

FILED

2005 APR 29 A 11: 31

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



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)



Passed April 9, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 3016

(BY MR. SPEAKER, MR. KISS AND DELEGATES G. WHITE,
BEACH, BEANE, ENNIS, VARNER, H. WHITE, BROWNING,
STATON, MAHAN AND STALNAKER)

[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.

4 (b) The practice of real estate brokerage does not include
5 the activities normally performed by an appraiser, mortgage
6 company, lawyer, engineer, contractor, surveyor, home inspec-
7 tor or other professional who may perform an ancillary service
8 in conjunction with a real estate transaction.

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

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

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

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

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

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

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

31 (7) Any person acquiring or disposing of any interest in
32 timber or minerals, or acquiring or disposing of properties for

33 easements and rights-of-ways for pipelines, electric power lines
34 and stations, public utilities, railroads or roads.

35 (8) Any person employed exclusively to act as the manage-
36 ment or rental agent for the real estate of one person, partner-
37 ship or corporation.

38 (9) Any person properly licensed pursuant to the provisions
39 of article two-c, chapter nineteen of this code when conducting
40 an auction, any portion of which contains any leasehold or
41 estate in real estate, only when the person so licensed is retained
42 to conduct an auction by:

43 (A) A receiver or trustee in bankruptcy;

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

46 (C) A fiduciary of a decedent's estate.

47 (10) Any person employed by a broker in a noncommis-
48 sioned secretarial or clerical capacity who may in the normal
49 course of employment, be required to:

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

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

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

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

60 (E) Any combination thereof.


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

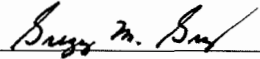

Chairman Senate Committee

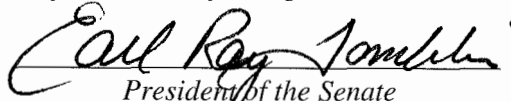

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

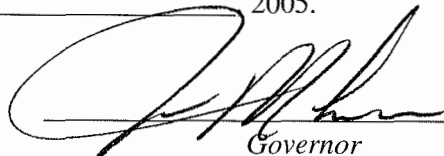

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within was approved this the 24th
day of April 2005.


Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:05 AM