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HOUSE BILL NO. 2040

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 54.1-2103 of the Code of Virginia, relating to the Real Estate Board; compensation to referring attorneys prohibited; exception.

Patron—Iaquinto

Referred to Committee on General Laws

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

§ 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. Any person acting without compensation as attorney-in-fact under a power of attorney issued by a property owner solely for the purpose of authorizing the final performance required of such owner under a contract for the sale, lease, purchase, or exchange of real estate;

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;

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

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

9. —Expired.]

10. Any salaried person employed by a licensed real estate broker for and on behalf of the owner of any real estate or the improvements thereon that the licensed broker has contracted to manage for the owner if the actions of such salaried employee are limited to (i) exhibiting residential units on such real estate to prospective tenants, if the employee is employed on the premises of such real estate; (ii) providing prospective tenants with factual information about the lease of residential real estate; (iii) accepting applications for lease of such real estate; and (iv) accepting security deposits and rentals for such real estate. Such deposits and rentals shall be made payable to the owner or the broker employed by such owner. The salaried employee shall not negotiate the amounts of such security deposits or rentals and shall not negotiate any leases on behalf of such owner or broker.

B. The provisions of this chapter shall not prohibit the selling of real estate (i) by an attorney-at-law in the performance of his duties as such, (ii) by a receiver, trustee in bankruptcy, administrator or executor, a special commissioner or any person selling real estate under order of court, or (iii) by a trustee acting under the trust agreement, deed of trust or will, or the regular salaried employees thereof.

C. The provisions of this chapter shall not apply to any salaried person employed by a licensed real estate broker for and on behalf of the owner of any real estate or the improvements thereon which the licensed broker has contracted to manage for the owner if the actions of such salaried employee are limited to (i) exhibiting residential units on such real estate to prospective tenants, if the employee is employed on the premises of such real estate; (ii) providing prospective tenants with factual information about the lease of residential real estate; (iii) accepting applications for lease of such real estate; and (iv) accepting security deposits and rentals for such real estate. Such deposits and rentals shall be made

59 payable to the owner or the broker employed by such owner. The salaried employee shall not negotiate
60 the amounts of such security deposits or rentals and shall not negotiate any leases on behalf of such
61 owner or broker.

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

66 *D. An attorney-at-law referring a client to a licensee shall not receive any compensation from a*
67 *listing firm or offered in the common source information company to cooperating brokers, unless the*
68 *attorney is also licensed under this chapter as a real estate broker or salesperson.*