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HOUSE BILL NO. 2352

House Amendments in [] - January 29, 2019

A *BILL to amend and reenact §§ 54.1-2105, 54.1-2106.1, 54.1-2108.2, and 54.1-2109 of the Code of Virginia, relating to the Real Estate Board; real estate licensees.*

Patron Prior to Engrossment—Delegate Miyares

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2105, 54.1-2106.1, 54.1-2108.2, and 54.1-2109 of the Code of Virginia are amended and reenacted 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 institution of higher education, 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 institution of higher education or other school or educational institution offering equivalent courses.

3. Every applicant for a license by reciprocity as a real estate salesperson or real estate broker shall have:

a. Completed a course in the principles of real estate that is comparable in content and duration and scope to that required in subdivision 1 or 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses that are comparable in content and duration and scope to that required in subdivision 2; and

b. If currently licensed by another state as a real estate salesperson or broker, passed Virginia's examination.

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.

E. The Board may establish criteria delineating the permitted activities of unlicensed individuals employed by, or affiliated as an independent contractor with, real estate licensees or under the supervision of a real estate broker.

F. The Board may take a disciplinary case against a licensee under advisement, defer a finding in such case, and dismiss such action upon terms and conditions set by the Board.

§ 54.1-2106.1. Licenses required.

A. No business entity, other than a sole proprietorship, shall act, offer to act, or advertise to act, as a

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59 real estate firm without a real estate firm license from the Board. Such firm may be granted a license in
60 a fictitious name. No business entity shall be granted a firm license unless (i) every managing member
61 of a limited liability company, officer of a corporation, partner within a partnership, or associate within
62 an association who actively participates in the firm brokerage business holds a license as a real estate
63 broker; and (ii) every employee or independent contractor who acts as a salesperson for such business
64 entity holds a license as a real estate salesperson or broker. An individual holding a broker's license may
65 operate a real estate brokerage firm which he owns as a sole proprietorship without any further licensure
66 by the Board, although such individual shall not operate the brokerage firm in a fictitious name.
67 However, nothing herein shall be construed to prohibit a broker operating a brokerage firm from having
68 a business entity separate from the brokerage firm for such broker's own real estate business, provided
69 that such separate business entity otherwise complies with this section. A non-broker-owned sole
70 proprietorship shall obtain a license from the Board.

71 B. No individual shall act as a broker without a real estate broker's license from the Board. An
72 individual who holds a broker's license may act as a salesperson for another broker. A broker may be an
73 owner, member, or officer of a business entity salesperson as defined in subsection C.

74 C. No individual shall act as a salesperson without a salesperson's license from the Board. A business
75 entity may act as a salesperson with a separate business entity salesperson's license from the Board. No
76 business entity shall be granted a business entity salesperson's license unless every owner or officer who
77 actively participates in the brokerage business of such entity holds a license as a salesperson or broker
78 from the Board. The Board shall establish standards in its regulations for the names of business entity
79 salespersons when more than one licensee is an owner or officer.

80 D. No group of individuals consisting of one or more real estate brokers or real estate salespersons,
81 or a combination thereof, shall act as a real estate team without first obtaining a business entity
82 salesperson's license from the Board. A real estate team may hire one or more unlicensed assistants, *as*
83 *employees or independent contractors*, as otherwise provided by law.

84 E. If any principal broker maintains more than one place of business within the Commonwealth, such
85 principal broker shall be required to obtain a branch office license from the Board for each place of
86 business maintained. A copy of the branch office license shall be kept on the premises of the branch
87 office.

88 **§ 54.1-2108.2. Protection of escrow funds, etc., held by a real estate broker in the event of**
89 **termination of a real estate purchase contract.**

90 Notwithstanding any other provision of law, for purchase transactions:

91 1. Upon the ratification of a contract, an earnest money deposit received by the principal broker or
92 supervising broker ~~or his associates, or an agent of such principal broker or supervising broker~~, shall be
93 placed in an escrow account by the end of the fifth business banking day following ratification, unless
94 otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until
95 the transaction has been consummated or terminated.

96 2. In the event that the transaction is not consummated, the principal broker or supervising broker
97 shall hold such funds in escrow until (i) all principals to the transaction have agreed in a written
98 agreement as to their disposition, upon which the funds shall be returned to the agreed-upon principal as
99 provided in such written agreement; (ii) a court of competent jurisdiction orders such disbursement of
100 the funds; (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to
101 this section; or (iv) the broker releases the funds to the principal to the transaction who is entitled to
102 receive them in accordance with the clear and explicit terms of the contract that established the earnest
103 money deposit.

104 At the option of a broker, written notice may be sent by the broker that release of such funds shall
105 be made unless a written protest is received from the principal who is not receiving the funds by such
106 broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the
107 parties to the transaction in accordance with the contract, but if the contract does not specify a method
108 of delivery, one of the following methods complies with this section: (a) hand delivery; (b) United
109 States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be
110 either a United States postal certificate of mailing or a certificate of service prepared by the sender
111 confirming such mailing; (c) electronic means, provided that the sender retains sufficient proof of the
112 electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was
113 sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or
114 (d) overnight delivery using a commercial service or the United States Postal Service. Except as
115 provided in the clear and explicit terms of the contract, no broker shall be required to make a
116 determination as to the party entitled to receive the earnest money deposit. A broker who complies with
117 this section shall be immune from liability to any of the parties to the contract.

118 3. A principal broker or supervising broker holding escrow funds for a principal to the transaction
119 may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds
120 via an interpleader action pursuant to § 16.1-77.

4. If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 and otherwise comply with the provisions of § 54.1-2108.1.

§ 54.1-2109. Death or disability of a broker.

Upon the death or disability of a licensed real estate broker who was engaged in a proprietorship or who was the only licensed broker in a corporation or partnership, the Real Estate Board shall grant approval to carry on the business of the deceased or disabled broker for 180 days following the death or disability of the broker solely for the purpose of concluding the business of the deceased or disabled broker in the following order:

1. A personal representative qualified by the court to administer the deceased broker's estate.

2. If there is no personal representative qualified pursuant to subdivision 1, then an agent designated under a power of attorney of the disabled or deceased broker, which designation expressly references this section.

3. If there is no agent designated pursuant to subdivision 2, the executor nominated in the deceased broker's will.

4. If there is no executor nominated pursuant to subdivision 3, then an adult family member of the disabled or deceased broker.

5. If there is no adult family member nominated pursuant to subdivision 4, then an employee of, *or an independent [~~contract~~ contractor] affiliated with*, the disabled or deceased broker.

In the event none of the foregoing is available or suitable, the Board may appoint any other suitable person to terminate the business within 180 days.

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