

VREB Regulation April 1, 2008
PART V
STANDARDS OF PRACTICE AND CONDUCT

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

The board has the power to fine any licensee, and to suspend or revoke any license issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter where the licensee has been found to have violated or cooperated with others in violating any provision of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1 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 improper dealings, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

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 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 available to the public posted in a conspicuous place in each branch office.**

D. 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 subsection. 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 discuss contract provisions, approve all documents including but not limited to **leases, contracts affecting the firm's clients, brokerage agreements provisions agreements and advertising**;

2. The availability of training and written procedures and policies which provide, **without limitation**, clear guidance in the following areas:

- a) Proper handling of escrow deposits;

IMPORTANT
NEW
REQUIREMENTS
IMPOSED ON
BROKERS

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- 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 relationships;
- g) Distribution of information on new or changed statutory or regulatory requirements;
- h) Disclosure of matters relating to the condition of the property.
- 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.**

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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;**
6. **If a supervising broker is located more than 50 miles from the branch office and there are licensees who regularly conduct business assigned to the branch office, 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 in this subsection; and**
7. **The supervising broker must maintain the records required in this subsection for three years. The records must be furnished to the board's agent upon request.**

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.

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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 by certified mail to the board so that it is received within **10 calendar days of the date of termination or 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 by certified mail to the board **within three business days of termination or 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, 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; Volume 24, Issue 11, eff. April 1, 2008.

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 in Virginia into which **all down payments, earnest money deposits, money received upon final settlement, 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. 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 account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.

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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

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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.

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 parties 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 (non-consummation), 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, or **(ii)** a court of competent jurisdiction orders such disbursement of the funds, or **(iii)** 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** which 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) by 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 non-consummation, 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.

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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.

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.

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c. Lease transactions: **rents** or escrow fund advances. **Unless otherwise agreed in writing by all principals to the transaction,** all rents 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, unless otherwise agreed to in writing** by the principals to the transaction, and remain in

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that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.

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.

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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.**

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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.**

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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.

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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 has caused noncompliance **with this section**.

Expands
Brokers
Obligations to
report Escrow
Violations

Historical Notes

Derived from VR585-01-1 §5.3, 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; Volume 24, Issue 11, eff. April 1, 2008.

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

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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 record keeping 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 record keeping include:

1. Failing, as a principal or supervising broker, to retain for a **period of three years from the date** of the closing or ratification, if the transaction fails to close, a complete and legible copy of each disclosure of a brokerage relationship, and each executed contract, agreement, and closing statement related to a real estate transaction, in the broker's control or possession, unless prohibited by law;

2. Having received monies on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing or termination of a lease or conclusion of the licensee's involvement in the lease; and

3. Failing, within a reasonable time, to account for or to remit any monies coming into a licensee's possession which belong to others.

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.

"Disclosure" in the context of online advertising means (i) advertising that contains the firm's licensed name, the city and state in which the firm's main office is located and the jurisdiction in which the firm holds a license or (ii) advertising that contains the licensee name, the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license.

"Disclosure" in the context of other advertising means (a) advertising by the firm that contains the firm's licensed name and the firm's address or (b) advertising by an affiliated licensee that contains the licensee's name, the name of the firm with which the licensee is active and the firm's address.

"Institutional advertising" means advertising in which no real property is identified.

"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

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§54.1-2138.1 of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.

C. Online advertising.

1. Any online advertising undertaken for the purpose of any licensed activity is subject to the provisions of this chapter.

2. All online advertising that can be viewed or experienced as a separate unit (i.e., e-mail messages and web pages) must contain disclosure as follows:

a. The web. If a firm or licensee owns a webpage or controls its content, the viewable page must include disclosure or a link to disclosure.

b. E-mail, newsgroups, discussion lists, bulletin boards. All such formats shall include disclosure at the beginning or end of each message. The provisions of this subsection do not apply to correspondence in the ordinary course of business.

c. Instant messages. Disclosure is not necessary in this format if the firm or licensee provided the disclosures via another format prior to providing, or offering to provide, licensed services.

d. Chat/Internet-based dialogue. Disclosure is required prior to providing, or offering to provide, licensable services during the chat session, or in text visible on the same webpage that contains the chat session if the licensee controls the website hosting the chat session.

e. Voice Over Net (VON). Disclosure is required prior to advertising or the disclosure text must be visible on the same webpage that contains the VON session.

f. Banner ads. A link to disclosure is required unless the banner ad contains the disclosure.

3. All online listings advertised must be kept current and consistent as follows:

a. Online 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 online 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 online listing service controls the website displaying the listing information.

c. All listing information shall indicate in a readily visible manner the date that the listing information shown was last updated.

D. 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 and is not using the services of a licensed real estate entity;

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

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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, 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; Volume 24, Issue 11, eff. April 1, 2008.

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 135-20-200. Repealed.

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 that information to the owner, purchaser or lessee in writing in the offer to purchase, the application, the offer to lease or lease. This disclosure shall be made to the purchaser, seller or lessee upon having substantive discussions about specific real property.

Article 4

Extends broader requirements regarding discloser of interest to ALL transactions in which the licensee is a party

Historical Notes

Derived from VR585-01-1 §6.2, 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 24, Issue 11, eff. April 1, 2008.

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 in a brokerage relationship, as that term is defined in §54.1-2130 of the Code of Virginia.

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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.

Window for providing written disclosure

3. A licensee acting 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 of the

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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, 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; Volume 24, Issue 11, eff. April 1, 2008.
18 VAC 135-20-230. Repealed.

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 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.

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 1823 VAC 135-20-240, or its agents within 21 days.

18 VAC 135-20-260. Unworthiness and incompetence.

Actions constituting unworthy and incompetent conduct include:

1. Obtaining a license by false or fraudulent representation;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in this chapter;

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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. 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 there from 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 purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;
6. 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 5 of this section;
7. 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.
8. Failing to inform the board in writing within 30 days of a disciplinary action as stated in subdivision 7 of this section.
9. 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 there from or the time for appeal having elapsed;
10. Failing to act as a real estate broker or salesperson in such a manner as **to safeguard the interests of the public; and**
11. Engaging in improper, fraudulent, or dishonest conduct.

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

Actions constituting a conflict of interest include:

1. Being active with or receiving compensation from 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 of the Code of Virginia without first obtaining the written consent of all clients;
3. Acting as a **standard agent or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).**

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

Actions resulting in an improper brokerage commission include:

1. Offering to pay or paying a commission **or other valuable consideration** to any person for acts or services performed in violation **of Chapter 21 (§54.1-2100 et seq.) of Title 54.1** of the

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Code of Virginia, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction

and which only disburses commissions or referral fees to its licensed member brokers;

2. Accepting a commission **or other valuable consideration**, as a real estate salesperson or associate broker, from any person except 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 or the regulations of the board or related to any real estate transaction, **without the consent of that broker. Unless he has notified the broker in writing of the activity or activities to be pursued and obtained the prior written consent of the principal broker, no salesperson or associate broker shall (i) use any information about the property, the transaction or the parties to the transaction, 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 or (ii) act as an employee of a company providing real estate settlement services as defined in the Real Estate Settlement Procedures Act (12 USC §2601 et seq.) or pursuant to a license issued by the Commonwealth of Virginia to provide real estate settlement services to clients or customers of the firm;**

Applies to salespersons & associate brokers

3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or more principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

5. 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; and

6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's client for expenditures made on behalf of that client without the written consent of the client.

Historical Notes

Derived from VR585-01-1 §6.9, 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 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008.

18 VAC 135-20-290. Improper dealing.

Actions constituting **improper** dealing include:

1. Entering a brokerage relationship that does not (i) specify a definite termination date; (ii) provide a mechanism for determining the termination date; or (iii) is not terminable by the client;

2. 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;

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3. Placing a sign on any property without the consent of the owner of the property or the owner's authorized representative; and
4. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship.

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 and the licensee did in fact have at least that quantity for sale or rent;

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 a **standard 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 or making a material misrepresentation; and

10. Making a false promise through agents, salespersons, advertising, or other means.

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Historical Notes

Derived from VR585-01-1 §6.11, 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; Volume 24, Issue 11, eff. April 1, 2008.

18 VAC 135-20-310. 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 and 54.1-2139 of the Code of Virginia, listings, leases, offers to purchase, counteroffers, addenda, 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 monies 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 monies 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.

18 VAC 135-20-320. Repealed.

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.**

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.