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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



# ENROLLED

## House Bill No. 3089

(By Delegates H. White, Trump, Kominar and Amores)



Passed March 8, 2003

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

**ENROLLED**

**H. B. 3089**

(BY DELEGATES H. WHITE, TRUMP, KOMINAR AND AMORES)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections eighteen and twenty-two, article forty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to modifying the requirement that financial institutions which maintain a trust fund deposit account for real estate brokers notify the real estate commission if any checks drawn against the account are returned for any cause; providing that a financial institution is required to notify the real estate commission if any checks drawn against the trust fund account are returned for insufficient funds; removing criminal and civil penalties applicable to a financial institution if a trust fund account for a real estate broker fails to notify the real estate commission if any check drawn against the account is returned for insufficient funds.

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

That sections eighteen and twenty-two, article forty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

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

**§30-40-18. Trust fund accounts.**

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

10 (b) Funds that must be deposited into a trust fund account  
11 include, but are not limited to, earnest money deposits, security  
12 deposits, rental receipts, auction proceeds and money held in  
13 escrow at closing.

14 (c) Each trust fund account must be established at a  
15 financial institution which is insured against loss by an agency  
16 of the federal government and the amount deposited therein  
17 cannot exceed the amount that is insured against loss.

18 (d) Each trust fund account must provide for the withdrawal  
19 of funds without notice.

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

23 (f) The broker may not commingle his or her own funds  
24 with trust funds and the account may not be pledged as collat-  
25 eral for a loan or otherwise utilized by the broker in a manner  
26 that would violate his or her fiduciary obligations in relation to  
27 the trust funds: *Provided*, That nothing contained herein  
28 prevents the broker from depositing a maximum of one hundred

29 dollars of his or her own money in the trust fund account to  
30 maintain a minimum balance in the account.

31 (g) No financial institution, in which a trust fund account is  
32 established under the provisions of this article, shall require a  
33 minimum balance in excess of the amount authorized in  
34 subsection (f) of this section.

35 (h) The broker shall be the designated trustee of the account  
36 and shall maintain complete authority and control over all  
37 aspects of each trust fund account, including signature author-  
38 ity: *Provided*, That only one other member or officer of a  
39 corporation, association or partnership, who is licensed under  
40 the provisions of this article, may be authorized to disburse  
41 funds from the account: *Provided, however*, That if disburse-  
42 ments from a trust fund account require two signatures, one  
43 additional member or officer may be a signatory as provided in  
44 this section.

45 (i) The broker shall, at a minimum, maintain records of all  
46 funds deposited into the trust fund account, which shall clearly  
47 indicate the date and from whom the money was received, date  
48 deposited, date of withdrawal, to whom the money belongs, for  
49 whose account the money was received and other pertinent  
50 information concerning the transaction. All records shall be  
51 open to inspection by the commission or its duly authorized  
52 representative at all times during regular business hours at the  
53 broker's place of business.

54 (j) The broker shall cause the financial institution wherein  
55 a trust fund account is maintained, to execute a statement,  
56 prepared by the commission, which shall include, but is not  
57 limited to:

58 (1) Exact title of the <sup>an</sup> account as registered by the financial  
59 institution;

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

61       (3) Identification of all persons authorized to make with-  
62 draws from the account;

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

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

66       (6) Date the statement was executed; and

67       (7) Certification that the financial institution will notify the  
68 real estate commission if any checks drawn against the account  
69 are returned for insufficient funds and that the financial  
70 institution does not require a minimum balance in excess of the  
71 amount authorized in subsection (f) of this section.

72       (k) The broker shall execute a statement authorizing the  
73 commission, or its duly authorized representative, to make  
74 periodic inspections of the trust fund account and to obtain  
75 copies of records from any financial institution wherein a trust  
76 fund account is maintained. A copy of any authorization shall  
77 be accepted by any financial institution with the same force and  
78 effect as the original.

79       (l) The broker shall notify the commission, within ten days,  
80 of the establishment of or any change to a trust fund account.

81       (m) Nothing provided in this section creates any duty or  
82 obligation on a financial institution to monitor the activities of  
83 a broker designated as trustee of a trust fund account, except for  
84 those duties or obligations specifically provided in subsection  
85 (g) of this section and subdivision (7), subsection (j) of this  
86 section.

**§30-40-22. Penalties for violations.**

1 (a) Any person violating a provision of this article or the  
2 commission's rules is guilty of a misdemeanor. Any person  
3 convicted of a first violation shall be fined not less than one  
4 thousand dollars nor more than two thousand dollars, or  
5 confined in the county or regional jail not more than ninety  
6 days, or both fined and confined;

7 (b) Any person convicted of a second or subsequent  
8 violation shall be fined not less than two thousand dollars nor  
9 more than five thousand dollars, or confined in the county or  
10 regional jail for a term not to exceed one year, or both fined and  
11 confined;

12 (c) Any corporation, association or partnership convicted of  
13 a first violation of this article or the commission's rules, shall  
14 be fined not less than two thousand dollars nor more than five  
15 thousand dollars;

16 (d) Any corporation, association or partnership convicted  
17 of a second or subsequent violation, shall be fined not less than  
18 five thousand dollars nor more than ten thousand dollars;

19 (e) Any officer, member, employee or agent of a corpora-  
20 tion, association or partnership, shall be subject to the penalties  
21 herein prescribed for individuals;

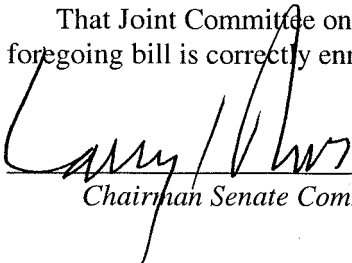
22 (f) Each and every day a violation of this article continues  
23 shall constitute a separate offense;

24 (g) In addition to the penalties herein provided, if any  
25 person receives compensation for acts or services performed in  
26 violation of this article, he or she shall also be subject to a  
27 penalty of not less than the value of the compensation received  
28 nor more than three times the value of the compensation  
29 received, as may be determined by a court of competent

30 jurisdiction. Any penalty may be recovered by a person  
31 aggrieved as a result of a violation of this article.

32 (h) The penalties provided in this section do not apply to a  
33 violation of the duties or obligations of a financial institution  
34 under the certification required by subdivision (7), subsection  
35 (j), section eighteen of this article by a financial institution  
36 providing trust fund account services to a broker.

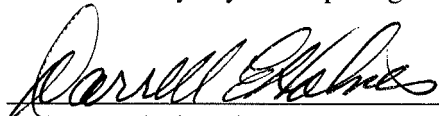
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

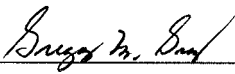
  
Chairman Senate Committee

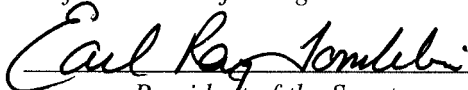
  
Chairman House Committee


Originating in the House.

In effect ninety days from passage

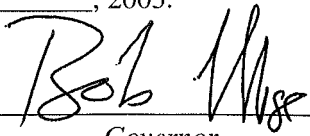
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 1<sup>st</sup>  
day of April, 2003.

  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/24/03

Time 10:35 am