



# Comprehensive Overview of Regulatory Changes

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On November 1, 2015, new Virginia Real Estate Board Regulations take effect. This document will provide a comprehensive overview of all significant amendments to the regulations. Please also review other resources on the regulatory amendments at <http://www.varealtor.com/node/142156>.

## Significant Amendments

### Advertising

#### **For Sale or For Rent Signs Placed on Property**

When the regulations become effective, some firms and agents may have to alter their real estate signs. The regulations provide that for sale and for lease signs placed on property must at least include the firm's name **and the firm's primary or branch office telephone number**. Individual licensees should also include their name on the sign.

The proposed Real Estate Board Regulations did not specify where on the sign the firm's phone number must be located. Therefore, firms may include the firm phone number on a sign rider, a sticker on the sign or anywhere else on the sign. The only requirement is that the firm phone number and all other information must be clearly and legibly displayed. Also, licensees can include their phone numbers on the sign as long as the firm's phone number is included somewhere else on the sign.

#### **Other Print Advertising**

- The regulations made clear that the firm name is all that is required for firm advertisements. Licensee advertisements must include the firm name and licensee's name.
- Business Cards – The regulations will require that cards must at least include the firm name, licensee's name and "contact information." Contact information means telephone number or web address.

#### **Electronic Advertising**

The amendments regarding electronic advertising will generally not change the advertising disclosures currently required due to the interplay between the Code of Ethics and Real Estate Board Regulations. However, the location in which disclosures are placed and linked may require alteration to your electronic disclosures. ***Please follow the bullets below all the way through for a walkthrough explaining the changes.***

- All electronic media advertising must include the following disclosures on the viewable page (jurisdictions of licensure was eliminated):

- Firm Advertising
  - Firm's licensed name; and
  - The city and state in which the firm's main office or branch office is located.
- Licensee Advertising
  - Licensee's name;
  - Firm name; and
  - The city and state in which the licensee's place of business is located.
- The new regulations specify where electronic media disclosures must be located in a slightly new way. Please note this change because it is a new way of linking to your disclosures.
  - The firm or licensee main page must clearly and legibly include all electronic media disclosures described above on the viewable page.
  - The firm or licensee non-main page(s) may clearly and legibly include all electronic media disclosures on each individual online page **OR** link to those electronic media disclosures **on the viewable main page**. Therefore, it is critical to include all required disclosures on the firm or licensee main page.
- NAR's Code of Ethics has existing additional disclosure requirements that must be adhered to by members.
  - If the advertisement is on a firm or Realtor® website, the firm name and states of licensure of the firm or licensee must be on the main home page. Non-main pages may just include a link back to the main home page of the firm or licensee. (Article 12, Standard of Practice (SOP) 12-9)
  - Other electronic advertising vehicles, like an online news site, must include at least the firm name; not just a link. (Article 12, SOP 12-5)
- **Putting it all together:**
  - Members should include all Real Estate Board electronic media disclosures AND states of licensure on all Firm and Realtor main home pages. Non-main pages that are part of the same website may include a link to the main home page that includes the aforementioned disclosures.
  - For non-firm or non-Realtor® owned or operated electronic media sites, they must at least include the firm name and can then include a link to their main page that includes all required disclosures. Of course, every electronic media page can include all electronic advertising disclosures as well.

**Agent/Owner Advertising** – Agents must include in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised.

- This is new because the agent/owner advertising disclosure applies even if the property is listed with a firm.
- Please note that this requirement includes for sale and for rent signs, which may require a sign rider.

## Escrow

- If the transaction is not completed, and all principals to the transaction have agreed in writing as to the earnest money deposit disposition, the funds must be returned by the escrow agent within **20 days** of the agreement.
- The principal broker now must have signatory authority on all escrow accounts.
- Firms need not hold escrow funds in a Virginia bank. The other requirements for escrow accounts remain (federally insured, in firm name, etc.)
- Application deposits are defined and must 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 have agreed otherwise in writing.
- Statutory interpleader options for disbursement and foreclosures are explained.
- Disbursement options at foreclosure are incorporated in the regulations.
- The regulations clarify that unless the principals agree in writing, prepaid rents and funds paid to the licensee in connection with a lease must be deposited in escrow within 5 business banking days of receipt.
- The regulations provide a new list of prohibitions that reflect current practice:
  - A licensee shall not submit copies of the same earnest money deposit check with multiple offers.
  - A licensee shall not represent in offers he received the earnest money deposit when he has not or he knows the check is worthless.
  - A licensee shall not misrepresent who is holding the EMD.
  - **Licensees** have an obligation to submit deposits to their brokers in a timely manner. This is a specific obligation of licensees.

## Licensure/Broker Supervision

- Excess continuing education credits completed by the licensee that are obtained within six months immediately prior to the license expiration date will carry over in the next two-year renewal period.
- Home offices must now have a separate entrance accessible to the public. Members of the public should not have to pass through any parts of the residence to enter the office.
- Supervising brokers must now ensure licensees have active, current licenses. This may require each firm to designate an individual responsible for checking periodically to determine that all licensees affiliated with the firm still have active licenses. A helpful resource to accomplish this is DPOR's License Lookup Site: <http://www.dpor.virginia.gov/LicenseLookup/>
- The Board clarified activities requiring a license:
  - a. Showing property;
  - b. Holding an open house;
  - c. Answering questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents;

- d. Discussing, explaining, interpreting, or negotiating a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and
- e. Negotiating or agreeing to any commission, commission split, management fee, or referral fee.

- The Board clarified limits on unlicensed assistants/employees:

The supervising broker shall provide adequate supervision over the unlicensed employee(s) or assistants under the supervision of a broker as they perform the following permitted activities:

- Perform general clerical duties, including answering the phones, responding by electronic media, and providing information shown on the listing;
  - Submit listings and changes to MLS;
  - Follow up on loan commitments after contracts have been ratified;
  - Have keys made for listings;
  - Compute commission checks;
  - Place signs on properties;
  - Act as a courier service;
  - Schedule appointments;
  - Record and deposit earnest money deposits, security deposits, and advance rents;
  - Prepare contract forms for approval of the licensee and supervising broker;
  - Prepare promotional materials and advertisements for approval of the licensee and supervising broker;
  - Assemble closing documents;
  - Obtain required public information from governmental entities;
  - Monitor license and personnel files;
  - Order routine repairs as directed by a licensee;
  - Are compensated for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and
  - Perform any other activities undertaken in the regular course of business for which a license is not required.
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- The new regulations create a process for brokers to exchange their licenses for that of a salesperson.
  - 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.
  - The regulations reflect the transfer process agreed to by VAR and the VREB.
  - The regulations make clear that a licensee is prohibited from practicing real estate after his license expires even though DPOR's system lists him as Active for 30 days after expiration.

### Actions Failing to Safeguard Public

- The new wording reinforces the broker's obligation to monitor the license status of those they supervise.
- A licensee must 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;
- Licensees are prohibited from negotiating leases for a third party through an unlicensed firm or without a principal broker.
- A licensee allowing unsupervised access to a home without the owner's authorization.
- Licensees must inform the broker of any transaction.
- Licensees must not attempt to divert commission from the firm and direct payment to a licensee or an unlicensed individual who is not a party to the transaction.

### Record Retention

The Board's amendments regarding record retention were clarifying for principal and supervising brokers:

- Documents to be retained for **three years from the date of execution**:
  - Brokerage agreements; and
  - Dual and designated agency disclosures and consents.
- The disclosure of brokerage relationship to an unrepresented party form must be retained for **three years from the date provided to the party**.
- Documents to be retained for **three years from the date of closing or from ratification, if the transaction fails to close**:
  - Executed purchase contracts;
  - Any executed release from a contract;
  - Executed lease agreements;
  - Executed property management agreements; and
  - Each settlement statement.
- 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**.

### Audit Statutes Codified

- The Voluntary Compliance Program that has been in place for several years is now included in the regulations. The Board clarified that immunity **only** applies to the principal broker/supervising broker who conducts an audit and submits a voluntary compliance plan.
- The procedures to comply with the mandatory audit statute are now included in the regulations as well.