WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED
Committee Substitute for
SENATE BILL NO. 343

(By Senator Helwick, et al.)

PASSED March 9, 1995
In Effect 90 days after Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 343

(SENATORS HELMICK, ROSS, PLYMALE, BOWMAN, MILLER,
  WIEDEBUSCH, BUCKALEW, DEEM, WOOTON, BLATNIK,
  WAGNER, SHARPE, BAILEY, CHAFIN, GRUBB, DITTMAR,
  DUGAN, SCOTT, ANDERSON, MANCHIN, JACKSON, CRAIGO,
  SCHOONOVER, WHITE, LOVE, YODER, TOMBLIN, MR.
  PRESIDENT, KIMBLE AND OLIVERIO, original sponsors)

[Passed March 9, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article two-c,
chapter nineteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact section two, article twelve, chapter
forty-seven of said code, all relating to allowing licensed
real estate brokers who are not also licensed auctioneers
and licensed auctioneers who are not also licensed real
estate brokers to auction real estate when retained by
certain fiduciaries.

Be it enacted by the Legislature of West Virginia:

That section one, article two-c, chapter nineteen of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted; and that section two,
article twelve, chapter forty-seven of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 2C. AUCTIONEERS.

§19-2C-1. Definitions.

1 For the purposes of this article:

2 (a) The term "auctioneer" means and includes a person who sells goods or real estate at public auction for another on commission or for other compensation. The term "auctioneer" does not include: (1) Persons conducting sales at auctions conducted by or under the direction of any public authority or pursuant to any judicial order or direction or to any sale required by law to be at auction; (2) the owner of any real or personal property when personally sold at auction by such owner and such owner has not personally conducted an auction within the previous twelve-month period; (3) persons conducting sales pursuant to a deed of trust or other security agreement; (4) fiduciaries of estates when selling real or personal property of such estate; (5) persons conducting sales on behalf of charitable, religious, fraternal or other nonprofit organizations; and (6) persons properly licensed pursuant to the provisions of article twelve, chapter forty-seven of this code when conducting an auction, any portion of which contains any leasehold or any estate in land whether corporeal or incorporeal, freehold or nonfreehold, when such person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent's estate: Provided, That nothing contained in this article exempts persons conducting sales at public markets from the provisions of article two-a of this chapter, where the sale is confined solely to livestock, poultry and other agriculture and horticulture products.

(b) The term "public auction" means any public sale of
real or personal property when offers or bids are made
by prospective purchasers and the property sold to the
highest bidder.

(c) The term “commissioner” means the commissioner
of agriculture of West Virginia.

d) The term “department” means the West Virginia
department of agriculture.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 12. REAL ESTATE COMMISSION, BROkers AND SALESPERSONS.

§47-12-2. Definitions and exceptions.

(a) The term “real estate broker” within the meaning of
this article includes all persons, partnerships,
associations and corporations, foreign and domestic, who
for a fee, commission or other valuable consideration or
who with the intention or expectation of receiving or
collecting the same, lists, sells, purchases, exchanges,
rents, manages, leases or auctions any real estate or the
improvements thereon, including options, or who
negotiates or attempts to negotiate any such activity; or
who advertises or holds himself, herself, itself or
themselves out as engaged in such activities; or who
directs or assists in the procuring of a purchaser or
prospect calculated or intended to result in a real estate
transaction. The term “real estate broker” shall also
include any person, partnership, association or
corporation employed by or on behalf of the owner or
owners of lots, or other parcels of real estate, at a stated
salary or upon a fee, commission or otherwise to sell
such real estate, or any parts thereof, in lots or other
parcels, and who shall sell, manage, exchange, lease,
offer, attempt or agree to negotiate the sale, exchange or
lease of any such lot or parcel of real estate.

(b) The term “real estate” as used in this article
includes leaseholds as well as any and every interest or
estate in land, whether corporeal or incorporeal, freehold
or nonfreehold, and whether said property is situated in
(c) The term "associate broker" means any person who for compensation or other valuable consideration is employed by a broker to perform all the functions authorized by a broker's license only for and on behalf of such employing broker including, but not limited to, authority to supervise other salespersons employed by a broker and manage an office on behalf of a broker.

(d) The term "real estate salesperson" means and includes any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included in this section, for compensation or otherwise.

(e) One act in consideration of or with the expectation or intention of or upon the promise of receiving compensation by fee, commission or otherwise, in the performance of any act or activity contained in this section, constitutes such persons, partnerships, association or corporation, a real estate broker and make him or her, them or it subject to the provisions and requirements of this article.

(f) The term "real estate broker" or "real estate salesperson" shall not include any person, partnership, association or corporation who, as a bona fide owner or lessor, performs any aforesaid act:

(1) With reference to property owned or leased by him or her to the regular employees thereof, where such acts are performed in the regular course of or as an incident to the management of, such property and the investment therein;

(2) Nor shall this article be construed to include attorneys-at-law, except that attorneys-at-law shall be required to submit to the written examination required under section seven of this article in order to qualify for a broker's license: Provided, That an attorney-at-law who is licensed as a real estate broker prior to the
effective date of this section is exempt from the written examination required under section seven of this article;

(3) Nor any person holding in good faith a duly executed power of attorney from the owner authorizing the final consummation and execution for the sale, purchase, lease or exchange of real estate;

(4) Nor to the acts of any person while acting as a receiver, trustee, administrator, executor, guardian or under the order of any court or while acting under authority of a deed of trust or will;

(5) Nor shall this article apply to public officers while performing their duties as such;

(6) Nor shall this article apply to the acquisition or disposition of coal, oil or gas leasehold or coal, oil or gas interests;

(7) Nor to persons properly licensed pursuant to the provisions of article two-c, chapter nineteen of this code when conducting an auction, any portion of which contains any leasehold or estate in land, when such person is retained to conduct an auction by a receiver or trustee in bankruptcy, a fiduciary acting under the authority of a deed of trust or will, or a fiduciary of a decedent’s estate.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schmoker
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 17th day of March, 1995.

Governor