

LD6296198

## HOUSE BILL NO. 2009

Offered January 23, 1995

A *BILL to amend and reenact §§ 54.1-601 and 54.1-2103 of the Code of Virginia, relating to conduct by auctioneers.*

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Patron—Davies

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Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:****1. That §§ 54.1-601 and 54.1-2103 of the Code of Virginia are amended and reenacted as follows:**

§ 54.1-601. Exemptions.

The provisions of this chapter and the terms "Virginia licensed auctioneer," "auctioneer" or "auction firm," as defined in § 54.1-600, shall not apply to:

1. Any person who auctions his own property, whether owned or leased, provided his regular business is not as an auctioneer;

2. Any person who is acting as a receiver, trustee in bankruptcy, guardian, administrator, or executor, or any person acting under order of a court;

3. A trustee acting under a trust agreement, deed of trust, or will;

4. An attorney-at-law licensed to practice in the Commonwealth of Virginia acting pursuant to a power of attorney;

5. Sales at auction conducted by or under the direction of any public authority, or pursuant to any judicial order or decree;

6. Sale of livestock at a public livestock market authorized by the Commissioner of Agriculture and Consumer Services;

7. Leaf tobacco sales conducted in accordance with the provisions of § 3.1-336;

8. Sale at auction of automobiles conducted under the provisions of § 43-34 or by a motor vehicle dealer licensed under the provisions of Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2;

9. Sale at auction of a particular brand of livestock conducted by an auctioneer of a livestock trade association;

10. Sales conducted by and on behalf of any charitable, religious, fraternal, or political organization if (i) the person conducting the sale receives no compensation, *either directly or indirectly*, therefor and has no ownership interest in the merchandise being sold or financial interest in the entity providing such merchandise, and (ii) the sale is in no way a shift or device to evade the provisions of this chapter;

11. Sales, not exceeding one sale per year, conducted by or on behalf of a civic club or organization; or

12. Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to Titles 8.1 through 8.10 and Chapter 23 (§ 55-416 et seq.) of Title 55.

§ 54.1-2103. Exemptions from chapter.

A. The provisions of this chapter shall not apply to:

1. Any person, partnership, association or corporation, or their regular employees, who as owner or lessor perform any of the acts enumerated in §§ 54.1-2100 and 54.1-2101 with reference to property owned or leased by them, where the acts are performed in the regular course of or incident to the management of the property and the investment therein;

2. Persons acting as attorney-in-fact, except persons so acting and receiving compensation where the primary purpose is to avoid the licensure requirements of this chapter, under a power of attorney issued by the property's owner solely for the purpose of authorizing the final performance required of the owner under a contract of sale or exchange or a lease;

3. Service rendered by an attorney-at-law in the performance of his duties as such;

4. A person acting as a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court;

5. A trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof;

6. Any corporation managing rental housing when the officers, directors, and members in the ownership corporation and the management corporation are the same and the management corporation manages no other property for other persons, partnerships, associations, or corporations.

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60 7. Any existing tenant of a residential dwelling unit who refers a prospective tenant to the owner of  
61 the unit or to the owner's duly authorized agent or employee and for the referral receives, or is offered,  
62 a referral fee from the owner, agent or employee.

63 8. *Any auctioneer licensed in accordance with Chapter 6 (§ 54.1-600 et seq.) of this title selling real*  
64 *estate at public auction when employed for such purpose by the owner of the real estate and provided*  
65 *the bidding at such auction is held open for no longer than seventy-two hours. An auctioneer shall not*  
66 *advertise that he is authorized to sell real estate. An auctioneer may advertise for sale at public auction*  
67 *any real estate when employed to do so as herein provided, and may advertise that he is authorized to*  
68 *auction real estate at public auction.*

69 B. The provisions of this chapter shall not prohibit the selling of real estate (i) ~~at public auction by~~  
70 ~~an auctioneer when employed for such purpose by the owner or owners of such real estate,~~ (ii) by an  
71 attorney-at-law in the performance of his duties as such, ~~(iii)~~ (ii) by a receiver, trustee in bankruptcy,  
72 administrator or executor, a special commissioner or any person selling real estate under order of court,  
73 or ~~(iv)~~ (iii) by a trustee acting under the trust agreement, deed of trust or will, or the regular salaried  
74 employees thereof. ~~However, an auctioneer shall not advertise that he is authorized to sell real estate. An~~  
75 ~~auctioneer may advertise for sale at public auction any real estate when employed to do so as herein~~  
76 ~~provided, and may advertise that he is authorized to auction real estate at public auction.~~

77 C. The provisions of this chapter shall not apply to any salaried person employed by a licensed real  
78 estate broker for and on behalf of the owner of any real estate or the improvements thereon which the  
79 licensed broker has contracted to manage for the owner if such salaried employee is employed on the  
80 premises of such real estate and limited in employment to exhibiting residential units on such real estate  
81 to prospective tenants, to providing such prospective tenants with information about the lease of such  
82 residential units, to accepting applications for lease of such units, and to accepting security deposits and  
83 rentals for such units. Such deposits and rentals shall be made payable to the owner or the broker  
84 employed by such owner. The salaried employee shall not negotiate the amounts of such security  
85 deposits or rentals and shall not negotiate any leases on behalf of such owner or broker.

86 D. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that  
87 the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection  
88 shall be construed to require a person to be licensed in accordance with this chapter if he would be  
89 otherwise exempt from such licensure.