TITLE 190
PROCEDURAL RULE
WEST VIRGINIA REAL ESTATE APPRAISER LICENSING & CERTIFICATION BOARD

SERIES 4
INVESTIGATIVE AND HEARING PROCEDURES

§190-4-1. General.

1.1. Scope. -- This procedural rule establishes the investigative and hearing procedures to be followed by the board when there is a complaint filed against an appraiser.

1.2. Authority. -- W. Va. Code §§30-38-13; 30-38-14; 30-38-15.

1.3. Filing Date. -- January 25, 2012.

1.4. Effective Date. -- March 1, 2012.

§190-4-2. Definitions.

2.1. "Appraisal" shall mean an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate or identified real property.

2.2. "Appraisal Report" shall mean any communication, written or oral, of an appraisal.

2.3. "Appraiser" shall mean any person who holds a State real estate appraiser license or State certification as a real estate appraiser issued to him or her under W. Va. Code §30-38 et seq., or has submitted himself or herself to jurisdiction hereunder to applying for and exercising a temporary permit thereunder.

2.4. "Board" shall mean the Real Estate Appraiser Licensing and Certification Board established under W. Va. Code §30-38 et seq.

2.5. "Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice (USPAP), published by the appraisal foundation, which are incorporated by reference and on file with the board and the office of the Secretary of State for use by all appraisers in the preparation of appraisal reports. This incorporation by reference contains no future additions or amendments. A copy of the USPAP may be obtained from the appraisal foundation.

§190-4-3. Causes for Denial of Licenses or Discipline of Licensees.

3.1. The board 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 §30-38-1, 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 §30-38-1, et seq., or the rules of the board.

§190-4-4. Standards Committee.

4.1. The members of the standards committee shall be appointed by the chairperson of the board. The standards committee shall consist of at least four individuals, but no more than seven individuals. The chairperson of the board shall be the chairperson of the standards committee.

4.2. At least one member of the standards committee shall be an actively licensed certified general real estate appraiser; and at least one member of the standards committee shall not be a member of the board.

4.3. At the request of the board, the standards committee shall review and, if deemed necessary, investigate, or otherwise cause the investigation of, complaints submitted to the board against licensees.

4.4. The standards committee may contract with any appropriate person(s) or appoint a member of the standards committee to conduct an investigation of a complaint.

§190-4-5. Disposition of Complaints.

5.1. Except as otherwise specifically provided herein, the enforcement proceedings under this Rule shall be conducted in accordance with the contested case hearing procedures of the West Virginia Administrative Procedures Act as adopted in this State, and the board shall have all the powers granted therein.

5.2. A complaint which alleges that the appraiser has violated a rule of professional conduct promulgated by the board shall be lodged with the board. The complaint process may be instituted by any person, including members of the board, by written complaint, or on an affidavit form prescribed by the board, and filed with the board. The board may, upon its own motion, file a formal complaint against an appraiser.

5.3. Upon initiation or receipt of the complaint, the board 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 Board, its Executive Director or other authorized representative permits the extension.

5.4. 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 board informed of his or her current address.

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

5.6. In connection with the investigation of a complaint, both the board and the standards committee are authorized to subpoena witnesses, books, papers, records and any other evidence to help it determine whether a contested case proceeding should be instituted.

5.7. The board or the standards committee may grant the appraiser an opportunity to appear before the

board or the standards committee for a voluntary informal discussion of the facts and circumstances of an alleged violation. An informal discussion constitutes a part of the investigation of a pending disciplinary case and the facts discussed at the informal discussion may be considered by the board or the standards committee in the event the matter proceeds to a contested case hearing. The board or the standards committee may seek a consent order at the time of the informal discussion.

5.7.a. Upon completion of the investigation, the board may:

5.7.a.1. Order the matter to be further investigated;

5.7.a.2. Allow the appraiser, who is the subject of the complaint, an opportunity to appear before the standards committee or the board for an informal discussion regarding the circumstances of the alleged violation;

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

5.7.a.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.

5.8. In the event the standards committee investigates a complaint on behalf of the board, at the conclusion of the committee investigation, the standards committee shall develop and provide to the board a recommendation relating to the disposition of the complaint. In the discretion of the board, and by majority vote, the board may accept or reject the standards committee's recommendation.

§190-4-6. Contested Case Hearing and Disposition.

6.1. Hearings shall be conducted in accordance with the provisions of W. Va. Code §5-29A and the board's rules.

6.2. The board shall deliver to the parties a notice of hearing. The notice of hearing shall fix the time and place for hearing and shall contain those notice terms as required by the West Virginia Administrative Procedures Act. The notice shall also contain a statement requiring the appraiser to submit an answer to the complaint within twenty (20) days after receipt of the notice of hearing. A written notice of hearing, together with a statement of charges, shall be personally delivered or mailed to the appraiser by certified mail, return receipt requested, at least thirty (30) days before the hearing date.

6.3. The statement of charges shall set forth the acts or omissions with which the appraiser is charged, including standards of professional practice and professional conduct rule(s), W. Va. Code §30-38 et seq., or any rules of the board alleged to have been violated, and shall be in sufficient detail to enable the preparation of the appraiser's defense.

6.4. The answer shall contain the following information:

6.4.a. The name, address and telephone number of the appraiser;

6.4.b. Specific statement regarding any or all allegations in the complaint which shall be in the form of admissions or denial, and may also contain explanation, remarks or statement of mitigating circumstances; and

6.4.c. Any additional facts or information the appraiser deems relevant to the investigation and which may be of assistance in the ultimate determination of the case.

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

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

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

6.8. If a licensee, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the board 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.

6.9. Before testimony is presented, the record shall show the identity of any board 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 board for cause prior to the commencement of the hearing; the members of the board (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 board 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 board or presiding officer:

6.9.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.

6.9.b. The assistant attorney general representing the State's interest before the board may make a brief opening statement, which may include a summary of charges and the witnesses and documents to support such.

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

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

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

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

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

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

6.10. The board may grant immunity from disciplinary action to a witness, but only upon a majority vote of the board 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 board to a witness. The official record of the hearing shall include the reasons for granting the immunity.

6.11. 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 board. 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 board either in writing or at a subsequent scheduled meeting of the board; the assistant attorney general assigned to prosecute the case before the board shall, however, be allowed to continue to present evidence during the hearing.

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

6.13. Upon the motion of the board or any party assigning error or omission in any part of any transcript, the board 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.

6.14. At the conclusion of any contested case hearing the board shall make Findings of Fact and Conclusions of Law and may:

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

6.14.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, or any other sanction pursuant to W. Va. Code §30-38-1, et seq.

6.15. The board may elect to have an administrative law judge or hearing examiner conduct the hearing.

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

6.15.a.1. Be in control of the proceedings as presiding officer;

6.15.a.2. Have the authority to administer oaths;

6.15.a.3. Have the authority to admit or exclude testimony or other evidence; and

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

6.15.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 board 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 board may

accept, reject or modify the proposed decision of the administrative law judge or hearing examiner.

6.16. 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.

§190-4-7. Subpoena Powers.

7.1. Board 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 board, or other representative designated by the board, 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.

7.2. In the event of a refusal to obey a subpoena, either party or the board 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.

§190-4-8. Final Decision.

8.1. The final decision of the board 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 appraiser's last known post office address or may be served in the manner of original notices upon the appraiser.

§190-4-9. Judicial Review.

9.1. Judicial review of the board's decision may be sought in accordance with the terms of the West Virginia Administrative Procedure Act.

§190-4-10. Application for Reinstatement.

10.1. Any person whose license or certification has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension. If the order of revocation or suspension does not establish terms upon which reinstatement might occur, an initial application for reinstatement may not be made until one (1) year has elapsed from the date the order becomes effective, and successive applications shall be made no more often than once every two (2) years. Prior to reinstatement of license or certification, any person requesting reinstatement of license or certification shall complete all continuing educational hours, and provide proof to the board thereof, as if the person had maintained active licensure or certification without interruption in license status.

§190-4-11. Public Records and Publication of Decisions.

11.1. The board shall maintain and keep open for public inspection during office hours a complete and properly indexed record of all applications for license or certification received, licenses and certificates issued, licenses and certificates renewed, and licenses and certificates revoked, canceled or suspended under the provisions of this act. A copy of any such record shall be made available to the public, upon application to the board, at such reasonable price per copy as may be fixed by the board.

11.2. Final decisions of the board relating to disciplinary actions, including consent agreements and

consent orders, may be transmitted to the appropriate professional association(s), other states, and news media.