

070925284

HOUSE BILL NO. 2064

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 1, 2007)

(Patron Prior to Substitute—Delegate Cox)

A BILL to amend and reenact §§ 54.1-2100, 54.1-2105, 54.1-2105.1, and 54.1-2344 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-2105.01 through 54.1-2105.04, relating to the Real Estate Board; powers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2100, 54.1-2105, 54.1-2105.1, and 54.1-2344 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-2105.01 through 54.1-2105.04 as follows:

§ 54.1-2100. Definitions.

For the purposes of As used in this chapter, "real:

"Distance learning" means instruction delivered by an approved provider through a medium other than a classroom setting. Such courses shall be those offered by an accredited university, college, community college, high school offering adult distributive education courses, other school or educational institution, or real estate professional association or related entities.

"Real estate broker" means any person or business entity, including, but not limited to, a partnership, association, corporation or limited liability company, who, for compensation or valuable consideration (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest as defined in § 55-426, or time-shares in a time-share program even though they may be deemed to be securities, or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others.

§ 54.1-2105. (Effective July 1, 2007) General powers of Real Estate Board; regulations; educational and experience requirements for licensure.

A. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.

B. The Board shall ~~include in its adopt~~ regulations *establishing minimum* educational requirements as conditions for licensure to ensure the protection of the public interest, including a requirement that an applicant have, at a minimum, a high school diploma or its equivalent. The Board is authorized to regulate any school that is established to offer real estate courses except such schools as are regulated by another state agency. Such authority shall include, but not be limited to, qualification of instructors, approval of course curricula, and requirement that such schools submit evidence of financial responsibility to ensure that these schools protect the public health, safety, and welfare. The Board shall have the discretion to waive any requirement under the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. No regulation imposing educational requirements for initial licensure beyond those specified by law shall apply to any person who was licensed prior to July 1, 1975, and who has been continuously licensed since that time, except that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed as a broker from the educational requirements established for brokers. Regulations promulgated by the Board *regulations* relating to initial licensure shall include the following requirements:

1. a. Every applicant to the Board for an initial license as a real estate salesperson shall have:

a. At a minimum, a high school diploma or its equivalent; and

~~completed~~ b. Completed a course in the principles of real estate that carried an academic credit of at least three semester hours or six quarter hours (but not less than 45 hours of classroom or correspondence or other distance learning instruction in any case). The course shall be one offered by an accredited university, college, community college, high school offering adult distributive education courses, or other school or educational institution offering an equivalent course.

b. However, on and after January 1, 1991, the academic credit required for the initial license as a real estate salesperson shall be at least four semester hours, but not less than 60 hours of classroom, correspondence, or other distance learning instruction, *offered by an accredited university, college, community college, high school offering adult distributive education courses, or other school or educational institution offering an equivalent course.*

2. Every applicant to the Board for an initial license as a real estate broker shall have ~~completed~~:

a. At a minimum, a high school diploma or its equivalent; and

b. Completed not less than 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses offered by an accredited university, college, community

college, or other school or educational institution offering equivalent courses.

C. The Board may waive any requirement under the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. No regulation imposing educational requirements for initial licensure beyond those specified by law shall apply to any person who was licensed prior to July 1, 1975, and who has been continuously licensed since that time, except that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed as a broker from the educational requirements established for brokers.

D. The Board shall establish criteria to ensure that prelicensure and broker licensure courses meet the standards of quality deemed by the Board to be necessary to protect the public interests. For correspondence and other distance learning instruction offered by an approved provider, such criteria may include appropriate testing procedures. The Board may establish procedures to ensure the quality of the courses.

Noncollegiate institutions shall not be authorized to grant collegiate semester hours for academic credit.

The specific content of the real estate courses shall be in real estate brokerage, real estate finance, real estate appraisal, real estate law, and such related subjects as are approved by the Board.

D. The Board shall establish guidelines for an educational curriculum of at least 30 hours of classroom, or correspondence or other distance learning, instruction, in specified areas, which shall be required of all licensees within the first two years of issuance of a license by the Board. Failure of a new licensee to complete the 30-hour curriculum within two years of obtaining a real estate salesperson's license shall result in nonrenewal by the Board of such license until the curriculum has been completed.

To establish the guidelines required by this subsection, the Board shall establish an industry advisory group to focus on the following three practice tracks: (i) residential real estate, (ii) commercial real estate, and (iii) property management. The industry advisory group shall consist of licensed real estate salespersons and real estate brokers, and meet at the direction of the Board, at least annually, to update the guidelines in each of the three educational practice tracks. The Board shall review and may approve educational curriculum developed by an approved school or other provider of real estate education authorized by this chapter. The industry advisory groups shall serve at no cost to the Board.

The guidelines in each of the three practice tracks for new licensees shall include topics that new licensees need to know in their respective practices, including, but not limited to, contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, property owners' and condominium association law, landlord-tenant law, Board regulations, and such other topics as designated by the Board. The continuing education requirements of this subsection for new licensees shall be in lieu of the continuing education requirements otherwise specified in this chapter and Board regulations.

E. The Board shall include in its regulations educational requirements as a condition for relicensure of brokers and salespersons to whom active licenses have been issued by the Board beyond those now specified by law as conditions for licensure. Brokers and salespersons to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 16 hours of classroom or correspondence or other distance learning instruction during each licensing term. Of the total 16 hours, the curriculum shall include a minimum of eight required hours to include ethics and standards of conduct, fair housing, legal updates and emerging trends, real estate agency, and real estate contracts. Fair housing requirements shall consist of a minimum of two hours including an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1, 2007, every applicant for relicensure as an active salesperson or broker shall complete at a minimum one two-hour continuing education course on limited service agency prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board which certifies that he has taken a two-hour continuing education course on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the Board, which, in the determination of the Board, covered substantially the information in a continuing education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee submits a notarized affidavit to the Board which certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required. A licensee who takes one two-hour continuing education class on limited service agency shall satisfy the requirements for continuing education and may but shall not be required to take any further continuing education on limited service agency.

The remaining eight hours shall be elective and shall include real estate-related subjects as are approved by the Board.

For correspondence and other distance learning instruction offered by an approved provider, the Board shall establish the appropriate testing procedures to verify completion of the course and require the licensee to file a notarized affidavit certifying compliance with the course requirements. The Board may establish procedures to ensure the quality of the courses. The Board shall not require testing for continuing education courses completed through classroom instruction.

For purposes of this chapter, "distance learning" means instruction delivered by an approved provider through a medium other than a classroom setting. Such courses shall be those offered by an accredited university, college, community college, high school offering adult distributive education courses, other school or educational institution, or real estate professional association or related entities.

F. The Board shall include in its regulations, a procedure for processing applications of educational institutions, real estate professional associations, or related entities, to provide continuing education courses, which procedure, at a minimum, shall (i) provide for a broad range of subject matters suitable for the continuing education of licensed professionals in a multifamily residential and commercial office, as well as single-family residential, sales, leasing and property management; (ii) acknowledge, in writing, receipt of such applications within 10 calendar days after receipt; and (iii) provide written notification to the applicant, within 75 calendar days of receipt of the application, whether the application has been approved or disapproved, and if disapproved, the reasons therefor. In addition, the Board shall prepare a comprehensive listing of courses, pre-approved by the Board, related to the professional competency requirements for the multifamily residential and commercial office industries.

The Board, through regulation, shall develop criteria for evaluating and approving continuing education course credits and for awarding credit hours for such courses. The Board shall approve recommended course titles, content, and hours of continuing education credit developed and published by national professional real estate trade associations, unless the Board determines in writing that such titles, content, or credit hours should not be approved and specifies the reasons therefor.

G. Every applicant for relicensure as an active salesperson or broker shall complete the continuing education requirements prior to each renewal or reinstatement of his license. The continuing education requirement shall also apply to inactive licensees who make application for an active license. Notwithstanding this requirement, military personnel called to active duty in the Armed Forces of the United States may complete the required continuing education within six months of their release from active duty.

H. The Board shall also include in its regulations remedial educational requirements for any salesperson or broker who has been inactive for more than three years. The regulations shall require the applicant to meet the educational requirements for a salesperson or broker in effect at the time either becomes active.

I. When the license has been inactive for more than three years, the Board may waive the educational requirements for reactivation of a license under the following conditions: (i) during the time the license has been inactive, the holder of such inactive license has been engaged in an occupation whereby the knowledge of real estate would be retained or (ii) the holder of such license is a member or the spouse of a member of the Armed Forces of the United States who has been permanently assigned outside Virginia for a portion of the time the license has been inactive, and the holder of the inactive license remained current in the field of real estate and demonstrates this fact to the satisfaction of the Board.

§ 54.1-2105.01. Educational requirements for all licensees within one year of licensure.

A. The Board shall establish guidelines for an educational curriculum of at least 30 hours of classroom, or correspondence or other distance learning, instruction, in specified areas, which shall be required of all licensees within one year of issuance of a license by the Board. Failure of a new licensee to complete the 30-hour curriculum within one year of obtaining a real estate salesperson's license shall result in the license being placed on inactive status by the Board of such license until the curriculum has been completed.

B. To establish the guidelines required by this section, the Board shall establish an industry advisory group to focus on the following three practice tracks: (i) residential real estate, (ii) commercial real estate, and (iii) property management. The industry advisory group shall consist of licensed real estate salespersons and real estate brokers, and meet at the direction of the Board, at least annually, to update the guidelines in each of the three educational practice tracks. The Board shall review and may approve educational curriculum developed by an approved school or other provider of real estate education authorized by this chapter. The industry advisory group shall serve at no cost to the Board.

C. The guidelines in each of the three practice tracks for new licensees shall include topics that new licensees need to know in their respective practices, including, but not limited to, contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, property owners' and condominium association law, landlord-tenant law, Board regulations, and such other topics as designated by the Board. The continuing education requirements of this section for

183 new licensees shall be in lieu of the continuing education requirements otherwise specified in this
184 chapter and Board regulations.

185 § 54.1-2105.02. Regulation of real estate education providers and courses.

186 A. The Board may regulate any school that is established to offer real estate courses except such
187 schools as are regulated by another state agency. Such authority shall include, but not be limited to,
188 qualification of instructors, approval of course curricula, and requirement that such schools submit
189 evidence of financial responsibility to ensure that these schools protect the public health, safety, and
190 welfare.

191 B. Board regulations shall include a procedure for processing applications of educational
192 institutions, real estate professional associations, or related entities, to provide continuing education
193 courses, which procedure, at a minimum, shall (i) provide for a broad range of subject matters suitable
194 for the continuing education of licensed professionals in a multifamily residential and commercial office,
195 as well as single-family residential, sales, leasing and property management; (ii) acknowledge, in
196 writing, receipt of such applications within 10 calendar days after receipt; and (iii) provide written
197 notification to the applicant, within 75 calendar days of receipt of the application, whether the
198 application has been approved or disapproved, and if disapproved, the reasons therefor. In addition, the
199 Board shall prepare a comprehensive listing of courses, pre-approved by the Board, related to the
200 professional competency requirements for the multifamily residential and commercial office industries.

201 Board regulations shall include criteria for evaluating and approving continuing education course
202 credits and for awarding credit hours for such courses, as well as procedures for ensuring the quality of
203 real estate courses. The Board shall approve recommended course titles, content, and hours of
204 continuing education credit developed and published by national professional real estate trade
205 associations, unless the Board determines in writing that such titles, content, or credit hours should not
206 be approved and specifies the reasons therefor.

207 § 54.1-2105.03. Continuing education; relicensure of brokers and salespersons.

208 A. Board regulations shall include educational requirements as a condition for relicensure of brokers
209 and salespersons to whom active licenses have been issued by the Board beyond those now specified by
210 law as conditions for licensure.

211 1. Brokers to whom active licenses have been issued by the Board shall be required to satisfactorily
212 complete courses of not less than 24 hours of classroom or correspondence or other distance learning
213 instruction during each licensing term. Of the total 24 hours, the curriculum shall include:

214 a. A minimum of eight required hours to include at least three hours of ethics and standards of
215 conduct, two hours of fair housing, and the remaining five hours of legal updates and emerging trends,
216 real estate agency, or real estate contracts;

217 b. A minimum of eight hours of courses relating to supervision and management of real estate agents
218 and the management of real estate brokerage firms as are approved by the Board; and

219 c. Eight hours of general elective courses as are approved by the Board.

220 The fair housing requirements shall include an update on current cases and administrative decisions
221 under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he
222 does not practice residential real estate and shall not do so during the licensing term, training in fair
223 housing shall not be required; instead, such licensee shall receive training in other applicable federal
224 and state discrimination laws and regulations. The Board shall approve a continuing education
225 curriculum of not less than two hours, and as of July 1, 2007, every applicant for relicensure as an
226 active salesperson or broker shall complete at a minimum one two-hour continuing education course on
227 limited service agency prior to renewal or reinstatement of his license. If the licensee submits a
228 notarized affidavit to the Board that certifies that he has taken a two-hour continuing education course
229 on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the
230 Board, which, in the determination of the Board, covered substantially the information in a continuing
231 education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for
232 the two hours of continuing education. If the licensee submits a notarized affidavit to the Board that
233 certifies that he does not practice residential real estate and shall not do so during the licensing term,
234 training in limited service agency shall not be required. A licensee who takes one two-hour continuing
235 education class on limited service agency shall satisfy the requirements for continuing education and
236 may but shall not be required to take any further continuing education on limited service agency.

237 2. Salespersons to whom active licenses have been issued by the Board shall be required to
238 satisfactorily complete courses of not less than 16 hours of classroom or correspondence or other
239 distance learning instruction during each licensing term. Of the total 16 hours, the curriculum shall
240 include:

241 a. A minimum of eight required hours to include at least three hours of ethics and standards of
242 conduct, two hours of fair housing, and the remaining five hours of legal updates and emerging trends,
243 real estate agency, real estate contracts; and

244 b. Eight hours of general elective courses as are approved by the Board.

The fair housing requirements shall include an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations.

The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1, 2007, every applicant for relicensure as an active salesperson or broker shall complete at a minimum one two-hour continuing education course on limited service agency prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board that certifies that he has taken a two-hour continuing education course on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the Board, which, in the determination of the Board, covered substantially the information in a continuing education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required. A licensee who takes one two-hour continuing education class on limited service agency shall satisfy the requirements for continuing education and may but shall not be required to take any further continuing education on limited service agency.

3. For correspondence and other distance learning instruction offered by an approved provider, the Board shall establish the appropriate testing procedures to verify completion of the course and require the licensee to file a notarized affidavit certifying compliance with the course requirements. The Board may establish procedures to ensure the quality of the courses. The Board shall not require testing for continuing education courses completed through classroom instruction.

B. Every applicant for relicensure as an active salesperson or broker shall complete the continuing education requirements prior to each renewal or reinstatement of his license. The continuing education requirement shall also apply to inactive licensees who make application for an active license. Notwithstanding this requirement, military personnel called to active duty in the armed forces of the United States may complete the required continuing education within six months of their release from active duty.

§ 54.1-2105.04. Education requirements; reactivation of licenses; waiver.

A. Board regulations shall include remedial educational requirements for any salesperson or broker who has been inactive for more than three years. The regulations shall require the applicant to meet the educational requirements for a salesperson or broker in effect at the time either becomes active.

B. When the license has been inactive for more than three years, the Board may waive the educational requirements for reactivation of a license under the following conditions: (i) during the time the license has been inactive, the holder of such inactive license has been engaged in an occupation whereby the knowledge of real estate would be retained or (ii) the holder of such license is a member or the spouse of a member of the armed forces of the United States who has been permanently assigned outside Virginia for a portion of the time the license has been inactive, and the holder of the inactive license remained current in the field of real estate and demonstrates this fact to the satisfaction of the Board.

C. The Board or its agent shall include in its regulations, requirements for proof of identity prior to an applicant taking the state examination.

§ 54.1-2105.1. Other powers and duties of the Real Estate Board.

In addition to the provisions of § 54.1-2105 §§ 54.1-2105.01 through 54.1-2105.04, the Board shall:

- 1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;*
- 2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1;*
- 3. Develop a residential property disclaimer statement form and a residential property disclosure statement form for use in accordance with the provisions of § 55-519; and*
- 4. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to § 55-512, which form shall summarize the unique characteristics of property owners' associations generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including, but not limited to, the obligation of a lot owner to pay regular annual or special assessments to the association, and the penalty for failure or refusal to pay such assessments; the purposes for which such assessments may be used; and the importance the declaration of restrictive covenants and other governing documents play in association living.*

§ 54.1-2344. Fair Housing Board; membership; terms; chairman; powers and duties.

A. The Fair Housing Board shall be composed of 11 members, to be appointed by the Governor, as follows: one representative of local government, one architect licensed in accordance with Chapter 4

306 (§ 54.1-400 et seq.) of this title, one representative of the mortgage lending industry, one representative
307 of the property and casualty insurance industry, one representative of the residential property
308 management industry not licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of this title, one
309 contractor licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of this title, one representative
310 of the disability community, one representative of the residential land lease industry subject to Chapter
311 13.3 (§ 55-248.41 et seq.) of Title 55, and three citizen members selected in accordance with § 54.1-107.
312 Initial terms of Board members shall be as follows: four members shall be appointed for a term of four
313 years; four members shall be appointed for a term of three years, and three members shall be appointed
314 for a term of two years. Thereafter, all terms of Board members shall be for terms of four years.

315 B. The Board shall elect a chairman from its membership.

316 C. The Board shall adopt a seal by which it shall authenticate its proceedings.

317 D. The Board shall be responsible for the administration and enforcement of the Fair Housing Law.
318 However, the Board shall have no authority with respect to a real estate broker, real estate salesperson,
319 real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents
320 or employees who have allegedly violated, or who have in fact violated, the Fair Housing Law.

321 The Board shall have the power and duty to establish, by regulation, an education-based certification
322 or registration program for persons subject to the Fair Housing Law who are involved in the business or
323 activity of selling or renting dwellings. The Board shall have the authority to approve training courses
324 and instructors in furtherance of the provisions of this chapter.

325 No education-based program established by the Board shall require Board certification or registration
326 where an individual holds a valid license issued by the Real Estate Board. Any courses approved by the
327 Real Estate Board to meet the fair housing requirement of § 54.1-2105 54.1-2105.03 and the instructors
328 approved by the Real Estate Board to teach continuing education courses in accordance with § 54.1-2105
329 54.1-2105.02 shall not require additional approval by the Fair Housing Board to meet any education
330 requirements in this section and in the regulations of the Fair Housing Board.