

WEST VIRGINIA

A. Actions Requiring Licensure

Determination for whether licensure is required for acts typically performed by land or right-of-way agents in West Virginia is governed by the West Virginia Code (“W.Va. Code”) and generally by W.Va. Code § 30-40-1, et seq.. Specifically, W.Va. Code § 30-40-3 provides that it is “unlawful for any person to engage in or carry on, directly or indirectly, or to advertise or hold himself or herself out as engaging in or carrying on the business or act in the capacity of a real estate broker, associate broker or salesperson within this State without first obtaining a license as provided for in this article.

A “broker” is defined elsewhere in the statutes as one who “for compensation or with the intention or expectation of receiving or collecting compensation: (1) Lists, sells, purchases, exchanges, options, rents, manages, leases or auctions any interest in real estate; or (2) Directs or assists in the procuring of a prospect calculated or intended to result in a real estate transaction; or (3) Advertises or holds himself or herself out as engaged in, negotiates or attempts to negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.” Further, an “associate broker” is one who is qualified to be a broker, but who works for another broker, and a “salesperson” is one who performs broker services working under a broker, but is not qualified for licensure as a broker.

B. Exceptions

As discussed, in many cases, if a statute appears to require inclusion in the licensure requirements, states set forth statutory exemptions or exceptions for licensure, particularly in the case where one performing duties does not hold himself out to the public for services executed or where one is acting solely for a company or entity for its own purposes and not for the public as a whole. In West Virginia, W.Va. Code § 30-40-5, specifically excepts from the provisions of a statute, the activities “normally performed by an appraiser, mortgage company, lawyer, engineer, contractor, surveyor, home inspector or other professional who may perform an ancillary service in conjunction with a real estate transaction” or

the “regular employees of an owner of real estate, who perform any acts regulated by this article, where the acts are incidental to the management of the real estate: *provided* the employee does not receive additional compensation for the act and does not perform the act as a vocation.”

More telling for the contract ROW agents’ client base, W.Va. Code § 30-40-5(7) specifically excludes from application “(a)ny person acquiring or disposing of any interest in timber or minerals, or acquiring or disposing of **properties for easements and rights-of-ways for pipelines, electric power lines and stations, public utilities, railroads or roads.**” Most clearly of any of the previous state’s surveyed, individuals who perform contract work for an owner or prospective owner of real estate and those who are working for pipeline companies (whether or not regulated) and in acquisition for state roads should not be required to be licensed realtors or brokers.