



**Alpha College of Real Estate**  
**1 Hour Legal Update Correspondence Course** Revised 051410  
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**VREB REGULATION UPDATES**

**April 1, 2008 Summary of changes made to the Real Estate Regulations**

18 VAC 135-20-10 added definition for “actively engaged in the brokerage business”.

18 VAC 135-20-30 amended qualifications for licensure to include the need for a high school diploma or its equivalent and clarified language regarding disclosure of convictions.

18 VAC 135-20-60 amended qualifications for licensure to include the need for a high school diploma or its equivalent and clarified language regarding disclosure of convictions.

18 VAC 135-20-100 amended to reflect changes in education requirements for license renewal.

18 VAC 135-20-101 added to reflect changes in education requirements for license renewal.

18 VAC 135-20-105 amended to require salespersons licensed by reciprocity to take the state portion of the salesperson’s exam before license renewal when upgrading to broker’s license.

18 VAC 135-20-160 amended to clarify posting requirements for branch office license and roster of brokers and salespersons assigned to branch office and to clarify supervising broker responsibilities.

18 VAC 135-20-170 amended to clarify use of a professional name and reporting changes in firm name.

18 VAC 135-20-180 amended to require principal brokers to report all instances where they believe that escrow accounts are not being properly maintained.

18 VAC 135-20-190 amended to clarify requirements for on-line advertising and include the disclosure required by § 54.1-2138.1 when applicable.

18 VAC 135-20-210 amended to clarify disclosure requirements for licensees (or family members or business associates) who have an ownership interest in property they are buying, selling or leasing.

18 VAC 135-20-220 amended to comply with statutory provisions.

18 VAC 135-20-280 amended to require prior written consent of the principal broker for performing certain acts.

18 VAC 135-20-300 amended to clarify actions constituting misrepresentation or omission.

18 VAC 135-20-345 added to allow the board to suspend, revoke or fail to renew all licenses held by an individual broker at once.

18 VAC 135-20-360 amended provisions for pre-license instructor qualifications, proprietary school and course requirements.

18 VAC 135-20-370 amended provisions for renewal of proprietary school and instructor certificates.

18 VAC 135-20-390 amended provisions for which the Board can withdraw its education approval.

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**CONTINUING EDUCATION UPDATES**

**Effective July 1, 2007**

**All Licensees** (Commercial licensees may be exempt) will be required to take a one time 2 hour Limited Service Agency course. This is in addition to the 16 hours required or the 30 hours required of licensees in their first 2 year renewal.

Exemption: If the licensee submits a notarized affidavit to the Board which certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required.

**Salespersons will need the following:**

A minimum of 3 hours of Ethics, 2 hours Fair Housing, 1 hour Legal Updates, 1 hour Agency, 1 hour Contracts plus 8 more hours of elective credits (this can be 8 hours of other approved topics or more than the minimum of the required topics)

**No Changes for Brokers until 2008 other than Limited Service Agency**

**Effective July 1, 2008**

**Brokers will need 24 hours to include:**

A minimum of 3 hours of Ethics, 2 hours Fair Housing, 1 hour Legal Updates, 1 hour Agency, 1 hour Contracts plus 8 more hours of elective credits (this can be 8 hours of other approved topics or more than the minimum of the required topics) and 8 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.

**Salespersons** must complete their 30 hours of post licensing within one year from licensure

**Effective July 1, 2009 Limited Service Agency course will not be required for licenseing renewals.**

**RENEWAL FEES AS OF APRIL 1, 2008**

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 associate broker's license as a business entity	\$90.00
Broker	\$80.00
Concurrent Broker	\$80.00
Firm	\$160.00
Branch Office	\$90.00

**ENTRY FEES AS OF APRIL 1, 2008**

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 associate 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

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Branch office license	\$190.00
Transfer application	\$ 60.00
Activate application	\$ 60.00

**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:

<b>IMPORTANT  NEW  REQUIREMENTS  IMPOSED ON  BROKERS</b>
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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;
  - 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.
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

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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 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 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.

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 there from, 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 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.

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.

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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.**

Historical Notes

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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.**

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.

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"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 §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;

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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
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.

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

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Code of Virginia shall be deemed in compliance with this disclosure requirement.

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 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:

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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;
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).**

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**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 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;**
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:

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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;
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;

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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.

**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**

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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.

**2010 Virginia Real Estate Law Update**

**Interpleader of real estate escrows; suits shall go to district court in event of foreclosure.**  
Establishes that suits in interpleader of real estate escrows shall go to general district court, and protects escrow funds in the event of a real estate foreclosure. This bill was recommended by the [Virginia Housing Commission](#).

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP018+pdf>

**Landlord and tenant laws; landlord and tenant obligations.**

Clarifies that the judgment rate of interest includes any and all amounts covered by the judgment. The bill, among other things, also:

- requires the executive secretary of the supreme court to permit electronic interface with case management systems and for the general district courts to allow private vendors to electronically file civil actions on forms developed by the executive secretary;
- provides that the homestead exemption does not apply to a money judgment for nonpayment of rent for which a writ of garnishment is issued, and which does not request a writ of fieri facias or levy on the real or personal property of the debtor;
- revises the ratio utility billing system for landlords and tenants and states that the use of a ratio utility billing system is not within the jurisdiction of the State Corporation Commission;
- allows certain people to prepare, execute, file, and have served on other parties, in any proceeding in a general district court, a warrant in debt, warrant in detinue, distress warrant, summons for unlawful detainer, suggestion for summons in garnishment, garnishment summons, writ of possession, writ of fieri facias, interpleader, and civil appeal notice without the intervention of any attorney;
- adds a definition of "commencement date of the rental agreement" and its effective date to the Virginia Residential Landlord and Tenant Act;
- revises the definition of "security deposit" under the Virginia Residential Landlord and Tenant Act;
- revises the damage and renter's insurance coverage provisions of the Virginia Residential Landlord and Tenant Act
- allows tenant records to be disclosed to a local commissioner of the revenue, under certain circumstances, and to the commanding officer, military housing officer, or military attorney of the tenant;
- allows the landlord to withhold a portion of the security deposit until final settlement of utility bills; and
- changes the times that trigger the payment of interest by the landlord on a security deposit. The bill also contains technical amendments.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0550+pdf>

**Real Estate Appraiser Board; regulation of appraisal management companies.**

Provides for the regulation of real estate appraisal management companies by the Real Estate Appraiser Board.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0508+pdf>

**Exchange Facilitators Act; established.**

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Establishes requirements for the activities of exchange facilitators, who are those that for a fee enter into an agreement with a taxpayer to act as:

- a qualified intermediary in an exchange of like-kind property,
- an exchange accommodation titleholder, or
- a qualified trustee or escrow holder. Exchange facilitators are required to notify exchange clients of change in control of the exchange facilitator; to maintain exchange funds in separately identified accounts or in a qualified escrow or qualified trust; to maintain errors and omissions insurance or deposit cash or letters of credit; and to account for money and property.

Those who engage in the business of an exchange facilitator are prohibited from making misrepresentations, failing to account for money or property of others, engaging in fraudulent or dishonest dealings, committing certain crimes, or materially failing to fulfill contractual duties to an exchange client. Violations are subject to a civil penalty of up to \$2,500. The attorney general, attorney for the commonwealth, or attorney for a locality may recover costs and reasonable expenses, including attorney fees, in any action brought under the Exchange Facilitators Act. This bill is recommended by the [Virginia Housing Commission](#).

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0409+pdf>

**Vested rights to include right to replace failed septic system.**

Includes the right to replace failed septic systems under vested rights protection. Also, if the local government has issued a permit, other than a building permit, that authorized construction of an improvement to real property and the improvement was thereafter constructed in accordance with such permit, the ordinance may provide that the improvements are nonconforming, but not illegal.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0698+pdf>

**Regulation of signage in highway rights of way.**

Allows county employees and volunteers who are acting as agents of the commonwealth transportation commissioner to remove and confiscate signs from the public right-of-way. If a sign is confiscated by an employee or volunteer, the sign owner shall have the right to reclaim the sign within five business days of the date of such confiscation. Finally, the legislation clarifies that a sign installed (on private property) that does not require use of tools or equipment does not trigger the requirement to call Miss Utility before installing the sign.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+SB64ER2+pdf>

**Real Estate Board; requirements for licensure, allows broker to enter into a voluntary program.**

Establishes a voluntary compliance program within the real estate board to allow certain real estate brokers to bring practices, policies and procedures into compliance with applicable laws and regulations. In addition, the bill provides for the real estate board to establish minimum education requirements for licensure by reciprocity.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0373+pdf>

**Virginia Defective Drywall Correction and Restoration Assistance Fund; created Virginia Disaster Response Fund; hazardous materials in dwellings.** Creates the Virginia Defective Drywall Correction and Restoration Assistance Fund to promote the correction and restoration of residential property affected by the environmental problems attributable to defective drywall used in new construction or renovation that occurred between 2001 and 2008.

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The fund will be administered by Virginia Resources Authority and the Department of Housing and Community Development. Under the bill, the department of housing and community development would develop guidelines for the distribution of loans or grants from the fund to particular recipients. The grants and loans may be used to pay the reasonable and necessary costs associated with:

- the remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes
- the stabilization or restoration of such structures or
- the demolition and removal of the existing structures or other work necessary to remediate or reuse the real property.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB46ER2>

**Secondary highway system design standards.**

Provides that for urban development areas in jurisdictions using the urban county executive form of government, the Virginia Department of Transportation shall work in conjunction with the jurisdiction and the Department of Rail and Public Transportation to review new design standards for state secondary highway system components that the jurisdiction proposes.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0498+pdf>

**Assessments for affordable housing units.**

Provides that assessments for certain affordable housing units be done according to the income approach, based on the property's current use and restrictions. This bill is a recommendation of the [Virginia Housing Commission](#). The bill is effective for assessments for tax years beginning on or after January 1, 2011.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB233ER2+pdf>

**Real property tax assessment; Department of Taxation to establish qualifications for certification.**

**Real property tax assessment.**

Provides:

- that the fair market value of certain affordable housing be determined using the income approach, based on the property's current use and restrictions;
- additional requirements for real property appraisers;
- that a locality's real property sales assessment ratio higher than 130 percent is prima facie proof that the locality has failed to assess at 100 percent of fair market value;
- taxpayers access to certain information related to assessments;
- additional requirements related to boards of equalization; and
- that the local assessing officer provide notice of any request to increase an assessment for commercial, multifamily residential, or industrial property assessments that are already being appealed.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0736+pdf>

**Common interest communities; exemptions from licensure; powers and duties of Common Interest Community Board.**

Provides that a resident who provides bookkeeping, billing, or record keeping services to his association for compensation is not required to be licensed as a common interest community manager provided the fidelity bond maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person. The bill requires that of the three citizen members of the Common Interest Community Board, one such member must serve

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or have served on the governing board of an association that is not professionally managed at the time of appointment. The bill contains technical amendments.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0511+pdf>

**Uniform Statewide Building Code; violations; nonresidential property.** Provides that a court may order violations of the Uniform Statewide Building Code on nonresidential buildings or structures be abated or otherwise remedied if the violations remain when the court is authorized to assess civil penalties.

The court had been required to order abatement for residential buildings or structures but was not authorized to do so if the building or structure was nonresidential.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0087+pdf>

**Virginia Residential Property Disclosure Act; wastewater systems.**

Adds the following seller's representation to a prospective purchaser of residential property:

*"...the owner makes no representations with respect to the presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any wastewater system on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract."*

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0518+pdf>

**Property Owners' Association Act; fees for disclosure packet; when collected.** Clarifies that for associations that are not professionally managed, all fees for providing the required disclosure packet shall be collected at the time of delivery of the disclosure packet and shall be an assessment against the lot and collectible as any other assessment. The bill contains technical amendments.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0165+pdf>

**Transfer of development rights; density bonus**

Allows localities to establish a density bonus that would permit certain property owners to transfer more property rights than the existing density would otherwise allow.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0239+pdf>

**Eminent domain; application to Norfolk.**

Extended the expiration date, from June 30, 2010, to December 31, 2010, for the exemption to requirements applicable to the exercise of the power of eminent domain by the City of Norfolk or the Norfolk Redevelopment and Housing Authority.

The exemption was created in the 2007 legislation that, among other things, established limitations on what constituted a public use for which private property could be acquired by exercise of the power of eminent domain.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0203+pdf>

**Virginia Condominium Act; the Virginia Property Owners' Association Act; amending association documents using technology**

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Provided that unless the declaration expressly provided otherwise, any notice required to be sent or received or any signature, vote, consent, or approval required to be obtained under any condominium instrument or declaration may be accomplished using the most advanced technology available at that time if such use is a generally accepted business practice. The electronic notice provisions shall not be applicable to any notice related to an enforcement action by the unit owners' association, an assessment lien, or foreclosure proceedings in enforcement of an assessment lien.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0432+pdf>

**Appeal of board of zoning appeals decisions.**

Provided that written notice of a zoning violation or a written order of the zoning administrator shall include the applicable appeal fee and a reference to where other information regarding the appeal process may be obtained. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs to process the appeal. Additionally, in an appeal of a decision of the board of zoning appeals, the board of zoning appeals shall not be named as a party to the proceedings.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0241+pdf>

**Urban development areas**

Sets certain densities in urban development areas according to the population of the locality that designated the urban development area. The bill also requires that, to the extent possible, certain federal funding and state water and sewer facility and public infrastructure funding be directed to urban development areas or other designated growth areas.

The bill mandated that the commission on local government report on localities' compliance with the statute requiring the designation of urban development areas.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0528+pdf>

**Stormwater management facilities; liability**

Provided that a common interest community shall enjoy limited liability protection relating to a stormwater management facility located on property owned by that community if:

- the common interest community cedes the responsibility for the maintenance, repair, and replacement of a stormwater management facility to the commonwealth or a political subdivision thereof
- the action has been memorialized by contract or other instrument executed by both parties, and
- the commonwealth or the governing body of the political subdivision accepted the responsibility ceded by the common interest community in writing or by resolution. Maintenance, repair, and replacement responsibilities may include the cleaning of the facility, maintenance of adjacent grounds which are part of the facility, maintenance and replacement of fencing where the facility is fenced, and posting of signage indicating the identity of the governmental entity which maintains the facility.

The immunity granted by this provision does not extend to actions or omissions by the landowner constituting intentional or willful misconduct or gross negligence.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB1100ER2+pdf>

**Property Owners' Association Act; authority of board of directors; parking.** Provided that to the extent the declaration gives the board of directors the authority to adopt rules and regulations relating to the parking of motor vehicles by lot owners, such rules may establish a parking space

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designation plan which makes parking spaces available to less than all of the lot owners. The bill provides that if such a plan is adopted, the common expenses attributable to such parking spaces may be specially assessed against the lot owners involved.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB1102ER2+pdf>

**Underground Utility Damage Prevention Act; sewer laterals.**

Established a set of requirements for the protection of sewer system laterals and private sewer laterals that are unique from the general requirements of the Underground Utility Damage Prevention Act. The measure also establishes procedures to address recurring noncompliance with the provisions of the act by localities and other political subdivisions of the commonwealth. The measure will become effective on January 1, 2011.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0205+pdf>

**Fair Housing Board certification program.**

Provides that the Fair Housing Board shall promulgate regulations regarding educational materials concerning the fair housing law, and those in the business of selling or renting dwelling units without a real estate broker shall submit an affidavit to the board that they have read and understood the law. This is a recommendation of the [Virginia Housing Commission](#).

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0457+pdf>

**Mortgage lenders and mortgage brokers; Nationwide Mortgage Licensing System and Registry**

Requires all mortgage lenders and mortgage brokers whose employees are required to be licensed as mortgage loan originators to register with the Nationwide Mortgage Licensing System and Registry. The registry has been developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The State Corporation Commission may enter into agreements with the Registry setting conditions for the collection of information and fees. This is a recommendation of the [Virginia Housing Commission](#).

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0146+pdf>

**Board of equalization; County manager plan of government**

Authorizes the board of supervisors of localities with a county manager plan of government to appoint a board of equalization of real estate assessments composed of no more than 11 members. The board of equalization may sit in panels of at least three members each, and each panel shall perform its duties independently of the others. This legislation also makes technical changes to the code.

**Bill Text:** <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0154+pdf>

**2009 Virginia Real Estate Law Update**

**HB1680:** Del. Robert Orrock (R-Spotsylvania) **PASSED**

**Vested rights; Act of God.**

For the code section dealing with vested rights the term "act of God" was clarified to include a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, or certain fires. The bill specifies that an accidental fire would not affect the vested rights, however, arson committed by the property owner would. The bill also limits the owner's right to repair, rebuild, or replace the building to its original nonconforming condition only if such building is damaged greater than 50 percent. This legislation was proposed in response to an issue HRRR faced with the City of Norfolk when their interpretation of "act of God" did not include fires.

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Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0782>

**HB 1724:** Del. Tom Rust (R-Herndon) **PASSED**

**Trespassing vehicle; towing; local ordinances.**

Provides that local ordinances may require towing and recovery operators to obtain at the time the vehicle is towed, verbal approval of an agent designated in the ordinance. Further provides that local ordinances requiring "second signatures" before trespassing vehicles can be towed away only apply if the tow is performed during the normal business hours of the owner of the property from which the vehicle is towed. This bill is the same as [SB 997](#) (J. C. Miller).

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+HB1724ER>

**HB1785:** Del. Robert D. Hull (D-Fairfax) **PASSED**

**Exceptions to disclosure requirements.**

Adds to the list of exceptions to disclosure requirements a disposition of a lot by a sale at an auction, where the association disclosure packet was made available as part of an auction package for prospective purchasers prior to the auction sale.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+HB1785ER>

**HB1788:** Del. Robert Hull (D-Falls Church) **PASSED**

**Alternative on-site sewage systems.**

Clarifies a locality's power to regulate but not prohibit the use of nonconventional sewage disposal systems. The bill also requires maintenance information be recorded with the clerk of the circuit court and that the information be transferred with the title upon sale. This legislation was proposed in response to a five year moratorium on alternative systems that was passed by Loudon County in 2008. [Click here](#) for more information about the Loudon County decision. This bill is identical to [SB 1276](#).

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+HB1788ER2>

**HB2040:** Del. Sal Iaquinto (R-Virginia Beach) **PASSED**

**Real Estate Board; compensation to referring attorneys prohibited; exception.**

Provides that an attorney-at-law referring a client to a licensee shall not receive any compensation from a listing firm or offered in the common source information company to cooperating brokers, unless the attorney is also licensed as a real estate broker or salesperson.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+HB2040ER>

**HB2135:** Del. Jackson Miller (R-Manassas) **PASSED**

**Recordation taxes; penalty.**

Changes the criminal penalty for knowingly misrepresenting the consideration for the interest in property conveyed for purposes of recordation and grantor taxes from a Class 2 to a Class 1 misdemeanor. The bill also would provide a penalty equal to 100 percent of the tax due on the understatement of the consideration in cases in which the understatement is false or fraudulent with the intent to evade a tax. The bill was originally intended to modify the Grantor's Tax so that it was based on the sales price of a home instead of using either the assessed value or sales price, whichever is higher. However, concerns regarding economic impact on localities eventually led to the removal of that portion of the bill. [SB1157](#) is a Senate version of the same bill.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0095>

**HB2541:** Del. Kristen Amundson (D-Mount Vernon) **PASSED**

**Department of Professional and Occupational Regulation; criminal records checks.**

Requires the Department of Professional and Occupational Regulation (DPOR) to obtain criminal history record information regarding individuals for initial licensure as real estate licensees.

DPOR must also amend the renewal license application form to require applicants for a renewal real estate sales or brokerage license to state that they have no criminal convictions that have not been previously disclosed.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+HB2541ER>

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**SB1031:** Sen. Emmett Hanger Jr. (R-Augusta) **PASSED**

**Virginia Real Estate Board; commercial real estate broker license exemption.**

Exempts from the license requirement any person who is licensed and in good standing as a real estate broker or salesperson in another state, 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 and amended in § 55-526, in the Commonwealth. The bill also authorizes such real estate licensee from another state to be compensated by a real estate broker in the Commonwealth.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0262>

**HB1681:** Del. Lynwood Lewis (D-Accomack) **PASSED**

**Construction of wells.**

Requires a site plan, but not a survey plat, to be included in an application for a permit to construct a private well. Also clarifies that it is the landowner's responsibility to ensure that the well is located on his property.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0059>

**HB1776:** Del. Jennifer McClellan (D-Richmond) **PASSED**

**Mortgage Lender and Broker Act; broker duties and liability.**

Prohibits a mortgage broker from failing to use reasonable skill, care, and diligence in exercising the broker's duty, which is created hereby, to make reasonable efforts to secure a mortgage loan that is in the best interests of the applicant, considering the applicant's circumstances and loan characteristics. A borrower who suffers a loss as a result of a breach of such duty may bring an action to recover actual damages. [SB 1020](#) is identical.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0189>

**HB1856:** Del. Stephen Shannon (D-Vienna) **PASSED**

**Virginia Residential Property Disclosure Act; disclosure of storm water detention facilities.**

Provides that an owner of real property disclose that no representations are being made with respect to the presence of any storm water detention facilities located on the property and that purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any storm water detention facilities on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0641>

**HB2030:** Del. Daniel Marshall (R-Danville) **PASSED**

**Mortgage Lender and Broker Act; employee background checks and training.**

Repeals provisions enacted in 2008 that require licensed mortgage lenders and brokers (i) to conduct background checks on employees who may have access to or process personal identifying or financial information from a member of the public and (ii) to ensure that their employees are properly trained in applicable state and federal mortgage lending laws and regulations.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0452>

**HB2031:** Del. Daniel Marshall (R-Danville) **PASSED**

**Mortgage loan originators.**

Prohibits an individual from acting as, or holding himself out to the public as being, a mortgage loan originator on or after July 1, 2010, unless he has obtained a license from the State Corporation Commission (SCC). The measure implements requirements of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, which allows states to retain regulatory authority over mortgage loan originators if they enact legislation that provides for the licensing and registration of such persons through the Nationwide Mortgage Licensing System and

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Registry. The measure establishes licensing procedures and criteria, including requirements for bonding, background checks, education, testing, continuing education, investigations, examinations, reporting, payment of annual fees, license suspension and revocation, and fines. The measure also provides for the SCC, to the extent practicable, to include in any written memorandum of understanding or other written agreement with the Registry provisions that address information security, disclosure of pending or incompletely adjudicated regulatory matters, licensing tests limited to specific products and services, reports on examination results, privilege or confidentiality of information, and review of the Registry's proposed budget, fees, and audited financial statements. [SB 1171](#) is identical.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0453>

**HB2032:** Del. Daniel Marshall (R-Danville) **PASSED**

**Department of Professional and Occupational Regulation; mold inspectors and remediators.**

Provides for the licensure of mold inspectors and mold remediators by the Board for Asbestos, Lead, and Home Inspectors. The bill increases the membership of this Board by one member to include a mold inspector or a mold remediator.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0358>

**HB2080:** Del. Glenn Oder (R-Newport News) **PASSED**

**Landlord and tenant laws; rights and obligations of tenants.**

Requires the landlord to give the same notice to the tenant for the application of insecticides as is required for pesticide applications, and requires the tenant to prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord, and if insects or pests are found to be present, to follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides. The bill also (i) eliminates the landlord's obligation to pay all costs for mold remediation where the mold is a result of the tenant's failure to maintain the dwelling unit; (ii) eliminates a tenant's right to repair, replace, or clean a damaged item in the dwelling unit and instead allows the landlord to do so and charge all costs to the tenant, which costs shall be due on the next rent due date; (iii) changes the cap on liquidated damages penalties included in a rental agreement to 150% of the per diem of the monthly rent; and (iv) amends the schedule of interest rates on security deposits between January 1, 2009 and December 31, 2009. The bill requires the landlord to provide notice to the tenant in the event of foreclosure under certain circumstances. The bill contains technical amendments.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0663>

**HB2261:** Del Terry Kilgore (R-Scott) **PASSED**

**Virginia Consumer Protection Act; foreclosure rescues.**

Provides that the prohibition on fraudulent acts or practices committed by a supplier in a consumer transaction involving residential real property owned and occupied as the primary dwelling unit of the owner applies when the supplier of service to avoid or prevent foreclosure charges or receives a fee (i) prior to the full and complete performance of the services it has agreed to perform, if the transaction does not involve the sale or transfer of residential real property, or (ii) prior to the settlement on the sale or transfer of residential real property, if the transaction involves the sale or transfer of the property. Currently, any practice where a supplier of a foreclosure avoidance or prevention service is to be paid a fee prior to the settlement on a sale of residential real property is prohibited, regardless of whether the fee is charged or collected as part of the transaction involving a sale of the property. The measure also clarifies that the existing prohibition on mandatory arbitration in an agreement with a property owner applies only to transactions involving foreclosure rescue services. This bill incorporates [HB 1688](#). This bill is identical to [SB 1169](#).

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0203>

**HB2262:** Del Terry Kilgore (R-Scott) **PASSED**

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**Mortgage Lender and Broker Act.**

Provides that no person in the business of originating residential mortgage loans shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a mortgage loan transaction and authorizes the Attorney General to investigate any such violations. The Attorney General may bring an action in circuit court to enjoin any such violations. If a person is found to have committed a willful violation, the Attorney General may recover a civil penalty of not more than \$2,500 per violation. The Attorney General may also recover damages, restitution on behalf of borrowers, other costs and expenses, and attorney fees. The bill does not create a private right of action in favor of any person aggrieved by a violation. This bill is identical to [SB 1170](#).

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0204>

[HB2291](#): Del. Ben Cline (R-Amherst) **PASSED**

**Release of deed of trust; assignment of penalty.**

Prohibits settlement agents and real estate attorneys from facilitating an assignment, to any third party designated by them, of their client's right to the \$500 penalty levied on lenders that fail to timely deliver a certificate of satisfaction releasing a deed of trust. This bill is identical to [SB 888](#).

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0421>

[HB2305](#): Del. Morgan Griffith (R-Salem) **PASSED**

**Property Owners' Association Act; access to books and records.**

Provides that actual salary information of the six highest paid employees of a property owners' association making over \$75,000 shall be available for examination and copying by association members. Currently, only aggregate salary information is required to be open. The bill also specifies that all books and records of the association, including individual salary information for all employees and payments to independent contractors, are available for examination by a member of the board of directors.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0665>

[HB2306](#): Del. Morgan Griffith (R-Salem) **PASSED**

**Virginia Residential Landlord and Tenant Act; rent escrow pending appeal.** Provides that no rent required to be escrowed in an unlawful detainer action shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff (landlord), the rent held in escrow shall be transmitted to the clerk of the circuit court.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0137>

[HB2326](#): Del. Clifford Athey (R-Front Royal) **PASSED**

**Boards of zoning appeals; variances.**

Changes the standard by which a variance can be granted by eliminating the requirement for a showing of a hardship "approaching confiscation."

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0206>

[HB2417](#): Del. Joe Bouchard (D-Virginia Beach) **PASSED**

**Covenants regarding solar power.**

Clarifies that restrictive covenants prohibiting the installation of solar panels existing prior to July 1, 2008 may be amended to allow such installation if the amendment is adopted by the membership of the community association in accordance with such association's governing documents.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0866>

[HB2432](#): Del. Johnny Joannou (D-Portsmouth) **PASSED**

**DPOR; regulation of lead-based paint renovation, repair, and painting.**

Provides for the Board for Asbestos, Lead, and Home Inspectors to regulate the practice of lead-based paint renovation businesses, individuals, and training providers. The bill defines

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"renovation" as the modification of any existing structure, for compensation, that results in the disturbance of painted surfaces, unless that activity is performed as a part of a lead abatement project. Currently the Board's authority is limited to the regulation of permanent elimination of lead-based paint. The bill adds definitions for a dust-sampling technician, renovation contractor, and renovator and increases the size of the Board from 10 to 14 members. The bill also contains technical amendments.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0819>

**HB2559:** Del. Joseph Johnson (D-Abingdon) **PASSED**  
**Homestead exemption.**

Increases the homestead exemption from \$5,000 to \$10,000 for householders who are 65 years of age or older.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0387>

**HB2560:** Del. Joseph Johnson (D-Abingdon) **PASSED**  
**Homestead exemption; veterans.**

Increases the additional homestead exemption for veterans from \$2,000 to \$10,000.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0388>

**HB2568:** Del. James Scott (R- Merrifield) **PASSED**  
**Consumer Real Estate Settlement Protection Act; disclosures.**

Expands the disclosure that is required to be included in certain real estate purchase contracts to include statements that (i) the provisions of the Consumer Real Estate Settlement Protection Act may not be varied by agreement and rights conferred by the Act may not be waived and (ii) the seller may not require the use of a particular settlement agent as a condition of the sale of the property. The measure also makes technical changes to the required disclosure regarding the choice of settlement agent.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0140>

**HB2599:** Del. Barry Knight (R-Virginia Beach) **PASSED**  
**Real Estate Cooperative Act; amendment of declaration; revival of expired declarant rights.**

Provides that if the time limit specified in the declaration for the creation of cooperative interests or the exercise of special declarant rights has expired, with the approval of the persons entitled to cast at least two-thirds of the votes in the association, other than any votes allocated to cooperative interests owned by the declarant, or any larger percentage as the declaration specifies, the declaration may be amended to (i) revive and reinstate any or all of the expired rights to create additional cooperative interests and any or all of the expired special declarant rights, and (ii) vest in any person, including the original declarant, any or all of the powers, rights, privileges, and authority to which a declarant is entitled under the Act regarding the exercise of the revived and reinstated rights with respect to any parcel of real estate that is a common element or any additional real estate that such amendment permits to be added to the cooperative. In no event, however, shall any such amendment extend or renew a period of declarant control of the association or provide a new period of declarant control.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0221>

**SB855:** Sen. John Edwards (D- Roanoke) **PASSED**  
**Uniform Power of Attorney Act (UPOAA).**

Establishes in the Code of Virginia the Uniform Act that was adopted by the National Conference of Commissioners on Uniform State Laws in 2006. The Act consists of default rules that can be modified if the principal desires. Powers of attorney will be durable unless drafted to expire upon a specified date or event. The UPOAA addresses creation and use, good faith reliance, limitations of agent's powers, refusal to recognize, judicial review, notification of resignation, and other matters. The Act contains an optional statutory form. The bill contains a reenactment clause.

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Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0830>

**SB938:** Sen. John Watkins (R-Midlothian) **PASSED**

**CRESPA; settlement agent registration.**

Shifts the duty to register settlement agents from the Virginia State Bar to the appropriate licensing authorities that are responsible for regulating their particular settlement agents. The measure also allows the appropriate licensing authority to administratively terminate the registration of a settlement agent who fails to maintain a license, fails to renew his registration, or fails to comply with certain financial responsibility requirements.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0256>

**SB1143:** Margaret Whipple (D-Arlington) **PASSED**

**Common Interest Communities.**

Limits that authority of the Common Interest Community Board to impose fines against governing boards rather than individual members of the governing board and adds requirement for a hearing before imposing a fine. The bill also changes the annual assessment collected by the Board from common interest community managers, condominium unit owners associations, real estate cooperative associations and property owners associations from the two hundredths of one percent (0.02%) to the lesser of \$1,000 or five hundredths of one percent (0.05%) of the managers' gross receipts from community management work and the associations' gross assessment income. A minimum assessment of \$10 is also provided. The bill also makes several other technical amendments including (i) conforming provisions relating to the delivery of the association disclosure packet, and (ii) changing the venue for Board actions from City of Richmond to Henrico County. This bill is recommended by the Virginia Housing Commission.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0557>

**SB1291:** Sen. John Edwards (D- Roanoke) **PASSED**

**Limitation on enforcement of deed of trust or mortgage.**

Provides a transition period for mortgages and deeds of trust for which enforcement rights may have been cut off as a result of 2008 legislation that reduced the time in which a deed of trust or mortgage may be enforced from 20 years to 10 years after the maturity of the underlying obligation. The measure provides that if the secured obligation became due and payable between July 1, 1988, and July 1, 2000, the instrument may be enforced until July 1, 2010. If the instrument is not enforced by that date, its enforcement will be time barred unless the beneficiary of the deed of trust or mortgage has extended the limitations period, for 10 additional years, by filing a certificate in the circuit court. The measure addresses obligations that matured within the 20 years preceding the effective date of the 2008 legislation and for which the beneficiary's ability to extend its limitation period was curtailed. However, the bill shall have no effect on the rights of a person who (i) acquired an interest in the real property securing such deed of trust or mortgage between July 1, 2008, and the date of enactment of this subsection and (ii) would otherwise have priority over or take free of such deed of trust or mortgage under the laws of the Commonwealth at that time. This bill contains an emergency clause.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0163>

**SB1335:** Sen. Richard Stuart (R-Montross) **PASSED**

**Conditional zoning; public hearing.** Provides that where an amendment to proffered conditions is requested by the proffor, and where such amendment does not affect conditions of use or density, a local governing body may waive the requirement for a public hearing.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0315>

**SB1416:** Sen. Harry Blevins (R-Chesapeake) **PASSED**

**Preservation of historical sites and architectural areas.**

Provides that local governing bodies may include in ordinances establishing areas of known historical or archaeological significance, that any applicant must submit documentation that any development in such areas will preserve or accommodate the historical or archaeological

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resources. This Act shall not affect any locality that has adopted an ordinance imposing archaeological requirements as of January 1, 2009.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0290>

**SB1471:** Sen. Richard Saslaw (D-Springfield) **PASSED**

**Real property; Commonwealth's title.** Authorizes the Governor, at the request of a local authority and in a form approved by the Attorney General, to disclaim any and all rights, title, and interest of the Commonwealth in and to lands used for stormwater control systems or water or waste systems if he finds (i) there is no greater public need or purpose than such use or (ii) that public use and necessity have been established. Such disclaimer shall be filed with the appropriate court and shall have the legal force and effect of disclaiming, releasing, and renouncing all of the right, title, and interest of the Commonwealth in and to such lands.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0861>

**SB1509:** Sen. Patricia Ticer (D-Alexandria) **PASSED**

**Septic systems; nitrogen-reducing technology.**

Clarifies that the Department of Conservation and Recreation may award grants from the Water Quality Improvement Fund for the replacement or modification of residential onsite sewage systems to include nitrogen removal capabilities. The Board of Health may also set nitrogen-reducing performance requirements for alternative onsite sewage systems that protect public health and ground and surface water quality.

Bill Text: <http://leg1.state.va.us/cgi-bin/legp504.exe?091+ful+CHAP0695>

**2008 Virginia Real Estate Law Update**

**HB 221 - Del. Terry Kilgore (R-Scott) PASSED**

**Landlord and managing agent immunity for mold claims.** Provides that landlords and managing agents are not liable for civil damages in an action for exposure to mold arising from the condition within the interior of a dwelling unit brought by a tenant, authorized occupant, or guest or invitee if the mold condition is caused solely by the negligence of the tenant. The bill also provides that managing agents with no maintenance responsibilities are not liable for damages unless the agents have actual knowledge of the mold condition and fail to disclose the existence of the condition to the landlord and any prospective or actual tenants. The bill provides further that if a written move-in inspection report reflects that there is no visible evidence of mold in a dwelling unit, and the tenant does not object in writing to such report within five days of his receipt of the report, there shall be a rebuttable presumption that no mold existed at the time of the move-in inspection. The bill also requires landlords and managing agents with maintenance responsibilities to perform mold remediation if visible evidence of mold occurs within a dwelling unit. This bill is identical to SB 232 sponsored by Sen. Ryan McDougle (R-Mechanicsville)

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0162>

**HB408 - Del. Glenn Oder (R-Newport News) PASSED**

**Foreclosure rescue; prohibition; penalties.** Makes persons participating in or servicing foreclosure rescues for profit with the intent to defraud a consumer a violation of the Virginia Consumer Protection Act. [HB 947](#) is incorporated into this bill.

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0485>

**HB 445 - Del. Tom Rust (R-Herndon) PASSED**

**Occupancy limits.** Provides that no fines shall accrue against the owner or managing agent of a single-family residential dwelling unit for the violation of a zoning ordinance regulating occupancy limits during the pendency of any legal action commenced by such owner or managing agent against a tenant to eliminate an overcrowding condition.

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+HB445ER>

**HB 516 – Del. Terrie Suit (R-Virginia Beach) PASSED**

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**Common Interest Communities.** Establishes a Common Interest Communities Board, creates a Common Interest Management Information Fund and allows for a certification process for Common Interest Association managers. The bill adds several new definitions to the Property Owners' Association, Condominium, Real Estate Cooperative, and Time-Share Acts, including "common interest community manager." The bill also sets limits for the fees to be charged for preparation of the required disclosure packets (*fee not to exceed \$150 for no more than two hard copies or \$125 for no more than two electronic copies*) and prohibits any other fees not expressly authorized in the POAA. The bill (i) provides that all declarations shall comply with the terms of the POAA, and the associations created in accordance with the POAA shall have only those powers that are expressly granted in the POAA; (ii) increases the cap on the liability of the association or its manager from \$500 to \$5,000 for actual damages sustained by the seller in the event of the association's failure to comply with the POAA; and (iii) provides that if settlement does not occur within 90 days of the delivery of the disclosure packet, the fee shall be assessed against the lot owner for which the disclosure packet was prepared and shall become as an assessment against the member's lot. The bill contains technical amendments, which reorganize the POAA into three articles: general provisions, disclosure requirements, and operation and management of associations. [HB 1076](#) was incorporated into this bill. This bill is identical to SB 301 sponsored by Sen. Mary Margaret Whipple (D-Arlington)

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+HB516ER>

**HB580 - Del. John Cosgrove (R-Chesapeake) PASSED**

**Mold conditions involving landlords and tenants.** Provides for mold remediation and the process for notice from tenant to landlord regarding mold.

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+HB580ER2>

There are three sections in this bill that you want to pay special attention to:

**§ 55-225.6. Inspection of dwelling unit.**

The landlord may, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct.

**§ 55-225.7. Disclosure of mold in dwelling units.**

As part of the written report of the move-in inspection pursuant to § [55-225.6](#), the landlord may disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection.

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**§ 55-225.9. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.**

Where a mold condition in a dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-225.8 for a period not to exceed 30 days. The landlord shall provide the tenant with either (a) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (b) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of the mold remediation, unless the tenant is at fault for the mold condition.

**HB 720 - Del. Glenn Oder (R-Newport News) PASSED**

**Landlord and tenant law; definitions; payment of rent; landlord remedies.** Adds, among other things, a definition of "application fee," caps the fee at \$50, and provides that such fee is nonrefundable. The bill also defines "written notice" as notice, including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or other medium, retrievable in a perceivable form, and regardless of whether an electronic signature is affixed. If the rental agreement so provides, the landlord and tenant may send notices in electronic form. In cases where a tenant pays rent with a bad check, the bill also allows a landlord to seek an award of costs or attorney fees or the lesser of \$250 or three times the amount of the bad check, draft or order as part of the damages requested on an unlawful detainer action, provided the landlord has given notice. The bill allows such notice to be included in the five-day termination notice at the option of the landlord. The bill contains specific provisions if the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development. The bill contains technical amendments.

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0489>

**HB 1078 - Del. Terrie Suit (R-Virginia Beach) PASSED**

**Vested rights and nonconforming uses.** Makes several changes to the vested rights and nonconforming use provisions, including (i) that a locality shall use square footage and building code provisions in determining whether a nonconforming use has been enlarged or structurally altered; and (ii) providing that when a property owner has paid taxes to the locality for a building or structure for a period in excess of 15 years, a zoning ordinance may provide that such building or structure shall be nonconforming, but not illegal.

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0377>

**HB 1098 - Del. Mark Sickles (D-Alexandria) PASSED**

**Wet Settlement Act.** Provides that a determination by a settlement agent that pre-recording conditions in a real estate purchase contract have been satisfied shall not control the rights and obligations of the parties under the contract.

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0514>

**HB 1114 - Del. Bob Hull, (D-Falls Church) PASSED**

**Real Estate Board; real estate firm licenses.** Provides that no business entity shall be granted a firm license unless every managing member of a limited liability company or officer of a corporation who actively participates in the firm brokerage business holds a license as a real estate broker. Currently, the law does not specify the type of business entity. This legislation clarified that it is every *managing member of a limited liability company* or *officer of a corporation* that needs to hold a broker license. Prior to this legislation, every member or officer had to hold a broker license.

Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0319>

**HB 1397 – Del. Jackson Miller (R-Manassas) PASSED**

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**Duties of real estate brokers and salespersons; required disclosures.** Eliminates the requirement that required disclosures concerning the physical condition of the property made by real estate licensees be conspicuous and printed either in bold lettering or all capitals, and underlined or in a separate box. Such disclosures, however, must continue to be made in writing.

**HB 1487 – Del. Terrie Suit (R-Virginia Beach) PASSED**

**Home ownership protection.** Authorizes the State Corporation Commission to impose a fine not exceeding \$2,500 upon a mortgage lender or mortgage broker that is required to be licensed under the Mortgage Lender and Broker Act for violating any other law or regulation applicable to the conduct of the lender's or broker's business. The Housing Commission is directed to study all new federal legislation pertaining to mortgage lending and brokering, and to determine if the legislation requires changes to Virginia law. The measure authorizes the Commission to suspend or revoke a mortgage lender's or broker's license upon its failure promptly to pay when due reasonable fees to a licensed appraiser for appraisal services performed in connection with the origination or closing of a mortgage loan for a customer of the mortgage broker or lender. Other amendments to the Mortgage Lender and Broker Act (i) remove the element of the definition of a mortgage loan that has required the property securing the loan to be owner-occupied; (ii) require the Commission to conduct criminal background checks through the Central Criminal Records Exchange on every member, senior officer, director, and principal of a licensee; (iii) require licensees to conduct background checks on employees who may have access to or process personal identifying or financial information from a member of the public; (iv) require licensees to ensure that employees are properly trained in applicable state and federal mortgage lending laws and regulations; and (v) authorize the Attorney General to bring actions to enjoin violations of the federal Real Estate Settlement Procedures Act to the extent authorized by provisions of that Act. Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+HB1487ER>

**SB 158 - Sen. Don McEachin (D-Richmond) PASSED**

**Wet settlement act; lender's disclosure of appraisal information.** Requires any lender providing a loan secured by a first mortgage on real estate containing not more than four residential dwelling units to disclose on the settlement statement any fee charged to the borrower for an appraisal and any fee charged to the borrower for a valuation or opinion of value prepared using an automated or other mechanism prepared by a person who is not licensed as an appraiser. Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0400>

**SB 797 – Sen. Phillip Puckett (D-Tazewell) PASSED**

**High-risk mortgage lenders or servicers; 10 days' notice; 30 days' forbearance.** Requires high-risk mortgage lenders or servicers to provide written notice of the intention to send a notice to accelerate the loan balance 10 business days prior to sending the notice of acceleration. If the borrower indicates the desire to avoid foreclosure, the high-risk mortgage lender or servicer shall give the borrower 30 calendar days' forbearance. The measure does not apply if the lender makes fewer than four mortgage loans in any 12-month period, if there is an active bankruptcy proceeding, or if a foreclosure sale is scheduled to occur within 30 days. Read the full bill text at: <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+SB797ER>

**Residential Property Disclosure Law**

**§ 55-517. Applicability.**

The provisions of this chapter apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a

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licensed real estate broker or salesperson. For the purposes of this chapter, a "real estate contract" means a contract for the sale, exchange, or lease with the option to buy residential real estate subject to this chapter. (1992, c. 717; 2007, c. 265.)

**§ 55-518. Exemptions.**

The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale or by a deed in lieu of a foreclosure, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance. Also, transfers by an assignment for the benefit of creditors pursuant to Chapter 9 (§ 55-156 et seq.) and transfers pursuant to escheats pursuant to Chapter 9 (§ 55-156 et seq.).
2. Transfers to a beneficiary of a deed of trust pursuant to a foreclosure sale or by a deed in lieu of foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.
3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
4. Transfers from one or more co-owners solely to one or more other co-owners.
5. Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.
6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.
7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.
8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.
9. Transfers involving the first sale of a dwelling; provided, that this exemption shall not apply to the disclosures required by § 55-519.1.

B. Notwithstanding the provisions of subdivision 9 of this section, the builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code. In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the property or (ii) the presence of abandoned mines, shafts, or pits, if any. The disclosures required by this subsection shall be made by a builder or owner (i) when selling a completed dwelling, before acceptance of the purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § 55-519. If no defects are known by the builder to exist, no written disclosure is required by this subsection. (1992, c. 717; 1993, c. 824; 1994, cc. 80, 242; 2005, c. 510; 2006, c. 706; 2007, c. 265.)

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**§ 55-519. Required disclosures.**

With regard to transfers described in § 55-517 of this chapter, the owner of the residential real property shall furnish to a purchaser a residential property disclosure statement in a form provided by the Real Estate Board stating that the owner makes the following representations as to the real property:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary including obtaining a certified home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;
2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;
3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;
4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) adopted by the locality where the property is located pursuant to § 10.1-2109 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;
5. The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and that purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract;
6. The owner represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions of the property of which the owner has been notified in writing by the locality, except as disclosed on the disclosure statement, nor any pending violation of the local zoning ordinance which the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as disclosed on the disclosure statement;
7. The owner makes no representations with respect to whether the property is within a dam break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam

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break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones; and

8. The owner makes no representations with respect to the presence of any storm water detention facilities located on the property and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any storm water detention facilities on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

9. The owner makes no representations with respect to the presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property and purchasers are advised to exercise whatever due diligence they deem necessary to determine the presence of any wastewater system on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

(1992, c. 717; 1996, c. 379; 1998, cc. 384, 795; 2005, c. 510; 2006, cc. 247, 514, 533, 705, 767; 2007, cc. 265, 784; 2008, c. 491; 2009, c. 641.)

**§ 55-519.1. Required disclosures pertaining to a military air installation.**

The owner of residential real property located in any locality in which a military air installation is located shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map by the locality in which the property is located on a form provided by the Real Estate Board. Such disclosure shall state the specific noise zone or accident potential zone, or both, in which the property is located according to the official zoning map. (2005, c. 510; 2007, c. 265.)

**§ 55-520. Time for disclosure; termination of contract.**

A. The owner of residential real property subject to this chapter shall deliver to the purchaser the written disclosure statement required by this chapter prior to the acceptance of a real estate purchase contract or otherwise be subject to the provisions of subsection B of this section. For the purposes of this chapter, "acceptance" means the full execution of a real estate purchase contract by all parties. The residential property disclosure statement may be included in the real estate purchase contract, in an addendum thereto, or in a separate document.

B. If the disclosure statement required by this chapter is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure statement in person; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner either by hand delivery or by United States mail, postage prepaid, and properly addressed to the owner. If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

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C. Notwithstanding the provisions of subsection B of § 55-524, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have the right to terminate a real estate purchase contract pursuant to this section for failure of the property owner to timely provide any disclosure required by § 55-519.1. (1992, c. 717; 1993, c. 818; 2005, c. 510; 2007, c. 265.)

**§ 55-521. Owner liability.**

A. Except with respect to the disclosures required by § 55-519.1, the owner shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if: (i) the error, inaccuracy or omission was not within the actual knowledge of the owner or was based on information provided by public agencies or by other persons providing information that is required to be disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining the information from a third party and transmitting it. The owner shall not be liable for any error, inaccuracy, or omission of any information required to be disclosed by § 55-519.1 if the error, inaccuracy, or omission was the result of information provided by an officer or employee of the locality in which the property is located.

B. The delivery by a public agency or other person, as described in subsection C below, of any information required to be disclosed by this chapter to a prospective purchaser shall be deemed to comply with the requirements of this chapter and shall relieve the owner of any further duty under this chapter with respect to that item of information.

C. The delivery by the owner of a report or opinion prepared by a licensed engineer, land surveyor, geologist, wood-destroying insect control expert, contractor or home inspection expert, dealing with matters within the scope of the professional's license or expertise, shall satisfy the requirements of this chapter if the information is provided to the prospective purchaser pursuant to a request here fore, whether written or oral. In responding to such a request, an expert may indicate, in writing, an understanding that the information provided will be used in fulfilling the requirements of this chapter and, if so, shall indicate the required disclosures, or portions thereof, to which the information being furnished is applicable. Where such a statement is furnished, the expert shall not be responsible for any items of information, or, portions thereof, other than those expressly set forth in the statement. (1992, c. 717; 2005, c. 510; 2007, c. 265.)

**§ 55-522. Change in circumstances.**

If information disclosed in accordance with this chapter is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting there from does not constitute a violation of this chapter. However, at or before settlement, the owner shall be required to disclose any material change in the disclosures made relative to the property or certify to the purchaser at settlement that the disclosures made relative to the property are substantially the same as it was when the disclosure form was provided. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner, and is not used for the purpose of circumventing or evading this chapter. (1992, c. 717; 2007, c. 265.)

**§ 55-523. Duties of real estate licensees.**

A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations under this chapter. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee

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representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations under this chapter. Provided a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this chapter, and shall not be liable to any party to a residential real estate transaction for a violation of this chapter or for any failure to disclose any information regarding any real property subject to this chapter. (1992, c. 717.)

**§ 55-524. Actions under this chapter.**

Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that an occupant of the subject real property, whether or not such real property is subject to this chapter, was afflicted with human immunodeficiency virus (HIV) or that the real property was the site of:

An act or occurrence which had no effect on the physical structure of the real property, its physical environment, or the improvements located thereon; or

2. A homicide, felony, or suicide.

B. The purchaser's remedies hereunder for failure of an owner to comply with the provisions of this chapter are as follows:

1. If the owner fails to provide the disclosure statement required by this chapter, the contract may be terminated subject to the provisions of subsection B of § 55-520.

2. In the event the owner fails to provide the disclosure required by § 55- 519.1, or the owner misrepresents, willfully or otherwise, the information required in such disclosure, except as result of information provided by an officer or employee of the locality in which the property is located, the purchaser may maintain an action to recover his actual damages suffered as the result of such violation. Notwithstanding the provisions of this subdivision, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day night average sound level of less than 65 decibels shall have a right to maintain an action for damages pursuant to this section.

C. Any action brought under this subsection shall be commenced within one year of the date the purchaser received the disclosure statement. If no disclosure statement was delivered to the purchaser, an action shall be commenced within one year of the date of settlement if by sale, or occupancy if by lease with an option to purchase. Nothing contained herein shall prevent a purchaser from pursuing any remedies at law or equity otherwise available against an owner in the event of an owner's intentional or willful misrepresentation of the condition of the subject property. (1992, c. 717; 1993, c. 847; 2005, c. 510; 2007, c. 265.)

**§ 55-525. Real Estate Board to develop form; when effective.**

An owner shall be required to make disclosures required by this chapter for real property subject to a real estate purchase contract which is fully executed by all parties thereto on and after January 1, 2008. On or before January 1, 2008, the Real Estate Board shall develop the form for the residential property disclosure statement in accordance with § 54.1-2105.1. The Board may at any time amend the form as the Board deems necessary and appropriate. (1992, c. 717; 1993, c. 848; 2007, c. 265.)

**SEE THE FOLLOWING ADDENDA:**  
**Military Air Installation Disclosure**  
**Residential Disclosure Form**  
**Septic Disclosure Form**

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**National Do Not Call Registry Update**

October 8, 2003

This update reflects new informational items and NAR activities relative to the National Do-Not-Call Registry Rule changes since the [October 7, 2003 update](#).

Do-Not-Call Back in Business (for now)

As reported to you earlier, the most recent court decision (Oct 7) permits the FTC to proceed with the implementation and enforcement the Do Not Call Registry. The court said the FTC can operate the registry while the remaining challenges wind their way through the courts. We will keep you posted on those developments. But for now, anyone who cold calls for clients must comply with the new Rules.

The FTC has provided the following information for telemarketers regarding access to the registry and information about filing complaints. Please note that access to the registry for telemarketers (<https://telemarketing.donotcall.gov/>) will start on October 10, 2003 at 8:00 a.m. EDT.

On October 7, 2003, the U.S. 10<sup>th</sup> Circuit Court of Appeals granted the FTC's request to stay the order of the U.S. District Court for the District of Colorado that halted enforcement of the National Do Not Call Registry. Accordingly, the FTC will move forward with implementing and enforcing the registry.

Consumers who have not already registered their phone numbers may do so beginning Thursday, October 9 at 8:00 a.m. EDT at <http://www.donotcall.gov> or by calling 1-888-382-1222 (TTY 1-866-290-4236).

Telemarketers may access the registry at [telemarketing.donotcall.gov](http://telemarketing.donotcall.gov) beginning Friday, October 10 at 8:00 a.m. EDT. Telemarketers who disregard the registry may be fined up to \$11,000 per call.

Consumers can file do not call complaints beginning Saturday, October 11 at 6 p.m. at <http://www.donotcall.gov> or by calling 1-888-382-1222 (TTY 1-866-290-4236). If you put your number on the registry before August 31, you can file a complaint about any telemarketing call received after October 1. To file a do not call complaint, you must know the date of the call and *either* the name or the phone number of the company that called. Consumers who put numbers on the registry after September 1, 2003, must wait three months before filing a complaint.

**To Call or Not to Call Webcast**

On . . . off . . . back on – the recent court decisions on the implementation of the Do-Not-Call Registry rules and messages from the FCC and FTC about enforcement are creating confusion among businesses and consumers. Log onto NAR's webcast No. 2 to hear an update on what the courts, Congress, and federal agencies are doing to sort everything out.

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**The CAN-SPAM Act: Requirements for Commercial Emailers**

The CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing

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Act) establishes requirements for those who send commercial email, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask emailers to stop spamming them.

The law, which became effective January 1, 2004, covers email whose primary purpose is advertising or promoting a commercial product or service, including content on a Web site. A “transactional or relationship message” – email that facilitates an agreed-upon transaction or updates a customer in an existing business relationship – may not contain false or misleading routing information, but otherwise is exempt from most provisions of the CAN-SPAM Act.

The Federal Trade Commission (FTC), the nation’s consumer protection agency, is authorized to enforce the CAN-SPAM Act. CAN-SPAM also gives the Department of Justice (DOJ) the authority to enforce its criminal sanctions. Other federal and state agencies can enforce the law against organizations under their jurisdiction, and companies that provide Internet access may sue violators, as well.

### **What the Law Requires**

#### **Here’s a rundown of the law’s main provisions:**

**It bans false or misleading header information.** Your email’s “From,” “To,” and routing information – including the originating domain name and email address – must be accurate and identify the person who initiated the email.

**It prohibits deceptive subject lines.** The subject line cannot mislead the recipient about the contents or subject matter of the message.

**It requires that your email give recipients an opt-out method.** You must provide a return email address or another Internet-based response mechanism that allows a recipient to ask you not to send future email messages to that email address, and you must honor the requests. You may create a “menu” of choices to allow a recipient to opt out of certain types of messages, but you must include the option to end any commercial messages from the sender.

Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your commercial email. When you receive an opt-out request, the law gives you 10 business days to stop sending email to the requestor’s email address. You cannot help another entity send email to that address, or have another entity send email on your behalf to that address. Finally, it’s illegal for you to sell or transfer the email addresses of people who choose not to receive your email, even in the form of a mailing list, unless you transfer the addresses so another entity can comply with the law.

**It requires that commercial email be identified as an advertisement and include the sender’s valid physical postal address.** Your message must contain clear and conspicuous notice that the message is an advertisement or solicitation and that the recipient can opt out of receiving more commercial email from you. It also must include your valid physical postal address.

### **Penalties**

Each violation of the above provisions is subject to fines of up to \$11,000. Deceptive commercial email also is subject to laws banning false or misleading advertising.

Additional fines are provided for commercial emailers who not only violate the rules described above, but also:

“harvest” email addresses from Web sites or Web services that have published a notice prohibiting the transfer of email addresses for the purpose of sending email  
generate email addresses using a “dictionary attack” – combining names, letters, or numbers into

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multiple permutations

use scripts or other automated ways to register for multiple email or user accounts to send commercial email

relay emails through a computer or network without permission – for example, by taking advantage of open relays or open proxies without authorization.

The law allows the DOJ to seek criminal penalties, including imprisonment, for commercial emailers who do – or conspire to:

use another computer without authorization and send commercial email from or through it

use a computer to relay or retransmit multiple commercial email messages to deceive or mislead recipients or an Internet access service about the origin of the message

falsify header information in multiple email messages and initiate the transmission of such messages

register for multiple email accounts or domain names using information that falsifies the identity of the actual registrant

falsely represent themselves as owners of multiple Internet Protocol addresses that are used to send commercial email messages.

**Additional Rules**

The FTC will issue additional rules under the CAN-SPAM Act involving the required labeling of sexually explicit commercial email and the criteria for determining “the primary purpose” of a commercial email. Look for the rule covering the labeling of sexually explicit material in April 2004; “the primary purpose” rulemaking will be complete by the end of 2004. The Act also instructs the FTC to report to Congress in summer 2004 on a National Do Not E-Mail Registry, and issue reports in the next two years on the labeling of all commercial email, the creation of a “bounty system” to promote enforcement of the law, and the effectiveness and enforcement of the CAN-SPAM Act.

See the FTC Web site at [www.ftc.gov/spam](http://www.ftc.gov/spam) for updates on implementation of the CAN-SPAM Act.

The FTC maintains a consumer complaint database of violations of the laws that the FTC enforces. Consumers can submit complaints online at <http://www.ftc.gov/> and forward unwanted commercial email to the FTC at [spam@uce.gov](mailto:spam@uce.gov).

**Your Opportunity to Comment**

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency’s responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REG-FAIR (1-888-734-3247) or go to [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman).  
For More Information

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a [complaint](#) or to get [free information on consumer issues](#), visit <http://www.ftc.gov/> or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into [Consumer Sentinel](#), a secure,

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online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

**ADDENDA:**

**FORMS:**

**RESIDENTIAL PROPERTY DISCLOSURE**  
**MILITARY AIR INSTALLATION DISCLOSURE FORM**  
**SEPTIC DISCLOSURE FORM**  
**VREB Speaking, Winter 2009 and Spring 2009**