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COMMONWEALTH OF VIRGINIA  
REAL ESTATE BOARD



# REAL ESTATE REGULATIONS

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STATUTES  
Title 54.1, Chapter 21



Department of Professional and Occupational Regulation

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Richmond, VA 23233  
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**NOTICE**  
**SUMMARY OF SIGNIFICANT CHANGES**

Included in this document are relevant excerpts from the Virginia Administrative Code. Please note that the Real Estate Board is responsible for promulgating regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), and the Virginia Code Commission is responsible for compiling and codifying all of the administrative regulations of state agencies into the Virginia Administrative Code.

It is your responsibility to stay informed and follow all regulations and statutes governing your profession or occupation. As a regulant of the Board, you should read and become familiar with all regulations applicable to your profession or occupation. You can stay informed of regulatory actions that may result in changes to the regulations at Virginia Regulatory Town Hall ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)).

This document is a complete, edited (unofficial) copy of the 2017 Regulations. Please refer to the Virginia Administrative Code for an official copy of the regulations applicable to your profession or occupation. You can access the Virginia Administrative Code online at <http://law.lis.virginia.gov/admincode>.

## STATEMENT OF PURPOSE

This booklet contains the information you will need to obtain your license as a salesperson or broker. The law that governs your profession is found in the *Code of Virginia*, 1950, as amended, in Title 54.1, Chapter 21. That law permits the Department of Professional and Occupational Regulation to issue regulations that tell you more about what is expected of you in your profession. This booklet contains a copy of the law and regulations that you will need to know and obey to obtain and keep your license. **BE SURE YOU READ AND UNDERSTAND THE STANDARDS OF PRACTICE AND CONDUCT. YOUR FAILURE TO OBEY THESE STANDARDS COULD RESULT IN A MONETARY PENALTY OR THE LOSS OF YOUR LICENSE.**

It is the goal of the Department of Professional and Occupational Regulation to provide you with the information you need to comply with the law and regulations. If you have a question and cannot find the answer to it in this booklet, please write to:

Real Estate Board  
Department of Professional and Occupational Regulation  
9960 Mayland Drive, Suite 400  
Richmond, Virginia 23233

or call the Agency at (804) 367-8500.

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**PART I.**  
**GENERAL**

**18 VAC 135-20-10. Definitions.**

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Active" means any broker or salesperson who is under the supervision of a principal or supervising broker of a firm or sole proprietor and who is performing those activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Actively engaged" means active licensure with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 40 hours per week. This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

"Actively engaged in the brokerage business" means anyone who holds an active real estate license.

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by § 54.1-2130 of the Code of Virginia.

"Firm" means any sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker owner), which is required by 18VAC135-20-20 B to obtain a separate brokerage firm license. The firm's licensed name may be any assumed or fictitious name properly filed with the board.

"Inactive status" refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not active with a firm or sole proprietorship and who is not performing any of the activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means real estate brokers and salespersons as defined in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or real estate firms.

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees. The principal broker shall have signatory authority on all escrow accounts maintained by the firm.

"Principal to a transaction" means a party to a real estate transaction including without limitation a seller or buyer, landlord or tenant, optionor or optionee, licensor or licensee. For the purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

"Sole proprietor" means any individual, not a corporation, limited liability company, partnership, or association, who is trading under the individual's name, or under an assumed or fictitious name pursuant to the provisions of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designated agent as stated in § 54.1-2130 of the Code of Virginia.

#### Historical Notes

Derived from VR585-01-1 § 1.1, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

## **PART II.**

### **ENTRY**

#### **18 VAC 135-20-20. Necessity for license.**

Refer to § 54.1-2106.1 of the Code of Virginia.

- A. Sole proprietor (principal broker owner). A real estate broker's license shall be issued to an individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, only after the individual signs and acknowledges a certificate provided by the board, setting forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. Each certificate must be attested by the clerk of court of the county or jurisdiction wherein the business is to be conducted. The attention of all applicants and licensees is directed to §§ 59.1-69 through 59.1-76 of the Code of Virginia.
- B. Sole proprietor (nonbroker owner), partnership, association, limited liability company, or corporation. Every sole proprietor (nonbroker owner), partnership, association, limited liability company, or corporation must secure a real estate license for its firm before transacting real estate business. This license is separate and distinct from the individual broker license required of each partner, associate, manager of a limited liability company, and officer of a corporation who is active in the firm's brokerage business. Each applicant for such license shall disclose, and the license shall be issued to, the name under which the applicant intends to do or does business and holds itself out to the public. Each applicant shall also disclose the business address of the firm. The board will consider the application of any partnership, association, corporation or limited liability company only after the entity is authorized to conduct business in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia.
- C. Each real estate firm is required to have a principal broker whose license is in good standing with the board in order to transact real estate business.
- D. Branch office license. If a real estate broker maintains more than one place of business within the state, a branch office license shall be issued for each place of business maintained. Application for the license shall be made on forms provided by the board and shall reveal the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office. The branch office license shall be maintained at the branch office location.

#### Historical Notes

Derived from VR585-01-1 § 2.1, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992;

Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 31, Issue 26, eff. November 1, 2015.

**18 VAC 135-20-30. Qualifications for licensure.**

Every applicant to the Real Estate Board for an individual salesperson's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.
3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including but not limited to paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education.
4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall submit to fingerprinting and shall disclose the following information:
  - a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and
  - b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

5. The applicant shall be at least 18 years old.
6. The applicant shall have a high school diploma or its equivalent.
7. The applicant, within 12 months prior to submitting a complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board.



8. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established with regard to conduct at the examination may be grounds for denial of application.
9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board.

#### Historical Notes

Derived from VR585-01-1 § 2.2, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Errata, 19:14 VA.R. 2176, 2177 March 24, 2003; amended, Virginia Register Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-40. Additional qualifications for brokers.**

1. The applicant shall meet the current educational requirements of § 54.1-2105 of the Code of Virginia.
2. The applicant shall have been actively engaged as defined in 18VAC135-20-10 as a real estate salesperson for a period of 36 of the 48 months immediately preceding application. This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.
3. The applicant's experience must be verified by the principal or supervising broker for whom the licensee worked at the time of obtaining that experience.

#### Historical Notes

Derived from VR585-01-1 § 2.3, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-45. Additional qualifications for salesperson's or broker's license as a business entity.**

An applicant for a salesperson's license as a business entity shall meet the following requirements in addition to those set forth in 18VAC135-20-30:

1. Every owner or officer who actively participates in the real estate business shall hold a license as a salesperson or broker. The business entity license does not replace the individual license. More than one licensee may be a participant of the business entity.

2. When one licensee is the owner or officer, the business entity shall be named in accordance with § 54.1-2106.1 C of the Code of Virginia.
3. The board will consider the application of any partnership, association, corporation or limited liability company only after the entity is authorized to do business in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia.

#### Historical Notes

Derived from Volume 15, Issue 05, eff. January 1, 1999; amended, Virginia Register Volume 19, Issue 12, eff. April 1, 2003; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-50. Concurrent licenses.**

Concurrent licenses shall be issued by the board to brokers active in more than one firm upon receipt of a concurrent license form and written statements verifying that written notice of the applicant's concurrent licensure status has been provided to the principal broker of each firm with which the applicant is and will be associated. Payment is required for each license. A concurrent license will not be issued to an individual applying to be associated with a firm if that individual has an expired license associated with the same firm and the expired license may be reinstated.

#### Historical Notes

Derived from VR585-01-1 §2.4, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003.

#### **18 VAC 135-20-55. Exchange to Salesperson's License.**

A broker who wants to exchange his license(s) for that of a salesperson must submit a complete application with appropriate fee. When exchanging the license(s), the licensee agrees his current broker's license(s) ceases to exist, and if he chooses to become licensed as a broker again, he must pass the current broker examination and must meet the current education and experience requirements in effect at the time of application.

#### Historical Notes

Derived from Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-60. Qualifications for licensure by reciprocity.**

An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:

1. The applicant shall be at least 18 years of age.
2. The applicant shall have a high school diploma or its equivalent.
3. The applicant shall have received the salesperson's or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.
4. The applicant shall sign a statement verifying that he has read and understands the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.
5. The applicant, within 12 months prior to submitting a complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.
6. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established by the board with regard to conduct at the examination may be grounds for denial of application.
7. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including but not limited to paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education.
8. At the time of application for a salesperson's license, the applicant must have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have met educational requirements that are substantially equivalent to those required in Virginia, and the applicant must have been actively engaged as defined by 18VAC135-20-10 for 36 of the preceding 48 months. The broker applicant's experience must be verified by an individual who has direct knowledge of the applicant's activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia. These requirements may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.
9. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

10. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall submit to fingerprinting and shall disclose the following information:
  - a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and
  - b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

11. Applicants for licensure who do not meet the requirements set forth in subdivisions 7 and 10 of this section may be approved for licensure following consideration by the board.

#### Historical Notes

Derived from VR585-01-1 § 2.5, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Errata, 19:14 VA.R. 2176, 2177 March 24, 2003; amended, Virginia Register Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-70. Activation or transfer of license.**

- A. Any inactive licensee may activate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board. A licensee who submits an activate application to the board shall not conduct business with the real estate firm or sole proprietorship set forth in the application until the application is processed and the license is issued by the board. Continuing education pursuant to § 54.1-2105.03 of the Code of Virginia shall be completed within two years prior to activation of a license when the license has been inactive for more than 30 days. Any licensee who has not been active with a licensed real estate firm or sole proprietorship for a period of greater than three years shall be required to meet the existing prelicense educational requirements.
- B. Any licensee may transfer from one licensed real estate firm or sole proprietorship to another by completing and submitting to the board a transfer application and the fee as set forth in 18VAC135-20-80. The transfer application shall include the signature of the new principal broker or supervising broker with signature authority who will be responsible for the licensee's real estate activities and shall be effective

upon the principal broker or supervising broker's execution of the transfer application.

#### Historical Notes

Derived from VR585-01-1 § 2.6, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 19, Issue 12, eff. April 1, 2003; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-80. Application fees.**

- A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.
- B. Application fees are as follows:

Salesperson by education and examination .....	\$150.00
Salesperson by reciprocity.....	\$150.00
Salesperson's or broker's license as a business entity .....	\$190.00
Broker by education and examination .....	\$190.00
Broker by reciprocity.....	\$190.00
Broker concurrent license.....	\$140.00
Firm license .....	\$250.00
Branch office license .....	\$190.00
Transfer application.....	\$ 60.00
Activate application.....	\$ 60.00
- C. The fee for examination or re-examination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts.

#### Historical Notes

Derived from VR585-01-1 §2.9, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 14, Issue 6, eff. January 8, 1998; Volume 15, Issue 5, eff. January 1, 1999; Volume 15, Issue 18, eff. July 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 20, Issue 23, eff. September 1, 2004, Volume 31, Issue 26, eff. November 1, 2015.

### **PART III.**

#### **FEES, RENEWAL AND REINSTATEMENT REQUIREMENTS**

##### **18 VAC 135-20-90. Renewal Required.**

Licenses issued under this chapter for salespersons, brokers, and firms shall expire two years from the last day of the month in which they were issued, as indicated on the license, except concurrent broker licenses which shall expire on the same date as the original broker license.

##### **Historical Notes**

Derived from VR585-01-1 §3.1, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999.

##### **18 VAC 135-20-100. (Repealed.)**

##### **Historical Notes**

Derived from VR585-01-1 § 3.2, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; repealed, Virginia Register Volume 31, Issue 26, eff. November 1, 2015.

##### **18 VAC 135-20-101. Qualification for renewal; continuing education requirements.**

As a condition of renewal, and pursuant to § 54.1-2105.03 of the Code of Virginia, all active salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of post-license education regardless of whether their licenses are active or inactive. All active brokers, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 24 classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation or transfer of license).

1. Providers shall be those as defined in 18VAC135-20-350;

2. Effective until January 1, 2016, for salespersons, eight of the required 16 hours shall include two hours in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in legal updates and emerging trends, real estate agency and real estate contracts. For brokers, 16 of the 24 required hours shall include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in legal updates and emerging trends, real estate agency and real estate contracts. Effective January 1, 2016, for salespersons, eight of the required 16 hours shall include two hours in fair housing laws, three hours in ethics and standards of conduct, and a minimum of one hour each in legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program, real estate agency and real estate contracts. For brokers, 16 of the 24 required hours shall include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours in fair housing laws, three hours in ethics and standards of conduct, and a minimum of one hour each in legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program, real estate agency and real estate contracts. If the licensee submits a notarized affidavit to the board that certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;
- g. Liens;
- h. Real property and title insurance;
- i. Investment;
- j. Taxes in real estate;
- k. Real estate financing;
- l. Brokerage and agency contract responsibilities;

- m. Real property management;
  - n. Search, examination and registration of title;
  - o. Title closing;
  - p. Appraisal of real property;
  - q. Planning subdivision developments and condominiums;
  - r. Regulatory statutes;
  - s. Housing legislation;
  - t. Fair housing;
  - u. Real Estate Board regulations;
  - v. Land use;
  - w. Business law;
  - x. Real estate economics;
  - y. Real estate investments;
  - z. Federal real estate law;
  - aa. Commercial real estate;
  - bb. Americans With Disabilities Act;
  - cc. Environmental issues impacting real estate;
  - dd. Building codes and design;
  - ee. Local laws and zoning;
  - ff. Escrow requirements;
  - gg. Ethics and standards of conduct; and
  - hh. Common interest ownership.
3. Effective until January 1, 2016, salespersons holding licenses in other jurisdictions must complete eight hours, which shall include fair housing laws, legal updates and emerging trends, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section. Brokers holding licenses in other jurisdictions must complete 16 hours that shall include supervision and management of real estate agents and the management of real estate brokerage firms, fair housing laws, legal updates and emerging trends, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section. Effective January 1, 2016, salespersons holding licenses in other jurisdictions must complete eight hours,



which shall include fair housing laws, legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section. Brokers holding licenses in other jurisdictions must complete 16 hours that shall include supervision and management of real estate agents and the management of real estate brokerage firms, fair housing laws, legal updates and emerging trends, to include flood zone areas and the National Flood Insurance Program, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this section.

4. The board may approve additional subjects at its discretion and in accordance with § 54.1-2105.03 of the Code of Virginia.
5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.
6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide documentation of completion as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.
7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.
8. Any continuing education credits completed by the licensee in excess of that required in the current license term that are obtained in the six months immediately prior to the license expiration date shall carry over into the next two-year renewal period.

#### Historical Notes

Derived from Volume 24, Issue 11, eff. April 1, 2008; amended, Virginia Register Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-105. (Repealed.)**

#### Historical Notes

Derived from Volume 19, Issue 12, eff. April 1, 2003; amended, Virginia Register Volume 24,

Issue 11, eff. April 1, 2008; repealed, Virginia Register Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-110. Procedures for renewal.**

Prior to the expiration date shown on the license, each licensee desiring to renew the license shall return to the board the renewal application forms and the appropriate fee as outlined in 18 VAC 135-20-120. Failure to receive notices from the board regarding license renewal does not relieve the licensee of the obligation to renew.

#### **Historical Notes**

Derived from VR585-01-1 §3.3, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003.

#### **18 VAC 135-20-120. Fees for renewal.**

- A. All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.
- B. Renewal fees are as follows:

Salesperson .....	\$65.00
Salesperson's or broker's license as a business entity.....	\$90.00
Broker .....	\$80.00
Concurrent Broker .....	\$80.00
Firm.....	\$160.00
Branch Office .....	\$90.00

#### **Historical Notes**

Derived from VR585-01-1 § 3.4, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 14, Issue 06, eff. January 8, 1998; Volume 15, Issue 05, eff. January 1, 1999; Volume 15, Issue 18, eff. July 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 20, Issue 23, eff. September 1, 2004; Volume 31, Issue 26, eff. November 1, 2015; Errata, 32:1 VA.R. 242 September 7, 2015.

#### **18 VAC 135-20-130. Board discretion to deny renewal.**

The board may deny renewal of a license for (i) the same reasons as it may refuse initial licensure or discipline a current licensee; (ii) failure to meet the terms of an agreement for licensure or other

board order; or (iii) failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest.

#### Historical Notes

Derived from VR585-01-1 §3.5, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 19, Issue 12, eff. April 1, 2003.

#### **18 VAC 135-20-140. Failure to renew; reinstatement required.**

- A. All applicants for reinstatement must meet all requirements set forth in 18VAC135-20-101. Applicants for reinstatement who want to activate their license must have completed the continuing education requirement in order to reinstate and activate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.
- B. If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a reinstatement fee is required as follows:
- |  |          |
|--|----------|
| Salesperson .....  | \$100.00 |
| Salesperson's or broker's license as a<br>business entity..... | \$135.00 |
| Broker .....   | \$120.00 |
| Concurrent Broker .....  | \$120.00 |
| Firm.....  | \$245.00 |
| Branch Office .....  | \$135.00 |
- C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.
- D. A licensee may not perform activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia with an expired license. Any real estate activity conducted subsequent to the expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

#### Historical Notes

Derived from VR585-01-1 § 4.1, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 14, Issue 06, eff. January 8, 1998; Volume 15, Issue 18, eff. July 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 20, Issue 23, eff. September 1, 2004; Volume 31, Issue 26, eff. November 1, 2015; Errata, 32:1 VA.R. 242 September 7, 2015; Errata, 32:2 VA.R. 296 September 21, 2015.

**18 VAC 135-20-150. Board discretion to deny reinstatement.**

The board may deny reinstatement of a license for (i) the same reasons as it may refuse initial licensure or discipline a current licensee; (ii) failure to meet the terms of an agreement for licensure or other board order; or (iii) failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest.

**Historical Notes**

Derived from VR585-01-1 §4.2, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003.

## **PART IV.**

### **STANDARDS OF PRACTICE AND CONDUCT**

#### **18 VAC 135-20-155. Grounds for disciplinary action.**

The board has the power to fine any licensee or certificate holder and to suspend or revoke any license or certificate issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia and this chapter in accordance with subdivision A 7 of § 54.1-201 and § 54.1-202 of the Code of Virginia and the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia, where the licensee or certificate holder has been found to have violated or cooperated with others in violating any provision of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia, or any regulation of the board. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia may be charged with a violation, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

#### **Historical Notes**

Derived from Volume 19, Issue 12, eff. April 1, 2003; amended, Virginia Register Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-160. Place of business.**

- A. Within the meaning and intent of § 54.1-2110 of the Code of Virginia, a place of business shall be an office where:
  - 1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in § 54.1-2100 of the Code of Virginia; and
  - 2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.
- B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence with its own entrance and is accessible by the public.
- C. Every principal broker shall have readily available to the public in the main place of business the firm license, the principal broker license and the license of every salesperson and broker active with the firm. The branch office license and a roster of every salesperson or broker assigned to the branch office shall be posted in a conspicuous place in each branch office.

## Historical Notes

Derived from VR585-01-1 § 5.1, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

### **18 VAC 135-20-165. Duties of Supervising Broker.**

Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions of this section. The supervising broker does not relinquish overall responsibility for the supervision of the acts of all licensees assigned to the branch office. Factors to be considered in determining whether the supervision is reasonable and adequate include but are not limited to the following:

1. The availability of the supervising broker to all licensees under the supervision of the broker to review and approve all documents, including but not limited to leases, contracts affecting the firm's clients, brokerage agreements, and advertising;
2. The availability of training and written procedures and policies that provide, without limitation, clear guidance in the following areas:
  - a. Proper handling of escrow deposits;
  - b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
  - c. Advertising;
  - d. Negotiating and drafting of contracts, leases, and brokerage agreements;
  - e. Use of unlicensed individuals;
  - f. Agency or independent contractor relationships;
  - g. Distribution of information on new or changed statutory or regulatory requirements;
  - h. Disclosure of matters relating to the condition of the property; and
  - i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

3. The availability of the supervising broker in a timely manner to supervise the management of the brokerage services;
4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;
5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office, including but not limited to ensuring the licensees have an active, current license;
6. The supervising broker undertakes reasonable steps to ensure only licensees undertake activities requiring a license, including but are not limited to:
  - a. Show property;
  - b. Hold an open house;
  - c. Answer questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents;
  - d. Discuss, explain, interpret, or negotiate a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and
  - e. Negotiate or agree to any commission, commission split, management fee, or referral fee.
7. The supervising broker shall provide adequate supervision over the unlicensed employees or assistants under the supervision of a broker as they perform the following permitted activities:
  - a. Perform general clerical duties, including answering the phones, responding by electronic media, and providing information shown on the listing;
  - b. Submit listings and changes to MLS;
  - c. Follow up on loan commitments after contracts have been ratified;
  - d. Have keys made for listings;
  - e. Compute commission checks;
  - f. Place signs on properties;
  - g. Act as a courier service;
  - h. Schedule appointments;

- i. Record and deposit earnest money deposits, security deposits, and advance rents;
  - j. Prepare contract forms for approval of the licensee and supervising broker;
  - k. Prepare promotional materials and advertisements for approval of the licensee and supervising broker;
  - l. Assemble closing documents;
  - m. Obtain required public information from governmental entities;
  - n. Monitor license and personnel files;
  - o. Order routine repairs as directed by licensee;
  - p. Are compensated for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and
  - q. Perform any other activities undertaken in the regular course of business for which a license is not required.
8. If a supervising broker is located more than 50 miles from the place of business or the branch office and there are licensees who regularly conduct business assigned to the branch office or at the place of business, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements of this section; and
9. The supervising broker must maintain the records required in this section for three years. The records must be furnished to the board's agent upon request.

#### Historical Notes

Derived from subsection D of 18VAC135-20-160, Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-170. Maintenance of licenses.**

- A. Name and address.
  - 1. Salespersons and individual brokers shall at all times keep the board informed of their current name and home address. Changes of name and address must be reported to the board in writing within 30 calendar days of such change. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use. The professional name shall include the licensee's first or last name and shall not include any titles.



2. Salespersons and brokers shall be issued a license only to the place of business of the sole proprietorship or firm with which the salesperson or broker is active.
  3. Principal brokers must at all times keep the board informed of their current firm and branch office name and addresses and changes of name and address must be reported to the board in writing within 30 calendar days of such change. A physical address is required. A post office box will not be accepted.
- B. Discharge or termination of active status.
1. When any salesperson or broker is discharged or in any way terminates his active status with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license to the board so that it is received within 10 calendar days of the date of termination or being notified of the status change. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.
  2. When any principal broker is discharged or in any way terminates his active status with a firm, it shall be the duty of the firm to notify the board and return the license to the board within three business days of termination or being notified of the status change. The firm shall indicate on the license the date of termination, and shall sign the license before returning it. See § 54.1-2109 of the Code of Virginia for termination relating to the death or disability of the principal broker.

#### Historical Notes

Derived from VR585-01-1 § 5.2, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-180. Maintenance and management of escrow accounts.**

- A. Maintenance of escrow accounts.
1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository into which all down payments, earnest money deposits, money received upon final settlement, application deposits as defined by § 55-248.4 of the Code of Virginia, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of

real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.
3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.
4. Lease transactions: application deposits. Any application deposit as defined by § 55-248.4 of the Code of Virginia paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord unless all principals to the lease transaction have agreed otherwise in writing.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that

account until the transaction has been consummated or terminated. In the event the transaction is not consummated (nonconsummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, and the funds shall be returned to the agreed upon principal within 20 days of the agreement, (ii) a court of competent jurisdiction orders such disbursement of the funds, (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section, or (iv) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract that established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee, or (ii) certified mail return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of nonconsummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

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

If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If there is in effect at the date of the foreclosure sale a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be

deemed a termination of the real estate purchase contract, and the principal broker or supervising broker may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the principals.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing in this section shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

c. Lease transactions: prepaid rent or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all prepaid rent and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable, except the prepaid rent, which shall be treated in accordance with the prepaid rent provision of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia.

d. Lease transactions: rent payments. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a licensee acting on behalf of the landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.

2.
  - a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.
  - b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia. If there is in effect at the date of the foreclosure sale a written property management agreement between the licensee and the landlord, the property management agreement shall continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.
3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.
4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.
5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report, etc.) shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;
3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;
4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and
5. Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.

#### Historical Notes

Derived from VR585-01-1 § 5.3, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015; Volume 34, Issue 05, eff. December 1, 2017.

#### **18 VAC 135-20-185. Maintenance and management of financial records.**

- A. A complete record of financial transactions conducted under authority of the principal broker's Virginia license shall be maintained in the principal broker's place of business, or in a designated branch office. When the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia, a copy of these records shall be maintained in the Virginia office. These records shall show, in addition to any other requirements of the regulations, the following information: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.
- B. The principal broker shall maintain a bookkeeping or recordkeeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.
- C. Actions constituting improper recordkeeping by a principal broker or supervising broker include:

1. Failing to retain for a period of three years from the date of execution, each brokerage agreement, each disclosure and consent to dual agency or dual representation, and each disclosure and consent to designated agency or designated representation. Each disclosure of a brokerage relationship to an unrepresented party shall be retained for three years from the date provided to the party;
2. Failing to retain for a period of three years from the date of closing or from ratification, if the transaction fails to close, a complete and legible copy of each executed contract of sale, any executed release from contract, any executed lease agreement, any executed property management agreement, and each settlement statement related to a real estate transaction, in the broker's control or possession unless prohibited by law;
3. Failing to maintain a complete and accurate record of such receipts and their disbursements for moneys received on behalf of others for a period of three years from the date of the closing or termination of the sales transaction or termination of a lease or conclusion of the licensee's involvement in the lease; and
4. Failing to maintain any records required by this section for three years.

#### Historical Notes

Derived from Volume 19, Issue 12, eff. April 1, 2003; amended, Virginia Register Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-190. Advertising by licensees.**

- A. Definitions. The following definitions apply unless a different meaning is plainly required by the context:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

"Contact information" means telephone number or web address.

"Disclosure" in the context of electronic media advertising means (i) advertising by the firm that contains the firm's licensed name and the city and state in which the firm's main office or branch office is located or (ii) advertising by an affiliated licensee that contains the licensee's name, the name of the firm with which the licensee is active, and the city and state in which the licensee's place of business is located, and this disclosure shall be viewable on the main page or no more than one click away from the main page. "Disclosure" in the context of all other

advertising means (i) advertising by the firm that contains the firm's licensed name or (ii) advertising by an affiliated licensee that contains the licensee's name and the name of the firm with which the licensee is active.

"Viewable page" means a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

- B. All advertising must be under the direct supervision of the principal broker or supervising broker, in the name of the firm and, when applicable, comply with the disclosure required by § 54.1-2138.1 of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.
- C. Electronic media advertising.
  - 1. Any electronic media advertising undertaken for the purpose of any licensed activity is subject to the provisions of this chapter.
  - 2. All electronic media advertising that can be viewed or experienced as a separate unit (i.e., email messages and web pages) must contain disclosure that shall be viewable on the main page or is no more than one click away from the main page.
  - 3. All electronic media listings advertised must be kept current and consistent as follows:
    - a. Electronic media listing information must be consistent with the property description and actual status of the listing. The licensee shall update in a timely manner material changes to the listing status authorized by the seller or property description when the licensee controls the electronic media site.
    - b. The licensee shall make timely written requests for updates reflecting material changes to the listing status or property descriptions when a third party electronic media listing service controls the website displaying the listing information.
- D. Other advertising.
  - 1. For sale and for lease signs placed on the property shall include but not be limited to the firm's name and the firm's primary or branch office telephone number.
  - 2. Business cards shall include but not be limited to the licensee's name, the firm name, and contact information.
- E. The following activities shall be prohibited:



1. Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person;
2. Failing to include a notice in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised;
3. Failing to include the firm's licensed name on any sign displayed outside each place of business;
4. Failing to obtain the written consent of the seller, landlord, optionor or licensor prior to advertising a specific identifiable property; and
5. Failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement.

#### Historical Notes

Derived from VR585-01-1 § 5.4, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-200. Repealed.**

#### Historical Notes

Derived from VR585-01-1 §6.1, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; repealed, Virginia Register Volume 19, Issue 12, eff. April 1, 2003.

#### **18 VAC 135-20-210. Disclosure of interest.**

If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property through purchase, sale, or lease and the licensee is a party to the transaction, the licensee must disclose in writing that he is a licensee and that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest has or will have an ownership interest to the other parties to the transaction. This disclosure shall be made to the purchaser, seller, lessor, or lessee upon having substantive discussions about specific real property.

#### Historical Notes

Derived from VR585-01-1 § 6.2, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

**18 VAC 135-20-220. Disclosure of brokerage relationships.**

**A. Purchase transactions.**

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents pursuant to a brokerage agreement, as that term is defined in § 54.1-2130 of the Code of Virginia.
2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of § 54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.
3. A licensee acting as a dual or designated agent or as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of §§ 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.
4. Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by § 54.1-2138 of the Code of Virginia.

**B. Lease transactions.**

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the

transaction. Such disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

2. This disclosure requirement shall not apply to lessors or lessees in single or multi-family residential units for lease terms of less than two months.

#### Historical Notes

Derived from VR585-01-1 § 6.3, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-225. Audits.**

- A. Procedures for voluntary compliance, self audit, or third-party audit; broker immunity.
  1. A principal broker or supervising broker may conduct, or may have another person conduct, an audit of the practices, policies, and procedures of his firm or sole proprietorship in accordance with § 54.1-2111.1 of the Code of Virginia. The methods and findings of the audit shall be documented as described in this subsection.
  2. A principal broker or supervising broker shall notify the board in writing within 30 days following the conclusion of a self audit, or within 30 days from the receipt of the final report of a third-party audit, of any matter he believes to constitute noncompliance with the provisions of Real Estate Board regulations or law. The principal broker or supervising broker shall also submit (i) a statement that such noncompliance has been remediated or (ii) a plan to correct such noncompliance within 90 days. Failure to comply with these requirements may result in loss of immunity from regulatory enforcement action.
  3. A principal broker or supervising broker shall sign and date any report made pursuant to subdivision 2 of this subsection. Such report, properly submitted, shall provide immunity from enforcement against the principal broker or supervising broker by the board for the matters reported therein.
  4. Immunity from enforcement action provided by this section shall not apply if the noncompliance with provisions of Real Estate Board regulations or law by the principal broker or supervising broker was intentional or was the result of gross negligence by the principal broker or supervising broker.

5. Immunity from enforcement action provided by this section shall apply only to the principal broker and supervising broker who conduct an audit and submit a voluntary compliance plan in accordance with this section and shall not extend to any other broker or salesperson who may not be in compliance with Real Estate Board regulations or law.
6. Failure to complete the voluntary compliance program within 90 days from the date of plan submission shall result in the loss of immunity from regulatory enforcement action. Repeated instances of a violation found as a result of an audit that was subject to the voluntary compliance program may be deemed by the board to constitute a failure to complete the prior voluntary compliance program.

B. Procedures for mandatory audit.

1. A principal broker or supervising broker shall conduct or have a third party conduct an audit at least once during each license term in accordance with § 54.1-2106.2 of the Code of Virginia. Such audit shall be documented on a form developed by the board.
2. In conducting an audit of practices, policies, and procedures of the firm or sole proprietorship, the principal broker or supervising broker or a third party shall examine and document all matters regarding the compliance by the firm or sole proprietorship with law and regulation regarding:
  - a. Proper handling of escrow deposits and maintenance of a complete record of financial transactions;
  - b. Compliance with federal and state fair housing laws and regulations if the firm or sole proprietorship engages in residential brokerage, residential leasing, or residential property management;
  - c. Advertising in all forms and media;
  - d. Negotiation and drafting of contracts, leases, and brokerage agreements;
  - e. Use of unlicensed individuals;
  - f. Agency or independent contractor relationships;
  - g. Distribution of information on new or changed statutory or regulatory requirements;
  - h. Proper documentation of required disclosures; and
  - i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

3. If at the conclusion of a mandatory audit the principal broker or supervising broker or third party believes there is noncompliance with the provisions of the Real Estate Board regulations or law, the principal broker or supervising broker may avail himself of the procedures for voluntary compliance described in subsection A of this section.

Upon request by any investigator, or by another agent of the board, a broker shall cooperate in the provision of records and documents pursuant to 18VAC135-20-240 within 10 days of receipt of the request, and for other requests by the board and its agents pursuant to 18VAC135-20-250, within 21 days of receipt.

#### Historical Notes

Derived from Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-230. Repealed.**

#### Historical Notes

Derived from VR585-01-1 §6.4, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; repealed, Virginia Register Volume 19, Issue 12, eff. April 1, 2003.

#### **18 VAC 135-20-240. Provision of records to the board.**

Unless otherwise specified by the board, or as set forth in § 54.1-2108 of the Code of Virginia, a licensee of the Real Estate Board shall produce to the board or any of its agents within 10 days of the request evidence of signature cards or bank records, any document, book, or record concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

#### Historical Notes

Derived from VR585-01-1 § 6.5, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-250. Response to inquiry of the board.**

A licensee must respond to an inquiry by the board, other than requested under 18 VAC 135-20-240, or its agents within 21 days.

## Historical Notes

Derived from VR585-01-1 §6.6; Virginia Register Volume 11, Issue 18, eff. June 28, 1995; amended, Virginia Register Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003.

### **18 VAC 135-20-260. Prohibited Acts.**

The following are prohibited acts:

1. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in this chapter;
3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;
4. As a currently licensed real estate broker, sitting for a real estate licensing examination;
5. Signing an experience verification form without direct supervision or actual knowledge of the applicant's activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia or unreasonably refusing to sign an experience verification form;
6. Having been convicted or found guilty regardless of the manner of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision;
7. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 6 of this section;
8. Having had a license as a real estate broker or real estate salesperson that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction;
9. Failing to inform the board in writing within 30 days of a disciplinary action as stated in subdivision 8 of this section;
10. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States, including without limitation Title VIII of the

Civil Rights Act of 1968 (82 Stat. 73), or the Civil Rights Act of 1866 (14 Stat. 27), there being no appeal therefrom or the time for appeal having elapsed;

11. Actions constituting failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, including but not limited to the following:
  - a. A principal broker or supervising broker failing to ensure proper supervision and accountability over the firm's day-to-day financial dealings, escrow account or accounts, and daily operations;
  - b. A broker failing to disburse funds from an escrow account according to the regulations or failing to properly retain documents relating to the basis for disbursement;
  - c. A broker failing to ensure the licensees for whom the broker has oversight responsibility hold active licenses while practicing real estate;
  - d. A broker failing to provide accurate and timely reports to the board about a licensee's compliance with the board's laws and regulations;
  - e. A broker failing to have signatory authority on all accounts;
  - f. A broker failing to account for or remit any moneys coming into a licensee's possession that belong to another;
  - g. A licensee failing to submit to the broker in a timely manner, all earnest money deposits, contracts, listing agreements, deeds of lease, or any other documents for which the broker has oversight responsibility;
  - h. A licensee negotiating leases for a third party through an unlicensed firm or without a principal broker;
  - i. A licensee operating an unlicensed firm or acting as a principal broker;
  - j. A licensee practicing real estate with an inactive or expired license;
  - k. A licensee knowingly providing the broker with an earnest money deposit check from an account with insufficient funds;
  - l. A licensee allowing unsupervised access to a home without the owner's authorization;
  - m. A licensee failing to inform the broker of a transaction; and
  - n. A licensee submitting unauthorized altered copies of a contract or contracts to the broker; and
12. Actions constituting engaging in improper, fraudulent, or dishonest conduct, including but not limited to the following:

- a. A licensee attempting to divert commission from the firm or sole proprietorship and direct payment to a licensee or an unlicensed individual who is not a party to the transaction;
- b. A licensee fabricating or altering any document with the intent to mislead;
- c. A licensee signing any documents on a client's behalf without first obtaining a client's proper written permission or authorization to sign said documents on his behalf;
- d. A licensee making an earnest money deposit payable to himself or negotiating the check without written authority;
- e. A licensee misrepresenting ownership of a property;
- f. A licensee submitting copies of the same earnest money deposit check for inclusion with multiple offers;
- g. A licensee entering into agreements to be compensated for real estate services while his license is inactive;
- h. A licensee representing in offers he received the earnest money deposit when he has not or he knows the check is worthless; and
- i. A licensee misrepresenting who is holding the earnest money deposit.

#### Historical Notes

Derived from VR585-01-1 § 6.7, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Errata, 19:14 VA.R. 2176, 2177 March 24, 2003; amended, Virginia Register Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-270. Conflict of interest.**

Actions constituting a conflict of interest include:

- 1. Being active with a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;
- 2. Acting for more than one client in a transaction governed by the provisions of §§ 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia without first obtaining the written consent of all clients; and



3. Performing regulated activities as a standard agent, limited service agent, or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).

#### Historical Notes

Derived from VR585-01-1 § 6.8, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-280. Improper brokerage commission.**

Actions resulting in an improper brokerage commission include:

1. Offering to pay or paying a transaction-based fee, fees, or other valuable consideration to any person not licensed in this or any jurisdiction for services that require a real estate license;
2. Accepting a commission, fee, or other valuable consideration, as a real estate salesperson or associate broker, for any real estate services from any person or entity except the licensee's principal broker or supervising broker at the time of the transaction;
3. Receiving financial benefit from the use of any information about the property, the transaction, or the parties to the transaction, when the information is gained as a result of the performance of acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia without the prior written consent of the licensee's principal broker;
4. Receiving financial benefit from any person other than the licensee's principal broker at the time of the transaction, for the performance of any of the acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia without the prior written consent of the licensee's principal broker;
5. Receiving financial benefit or other valuable consideration for any work or service related to a transaction without the prior written acknowledgment of the person paying for such work or service; and
6. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor.

#### Historical Notes

Derived from VR585-01-1 § 6.9, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19,

Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

### **18 VAC 135-20-290. Improper dealing.**

Actions constituting improper dealing include:

1. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative;
2. Placing a sign on any property without the consent of the owner of the property or the owner's authorized representative; and
3. Causing any advertisement for sale, rent, or lease to appear in any format or medium without including in the advertisement the name of the firm or sole proprietorship.

#### Historical Notes

Derived from VR585-01-1 § 6.10, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 31, Issue 26, eff. November 1, 2015.

### **18 VAC 135-20-300. Misrepresentation/omission.**

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity or for a specified time period and the licensee did in fact have at least that quantity for sale or rent at that price or terms at the time of advertising;
2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;
3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;
4. Failure by a licensee acting as an agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;

5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;
6. Failing to include the complete terms and conditions of the real estate transaction, including but not limited to any lease, property management agreement or offer to purchase;
7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;
8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
  - a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;
  - b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;
  - c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8 a of this section without the prior written consent of the principals to the transaction;
9. Knowingly making any material misrepresentation; and
10. Making a false promise through agents, salespersons, advertising, or other means.

#### Historical Notes

Derived from VR585-01-1 § 6.11, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-310. Improper delivery of instruments.**

Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each principal to a transaction, complete and legible copies of any written disclosures required by §§ 54.1-2138, 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia, listings, lease, offers to

purchase, counteroffers, addenda and ratified agreements, and other documentation required by the agreement;

2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;
3. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of moneys received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and
4. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.

#### Historical Notes

Derived from VR585-01-1 § 6.12, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-320. Repealed.**

#### Historical Notes

Derived from VR585-01-1 § 6.12, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; repealed, Virginia Register Volume 19, Issue 12, eff. April 1, 2003.

#### **18 VAC 135-20-330. Principal and supervising broker's responsibility for acts of licensees and employees.**

Any unlawful act or violation of any of the provisions of Chapter 21, (§ 54.1-2100 et seq.) of Title 54.1 or of Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia or of the regulations of the board by any real estate salesperson, employee, partner or affiliate of a principal broker, supervising broker or both, may not be cause for disciplinary action against the principal broker, supervising broker, or both, unless it appears to the satisfaction of the board that the principal broker, supervising broker, or both, knew or should have known of the unlawful act or violation and failed to take reasonable action under the circumstances to remedy the situation.

#### Historical Notes

Derived from VR585-01-1 §6.14, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 19, Issue 12, eff. April 1, 2003.

**18 VAC 135-20-340. Effect of disciplinary action on subordinate licensees.**

Action by the board resulting in the revocation, suspension, or denial of renewal of the license of any principal broker or sole proprietor shall automatically result in an order that the licenses of any and all individuals active with the affected firm be returned to the board until such time as they are reissued upon the written request of a sole proprietor or principal broker pursuant to regulation 18 VAC 135-20-170 B.

Historical Notes

Derived from VR585-01-1 §6.15, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 19, Issue 12, eff. April 1, 2003.

**18 VAC 135-20-345. Effect of disciplinary action on concurrent licenses.**The board shall suspend, revoke or deny renewal of existing concurrent broker licenses when the board suspends, revokes or denies renewal of another broker's license held by the same individual.

Historical Notes

Derived from Virginia Register Volume 24, Issue 11, eff. April 1, 2008.

**PART V.**  
**SCHOOLS.**

**18 VAC 135-20-350. Definitions.**

The following words and terms, when used in this part, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited university, college, community college, or other school or educational institution," as used in § 54.1-2105 B 1 of the Code of Virginia, means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

"Class hour/clock hour" means 50 minutes.

"Equivalent course" means any course encompassing the basic educational curriculum of Virginia courses and approved by the board.

"Proprietary School" means (i) a privately owned school, (ii) a real estate professional association, or (iii) a related entity, which is not under the authority of the Department of Education, but approved by the Real Estate Board to teach real estate courses.

"Provider" means an accredited university, college, community college, or high school offering adult distributive education courses, or a proprietary school.

**Historical Notes**

Derived from VR585-01-1 §7.1, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999.

**18 VAC 135-20-360. Proprietary school standards, instructor qualifications and course requirements.**

- A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the standards provided in subsection A of § 54.1-2105.02 of the Code of Virginia by submitting a CPA-certified letter attesting to the applicant's net worth or a balance sheet or financial statement certified to be accurate by the applicant. Such applicant shall show a minimum net worth of \$2,000.
- B. Every applicant to the Real Estate Board for certification as an instructor for prelicense education must meet two of the qualifications outlined in subdivisions 1 through 6 of this subsection:

1. A baccalaureate degree, an active Virginia real estate broker's license, and two consecutive years of discipline-free active real estate experience immediately prior to application;
  2. An active Virginia real estate broker's license and five consecutive years of discipline-free active real estate experience immediately prior to application;
  3. A professional designation such as, but not limited to, Accredited Land Consultant (ALC), Certified Residential Specialist (CRS), Certified Commercial Investment Member (CCIM), Certified Property Manager (CPM), Certified Residential Broker (CRB), Counselor Real Estate (CRE), Member Appraisal Institute (MAI), Society Industrial Office Realtors (SIOR), Senior Residential Appraiser (SRA), or Senior Real Estate Property Appraiser (SRPA);
  4. A fully designated membership of the Real Estate Educators Association holding the Designated Real Estate Instructor (DREI) designation;
  5. Possession of a valid teaching credential or certificate issued by the Commonwealth of Virginia, or any other state with qualifications that are equal to or exceed Virginia teacher qualifications, or at least five years of teaching experience in an accredited public, private, or parochial school, or an accredited junior college, college, or university; and
  6. An attorney member of the Virginia State Bar who is engaged in the field of real estate-related law.
  7. The board shall also consider evaluations from previous education courses the applicant has instructed and recommendations of course providers, coordinators, administrators, and institutions that have employed the applicant.
  8. The board may waive the requirements of subdivisions 1 through 6 of this subsection upon review of proof of experience in related fields of real estate. The board has discretion to deny an applicant who has been the subject of a disciplinary action.
- C. Every applicant to the Real Estate Board for approval as an instructor for continuing education and post license education shall have expertise in a specific field of real estate with at least three years of active experience and will teach only in the area of their expertise. Such applicants will be required to furnish proof of their expertise, possibly including but not limited to educational transcripts, professional certificates, letters of reference (a maximum of three), a resume, or any other type of documentation that will verify the applicant's expertise.
- D. Prelicense courses must be acceptable to the board, be taught by a certified prelicense instructor, and are required to have a monitored, final written

examination. Online distance learning courses must include a timer requiring licensees to be actively engaged online learning course content for at least 50 minutes to receive one hour of credit. Those schools which propose to offer prelicensing courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:

1. Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in 18VAC135-20-400. All requests to offer broker courses must include a course syllabus acceptable to the board;
  2. Name of the course's text and any research materials used for study assignments;
  3. Description of any research assignments;
  4. Copies of test or quizzes;
  5. Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with § 54.1-2105 of the Code of Virginia; and
  6. Information about recordkeeping for the type of course delivery.
- E. Providers of continuing education and post license education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course, including requiring licensees who complete correspondence or other distance learning courses to file a notarized affidavit certifying compliance with the course requirements with the education provider or with the licensee's own records. Online distance learning courses must include a timer requiring licensees to be actively engaged online learning course content for at least 50 minutes to receive one hour of credit. The board shall approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.
- F. Approval of prelicense, continuing education and post license education courses shall expire on December 31 three years from the year in which the approval was issued, as indicated on the approval document.
- G. All schools must establish and maintain a record for each student. The record shall include: the student's name and address, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, the date of successful completion, and the board's course code. Records shall be



available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.

- H. All schools must provide each student with a certificate of course completion or other documentation that the student may use as proof of course completion. Such documentation shall contain the student's name, school name, course name, course approval number, course completion date, hours of credit completed, and a statement that the course is "Approved by the Real Estate Board."
- I. All providers of continuing education or post license education courses shall electronically transmit course completion data to the board in an approved format within five business days of the completion of each individual course. The transmittal will include each student's name, license number or social security number; the date of successful completion of the course; the school's code; and the board's code.

#### Historical Notes

Derived from VR585-01-1 § 7.2, eff. July 15, 1987; amended, Volume 05, Issue 23, eff. October 1, 1989; Volume 07, Issue 14, eff. May 15, 1991; Volume 08, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 05, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008; Volume 31, Issue 26, eff. November 1, 2015.

#### **18 VAC 135-20-370. Fees.**

- A. The application fee for an original certificate for a proprietary school shall be \$190.
- B. The renewal fee for proprietary school certificates expiring every two years from the last day of the month in which they were issued shall be \$90.
- C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$135 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant. If the renewal requirements are not completed within 30 days of the expiration date noted on the proprietary school approval, the proprietary school shall no longer offer board-approved courses.
- D. The application for an original prelicense education instructor certificate shall be \$190.

- E. The renewal fee for a prelicense instructor certificate expiring every two years from the last day of the month in which it was issued shall be \$75.
- F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of \$110 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.
- G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.

#### Historical Notes

Derived from VR585-01-1 §7.3, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 14, Issue 6, eff. January 8, 1998; Volume 15, Issue 5, eff. January 1, 1999; Volume 15, Issue 18, eff. July 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 20, Issue 23, eff. September 1, 2004; Volume 24, Issue 11, eff. April 1, 2008.

#### **18 VAC 135-20-380. Posting school certificate of approval and instructor certificates.**

Copies of school certificates of approval, and instructor certificates, if applicable, must be available at the location a course is taught.

#### Historical Notes

Derived from VR585-01-1 §7.4, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999.

#### **18 VAC 135-20-390. Withdrawal of approval.**

The board may withdraw approval of any school, course or instructor for the following reasons:

1. The school, instructors, courses, or subjects no longer meet the standards established by the board.
2. The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.
3. The school or instructor distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without

receiving the prior written approval of the copyright owner to distribute or communicate those questions.

4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.
5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

#### Historical Notes

Derived from VR585-01-1 §7.5, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 24, Issue 11, eff. April 1, 2008.

#### **18 VAC 135-20-400. Course content of real estate principles and practices.**

The following shall be included in the four-semester-hour or six-quarter-hour course which shall not have less than sixty class hours:

1. Economy and social impact of real estate
2. Real estate market and analysis
3. Property rights
4. Contracts
5. Deeds
6. Mortgages and deeds of trust
7. Types of mortgages
8. Leases
9. Liens
10. Home ownership
11. Real property and title insurance
12. Investment
13. Taxes in real estate
14. Real estate financing
15. Brokerage and agency contract responsibilities
16. Real estate marketing
17. Real property management
18. Search, examination and registration of title
19. Title closing
20. Appraisal of residential and income producing property
21. Planning subdivision developments and condominiums
22. Regulatory statutes
23. Housing legislation
24. Fair housing statutes

25. Real Estate Board regulations

Historical Notes

Derived from VR585-01-1 §7.6, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999.

**18 VAC 135-20-410. Broker Courses.**

- A. Brokerage shall be a required specific course with three semester hours or six quarter hours, but not less than 45 class hours, constituting a complete course.
- B. "Related subjects," as referred to in § 54.1-2105 of the Code of Virginia, shall be real estate related and shall include, but are not limited to, courses in property management, land planning and land use, business law, real estate economics, and real estate investments.
- C. No more than 45 class hours of broker-related courses shall be accepted in lieu of specific broker courses set forth in § 54.1-2105 of the Code of Virginia.
- D. Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course with a cover letter requesting approval.

Historical Notes

Derived from VR585-01-1 §7.7, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003.

## NOTICE

Included in this booklet are relevant excerpts from the *Code of Virginia*. Please note that the Virginia General Assembly is responsible for creating and amending the *Code*, not the Real Estate Board. The version contained herein contains all changes, if any, that have been made by the General Assembly through the 2016 session. Any changes made during the 2016 session became effective July 1, 2016, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulations and the statutes governing your profession or occupation. Please consult the General Assembly or your local library for annual changes.

### TITLE 54.1, CHAPTER 21

#### **§ 54.1-2100. Definitions.**

As used in this chapter:

"Distance learning" means instruction delivered by an approved provider through a medium other than a classroom setting. Such courses shall be those offered by an accredited university, college, community college, high school offering adult distributive education courses, other school or educational institution, or real estate professional association or related entities.

"Real estate broker" means any person or business entity, including, but not limited to, a partnership, association, corporation or limited liability company, who, for compensation or valuable consideration (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest as defined in § 55-426, or time-shares in a time-share program even though they may be deemed to be securities, or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others.

(Code 1950, § 54-730; 1974, c. 409; 1982, c. 440; 1984, c. 283; 1988, c. 765; 1996, c. 993; 2001, c. 548; 2007, c. 809.)

#### **§ 54.1-2101. Real estate salesperson defined.**

For the purposes of this chapter, "real estate salesperson" means any person, or business entity of not more than two persons unless related by blood or marriage, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange of real estate, or to lease, rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon.

(Code 1950, § 54-731; 1974, c. 685; 1978, c. 138; 1984, c. 201; 1988, c. 765; 1992, c. 84; 1996, c. 993.)

#### **§ 54.1-2101.1. Preparation of real estate contracts by real estate licensees.**

Notwithstanding any rule of court to the contrary, any person licensed under this chapter may prepare written contracts for the sale, purchase, option, exchange, or rental of real estate provided the preparation of such contracts is incidental to a real estate transaction in which the licensee (i) is involved and (ii) does not charge a separate fee for preparing the contracts.

(1997, cc. 200, 231.)

**§ 54.1-2102.**

Repealed by Acts 1992, c. 84.

**§ 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 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. For property governed by Chapter 21 (§ 55-360 et seq.) of Title 55, 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 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 person who is licensed and is in good standing as a real estate broker or salesperson in another state, and who assists a prospective purchaser, tenant, optionee, or licensee located in another state to purchase, lease, option, or license an interest in commercial real estate, as defined in § 55-526, in the Commonwealth. Such real estate licensee from another state may be compensated by a real estate broker in the Commonwealth. Nothing in this subdivision shall be construed to permit any person not licensed and in good standing as a real estate broker or salesperson in the Commonwealth to otherwise act as a real estate broker or salesperson under this chapter.

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 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.

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

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

(Code 1950, § 54-734; 1972, c. 324; 1973, cc. 487, 527; 1975, c. 238; 1980, c. 127; 1982, cc. 633, 682; 1988, c. 765; 1992, c. 84; 1993, cc. 816, 899; 1995, c. 227; 1998, cc. 261, 262; 2009, cc. 88, 262; 2015, cc. 24, 272.)

#### **§ 54.1-2104. Real Estate Board; membership; chairman; seal.**

The Real Estate Board shall be composed of nine members as follows: seven members who have been licensed real estate brokers or salespersons for at least five consecutive years before their appointment and two citizen members. The terms of Board members shall be four years.

The Board shall elect a chairman from its membership.

The Board shall adopt a seal by which it shall authenticate its proceedings.

(Code 1950, §§ 54-737, 54-738, 54-739, 54-744; 1956, c. 145; 1981, c. 447; 1984, c. 201; 1985, c. 448; 1988, cc. 42, 765; 1992, c. 809; 2010, c. 91.)

**§ 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 university, college, community college, 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 university, college, community college, 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 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.

Code 1950, § 54-740; 1974, c. 663; 1977, c. 3; 1980, c. 571; 1981, c. 117; 1984, cc. 201, 283; 1985, c. 116; 1988, cc. 9, 765; 1989, c. 244; 1991, c. 576; 1992, cc. 65, 446, 624, 717; 1995, c. 125; 1996, cc. 890, 903; 1997, c. 389; 1998, c. 268; 2000, c. 759; 2003, cc. 998, 1027; 2006, cc. 61, 627; 2007, c. 809; 2010, cc. 373, 637; 2012, c. 750; 2016, c. 334.

**§ 54.1-2105.01. Educational requirements for all salespersons within one year of licensure.**

A. The Board shall establish guidelines for an educational curriculum of at least 30 hours of classroom, or correspondence or other distance learning, instruction, in specified areas, which shall be required of all salespersons within one year of issuance of a license by the Board. Failure of a new licensee to complete the 30-hour curriculum within one year of obtaining a real estate salesperson's license shall result in the license being placed on inactive status by the Board until the curriculum has been completed.

B. To establish the guidelines required by this section, the Board shall establish an industry advisory group composed of representatives of the practices of (i) residential real estate, (ii) commercial real estate, and (iii) property management. The industry advisory group shall consist of licensed real estate salespersons and real estate brokers who shall be appointed by and shall meet at the direction of the Board, at least annually, to update the guidelines. The Board shall review and may approve educational curricula developed by an approved school or other provider of real estate education authorized by this chapter. The industry advisory group shall serve at no cost to the Board.

C. (Effective until January 1, 2016) The curricula for new licensees shall include topics that new licensees need to know in their practices, including contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, property owners' and condominium association law, landlord-tenant law, Board regulations, and such other topics as designated by the Board. The continuing education requirements of this section for new licensees shall be in lieu of the continuing education requirements otherwise specified in this chapter and Board regulations.

C. (Effective January 1, 2016) The curricula for new licensees shall include topics that new licensees need to know in their practices, including contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, flood hazard areas and the National Flood Insurance Program, property owners' and condominium association law, landlord-tenant law, Board regulations, and such other topics as designated by the Board. The continuing education requirements of this section for new licensees shall be in lieu of the continuing education requirements otherwise specified in this chapter and Board regulations.

(2007, c. 809; 2011, c. 461; 2015, c. 692.)

**§ 54.1-2105.02. Regulation of real estate education providers and courses.**

A. The Board may regulate any school that is established to offer real estate courses except such schools as are regulated by another state agency. Such authority shall include, but not be limited to, qualification of instructors, approval of course curricula, and requirement that such schools submit evidence of financial responsibility to ensure that these schools protect the public health, safety, and welfare.

B. Board regulations shall include a procedure for processing applications of educational institutions, real estate professional associations, or related entities, to provide continuing education courses, which procedure, at a minimum, shall (i) provide for a broad range of subject matters suitable for the continuing education of licensed professionals in a multifamily residential and commercial office, as well as single-family residential, sales, leasing and property management; (ii) acknowledge, in writing, receipt of such applications within 10 calendar days after receipt; and (iii) provide written notification to the applicant, within 75 calendar days of receipt of the application, whether the application has been approved or disapproved, and if disapproved, the reasons therefor. In addition, the Board shall prepare a comprehensive listing of courses, pre-approved by the Board, related to the professional competency requirements for the multifamily residential and commercial office industries.

Board regulations shall include criteria for evaluating and approving continuing education course credits and for awarding credit hours for such courses, as well as procedures for ensuring the quality of real estate courses. The Board shall approve recommended course titles, content, and hours of continuing education credit developed and published by national professional real estate trade associations, unless the Board determines in writing that such titles, content, or credit hours should not be approved and specifies the reasons therefor.

(2007, c. 809.)

**§ 54.1-2105.03. Continuing education; relicensure of brokers and salespersons.**

A. Board regulations shall include educational requirements as a condition for relicensure of brokers and salespersons to whom active licenses have been issued by the Board beyond those now specified by law as conditions for licensure.

1. Brokers to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 24 hours of classroom or correspondence or other

distance learning instruction during each licensing term. Of the total 24 hours, the curriculum shall consist of:

- a. A minimum of eight required hours to include at least three hours of ethics and standards of conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging trends, flood hazard areas and the National Flood Insurance Program, real estate agency, and real estate contracts;
- b. A minimum of eight hours of courses relating to supervision and management of real estate agents and the management of real estate brokerage firms as are approved by the Board; and
- c. Eight hours of general elective courses as are approved by the Board.

The Board may, on a year-by-year basis, adjust the required hours and course topics specified in this subdivision for the next succeeding year, applicable to a licensee in the next renewal period for his license, including the addition of topics deemed by the Board to be essential. Such designation or adjustment by the Board shall be made prior to September 1 of any given calendar year. The action of the Board in making such adjustment shall be subject to § 2.2-4012.1.

The fair housing requirements shall include an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations.

2. Salespersons to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 16 hours of classroom or correspondence or other distance learning instruction during each licensing term. Of the total 16 hours, the curriculum shall consist of:

- a. A minimum of eight required hours to include at least three hours of ethics and standards of conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging trends, real estate agency, real estate contracts, and flood hazard areas and the National Flood Insurance Program; and
- b. Eight hours of general elective courses as are approved by the Board.

The Board may, on a year-by-year basis, readjust the required hours and course topics specified in this subdivision for the next succeeding year, applicable to a licensee in the next renewal period for his license, including the addition of topics deemed by the Board to be essential. Such designation or adjustment by the Board shall be made prior to September 1 of any given calendar year. The action of the Board in making such adjustment shall be subject to § 2.2-4012.1.

3. The Board shall approve a continuing education curriculum of not less than three hours, and as of July 1, 2012, every applicant for relicensure as an active broker or salesperson shall complete at a minimum one three-hour continuing education course on the changes to residential standard agency effective as of July 1, 2011, to Article 3 (§ 54.1-2130 et seq.) prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board that

certifies that he does not practice residential real estate and shall not do so during the licensing term, training in residential representation shall not be required. A licensee who takes one three-hour continuing education class on residential representation shall satisfy the requirements for continuing education and may, but shall not be required to, take any further continuing education on residential standard agency.

The fair housing requirements shall include an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations.

4. For correspondence and other distance learning instruction offered by an approved provider, the Board shall establish the appropriate testing procedures to verify completion of the course and require the licensee to file a notarized affidavit certifying compliance with the course requirements. The Board may establish procedures to ensure the quality of the courses. The Board shall not require testing for continuing education courses completed through classroom instruction.

B. Every applicant for relicensure as an active salesperson or broker shall complete the continuing education requirements prior to each renewal or reinstatement of his license. The continuing education requirement shall also apply to inactive licensees who make application for an active license. Notwithstanding this requirement, military personnel called to active duty in the armed forces of the United States may complete the required continuing education within six months of their release from active duty.

C. The Board shall establish procedures for the carryover of continuing education credits completed by licensees from the licensee's current license period to the licensee's next renewal period.

D. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship as demonstrated to the Board.

2007, c. 809; 2011, c. 461; 2012, c. 750; 2015, c. 692; 2016, c. 334.

**§ 54.1-2105.04. Education requirements; reactivation of licenses; waiver.**

A. Board regulations shall include remedial educational requirements for any salesperson or broker who has been inactive for more than three years. The regulations shall require the applicant to meet the educational requirements for a salesperson or broker in effect at the time either becomes active.

B. When the license has been inactive for more than three years, the Board may waive the educational requirements for reactivation of a license under the following conditions: (i) during the time the license has been inactive, the holder of such inactive license has been engaged in an occupation whereby the knowledge of real estate would be retained or (ii) the holder of such license is a member or the spouse of a member of the armed forces of the United States who has

been permanently assigned outside Virginia for a portion of the time the license has been inactive, and the holder of the inactive license remained current in the field of real estate and demonstrates this fact to the satisfaction of the Board.

C. The Board or its agent shall require proof of identity prior to an applicant taking the state examination.

(2007, c. 809.)

**§ 54.1-2105.1. Other powers and duties of the Real Estate Board.**

In addition to the provisions of §§ 54.1-2105.01 through 54.1-2105.04, the Board shall:

1. Develop a residential property disclosure statement form for use in accordance with the provisions of Chapter 27 (§ 55-517 et seq.) of Title 55. The Board shall also include on its website the notice required by subsection B of § 55-519; and
2. Inform licensed brokers, in a manner deemed appropriate by the Board, of the broker's ability to designate an agent pursuant to § 54.1-2109 in the event of the broker's death or disability.

(1993, c. 958; 2000, c. 759; 2007, cc. 265, 809; 2008, cc. 851, 871; 2011, c. 461; 2014, cc. 24, 705.)

**§ 54.1-2105.2. Cease and desist orders for unlicensed activity; civil penalty.**

A. Notwithstanding any other provision of law, the Board may issue an order requiring any person to cease and desist from acting as a real estate broker or salesperson when such person is not licensed by the Board in accordance with this chapter. The order shall be effective upon its entry and shall become final unless such person files an appeal with the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) within 21 days of the date of entry of the order.

B. If the person fails to cease and desist the unlicensed activity after entry of an order in accordance with subsection A, the Board may refer the matter for enforcement pursuant to § 54.1-306.

C. Any person engaging in unlicensed activity shall be subject to further proceedings before the Board and the Board may impose a civil penalty not to exceed \$1,000 for any real estate transaction or the compensation received from any such real estate transaction, whichever is greater. Any penalties collected under this section shall be paid to the Literary Fund after deduction of the administrative costs of the Board in furtherance of this section.

(2005, c. 437.)

**§ 54.1-2106.**

Repealed by Acts 1996, c. 993.

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

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

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

(1996, c. 993; 1998, c. 265; 1999, cc. 82, 105; 2008, c. 319; 2012, c. 750.)

#### **§ 54.1-2106.2. Certification of audit on renewal of firm or sole proprietorship license.**

When submitting a renewal of any firm or sole proprietorship license, the principal broker or supervising broker of the firm shall certify that he has audited or has caused to be audited the operations, policies, and procedures of the firm to assure compliance with the provisions of this chapter and with regulations adopted by the Board. Such audit shall be conducted at least once during each term of licensure, and the completed audit form developed by the Board, signed by the principal or supervising broker, shall be kept on the premises of the firm or sole proprietorship and shall be produced for inspection or copying upon request by an authorized agent of the Board.

(2012, c. 750.)

#### **§ 54.1-2107. Certain action to constitute real estate broker or salesperson.**

One act for compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell or exchange real estate, or leasing, or renting, or offering to rent real estate, except as specifically excepted in § 54.1-2103, shall constitute the person, firm, partnership, copartnership, association or corporation, performing, offering or

attempting to perform any of the acts enumerated above, a real estate broker or real estate salesperson.

(Code 1950, § 54-732; 1984, c. 201; 1988, c. 765.)

**§ 54.1-2108. Protection of escrow funds, etc., held by broker.**

No licensee or any agent of the licensee shall divert or misuse any funds held in escrow or otherwise held by him for another. Where escrow funds or other funds are held by the licensee or his agents and the Real Estate Board or its agents have reason to believe that the licensee is not able to adequately protect the interests of persons involved, or his conduct threatens their interests, the Board shall file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by the licensee. If the court finds him unable to make such payment, the Board shall determine whether the expenses and fees shall be paid from the Virginia Real Estate Transaction Recovery Fund or from funds received by the Board. Such determination shall be made within thirty days of the Board's receipt of the court-approved receiver invoices. If the court finds that the licensee was without fault and that he is found not to have violated any provisions of this chapter or of the regulations of the Board, then the receiver's expenses and fees shall be paid by the Board. Such payments shall be paid from funds received by the Board.

(1973, c. 487, § 54-764.5; 1988, c. 765; 1997, c. 82; 1998, c. 29.)

**§ 54.1-2108.1 Protection of escrow funds, etc., held by a real estate broker in the event of foreclosure of real property; required deposits.**

A. Notwithstanding any other provision of law:

1. If a licensed real estate broker or an agent of the licensee is holding escrow funds for the owner of real property and such property is foreclosed upon, the licensee or an agent of the licensee shall have the right to file an interpleader action pursuant to § 16.1-77.
2. If there is in effect at the date of the foreclosure sale, a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a licensee shall be paid to a party to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract and the licensee or an agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the parties.
3. If there is in effect at the date of the foreclosure sale, a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security

deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing herein shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

4. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon pursuant to § 55-225.10, the foreclosure acts as a termination of the rental agreement by the landlord and the tenant may remain in possession of such dwelling. If rent is paid to a real estate licensee acting on behalf of the landlord as a managing agent, such property management agreement having been entered into prior to and in effect at the time of the foreclosure sale, the managing agent may collect the rent and shall place it into an escrow account by the end of the fifth business banking day following receipt.

5. If there is in effect at the date of the foreclosure sale a written property management agreement between the landlord and a real estate licensee licensed pursuant to the provisions of § 54.1-2106.1, the foreclosure shall convert the property management agreement into a month-to-month agreement between the successor landlord and the real estate licensee acting as a managing agent, except in the event that the terms of the original property management agreement between the landlord and the real estate licensee acting as a managing agent require an earlier termination date. Unless altered by the parties, the terms of the original property management agreement that existed between the landlord and the real estate licensee acting as a managing agent shall govern the agreement between the successor landlord and the real estate licensee acting as a managing agent. The property management agreement may be terminated by either party upon provision of written notice to the other party at least 30 days prior to the intended termination date. Any funds received or held by the real estate licensee acting as a managing agent shall be disbursed only in accordance with the terms of the property management agreement or as otherwise provided by law.

**B. Notwithstanding any other provision of law:**

1. Any prepaid rent paid more than one month prior to the rent due date to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction. Any rent paid less than one month prior to the rent due date shall be current rent and may be deposited into an operating account of the real estate licensee.

2. Any security deposits paid to a real estate licensee acting on behalf of a landlord client in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to a lease transaction.

3. Any application deposit as defined by § 55-248.4 paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a real estate licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following



approval of the rental application by the landlord, unless otherwise agreed to in writing by the principals to a lease transaction.

4. Such funds shall remain in an escrow account until disbursed in accordance with the terms of the lease, the property management agreement, or the applicable statutory provisions, as applicable.

5. Except in the event of foreclosure, if a real estate licensee acting on behalf of a landlord client as a managing agent elects to terminate the property management agreement, the licensee may transfer any funds held in escrow by the licensee on behalf of the landlord client to the landlord client without his consent, provided that the real estate licensee provides written notice to each tenant that the funds have been so transferred. In the event of foreclosure, a real estate licensee shall not transfer any funds to a landlord client whose property has been foreclosed upon.

6. A real estate licensee acting on behalf of a landlord client as a managing agent who complies with the provisions of this section shall have immunity from any liability for such compliance, in the absence of gross negligence or intentional misconduct.

(2010, c. 181; 2013, c. 489; 2017, cc. 67, 394.)

**§ 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 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.

(1984, c. 283, § 54-731.3; 1988, c. 765; 2014, cc. 24, 705.)

**§ 54.1-2110. Resident broker to maintain place of business in Virginia.**

Every resident real estate broker shall maintain a place of business in this Commonwealth.

(Code 1950, § 54-733; 1981, c. 34; 1988, c. 765.)

**§ 54.1-2110.1. Duties of supervising broker.**

A. Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions required by this section, but such designation shall not relieve the supervising broker of responsibility for the supervision of the acts of all licensees assigned to the branch office.

B. As used in this section, "reasonable and adequate supervision" by the supervising broker shall include the following:

1. Being available to all licensees under his supervision at reasonable times to review and approve all documents, including leases, contracts, brokerage agreements, and advertising as may affect the firm's clients and business;
2. Ensuring the availability of training opportunities and that the office has written procedures and policies that provide clear guidance in the following areas:
  - a. Handling of escrow deposits in compliance with law and regulation;
  - b. Complying with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
  - c. Advertising and marketing of the brokerage firm;
  - d. Negotiating and drafting of contracts, leases, and brokerage agreements;
  - e. Exercising appropriate oversight and limitations on the use of unlicensed assistants, whether as part of a team arrangement or otherwise;
  - f. Creating agency or independent contractor relationships and elements thereof;
  - g. Distributing information on new or amended laws or regulations; and
  - h. Disclosing required information relating to the physical condition of real property;
3. Ensuring that the brokerage services are carried out competently and in accordance with the provisions of this chapter; and
4. Maintaining the records required by this subsection for three years. The records shall be furnished to the Board's agent upon request.

C. Any supervising broker who resides more than 50 miles from a branch office under his supervision, having licensees who regularly conduct business assigned to such branch office,

shall certify in writing quarterly on a form provided by the Board that the supervising broker has complied with the requirements of this section.

D. No later than January 1, 2017, the supervising broker for a branch office shall provide to the Board the name and license number of the supervising broker for the branch office. Thereafter, upon the renewal of the license of each licensee working in such branch office or upon the transfer of a licensee to such office, the broker shall provide to the Board the name and license number of each real estate licensee working in the branch office on the broker acknowledgement form created by the Board.

2012, c. 750; 2016, c. 334.

**§ 54.1-2111. Consent to suits and service of process by nonresidents; manner of service.**

A. Every nonresident applicant shall file with the Real Estate Board an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county or city of this Commonwealth in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this Commonwealth on the Director of the Department of Professional and Occupational Regulation. The consent shall stipulate that such service of process or pleadings on the Director shall be taken and held in all courts to be as valid and binding as if due service had been made upon the applicant in the Commonwealth of Virginia.

B. Any process or pleadings served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the licensee at the last known address.

(Code 1950, §§ 54-773, 54-774; 1988, c. 765; 1993, c. 499.)

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

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

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

C. The provisions of this section do not apply if the noncompliance by the broker was intentional or a result of gross negligence of the broker.

(2010, cc. 373, 637.)

**§ 54.1-2112. Definitions.**

As used in this article, unless the context requires a different meaning:

"Act" means the Virginia Real Estate Transaction Recovery Act.

"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions A 1, 2, and 4 of § 2.2-4519, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations payable to the fund.

"Board" means the Real Estate Board.

"Claimant" means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this act.

"Director" means the Director of the Department of Professional and Occupational Regulation.

"Fund" means the Virginia Real Estate Transaction Recovery Fund.

"Improper or dishonest conduct" includes only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.

"Judgment" includes an order of a United States Bankruptcy Court (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy," (ii) extinguishing a claim against a regulant who is in bankruptcy and for which claim no distribution was made from the regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court, or (iii) extinguishing a claim against a regulant who is in bankruptcy and for which claim only partial distribution was made from the regulant's bankruptcy estate. An order of dismissal shall not be considered a judgment.

"Regulant" means a person, partnership, association, corporation, agency, firm or any other entity licensed by the Real Estate Board as a real estate broker or real estate salesperson.

"Verified claim" means a completed application, on a form designed by the Board, the truthfulness of which has been attested to by the claimant before a notary public, along with all required supporting documentation, that has been properly received by the Department in accordance with this chapter.

1977, c. 69, § 54-765.2; 1984, cc. 266, 283; 1985, c. 448; 1987, c. 555; 1988, c. 765; 1992, c. 348; 1993, c. 499; 2015, c. 409.

**§ 54.1-2113. Establishment and maintenance of fund, duty of Director, assessments of regulants.**

A. Each initial regulant at the time of licensure shall be assessed \$20, which shall be specifically assigned to the fund. Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director within 30 days.

B. All assessments, except initial assessments, for the fund shall be deposited, within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings and loan associations or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings institutions or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 64.2-1502. The Director shall maintain in his office an accurate record of all transactions involving the fund, which records shall be open for inspection and copying by the public during the normal business hours of the Director.

C. The minimum balance of the fund shall be \$400,000. Whenever the Director determines that the balance of the fund is or will be less than such minimum balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount of interest earnings to the fund to bring the balance of the fund to the amount required by this subsection. Such transfer of interest shall be considered by the Board within 30 days of the notification of the Director.

D. If available interest earnings are insufficient to bring the balance of the fund to the minimum amount required by this section, or if a transfer of available interest earnings to the fund has not occurred, the Board shall assess each regulant within 30 days of notification by the Director, a sum sufficient to bring the balance of the fund to the required minimum amount. The Board may order an assessment of regulants at any time in addition to any required assessment. No regulant shall be assessed a total amount of more than \$20 during any biennial license period or part thereof, the biennial period expiring on June 30 of each even-numbered year. Assessments of regulants made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

E. At the close of each fiscal year, whenever the balance of the fund exceeds \$2 million, the amount in excess of \$2 million shall be transferred to the Virginia Housing Trust Fund established pursuant to Chapter 9 (§ 36-141 et seq.) of Title 36. Except for transfers pursuant to this subsection, there shall be no transfers out of the fund, including transfers to the general fund, regardless of the balance of the fund.

F. If the Board determines that all regulants will be assessed concurrently, notice to the regulants of such assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail to the Director within 45 days after the mailing to regulants of such notice.

If the Board determines that all regulants will be assessed in conjunction with license renewal, notice to the regulants may be included with the license renewal notice issued by the Board. The

assessment shall be due with the payment of the license renewal fees. No license shall be renewed or reinstated until any outstanding assessments are paid.

G. If any regulant fails to remit the required payment mailed in accordance with subsection F within 45 days of the mailing, the Director shall notify the regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within 30 days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

H. The costs of administering the act shall be paid out of interest earned on deposits constituting the fund. The remainder of the interest, at the discretion of the Board, may (i) be used for providing research and education on subjects of benefit to real estate regulants or members of the public, (ii) be transferred to the Virginia Housing Trust Fund, or (iii) accrue to the fund in accordance with subsection C.

(1977, c. 69, § 54-765.3; 1982, c. 6; 1984, c. 266; 1987, c. 555; 1988, c. 765; 1990, c. 3; 1992, cc. 348, 810; 1997, c. 82; 2007, c. 791; 2013, c. 754.)

**§ 54.1-2114. Recovery from fund generally.**

A. The claimant shall not himself be (i) a regulant, (ii) the personal representative of a regulant, (iii) the spouse or child of the regulant against whom the judgment was awarded or the personal representative of such spouse or child, or (iv) a lending or financial institution or any person whose business involves the construction or development of real property.

B. Whenever any person is awarded a final judgment in any court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity for improper or dishonest conduct as defined in the act, and the improper or dishonest conduct occurred during a period when the individual or entity was a regulant and occurred in connection with a transaction involving the sale, lease, or management of real property by the regulant acting in the capacity of a real estate broker or real estate salesperson and not in the capacity of a principal, or on his own account, the person to whom such judgment was awarded may file a verified claim with the Director for a directive ordering payment from the fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the complaint upon the Board by certified mail or the equivalent.
2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.
3. A verified claim shall be filed with the Director no later than 12 months after the date of entry of the final judgment from which no further right of appeal exists.
4. Prior to submitting a verified claim, the claimant shall:

a. Conduct or make a reasonable attempt to conduct debtor's interrogatories to determine whether the judgment debtor has any assets, including any listings held by the regulant and any commissions due thereby; and

b. Take all legally available actions for the sale or application of any assets disclosed in the debtor's interrogatories.

5. If the judgment debtor has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, or the distribution ordered fails to satisfy the claim, the claimant may then file a claim with the Board. The verified claim shall be received by the Board within 12 months of the date of bankruptcy discharge or dismissal. In the event the judgment is silent as to the conduct of the regulant, the Board shall determine (i) whether the conduct of the regulant that gave rise to the claim was improper or dishonest as defined in § 54.1-2112 and (ii) what amount, if any, such claimant is entitled to recover from the Fund.

C. The Department shall promptly consider the verified claim. If it appears that a prima facie case has been made for payment of the claim, the Department shall provide the regulant with a notice offering the opportunity to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.). Such notice shall state that if the regulant does not request an informal fact-finding conference within 30 days, with three days added in instances where the notice is sent by mail, the Department shall present the claim to the Board with a recommendation to pay the verified claim.

D. A claimant shall not be denied recovery from the Fund due to the fact that the order for judgment filed with the verified claim does not contain a specific finding of improper or dishonest conduct. Any language in the order that supports the conclusion that the court found that the conduct of the regulant meets the definition of improper or dishonest conduct in § 54.1-2112 shall be used by the Board to determine eligibility for recovery from the Fund. To the extent the judgment order is silent as to the court's findings on the conduct of the regulant, the Board may determine whether the conduct of the regulant meets the definition of improper or dishonest conduct by substantial evidence in the verified claim.

E. If the Board finds that there has been compliance with the statutory conditions to which reference is made in this section, the Board shall issue a directive ordering payment to the claimant from the fund the amount unpaid on the judgment, subject to the limitations set forth in § 54.1-2116. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

(1977, c. 69, § 54-765.4; 1984, c. 266; 1987, c. 555; 1988, c. 765; 1996, c. 115; 2006, c. 723; 2015, c. 409.)

#### **§ 54.1-2115. Investigations.**

Upon receipt of the notice of proceedings against the regulant, the Department may cause its own investigation to be conducted pursuant to § 54.1-306.

(1987, c. 555, § 54-765.4:1; 1988, c. 765; 2015, c. 409.)

**§ 54.1-2116. Limitations upon recovery from fund; certain actions not a bar to recovery.**

A. The aggregate of claims by claimants against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, is limited to \$50,000. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund arising out of the same transaction, the Board may withhold any payment(s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims arising out of the same transaction exceeds \$50,000, such \$50,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

B. The maximum claim of one claimant against the fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, shall be limited to \$20,000, regardless of the number of claimants and regardless of the amount of the unpaid judgment of the claimant.

C. The aggregate of claims against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with more than a single transaction involving the sale, lease, or management of real property is limited to \$100,000 during any biennial license period, the biennial periods expiring on June 30 of each even-numbered year. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the fund involving such regulant for a period of not more than one year. After the one-year period, if the aggregate of claims against the regulant exceeds \$100,000, such \$100,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

D. Excluded from the amount of any unpaid judgment upon which a claim against the fund is based shall be any sums included in the judgment which represent interest, or punitive damages. The claim against the fund may include court costs and attorney fees.

E. If, at any time, the amount of the fund is insufficient to satisfy any claims, claim, or portion thereof filed with the Board and authorized by the act, the Board shall, when the amount of the fund is sufficient to satisfy some or all of such claims, claim, or portion thereof, pay the claimants in the order that such claims were filed with the Board.

F. Failure of a claimant to comply with the provisions of subdivisions B 1 and 2 of § 54.1-2114 and the provisions of § 54.1-2117 shall not be a bar to recovery under this act if the claimant is otherwise entitled to such recovery.

(1977, c. 69, § 54-765.5; 1987, c. 555; 1988, c. 765; 2015, cc. 409, 710.)



**§ 54.1-2117. Participation by Board in proceedings.**

Upon service of the complaint as provided in subdivision B 1 of § 54.1-2114, the Board, the Director, or duly authorized representatives of the Board shall then have the right to request leave of court to intervene.

(1977, c. 69, § 54-765.6; 1987, c. 555; 1988, c. 765; 2015, c. 409.)

**§ 54.1-2118. Payment of claim; assignment of claimant's rights to Board.**

The Director shall, subject to the provisions of § 54.1-2116, pay to the claimant from the fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights against the regulant to the extent that such rights were satisfied from the fund.

(1977, c. 69, § 54-765.7; 1987, c. 555; 1988, c. 765.)

**§ 54.1-2119. Revocation of license of regulant upon payment from fund.**

Upon payment by the Director to a claimant from the fund as provided in § 54.1-2118, the Board shall immediately revoke the license of the regulant whose improper or dishonest conduct, as defined in the act, resulted in payment from the fund. The regulant whose license was so revoked shall not be eligible to apply for a license as a real estate broker or real estate salesperson until he has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment from the fund.

(1977, c. 69, § 54-765.8; 1984, c. 266; 1987, c. 555; 1988, c. 765.)

**§ 54.1-2120. No waiver by Board of disciplinary action against regulant.**

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any regulant for any violation of this chapter or Board regulations, nor shall the repayment in full by a regulant of the amount paid from the fund on such regulant's account nullify or modify the effect of any disciplinary proceeding against such regulant for any such violation.

(1977, c. 69, § 54-765.9; 1978, c. 129; 1987, c. 555; 1988, c. 765.)

**§ 54.1-2130. Definitions.**

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person as an agent by such person's express authority in a commercial or residential real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a

licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135. Any real estate licensee who acts for or represents a client in an agency relationship in a residential real estate transaction shall either represent such client as a standard agent or a limited service agent.

"Agent" means a real estate licensee who is acting as (i) a standard agent in a residential real estate transaction, (ii) a limited service agent in a residential real estate transaction, or (iii) an agent in a commercial real estate transaction.

"Brokerage agreement" means the written agreement creating a brokerage relationship between a client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent the client as an agent or an independent contractor.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

"Client" means a person who has entered into a brokerage relationship with a licensee.

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under § 58.1-3230. Commercial real estate shall not include single family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee rather than a client.

"Designated agent" or "designated representative" means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by

such principal or broker in the same transaction. A designated representative shall only act as an independent contractor.

"Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an agency relationship under brokerage agreements with the clients. A dual representative has an independent contractor relationship under brokerage agreements with the clients. A dual representative shall only act as an independent contractor.

"Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship based upon a brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent; (ii) shall have the obligations agreed to by the parties in the brokerage agreement; and (iii) shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135.

"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.).

"Limited service agent" means a licensee who acts for or represents a client in a residential real estate transaction pursuant to a brokerage agreement that provides that the limited service agent will not provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service agent shall have the obligations set out in the brokerage agreement, except that a limited service agent shall provide the client, at the time of entering the brokerage agreement, copies of any and all disclosures required by federal or state law, or local disclosures expressly authorized by state law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client under the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the condominium resale certificate required by § 55-79.97; and (iii) if the client is selling a property subject to the Property Owners' Association Act (§ 55-508 et seq.), the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet required by § 55-509.5.

"Ministerial acts" means those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment.

"Property management agreement" means the written agreement between a property manager and the owner of real estate for the management of the real estate.

"Residential real estate" means real property containing from one to four residential dwelling units and the sale of lots containing one to four residential dwelling units.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship in a residential real estate transaction. A standard agent shall have the obligations as provided in this article and any additional obligations agreed to by the parties in the brokerage agreement.

1995, cc. 741, 813; 2006, c. 627; 2008, cc. 851, 871; 2011, c. 461; 2012, c. 750; 2016, c. 334.

**§ 54.1-2131. Licensees engaged by sellers.**

A. A licensee engaged by a seller shall:

1. Perform in accordance with the terms of the brokerage agreement;
2. Promote the interests of the seller by:
  - a. Conducting marketing activities on behalf of the seller in accordance with the brokerage agreement. In so doing, the licensee shall seek a sale at the price and terms agreed upon in the brokerage agreement or at a price and terms acceptable to the seller; however, the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless agreed to as part of the brokerage agreement or as the contract of sale so provides;
  - b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the seller's objectives;
  - c. Receiving and presenting in a timely manner written offers and counteroffers to and from the seller and purchasers, even when the property is already subject to a contract of sale; and
  - d. Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to facilitate settlement of the purchase contract;
3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the seller consents in writing to the release of such information;
4. Exercise ordinary care;
5. Account in a timely manner for all money and property received by the licensee in which the seller has or may have an interest;
6. Disclose to the seller material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
7. Comply with all requirements of this article, all fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, or (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this article shall limit in any way the provisions of the Virginia Residential Property Disclosure Act (§ 55-517 et seq.) applicable to residential real estate transactions.

C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to a buyer or potential buyer by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage agreement with the seller unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such buyer or potential buyer.

D. A licensee engaged by a seller does not breach any duty or obligation owed to the seller by showing alternative properties to prospective buyers, whether as clients or customers, or by representing other sellers who have other properties for sale.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a nonattorney settlement agent.

1995, cc. 741, 813; 2006, c. 627; 2008, c. 741; 2011, cc. 34, 46, 461; 2012, c. 750; 2016, c. 334.

#### **§ 54.1-2132. Licensees engaged by buyers.**

A. A licensee engaged by a buyer shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the buyer by:

a. Seeking a property of a type acceptable to the buyer and at a price and on terms acceptable to the buyer; however, the licensee shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the brokerage relationship;

b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the buyer's objectives;

c. Receiving and presenting in a timely manner all written offers or counteroffers to and from the buyer and seller, even when the buyer is already a party to a contract to purchase property; and

d. Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate settlement of the purchase contract;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the buyer consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the buyer has or may have an interest;

6. Disclose to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, all fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false information. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. In the case of a residential transaction, a licensee engaged by a buyer shall disclose to a seller whether or not the buyer intends to occupy the property as a principal residence. The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.

C. A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to the seller, or prospective seller, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage agreement with the buyer unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such seller.

D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing properties in which the buyer is interested to other prospective buyers, whether as clients or

customers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a nonattorney settlement agent.

G. Notwithstanding any other provision of law requiring written brokerage agreements or governing the duties of licensees, nothing in this chapter shall be construed to require that a written agreement between a licensee and a prospective buyer be executed prior to the licensee's showing properties to the prospective buyer.

1995, cc. 741, 813; 2006, c. 627; 2011, cc. 34, 46; 2012, c. 750; 2016, c. 334.

**§ 54.1-2133. Licensees engaged by landlords to lease property.**

A. A licensee engaged by a landlord shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the landlord by:

a. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement with the landlord. In so doing, the licensee shall seek a tenant at the rent and terms agreed in the brokerage agreement or at a rent and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;

b. Assisting the landlord in drafting and negotiating leases and letters of intent to lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord and tenant pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the landlord to finalize the lease agreement;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the landlord consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the landlord has or may have an interest;

6. Disclose to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property.

C. A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.

D. A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

1995, cc. 741, 813; 2006, c. 627; 2008, c. 741; 2011, cc. 34, 46, 461; 2012, c. 750; 2016, c. 334.

#### **§ 54.1-2134. Licensees engaged by tenants.**

A. A licensee engaged by a tenant shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the tenant by:

a. Seeking a lease at a rent and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a



letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;

b. Assisting in the drafting and negotiating of leases, letters of intent to lease, and rental applications, and presenting, in a timely fashion, all written offers or counteroffers to and from the tenant and landlord pursuant to § 54.1-2101.1, even when the tenant is already a party to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the tenant to finalize the lease agreement;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the tenant consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the tenant has or may have an interest;

6. Disclose to the tenant material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false information. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law.

C. A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord or prospective landlord by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the tenant unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with the landlord or prospective landlord.

D. A licensee engaged by a tenant does not breach any duty or obligation to the tenant by showing properties in which the tenant is interested to other prospective tenants, whether as clients or customers, by representing other tenants looking for the same or other properties to lease, or by representing landlords relative to other properties.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Notwithstanding any other provision of law requiring written brokerage agreements or governing the duties of licensees, nothing in this chapter shall be construed to require that a written agreement between a licensee and a prospective tenant be executed prior to the licensee's showing properties to the prospective tenant.

1995, cc. 741, 813; 2006, c. 627; 2011, cc. 34, 46; 2012, c. 750; 2016, c. 334.

**§ 54.1-2135. Licensees engaged to manage real estate.**

A. A licensee engaged to manage real estate shall:

1. Perform in accordance with the terms of the property management agreement;
2. Exercise ordinary care;
3. Disclose in a timely manner to the owner material facts of which the licensee has actual knowledge concerning the property;
4. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the owner consents in writing to the release of such information;
5. Account for, in a timely manner, all money and property received in which the owner has or may have an interest; and
6. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations which are not in conflict with this article.

B. Except as provided in the property management agreement, a licensee engaged to manage real estate does not breach any duty or obligation to the owner by representing other owners in the management of other properties.

C. A licensee may also represent the owner as seller or landlord if they enter into a brokerage relationship that so provides; in which case, the licensee shall disclose such brokerage relationships pursuant to the provisions of this article.

D. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the owner. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

E. Property management agreements in residential real estate transactions shall be in writing and shall:

1. Have a definite termination date or duration; however, if a property management agreement does not specify a definite termination date or duration, the agreement shall terminate 90 days after the date of the agreement;

2. State the amount of the management fees and how and when such fees are to be paid;

3. State the services to be rendered by the licensee; and

4. Include such other terms as have been agreed to by the owner and the property manager.

F. The provisions of this section shall not apply to licensees engaged in commercial real estate transactions.

1995, cc. 741, 813; 2011, cc. 34, 46, 461; 2016, c. 334.

**§ 54.1-2136. Preconditions to brokerage relationship.**

Prior to entering into any brokerage relationship provided for in this article, a licensee shall advise the prospective client of (i) the type of brokerage relationship proposed by the broker and (ii) the broker's compensation and whether the broker will share such salary or compensation with another broker who may have a brokerage relationship with another party to the transaction.

(1995, cc. 741, 813.)

**§ 54.1-2137. Commencement and termination of brokerage relationships.**

A. The brokerage relationships set forth in this article shall commence at the time that a client engages a licensee and shall continue until (i) completion of performance in accordance with the brokerage agreement or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage agreement or in any amendments thereto, (b) any mutually agreed upon termination of the brokerage agreement, (c) a default by any party under the terms of the brokerage agreement, or (d) a termination as set forth in subsection F of § 54.1-2139.

B. Brokerage agreements shall be in writing and shall:

1. Have a definite termination date; however, if a brokerage agreement does not specify a definite termination date, the brokerage agreement shall terminate 90 days after the date of the brokerage agreement;

2. State the amount of the brokerage fees and how and when such fees are to be paid;

3. State the services to be rendered by the licensee;

4. Include such other terms of the brokerage relationship as have been agreed to by the client and the licensee; and

5. In the case of brokerage agreements entered into in conjunction with the client's consent to a dual representation, the disclosures set out in subsection A of § 54.1-2139.

C. Except as otherwise agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of performance of the brokerage agreement, except to (i) account for all moneys and property relating to the brokerage relationship and (ii) keep confidential all personal and financial information received from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information.

(1995, cc. 741, 813; 2011, c. 461; 2012, c. 750.)

**§ 54.1-2138. Disclosure of brokerage relationship.**

A. Upon having a substantive discussion about a specific property or properties in a residential real estate transaction with an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction. Further, except as provided in § 54.1-2139 or 54.1-2139.1, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

**DISCLOSURE OF BROKERAGE RELATIONSHIP IN A RESIDENTIAL REAL ESTATE TRANSACTION**

The undersigned do hereby acknowledge disclosure that:

The licensee ..... (name of broker or salesperson)

associated with .....

(Name of Brokerage Firm)

represents the following party in a residential real estate transaction:

..... Seller(s) or

..... Buyer(s)

..... Landlord(s) - 13m or

..... Tenant(s)

.....

.....

DateName

.....

.....

DateName

B. A licensee shall disclose to an actual or prospective landlord or tenant, who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in all applications for lease or in the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, disclosure shall be made in writing no later than the signing of the lease. Such disclosure requirement shall not apply to lessors or lessees in single or multifamily residential units for lease terms of less than two months.

C. If a licensee's relationship to a client or customer changes, the licensee shall disclose that fact in writing to all clients and customers already involved in the specific contemplated transaction.

D. Copies of any disclosures relative to fully executed purchase contracts shall be kept by the licensee for a period of three years as proof of having made such disclosure, whether or not such disclosure is acknowledged in writing by the party to whom such disclosure was shown or given.

E. A limited service agent shall also make the disclosure required by § 54.1-2138.1.

1995, cc. 741, 813; 1997, cc. 86, 119; 2006, c. 627; 2012, c. 750; 2016, c. 334.

**§ 54.1-2138.1. Limited service agent, contract disclosure required.**

A. A licensee may act as a limited service agent in a residential real estate transaction only pursuant to a written brokerage agreement in which the limited service agent (i) discloses that the licensee is acting as a limited service agent; (ii) provides a list of the specific services that the licensee will provide to the client; and (iii) provides a list of the specific duties of a standard agent set out in subdivision A 2 of § 54.1-2131, subdivision A 2 of § 54.1-2132, subdivision A 2 of § 54.1-2133, or subdivision A 2 of § 54.1-2134, as applicable, that the limited service agent will not provide to the client. Such disclosure shall be conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate box. In addition, a disclosure that contains language that complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

"By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service agent in a residential real estate transaction by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service agent."

A limited service agent shall disclose dual agency in accordance with § 54.1-2139.

B. A licensee engaged by one client to a residential real estate transaction and dealing with an unrepresented party or with a party represented by a limited service agent and who, without additional compensation, provides such other party information relative to the transaction or undertakes to assist such other party in securing a contract or with such party's obligations thereunder, shall not incur liability for such actions except in the case of gross negligence or

willful misconduct. A licensee does not create a brokerage relationship by providing such assistance or information to the other party to the transaction. A licensee dealing with a client of a limited service agent may enter into an agreement with that party for payment of a fee for services performed or information provided by that licensee. Such payment shall not create a brokerage relationship; however, the licensee providing such services or information for a fee shall be held to the ordinary standard of care in the provision of such services or information.

2006, c. 627; 2012, c. 750; 2016, c. 334.

**§ 54.1-2139. Disclosed dual agency and dual representation authorized in a residential real estate transaction.**

A. A licensee may not act as a dual agent or dual representative in a residential real estate transaction unless he has first obtained the written consent of all parties to the transaction given after written disclosure of the consequences of such dual agency or dual representation. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such disclosure shall be in writing and given to both parties prior to the commencement of such dual agency or dual representation.

B. If the licensee is currently representing a party as an agent or independent contractor representative and that party desires to engage in a real estate transaction with another existing client represented by the licensee, the licensee may engage in dual representation provided that prior to commencement thereof the disclosure required by this section is given to both of the licensee's existing clients.

C. If the licensee is currently representing a party as an agent or independent contractor representative and the licensee proposes to represent a new client in a dual representation, the licensee may only engage in such dual representation if prior to commencement thereof, the disclosure required by this section is given to the licensee's one existing client and one new client.

D. Such disclosures shall not be deemed to comply with the requirements in this section if (i) not signed by the client or (ii) given in a purchase agreement, lease, or any other document related to a transaction. However, such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as required in this section.

E. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

F. No cause of action shall arise against a dual agent or dual representative for making disclosures of brokerage relationships as provided by this article. A dual agent or dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual agency or dual representation.

G. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual agency or dual representation hereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction nor to limit the licensee from representing the client who refused the dual agency or dual representation in other transactions not involving the dual agency or dual representation.

H. The dual agency or dual representation disclosure in a residential transaction shall contain the following provisions and disclosure that substantially complies with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION IN A  
RESIDENTIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:

The licensee .....  
(name of broker or salesperson)

associated with .....  
(Brokerage Firm)

represents more than one party in this residential real estate transaction as follows:

A. Brokerage Firm represents the following party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

Brokerage Firm represents another party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

B. Brokerage Firm disclosure and client acknowledgement of the following  
(select one):

☐ Brokerage Firm represents two existing clients in the transaction and the undersigned acknowledge the following:

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been

given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

[ ] Brokerage Firm represents one existing client and one new client in the transaction and the undersigned acknowledge the following:

The undersigned understand:

1. That following the commencement of dual agency or representation, the licensee cannot advise either party as to the terms to offer or accept in any offer or counteroffer; however, the licensee may have advised one party as to such terms prior to the commencement of dual agency or representation;
2. That the licensee cannot advise the buyer client as to the suitability of the property, its condition (other than to make any disclosures as required by law of any licensee representing a seller), and cannot advise either party as to what repairs of the property to make or request;
3. That the licensee cannot advise either party in any dispute that arises relating to the transaction;
4. That the licensee may be acting without knowledge of the client's needs, client's knowledge of the market, or client's capabilities in dealing with the intricacies of real estate transactions; and
5. That either party may engage another licensee at additional cost to represent their respective interests.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

.....	.....
Date	Name (One Party)
.....	.....
Date	Name (One Party)
.....	.....
Date	Name (Other Party)
.....	.....



Date

Name (Other Party)

(1995, cc. 741, 813; 2011, c. 461; 2012, c. 750.)

**§ 54.1-2139.01. Disclosed dual agency and dual representation in commercial real estate transactions authorized.**

A. A licensee may act as a dual agent or dual representative in a commercial real estate transaction only with the written consent of all clients to the transaction. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as provided in this section.

B. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure shall be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

**DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION IN A COMMERCIAL REAL ESTATE TRANSACTION**

The undersigned do hereby acknowledge disclosure that:

The licensee.....

(name of broker or salesperson)

associated with.....

(Brokerage Firm)

represents more than one party in this commercial real estate transaction as

follows:

Brokerage Firm represents the following party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ agent ☐ independent contractor

Brokerage Firm represents another party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

[ ] agent [ ] independent contractor

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

.....

.....

DateName (One Party)

.....

.....

DateName (One Party)

.....

.....

DateName (Other Party)

.....

.....

DateName (Other Party)

C. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

D. No cause of action shall arise against a dual representative for making disclosures of brokerage relationships as provided by this article. A dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual representation.

E. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual representation thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or to limit the licensee from representing the client who refused the dual representation in other transactions not involving dual representation.

2012, c. 750; 2016, c. 334.

**§ 54.1-2139.1. Designated standard agency or designated representation authorized.**

A. A principal or supervising broker may assign different licensees affiliated with the broker as designated agent or representative to represent different clients in the same residential real estate transaction to the exclusion of all other licensees in the firm. Use of such designated agents or representatives shall not constitute dual agency or representation if a designated agent or representative is not representing more than one client in a particular real estate transaction; however, the principal or broker who is supervising the transaction shall be considered a dual agent or representative as provided in this article. Designated agents or representatives may not disclose, except to the affiliated licensee's broker, personal or financial information received from the clients during the brokerage relationship and any other information that the client requests during the brokerage relationship be kept confidential, unless otherwise provided for by law or the client consents in writing to the release of such information.

B. Use of designated agents or representatives in a residential real estate transaction shall be disclosed in accordance with the provisions of this article. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure shall be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure that complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

**DISCLOSURE OF DESIGNATED AGENTS OR REPRESENTATIVES IN A RESIDENTIAL REAL ESTATE TRANSACTION**

The undersigned do hereby acknowledge disclosure that:

The licensee.....

(Name of Broker and Firm)

represents more than one party in this residential real estate transaction as indicated below:

..... Seller(s) and Buyer(s)

..... Landlord(s) and Tenant(s).

The undersigned understand that the foregoing dual agent or representative may not disclose to either client or such client's designated agent or representative any information that has been given to the dual agent or representative by the other client within the confidence and trust of the

brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The principal or supervising broker has assigned  
.....to act as Designated Agent or Representative  
(broker or salesperson)

for the one party as indicated below:

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor  
..... to act as Designated Agent or Representative  
(broker or salesperson)

for the other party as indicated below:

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

The undersigned by signing this notice do hereby acknowledge their consent to the disclosed dual representation by the licensee.

.....

.....  
DateName (One Party)

.....  
DateName (One Party)

.....  
DateName (Other Party)

.....  
DateName (Other Party)

C. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

D. No cause of action shall arise against a designated agent or representative for making disclosures of brokerage relationships as provided by this article. A designated agent or representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual representation.

E. In any residential real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed designated agency or representation agreement thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction

or to limit the licensee from representing the client who refused the designated agency or representation relationship in other transactions not involving designated representation.

2011, c. 461; 2012, c. 750; 2016, c. 334.

**§§ 54.1-2139.2. , 54.1-2139.3.**

Repealed by Acts 2012, c. 750, cl. 2.

**§ 54.1-2140. Compensation shall not imply brokerage relationship.**

The payment or promise of payment or compensation to a real estate broker does not create a brokerage relationship between any broker, seller, landlord, buyer or tenant.

(1995, cc. 741, 813.)

**§ 54.1-2141. Brokerage relationship not created by using common source information company.**

No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord or other licensee solely by reason of using a common source information company. However, nothing contained in this article shall be construed to prevent a common source information company from requiring, as a condition of participation in or use of such common source information, that licensees providing information through such company disclose the nature of the brokerage relationship with the client, including, but not limited to, whether the licensee is acting as (i) an independent contractor, (ii) a limited service agent, (iii) a standard agent, or (iv) an agent as provided in the brokerage agreement. A common source information company may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt rules providing that absent any disclosure, a licensee providing information through such company may be assumed to be acting as a standard agent. A common source information company shall have the right, but not the obligation, to make information about the nature of brokerage relationships available to its participants and to settlement service it provides including, without limitation, title insurance companies, lenders, and settlement agents.

1995, cc. 741, 813; 2006, c. 627; 2012, c. 750; 2016, c. 334.

**§ 54.1-2142. Liability; knowledge not to be imputed.**

A. A client is not liable for (i) a misrepresentation made by a licensee in connection with a brokerage relationship, unless the client knew or should have known of the misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or (ii) the negligence, gross negligence or intentional acts of any broker or broker's licensee.

B. A broker who has a brokerage relationship with a client and who engages another broker to assist in providing brokerage services to such client shall not be liable for (i) a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely

manner, or (ii) the negligence, gross negligence or intentional acts of the assisting broker or assisting broker's licensee.

C. Clients and licensees shall be deemed to possess actual knowledge and information only. Knowledge or information among or between clients and licensees shall not be imputed.

D. Nothing in this article shall limit the liability between or among clients and licensees in all matters involving unlawful discriminatory housing practices.

E. Except as expressly set forth in this section, nothing in this article shall affect a person's right to rescind a real estate transaction or limit the liability of (i) a client for the misrepresentation, negligence, gross negligence or intentional acts of such client in connection with a real estate transaction, or (ii) a licensee for the misrepresentation, negligence, gross negligence or intentional acts of such licensee in connection with a real estate transaction. However, nothing in this article shall create a civil cause of action against a licensee.

1995, cc. 741, 813; 2016, c. 334.

**§ 54.1-2142.1. Liability for false information.**

A licensee shall not be liable for providing false information if the information was (i) provided to the licensee by the licensee's client; (ii) obtained from a governmental entity; (iii) obtained from a nongovernmental person or entity that obtained the information from a governmental entity; or (iv) obtained from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (a) have actual knowledge that the information was false or (b) act in reckless disregard of the truth. This includes any regulatory action brought under this chapter and any civil actions filed. However, nothing in this article shall create a civil cause of action against a licensee.

2011, c. 461; 2013, c. 499; 2016, c. 334.

**§ 54.1-2143. Real estate board regulations to be consistent.**

Any regulations adopted by the Virginia Real Estate Board shall be consistent with this article, and any such regulations existing as of the effective date of this article shall be modified to comply with the provisions of this article.

(1995, cc. 741, 813.)

**§ 54.1-2144. Common law abrogated.**

The common law of agency relative to brokerage relationships in real estate transactions to the extent inconsistent with this article shall be expressly abrogated.

(1995, cc. 741, 813.)

**§ 54.1-2145. Article does not limit antitrust laws.**

Nothing in this article shall be construed to limit, modify, impair, or supercede the applicability of any federal or state antitrust laws.

(2006, c. 627.)

**§ 54.1-2146. Licensee maintenance of records.**

Any document or record required to be maintained by a licensee under this chapter may be an electronic record in accordance with the Uniform Electronic Transactions Act (§ 59.1-479 et seq.).

(2011, c. 461.)