

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 681

BY SENATOR MAYNARD

[Introduced February 18, 2022; referred
to the Committee on Government Organization]

1 A BILL to repeal §30-40-27 of the Code of West Virginia, 1931, as amended; and to amend and
 2 reenact §30-40-3, §30-40-4, §30-40-5, §30-40-9, §30-40-11, §30-40-12, §30-40-13, §30-
 3 40-14, §30-40-15, §30-40-16, §30-40-17, §30-40-18, §30-40-19, §30-40-20, §30-40-21,
 4 §30-40-22, §30-40-25, and §30-40-26, all relating generally to revisions in the West
 5 Virginia Real License Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-3. License required.

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

§30-40-4. Definitions.

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

3 ~~(a)~~ "Applicant" means any person who is making application to the commission for a
 4 license.

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

8 ~~(c)~~ "Broker" means any person who for compensation or with the intention or expectation
 9 of receiving or collecting compensation:

10 ~~(4)~~ (a) Lists, sells, purchases, exchanges, options, rents, manages, leases, or auctions

11 any interest in real estate; or

12 ~~(2)~~ (b) Directs or assists in the procuring of a prospect calculated or intended to result in
13 a real estate transaction; or

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

16 “Cancelled” means a license that was not renewed by December 31 of the year in which
17 license expired;

18 ~~(d)~~ “Commission” means the West Virginia Real Estate Commission as established in
19 section six of this article.

20 ~~(e)~~ “Compensation” means fee, commission, salary, or other valuable consideration, in the
21 form of money or otherwise.

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

27 ~~(g)~~ “Distance education” means courses of asynchronous instruction in which instruction
28 takes place through media where the teacher and student are separated by ~~distance and~~
29 ~~sometimes by time.~~

30 “Entity” means a business, company, corporation, limited liability company, association,
31 or partnership.

32 “Expired” means a license that was not renewed by July 1.

33 ~~(h)~~ “Inactive” means a licensee who is not authorized to conduct any real estate business
34 and is not required to comply with any continuing education requirements.

35 ~~(i)~~ “License” means a license to act as a broker, associate broker or salesperson.

36 ~~(j)~~ “Licensee” means a person holding a license.

37 ~~(k)~~ "Member" means a commissioner of the Real Estate Commission.

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

40 ~~(l)~~ "Real estate" means any interest or estate in land, and anything permanently affixed to
41 land.

42 ~~(m)~~ "Salesperson" means a person employed or engaged by or on behalf of a broker to
43 do or deal in any activity included in this article, in the name of and under the direct supervision
44 of a broker, other than an associate broker.

45 "Team" means any group of two or more associate brokers and/or salespersons, and other
46 non-licensed professionals, affiliated with the same broker or company acting as one agent
47 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 section four of this article.

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 section twelve of this article in order to qualify for a broker's

15 license: *Provided, however,* That an attorney-at-law who is licensed as a real estate broker prior
16 to July 1, 1980, is exempt from the written examination required under section twelve of this
17 article.

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

20 ~~(5)~~ (4) Any person acting as a receiver, trustee, administrator, executor, guardian,
21 conservator or under the order of any court or under the authority of a deed of trust or will.

22 ~~(6)~~ (5) A public officer while performing his or her official duties.

23 ~~(7)~~ (6) Any person acquiring or disposing of any interest in timber or minerals, or acquiring
24 or disposing of properties for easements and ~~rights-of-ways~~ rights of way. ~~for pipelines, electric~~
25 ~~power lines and stations, public utilities, railroads, or roads~~

26 ~~(8)~~ (7) Any person employed exclusively to act as the management or rental agent for the
27 real estate of one person, ~~partnership, or corporation~~ or entity.

28 ~~(9)~~ (8) Any person properly licensed pursuant to the provisions of article two-c, chapter
29 nineteen of this code when conducting an auction, any portion of which contains any leasehold
30 or estate in real estate, only when the person so licensed is retained to conduct an auction by:

31 (A) A receiver or trustee in bankruptcy;

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

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

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

36 (A) Disseminate brokerage preprinted and predetermined real estate sales and rental
37 information;

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

40 (C) Collect predetermined rental fees for the rentals which are to be promptly tendered to

41 the broker;

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

44 (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, ~~at least once each month~~ daily, into a special
3 revenue fund known as the “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, in a form prescribed by the commission which ~~must~~
3 shall contain, but is not limited to:

4 (1) The applicant's social security number;

5 ~~(2) The recommendation of at least two persons who:~~

6 ~~(A) Are property owners at the time of signing the application;~~

7 ~~(B) Have been property owners for at least twelve months preceding the signing of the~~
8 ~~application;~~

9 ~~(C) Have known the applicant for at least two years;~~

10 ~~(D) Are not related to the applicant;~~

11 ~~(E) Are not affiliated with the applicant as an employer, partner or associate or with the~~
12 ~~broker that will employ the applicant;~~

13 ~~(F) Believe the applicant bears a good reputation for honesty, trustworthiness and fair~~
14 ~~dealing; and~~

15 ~~(G) Believe the applicant is competent to transact the business of a real estate broker,~~
16 ~~associate broker or salesperson, as the case may be, in a manner that would protect the interest~~
17 ~~of the public.~~

18 ~~(3) (2)~~ A clear record indicating all jurisdictions where the applicant holds or has held any
19 professional license.

20 ~~(4) (3)~~ A clear record indicating if the applicant has been convicted of any criminal offense
21 or if there is any criminal charge pending against the applicant, or a member or officer of the
22 brokerage business, at the time of application.

23 (b) Is at least 18 years of age.

24 (c) Is a high school graduate or the holder of an equivalency diploma.

25 (d) Is trustworthy, of good moral character and competent to transact the business of a
26 broker, associate broker, or salesperson.

27 (e) Has paid the appropriate fee, if any, which ~~must~~ shall accompany all applications for
28 original license or renewal.

29 (f) Has submitted to a state and national criminal history record check, as set forth in this
30 subsection: *Provided*, That an applicant for a license who is an attorney at law may submit a letter
31 of good standing from the ~~Clerk of the Supreme Court of Appeals of West Virginia~~ State Bar in
32 lieu of submitting to a state and national criminal history record check.

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

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

36 (3) The applicant shall meet all requirements necessary to ~~accomplish~~ complete the state

37 and national criminal history record check, including:

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

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

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

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

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

47 (C) Pursuant to a court order.

48 (5) The criminal history record check and related records are not public records for the
49 purposes of Chapter 29B of this code.

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

52 (7) Before implementing the provisions of this subsection, the commission shall propose
53 rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code. The rules shall set
54 forth the requirements and procedures for the criminal history record check and ~~must~~ shall be
55 consistent with standards established by the Federal Bureau of Investigation and the National
56 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) ~~Have served an apprenticeship as a licensed salesperson for two years or shall~~
3 ~~produce evidence satisfactory to the commission, in its sole discretion, of real estate experience~~
4 ~~equivalent to two years full-time experience as a licensed salesperson~~ Submit evidence
5 satisfactory to the commission of real estate experience as a licensed real estate salesperson

6 during the two years prior to the date of application showing any of the following: (i) the applicant's
 7 representation of a buyer or seller in a minimum of 20 closed transactions; (ii) if the applicant is
 8 engaged solely in the leasing or renting of real estate, representation of the landlord or tenant in
 9 a minimum of 20 closed transactions of at least one year in duration; or (iii) if the applicant is
 10 engaged solely in the management of a real estate brokerage company, active involvement in a
 11 minimum of 30 closed transactions, and, if any of these transactions involve a landlord or tenant,
 12 such transactions shall be no less than one year in duration. For the purposes of this section, a
 13 "closed transaction" means a transaction that resulted in the real estate being conveyed from
 14 seller to buyer in which the applicant represented the seller, buyer, or both, or a transaction that
 15 resulted in the consummation of a lease of no less than one year in duration in which the applicant
 16 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 ~~a corporation, association or~~
 21 ~~partnership~~ an entity except through one of its members or officers.

22 (c) No broker's license shall may be issued in the name of ~~a corporation, association or~~
 23 ~~partnership~~ an entity unless each member or officer, who will engage in the real estate business,
 24 obtains a license as a real estate salesperson 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 section fourteen of this article; 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 twelve college semester
 3 credit hours, in a course or courses approved by the commission: *Provided*, That an applicant for
 4 a broker's license who holds a salesperson's license in this state shall ~~only~~ 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 ~~must~~ shall have been
 11 completed during the ~~five-year~~ three-year period preceding the date of application in order to be
 12 accepted by the commission.

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

1 (a) The commission may recognize a valid license issued by another jurisdiction as
 2 satisfactorily qualifying ~~a nonresident person~~ an applicant who is licensed to practice real estate
 3 brokerage in another jurisdiction to obtain a comparable license in this state: *Provided*, That the
 4 ~~nonresident applicant~~ applicant has qualified for ~~original license in his or her jurisdiction of residence in~~
 5 another jurisdiction by examination and by complying with all the provisions for obtaining ~~an~~
 6 ~~original~~ a license in that jurisdiction and the jurisdiction affords the same privilege to licensees of
 7 this state.

8 (b) In order to obtain a license in this state, ~~a nonresident~~ an applicant under this section
 9 ~~must~~ shall:

10 (1) Submit the ~~appropriate~~ application on a form prescribed by the commission and fee, if
11 any;

12 (2) ~~Sign a statement that the applicant has read the real estate license law and rules of~~
13 ~~this state and agrees to abide by those provisions in all brokerage activity conducted in this state~~
14 Pass the West Virginia state law portion of the licensure examination approved by the
15 commission;

16 (3) ~~Cause the real estate licensing body of the applicant's resident jurisdiction to furnish a~~
17 ~~certification of licensure which shall contain a clear record of any disciplinary actions~~ Submit a
18 certification of licensure showing that the applicant possesses an active license to practice real
19 estate brokerage in another jurisdiction;

20 (4) ~~Cause the real estate licensing body of any other jurisdiction where the applicant~~
21 ~~currently holds or has held a real estate license to furnish a certification of licensure which shall~~
22 ~~contain a clear record of any disciplinary actions~~ Submit record(s) showing all disciplinary actions
23 imposed against the applicant by any jurisdiction in which the applicant holds or held a license, if
24 any;

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

36 ~~(6) File with the commission, a bond in the penalty of \$2,000 if the applicant wishes to~~
37 ~~maintain an active license in this state. The bond must be issued by a recognized surety and must~~
38 ~~be for the benefit of and to indemnify any person in this state who may have a cause of action~~
39 ~~against the principal~~

§30-40-16. Continuing professional education.

1 (a) Every licensee shall complete ~~seven~~ 10 hours of continuing professional education for
2 each fiscal year, with each hour equaling fifty minutes of instruction for brokers and associate
3 brokers, three of the required 10 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 ~~must~~ shall furnish satisfactory evidence, as established by the commission, that he or she has
7 completed ~~seven~~ 10 hours of approved continuing professional education during the term of the
8 previous license. ~~Provided, That if the commission issues a license certificate for a period of more~~
9 ~~than one fiscal year, each licensee must furnish satisfactory evidence that he or she has~~
10 ~~completed the equivalent of seven hours of continuing professional education for each year~~
11 ~~covered by the term of the previous license~~

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

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

18 (e) Real estate-related continuing education courses provided by or approved by the real
19 estate appraiser licensing and certification board, the department of highways, the West Virginia
20 State Bar or other agency of this state shall be recognized as approved by the commission.

21 (f) If approved in advance by the commission, distance education courses may be used

22 to satisfy the continuing education requirement.

23 (g) Any licensee holding a license on July 1, 1969, and continuously thereafter, shall be
24 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; ~~Provided, That a nonresident broker who~~
7 ~~maintains a definite place of business in his or her jurisdiction of residence may not be required~~
8 ~~to maintain an office in this state if said jurisdiction offers the same privilege to licensed brokers~~
9 ~~of this state;~~

10 ~~(2) Conspicuously display his or her broker's license in the main office and the license of~~
11 ~~each associate broker and salesperson employed by the broker who is primarily working from the~~
12 ~~main office;~~

13 ~~(3) (2) Conspicuously display his or her branch office license in each branch office and the~~
14 ~~license of each associate broker and salesperson employed by the broker who is primarily~~
15 ~~working from each branch office~~

16 ~~(4) (3) Make application to the commission before changing the address of any office or~~
17 ~~within 10 days after any change;~~

18 ~~(5) (4) Maintain in his or her custody and control the license of each associate broker and~~
19 ~~salesperson employed by affiliated with him or her; and~~

20 ~~(6) (5) Promptly return the license of any associate broker or salesperson whose~~

21 ~~employment~~ affiliation with the broker is terminated.

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

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

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

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

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

33 (2) ~~Be imprinted with~~ Display the seal of the commission and shall contain such other
34 information as the commission may prescribe: *Provided*, That a salesperson's and an associate
35 broker's license shall show the name of the broker by whom he or she is ~~employed~~ affiliated;

36 (3) ~~In the case of~~ If an active licensee, be mailed or delivered to the broker's main office
37 address;

38 (4) ~~In the case of~~ If an inactive licensee, be held in the commission office;

39 (5) Be valid for a period that coincides with the fiscal year beginning on July 1, and ending
40 on June 30 ~~and may be issued for a period covering more than one fiscal year at the discretion~~
41 ~~of the commission: *Provided*, That nothing contained herein shall authorize any person to transact~~
42 ~~real estate business prior to becoming properly licensed.~~

§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 ~~must~~ shall be deposited into a trust fund account include, but are not limited
8 to, earnest money deposits, security deposits, rental receipts, auction proceeds and money held
9 in escrow at closing.

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

13 (d) Each trust fund account ~~must~~ 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) No financial institution, in which a trust fund account is established under the provisions~~
22 ~~of this article, shall require a minimum balance in excess of the amount authorized in subsection~~
23 ~~(f) of this section~~

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

30 section.

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

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

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

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

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

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

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

45 (6) Date the statement was executed; and

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

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

55 ~~(i)~~ (k) The broker shall notify the commission, within 10 days of the establishment of or

56 any change to a trust fund account.

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

1 (a) The commission ~~shall have full power to~~ may refuse a license for reasonable cause or
2 to revoke, suspend or 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 without
20 an agency relationship being established or without the owner's knowledge and written consent;

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

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

24 (13) Fails to voluntarily furnish copies of the notice of agency relationship, listing contract,

25 sale contract, lease contract or any other contract to each party executing the same;

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

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

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

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

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

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

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

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

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

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

50 (24) Fails to disclose any information within his or her knowledge or to produce any

51 document, book, or record in his or her possession for inspection of and copying by the
52 commission or its duly authorized representatives;

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

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

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

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

61 (29) Fails to maintain ~~adequate~~ accurate records on the broker's "trust fund account";

62 (30) ~~In the case of~~ If a broker, fails to ~~adequately~~ supervise all associate brokers and
63 salespersons ~~employed by~~ affiliated with him or her;

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

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

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

75 (34) Fails to disclose to an owner the licensee's true position if he or she directly or
76 indirectly through a third party, purchases for himself or herself or acquires or intends to acquire

77 any interest in or any option to purchase the property;

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

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

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

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

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

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

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

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

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

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

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

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

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

105 (c) As used in this section:

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

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

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

114 (e) The revocation of a broker's license shall automatically suspend the license of every
115 associate broker and salesperson ~~employed by~~ affiliated with the broker: *Provided*, That the
116 commission shall issue a replacement license for any licensee so affected to a new ~~employing~~
117 broker, without charge, if a proper application is submitted to the commission during the same
118 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 the~~ commission may ~~upon its own motion and shall upon the filing of a~~
3 ~~complaint setting forth a cause of action under this article, or the rules promulgated thereunder~~
4 ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license,
5 or the imposition of sanctions against a licensee: *Provided*, That no disciplinary action may be
6 brought against a licensee upon any complaint that is filed more than two years after the acts or
7 omissions alleged in the complaint or, where the licensee is alleged to have engaged in fraud,
8 deceit or misrepresentation, more than two years after the date at which the complainant
9 discovered, or through reasonable diligence should have discovered, the alleged unprofessional

10 conduct. Time limits for the filing of a complaint shall be tolled during any period in which material
11 evidence necessary for the commission's evaluation or use is unavailable to the commission due
12 to an ongoing criminal investigation or prosecution.

13 (b) All complaints ~~must~~ shall be submitted in writing on a form prescribed by the
14 commission and ~~must~~ shall fully describe the acts or omissions constituting the alleged
15 unprofessional conduct violation(s) of this article or rules promulgated thereunder.

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

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

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

30 (f) If a determination that probable cause exists for disciplinary action, the commission
31 may hold a hearing in compliance with §30-40-21 of this code or may dispose of the matter
32 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 may reserve this obligation for its
15 consideration. The commission may accept, reject, or modify the decision of the administrative
16 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 by the circuit court of the county where the hearing~~
19 ~~was held.~~

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

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

1 (a) ~~Any~~ In addition to the sanctions imposed by the commission pursuant to this article,
2 any 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 ~~the county or regional~~ 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 ~~the county or regional~~ jail for a term not to exceed

7 one year, or both fined 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 ~~and every~~ day a violation of this article continues ~~shall constitute~~ constitutes a
15 separate offense;

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

21 (h) The penalties provided in this section do not apply to a violation of the duties or
22 obligations of a financial institution under the certification required by §30-40-18(j)(7) of this code
23 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 ~~shall have the right to~~ may institute suit in his or her own name for the recovery of
6 compensation from his or her ~~employing~~ affiliated broker for acts or services performed while ~~in~~
7 ~~the employ of said employing~~ 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, ~~or both~~
17 the seller, and the buyer, the landlord, the tenant, or the landlord and the tenant. The disclosure
18 shall be made prior to any person signing any contract for representation by a licensee or a
19 contract for 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.]

NOTE: The purpose of this bill is to generally revise the West Virginia Real License Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.