

SB 0343

Rec'd by 3-23
4 pm 3/20/95
MH

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Committee Substitute for

SENATE BILL NO. 343

(By Senator HELVICK, ET AL)



PASSED MARCH 9, 1995

In Effect 90 DAYS FROM 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
3 who sells goods or real estate at public auction for
4 another on commission or for other compensation. The
5 term "auctioneer" does not include: (1) Persons
6 conducting sales at auctions conducted by or under the
7 direction of any public authority or pursuant to any
8 judicial order or direction or to any sale required by law
9 to be at auction; (2) the owner of any real or personal
10 property when personally sold at auction by such owner
11 and such owner has not personally conducted an auction
12 within the previous twelve-month period; (3) persons
13 conducting sales pursuant to a deed of trust or other
14 security agreement; (4) fiduciaries of estates when selling
15 real or personal property of such estate; (5) persons
16 conducting sales on behalf of charitable, religious,
17 fraternal or other nonprofit organizations; and (6)
18 persons properly licensed pursuant to the provisions of
19 article twelve, chapter forty-seven of this code when
20 conducting an auction, any portion of which contains
21 any leasehold or any estate in land whether corporeal or
22 incorporeal, freehold or nonfreehold, when such person
23 is retained to conduct an auction by a receiver or trustee
24 in bankruptcy, a fiduciary acting under the authority of
25 a deed of trust or will, or a fiduciary of a decedent's
26 estate: *Provided*, That nothing contained in this article
27 exempts persons conducting sales at public markets from
28 the provisions of article two-a of this chapter, where the
29 sale is confined solely to livestock, poultry and other
30 agriculture and horticulture products.

31 (b) The term "public auction" means any public sale of

32 real or personal property when offers or bids are made
33 by prospective purchasers and the property sold to the
34 highest bidder.

35 (c) The term "commissioner" means the commissioner
36 of agriculture of West Virginia.

37 (d) The term "department" means the West Virginia
38 department of agriculture.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-2. Definitions and exceptions.

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

23 (b) The term "real estate" as used in this article
24 includes leaseholds as well as any and every interest or
25 estate in land, whether corporeal or incorporeal, freehold
26 or nonfreehold, and whether said property is situated in

27 this state or elsewhere.

28 (c) The term "associate broker" means any person who
29 for compensation or other valuable consideration is
30 employed by a broker to perform all the functions
31 authorized by a broker's license only for and on behalf of
32 such employing broker including, but not limited to,
33 authority to supervise other salespersons employed by a
34 broker and manage an office on behalf of a broker.

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

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

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

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

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

63 effective date of this section is exempt from the written
64 examination required under section seven of this article;

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

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

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

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

78 (7) Nor to persons properly licensed pursuant to the
79 provisions of article two-c, chapter nineteen of this code
80 when conducting an auction, any portion of which
81 contains any leasehold or estate in land, when such
82 person is retained to conduct an auction by a receiver or
83 trustee in bankruptcy, a fiduciary acting under the
84 authority of a deed of trust or will, or a fiduciary of a
85 decedent's estate.

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

Randy Schoonover
.....
Chairman Senate Committee

Ernest C Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll P. Adams
.....
Clerk of the Senate

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

Carl Ray Tomblin
.....
President of the Senate

Carl Adams
.....
Speaker House of Delegates

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

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/16/95

Time 10:35 am