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SENATE BILL NO. 457

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 54.1-2105 and to amend the Code of Virginia by adding in Article 1 of Chapter 21 of Title 54.1 a section numbered 54.1-2111.1 and by adding in Subtitle II of Title 54.1 a chapter numbered 23.4, consisting of sections numbered 54.1-2355 through 54.1-2358, relating to the Department of Professional and Occupation Regulation; Real Estate Board; regulation of business brokers.

 Patron—McEachin

 Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2105 is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 21 of Title 54.1 a section numbered 54.1-2111.1 and by adding in Subtitle II of Title 54.1 a chapter numbered 23.4, consisting of sections numbered 54.1-2355 through 54.1-2358, as follows:

§ 54.1-2105. 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 adopt regulations establishing minimum educational requirements as conditions for licensure. Board regulations relating to initial licensure shall include the following requirements:

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

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

b. Completed a course in the principles of real estate that carried an academic credit of 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 for an initial license as a real estate broker shall have:

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 shall adopt regulations establishing minimum educational requirements as conditions for licensure by reciprocity, including a requirement for having completed a similar principles in real estate class and a requirement that the applicant pass a Virginia examination if the applicant is currently licensed as a real estate salesperson or broker in another jurisdiction.*

D. 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.

DE. 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.

§ 54.1-2111.1. *Voluntary Compliance Program; real estate brokers.*

A. *The Board shall promulgate regulations to include in its regulations provisions to allow the practices, policies and procedures of a real estate broker licensed by the Board audited, either through a third party or through a self-audit, and if the broker is determined by such audit to not be in compliance with the provisions of this chapter or applicable regulations of the Board, for the broker to*

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59 enter into a voluntary compliance program to bring the broker's practices, policies and procedures into
60 compliance with applicable laws and regulations. The broker shall notify the Board of the discovery of
61 any noncompliance within 30 days after discovery and shall submit a written statement with a plan to
62 bring the practices, policies and procedures into voluntary compliance, which completion of such
63 voluntary compliance shall not exceed a period of 90 days from the date that the plan is submitted to
64 the Board.

65 B. Certification by the broker or auditor of such broker shall constitute immunity to an enforcement
66 action under this chapter or under the applicable regulations of the Board.

67 C. The provisions of this section do not apply if the noncompliance by the broker was intentional or
68 a result of gross negligence of the broker.

69 CHAPTER 23.4.
70 BUSINESS BROKERS.

71 § 54.1-2355. Definitions.

72 As used in this chapter, unless the context requires a different meaning:

73 "Business" means an existing business, goodwill of an existing business, any interest therein, or any
74 one or combination thereof, where the transaction is not a securities transaction involving securities
75 subject to Chapter 5 (§ 13.1-501 et seq.) of Title 13.1, and wherein the sale or exchange of real estate
76 is not the dominant element of the transaction.

77 "Business broker" means any person who in return for a fee or commission provides business broker
78 services.

79 "Business broker services" means the following services: (i) promising to procure a business for any
80 person or to assist any person in procuring a business from any third person; (ii) negotiating, offering,
81 attempting or agreeing to negotiate the sale, exchange, or purchase of a business; (iii) buying, selling,
82 offering to buy or sell, or otherwise dealing in options on businesses; (iv) assisting or directing in the
83 procuring of prospects intended to result in the purchase, sale, lease, or exchange of a business; or (v)
84 offering, promoting, or listing a business for sale, lease, or exchange.

85 "Client" means any person who has signed an agreement with a business broker that provides for
86 business broker services to be performed.

87 "Department" means the Department of Professional and Occupational Regulation.

88 "Director" means the Director of the Department of Professional and Occupational Regulation.

89 "Person" means any natural person, partnership, association, corporation or trust.

90 "Purchaser" means a person who enters into a contract or agreement for the acquisition of a
91 business or a person to whom an offer to sell a business is directed.

92 "Seller" means a person who sells or offers to sell a business or any agent who directly or indirectly
93 acts on behalf of such person, except that a person acting as a business broker is neither a seller nor a
94 purchaser.

95 § 54.1-2356. Exemptions.

96 The provisions of this chapter shall not apply to:

- 97 1. Gratuitous services as a business broker;
98 2. Services rendered by an attorney-at-law in the performance of his duties as such;
99 3. Services rendered by a real estate broker or salesperson in the performance of his duties as such;

100 or

- 101 4. Services rendered by a person acting as a receiver, trustee in bankruptcy, administrator or
102 executor, or any person selling real estate under order of any court.

103 § 54.1-2357. License required.

104 It shall be unlawful on or after January 1, 2011, for any person who does not have a business
105 broker license to contract with another person, for compensation, to carry out business broker services.

106 § 54.1-2358. Regulations.

107 The Director shall administer and enforce this chapter. The Director shall:

- 108 1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with
109 the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to
110 fees, procedures, and qualifications for the issuance and renewal of business broker licenses;

- 111 2. Approve the criteria for accredited business broker training programs; and

- 112 3. Approve accredited business broker training program examinations and the grading system for
113 testing applicants for business broker licenses.

114 2. That the Director of the Department of Professional and Occupational Regulation shall
115 promulgate regulations to implement the provisions of this act pertaining to regulation of business
116 brokers to be effective within 280 days of its enactment.