WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

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ENROLLED

House Bill No. 3016

(By Mr. Speaker, Mr. Kiss and Delegates G. White, Beach, Beane, Ennis, Varner, H. White, Browning, Staton, Mahan and Stalnaker)

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Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §30-40-5 of the Code of West Virginia, 1931, as amended, relating to excepting the making of appointments by secretaries of licensed real estate brokers and salespersons with buyers and sellers or potential buyers and sellers of real estate from the scope of practice of real estate brokerage subject to licensing.

Be it enacted by the Legislature of West Virginia:

That §30-40-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-5. Scope of practice; exceptions.

1 (a) The practice of real estate brokerage includes acting in
2 the capacity of a broker, associate broker or salesperson as
3 defined in section four of this article.
(b) The practice of real estate brokerage does not include the activities normally performed by an appraiser, mortgage company, lawyer, engineer, contractor, surveyor, home inspector or other professional who may perform an ancillary service in conjunction with a real estate transaction.

(c) The provisions of this article do not apply to:

(1) Any person acting on his or her own behalf as owner or lessor of real estate.

(2) The regular employees of an owner of real estate, who perform any acts regulated by this article, where the acts are incidental to the management of the real estate: Provided, That the employee does not receive additional compensation for the act and does not perform the act as a vocation.

(3) Attorneys-at-law: Provided, That attorneys-at-law shall be required to submit to the written examination required under section twelve of this article in order to qualify for a broker’s license: Provided, however, That an attorney-at-law who is licensed as a real estate broker prior to the first day of July, one thousand nine hundred eighty, is exempt from the written examination required under section twelve of this article.

(4) Any person holding, in good faith, a valid power of attorney from the owner or lessor of the real estate.

(5) Any person acting as a receiver, trustee, administrator, executor, guardian, conservator or under the order of any court or under the authority of a deed of trust or will.

(6) A public officer while performing his or her official duties.

(7) Any person acquiring or disposing of any interest in timber or minerals, or acquiring or disposing of properties for
easements and rights-of-ways for pipelines, electric power lines and stations, public utilities, railroads or roads.

(8) Any person employed exclusively to act as the management or rental agent for the real estate of one person, partnership or corporation.

(9) Any person 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 real estate, only when the person so licensed is retained to conduct an auction by:

(A) A receiver or trustee in bankruptcy;

(B) A fiduciary acting under the authority of a deed of trust or will; or

(C) A fiduciary of a decedent’s estate.

(10) Any person employed by a broker in a noncommissioned secretarial or clerical capacity who may in the normal 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;

(D) Make appointments on behalf of the broker or licensed salesperson with buyers and sellers of real estate and potential buyers and sellers of real estate; or

(E) Any combination thereof.
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 approved this the 29th day of April 2005.

Governor