

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

House Bill 5632

By Delegates Lucas, Warner, Howell, Akers, Adkins,

Crouse, Dean, Campbell, Maynor, and Ross

[Introduced February 12, 2024; Referred to the

Committee on Government Organization]

1 A BILL to amend and reenact §30-40-4, §30-40-12, and §30-40-17 of the Code of West Virginia,
2 1931, as amended, relating to the West Virginia Real Estate License Act; adding a
3 definition for "property management"; qualifications for broker's license; and obligations of
4 nonresident brokers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§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 the
5 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 real
11 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 §30-40-6
17 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, or
28 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 "Property management" means the overseeing and management of commercial and
38 residential real estate properties. This includes taking care of all of the daily operations for a
39 property which may include, but is not limited to, collecting rent, collecting or holding security
40 deposits on behalf of the property owner, handling maintenance, paying vendors for repairs, and
41 fielding tenant complaints. The amount of responsibilities the property manager has depends on
42 their contract with the owner of the property.

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

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

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

§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 the
4 applicant's representation of a buyer or seller in a minimum of ~~40~~ 20 closed transactions; if the
5 applicant is engaged solely in the leasing or renting of real estate, representation of the landlord or
6 tenant in a minimum of ~~40~~ 20 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 a
8 minimum of 20 closed transactions; or (ii) regardless of the number of years as a licensed
9 salesperson: a minimum of ~~20~~ 40 closed transactions; if the applicant is engaged solely in the
10 leasing or renting of real estate, representation of the landlord or tenant in a minimum of ~~20~~ 40
11 closed transactions of at least one year duration; or if the applicant is engaged solely in the
12 management of a real estate brokerage company, active involvement in a minimum of ~~30~~ 40
13 closed transactions. For the purposes of this section, a "closed transaction" means a transaction
14 that resulted in the real estate being conveyed from seller to buyer in which the applicant
15 represented the seller, buyer, or both, or a transaction that resulted in the consummation of a lease
16 of no less than one year in duration in which the applicant represented either the landlord or tenant
17 of the real estate;

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

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

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

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

**§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 within this state, unless such other location
6 is properly licensed by the commission as a branch office. A broker who is a nonresident of this
7 state may not be required to maintain an active place of business in this state if the nonresident
8 broker's state of original licensure is party to an active reciprocity agreement with the commission
9 that does not require West Virginia licensees holding licenses in that state to maintain an office in
10 that state;

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

12 (3) Make application to the commission before changing the address of any office or within
13 10 days after any change;

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

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

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

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

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

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

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

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

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

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

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