

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **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  
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 "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  
49 the 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  
4 the applicant's representation of a buyer or seller in a minimum of ~~40~~ 20 closed transactions; if  
5 the applicant is engaged solely in the leasing or renting of real estate, representation of the  
6 landlord or tenant in a minimum of ~~40~~ 20 closed transactions of at least one year in duration; or if  
7 the applicant is engaged solely in the management of a real estate brokerage company, active  
8 involvement in a minimum of 20 closed transactions; or (ii) regardless of the number of years as  
9 a licensed salesperson: a minimum of ~~20~~ 40 closed transactions; if the applicant is engaged solely  
10 in the leasing or renting of real estate, representation of the landlord or tenant in a minimum of ~~20~~  
11 40 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  
16 lease of no less than one year in duration in which the applicant represented either the landlord  
17 or tenant 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 may not  
7 be required to maintain an active place of business in this state if: (A) The broker maintains a  
8 business place in the state of original licensure; (B) The state of original licensure, in accordance  
9 with its reciprocity agreement with the commission, does not require West Virginia licensees  
10 holding licenses in that state to maintain an office in that state; and (C) Subsections (a) and (b) of  
11 this section do not conflict with the commission's agreement of reciprocity with the state of original  
12 licensure;

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

14 (3) Make application to the commission before changing the address of any office or within  
15 10 days after any change;

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

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

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

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to add a definition for "property management"; amend qualifications for broker's license; and amend obligations of nonresident brokers under the West Virginia Real Estate 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.