amount charged by the transaction processing entity. Paper processing of requests for transactions which are available on-line will be charged a \$10.00 processing fee; and

2.17.b. Until such time as the Commission notifies its licensees via website or otherwise that licenses are to be renewed online, there will be no processing fee. After the commencement of on-line renewals, the Commission may continue to accept paper renewals, for which the licensee shall pay a \$35.00 processing fee in addition to all other renewal fees.

§174-2-3. Insufficient funds. Funds tendered to the Commission for any fee set forth in this rule which remains unpaid due to insufficient funds or for other reason shall nullify the transaction for which the fee remains unpaid. The Commission will afford the payee a reasonable opportunity to pay the fee. If the non-payment is the result of a returned check, only a certified check, money order or credit card charge will be accepted to cure the non-payment. The Commission may require payment of any actual charges or expenses incurred by the Commission prior to lifting the nullification of the transaction. The Commission may also take appropriate collection action and may require the payee to pay the charges of such action.

§174-2-4. Fees Not Refundable. All fees are non-refundable and will not be pro-rated.

§174-2-5. Effect of Non-Compliance. Failure to pay any of the fees required under this legislative rule is just cause for refusal to issue or renew a license or the Commission may initiate disciplinary proceedings for violation of this rule.

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

SERIES 3

Index

- Section 1. General.
- Section 2. Definitions.
- Section 3. Real estate courses, course providers and instructors.
- Section 4. Audits of approved providers, courses and instructors; Report and response required; Investigations.
- Section 5. Disciplinary Actions for approved Pre-license and Continuing Education Providers and Instructors.

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

**SERIES 3
REQUIREMENTS FOR
REAL ESTATE COURSES, COURSE PROVIDERS AND
INSTRUCTORS**

§174-3-1. General.

1.1. Scope. -- This legislative rule establishes the minimum requirements and qualifications necessary for approval of real estate courses, course providers and instructors and the regulation of same.

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

1.3. Filing Date. - April 12, 2018

1.4. Effective Date. - July 1, 2018

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

§174-3-2. Definitions.

2.1. "Applicant" means any person, partnership, association or corporation who is making application to the Commission under this rule.

2.2. "Approved education provider" means education institution, both accredited post-secondary education institution and proprietary education institution, approved and registered with the Commission to offer Commission approved pre-license and continuing education courses.

2.3. "ARELLO" means the Association of Real Estate License Law Officials.

2.4. "Commission" means the West Virginia Real Estate Commission as authorized by W. Va. Code §30-40-6.

2.5. "Continuing education" means the professional development education as mandated in W. Va. Code §30-40-16 and required to renew a real estate broker or salesperson license on an active status.

2.6. "Distance Education" means courses whereby instruction does not take place in a traditional classroom setting but rather where the teacher and student are separated by distance and sometimes by time, or both, and the instruction takes place through media.

2.7. "Post-Secondary education institution" means any education institution accredited as such by an accrediting agency officially recognized by the United States Department of Education.

2.8. "Pre-license education" means courses mandated in W. Va. Code §30-40-14 as prerequisite to obtain a real estate broker or salesperson license.

2.9. "Primary education provider" means a course developer who has a proprietary interest in the course and may deliver the course and/or market it to secondary providers.

2.10. "Secondary course provider" means an approved provider which obtains a distance education course from a primary provider for the purpose of offering it to licensees.

§174-3-3. Real estate courses, course providers and instructors.

3.1. Approval by Commission. -- Unless exempted by statute, all real estate courses, course providers and instructors must be approved by and registered with the Commission prior to advertising or offering pre-license or continuing education courses, although a provider may advertise a course submitted for approval prior to approval by including a plain, visible statement that the course has not yet been approved by the Commission. Applications for approval shall be on forms prescribed by the Commission and through a process prescribed by the Commission. The required approval fees, set forth in Series 2 of these rules, must be submitted with the application. Application fees are non-refundable. Post-secondary education institutions are approved providers without having to go through the approval process prescribed by the Commission.

3.2. Renewal; failure to renew.

3.2.a. To remain active, all course, course provider, and instructor approvals shall be renewed on an annual basis. Such renewal shall be on forms and through a process as prescribed by the Commission. The required, non-refundable, renewal application fee, set forth in Series 2 of these rules, must be submitted with the application.

3.2.b. All pre-license course, course provider, and instructor approvals shall be renewed no later than December 31 of each calendar year. Real estate pre-license courses which have not been renewed by this deadline may no longer be offered. Real estate pre-license course providers and instructors, who have not renewed by this deadline, may no longer offer or teach pre-license real estate courses. Any real estate pre-license course, course provider or instructor not renewed by this deadline will need to be approved following the

process set out in 3.1 of this rule. Approved and renewed instructors may not teach under a pre-license provider who has not renewed.

3.2.c. All continuing education course, course provider, and instructor approvals shall be renewed no later than June 30 of each fiscal year. The Commission, by policy, may add a grace period and late fee for renewal after June 30. Real estate continuing education courses, which have not been renewed by this deadline, may no longer be offered. Real estate continuing education course providers and instructors, who have not renewed by this deadline, may no longer offer or teach continuing education courses. Any real estate continuing education course, course provider or instructor not renewed by this deadline will need to be approved following the process set out in 3.1 of this rule. Approved and renewed instructors may not teach under a continuing education provider who has not renewed.

3.2.d. To be eligible to renew, all pre-license and continuing education instructors shall complete annual instructor development workshops when offered by the Commission, unless the attendance is waived by the Commission.

3.3. Out-of-state providers. -- Out-of-state education providers must register with the West Virginia Secretary of State prior to offering any education services in the State and take all other necessary steps to legally conduct business in West Virginia prior to their application with the Commission.

3.4. Pre-License education.

3.4.a. The ninety hours (six college credit hours) course prescribed for applicants for a salesperson's license shall consist of:

30 clock hours -- Real Estate Principles and Practice

20 clock hours -- Real Estate Law

20 clock hours -- Real Estate Finance

20 clock hours -- Real Estate Appraisal

3.4.b. The additional ninety hours (six college credit hours) course prescribed for applicants for a broker's license shall consist of:

30 clock hours -- Brokerage Operation and Management

25 clock hours -- Human Resources Management and Interpersonal Skills

35 clock hours -- West Virginia-Specific Real Estate for Brokers

3.4.c. In order to sit for the real estate examination, the applicant must score 70% or higher in each subject area.

3.4.d. After a student has successfully completed an approved pre-license education course, the approved provider shall supply the student with a certificate of course completion which certifies the student's name and address, 90% attendance but for absences excused in accordance with Commission policy, the course completion date, the number of hours in each subject area, and the score of 70% or higher.

3.4.e. All approved providers shall maintain records indicating the students who have registered for each course, the completion date of the course and the final results of their attendance. These records must be maintained for a minimum period of five (5) years and are subject to inspection by the Commission or its authorized representative. On December 31 of each year, every approved provider shall compile a list of the students completing each class during the previous calendar

year and submit the information to the Real Estate Commission prior to January 31 of the succeeding year.

3.4.f. The Commission will accept pre-license education courses approved by the real estate regulatory agency of any other licensing jurisdiction in meeting West Virginia pre-license education requirements if the jurisdiction offers the same privilege to West Virginia. The Commission will not give credit for classroom hours earned in excess of the number of hours awarded by the other jurisdiction.

3.4.g. The Commission will prepare and supply a suggested course outline of the material to be taught in the pre-license courses, and will supply supplemental material when the Commission deems it necessary. In addition, the Commission may recommend suggested textbooks to be used in the courses.

3.5. Continuing education.

3.5.a. Guidelines.

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

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

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

3.5.b. Approved providers shall make application to the Commission for approval of every continuing education course. The application shall be accompanied by a copy of all course materials proposed to be used in the course, a copy of any

proposed advertisements, and any other information that may be required by the Commission.

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

3.5.d. The Commission may approve courses that deal with real estate related subjects, including but not limited to real estate law, agency, ethics, civil rights, equal opportunity, appraisal, contract law, finance, and principal/agent relationships.

3.5.e. When approved instructional elements (videos, interactive exercises, external links, assessments, etc.) are used, the instructor must be present at all times while class is in session.

3.5.f. Instructors of continuing education courses who are also licensees may obtain credit toward the continuing education requirement in the same amount as the number of hours awarded to the students but only for the first time the course is taught. No continuing education credit shall be given for subsequent teaching of the same course.

3.5.g. Each course provider approved to offer continuing education courses shall maintain records indicating the student's name and address, the completion date of the course, the course title, and the number of hours awarded. These records must be maintained for a minimum period of five (5) years and shall be open to inspection by the Commission or its authorized representative. Each approved provider shall annually supply the Commission with a comprehensive list of all students who have completed a course in continuing education at their institution during the fiscal year July 1 through June 30 no later than July 15 of the succeeding fiscal year.

3.6. Distance education.

3.6.a. Real estate pre-license and continuing education may be offered through distance education formats. Real estate courses offered through distance education must be well-structured and allow monitoring.

3.6.b. All distance education courses of both the primary and the secondary provider shall be approved by the Commission in accordance with such policy as shall be adopted by the Commission.

3.6.c. Each distance education course must contain a comprehensive final exam that includes a sufficient number of questions to assure the student has a thorough knowledge of the course material.

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

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

3.7.a. The approval requirement set forth in 3.1. of this rule shall not apply to any guest speaker or to any professor of a post-secondary educational institution teaching real estate or related college courses.

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

3.7.b.1. Is an attorney at law with a minimum of five (5) years of active practice in the area of study he or she proposes to teach;

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

3.7.b.3. Is a licensed real estate broker, associate broker, or salesperson with a minimum of five (5) years experience in the area of study he or she proposes to teach;

3.7.b.4. Holds a degree from an accredited college or university and has at least (2) years of teaching experience and possesses a minimum of two hundred (200) classroom hours in the area of study he or she proposes to teach; or

3.7.b.5. Has a minimum of five (5) years of professional or teaching experience in the area of study he or she proposes to teach.

3.8. Instructors of distance education courses shall obtain Distance Education Instructor Certification from IDECC (International Distance Education Certification Center) prior to their application for approval by the Commission and must submit verification of the certification.

3.9. All approved pre-license and continuing education instructors shall complete annual instructor development workshops when offered by the Commission, unless the attendance is waived by the Commission or the individual is an out-of-state instructor who a) is approved by the National Association of Realtors (NAR) or b) holds a Distinguished Real Estate Instructor (DREI) designation.

3.10. No product or service may be promoted or sold during a real estate pre-license or continuing education offering.

§174-3-4. Audits of approved providers, courses and instructors; Report and response required; Investigations.

4.1. All approved providers, courses and instructors shall be subject to audit by the Commission or its authorized representative(s) to ensure compliance with the West Virginia Real Estate License Act and the Commission's rules.

4.2 In the event of such an audit, all documentation and information requested and deemed necessary to complete the audit, shall be made available to the Commission or its representative(s). This may include, but is not limited to:

4.2.a. Registrations;

4.2.b. Attendance records;

4.2.c. Course completion records and certificates of course completion;

4.2.d. Advertisements, including information published on social media;

4.2.e. Course materials used in conducting the course;
and

4.2.f. Any additional documentation reasonably requested by the Commission.

4.3. The Commission representative(s) may make photocopies of any documentation the approved education provider or instructor has submitted relative to the audit and required to maintain by the Commission.

4.4. The Commission representative(s) conducting the audit shall make report that is provided to the approved provider within sixty (60) days of the audit.

4.5. The Commission will review and approve the written audit report prior to being delivered by certified mail, to the audited real estate course provider or instructor.

4.6. The real estate course provider or instructor will receive a written warning and be given a specified amount of time to correct the issues, if there is an audit violation of any of the following:

4.6.a. Does an inadequate job of teaching the curriculum required by the Commission as evidenced by the use of inaccurate, inappropriate or outdated teaching materials and strategies, students' poor performance on the licensing examination, student evaluations, and/or Commission audits. This shall include failing to teach the content contained in the detailed content outline(s) approved by the Commission;

4.6.b. Engages in unprofessional behavior and/or inappropriate conduct in the classroom including but not limited to regular tardiness or excessive disorganization; the use of profanity or ridicule; making inappropriate or offensive remarks; or engaging in conduct prohibited by local, state or federal law relating to human rights, anti-discrimination and similar laws;

4.6.c. Fails to display adequate knowledge of the subject matter in the presentation of information or in answering questions related to the subject matter;

4.6.d. Fails to utilize a variety of teaching methods to accommodate visual, auditory and tactile learning styles;

4.6.e. Makes inaccurate comments to students regarding course content or West Virginia real estate law to students which are in conflict with the West Virginia Real Estate License Act, the Commission's rules, or any material contained in a Commission approved course.

4.7. The audited real estate course provider and/or instructor shall submit a written response to the Commission, at the end of the time specified in the written warning, outlining the actions taken to resolve the issues.

4.8. Failure to respond or take the necessary corrective measures may result in non-renewal and/or disciplinary action set forth in this rule.

4.9. The Commission may investigate any approved course provider and/or instructor, regarding matters of concern in the areas set forth in this section.

§174-3-5. Disciplinary Actions for approved Pre-license and Continuing Education Providers and Instructors.

5.1. The Commission may take disciplinary action(s) against an approved provider or instructor in accordance with the procedural rules of the Commission and other applicable law if found in violation of any of the following:

5.1.a. Is a party to any falsification of any document or other information provided to the Commission;

5.1.b. Publishes or causes to be published any advertisement which is not in compliance with the provisions of the West Virginia Real Estate Licensing Act and the Commission's rules;

5.1.c. Does not comply with any provision of the West Virginia Real Estate Licensing Act or the Commission's rules;

5.1.d. Engages in conduct which constitutes or demonstrates dishonest dealings, bad faith or untrustworthiness;

5.1.e. Awards credit to any student who fails to comply with the attendance requirements as set forth in Commission's rules;

5.1.f. Fails to file with the Commission accurate and complete records as required by these rules or fails to furnish any documents requested by the Commission by the stated deadline;

5.1.g. Does not correct problems identified in a Commission audit report; or

5.1.h. Conducts any course of education without active approval by the Commission;

5.2. Sanctions.

5.2.a. The Commission may impose sanctions against any provider or instructor found to be in violation of any provision of subsection 5.1 of this section in accordance with the general powers and duties of W. Va. Code §30-40-7(l) and any other applicable provisions of the West Virginia Real Estate License Act and the Commission's rules.

5.2.b. A revocation of provider and/or instructor approval shall be for a period of two years. Any provider or instructor whose approval has been revoked shall need to be approved following the process set out in 3.1. of this rule.

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

SERIES 4

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**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 who 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

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

**SERIES 5
COMPLIANCE WITH REQUIREMENT THAT BROKERS'
TRUST FUND ACCOUNTS BE INSURED AGAINST LOSS**

REPEALED – July 1, 2018

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

SERIES 6

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

**SERIES 6
APPLICATION FOR WAIVER OF INITIAL LICENSING FEES
FOR CERTAIN INDIVIDUALS**

§174-6-1. General.

1.1. Scope. -- This rule establishes procedures for waiving the initial licensing fee for low income individuals and military personnel and their spouses.

1.2. Authority. -- WV Code §30-40-8

1.3. Filing Date. - April 1, 2020

1.4. Effective Date. - July 1, 2020

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

§174-6-2. Definitions.

2.1. "Commission" means the West Virginia Real Estate Commission.

2.2. "REC-LIW" means the Real Estate Commission Low Income Waiver form used to request a waiver of the initial licensing fee for low income individuals, as authorized in W.Va. Code §30-1-23;

2.3. "Initial license" means an individual applying for a license in West Virginia sought for the first time;

2.4 "Local labor market" means every county in West Virginia, and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia, pursuant to W.Va. Code §21-1C-2;

2.5. "Low-income individuals" means individuals in the local labor market as defined in West Virginia Code §21-1C-2, whose household adjusted gross income is below 130 percent of the federal poverty line. This term also includes any person enrolled in a state or federal public assistance program including, but not limited to, the Temporary Assistance for Needy Families Program, Medicaid, or the Supplemental Nutrition Assistance Program;

2.6. "Military families" means any person who serves as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U. S. C. §101, honorably discharged veterans of those forces, and their spouses. This term also includes surviving spouses of deceased service members who have not remarried; and

2.7 "REC-MFW" means the Real Estate Commission Military Family Waiver form used to request a waiver of the initial licensing fee for military service members and their spouses as described in §30-1-22.

§174-6-3. Request for Waiver of Initial Licensure Fees.

3.1. An applicant seeking a low-income individual or military family waiver of the initial licensing fee shall apply for licensure to the Commission and provide the required documentation of eligibility for waiver.

3.2. The Commission shall provide the application form and instructions on what documentation is necessary to submit with the license application requesting the low-income individual or military family initial licensing fee waiver.

3.3. An applicant shall submit all required documentation to the Commission and upon the submission of a complete application, the Commission shall review the application and issue a decision within 30 days of receipt of the completed application.

3.4. The Commission may issue a license to an applicant who meets the requirements for licensure, under the West Virginia Real Estate License Act and the rules promulgated by the Commission, and the Commission shall waive the initial licensing fee for an applicant that meets the requirement of "low-income individuals" or "military families" as defined in W.Va. Code §30-1-23.

§174-6-4. Required Documentation for Waiver of Initial Licensure Fees.

4.1. Individuals requesting a waiver of initial licensure fees for low income or military service personnel and their spouses, shall submit with the application for licensure the initial licensure waiver REC-LIW or REC-MFW form and the appropriate documentation as specified in this section.

4.2. To establish low income eligibility for the initial licensing fee waiver, an applicant shall submit to the Commission evidence that the adjusted gross income of the household of the applicant is below 130% of the federal poverty level by submitting documentation of eligibility for:

- 4.2.1. Temporary Assistance for Needy Families Program;
- 4.2.2. Medicaid;
- 4.2.3. Supplemental Nutrition Assistance Program; or
- 4.2.4. A Federal Tax Return.

4.3. To establish military family eligibility for the initial licensing fee waiver, an applicant shall submit to the Commission proof of qualifying military service and proof of eligibility as a qualifying spouse as follows:

4.3.1. A service member's DD-214 form;

4.3.2. A service member's NGB-22 form;

4.3.3. A service member's DD-1300 form; or

4.3.4. A copy of the service member's current military orders; or

4.3.5. Other official military documentation, determined to be appropriate by the Commission, demonstrating the service member's qualifying past or current military service; and

4.3.6. A copy of the marriage certificate with the qualifying service member and, where applicable, the death certificate of the qualifying service member if the spouse is applying for the military family waiver.

4.4. Honorably discharged service members applying for waiver of the initial licensing fee shall submit a completed application, and a DD-214 form, a NGB-22 form, or other official military documentation determined to be appropriate by the Commission, showing the applicant has been honorably discharged from military service.

**TITLE 174
LEGISLATIVE RULE
REAL ESTATE COMMISSION**

SERIES 7

**CONSIDERATION OF PRIOR CRIMINAL
CONVICTIONS IN INITIAL LICENSE
ELIGIBILITY DETERMINATION**

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174-7-1. General.

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

1.2. Authority. -- WV Code §30-40-8

1.3. Filing Date. - April 1, 2020

1.4. Effective Date. - July 1, 2020

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

§174-7-2. Definitions.

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

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

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

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

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

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

whether a criminal conviction bears a rational nexus to a real estate, the commission shall consider at a minimum:

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

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

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

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

§174-7-4. Application after denial.

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

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

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

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

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

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

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

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

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

