WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 2569

(Bv Delegates Collins, Proudfoot, Clutch, and Kuhn)

Passed March 13, 1998

In Effect Ninety Days from Passage
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.
(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 the 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 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 the property is situated in this state or elsewhere.

(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 the 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" does 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, the 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 the 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;

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

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

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

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

(D) Any combination thereof.

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

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

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

(2) Makes any substantial misrepresentation;

(3) Makes any false promises or representations of character likely to influence, persuade or induce a person involved in a real estate transaction;
(4) Pursues a continued or flagrant course of misrepresentation or makes false promises or representations through agents or salespersons or any medium of advertising or otherwise;

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

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

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

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

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

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

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

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

(13) Accepts a commission or other valuable consideration as a real estate salesperson for the performance of any of the acts specified in this article, from any person, other than his or her employer, who must be a licensed real estate broker;
(14) Pays a commission or other valuable consideration to any person for acts or services performed either in violation of this article or the real estate licensure laws of any other state;

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

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

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

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

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

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

(b) As used in this section:

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

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

§47-12-16. Penalties for violations.
Any person violating a provision of this article is guilty of a misdemeanor and, upon conviction of a first violation thereof, if an individual, shall be fined not less than one thousand dollars nor more than two thousand dollars, or confined in the county or regional jail not more than ninety days, or both fined and confined; and if a corporation, shall be fined not less than two thousand dollars nor more than five thousand dollars. Upon conviction of a second or subsequent violation, any person so convicted, if an individual, shall be fined not less than two thousand dollars nor more than five thousand dollars, or confined in the county or regional jail for a term not to exceed one year, or both fined and confined; and if a corporation, shall be fined not less than five thousand dollars nor more than ten thousand dollars. Any officer or agent of a corporation, or any member or agent of a partnership or association, shall be subject to the penalties herein prescribed for individuals.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

Speaker of the House of Delegates

The within approved this the 21st day of December, 1998.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/26/48
Time 10:08 AM