

BEFORE THE WEST VIRGINIA ETHICS COMMISSION

IN RE:

DUSTIN W. ZICKEFOOSE
Assessor,
Upshur County, West Virginia

Pre-Complaint Conciliation Agreement

The West Virginia Ethics Commission and Dustin W. Zickefoose freely and voluntarily enter into the following Conciliation Agreement pursuant to W. Va. Code § 6B-2-4(t) to resolve all potential charges arising from allegations of violations of the West Virginia Governmental Ethics Act ("Ethics Act") discussed below.

Findings of Fact

1. Dustin W. Zickefoose has served as the elected Assessor of Upshur County since January 1, 2017.
2. As the Assessor of Upshur County, Zickefoose was, at all times relevant herein, a "public official" as defined in the Ethics Act, at W. Va. Code § 6B-1-3(k).
3. The Ethics Commission has jurisdiction over alleged violations of the Ethics Act committed by West Virginia public officials, such as Zickefoose. W. Va. Code §§ 6B-1-1 through 6B-3-11.
4. Prior to becoming the elected Assessor and at all times relevant herein, Zickefoose was licensed by the West Virginia Real Estate Commission as a real estate salesperson. In April 2018, after being contacted by Ethics Commission staff to discuss whether he could be a real estate agent in the county where he serves as the Assessor, Zickefoose voluntarily requested that the West Virginia Real Estate Commission place


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his real estate salesperson license in inactive status. Zickefoose states that he will not be a real estate salesperson while he is the elected Assessor.

5. At all times relevant herein, Zickefoose conducted his real estate agent business through Upshur Agency Inc. and its subsidiary, Century 21 Country Roads Realty, as a contract employee.

6. After becoming the Assessor, Zickefoose served as the real estate agent for four real estate transactions in Upshur County. An overview of the properties and his role in the transaction follows:

a) 92 Evergreen Estates –Zickefoose was the Listing Agent. He listed the property prior to becoming the Assessor and the sale closed in 2017.

b) 123 South Kanawha Street –Zickefoose was the Listing Agent. He listed the property prior to becoming Assessor and the sale closed in 2017.

c) 91 Professional Arts Plaza –Zickefoose was the Listing Agent. He listed the property after becoming Assessor and the sale closed in 2018.

d) 52 Phillips Dairy Road –Zickefoose was the Buyer’s Agent. He became the Buyer’s Agent after becoming the Assessor and the sale closed in 2017. Zickefoose started working with this client on various matters prior to becoming the Assessor.

7. In Advisory Opinion 2011-14, the Ethics Commission held that a candidate for county assessor, if elected, “may not continue his career as the owner and broker of a real estate business within the county where he serves.”

8. Zickefoose states that when he became the elected Assessor, he was unaware that the Ethics Act prohibits him from conducting business as a real estate salesperson/agent in Upshur County. Zickefoose acknowledges that ignorance of the law is not a defense but asserts that he would not have knowingly engaged in this business in Upshur County had he known that it violated the Ethics Act.


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9. Zickefoose is a Certified Appraiser; however, in accordance with advice from Ethics Commission staff that he received prior to being elected, Zickefoose does not appraise properties located in Upshur County or properties located outside of Upshur County that are owned by people or businesses that also own real or personal property in Upshur County.

10. Zickefoose does, however, conduct his appraisal business as an independent contractor through Upshur Agency Inc., a business located in Upshur County.

11. Zickefoose has fully cooperated with Ethics Commission staff.

Relevant Legal Provision

W. Va. Code § 6B-2-5(h) states, in relevant part:

Employment by regulated persons and vendors. -- (1) No full-time official or full-time public employee may . . . seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

. . . .

Conciliation of Violation

I, Dustin W. Zickefoose, agree that I violated the above-referenced provision of the West Virginia Governmental Ethics Act by working as a real estate agent in Upshur County while serving as the Upshur County Assessor. In order to resolve this matter, I am entering into this Agreement. For this Conciliation Agreement to be finalized, I


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understand that the Ethics Commission must approve it and must determine which sanctions to impose.

In consideration for the settlement of this matter, I agree to the Commission's imposition of the following sanctions:

1. A fine in the amount of \$1,500 to be paid on or before September 1, 2018;
2. To immediately cease and desist from engaging in the business of buying and selling real estate in Upshur County, either personally or as an agent for others, while I serve as the elected Assessor.
3. Effective September 1, 2018, to cease and desist working for the Upshur Agency Inc. as an independent contractor or in any other capacity unless and until I receive an Advisory Opinion or Employment Exemption from the Ethics Commission stating that as the elected Assessor, I may be employed as an independent contract appraiser by a business located in the county in which I serve as Assessor when the appraisal work is only for out-of-county properties and businesses.
4. A public reprimand, and
5. Training on the West Virginia Governmental Ethics Act either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, before August 1, 2018. I shall provide written confirmation of the completion of this training to the Ethics Commission.





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I understand and agree that if the Ethics Commission fails to approve this Conciliation Agreement, then this Conciliation Agreement is null and void and that a Complaint against me may be filed.

If the Ethics Commission approves the Agreement, it will enter an Order in which it approves the Agreement and sets forth the sanctions listed above.

Both parties understand that, pursuant to W. Va. Code § 6B-2-4(t), this Conciliation Agreement and Commission Order must be made available to the public.

Date	<u>7/12/18</u>	 Robert J. Wolfe, Chairperson W. Va. Ethics Commission
Date	<u>6/1/18</u>	 Dustin W. Zickefoose




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COMMISSION'S ORDER

After considering the Findings of Fact, Relevant Legal Provision and Conciliation of Violation in the Pre-Complaint Conciliation Agreement, the West Virginia Ethics Commission finds that the Pre-Complaint Conciliation Agreement is in the best interest of the State and Dustin W. Zickefoose as required by W. Va. Code § 6B-2-4(t). In accordance with W. Va. Code § 6B-2-4(s), the Commission imposes the following sanctions:

1. A fine in the amount of \$1,500 to be paid on or before September 1, 2018;
2. To immediately cease and desist from engaging in the business of buying and selling real estate in Upshur County, either personally or as an agent for others, while Zickefoose serves as the elected Assessor;
3. Effective September 1, 2018, to cease and desist working for the Upshur Agency Inc. as an independent contractor or in any other capacity unless and until Zickefoose receives an Advisory Opinion or Employment Exemption from the Ethics Commission stating that as the elected Assessor, Zickefoose may be employed as an independent contract appraiser by a business located in the county in which Zickefoose serves as Assessor when the appraisal work is only for out-of-county properties and businesses;
4. A public reprimand, and
5. Training on the West Virginia Governmental Ethics Act either in person or by viewing the training provided on the Ethics Commission's website, at ethics.wv.gov, before August 1, 2018.

Zickefoose shall provide written confirmation of the completion of this training to the Ethics Commission.

7/12/15
Date


Betty S. Ireland, Acting Chairperson
West Virginia Ethics Commission