WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

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ENROLLED

House Bill No. 3089
(By Delegates H. White, Trump, Kominar and Amores)

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Passed March 8, 2003

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections eighteen and twenty-two, article forty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to modifying the requirement that financial institutions which maintain a trust fund deposit account for real estate brokers notify the real estate commission if any checks drawn against the account are returned for any cause; providing that a financial institution is required to notify the real estate commission if any checks drawn against the trust fund account are returned for insufficient funds; removing criminal and civil penalties applicable to a financial institution if a trust fund account for a real estate broker fails to notify the real estate commission if any check drawn against the account is returned for insufficient funds.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and twenty-two, article forty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.


(a) Every person licensed as a broker under the provisions of this article who does not immediately deliver all funds received, in relation to a real estate transaction, to his or her principal or to a neutral escrow depository shall maintain one or more trust fund accounts in a recognized financial institution and shall place all funds therein: Provided, That nothing contained herein shall require a broker to maintain a trust fund account if the broker does not hold any money in trust for another party.

(b) Funds that must be deposited into a trust fund account include, but are not limited to, earnest money deposits, security deposits, rental receipts, auction proceeds and money held in escrow at closing.

(c) Each trust fund account must be established at a financial institution which is insured against loss by an agency of the federal government and the amount deposited therein cannot exceed the amount that is insured against loss.

(d) Each trust fund account must provide for the withdrawal of funds without notice.

(e) No trust fund account may earn interest or any other form of income, unless specifically authorized by commission rule.

(f) The broker may not commingle his or her own funds with trust funds and the account may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that would violate his or her fiduciary obligations in relation to the trust funds: Provided, That nothing contained herein prevents the broker from depositing a maximum of one hundred
dollars of his or her own money in the trust fund account to maintain a minimum balance in the account.

(g) No financial institution, in which a trust fund account is established under the provisions of this article, shall require a minimum balance in excess of the amount authorized in subsection (f) of this section.

(h) The broker shall be the designated trustee of the account and shall maintain complete authority and control over all aspects of each trust fund account, including signature authority: Provided, That only one other member or officer of a corporation, association or partnership, who is licensed under the provisions of this article, may be authorized to disburse funds from the account: Provided, however, That if disbursements from a trust fund account require two signatures, one additional member or officer may be a signatory as provided in this section.

(i) The broker shall, at a minimum, maintain records of all funds deposited into the trust fund account, which shall clearly indicate the date and from whom the money was received, date deposited, date of withdrawal, to whom the money belongs, for whose account the money was received and other pertinent information concerning the transaction. All records shall be open to inspection by the commission or its duly authorized representative at all times during regular business hours at the broker’s place of business.

(j) The broker shall cause the financial institution wherein a trust fund account is maintained, to execute a statement, prepared by the commission, which shall include, but is not limited to:

(1) Exact title of the account as registered by the financial institution;
(2) The account number of the trust fund account;

(3) Identification of all persons authorized to make with- drawals from the account;

(4) Name and address of the financial institution;

(5) Title of the person executing the statement on behalf of the financial institution;

(6) Date the statement was executed; and

(7) Certification that the financial institution will notify the real estate commission if any checks drawn against the account are returned for insufficient funds and that the financial institution does not require a minimum balance in excess of the amount authorized in subsection (f) of this section.

(k) The broker shall execute a statement authorizing the commission, or its duly authorized representative, to make periodic inspections of the trust fund account and to obtain copies of records from any financial institution wherein a trust fund account is maintained. A copy of any authorization shall be accepted by any financial institution with the same force and effect as the original.

(l) The broker shall notify the commission, within ten days, of the establishment of or any change to a trust fund account.

(m) Nothing provided in this section creates any duty or obligation on a financial institution to monitor the activities of a broker designated as trustee of a trust fund account, except for those duties or obligations specifically provided in subsection (g) of this section and subdivision (7), subsection (j) of this section.
§30-40-22. Penalties for violations.

(a) Any person violating a provision of this article or the commission’s rules is guilty of a misdemeanor. Any person convicted of a first violation 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;

(b) Any person convicted of a second or subsequent violation 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;

(c) Any corporation, association or partnership convicted of a first violation of this article or the commission’s rules, shall be fined not less than two thousand dollars nor more than five thousand dollars;

(d) Any corporation, association or partnership convicted of a second or subsequent violation, shall be fined not less than five thousand dollars nor more than ten thousand dollars;

(e) Any officer, member, employee or agent of a corporation, association or partnership, shall be subject to the penalties herein prescribed for individuals;

(f) Each and every day a violation of this article continues shall constitute a separate offense;

(g) In addition to the penalties herein provided, if any person receives compensation for acts or services performed in violation of this article, he or she shall also be subject to a penalty of not less than the value of the compensation received nor more than three times the value of the compensation received, as may be determined by a court of competent
jurisdiction. Any penalty may be recovered by a person aggrieved as a result of a violation of this article.

(h) The penalties provided in this section do not apply to a violation of the duties or obligations of a financial institution under the certification required by subdivision (7), subsection (j), section eighteen of this article by a financial institution providing trust fund account services to a broker.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 is approved this the 1st day of April, 2003.

Governor