WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1937

ENROLLED

SENATE BILL No. 107
(By Mr. Belknap)

PASSED March 13th 1937

In Effect from Passage
ENROLLED

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 West Virginia Real Estate Commission,” which shall be a corporation, and, as such, may sue and be sued, contract and be contracted with, and shall have a common seal. The commission shall consist of three members who shall be ap-
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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.
The governor shall designate one member of the commission as the chairman thereof, and the members shall choose one of the members thereof as secretary. Two members of the commission shall constitute a quorum for the conduct of official business. The members of the commission shall not receive any salary, excepting that they shall be paid the sum of ten dollars for each day actually spent in the work of the commission, and they shall each receive their actual and necessary expenses incurred in such work. The commission may employ such clerical and other help as may be necessary for the conduct of the duties of the commission, which shall be paid for out of the fund hereby created. All fees and charges collected by the commission under the provisions of this act shall be paid into a special fund for the purpose of this act, and all expenditures of the commission shall be paid therefrom. The amount paid to or expended by the commission in any fiscal year shall not exceed the revenues derived under the provisions of this act as hereinafter provided.

Sec. 2. The term "real estate business" as used in this act shall mean the performing or attempting to perform or
the holding out to perform any of the things usually done
by a real estate broker or a real estate salesman as here-
inafter defined.

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

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

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

Sec. 3. It shall be unlawful for any person to act as a
real estate broker or as a real estate salesman or to engage
in the real estate business without a license issued by the
West Virginia real estate commission. No license shall be
issued to a real estate broker unless every employee who
acts for such broker as a salesman shall secure a license as a
real estate salesman. However, if such broker be a partner-
ship, association, or corporation, then every bona fide mem-
ber of such partnership or association and every officer of
such corporation shall be licensed as a real estate salesman
when and after said broker shall have been granted a brok-
er’s license.

Sec. 4. The provisions of this act shall not apply to any
person, or to the employees of any person, as owner or
lessor, shall engage in the real estate business with reference
to property owned or leased by him, where such acts are
performed in the regular course of, or as an incident to, the
management of such property and improvements thereon;
nor shall the provisions of this act apply to persons acting
as attorney in fact, under a duly executed power of attorney
from the owner authorizing the final consummation by per-
formance of any contract for the selling, leasing or exchange
of real estate, nor shall this act be construed to include in
any way the services rendered by an attorney at law in the
performance of his duties as such attorney at law; nor shall
it be held to include, while acting as such, a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court, nor to include a trustee acting under a trust agreement, deed of trust, or will, nor the regular salaried employees thereof.

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

Upon receipt of any application for a license in the form required by the commission and accompanied by the required fee, the commission shall consider the same as soon as practicable. If the commission shall consider it proper that an applicant be granted a license, the same shall be issued.

The commission is empowered to refuse to grant a license to any applicant, or to refuse to renew any license, or to cancel and withdraw any license issued by it, for violation of any provisions of this act, or for any reasonable cause appearing to the commission.

If the commission is of opinion to refuse to issue a license that has been applied for, or to refuse to renew a license,
or to cancel and withdraw a license, it shall, before any such refusal or cancellation is finally acted upon, notify the applicant or licensee affected of its opinion and contemplated action, and shall give to him an opportunity to appear before the commission and be heard in connection therewith. Such hearings shall be held under such reasonable rules and regulations as the commission may make and provide.

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

The commission may issue duplicate licenses under such rules as it may make with regard thereto and upon the payment of a fee of one dollar.

Sec. 6. Every applicant for a real estate broker's license shall apply therefor in writing upon blanks prepared or furnished by the commission. Such application shall be accompanied by the recommendation of at least two citizens who are real estate owners and who are not related to the applicant, who have owned real estate for a period of one year or more in the county or city in which said applicant resides, or
Every applicant for a broker's license shall state the name of the person with whom he will be associated in the real estate business, and the location of the place or places for which said license is desired, and set forth the period of time, if any, for which said applicant has been engaged in the real estate business.

Every applicant for a license shall furnish a sworn statement setting forth his present business and residential addresses, a complete list of all former places and firms where he may have resided or been engaged in business for a period of sixty days or more, during the last five years, accounting for such entire period, and the length of such residence, together with the name and address of at least one real estate owner in each of said counties or cities where he may have resided or have been engaged in business.
Every applicant for a salesman’s license shall, in addition to the requirements of this section, also set forth the period of time, if any, during which he has been engaged in the real estate business, stating the name and address of his last employer, and the name and the place of business of the person then employing him, or into whose service he is about to enter. The application shall be accompanied by a written statement by the broker in whose service he is about to enter, stating that in his opinion the applicant is honest, truthful, and of good reputation, and recommending that the license be granted to the applicant.

Every application for a license, under the provisions of this act, shall be accompanied by the license fee herein prescribed. In the event that the commission does not issue the license, the fee shall be returned to the applicant. The commission may require such other proof as shall be deemed desirable and in the public interest, regarding the honesty, truthfulness, integrity, and competency of the applicant. The commission is expressly vested with the power and authority to make and enforce any and all such reasonable rules and regulations connected with the application
Sec. 7. Before a license as a real estate broker shall be issued to any person who does not have his principal place of business in the state of West Virginia, he shall file with the commission a bond in the penalty of two thousand dollars, in form and with security to be approved by the commission, and conditioned so as to be for the benefit of and to indemnify any person in the state who may have any cause of action against the principal in such bond growing out of a real estate transaction with such principal. And unless such non-resident applicant shall be a corporation organized or domesticated in the state, he shall file with the auditor of the state a power of attorney authorizing the auditor to accept service of legal process for him in the same manner as service may be accepted for West Virginia corporations.

Before a license as a real estate salesman shall be issued to any person who is not a bona fide resident of the state, whether he be an employee of a resident or a non-resident real estate broker, such applicant shall file with the commission a bond such as is herein required to be filed by a non-
resident broker, and he shall also file a power of attorney
with the auditor such as is herein required to be filed by a
non-resident broker.

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

Sec. 9. Every license shall expire on the thirty-first day
of December of each year. The commission shall issue a
new license for each ensuing year, in the absence of any reason which might warrant the refusal of the granting of a license, upon receipt of the annual fee therefor, as herein required. The revocation of a broker’s license shall automatically suspend every real estate salesman’s license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge, if granted during the same year in which original license was granted.

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

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

c) Pursued a continued and flagrant course of misrepresentation, or made false representations through agents or salesmen or advertising or otherwise;

d) Acted for more than one party in a transaction without the knowledge of all parties for whom he acts;

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

f) Represented or attempted to represent a real estate broker other than the employer, without the express knowledge and consent of the employer;

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

h) Been unworthy or incompetent to act as a real estate broker or salesman in such manner as to safeguard the interest of the public;
31. (i) Paid a commission or valuable consideration to any persons for acts or services performed in violation of this act;

34. (j) Conducted himself in any manner constituting improper, fraudulent, or dishonest dealing.

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

Sec. 12. All acts or parts of acts, including licensing acts, inconsistent with this act are hereby repealed. But nothing herein contained shall affect any right that municipalities may now or hereafter have to tax, license, or regulate persons engaged in the real estate business.

Sec. 13. The various provisions of this act shall be construed as separable and several, and should any of the provisions or parts thereof be construed or held unconstitu-
tional, or for any other reason invalid, the remaining pro-
visions shall not be affected thereby, and shall be and re-
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 pres-
scribed by the constitution of the state, has become a law without his approval.

This the 19th day of March......

19.37

[Signature]

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

Chairman Senate Committee

Chairman House Committee

Originated in the...

Takes effect...passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...this the...

day of..., 1937.

Governor

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

Wm. S. O'Brien,
Secretary of State