TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 25
INSURANCE ADJUSTERS

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TITLE 114
LEGISLATIVE RULES
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SERIES 25
INSURANCE ADJUSTERS

§114-25-1. General.

1.1. Scope. -- This rule establishes standards for licensing and regulation of insurance adjusters. It is partly based on the National Association of Insurance Commissioners' "Public Adjusters Licensing Model Act (Model 228)," as amended in the 3rd quarter of 2009.

1.2. Authority. -- W. Va. Code §§33-12B-12 and 33-2-10.

1.3. Filing Date. -- May 10, 2011.

1.4. Effective Date. -- July 1, 2011.

§114-25-2. Definitions.

2.1. "Adjuster" means any individual who, for compensation, fee or commission, investigates and settles claims arising under property, casualty or surety insurance contracts on behalf of either the insurer or the insured. As used in this rule, the term "adjuster" includes public adjusters, company adjusters, and crop adjusters, unless specified otherwise.

2.2. "Code" means the W. Va. Code.

2.3. "Commissioner" means the West Virginia Insurance Commissioner.

2.4. "Company adjuster" means an individual representing the interests of the insurer, including independent contractors with the insurer and salaried employees of the insurer.

2.5. "Crop adjuster" means a person who adjusts crop insurance claims under the federal crop insurance program administered by the United States Department of Agriculture.

2.6. "Emergency Adjuster" means a person who is authorized by the Commissioner to perform adjusting activities in West Virginia during an insurance emergency.

2.7. "Home state" means the District of Columbia or any state or territory of the United States in which an adjuster maintains his or her principal place of residence or business and in which he or she is licensed to act as a resident adjuster: *Provided*, That if a person's principal place of residence or business does not license adjusters for the type of adjuster license sought in this state, he or she shall designate as his or her home state any state in which he or she has such

a license.

2.8. "Insurance emergency" means a temporary situation declared by the Commissioner pursuant to W. Va. Code §33-12B-11a when he or she finds that there is an inadequate number of licensed adjusters to meet the demands of the public.

2.9. "Licensed Adjuster" means a person with a valid West Virginia resident or non-resident company, public or crop adjuster license or an emergency license.

2.10. "Public adjuster" means:

2.10.a. Any person who, for compensation or any other thing of value and solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, acts on behalf of the insured in negotiating for, or effecting the settlement of a claim for loss or damage covered by an insurance contract.

2.10.b. A person who advertises for employment as a public adjuster or solicits business or represents himself or herself to the public as a public adjuster.

2.10.c. A person who directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

§114-25-3. License Requirements.

3.1. No person shall in West Virginia act as or hold himself to be an adjuster unless licensed by the Commissioner. As used in the rule, the term "person" shall not include those persons located in an office of an insurer outside the State of West Virginia who adjust claims solely by telephone, fax, United States Mail and electronic mail and who do not physically enter the State of West Virginia in the course of adjusting such claims.

3.2. The definition of adjuster does not include, and an adjuster's license shall not be required of, the following:

3.2.a. An attorney-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

3.2.b. A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed company adjuster;

3.2.c. An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;

3.2.d. A person who solely performs executive, administrative, managerial or

clerical duties or any combination thereof and who does not investigate, negotiate or settle claims with policyholders, claimants or their legal representative;

3.2.e. A licensed health care provider or its employee who provides managed care services so long as the services do not include the determination of compensability;

3.2.f. A managed care organization or any of its employees or an employee of any organization providing managed care services so long as the services do not include the determination of compensability;

3.2.g. A person who settles only reinsurance or subrogation claims;

3.2.h. An officer, director or manager of an authorized insurer or surplus lines insurer or a risk retention group or of a related holding company or an affiliated insurer, in the state, whether an individual or a business entity, or an attorney-in-fact of a reciprocal insurer;

3.2.i. A U.S. Manager of the United States branch of an alien insurer;

3.2.j. A person who investigates, negotiates or settles life, accident and sickness, annuity or disability insurance claims;

3.2.k. An individual who adjusts claims on behalf of a self insured entity;

3.2.*l*. A licensed insurance producer, attorney-in-fact of a reciprocal insurer or managing general agent of the insurer to whom claim authority has been granted by the insurer; and

3.2.m. A person who adjusts claims for licensed farmers' mutual fire insurance companies.

3.3. Claims arising out of a particular loss of unique or unusual character may be adjusted by a non-licensed adjuster upon registration with the Commissioner as long as the work of the non-licensed person is supervised by either an adjuster licensed in this state or an insurance company authorized to do business in this state; *Provided*, That the authority to work granted as provided herein to unlicensed persons is limited to three losses within any twelve month period.

§114-25-4. Emergency Adjuster Licensing.

4.1. Upon declaration of an insurance emergency, a licensed insurer may apply to the Commissioner requesting the issuance of emergency licenses to persons designated in the application to act as emergency adjusters. The application shall be in the format on the Insurance Commissioner's website.

4.2. The Commissioner shall act on the application within 24 hours after it has been

received in his or her office:

4.3. An emergency license is effective for a period not to exceed one hundred and twenty (120) days

4.4. The Commissioner may, without notice and hearing, revoke the privileges of an individual holding an emergency license on grounds specified by this rule,

4.5. Emergency adjusters must keep in their possession at all times the West Virginia emergency license in order to be eligible to adjust emergency claims.

4.6. Insurers are responsible for their designated adjusters and will be held accountable for such adjusters' acts or failures to act.

§114-25-5. Categories and Types of Licenses.

5.1. The types of adjuster's licenses which may be issued are as follows:

5.1.a. Company adjuster.

5.1.b. Public adjuster.

5.1.c. Crop adjuster.

5.2. An individual may be licensed concurrently under separate licenses as a company adjuster, a public adjuster and as a crop adjuster but shall not act as a company or crop adjuster and a public adjuster with respect to the same claim.

§114-25-6. Qualifications.

6.1. No individual may hold a license as an adjuster unless that individual:

6.1.a. Is eighteen years of age or older;

6.1.b. Is a resident of West Virginia, except for nonresident adjusters as provided in W.Va. Code §33-12B-9 and 114 WV CSR 25-11;

6.1.c. Satisfies the Commissioner that he or she is trustworthy and competent. The Commissioner may, at his or her discretion, test the competency of all applicants for a license under this section by examination. If such examination is required by the Commissioner, each examinee shall pay a $25 examination fee for each examination to the Commissioner. The Commissioner may, at his or her discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the Commissioner, and examination fees charged by such service shall be paid by the applicant.

§114-25-7. Application For Licensure.

7.1. Application for a company, public or crop adjuster's license shall be made to the Commissioner on forms prescribed by him or her and shall contain such information and be accompanied by such supporting documents as the Commissioner may require and, if so required by the Commissioner, shall be made under oath. The fee for an adjuster's license is $25, as provided in §33-12b-8 of the W.Va. Code, and shall be submitted with the application.

7.2. Applicants for a crop adjuster license must pass a written examination that tests the knowledge of the individual concerning the insurance laws of this state and the duties and responsibilities of a multi-peril crop adjuster: *Provided*, That in lieu of such an examination, the Commissioner may accept certification that the individual has passed a proficiency examination approved by the federal Risk Management Agency.

7.3. Willful misrepresentation of any fact in any such application or in any documents in support thereof is a violation of chapter thirty-three of the Code and this rule.

§114-25-8. Records Maintenance.

8.1. A public adjuster shall maintain a complete record of each transaction as a public adjuster including:

8.1.a. Name of the insured;

8.1.b. Date, location and amount of loss;

8.1.c. Copy of the contract between the public adjuster and the insured;

8.1.d. Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;

8.1.e. Itemized statement of the insured's recoveries;

8.1.f. Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

8.1.g. A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;

8.1.h. Name of the public adjuster who executed the contract;

8.1.i. Name of the attorney representing the insured, if any, and the name of the claims representatives of the insurance company; and

8.1.j. Evidence of financial responsibility in a format prescribed by the Commissioner.

8.2. Records of public adjusters must be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the Commissioner at all times.

8.3. Records submitted to the Commissioner in accordance with this section that contain information determined to be proprietary by the Commissioner shall be treated as confidential by the Commissioner and shall not be subject to the public disclosure provisions of chapter twenty-nine-b of the Code.

§114-25-9. Standards of Conduct of Company and Crop Adjusters.

9.1. The standards of conduct of company and crop adjusters are as follows:

9.1.a. A company or crop adjuster shall not give legal advice, and shall not deal directly with any policyholder or claimant who is represented by legal counsel without the consent of the legal counsel involved.

9.1.b. A company or crop adjuster shall identify himself, herself or itself as an independent contractor and, if applicable, identify his or her employer when dealing with any policyholder or claimant.

9.1.c. A company or crop adjuster shall identify his or her employer when dealing with any policyholder or claimant.

9.1.d. A company or crop adjuster shall not have any financial interest in any adjustment or acquire for himself or herself any interest or title in salvage, without first receiving written authority from the principal.

§114-25-10. Standards of Conduct of Public Adjusters.

10.1. Public adjusters shall adhere to the following standard of conduct:

10.1.a. A public adjuster is obligated to serve his or her client with objectivity and complete loyalty, and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest;

10.1.b. A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract;

10.1.c. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this

article;

10.1.d. A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in subsection 11.4 of this rule;

10.1.e. A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer;

10.1.f. The public adjuster shall not refer or direct the insured to get needed repairs or services in connection with a loss unless the adjuster discloses to the insured whether the adjuster may receive direct or indirect compensation for the referral;

10.1.g. The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other person that performs any work in conjunction with damages caused by the insured loss; and

10.1.h. The source and amount of any compensation or thing of value received by the public adjuster in connection with an insured's loss shall be disclosed in writing to the insured.

10.2. Public adjusters shall adhere to the following general ethical requirements:

10.2.a. A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise;

10.2.b. A public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client;

10.2.c. No public adjuster, while so licensed by the Commissioner, may represent or act as a company adjuster on the same claim;

10.2.d. The contract with the insured shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;

10.2.e. A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work;

10.2.f. A public adjuster shall ensure that all contracts for the public adjuster's

services are in writing and set forth all terms and conditions of the engagement.

10.2.g. A public adjuster may not agree to any loss settlement without the insured's knowledge and consent; and

10.2.h. Public adjusters may not directly solicit a client for employment between the hours of seven p.m. and nine a.m.

§114-25-11. Contract Between Public Adjuster and Insured.

11.1. Public adjusters shall ensure that all contracts for their services are in a document entitled "Public Adjuster Contract" containing the following:

11.1.a. Full name of the adjuster signing the contract;

11.1.b. Permanent home state business address and phone number;

11.1.c. License number;

11.1.d. The insured's full name, street address, insurance company name and policy number;

11.1.e. A description of the loss and its location;

11.1.f. Description of services to be provided to the insured;

11.1.g. Signatures of the public adjuster and the insured and date(s) signed; and

11.1.h. Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.

11.2. The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

11.2.a. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

11.2.b. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

11.2.c. Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the Commissioner.

11.3. If the insurer, no later than seventy-two hours after the date on which the loss is

reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

11.3.a. Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;

11.3.b. Inform the insured that loss recovery amount might not be increased by insurer; and

11.3.c. Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

11.4. A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with or in any other party who is involved in any aspect of the claim, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other person that provides estimates for work, or that performs any work in conjunction with damages caused by the insured loss.

11.5. A public adjuster contract may not contain any contract term that:

11.5.a. Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;

11.5.b. Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;

11.5.c. Imposes collection costs or late fees; or

11.5.d. Precludes an insured from pursuing civil remedies.

11.6. Prior to the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

11.6.a. Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are two types of adjusters that could be involved in that process. The definitions of the two types are as follows:

11.6.a.1. "Company adjuster" means an adjuster representing the interests of the insurer, including an independent contractor and a salaried employee of the insurer. The

company adjuster should not charge the insured a fee for his or her services.

11.6.a.2. "Public adjuster" means an insurance adjuster who does not work for any insurance company. The public adjuster works for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires the public adjuster by signing a contract agreeing to pay him or her a fee or commission based on a percentage of the settlement, or other method of compensation.

11.6.b. The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.

11.6.c The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim.

11.6.d. The public adjuster is not a representative or employee of the insurer.

11.6.e. The salary, fee, commission or other consideration paid to a public adjuster is the obligation of the insured, not the insurer.

11.6.f. The contract shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the Commissioner.

11.6.g. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

11.6.h. The insured has the right to rescind the contract within three business days after the date the contract was signed. The rescission must be in writing and shall be delivered to the public adjuster at the address in the contract within the three business day period: Provided, That a rescission letter postmarked within the three-day rescission period shall be deemed ot have been delivered within such period.

11.6.i. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen business days following the receipt by the public adjuster of the cancellation notice.

§114-25-12. Public Adjuster Fees.

12.1. Any fee charged by a public adjuster must be reasonable.

12.2. A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this article and is not so licensed.

12.3. A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this article and is not so licensed.

12.4. In the event of a catastrophe, no public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent of any insurance settlement or proceeds. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

§114-25-13. Escrow or Trust Accounts.

13.1. A public adjuster who receives, accepts or holds any funds on behalf of an insured towards the settlement of a claim for loss or damage shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

§114-25-14. Assumed Names.

14.1. A company, public or crop adjuster doing business under any name other than the adjuster's legal name is required to notify the Commissioner prior to using the assumed name.

§114-25-15. Prohibited Practices; Voidable Contracts.

15.1. A public adjuster shall not solicit or attempt to solicit employment during progress of a loss-producing occurrence nor while the fire department or its representatives are engaged at the damaged premises.

15.2. A public adjuster shall not collect or attempt to collect a fee or charge from a repair contractor for obtaining repair work for the contractor.

15.3. A public adjuster shall not advance money or any other valuable thing to an insured pending adjustment of a claim.

15.4. A public adjuster shall not provide his or her services to a client until the adjuster has contracted in writing with the insured or his or her authorized representative. A contract which is executed within forty-eight hours after conclusion of the loss producing occurrence shall be voidable at the option of the insured for ten days after execution of the contract. The written contract shall constitute the entire agreement between the adjuster and the insured and shall disclose all fees to be charged the insured by the public adjuster. A copy of the contract shall be given to the insured when the contract is executed.

§114-25-16. Addresses of Adjusters; Filing.

16.1. Each adjuster shall file with the Commissioner the complete address of his

principal place of business and the complete address of his residence including the name and number of the street, or if the street where the business is located is not numbered, the number of the post office box. The Commissioner may require the filing of other information for the purposes of identifying the principal place of business and the place of residence.

§114-25-17. Change of Address; Notice.

17.1. Within thirty days of a change of business or residence address by an adjuster the adjuster must file with the Commissioner the current version of such information as is required by Section 16 of this rule. An adjuster's principal place of business may be either a home or a business address, but in either event, the adjuster must maintain such address as a permanent office.

§114-25-18. Licensing of Nonresident Adjusters.

18.1. An individual otherwise complying with the provisions of this rule who is a licensed adjuster in his or her home state, may apply with the Commissioner to become licensed as a nonresident company, public or crop adjuster in this state if his or her home state has established, by law or regulation requirements for the licensing of a resident of this state as a nonresident adjuster and if the applicant's home state awards nonresident licenses to residents of this state on the same basis. Such an individual is exempt from the examination requirements of W.Va. Code §33-12B-5 if his or her home state required a substantially similar prelicensing examination.

18.2. The Commissioner may issue an adjuster's license to any applicant who is not a West Virginia resident and who cannot meet the requirements of section 18.1 of this rule if the applicant passes a written examination in West Virginia.

18.3. As a condition to the continuation of a nonresident adjuster license, the licensee shall maintain a resident adjuster license in his or her home state.

18.4. An individual who has obtained a nonresident adjuster license and who thereafter establishes legal residency in this state must make application within ninety (90) days to obtain a resident license for the same line of authority; such applicant is exempt from any prelicensing examination requirements.

§114-25-19. Expiration of License; Renewal.

19.1. All licenses of adjusters shall expire at midnight on May 31 next following the date of issuance. An adjuster whose license has expired shall make application to the Commissioner on forms prescribed by the Commissioner for renewal.

19.2. An adjuster who allows his or her license to lapse may have such license reinstated if he or she makes application within twelve months of the expiration date and pays a penalty in the amount of $25 in addition to any other fees.

19.3. The Commissioner may waive renewal requirements for an adjuster who is unable to comply due to military service, long-term disability or other extenuating circumstance.

19.4. Crop Adjusters that are renewing a license must show that they have maintained certification of proficiency issued or approved by the federal Risk Management Agency.

§114-25-20. Revocation, Suspension, Refusal to Renew or Issue License; Penalty in Lieu Thereof.

20.1. The Commissioner may examine and investigate the business affairs or conduct of persons applying for or holding an adjuster license. In the event that the action by the Commissioner is to deny an application for or not renew a license, the Commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the Commissioner within ten days for a hearing before the Commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within forty-five days and shall be held pursuant to section thirteen, article two of chapter thirty-three of the West Virginia Code.

20.2. Whenever, after notice and hearing the Commissioner is satisfied that any adjuster has violated any provision of this rule, or is incompetent or untrustworthy, the Commissioner may place on probation, revoke, suspend, or refuse to issue or, if renewal of license is pending, refuse to renew the license of such adjuster. In addition to placing on probation, revoking, suspending, or refusing to renew such license, the Commissioner may in his or her discretion order such licensee to pay to the State of West Virginia an administrative penalty in a sum not to exceed one thousand dollars. Upon failure of the licensee to pay such penalty within 30 days, his or her license will be suspended or revoked by the Commissioner.

20.3. For the purposes of this regulation, it is considered to demonstrate lack of trustworthiness or competency if the Commissioner determines such adjuster has:

20.3.a. Provided incorrect, misleading, incomplete, or materially untrue information in the license application;

20.3.b. Violated any insurance law or any lawful rule, regulation, subpoena or order of the Commissioner;

20.3.c. Improperly withheld, misappropriated, or converted to his own use any money received in the course of business and belonging to policyholders, insurers, beneficiaries, or others;

20.3.d. Intentionally misrepresented the terms or benefits of an actual or proposed insurance contract or the eligibility for claims under an insurance contract;

20.3.e. Engaged in any pattern of unfair methods of competition or unfair or

deceptive acts or practices in the business of insurance as defined in W.Va. Code §33-11-1 et seq;

20.3.f. Forged another person's name to any document or fraudulently procured a forged signature to any document, knowing such signature to be forged;

20.3.g. Knowingly and willfully made or permitted a false or fraudulent statement or misrepresentation in or relative to the adjustment of any claim;

20.3.h Been convicted of or pleaded nolo contendre to any felony;

20.3.i. Been convicted of or pleaded nolo contendre to a misdemeanor in connection with his activities as an adjuster;

20.3.j. Had an insurance license or its equivalent suspended, revoked or refused in any other state, district or territory of the United States or any province of Canada;

20.3.k. Obtained a license as an agent, broker, or adjuster through misrepresentation, fraud, or any other act for which issuance of the license could have been refused had it been known to the Commissioner at the time of issuance.

20.3.*l*. Cheated, including improperly using notes or any other reference material, to complete an examination for an insurance license;

20.3.m. Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the Commissioner;

20.3.n. Failed to comply with an administrative or court order imposing a child support obligation;

20.3.o. Failed to pay state income tax or comply with any administrative or court order directing payment of state income tax; or

20.3.p. Committed any other act which inherently demonstrates untrustworthiness or lack of competence.

20.4. The Commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this rule or W.Va. Code §33-12B-1 *et. seq* against any person who is under investigation for or charged with a violation of this rule or W.Va. Code §33-12B-1 *et. seq.* even if the person's license or registration has been surrendered or has lapsed by operation of law.