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HOUSE BILL NO. 2557
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on General Laws
on)
(Patron Prior to Substitute—Delegate McClure)

A BILL to amend and reenact §§ 54.1-2103 and 54.1-2111.1 of the Code of Virginia, relating to Department of Professional and Occupational Regulation; real estate brokers, salespersons, and rental location agents; exemptions.

on _____)

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2103 and 54.1-2111.1 of the Code of Virginia are 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, corporation, entity, or their regular employees, who as owner or lessor perform any of the acts enumerated in § 54.1-2100 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. For property governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), the term "owner" for purposes of this subdivision shall include affiliated entities, provided that (i) the owner has a controlling interest in the affiliated entity or (ii) the affiliated entity and the owner have a common parent company;

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

31 property for other persons, partnerships, associations, or corporations;

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

35 8. Any auctioneer licensed in accordance with Chapter 6 (§ 54.1-600 et seq.) ~~of this title~~ selling real estate
36 at public auction when employed for such purpose by the owner of the real estate and provided the bidding at
37 such auction is held open for no longer than ~~forty-eight~~ 48 hours. An auctioneer shall not advertise that he is
38 authorized to sell real estate. An auctioneer may advertise for sale at public auction any real estate when
39 employed to do so as herein provided, and may advertise that he is authorized to auction real estate at public
40 auction;

41 9. [Expired.]

42 10. Any person who is licensed and is in good standing as a real estate broker or salesperson in another
43 state, and who assists a prospective purchaser, tenant, optionee, or licensee located in another state to
44 purchase, lease, option, or license an interest in commercial real estate, as defined in § 55.1-1100, in the
45 Commonwealth. Such real estate licensee from another state may be compensated by a real estate broker in
46 the Commonwealth. Nothing in this subdivision shall be construed to permit any person not licensed and in
47 good standing as a real estate broker or salesperson in the Commonwealth to otherwise act as a real estate
48 broker or salesperson under this chapter.

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

53 C. The provisions of this chapter shall not apply to any ~~salaried~~ person employed by a licensed real estate
54 broker for and on behalf of the owner of any real estate or the improvements thereon ~~which~~ *that* the licensed
55 broker has contracted to manage for the owner if the actions of such ~~salaried~~ employee are limited to (i)
56 exhibiting residential units on such real estate to prospective tenants, if the employee is employed on the
57 premises of such real estate; (ii) providing prospective tenants with factual information about the ~~lease~~ *rental*
58 of residential real estate; (iii) accepting applications for ~~lease~~ *the rental* of such real estate; ~~and~~ (iv) accepting
59 *and signing broker-approved rental agreements, state or federal required disclosures, and any documents*

60 *required for compliance with Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 related to such rental transaction;*
61 *and (v) accepting security deposits ~~and rentals~~, periodic rent, and other payments as contracted for in the*
62 *rental agreement for such real estate. Such deposits and ~~rentals~~ rent shall be made payable to the owner or*
63 *the broker employed by such owner. The ~~salaries~~ employee shall not negotiate the amounts of such security*
64 *deposits ~~or rentals~~, periodic rent, or other payments contracted for in the rental agreement and shall not*
65 *negotiate any ~~leases~~ rental agreements on behalf of such owner or broker.*

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

70 E. An attorney-at-law referring a client to a licensee shall not be entitled to receive any compensation
71 from a listing firm or offered by a common source information company to cooperating brokers, unless the
72 attorney is also licensed under this chapter as a real estate broker or salesperson.

73 **§ 54.1-2111.1. Voluntary compliance program; real estate brokers.**

74 A. The Board shall promulgate regulations to allow the audit of the practices, policies, and procedures of a
75 real estate broker licensed by the Board, either through a third party retained by the real estate broker or
76 through a self-audit, and if the broker is determined by such audit to not be in compliance with the provisions
77 of this chapter or applicable regulations of the Board, to allow for the broker to enter into a voluntary
78 compliance program to bring the broker's practices, policies, and procedures into compliance with applicable
79 laws and regulations. The broker shall notify the Board of the discovery of any noncompliance within 30
80 days after discovery and shall submit a written statement with a plan to bring the practices, policies, and
81 procedures into voluntary compliance, which completion of such voluntary compliance shall not exceed a
82 period of 90 days from the date that the plan is submitted to the Board.

83 B. Certification by the broker or auditor of such broker shall constitute immunity from an enforcement
84 action under this chapter or under the applicable regulations of the Board.

85 C. The provisions of this section do not apply if the noncompliance by the broker was intentional or a
86 result of gross negligence of the broker, *including any actions by an unlicensed employee negotiating the*
87 *provisions of a rental agreement as prohibited under subsection C of § 54.1-2103.*