WEST VIRGINIA CODE CHAPTER 30 ARTICLE 40

WV Legislature

§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.

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§30-40-2. Short title.

This article shall be known and may be cited as the "West Virginia Real Estate License Act".

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§30-40-3. License required.

It is unlawful for any person to engage in 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. Prior to practicing real estate brokerage in this state, a license shall be obtained from the commission even if the person or entity is licensed in another state and is affiliated or otherwise associated with a licensed real estate broker in this state.

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§30-40-4. Definitions.

Unless the context used clearly requires a different meaning, as used in this article:

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

"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.

"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.

"Cancelled" means a license that was not renewed by December 31 of the year in which license expired;

"Commission" means the West Virginia Real Estate Commission as established §30-40-6 of this code.

"Compensation" means fee, commission, salary, or other valuable consideration, in the form of money or otherwise.

"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.

"Distance education" means courses of asynchronous instruction in which instruction takes place through media where the teacher and student are separated by time.

"Entity" means a business, company, corporation, limited liability company, association, or partnership.

"Expired" means a license that was not renewed by July 1.

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"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.

"License" means a license to act as a broker, associate broker, or salesperson.

"Licensee" means a person holding a license.

"Member" means a commissioner of the Real Estate Commission.

"Principal" means a person or entity that authorizes a licensee to act on his, her, or its behalf.

"Property management" means the overseeing and management of commercial and residential real estate properties. This includes taking care of all of the daily operations for a property which may include, but is not limited to, collecting rent, collecting or holding security deposits on behalf of the property owner, handling maintenance, paying vendors for repairs, and fielding tenant complaints. The amount of responsibilities the property manager has depends on their contract with the owner of the property.

"Real estate" means any interest or estate in land, and anything permanently affixed to land.

"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: *Provided*, That for the purposes of receiving compensation, a salesperson may designate an entity to receive any compensation payable to the salesperson, including, but not limited to, a limited liability corporation or an S-corporation.

"Team" means any group of two or more associate brokers and/or salespersons, and other non-licensed professionals, affiliated with the same broker or company acting as one agent representative for the principal.

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§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 §30-40-4 of this code.

(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 §30-40-12 of this code 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 July 1, 1980, is exempt from the written examination required under §30-40-12 of this code.

(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 way.

(8) Any person employed exclusively to act as the management or rental agent for the real estate of one person or entity.

(9) Any person properly licensed pursuant to the provisions of §19-2C-1 *et seq*. 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

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(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 30 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.

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§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 July 1, 2002, 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

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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.

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§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 $1,000 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

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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.

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§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

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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.

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§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, daily, into a special revenue fund known as the "real estate license fund" which is continued.

(b) Except as may be provided in §30-40-10 of this code, 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.

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§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.

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§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, on a form prescribed by the commission which shall contain, but is not limited to:

(1) The applicant's Social Security number;

(2) A clear record indicating all jurisdictions where the applicant holds or has held any professional license;

(3) 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 18 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 shall 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 West Virginia State Bar 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 complete 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

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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 29B 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 §29A-3-1 *et seq*. of this code. The rules shall set forth the requirements and procedures for the criminal history record 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*.

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§30-40-12. Qualifications for broker's license.

(a) An applicant for a broker's license shall:

(1) Submit evidence satisfactory to the commission of either: (i) Real estate experience as a licensed real estate salesperson during the two years prior to the date of application showing the applicant's representation of a buyer or seller in a minimum of 20 closed transactions; if the applicant is engaged solely in the leasing or renting of real estate, representation of the landlord or tenant in a minimum of 20 closed transactions of at least one year in duration; or if the applicant is engaged solely in the management of a real estate brokerage company, active involvement in a minimum of 20 closed transactions; or (ii) regardless of the number of years as a licensed salesperson: a minimum of 40 closed transactions; if the applicant is engaged solely in the leasing or renting of real estate, representation of the landlord or tenant in a minimum of 40 closed transactions of at least one year duration; or if the applicant is engaged solely in the management of a real estate brokerage company, active involvement in a minimum of 40 closed transactions. For the purposes of this section, a "closed transaction" means a transaction that resulted in the real estate being conveyed from seller to buyer in which the applicant represented the seller, buyer, or both, or a transaction that resulted in the consummation of a lease of no less than one year in duration in which the applicant represented either the landlord or tenant of the real estate;

(2) Submit satisfactory evidence of having completed the required education course as provided for in §30-40-14 of this code; and

(3) Successfully pass the examination or examinations provided by the commission.

(b) No broker's license shall be issued in the name of an entity except through one of its members or officers.

(c) No broker's license may be issued in the name of an entity unless each member or officer who will engage in the real estate business, obtains a license as a real estate salesperson or associate broker.

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§30-40-13. Qualifications for salesperson's license.

(a) An applicant for a salesperson's license shall:

(1) Submit satisfactory evidence of having completed the required education course as provided in §30-40-14 of this code; and

(2) Successfully pass the examination or examinations provided by the commission.

(b) No salesperson's license may be issued in the name of an entity except through one of its members or officers.

(c) No salesperson's license may be issued in the name of an entity unless each member or officer, who will engage in the real estate business, obtains a license as a real estate salesperson or associate broker.

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§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 180 clock-hours, equivalent to 12 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 be required to provide evidence that he or she has completed an additional 90 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 90 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 shall have been completed during the three-year period preceding the date of application in order to be accepted by the commission.

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§30-40-15. Licensing based on licensure in another jurisdiction.

(a) The commission may recognize a valid license issued by another jurisdiction as satisfactorily qualifying an applicant who is licensed to practice real estate brokerage in another jurisdiction to obtain a comparable license in this state: *Provided*, That the applicant has qualified for license in another jurisdiction by examination and by complying with all the provisions for obtaining a 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, an applicant under this section shall:

(1) Submit the application on a form prescribed by the commission and fee, if any;

(2) Pass the West Virginia state law portion of the licensure examination approved by the commission;

(3) Submit a certification of licensure showing that the applicant possesses an active license to practice real estate brokerage in another jurisdiction;

(4) Submit record(s) showing all disciplinary actions imposed against the applicant by any jurisdiction in which the applicant holds or held a license, if any; and

(5) For non-resident applicants, submit an irrevocable written designation that appoints the executive director of the commission to act as the non-resident licensee's agent, upon whom all judicial and other process or legal notices directed to the licensee may be served. The designation shall 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 30 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.

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§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 50 minutes of instruction. For brokers and associate brokers, three of the required seven hours shall be from the broker-level education curriculum approved by the commission.

(b) Upon application for the renewal of a real estate license on active status, each licensee shall 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.

(c) When a licensee in an inactive status makes application to revert to an active status, he or she shall 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 Division 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 July 1, 1969, and continuously thereafter, shall be exempt from the continuing professional education requirement.

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§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 within this state, 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;

(2) Conspicuously display his or her branch office license in each branch office;

(3) Make application to the commission before changing the address of any office or within 10 days after any change;

(4) Maintain in his or her custody and control the license of each associate broker and salesperson affiliated with him or her; and

(5) Promptly return the license of any associate broker or salesperson whose affiliation 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 affiliated broker, which shall be designated in the license certificate; and

(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 affiliation has been terminated until the associate broker or salesperson has made application to the commission for a change of affiliated 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) Display 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 affiliated;

(3) If an active licensee, be mailed or delivered to the broker's main office address;

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(4) If an inactive licensee, be held in the commission office; and

(5) Be valid for a period that coincides with the fiscal year beginning on July 1 and ending on June 30.

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§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 and reconcile 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 shall 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 shall 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 shall 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 $100 of his or her own money in the trust fund account to maintain a minimum balance in the account.

(g) 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.

(h) 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.

(i) 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

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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.

(j) 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.

(k) The broker shall notify the commission, within 10 days of the establishment of or any change to a trust fund account.

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§30-40-19. Refusal, suspension, or revocation of a license.

(a) The commission may refuse a license for reasonable cause or 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;

WV Legislature

(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 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 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 provision 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 payment 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 anti-discrimination 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 accurate records on the broker's trust fund account;

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(30) If a broker, fails to supervise all associate brokers and salespersons affiliated with 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 or to any affiliated business 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: *Provided*, That this subsection may not be construed to prevent the sharing of compensation or other valuable consideration between licensed brokers;

(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, 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;

WV Legislature

(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 affiliated with the broker: *Provided*, That the commission shall issue a replacement license for any licensee so affected to a new broker, without charge, if a proper application is submitted to the commission during the same license term.

WV Legislature

§30-40-20. Complaints; investigation.

(a) Upon the initiation of a complaint by the commission or the filing of a complaint by another person, the commission may 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 complainant discovered, or through reasonable diligence should have discovered, the alleged unprofessional conduct. Time limits for the filing 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 shall be submitted in writing on a form prescribed by the commission, and shall fully describe the acts or omissions constituting the alleged violation(s) of this article or rules promulgated thereunder.

(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 20 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 may 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 §30-40-21 of this code or may dispose of the matter informally through a consent agreement or otherwise.

WV Legislature

§30-40-21. Hearings; judicial review; cost of proceedings.

(a) Hearings shall be conducted in accordance with the provisions of §29A-5-1 *et seq*. 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 30 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 the commission 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 pursuant to the provisions of §29A-5-4 of this code.

(g) In addition to any other sanction imposed, the commission may require a licensee to pay the costs of the proceeding.

WV Legislature

§30-40-22. Criminal penalties for violations.

(a) In addition to the sanctions imposed by the commission pursuant to this article, 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 $1,000 nor more than $2,000, or confined in jail not more than 90 days, or both fined and confined;

(b) Any person convicted of a second or subsequent violation shall be fined not less than $2,000 nor more than $5,000, or confined in 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 $2,000 nor more than $5,000;

(d) Any corporation, association, or partnership convicted of a second or subsequent violation, shall be fined not less than $5,000 nor more than $10,000;

(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 day a violation of this article continues constitutes 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 §30-40-18(j)(7) of this code by a financial institution providing trust fund account services to a broker.

WV Legislature

§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.

WV Legislature

§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.

WV Legislature

§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 may institute suit in his or her own name for the recovery of compensation from his or her affiliated broker for acts or services performed while affiliated with the broker.

WV Legislature

§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, the seller and the buyer, the landlord, the tenant, or the landlord and the tenant. 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.

WV Legislature

§30-40-27. Duration of existing licenses.

[Repealed.]

WV Legislature

§30-40-28.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature