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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1991



ENROLLED

SENATE BILL NO. 32

(By Senator Pritt, et al)



PASSED March 9, 1991

In Effect from Passage

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Senate Bill No. 32

(BY SENATORS PRITT, J. MANCHIN AND M. MANCHIN)

[Passed March 9, 1991; in effect from passage.]

AN ACT to repeal sections ten, eleven, twelve, twenty, twenty-one and thirty-two, article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, six, thirteen, twenty-eight, thirty, thirty-one, forty and forty-four of said article, relating to application, licensure and certification for real estate appraisers; eliminating waiver of certain requirements for licensure; definitions; extending date for compliance with licensure and certification requirements if extended by applicable federal law; exemption for appraisals of personal property and government officers or employees; authorizing emergency rules; classification of licensure and certification; qualifications for licensure and certification; permitting transitional license if either experience or education requirement is not met in certain cases; requiring examination; increasing certain fees; and licensure, certification, or registration for temporary practice for nonresidents.

Be it enacted by the Legislature of West Virginia:

That sections ten, eleven, twelve, twenty, twenty-one and thirty-two, article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-

one, as amended, be repealed; that sections two, three, four, six, thirteen, twenty-eight, thirty, thirty-one, forty and forty-four of said article fourteen be amended and re-enacted to read as follows:

ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§37-14-2. Definitions.

1 As used in this article, the following terms shall
2 have the following meanings:

3 (a) "Appraisal" means an analysis, opinion or
4 conclusion prepared by a real estate appraiser relating
5 to the nature, quality, value or utility of specified
6 interests in, or aspects of, identified real estate or
7 identified real property. An appraisal may be classified
8 by the nature of the assignment as a valuation
9 appraisal, an analysis assignment, or a review assign-
10 ment. The term "valuation appraisal" refers to an
11 analysis, opinion or conclusion prepared by a real
12 estate appraiser that estimates the value of an identi-
13 fied parcel of real estate or identified real property at
14 a particular point in time. An "analysis assignment"
15 refers to an analysis, opinion or conclusion prepared
16 by a real estate appraiser that relates to the nature,
17 quality or utility of identified real estate or identified
18 real property. A "review assignment" refers to an
19 analysis, opinion or conclusion prepared by a real
20 estate appraiser that forms an opinion as to the
21 adequacy and appropriateness of a valuation appraisal
22 or an analysis assignment;

23 (b) "Appraisal foundation" means the appraisal
24 foundation established on the thirtieth day of Novem-
25 ber, one thousand nine hundred eighty-seven, as a
26 not-for-profit corporation under the laws of Illinois;

27 (c) "Appraisal report" means any communication,
28 written or oral, of an appraisal. An appraisal report
29 may be classified by the nature of the assignment as
30 a "valuation report," "analysis report" or "review
31 report." For the purposes of this article, the testimony
32 of an appraiser dealing with the appraiser's analyses,

33 conclusions or opinions concerning identified real
34 estate or identified real property is deemed to be an
35 oral appraisal report;

36 (d) "Board" means the real estate appraiser licens-
37 ing and certification board established pursuant to the
38 provisions of this article;

39 (e) "Certified appraisal report" means a written
40 appraisal report that is certified as such by a state
41 licensed or certified real estate appraiser. When a real
42 estate appraiser identifies an appraisal report as
43 "certified", such real estate appraiser must indicate
44 which type of licensure or certification he or she
45 holds. The certification of an appraisal report by a
46 state licensed residential real estate appraiser or a
47 state certified general real estate appraiser represents
48 to the public that it meets the appraisal standards
49 established pursuant to this article;

50 (f) "Licensed real estate appraiser" means a person
51 who holds a current, valid license as a state licensed
52 residential real estate appraiser issued to him or her
53 under the provisions of this article;

54 (g) "Real estate" means an identified parcel or tract
55 of land, including improvements, if any;

56 (h) "Real estate appraisal activity" means the act or
57 process of making an appraisal of real estate or real
58 property and preparing an appraisal report;

59 (i) "Real estate appraiser" means a person who
60 engages in real estate appraisal activity for a fee or
61 other valuable consideration;

62 (j) "Real property interests" means one or more
63 defined interests, benefits or rights inherent in the
64 ownership of real estate; and

65 (k) "Certified real estate appraiser" means a person
66 who holds a current, valid certification as a state
67 certified general real estate appraiser issued to him or
68 her under the provisions of this article.

§37-14-3. Real estate appraiser license required.

1 (a) Beginning the first day of July, one thousand
2 nine hundred ninety-one, it is unlawful for any
3 person, for compensation or valuable consideration, to
4 prepare a valuation appraisal or a valuation appraisal
5 report relating to real estate or real property in this
6 state without first being licensed or certified as
7 provided in this article. This section shall not be
8 construed to apply to persons who do not render
9 significant professional assistance in arriving at a real
10 estate appraisal analysis, opinion or conclusion. Noth-
11 ing in this article, however, shall be construed to
12 prohibit any person who is licensed to practice in this
13 state under any other law from engaging in the
14 practice for which he or she is licensed.

15 (b) Notwithstanding the provisions of subsection (a)
16 herein, the real estate appraiser licensing and certifi-
17 cation board may, by emergency rule, extend the date
18 for complying with the provisions of this article in
19 accordance with any extensions which may be pro-
20 vided under applicable federal law, except that the
21 date for compliance set by emergency rule may not be
22 extended beyond the thirty-first day of December, one
23 thousand nine hundred ninety-one.

§37-14-4. Exceptions to license or certification requirement.

1 This article does not apply to:

2 (a) A real estate broker or salesperson licensed by
3 this state who, in the ordinary course of his or her
4 business, gives an opinion to a potential seller or third
5 party as to the recommended listing price of real
6 estate or an opinion to a potential purchaser or third
7 party as to the recommended purchase price of real
8 estate, when this opinion as to the listing price or the
9 purchase price is not to be referred to as an appraisal,
10 no opinion is rendered as to the value of the real
11 estate, and no fee is charged;

12 (b) A casual or drive-by inspection of real estate in
13 connection with a consumer loan secured by the said
14 real estate, when the inspection is not referred to as

15 an appraisal, no opinion is rendered as to the value of
16 the real estate, and no fee is charged for the inspection;

17 (c) An employee who renders an opinion as to the
18 value of real estate for his full-time employer, for the
19 employer's internal use only and performed in the
20 regular course of the employee's position, when the
21 opinion is not referred to as an appraisal and no fee is
22 charged; and

23 (d) Appraisals of personal property, including but
24 not limited to jewelry, household furnishings, vehicles,
25 and manufactured homes not attached to real estate.

26 (e) Any officer or employee of the United States, or
27 of the state of West Virginia or a political subdivision
28 thereof, when the employee or officer is performing
29 his official duties: *Provided*, That such individual does
30 not furnish advisory service for compensation to the
31 public or act as an independent contracting party in
32 West Virginia or any subdivision thereof in connection
33 with the appraisal of real estate or real property:
34 *Provided, however*, That this exception shall not apply
35 with respect to federally related transactions as
36 defined in Title XI of the United States Code, entitled
37 "Financial Institutions Reform, Recovery, and
38 Enforcement Act of 1989."

§37-14-6. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experi-
3 ence, appraisal experience and equivalent experience
4 that will meet the statutory requirements of this
5 article;

6 (b) Establish examination specifications as pres-
7 cribed herein and provide or procure appropriate
8 examinations;

9 (c) Approve or disapprove applications for certifica-
10 tion and licensure;

11 (d) Define by rule continuing education require-
12 ments for the renewal of certification and licenses;

13 (e) Censure, suspend or revoke licenses and certifi-
14 cation as provided in this article;

15 (f) Hold meetings, hearings and examinations in
16 places and at times as it shall designate;

17 (g) Establish procedures for submitting, approving
18 and disapproving applications;

19 (h) Maintain an accurate registry of the names and
20 addresses of all persons certified or issued a license to
21 practice under this article;

22 (i) Maintain accurate records on applicants and
23 licensed or certified real estate appraisers;

24 (j) Issue to each licensed or certified real estate
25 appraiser a pocket card with the name and license or
26 certification number on each in the size and form it
27 may approve. The license or certification pocket card
28 shall remain the property of the state of West Virginia,
29 and, upon suspension or revocation of the license to
30 practice pursuant to this article, shall be returned
31 immediately to the commission;

32 (k) Deposit all fees collected by the commission in
33 the state treasury. The state treasurer shall deposit the
34 fees to the credit of the West Virginia appraiser
35 licensing and certification board and shall disburse
36 moneys from the account to pay the cost of board
37 operation. Disbursements from the account shall not
38 exceed the moneys credited to it;

39 (l) Hire employees to assist in the discharge of the
40 duties imposed upon it by this article subject to the
41 policies and standards of the department of adminis-
42 tration. No employee of the commission may be a paid
43 employee of any real estate association, group or real
44 estate dealers, brokers, appraisers or lenders;

45 (m) Perform any other functions and duties as may
46 be necessary in carrying out the provisions of this
47 article.

48 All rules shall be promulgated pursuant to the
49 provisions of chapter twenty-nine-a of this code.
50 Emergency rules are specifically authorized upon the

51 effective date of this article and prior to the first day
52 of July, one thousand nine hundred ninety-one. The
53 members of the board shall be immune from any civil
54 action or criminal prosecution for initiating or assist-
55 ing in any lawful investigation of the actions of, or
56 participating in any disciplinary proceeding concern-
57 ing a licensed or certified real estate appraiser pursu-
58 ant to this article: *Provided*, That such action is taken
59 without malicious intent and in the reasonable belief
60 that the action was taken pursuant to the powers and
61 duties vested in the members of the board under this
62 article.

§37-14-13. Term of license or certification.

1 If the board determines that an applicant meets the
2 requirements of this article and is qualified to be
3 licensed or certified, it shall issue a license or certifi-
4 cation to the applicant that shall expire one year
5 following the date of issuance unless revoked or
6 suspended prior thereto. The board shall approve or
7 deny each application within ninety days of receipt.

§37-14-28. Classification of licensure and certification.

1 There shall be two classifications of real estate
2 appraisers:

3 (a) *State licensed residential real estate appraiser.* —
4 The state licensed residential real estate appraiser
5 classification shall consist of those persons who meet
6 the requirements for licensure that relate to the
7 appraisal of residential real estate of one to four units,
8 when the value of the property appraised is less than
9 one million dollars, a net operating income capitaliza-
10 tion analysis is not required by the terms of the
11 assignment, and, if the value of the property appraised
12 is over two hundred fifty thousand dollars, the
13 appraisal is non-complex; and to the appraisal of
14 nonresidential real estate when the value of the
15 property appraised is less than one hundred thousand
16 dollars.

17 (b) *State certified general real estate appraiser.* —
18 The state certified general real estate appraiser

19 classification shall consist of those persons who meet
20 the requirements for certification relating to the
21 appraisal of all types of real estate.

22 The board is authorized to establish by rules pro-
23 mulgated pursuant to the provisions of chapter
24 twenty-nine-a of this code such further classes or
25 classifications as may be required by applicable federal
26 law.

27 Each application for licensure or certification and
28 each application to take an examination shall specify
29 the classification being applied for and, if applicable,
30 the class of licensure or certification previously
31 granted.

§37-14-30. Qualifications.

1 (a) *Residential classification.* — As a prerequisite to
2 taking the examination for licensure as a state licensed
3 residential real estate appraiser, an applicant shall
4 present evidence satisfactory to the board that he or
5 she has satisfied the criteria, including education and
6 experience criteria, for licensure of licensed appraisers
7 issued by the appraisal qualifications board of the
8 appraisal foundation, which criteria shall be incorpo-
9 rated in regulations of the board adopted pursuant to
10 the provisions of chapter twenty-nine-a of this code.

11 (b) *General classification.* — As a prerequisite to
12 taking the examination for certification as a state
13 certified general real estate appraiser, an applicant
14 shall present evidence satisfactory to the board that he
15 or she has satisfied the criteria, including education
16 and experience criteria, for certification of general
17 appraisers issued by the appraisal qualifications board
18 of the appraisal foundation, which criteria shall be
19 incorporated in regulations of the board adopted
20 pursuant to the provisions of chapter twenty-nine-a of
21 this code.

22 (c) *Transitional License.* — The board may extend
23 the time for satisfying the requirements of subdivision
24 (a) of this section with respect to either education
25 requirements or experience requirements, but not

26 both education and experience requirements, and may
27 issue a transitional license as a state licensed residen-
28 tial real estate appraiser so long as: (1) All other
29 criteria for licensure are satisfied; (2) the applicant
30 passes the examination required pursuant to section
31 thirty-one of this article; and (3) the educational
32 deficiency is corrected within one year of licensure, or
33 the experience deficiency, within two years.

§37-14-31. Examination required.

1 An original license or certification as a state licensed
2 or certified real estate appraiser shall not be issued to
3 any person who has not passed an examination admin-
4 istered through the board, which examination is consis-
5 tent with the uniform state examination for licensure
6 or certification issued or endorsed by the appraisal
7 qualifications board of the appraisal foundation.

8 The board may offer for the benefit of prospective
9 applicants for licensure or certification a program of
10 instruction and preparation for the examination.

§37-14-40. Licensure and certification fees.

1 The board shall charge and collect appropriate fees
2 annually for its services under this article. The fees
3 charged by the board shall not exceed the amounts
4 indicated below:

5 (1) A license application fee of fifty dollars;

6 (2) A license examination fee of fifty dollars;

7 (3) A license fee of three hundred twenty-five
8 dollars;

9 (4) A delinquent license fee of an additional one
10 hundred dollars;

11 (5) A registration fee for temporary practice of one
12 hundred dollars;

13 (6) A certification application fee of seventy-five
14 dollars;

15 (7) A certification examination fee of fifty dollars;

16 (8) A certification fee of five hundred twenty-five

17 dollars;

18 (9) A delinquent certification fee of an additional one
19 hundred dollars;

20 (10) The board may collect from individuals who
21 perform or seek to perform appraisal transactions
22 where required by federal law an annual registry fee
23 in an amount to be set by regulation in order to enable
24 the board to transfer the necessary fees to the federal
25 financial institution examination council on an annual
26 basis.

27 All fees and revenues collected by the board pursu-
28 ant to this act shall be deposited in a special fund that
29 shall be used solely for the purpose of paying the
30 expenses incurred in connection with the administra-
31 tion of this article.

§37-14-44. Licensure and certification of nonresidents.

1 (a) *Consent to service of process.* — Each applicant
2 for licensure or certification and each registrant for
3 temporary practice within this state who is not a
4 resident of this state shall submit, with his or her
5 application, an irrevocable consent that service of
6 process upon him or her may be made by delivery of
7 the process to the secretary of state if, in an action
8 against the applicant in a court of this state arising out
9 of the applicant's activities as a real estate appraiser in
10 this state, the plaintiff cannot, in the exercise of due
11 diligence, effect personal service upon the applicant.

12 (b) *Nonresident licensure and certification.* — A
13 nonresident of this state who has complied with the
14 provisions of subsection (a) of this section may obtain
15 a license or certification as a real estate appraiser in
16 this state by complying with all of the provisions of
17 this article relating to the licensing or certification of
18 real estate appraisers.

19 (c) *Temporary practice.* — A nonresident of this
20 state who has complied with the provisions of subsec-
21 tion (a) of this section may perform a contract relating
22 to the appraisal of real estate or real property in this
23 state by registering with the board. An applicant for

24 temporary registration shall:

25 (1) Submit an application on a form approved by the
26 board;

27 (2) Submit evidence that he or she is licensed or
28 certified to appraise real estate and real property in
29 his or her state of domicile;

30 (3) Submit evidence that the applicant's business in
31 the state is of a temporary nature;

32 (4) Certify that disciplinary proceedings are not
33 pending against the applicant in the applicant's state of
34 domicile; and

35 (5) Pay the temporary registration fee set forth in
36 section forty of this article.

37 (d) *License by reciprocity.* — If, in the determination
38 of the board, another state or territory or the District
39 of Columbia is deemed to have substantially equiva-
40 lent license or certification laws for real estate apprais-
41 ers, an applicant for licensure or certification in this
42 state who is licensed or certified under the law of such
43 other state, territory or district may obtain a license or
44 certificate as a real estate appraiser in this state upon
45 such terms and conditions as may be determined by
46 the board: *Provided*, That the laws of such state,
47 territory or district accord substantially equal recipro-
48 cal rights to a licensed or certified real estate appraiser
49 in good standing in this state: *Provided, however*, That
50 disciplinary proceedings are not pending against such
51 applicant in his or her state of licensure or certification.

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

Somer Heck
.....
Chairman Senate Committee

Ernest M. Mader
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Harriet E. Adams
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Keith Burdette
.....
President of the Senate

Bill Rubin
.....
Speaker House of Delegates

The within is approved .. this the ... *2nd*

day of *April*, 1991.

Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 7/20/91

Time 5:10 pm