

H. B. 2732

(By Delegates Howell, Sobonya, Rohrbach, Householder, Folk,
Kurcaba, Stansbury and Miller)

[Introduced February 13, 2015; referred to the

Committee on Government Organization then the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.**§30-40-20. Complaints; investigation.**

(a) The commission may upon its own motion and shall upon the filing of a complaint setting forth a cause of action under this article or the rules promulgated thereunder, ascertain the facts and if warranted hold a hearing for the suspension or revocation of a license, or the imposition of sanctions against a licensee: Provided, That no disciplinary action may be brought against a licensee upon any complaint that is filed more than two years after the acts or omissions alleged in the

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

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

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

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

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

- 1 (f) If a determination that probable cause exists for disciplinary action, the commission may
- 2 hold a hearing in compliance with section twenty-one of this article or may dispose of the matter
- 3 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.