

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1937



ENROLLED

SENATE BILL No. 107

(By Mr. Belknap)



PASSED March 13th 1937

In Effect From Passage

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Senate Bill No. 107

(By MR. BELKNAP)

[Passed March 13, 1937; in effect from passage.]

AN ACT to regulate the business of buying, leasing, selling, and managing real estate for others; requiring a license and the payment of a fee to engage in such business; providing penalties for violation of such regulations; and creating the West Virginia real estate commission.

Be it enacted by the Legislature of West Virginia:

Section 1. There shall be a commission known as “The
2 West Virginia Real Estate Commission,” which shall be a
3 corporation, and, as such, may sue and be sued, contract and
4 be contracted with, and shall have a common seal. The
5 commission shall consist of three members who shall be ap-

6 pointed by the governor by and with the advice and consent
7 of the senate. Each member of the board shall be a citizen
8 of the United States and a resident of this state and shall
9 have been engaged in the real estate business for a period
10 of at least five years immediately prior to his appointment.
11 One member shall be appointed for a term of two years, and
12 one for a term of three years, and one for a term of four
13 years, and subsequent appointments shall be for terms of
14 four years. Any appointment to fill a vacancy shall be for
15 the unexpired term. Members shall serve until their re-
16 spective terms expire and until their successors have been
17 appointed, unless sooner removed. Not more than two mem-
18 bers of such commission shall belong to the same political
19 party.

20 No member shall be a candidate for or hold any other
21 public office or be a member of any political committee while
22 acting as such commissioner. In case any commissioner be
23 a candidate for or hold any other public office or be a
24 member of any political committee, his office as a commis-
25 sioner shall *ipso facto* be vacated.

26 The governor shall designate one member of the commis-
27 sion as the chairman thereof, and the members shall choose
28 one of the members thereof as secretary. Two members of
29 the commission shall constitute a quorum for the conduct of
30 official business. The members of the commission shall not
31 receive any salary, excepting that they shall be paid the sum
32 of ten dollars for each day actually spent in the work of
33 the commission, and they shall each receive their actual and
34 necessary expenses incurred in such work. The commission
35 may employ such clerical and other help as may be neces-
36 sary for the conduct of the duties of the commission, which
37 shall be paid for out of the fund hereby created. All fees
38 and charges collected by the commission under the pro-
39 visions of this act shall be paid into a special fund for the
40 purpose of this act, and all expenditures of the commission
41 shall be paid therefrom. The amount paid to or expended
42 by the commission in any fiscal year shall not exceed the
43 revenues derived under the provisions of this act as herein-
44 after provided.

Sec. 2. The term "real estate business" as used in this
2 act shall mean the performing or attempting to perform or

3 the holding out to perform any of the things usually done
4 by a real estate broker or a real estate salesman as here-
5 inafter defined.

6 The term "person" as used in this act shall mean any in-
7 dividual, firm, partnership, association, or corporation.

8 The term "real estate broker" as used in this act shall
9 mean a person who, for compensation or consideration, sells,
10 buys, negotiates the purchase or sale, exchanges, leases,
11 rents, or manages any real estate or any improvement on
12 real estate, or who offers, advertises, or holds himself out to
13 do any of such things for another or others.

14 The term "real estate salesman" as used in this act shall
15 mean any person who, for compensation or consideration, is
16 employed either directly or indirectly by a real estate broker
17 to engage in the real estate business or to do any of the
18 things set out herein in the definition of the term "real
19 estate broker".

Sec. 3. It shall be unlawful for any person to act as a
2 real estate broker or as a real estate salesman or to engage
3 in the real estate business without a license issued by the
4 West Virginia real estate commission. No license shall be

5 issued to a real estate broker unless every employee who
6 acts for such broker as a salesman shall secure a license as a
7 real estate salesman. However, if such broker be a partner-
8 ship, association, or corporation, then every bona fide mem-
9 ber of such partnership or association and every officer of
10 such corporation shall be licensed as a real estate salesman
11 when and after said broker shall have been granted a brok-
12 er's license.

Sec. 4. The provisions of this act shall not apply to any
2 person, or to the employees of any person, as owner or
3 lessor, shall engage in the real estate business with reference
4 to property owned or leased by him, where such acts are
5 performed in the regular course of, or as an incident to, the
6 management of such property and improvements thereon;
7 nor shall the provisions of this act apply to persons acting
8 as attorney in fact, under a duly executed power of attorney
9 from the owner authorizing the final consummation by per-
10 formance of any contract for the selling, leasing or exchange
11 of real estate, nor shall this act be construed to include in
12 any way the services rendered by an attorney at law in the
13 performance of his duties as such attorney at law; nor shall

14 it be held to include, while acting as such, a receiver, trus-
15 tee in bankruptcy, administrator or executor, or any person
16 selling real estate under order of any court, nor to include
17 a trustee acting under a trust agreement, deed of trust, or
18 will, nor the regular salaried employees thereof.

Sec. 5. Licenses shall be issued by the commission, in
2 such form as it may determine, to applicants who are found to
3 be of good character and to be competent to carry on the
4 business for which the license is sought.

5 Upon receipt of any application for a license in the form
6 required by the commission and accompanied by the required
7 fee, the commission shall consider the same as soon as practi-
8 cable. If the commission shall consider it proper that an
9 applicant be granted a license, the same shall be issued.

10 The commission is empowered to refuse to grant a license
11 to any applicant, or to refuse to renew any license, or to cancel
12 and withdraw any license issued by it, for violation of any pro-
13 visions of this act, or for any reasonable cause appearing to
14 the commission.

15 If the commission is of opinion to refuse to issue a license
16 that has been applied for, or to refuse to renew a license,

17 or to cancel and withdraw a license, it shall, before any such
18 refusal or cancellation is finally acted upon, notify the
19 applicant or licensee affected of its opinion and contemplated
20 action, and shall give to him an opportunity to appear be-
21 fore the commission and be heard in connection therewith.
22 Such hearings shall be held under such reasonable rules and
23 regulations as the commission may make and provide.

24 The commission may make and enforce rules regarding
25 transactions between licensees and the commission and require
26 reports as to matters of employment of or by licensees and
27 changes of address of licensees and kindred matters.

28 The commission may issue duplicate licenses under such
29 rules as it may make with regard thereto and upon the pay-
30 ment of a fee of one dollar.

Sec. 6. Every applicant for a real estate broker's license
2 shall apply therefor in writing upon blanks prepared or
3 furnished by the commission. Such application shall be ac-
4 companied by the recommendation of at least two citizens who
5 are real estate owners and who are not related to the appli-
6 cant, who have owned real estate for a period of one year or
7 more in the county or city in which said applicant resides, or

8 has his place of business, which recommendation shall certify
9 that the applicant bears a good reputation for honesty, truth-
10 fulness, fair dealing and competency, and recommending that
11 a licensee be granted to the applicant; but no recommendation
12 shall be required for the renewal of a license after being once
13 issued.

14 Every applicant for a broker's license shall state the name
15 of the person with whom he will be associated in the real
16 estate business, and the location of the place or places for
17 which said license is desired, and set forth the period of time,
18 if any, for which said applicant has been engaged in the real
19 estate business.

20 Every applicant for a license shall furnish a sworn state-
21 ment setting forth his present business and residential ad-
22 dresses, a complete list of all former places and firms where he
23 may have resided or been engaged in business for a period of
24 sixty days or more, during the last five years, accounting for
25 such entire period, and the length of such residence, together
26 with the name and address of at least one real estate owner
27 in each of said counties or cities where he may have resided
28 or have been engaged in business.

29 Every applicant for a salesman's license shall, in addition
30 to the requirements of this section, also set forth the period
31 of time, if any, during which he has been engaged in the real
32 estate business, stating the name and address of his last em-
33 ployer, and the name and the place of business of the person
34 then employing him, or into whose service he is about to enter.
35 The application shall be accompanied by a written statement
36 by the broker in whose service he is about to enter, stating
37 that in his opinion the applicant is honest, truthful, and of
38 good reputation, and recommending that the license be granted
39 to the applicant.

40 Every application for a license, under the provisions of
41 this act, shall be accompanied by the license fee herein pre-
42 scribed. In the event that the commission does not issue the
43 license, the fee shall be returned to the applicant.

44 The commission may require such other proof as shall be
45 deemed desirable and in the public interest, regarding the
46 honesty, truthfulness, integrity, and competency of the ap-
47 plicant. The commission is expressly vested with the power
48 and authority to make and enforce any and all such reason-
49 able rules and regulations connected with the application

50 for any license as shall be deemed necessary to administer
51 and enforce the provisions of this act.

Sec. 7. Before a license as a real estate broker shall be
2 issued to any person who does not have his principal place of
3 business in the state of West Virginia, he shall file with the
4 commission a bond in the penalty of two thousand dollars, in
5 form and with security to be approved by the commission, and
6 conditioned so as to be for the benefit of and to indemnify
7 any person in the state who may have any cause of action
8 against the principal in such bond growing out of a real
9 estate transaction with such principal. And unless such
10 non-resident applicant shall be a corporation organized or
11 domesticated in the state, he shall file with the auditor of the
12 state a power of attorney authorizing the auditor to accept
13 service of legal process for him in the same manner as service
14 may be accepted for West Virginia corporations.

15 Before a license as a real estate salesman shall be issued
16 to any person who is not a bona fide resident of the state,
17 whether he be an employee of a resident or a non-resident
18 real estate broker, such applicant shall file with the commis-
19 sion a bond such as is herein required to be filed by a non-

20 resident broker, and he shall also file a power of attorney
21 with the auditor such as is herein required to be filed by a
22 non-resident broker.

Sec. 8. The original fee and annual renewal fee for each
2 real estate broker's license shall be fifty dollars, if such
3 licensee's place of business is located in a city having a
4 population of seven thousand five hundred or more. The
5 original fee and annual renewal fee for each real estate
6 broker's license shall be ten dollars, if such licensee's
7 place of business is located in a town having a population of
8 less than seven thousand five hundred.

9 The original fee and annual renewal fee for each real
10 estate salesman's license shall be twenty-five dollars if such
11 licensee's place of business is located in a city having a
12 population of seven thousand five hundred or more. The
13 original fee and annual renewal fee for each real estate
14 salesman's license shall be five dollars, if such licensee's
15 place of business is located in a town having a population of
16 less than seven thousand five hundred.

Sec. 9. Every license shall expire on the thirty-first day
2 of December of each year. The commission shall issue a

3 new license for each ensuing year, in the absence of any
4 reason which might warrant the refusal of the granting of a
5 license, upon receipt of the annual fee therefor, as herein
6 required. The revocation of a broker's license shall auto-
7 matically suspend every real estate salesman's license granted
8 to any person by virtue of his employment by the broker
9 whose license has been revoked, pending a change of em-
10 ployer and the issuance of a new license. Such new license
11 shall be issued without charge, if granted during the same
12 year in which original license was granted.

Sec. 10. The commission may, upon its own motion, and
2 shall, upon the verified complaint in writing of any person,
3 investigate the actions of any real estate broker or real estate
4 salesman, or any person who shall assume to act in either
5 capacity within this state, and shall have the power to suspend
6 or to revoke any license issued by the commission that has
7 been fraudulently procured, or when the licensee, in the
8 course of his licensed business, has done or is doing any one
9 or more of the following things:

10 (a) Made any substantial misrepresentation;

11 (b) Made any false representation of a character likely
12 to influence, persuade, or induce;

13 (c) Pursued a continued and flagrant course of misrepre-
14 sentation, or made false representations through agents or
15 salesmen or advertising or otherwise;

16 (d) Acted for more than one party in a transaction with-
17 out the knowledge of all parties for whom he acts;

18 (e) Accepted a commission or valuable consideration as a
19 real estate salesman for the performance of any of the acts
20 specified in this act, from any person, except his employer,
21 who must be a licensed real estate broker;

22 (f) Represented or attempted to represent a real estate
23 broker other than the employer, without the express knowl-
24 edge and consent of the employer;

25 (g) Failed, within a reasonable time, to account for or to
26 remit any moneys coming into his possession which belong
27 to others;

28 (h) Been unworthy or incompetent to act as a real estate
29 broker or salesman in such manner as to safeguard the interest
30 of the public;

31 (i) Paid a commission or valuable consideration to any
32 persons for acts or services performed in violation of this
33 act;

34 (j) Conducted himself in any manner constituting im-
35 proper, fraudulent, or dishonest dealing.

Sec. 11. Any person who shall engage in the real estate
2 business as defined by this act, without a license, or who
3 shall violate any other provision of this act, shall be guilty
4 of a misdemeanor, punishable upon conviction by a fine of
5 not less than one hundred dollars nor more than one thousand
6 dollars, or by imprisonment for a term not to exceed six
7 months, or both.

Sec. 12. All acts or parts of acts, including licensing
2 acts, inconsistent with this act are hereby repealed. But
3 nothing herein contained shall affect any right that munici-
4 palities may now or hereafter have to tax, license, or reg-
5 ulate persons engaged in the real estate business.


Sec. 13. The various provisions of this act shall be con-
2 strued as separable and several, and should any of the pro-
3 visions or parts thereof be construed or held unconstitu-

4 tional, or for any other reason invalid, the remaining pro-
5 visions shall not be affected thereby, and shall be and re-
6 main in full force and effect.

I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

This the 19th day of March,

1937.



SECRETARY OF STATE

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chas. B. Galbreath
Chairman Senate Committee

Wm. S. O'Brien
Chairman House Committee

Originated in the.....

Takes effect.....passage.

Charles E. Hays
Clerk of the Senate

Wm. S. O'Brien
Clerk of the House of Delegates

Chas. E. Hays
President of the Senate

J. K. Thomas
Speaker House of Delegates

The within.....this the.....

day of....., 1937.

.....
Governor

JARRETT PRINTING COMPANY, CHARLESTON, W. VA.



Filed in the office of the Secretary of State
of West Virginia. MAR 19 1937

Wm. S. O'BRIEN,
Secretary of State