

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

House Bill 3203

BY DELEGATES STEELE, HORNBY, YOUNG AND LUCAS

[Passed March 11, 2023; in effect ninety days from passage.]

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2023 MAR 28 P 4: 48

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SECRETARY OF STATE

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1 AN ACT to amend and reenact §30-40-3, §30-40-4, §30-40-5, §30-40-9, §30-40-11, §30-40-12,
2 §30-40-13, §30-40-14, §30-40-15, §30-40-16, §30-40-17, §30-40-18, §30-40-19, §30-40-
3 20, §30-40-21, §30-40-22, §30-40-25, and §30-40-26 of the Code of West Virginia, 1931,
4 as amended; and to repeal §30-40-27 of said code, all relating to the West Virginia Real
5 Estate License Act; amending definitions; modifying the applicability of the article;
6 requiring certain fees to be deposited into the Treasury of the state daily; eliminating
7 requirements for certain information to be included on applications for licensure; modifying
8 qualifications for obtaining broker's license; providing restrictions on the entities that may
9 be issued a salesperson's license; clarifying and amending requirements for prelicense
10 education; modifying requirements for licensing based on licensure in another jurisdiction;
11 modifying continuing education requirements; eliminating certain requirements for
12 persons holding a broker's license; modifying requirements for license certificates issued
13 by the Real Estate Commission; requiring a licensed broker to reconcile trust accounts;
14 eliminating a prohibition on financial institutions that maintain trust accounts from requiring
15 a certain minimum balance; clarifying language related to when commission may refuse
16 a license or revoke, suspend, or impose any other sanction against a licensee; modifying
17 the procedure for commission to administer complaints; modifying procedure for judicial
18 review of decisions or final orders of the commission; clarifying language regarding
19 criminal penalties; clarifying language related to suits for collection of compensation;
20 requiring licensees to disclose in writing whether the licensee represents the seller, the
21 buyer, the seller and the buyer, the landlord, the tenant, or the landlord and the tenant;
22 and repealing an outdated section of code governing the duration of existing licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-3. License required.

1 It is unlawful for any person to engage in directly or indirectly, or to advertise or hold
2 himself or herself out as engaging in or carrying on the business or act in the capacity of a real
3 estate broker, associate broker, or salesperson within this state without first obtaining a license
4 as provided for in this article. Prior to practicing real estate brokerage in this state, a license shall
5 be obtained from the commission even if the person or entity is licensed in another state and is
6 affiliated or otherwise associated with a licensed real estate broker in this state.

§30-40-4. Definitions.

1 Unless the context used clearly requires a different meaning, as used in this article:

2 "Applicant" means any person who is making application to the commission for a license.

3 "Associate broker" means any person who qualifies for a broker's license, but who is
4 employed or engaged by a licensed broker to engage in any activity regulated by this article, in
5 the name of and under the direct supervision of the licensed broker.

6 "Broker" means any person who for compensation or with the intention or expectation of
7 receiving or collecting compensation:

8 (1) Lists, sells, purchases, exchanges, options, rents, manages, leases, or auctions any
9 interest in real estate; or

10 (2) Directs or assists in the procuring of a prospect calculated or intended to result in a
11 real estate transaction; or

12 (3) Advertises or holds himself or herself out as engaged in, negotiates, or attempts to
13 negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.

14 "Cancelled" means a license that was not renewed by December 31 of the year in which
15 license expired;

16 "Commission" means the West Virginia Real Estate Commission as established §30-40-
17 6 of this code.

18 "Compensation" means fee, commission, salary, or other valuable consideration, in the
19 form of money or otherwise.

20 "Designated broker" means a person holding a broker's license who has been appointed
21 by a partnership, association, corporation, or other form of business organization engaged in the
22 real estate brokerage business, to be responsible for the acts of the business and to whom the
23 partners, members, or board of directors have delegated full authority to conduct the real estate
24 brokerage activities of the business organization.

25 "Distance education" means courses of asynchronous instruction in which instruction
26 takes place through media where the teacher and student are separated by time.

27 "Entity" means a business, company, corporation, limited liability company, association,
28 or partnership.

29 "Expired" means a license that was not renewed by July 1.

30 "Inactive" means a licensee who is not authorized to conduct any real estate business and
31 is not required to comply with any continuing education requirements.

32 "License" means a license to act as a broker, associate broker, or salesperson.

33 "Licensee" means a person holding a license.

34 "Member" means a commissioner of the Real Estate Commission.

35 "Principal" means a person or entity that authorizes a licensee to act on his, her, or its
36 behalf.

37 "Real estate" means any interest or estate in land, and anything permanently affixed to
38 land.

39 "Salesperson" means a person employed or engaged by or on behalf of a broker to do or
40 deal in any activity included in this article, in the name of and under the direct supervision of a
41 broker, other than an associate broker: *Provided*, That for the purposes of receiving
42 compensation, a salesperson may designate an entity to receive any compensation payable to
43 the salesperson, including, but not limited to, a limited liability corporation or an S-corporation.

44 "Team" means any group of two or more associate brokers and/or salespersons, and other
45 non-licensed professionals, affiliated with the same broker or company acting as one agent
46 representative for the principal.

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

1 (a) The practice of real estate brokerage includes acting in the capacity of a broker,
2 associate broker, or salesperson as defined in §30-40-4 of this code.

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

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

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

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

13 (3) Attorneys-at-law: *Provided*, That attorneys-at-law shall be required to submit to the
14 written examination required under §30-40-12 of this code in order to qualify for a broker's license:
15 *Provided, however*, That an attorney-at-law who is licensed as a real estate broker prior to July
16 1, 1980, is exempt from the written examination required under §30-40-12 of this code.

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

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

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

22 (7) Any person acquiring or disposing of any interest in timber or minerals, or acquiring or
23 disposing of properties for easements and rights of way.

24 (8) Any person employed exclusively to act as the management or rental agent for the real
25 estate of one person or entity.

26 (9) Any person properly licensed pursuant to the provisions of §19-2C-1 *et seq.* of this
27 code when conducting an auction, any portion of which contains any leasehold or estate in real
28 estate, only when the person so licensed is retained to conduct an auction by:

29 (A) A receiver or trustee in bankruptcy;

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

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

32 (10) Any person employed by a broker in a noncommissioned secretarial or clerical
33 capacity who may in the normal course of employment, be required to:

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

36 (B) Accept and process rental reservations or bookings for a period not to exceed 30
37 consecutive days in a manner and procedure predetermined by the broker;

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

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

42 (E) Any combination thereof.

§30-40-9. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the commission
2 shall be deposited into the treasury of the state, daily, into a special revenue fund known as the
3 "real estate license fund" which is continued.

4 (b) Except as may be provided in §30-40-10 of this code, the commission shall retain the
5 amounts in the special revenue fund from year to year and no funds collected under this article
6 may be used by the commission for any purpose other than the administration and enforcement
7 of this article. No compensation or expense incurred under this article is a charge against the
8 General Revenue Fund.

9 (c) Any amounts received as administrative fines imposed pursuant to this article shall be
10 deposited into the General Revenue Fund of the State Treasury.

§30-40-11. Application for license.

1 The commission shall only issue an original license to an applicant if he or she:

2 (a) Submits an application, in writing, on a form prescribed by the commission which shall
3 contain, but is not limited to:

4 (1) The applicant's Social Security number;

5 (2) A clear record indicating all jurisdictions where the applicant holds or has held any
6 professional license;

7 (3) A clear record indicating if the applicant has been convicted of any criminal offense or
8 if there is any criminal charge pending against the applicant, or a member or officer of the
9 brokerage business, at the time of application;

10 (b) Is at least 18 years of age;

11 (c) Is a high school graduate or the holder of an equivalency diploma;

12 (d) Is trustworthy, of good moral character, and competent to transact the business of a
13 broker, associate broker, or salesperson;

14 (e) Has paid the appropriate fee, if any, which shall accompany all applications for original
15 license or renewal;

16 (f) Has submitted to a state and national criminal history record check, as set forth in this
17 subsection: *Provided*, That an applicant for a license who is an attorney at law may submit a letter

18 of good standing from the West Virginia State Bar in lieu of submitting to a state and national
19 criminal history record check;

20 (1) This requirement is found not to be against public policy.

21 (2) The criminal history record check shall be based on fingerprints submitted to the West
22 Virginia State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

23 (3) The applicant shall meet all requirements necessary to complete the state and national
24 criminal history record check, including:

25 (A) Submitting fingerprints for the purposes set forth in this subsection; and

26 (B) Authorizing the commission, the West Virginia State Police, and the Federal Bureau
27 of Investigation to use all records submitted and produced for the purpose of screening the
28 applicant for a license.

29 (4) The results of the state and national criminal history record check may not be released
30 to or by a private entity except:

31 (A) To the individual who is the subject of the criminal history record check;

32 (B) With the written authorization of the individual who is the subject of the criminal history
33 record check; or

34 (C) Pursuant to a court order.

35 (5) The criminal history record check and related records are not public records for the
36 purposes of chapter 29B of this code.

37 (6) The applicant shall pay the actual costs of the fingerprinting and criminal history record
38 check.

39 (7) Before implementing the provisions of this subsection, the commission shall propose
40 rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code. The rules shall set
41 forth the requirements and procedures for the criminal history record check and must be
42 consistent with standards established by the Federal Bureau of Investigation and the National
43 Crime Prevention and Privacy Compact as authorized by 42 U. S. C. A. §14611, *et seq.*

§30-40-12. Qualifications for broker's license.

1 (a) An applicant for a broker's license shall:

2 (1) Submit evidence satisfactory to the commission of either: (i) Real estate experience as
3 a licensed real estate salesperson during the two years prior to the date of application showing
4 the applicant's representation of a buyer or seller in a minimum of 10 closed transactions; if the
5 applicant is engaged solely in the leasing or renting of real estate, representation of the landlord
6 or tenant in a minimum of 10 closed transactions of at least one year in duration; or if the applicant
7 is engaged solely in the management of a real estate brokerage company, active involvement in
8 a minimum of 20 closed transactions; or (ii) regardless of the number of years as a licensed
9 salesperson: a minimum of 20 closed transactions; if the applicant is engaged solely in the leasing
10 or renting of real estate, representation of the landlord or tenant in a minimum of 20 closed
11 transactions of at least one year duration; or if the applicant is engaged solely in the management
12 of a real estate brokerage company, active involvement in a minimum of 30 closed transactions.

13 For the purposes of this section, a "closed transaction" means a transaction that resulted in the
14 real estate being conveyed from seller to buyer in which the applicant represented the seller,
15 buyer, or both, or a transaction that resulted in the consummation of a lease of no less than one
16 year in duration in which the applicant represented either the landlord or tenant of the real estate;

17 (2) Submit satisfactory evidence of having completed the required education course as
18 provided for in §30-40-14 of this code; and

19 (3) Successfully pass the examination or examinations provided by the commission.

20 (b) No broker's license shall be issued in the name of an entity except through one of its
21 members or officers.

22 (c) No broker's license may be issued in the name of an entity unless each member or
23 officer who will engage in the real estate business, obtains a license as a real estate salesperson
24 or associate broker.

§30-40-13. Qualifications for salesperson's license.

1 (a) An applicant for a salesperson's license shall:

2 (1) Submit satisfactory evidence of having completed the required education course as
3 provided in §30-40-14 of this code; and

4 (2) Successfully pass the examination or examinations provided by the commission.

1 (b) No salesperson's license may be issued in the name of an entity except through one
2 of its members or officers.

3 (c) No salesperson's license may be issued in the name of an entity unless each member
4 or officer, who will engage in the real estate business, obtains a license as a real estate
5 salesperson or associate broker.

§30-40-14. Prelicense education.

1 (a) Applicants for a broker's license shall provide evidence satisfactory to the commission
2 that he or she has completed at least 180 clock-hours, equivalent to 12 college semester credit
3 hours, in a course or courses approved by the commission: *Provided*, That an applicant for a
4 broker's license who holds a salesperson's license in this state shall be required to provide
5 evidence that he or she has completed an additional 90 clock-hours, equivalent to six college
6 semester hours, in a course or courses approved by the commission.

7 (b) Applicants for a salesperson's license shall provide evidence satisfactory to the
8 commission that he or she has completed 90 clock-hours, equivalent to six college semester
9 credit hours, in a course or courses approved by the commission.

10 (c) Any course required by subsection (a) or (b) of this section shall have been completed
11 during the three-year period preceding the date of application in order to be accepted by the
12 commission.

§30-40-15. Licensing based on licensure in another jurisdiction.

1 (a) The commission may recognize a valid license issued by another jurisdiction as
2 satisfactorily qualifying an applicant who is licensed to practice real estate brokerage in another
3 jurisdiction to obtain a comparable license in this state: *Provided*, That the applicant has qualified

4 for license in another jurisdiction by examination and by complying with all the provisions for
5 obtaining a license in that jurisdiction and the jurisdiction affords the same privilege to licensees
6 of this state.

7 (b) In order to obtain a license in this state, an applicant under this section shall:

8 (1) Submit the application on a form prescribed by the commission and fee, if any;

9 (2) Pass the West Virginia state law portion of the licensure examination approved by the
10 commission;

11 (3) Submit a certification of licensure showing that the applicant possesses an active
12 license to practice real estate brokerage in another jurisdiction;

13 (4) Submit record(s) showing all disciplinary actions imposed against the applicant by any
14 jurisdiction in which the applicant holds or held a license, if any; and

15 (5) For non-resident applicants, submit an irrevocable written designation that appoints
16 the executive director of the commission to act as the non-resident licensee's agent, upon whom
17 all judicial and other process or legal notices directed to the licensee may be served. The
18 designation shall stipulate and agree that service upon the executive director is equivalent to
19 personal service upon the licensee. A copy of the designation of appointment, certified by the seal
20 of the commission, may be admitted into evidence with the same force and affect as the original.
21 The executive director shall mail a copy of any process or legal notice immediately upon receipt,
22 by certified mail, to the last known business address of the licensee. No judgment by default may
23 be taken in any action or proceeding until after 30 days of mailing and then only upon certification
24 by the executive director that a copy of the judicial, other process or legal notice was mailed as
25 required.

§30-40-16. Continuing professional education.

1 (a) Every licensee shall complete seven hours of continuing professional education for
2 each fiscal year, with each hour equaling 50 minutes of instruction. For brokers and associate

3 brokers, three of the required seven hours shall be from the broker-level education curriculum
4 approved by the commission.

5 (b) Upon application for the renewal of a real estate license on active status, each licensee
6 shall furnish satisfactory evidence, as established by the commission, that he or she has
7 completed seven hours of approved continuing professional education during the term of the
8 previous license.

9 (c) When a licensee in an inactive status makes application to revert to an active status,
10 he or she shall furnish satisfactory evidence to the commission that he or she has completed the
11 approved continuing professional education that would have been required for active status at the
12 time the license was renewed.

13 (d) Approval from the commission shall be obtained by each provider and instructor and
14 for any course prior to any advertising or offering of the course.

15 (e) Real estate-related continuing education courses provided by or approved by the real
16 estate appraiser licensing and certification board, the Division of Highways, the West Virginia
17 State Bar, or other agency of this state shall be recognized as approved by the commission.

18 (f) If approved in advance by the commission, distance education courses may be used
19 to satisfy the continuing education requirement.

20 (g) Any licensee holding a license on July 1, 1969, and continuously thereafter, shall be
21 exempt from the continuing professional education requirement.

**§30-40-17. Place of business; branch offices; display of certificates; custody of license
certificates; change of address; change of employer by a salesperson or
associate broker; license certificates; term of license.**

1 (a) Every person holding a broker's license under the provisions of this article shall:

2 (1) Have and maintain a definite place of business within this state, which shall be a room
3 or rooms used for the transaction of real estate business and any allied business. The definite
4 place of business shall be designated in the license certificate issued by the commission and the

5 broker may not transact business at any other location, unless such other location is properly
6 licensed by the commission as a branch office;

7 (2) Conspicuously display his or her branch office license in each branch office;

8 (3) Make application to the commission before changing the address of any office or within
9 10 days after any change;

10 (4) Maintain in his or her custody and control the license of each associate broker and
11 salesperson affiliated with him or her; and

12 (5) Promptly return the license of any associate broker or salesperson whose affiliation
13 with the broker is terminated.

14 (b) Every person holding an associate broker's or salesperson's license under the
15 provisions of this article shall:

16 (1) Conduct real estate brokerage activities only under the direct supervision and control
17 of his or her affiliated broker, which shall be designated in the license certificate; and

18 (2) Promptly make application to the commission of any change of employing broker:
19 *Provided*, That it shall be unlawful to perform any act contained in this article, either directly or
20 indirectly, after affiliation has been terminated until the associate broker or salesperson has made
21 application to the commission for a change of affiliated broker and the application is approved.

22 (c) The commission shall issue a license certificate which shall:

23 (1) Be in such form and size as shall be prescribed by the commission;

24 (2) Display the seal of the commission and shall contain such other information as the
25 commission may prescribe: *Provided*, That a salesperson's and an associate broker's license
26 shall show the name of the broker by whom he or she is affiliated;

27 (3) If an active licensee, be mailed or delivered to the broker's main office address;

28 (4) If an inactive licensee, be held in the commission office; and

29 (5) Be valid for a period that coincides with the fiscal year beginning on July 1 and ending
30 on June 30.

§30-40-18. Trust fund accounts.

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

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

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

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

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

16 (f) The broker may not commingle his or her own funds with trust funds and the account
17 may not be pledged as collateral for a loan or otherwise utilized by the broker in a manner that
18 would violate his or her fiduciary obligations in relation to the trust funds: *Provided*, That nothing
19 contained herein prevents the broker from depositing a maximum of \$100 of his or her own money
20 in the trust fund account to maintain a minimum balance in the account.

21 (g) The broker shall be the designated trustee of the account and shall maintain complete
22 authority and control over all aspects of each trust fund account, including signature authority:
23 *Provided*, That only one other member or officer of a corporation, association, or partnership, who
24 is licensed under the provisions of this article, may be authorized to disburse funds from the

25 account: *Provided, however,* That if disbursements from a trust fund account require two
26 signatures, one additional member or officer may be a signatory as provided in this section.

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

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

36 (1) Exact title of the account as registered by the financial institution;

37 (2) The account number of the trust fund account;

38 (3) Identification of all persons authorized to make withdrawals from the account;

39 (4) Name and address of the financial institution;

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

41 (6) Date the statement was executed; and

42 (7) Certification that the financial institution will notify the Real Estate Commission if any
43 checks drawn against the account are returned for insufficient funds and that the financial
44 institution does not require a minimum balance in excess of the amount authorized in subsection
45 (f) of this section.

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

51 (k) The broker shall notify the commission, within 10 days of the establishment of or any
52 change to a trust fund account.

§30-40-19. Refusal, suspension, or revocation of a license.

1 (a) The commission may refuse a license for reasonable cause or revoke, suspend, or
2 impose any other sanction against a licensee if the licensee:

3 (1) Obtains, renews, or attempts to obtain or renew a license, for himself, herself, or
4 another, through the submission of any application or other writing that contains false, fraudulent,
5 or misleading information;

6 (2) Makes any substantial misrepresentation;

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

9 (4) Pursues a course of misrepresentation or makes false promises or representations
10 through agents or any medium of advertising or otherwise;

11 (5) Uses misleading or false advertising;

12 (6) Uses any trade name or insignia of membership in any organization in which the
13 licensee is not a member;

14 (7) Acts for more than one party in a transaction without the knowledge and written consent
15 of all parties for whom he or she acts;

16 (8) Fails, within a reasonable time, to account for or to remit moneys or other assets
17 coming into his or her possession, which belong to others;

18 (9) Commingles moneys belonging to others with his or her own funds;

19 (10) Advertises or displays a "for sale", "for rent", or other such sign on any property
20 without an agency relationship being established or without the owner's knowledge and written
21 consent;

22 (11) Advertises any property on terms other than those authorized by the owner;

23 (12) Fails to disclose, on the notice of agency relationship form promulgated by the
24 commission, whether the licensee represents the seller, buyer, or both;

25 (13) Fails to voluntarily furnish copies of the notice of agency relationship, listing contract,
26 sale contract, lease contract, or any other contract to each party executing the same;

27 (14) Pays or receives any rebate, profit, compensation, commission, or other valuable
28 consideration, resulting from a real estate transaction, to or from any person other than the
29 licensee's principal: *Provided*, That this subsection may not be construed to prevent the sharing
30 of compensation or other valuable consideration between licensed brokers;

31 (15) Induces any person to a contract to break the contract for the purpose of substituting
32 a new contract with a third party;

33 (16) Accepts compensation as a salesperson or associate broker for any act specified in
34 this article from any person other than his or her broker;

35 (17) Pays compensation to any person for acts or services performed either in violation of
36 this article or the real estate licensure laws of any other jurisdiction;

37 (18) Pays compensation to any person knowing that they will pay a portion or all of that
38 which is received, in a manner that would constitute a violation of this article if it were paid directly
39 by a licensee of this state;

40 (19) Violates any provision of this article, any rule, or any order or final decision issued by
41 the commission;

42 (20) Procures an attorney for any client or customer, or solicits legal business for any
43 attorney-at-law;

44 (21) Engages in the unlawful or unauthorized practice of law as defined by the Supreme
45 Court of Appeals of West Virginia;

46 (22) Commits or is a party to any material fraud, misrepresentation, concealment,
47 conspiracy, collusion, trick, scheme, or other device whereby any other person relies upon the
48 word, representation, or conduct of the licensee;

49 (23) Continues in the capacity of, or accepts the services of, any broker, associate broker,
50 or salesperson who is not properly licensed;

51 (24) Fails to disclose any information within his or her knowledge or to produce any
52 document, book, or record in his or her possession for inspection of and copying by the
53 commission or its duly authorized representatives;

54 (25) Accepts payment other than cash or its equivalent as earnest money or other deposit
55 unless this fact is disclosed in the contract to which the deposit relates;

56 (26) Accepts, takes, or charges any undisclosed compensation on expenditures made by
57 or on behalf of the licensee's principal;

58 (27) Discriminates against any person involved in a real estate transaction which is in
59 violation of any federal or state anti-discrimination law, including any fair housing law;

60 (28) Fails to preserve for five years following its consummation, records relating to any
61 real estate transaction;

62 (29) Fails to maintain accurate records on the broker's trust fund account;

63 (30) If a broker, fails to supervise all associate brokers and salespersons affiliated with
64 him or her;

65 (31) Breaches a fiduciary duty owed by a licensee to his or her principal in a real estate
66 transaction;

67 (32) Directs any party to a real estate transaction in which the licensee is involved, to any
68 lending institution for financing or to any affiliated business with the expectation of receiving a
69 financial incentive, rebate, or other compensation, without first obtaining from his or her principal
70 the signed acknowledgment of and consent to the receipt of the financial incentive, rebate, or
71 other compensation: *Provided*, That this subsection may not be construed to prevent the sharing
72 of compensation or other valuable consideration between licensed brokers;

73 (33) Represents to any lending institution, or other interested party either verbally or
74 through the preparation of false documents, an amount in excess of the true and actual sale price
75 of the real estate or terms differing from those actually agreed upon;

76 (34) Fails to disclose to an owner the licensee's true position if he or she directly or
77 indirectly through a third party, purchases for himself or herself or acquires or intends to acquire
78 any interest in or any option to purchase the property;

79 (35) Lends a broker's license to any person, including a salesperson, or permits a
80 salesperson to operate as a broker;

81 (36) Has been convicted in a court of competent jurisdiction in this or any other jurisdiction
82 of forgery, embezzlement, obtaining money under false pretense, bribery, larceny, extortion,
83 conspiracy to defraud, any other similar offense, a crime involving moral turpitude, or a felony;

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

86 (38) Induces any person to alter, modify, or change another licensee's fee or commission
87 for brokerage services, without that licensee's prior written consent;

88 (39) Negotiates a real estate transaction directly with any person that is represented
89 exclusively by another broker, unless the conduct is specifically authorized by the other broker;

90 (40) Obtains, negotiates, or attempts to obtain or negotiate a contract whereby the broker
91 is entitled to a commission only to the extent that the sales price exceeds a given amount,
92 commonly referred to as a net listing;

93 (41) Fails or refuses, on demand, to furnish copies of a document to a person whose
94 signature is affixed to the document;

95 (42) In the case of an associate broker or salesperson, represents or attempts to represent
96 a broker other than his or her employing broker;

97 (43) Fails to reduce a bona fide offer to writing;

98 (44) Guarantees, or authorizes or permits another licensee to guarantee, future profits
99 which may result from a real estate transaction;

100 (45) Is disciplined by another jurisdiction if at least one of the grounds for that discipline is
101 the same as or equivalent to one of the grounds for discipline in this article; or

102 (46) Engages in any other act or omission in violation of professional conduct
103 requirements of licensees established by legislative rule of the commission.

104 (b) The provisions of this section shall be liberally construed in order to carry out the
105 objectives and purposes of this article.

106 (c) As used in this section:

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

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

112 (d) Every person licensed by the commission has an affirmative duty to report, in a timely
113 manner, any known or observed violation of this article or the rules, orders, or final decisions of
114 the commission.

115 (e) The revocation of a broker's license shall automatically suspend the license of every
116 associate broker and salesperson affiliated with the broker: *Provided*, That the commission shall
117 issue a replacement license for any licensee so affected to a new broker, without charge, if a
118 proper application is submitted to the commission during the same license term.

§30-40-20. Complaints; investigation.

1 (a) Upon the initiation of a complaint by the commission or the filing of a complaint by
2 another person, the commission may ascertain the facts and if warranted hold a hearing for the
3 suspension or revocation of a license, or the imposition of sanctions against a licensee: *Provided*,
4 That no disciplinary action may be brought against a licensee upon any complaint that is filed

5 more than two years after the acts or omissions alleged in the complaint or, where the licensee is
6 alleged to have engaged in fraud, deceit, or misrepresentation, more than two years after the date
7 at which the complainant discovered, or through reasonable diligence should have discovered,
8 the alleged unprofessional conduct. Time limits for the filing of a complaint shall be tolled during
9 any period in which material evidence necessary for the commission's evaluation or use is
10 unavailable to the commission due to an ongoing criminal investigation or prosecution.

11 (b) All complaints shall be submitted in writing on a form prescribed by the commission,
12 and shall fully describe the acts or omissions constituting the alleged violation(s) of this article or
13 rules promulgated thereunder.

14 (c) Upon initiation or receipt of the complaint, the commission shall provide a copy of the
15 complaint to the licensee for his or her response to the allegations contained in the complaint.
16 The accused party shall file an answer within 20 days of the date of service. Failure of the licensee
17 to file a timely response may be considered an admission of the allegations in the complaint:
18 *Provided*, That nothing contained herein may prohibit the accused party from obtaining an
19 extension of time to file a response, if the commission, its executive director, or other authorized
20 representative permits the extension.

21 (d) The commission may cause an investigation to be made into the facts and
22 circumstances giving rise to the complaint and any person licensed by the commission has an
23 affirmative duty to assist the commission, or its authorized representative, in the conduct of its
24 investigation.

25 (e) After receiving the licensee's response and reviewing any information obtained through
26 investigation, the commission shall determine if probable cause exists that the licensee has
27 violated any provision of this article or the rules.

28 (f) If a determination that probable cause exists for disciplinary action, the commission
29 may hold a hearing in compliance with §30-40-21 of this code or may dispose of the matter
30 informally through a consent agreement or otherwise.

§30-40-21. Hearings; judicial review; cost of proceedings.

1 (a) Hearings shall be conducted in accordance with the provisions of §29A-5-1 *et seq.* of
2 this code and the commission's rules.

3 (b) Hearings shall be held at a time and place determined by the commission, but in no
4 event less than 30 days after the notice of hearing is given.

5 (c) Any member has the authority to administer oaths and to examine any person under
6 oath.

7 (d) If, after hearing, the commission determines the licensee has violated any provision of
8 this article, or the commission's rules, a formal decision shall be prepared which contains findings
9 of fact, conclusions of law, and specifically lists the disciplinary actions imposed.

10 (e) The commission may elect to have an administrative law judge or hearing examiner
11 conduct the hearing. If the commission makes this election, the administrative law judge or
12 hearing examiner, at the conclusion of a hearing, shall prepare a proposed order which shall
13 contain findings of fact and conclusions of law. The commission may request that disciplinary
14 actions imposed be a part of the proposed order, or the commission may reserve this obligation
15 for its consideration. The commission may accept, reject, or modify the decision of the
16 administrative law judge or hearing examiner.

17 (f) Any person adversely affected by any decision or final order made by the commission,
18 after a hearing, is entitled to judicial review pursuant to the provisions of §29A-5-4 of this code.

19 (g) In addition to any other sanction imposed, the commission may require a licensee to
20 pay the costs of the proceeding.

§30-40-22. Criminal penalties for violations.

1 (a) In addition to the sanctions imposed by the commission pursuant to this article, any
2 person violating a provision of this article or the commission's rules is guilty of a misdemeanor.
3 Any person convicted of a first violation shall be fined not less than \$1,000 nor more than \$2,000,
4 or confined in jail not more than 90 days, or both fined and confined;

5 (b) Any person convicted of a second or subsequent violation shall be fined not less than
6 \$2,000 nor more than \$5,000, or confined in jail for a term not to exceed one year, or both fined
7 and confined;

8 (c) Any corporation, association, or partnership convicted of a first violation of this article
9 or the commission's rules, shall be fined not less than \$2,000 nor more than \$5,000;

10 (d) Any corporation, association, or partnership convicted of a second or subsequent
11 violation, shall be fined not less than \$5,000 nor more than \$10,000;

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

14 (f) Each day a violation of this article continues constitutes a separate offense;

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

20 (h) The penalties provided in this section do not apply to a violation of the duties or
21 obligations of a financial institution under the certification required by §30-40-18(j)(7) of this code
22 by a financial institution providing trust fund account services to a broker.

§30-40-25. Collection of compensation.

1 No person may bring or maintain any action in any court of this state for the recovery of
2 compensation for the performance of any act or service for which a broker's license is required,
3 without alleging and proving that he or she was the holder of a valid broker's license at all times
4 during the performance or rendering of any act or service: *Provided*, That an associate broker or
5 salesperson may institute suit in his or her own name for the recovery of compensation from his
6 or her affiliated broker for acts or services performed while affiliated with the broker.

§30-40-26. Duties of licensees.

1 Every broker, associate broker, and salesperson owes certain inherent duties to the
2 consumer which are required by virtue of the commission granting a license under this article.
3 The duties include, but are not limited to:

4 (a) At the time of securing any contract whereby the broker is obligated to represent a
5 principal to a real estate transaction, every licensee shall supply a true legible copy of the contract
6 to each person signing the contract.

7 (b) Any contract in which a broker is obligated to represent a principal to a real estate
8 transaction shall contain a definite expiration date, and no provision may be included in any
9 contract whereby the principal is required to notify the broker of his or her intention to cancel the
10 contract after the definite expiration date.

11 (c) No provision may be inserted in any contract for representation that would obligate the
12 person signing the contract to pay a fee, commission, or other valuable consideration to the
13 broker, after the contract's expiration date, if the person subsequently enters into a contract for
14 representation with a different broker.

15 (d) Every licensee shall disclose in writing, on the notice of agency relationship form
16 promulgated by the commission, whether the licensee represents the seller, the buyer, the seller
17 and the buyer, the landlord, the tenant, or the landlord and the tenant. The disclosure shall be
18 made prior to any person signing any contract for representation by a licensee or a contract for
19 the sale or purchase of real estate.

20 (e) Every licensee shall promptly deliver to his or her principal, every written offer received.

21 (f) Every licensee shall make certain that all the terms and conditions of a real estate
22 transaction are contained in any contract prepared by the licensee.

23 (g) At the time of securing the signature of any party to a contract, the licensee shall deliver
24 a true copy of the contract to the person whose signature was obtained.

25 (h) Upon the final acceptance or ratification of any contract, the licensee shall promptly
26 deliver a true copy to each party that has signed the contract.

§30-40-27. Duration of existing licenses.

1 [Repealed.]

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Steve Harris

Clerk of the House of Delegates

Joe Min
Clerk of the Senate

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 28 P 4: 48

FILED

Originated in the House of Delegates.

In effect ninety days from passage.

Rep. Hansley
Speaker of the House of Delegates

C. P. ...
President of the Senate

The within is approved this the 28th
Day of March, 2023.

James ...
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2023

Time 2:52pm