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STATE HOUSE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 2569

(By Delegates Collins, Proudfoot,  
Staton, and Kuhn)



Passed March 13, 1998

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK  
LEGISLATIVE DEPARTMENT  
STATE OF WEST VIRGINIA

**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 2569**

(BY DELEGATES COLLINS, PROUDFOOT, STATON AND KUHN)

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[Passed March 13, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two, eleven and sixteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to real estate brokers and salespersons; excluding from the definition of "real estate broker" noncommissioned clerical employees of real estate brokers who perform certain administrative functions; setting forth grounds for refusing, suspending or revoking licenses, including the payment of a commission or other consideration to another broker or salesperson in certain instances; and setting forth criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections two, eleven and sixteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

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

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

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

39 (e) One act in consideration of or with the expectation  
40 or intention of or upon the promise of receiving

41 compensation by fee, commission or otherwise, in the  
42 performance of any act or activity contained in this  
43 section, constitutes such persons, partnerships, association  
44 or corporation, a real estate broker and make him or her,  
45 them or it subject to the provisions and requirements of  
46 this article.

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

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

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

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

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

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

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

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

84 (8) Nor does this article apply to any person  
85 employed by a real estate broker in a noncommissioned  
86 clerical capacity who may in the course of employment be  
87 required to:

88 (A) Disseminate brokerage preprinted and  
89 predetermined real estate sales and rental information;

90 (B) Accept and process rental reservations or bookings  
91 for a period not to exceed thirty consecutive days in a  
92 manner and procedure predetermined by the broker;

93 (C) Collect predetermined rental fees for the rentals  
94 which are to be promptly tendered to the broker; or

95 (D) Any combination thereof.

**§47-12-11. Procedure and grounds for refusal, suspension or  
revocation of license.**

1 (a) The commission may upon its own motion and  
2 shall, upon the verified complaint in writing of any person  
3 setting forth a cause of action under this section, ascertain  
4 the facts and if warranted hold a hearing for the  
5 suspension or revocation of a license. The commission  
6 shall have full power to refuse a license for reasonable  
7 cause or to revoke or suspend a license if the licensee:

8 (1) Obtains, renews or attempts to obtain or renew a  
9 license through the submission of any application or other  
10 writing that contains false or fraudulent information;

11 (2) Makes any substantial misrepresentation;

12 (3) Makes any false promises or representations of  
13 character likely to influence, persuade or induce a person  
14 involved in a real estate transaction;

15 (4) Pursues a continued or flagrant course of  
16 misrepresentation or makes false promises or  
17 representations through agents or salespersons or any  
18 medium of advertising or otherwise;

19 (5) Uses misleading or false advertising or uses any  
20 trade name or insignia of membership in any real estate  
21 organization, in which the licensee is not a member;

22 (6) Acts for more than one party in a transaction  
23 without the knowledge of all parties for whom he or she  
24 acts;

25 (7) Fails, within a reasonable time, to account for or to  
26 remit any moneys coming into his or her possession  
27 belonging to others, or commingles moneys belonging to  
28 others with his or her own funds;

29 (8) Displays a "for sale" or "for rent" sign on any  
30 property without an agency therefor or without the  
31 owner's consent;

32 (9) Fails to disclose in writing to all parties to a real  
33 estate transaction, on the form promulgated by the  
34 commission, whether the licensee is representing the seller,  
35 the buyer or both;

36 (10) Fails to voluntarily furnish copies of a notice of  
37 agency disclosure, and all listing agreements, sales  
38 contracts, and lease agreements to all parties executing the  
39 same;

40 (11) Pays or receives any rebate, profit, compensation  
41 or commission as a result of a real estate transaction from  
42 any person other than his or her principal;

43 (12) Induces any party to a contract, sale or lease to  
44 enter into another contract, in lieu thereof, for the personal  
45 gain of the licensee;

46 (13) Accepts a commission or other valuable  
47 consideration as a real estate salesperson for the  
48 performance of any of the acts specified in this article,  
49 from any person, other than his or her employer, who  
50 must be a licensed real estate broker;

51 (14) Pays a commission or other valuable  
52 consideration to any person for acts or services performed  
53 either in violation of this article or the real estate licensure  
54 laws of any other state;

55 (15) Pays a commission or other valuable  
56 consideration to another real estate broker or salesperson,  
57 knowing that the other real estate broker or salesperson  
58 will pay a portion or all of that which is received in a  
59 manner that would constitute a violation of this article if it  
60 were paid directly by a licensee of this state;

61 (16) Engages in the unlawful or unauthorized practice  
62 of law as defined by the supreme court of appeals of West  
63 Virginia;

64 (17) Procures an attorney for any customer or solicits  
65 legal business for any attorney at law;

66 (18) Engages in any act or conduct which constitutes  
67 or demonstrates bad faith, incompetency or  
68 untrustworthiness, or dishonest, fraudulent or improper  
69 dealing;

70 (19) Has been convicted in a court of competent  
71 jurisdiction in this or in any other state of forgery,  
72 embezzlement, obtaining money under false pretense,  
73 extortion, conspiracy to defraud or of any other like  
74 offense; or

75 (20) Has been convicted in a court of competent  
76 jurisdiction in this or any other state of a felony.


77 (b) As used in this section:

78 (1) The words "convicted in a court of competent  
79 jurisdiction" mean a plea of guilty or nolo contendere  
80 entered by a person or a verdict of guilt returned against a  
81 person at the conclusion of a trial;

82 (2) A certified copy of a conviction order entered in  
83 such court is sufficient evidence to demonstrate a person  
84 has been convicted in a court of competent jurisdiction.

**§47-12-16. Penalties for violations.**

1 Any person violating a provision of this article is  
2 guilty of a misdemeanor and, upon conviction of a first  
3 violation thereof, if an individual, shall be fined not less  
4 than one thousand dollars nor more than two thousand  
5 dollars, or confined in the county or regional jail not more  
6 than ninety days, or both fined and confined; and if a  
7 corporation, shall be fined not less than two thousand  
8 dollars nor more than five thousand dollars. Upon  
9 conviction of a second or subsequent violation, any person  
10 so convicted, if an individual, shall be fined not less than  
11 two thousand dollars nor more than five thousand dollars,  
12 or confined in the county or regional jail for a term not to  
13 exceed one year, or both fined and confined; and if a  
14 corporation, shall be fined not less than five thousand  
15 dollars nor more than ten thousand dollars. Any officer  
16 or agent of a corporation, or any member or agent of a  
17 partnership or association, shall be subject to the penalties  
18 herein prescribed for individuals.





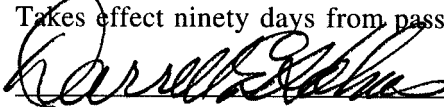
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
Chairman Senate Committee

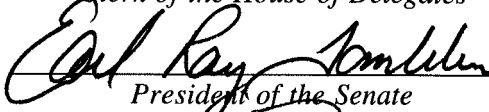
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

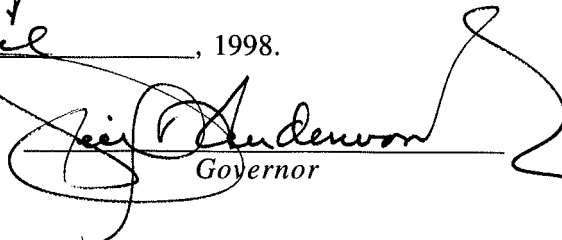
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 24  
day of April, 1998.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/48

Time 10:08 am