

VIRGINIA ACTS OF ASSEMBLY -- 2018 SESSION

CHAPTER 131

An Act to amend and reenact §§ 38.2-1817, 38.2-1820, 38.2-1838, 38.2-1845.2, 38.2-1845.5, 38.2-1857.2, and 38.2-1865.1 of the Code of Virginia, relating to insurance agents; licensing requirements.

[S 246]

Approved March 2, 2018

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1817, 38.2-1820, 38.2-1838, 38.2-1845.2, 38.2-1845.5, 38.2-1857.2, and 38.2-1865.1 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1817. Examination for license; fee required; when fee forfeited.

A. Examinations for licenses shall be conducted at least monthly at the times and places the Commission prescribes. Each applicant shall pass the examination prescribed by the Commission unless otherwise exempted.

B. If a resident individual applicant fails three times to pass the examination, the applicant shall be required to wait ~~thirty~~ 30 calendar days before the applicant may retake the examination.

C. ~~An individual who has been awarded the designation of Chartered Property and Casualty Underwriter shall be exempt from the examination requirements of this article for a property and casualty insurance license or a personal lines license. An individual who has been awarded the designation of Chartered Life Underwriter shall be exempt from the examination requirements for a life and annuities license or a health license. However, no individual shall be exempt from the requirement to submit the application and pay the fee required by § 38.2-1819.~~

~~D.~~ Each applicant for an examination shall make application in the form and containing the information the Commission prescribes.

~~E.~~ D. Each applicant shall, at the time of applying to take the examination, pay such fee as may be prescribed by the Commission and in a manner prescribed by the Commission. The prescribed examination fee shall not be less than \$20 nor more than \$100. The examination fee shall be nonrefundable.

~~F.~~ E. If the applicant fails to take the examination within ~~ninety~~ 90 calendar days from the date his registration for the examination is accepted, the examination fee shall be forfeited and the registration shall be considered withdrawn.

~~G.~~ F. If the applicant fails to obtain the appropriate license from the Commission within 183 calendar days from the date he passes the examination, the examination grade shall be considered invalid and the examination fee and application processing fee shall be forfeited. Such applicant shall be required to reapply for the examination and to satisfy any appropriate prelicensing requirements.

~~H.~~ G. An individual who applies for a resident insurance agent's license in ~~this~~ the Commonwealth who was previously licensed for the same lines of authority in the individual's home state shall not be required to complete any prelicensing examination. This exemption is only available if the individual is currently licensed in the applicant's home state, or if the application is received within ~~ninety~~ 90 calendar days of the cancellation of the applicant's previous license in the applicant's home state, and if the applicant's home state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's Producer Database records, maintained by the NAIC, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

§ 38.2-1820. Issuance of license.

A. Each applicant who is at least 18 years of age and who has satisfied the Commission that he is of good character, has a good reputation for honesty, and has complied with the other requirements of this article is entitled to and shall receive a license in the form the Commission prescribes.

B. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application, or such other application acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fees set forth in § 38.2-1819; and

2. The business entity has designated an employee, officer, ~~or~~ director, *manager, member, or partner* to serve as the licensed producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of the Commonwealth. However, with respect to a business entity applying for a limited lines license pursuant to Article 8 (§ 38.2-1875 et seq.) or 8.1 (§ 38.2-1881 et seq.), the licensed producer designated by the vendor or lessor is not required to be an employee, officer, ~~or~~ director, *manager, member, or partner* of the vendor or lessor.

C. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1838. License required of consultants.

A. No person, unless he holds an appropriate license shall:

1. Represent to members of the public that he provides planning or consulting services beyond those within the normal scope of activities of a licensed insurance agent; or

2. Except as provided in § 38.2-1812.2, charge or receive, directly or indirectly, a fee or other compensation for insurance advice, other than commissions received in such person's capacity as a licensed insurance agent or surplus lines broker resulting from selling, soliciting, or negotiating insurance or health care services as allowed by his license.

B. Each individual applying for an insurance consultant's license shall apply to the Commission in a form acceptable to the Commission, and shall provide satisfactory evidence of having met the following requirements:

1. To be licensed as a property and casualty insurance consultant the applicant must pass, within 183 calendar days prior to the date of application for such license, the property and casualty examination as required in § 38.2-1817, except that an applicant who, at the time of such application holds an active property and casualty insurance agent license, shall be exempt from the examination requirements;

2. To be licensed as a life and health insurance consultant, the applicant must pass, within 183 calendar days prior to the date of application for such license, both the life and annuities and the health examinations as required in § 38.2-1817, except that an applicant who, at the time of such application holds both an active life and annuities license and an active health agent license, shall be exempt from the examination requirements; and

3. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in the Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

C. Any individual who acts as an insurance consultant as an officer, director, principal or employee of a business entity shall be required to hold an appropriate individual license as an insurance consultant.

D. A business entity acting as an insurance consultant is required to obtain an insurance consultant license. Application shall be made in a form and manner acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section; and

2. The business entity has designated an employee, officer, ~~or~~ director, *manager, member, or partner* to serve as the licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of the Commonwealth.

E. The Commission may require any documents reasonably necessary to verify the information contained in an application.

F. Each applicant for an insurance consultant's license shall submit a nonrefundable application processing fee of \$50 at the time of initial application for such license.

§ 38.2-1845.2. License required of resident public adjusters.

A. No person shall engage in the business of public adjusting, on or after January 1, 2013, without first applying for and obtaining a license from the Commission, except as provided in § 38.2-1845.3. Every license issued pursuant to this article shall be for a term expiring two years from the date of issuance and may be renewed for ensuing two-year periods.

B. Each individual applicant for a public adjuster license who is at least 18 years of age, who has satisfied the Commission that he (i) is of good character; (ii) has a reputation for honesty; (iii) has not committed any act that is a ground for refusal to issue, denial, suspension, or revocation of a public adjuster license as set forth in § 38.2-1845.10; and (iv) has complied successfully with the other requirements of this article is entitled to and shall receive a license under this chapter in the form and manner prescribed by the Commission. The Commission may require, for resident licensing, proof of residency as described in subsection B of § 38.2-1800.1.

C. Each individual applicant for a public adjuster license shall apply to the Commission in the form and manner prescribed by the Commission and shall provide satisfactory evidence of having met the following requirements:

1. Each applicant shall pass, within 183 calendar days prior to the date of application for such license, the public adjuster examination as required by the Commission pursuant to and in accordance with the requirements set forth in § 38.2-1845.4.

2. Each applicant for a public adjuster license shall submit a nonrefundable application processing fee prescribed by the Commission at the time of initial application for such license.

3. Prior to issuance of a license, each applicant shall attest that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of the Commonwealth in the amount of \$50,000 with corporate sureties licensed by the Commission, on a form prescribed by the Commission. The bond shall be conditioned that the public adjuster will conduct business under the license in accordance with the laws of the Commonwealth. The bond shall not be terminated unless at least 60 calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed public adjuster fails to file with the Commission a certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the public adjuster license shall terminate, and the licensee shall be required to satisfy any and all preclicensing requirements in order to apply for a new public adjuster license. The Commission may ask for a copy of the bond or other evidence of financial responsibility at any time.

D. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the Clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in the Commonwealth. Service of process on the Clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.).

E. Any individual who acts as a public adjuster and who is also an officer, director, principal, or employee of a business entity acting as a public adjuster in the Commonwealth shall be required to hold an appropriate individual license as a public adjuster in the Commonwealth.

F. A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made in a form and manner acceptable to the Commission. Before approving the application, the Commission shall find that:

1. The business entity has paid the fee prescribed by the Commission;
2. The business entity has demonstrated proof of residency pursuant to subsection B of § 38.2-1800.1; and
3. The business entity has designated an individual employee, officer, ~~or~~ director, *manager, member, or partner* licensed in Virginia as a public adjuster to be responsible for the business entity's compliance with the laws, rules, and regulations of the Commonwealth applicable to public adjusters.

G. Prior to issuance of a license, each entity shall attest that the entity has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of the Commonwealth in the amount of \$50,000 with corporate sureties licensed by the Commission, on a form prescribed by the Commission. The bond shall be conditioned that the public adjuster will conduct business under the license in accordance with the laws of the Commonwealth. The bond shall not be terminated unless at least 60 calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed public adjuster fails to file with the Commission a certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the public adjuster license shall terminate, and the entity shall be required to satisfy any and all preclicensing requirements in order to apply for a new public adjuster license. The Commission may ask for a copy of the bond or other evidence of financial responsibility at any time.

H. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1845.5. Licensing nonresidents; reciprocal agreements with other states and Canadian provinces.

A. An individual or business entity that is not a resident as defined in subsection B of § 38.2-1800.1 but that is a resident of another state, territory, or province of Canada shall receive a nonresident public adjuster license if:

1. The applicant presents proof in a form acceptable to the Commission that the applicant is currently licensed or otherwise authorized as a resident public adjuster and is in good standing in his home state;
2. The applicant has submitted the proper application for licensure or a copy of the application for licensure submitted to his home state and has paid the fees required by § 38.2-1845.2;
3. The applicant's home state issues nonresident public adjuster licenses to residents of the Commonwealth on the same basis or will permit a resident of the Commonwealth to act as a public adjuster in such state without requiring a license;
4. The applicant, if a corporation, limited liability company, or limited partnership, has obtained from the Clerk of the Commission a certificate of authority, certificate of registration, or certificate of limited partnership, respectively; and

5. The applicant attests that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of the Commonwealth in the amount of \$50,000 with corporate sureties licensed by the Commission, on a form prescribed by the Commission. The bond shall be conditioned that the public adjuster will conduct business under the license in accordance with the laws of the Commonwealth. The bond shall not be terminated unless at least 60 calendar days' prior

written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed public adjuster fails to file with the Commission a certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the public adjuster license shall terminate, and the licensee shall be required to satisfy any and all preclicensing requirements in order to apply for a new public adjuster license. The Commission may ask for a copy of the bond or other evidence of financial responsibility at any time.

B. For the purposes of this chapter, any individual whose place of residence and place of business are in a city or town located partly within the Commonwealth and partly within another state may be considered as meeting the requirements as a resident of the Commonwealth, provided the other state has established by law or regulation similar requirements as to residence of such individuals.

C. The Commission may enter into a reciprocal agreement with an appropriate official of any other state or province of Canada if such an agreement is required in order for a Virginia resident to be similarly licensed as a nonresident in that state or province.

D. The Commission may verify the public adjuster's licensing status through the Producer Database records maintained by the NAIC, its affiliates, or subsidiaries.

E. The business entity has designated an individual *employee, officer, director, manager, member, or partner* licensed in Virginia as a public adjuster to be responsible for the business entity's compliance with the laws, rules, and regulations of the Commonwealth applicable to public adjusters.

F. The Commission may require any documents reasonably necessary to verify the information contained in an application.

G. A licensed nonresident public adjuster who changes his home state shall file a change of address within 30 calendar days of the change of legal residence.

H. Any licenses issued to nonresidents pursuant to this section shall be terminated at any time that the nonresident's equivalent authority in his home state is terminated, suspended, or revoked.

§ 38.2-1857.2. Applications for surplus lines brokers' licenses.

A. Every original applicant for a surplus lines broker's license shall apply for such license in a form and manner prescribed by the Commission, and containing any information the Commission requires.

B. Prior to issuance of a license, the applicant shall file with the Commission a certification or attestation that the applicant has, and thereafter shall keep in force for as long as the license remains in effect, a bond in favor of ~~this~~ *the* Commonwealth in the amount of \$25,000 with corporate sureties licensed by the Commission. The bond shall be conditioned that the broker will conduct business under the license in accordance with the provisions of the surplus lines insurance law and that he will promptly remit the taxes provided by such law. The bond shall not be terminated unless at least 30 calendar days' prior written notice of the termination is filed with the Commission. If, prior to the expiration date of the bond, the licensed surplus lines broker fails to file with the Commission a certification or attestation that a new bond satisfying the requirements of this section has been put into effect, the surplus lines broker license shall terminate and the licensee shall be required to apply for a new surplus lines broker license.

C. Notwithstanding any other provisions of this title, a person licensed as a surplus lines broker in his home state, as defined in § 38.2-1800, shall receive a nonresident surplus lines broker license subject to meeting the requirements set forth in § 38.2-1857.9.

D. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in the Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) ~~of this title~~.

E. A business entity acting as a surplus lines broker is required to obtain a surplus lines broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in § 38.2-1857.3; and
2. If:

a. A resident of the Commonwealth, the business entity has designated an *employee, officer, or director, manager, member, or partner* to serve as the licensed Virginia Property and Casualty insurance agent to be responsible for the business entity's compliance with the insurance laws, rules and regulations of the Commonwealth; or

b. Not a resident of the Commonwealth, the business entity has designated an *employee, officer, or director, manager, member, or partner* licensed in his home state to be responsible for the business entity's compliance with the insurance laws, rules and regulations of the Commonwealth.

F. The Commission may require any documents reasonably necessary to verify the information contained in an application.

§ 38.2-1865.1. License required for viatical settlement brokers; Commission's authority;

conditions.

A. No person shall act as a viatical settlement broker, or solicit a viatical settlement contract while acting as a viatical settlement broker, on or after January 1, 1998, without first obtaining a license from the Commission.

B. A resident or nonresident life and annuities insurance agent shall not be prohibited from obtaining a license, and subsequently acting as, a viatical settlement broker. Such licensed life and annuities agent applying for a license as a viatical settlement broker shall comply with all provisions of this chapter.

C. Application for a viatical settlement broker's license shall be made to the Commission in the manner, in the form, and accompanied by the nonrefundable license processing fee prescribed by the Commission.

D. A business entity acting as a viatical settlement broker is required to obtain a viatical settlement broker license. In addition to the other requirements in this section, and before approving the application, the Commission shall find that:

1. The business entity has paid the fee set forth in this section; and
2. The business entity has designated an employee, officer, ~~or~~ director, *manager, member, or partner* who is a licensed viatical settlement broker as the individual responsible for the business entity's compliance with the insurance and other laws of this title, and related rules and regulations of the Commonwealth.

E. The Commission may require any documents reasonably necessary to verify the information contained in an application.

F. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in the Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.).

G. The license processing fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund — State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

H. Before June 1 of each year, each viatical settlement broker shall remit the nonrefundable renewal fee and renewal application prescribed by the Commission for the renewal of the license effective July 1 of that year.

I. Viatical settlement broker's licenses may be renewed for a one-year period ending on the following June 30 if the required renewal application and renewal fee have been received by the Commission on or before June 1, and the license has not been terminated, suspended or revoked on or before June 30.

J. The renewal fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund — State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

K. Each applicant for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license pertaining to the business of viatical settlements or to the insurance or other financial services business.

L. In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers are presumed to be agents of viatical settlement providers.

M. A viatical settlement broker shall not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

2. That a licensed agent, as defined in § 38.2-1800 of the Code of Virginia, who prior to July 1, 2018, was exempt from examination requirements of Article 2 (§ 38.2-1814 et seq.) of Chapter 18 of Title 38.2 pursuant to former subsection C of § 38.2-1817 on the basis of having obtained a Chartered Property and Casualty Underwriter (CPCU) or a Chartered Life Underwriter (CLU) designation shall not be required to comply with such examination requirements after the effective date of this act in order to maintain a license that was issued pursuant to such exemption.