

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
Revised 2/2009

Table of Contents

Purpose	2
Continuing Education Requirements	3
Définitions	4
Licensee's engaged by the seller	5
Licensee engaged by the buyer	6
Licensee engaged by landlords to lease property	10
Limited service representative, contract disclosure required.	11
Brokerage relationship not created by using common source information company	13
Article does not limit antitrust laws	13
Equal Service for all. Limited-Service listings need full treatment.	14

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
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The purpose of this course is to highlight the recent legislative changes to the Virginia Agency law, which governs the relationships between real estate agents and their customers or clients.

In the mid 1990's the Virginia Association of REALTORS® helped create legislation that would redefine the rules of agency as it applied to the relationships of real estate agents to their clients and customers. Prior to this legislation, real estate agent's duties to clients and customers when in conflict were determined by what is called Common Law. Common Law is prior court case decisions that did not always fit the relationships found in real estate. To add to the confusion the public did not always understand their relationship with real estate agents. Agent's found themselves on both sides of the transaction and it was difficult to understand what duties were due to which customer or client. Again the clients and customers were equally confused as to who represented their best interest. Common law and the Virginia real estate licensing regulations were many times at odds with each other.

The 1995 legislation created a list of statutes (laws) by which agents and the public can easily determine what duties are due to whom. It created definitions, which describe the differences between clients and customers. It allows for different levels of services to be decided between the agent and the client. It created a guide for handling confidentiality when handling multiple clients within one firm. It created disclosure requirements for the real estate agent to give notice to the public as to whom the agent will represent. It established how brokerage relationships are established and how they are terminated.

With the invention of the World Wide Web, sophisticated buyers and sellers of real estate are requesting different levels of service from real estate agents. Many real estate companies are offering a la carte services for a fee per service. Because disclosure is a very important aspect of Virginia Agency law, changes have been instituted in the law to allow for this type of limited service and to insure that those receiving limited services have been given sufficient notice as to what services they won't receive under this type of brokerage agreement.

Limited service relationships do not only affect the client and their agent, it also affects the cooperating agent as well. How cooperative agents deal with other agent's clients has also been addressed. With limited service relationships, cooperating agents may find themselves in a position of providing services to other agent's clients. The changes to the law help describe the rules and responsibilities of the cooperating agent finding themselves in these situations.

A case study on ethical consideration of the limited service agency model has been included in this course as guidance for those real estate agents who are also members of the National Association of REALTORS®

The following information is provided as a review of the statutes as it refers to the Virginia Limited Service Agency law.

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
Revised 2/2009

**§ 54.1-2105.03**

.....The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1, 2007, every applicant for re-licensure as an active salesperson shall complete at a minimum one two-hour continuing education course on limited service agency prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board that certifies that he has taken a two-hour continuing education course on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the Board, which, in the determination of the Board, covered substantially the information in a continuing education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required. A licensee who takes one two-hour continuing education class on limited service agency shall satisfy the requirements for continuing education and may but shall not be required to take any further continuing education on limited service agency.

**§ 54.1-2130. Definitions.**

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship. Agency includes representation of a client as a standard agent or a limited service agent. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall have no obligations under §§ [54.1-2131](#) through [54.1-2135](#) of this article.

"Brokerage agreement" means the agreement by which a real estate licensee represents a client in a brokerage relationship.

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

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

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
Revised 2/2009

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

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

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

"Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction.

"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ [54.1-2100](#) et seq.) of Chapter 21 of this title.

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

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

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

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

A. A licensee engaged by a seller shall:

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

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
Revised 2/2009

B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. A licensee shall not be liable to a buyer for providing false information to the buyer if the false information was provided to the licensee by the seller or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this article shall limit in any way the provisions of the Virginia Residential Property Disclosure Act (§ [55-517](#) et seq.).

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

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

E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article. (1995, cc. 741, 813; 2006, c. 627; 2008, c. 741.)

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

A. A licensee engaged by a buyer shall:

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

2. Promote the interests of the buyer by:

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

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
Revised 2/2009

- b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § [54.1-2101.1](#) and in establishing strategies for accomplishing the buyer's objectives;
  - c. Receiving and presenting in a timely manner all written offers or counteroffers to and from the buyer and seller, even when the buyer is already a party to a contract to purchase property; and
  - d. Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate settlement of the purchase contract.
3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the buyer consents in writing to the release of such information;
4. Exercise ordinary care;
5. Account in a timely manner for all money and property received by the licensee in which the buyer has or may have an interest;
6. Disclose to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
7. Comply with all requirements of this article, all applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
- B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false information. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. In the case of a residential transaction, a licensee engaged by a buyer shall disclose to a seller whether or not the buyer intends to occupy the property as a principal residence. The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.
- C. A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to the seller, or prospective seller, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the buyer unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with such seller.
- D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing properties in which the buyer is interested to other prospective buyers, whether as clients or customers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.

E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article. (1995, cc. 741, 813; 2006, c. 627.)

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

A. A licensee engaged by a landlord shall:

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

2. Promote the interests of the landlord by:

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

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

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

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

4. Exercise ordinary care;

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

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

7. Comply with all requirements of this article, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false information. A licensee engaged by a landlord shall disclose to prospective tenants all material

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
Revised 2/2009

adverse facts pertaining to the physical condition of the property which are actually known by the licensee. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. A licensee shall not be liable to a tenant for providing false information to the tenant if the false information was provided to the licensee by the landlord or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property.

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

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

E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article. (1995, cc. 741, 813; 2006, c. 627; 2008, c. 741.)

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

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

"By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service representation by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee

Alpha College of Real Estate  
2 Hour  
Virginia Real Estate Limited Service Agency Course  
Revised 2/2009

representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service representative."

B. A licensee engaged by one client to a transaction and dealing with an unrepresented party or with a party represented by a limited service representative and who, without additional compensation, provides such other party information relative to the transaction or undertakes to assist such other party in securing a contract or with such party's obligations there under, shall not incur liability for such actions except in the case of gross negligence or willful misconduct. A licensee does not create a brokerage relationship by providing such assistance or information to the other party to the transaction. A licensee dealing with a client of a limited service representative may enter into an agreement with that party for payment of a fee for services performed or information provided by that licensee. Such payment shall not create a brokerage relationship; however, the licensee providing such services or information for a fee shall be held to the ordinary standard of care in the provision of such services or information.

(2006, c. 627.)

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

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

(1995, cc. 741, 813; 2006, c. 627.)

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

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

(2006, c. 627.)

**ETHICS: Q & A**  
**BY BRUCE AYDT**

Equal service for all

Limited-service listings need full treatment.

**Q.** I'm not sure how to act when I see listings from a limited-service broker in the MLS. Can I contact the seller directly for showings and contract negotiations?

**A.** Standard of Practice 16-13 of the NATIONAL ASSOCIATION OF REALTORS® Code of Ethics provides the short answer to your question. The first paragraph states, "All dealings concerning property exclusively listed shall be carried on with the client's representative or broker and not with the client, except with the consent of the client's representative

With that in mind, determine first whether the seller has an exclusive agreement with the listing broker. A limited-service listing can be an exclusive listing even if it doesn't provide the range of services you define as full service. In fact, some MLS have rules that only exclusive listings may be submitted to the MLS.

In addition, many limited-service listings give specific direction in the MLS that a cooperating broker should contact the owner directly for showings and negotiations. If there isn't any statement to that effect in the MLS, contact the broker first and obtain permission before you call the seller.

There's no requirement in the Code of Ethics that a listing broker must provide showing and negotiation services, though some states have or are considering legislation that requires a broker to provide certain minimum services. Illinois recently enacted amendments to the license law requiring that brokers under exclusive brokerage agreements provide such services as presenting offers, assisting in negotiating offers, and answering questions about offers and counteroffers.

**Q.** In arbitration cases, hearing panels often want to split the commission or fee to resolve the case. What does NAR say about splits? How does a split award impact the mediation process?

A. Most often, hearing panels in arbitration cases are called on to decide monetary disputes between two REALTOR® principals regarding which one is entitled to the cooperative commission offered by the listing broker. In deciding those cases, hearing panels make their decision on the basis of which REALTOR® was the procuring cause of the sale.

Procuring cause determinations are often difficult because each case is different and no one rule applies in all cases. A panel may choose to simply divide the commission in half between the two parties or to split the fee on the basis of each REALTORS® contribution to the sale. However, panels shouldn't take this approach.

The NAR Code of Ethics and Arbitration Manual's Arbitration Guidelines (Appendix II to Part 10 of the manual) make it clear that splitting an award should be the exception rather than the rule: "Although awards are generally for the full amount in question [some states require that only one party can be determined to be the procuring cause], in exceptional cases, awards may be split between the parties (again, except where prohibited by state law). Split awards should be used only when hearing panels determine that the transaction would have resulted only through the combined efforts of both parties." It's the hearing panel's job to make the often difficult decision about which party is the procuring cause and is thus entitled to the entire commission.

Mediation is NAR's alternative to arbitration for dispute resolution. Mediation empowers parties to mutually agree on a solution to their dispute rather than having a decision imposed on them by a hearing panel. If it's common knowledge that an association's hearing panel routinely splits awards, brokers may see little point in investing the time and energy needed to work out a mediated solution.

Aydt, ABR®, CRB, is senior vice president and general counsel of Prudential Alliance, REALTORS®, in St. Louis, and a former chair of NAR's Professional Standards Committee.

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