

1 **Senate Bill No. 412**

2 (By Senator Blair)

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4 [Introduced February 4, 2015; referred to the Committee on Government Organization; and then
5 to the Committee on the Judiciary.]

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10 A BILL to amend and reenact §30-40-20 of the Code of West Virginia, 1931, as amended, relating
11 to the Real Estate Commission; licenses issued by commission; establishing time limitations
12 on filing complaints of unprofessional conduct against a licensee; and tolling the time limits
13 during criminal investigations and prosecutions.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §30-40-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted
16 to read as follows:

17 **ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.**

18 **§30-40-20. Complaints; investigation.**

19 (a) The commission may upon its own motion and shall upon the filing of a complaint setting
20 forth a cause of action under this article, or the rules promulgated thereunder, ascertain the facts and
21 if warranted hold a hearing for the suspension or revocation of a license, or the imposition of
22 sanctions against a licensee: Provided, That no disciplinary action may be brought against a licensee

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

8 (b) ~~The commission shall consider complaints which are submitted in writing and set forth~~
9 ~~the details of the transaction.~~ All complaints must be submitted in writing and must fully describe
10 the acts or omissions constituting the alleged unprofessional conduct.

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

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

21 (e) After receiving the licensee's response and reviewing any information obtained through
22 investigation, the commission shall determine if probable cause exists that the licensee has violated

1 any provision of this article or the rules.

2 (f) If a determination that probable cause exists for disciplinary action, the commission may

3 hold a hearing in compliance with section twenty-one of this article or may dispose of the matter

4 informally through a consent agreement or otherwise.

(NOTE: The purpose of this bill is to establish reasonable time limits for the filing of complaints with the Real Estate Commission for potential disciplinary action against a licensee alleged to have engaged in unprofessional conduct.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)