VIRGINIA AGENCY LAW

TABLE OF CONTENTS

Definitions	1
Licensees engaged by sellers	2
Licensees engaged by buyers	4
Licensees engaged by landlords to lease property	5
Licensees engaged by tenants	7
Licensees engage to manage real estate	8
Preconditions to brokerage relationship	9
Commencement and termination of brokerage relationships	9
Disclosure of brokerage relationship	9
Limited Service Representative, contract disclosure required	11
Disclosure dual or designated representation authorized	11
Compensation shall not imply brokerage relationship	13
Brokerage relationship not created by using common source information company	14
Liability: knowledge not to be imputed	14
Real estate board regulations to be consistent	15
Common law abrogated	15
Article does not limit antitrust laws	15
Case Study-Buyer Agency	16
Case Study-Limited Service	18
Agency Law Questions	19
Answers to Agency Law Questions	24

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

§ 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.

"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.

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

"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.

(1995, cc. 741, 813; 2006, c. 627; 2008, cc. 851, 871.)

§ 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.

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.).

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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;

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;

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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:

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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 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

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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.)

§ 54.1-2134. Licensees engaged by tenants.

A. A licensee engaged by a tenant shall:

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

2. Promote the interests of the tenant by:

a. Seeking a lease at a rent and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

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

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

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

during the brokerage relationship be maintained confidential unless otherwise provided by law or the tenant consents in writing to the release of such information;

4. Exercise ordinary care;

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

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

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

B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false information. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law.

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

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

E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

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

§ 54.1-2135. Licensees engaged to manage real estate.
A. A licensee engaged to manage real estate shall:

1. Perform in accordance with the terms of the property management agreement;

2. Exercise ordinary care;

3. Disclose in a timely manner to the owner material facts of which the licensee has actual knowledge concerning the property;

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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

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

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

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

C. A licensee may also represent the owner as seller or landlord if they enter into a brokerage relationship that so provides; in which case, the licensee shall disclose such brokerage relationships pursuant to the provisions of this article.
(1995, cc. 741, 813.)

§ 54.1-2136. Preconditions to brokerage relationship.
Prior to entering into any brokerage relationship provided for in this article, a licensee shall advise the prospective client of (i) the type of brokerage relationship proposed by the broker and (ii) the broker's compensation and whether the broker will share such salary or compensation with another broker who may have a brokerage relationship with another party to the transaction.
(1995, cc. 741, 813.)

§ 54.1-2137. Commencement and termination of brokerage relationships.
A. The brokerage relationships set forth in this article shall commence at the time that a client engages a licensee and shall continue until (i) completion of performance in accordance with the brokerage relationship or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage relationship or in any amendments thereto, (b) any mutually agreed upon termination of the relationship, (c) a default by any party under the terms of the brokerage relationship, or (d) a termination as set forth in subsection D of § 54.1-2139.

B. Brokerage relationships shall have a definite termination date; however, if a brokerage relationship does not specify a definite termination date, the brokerage relationship shall terminate ninety days after the date the brokerage relationship was entered into.

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

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information. (1995, cc. 741, 813.)

§ 54.1-2138. Disclosure of brokerage relationship.

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

```
                    DISCLOSURE OF BROKERAGE RELATIONSHIP

The undersigned do hereby acknowledge disclosure that:

The licensee  ....................

                     Name of Firm

represents the following party in a real estate transaction:

........ Seller(s)           or            ........ Buyer(s)

........ Landlord(s)         or            ........ Tenant(s)

....................                   ....................

      Date                                     Name

....................                   ....................

      Date                                     Name
```

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

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

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

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

(1995, cc. 741, 813; 1997, cc. 86, 119; 2006, c. 627.)

§ 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 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.

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

(2006, c. 627.)

§ 54.1-2139. Disclosed dual or designated representation authorized.

A. A licensee may act as a dual representative only with the written consent of all clients to the transaction. Such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as provided in this section.

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

DISCLOSURE OF DUAL REPRESENTATION

The undersigned do hereby acknowledge disclosure that:
The licensee .....
(Name of Broker, Firm or Salesperson as applicable)
represents more than one party in this real estate transaction as indicated below:
..... Seller(s) and Buyer(s)
..... Landlord(s) and Tenant(s).
The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

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

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

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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

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

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

DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES

The undersigned do hereby acknowledge disclosure that: The licensee
.....
(Name of Broker and Firm)

represents more than one party in this real estate transaction as indicated below:
..... Seller(s) and Buyer(s)
..... Landlord(s) and Tenant(s).

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

The principal or supervising broker has assigned ..... to act as Designated Representative (Licensee/Sales Associate) for the one party as indicated below:

..... Seller(s) or ..... Buyer(s)
..... Landlord(s) or .....Tenant(s).
and
..... to act as Designated Representative (Licensee/Sales Associate) for the other party as indicated below:
..... Seller(s) or ..... Buyer(s)
..... Landlord(s) or .....Tenant(s)

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

(1995, cc. 741, 813.)

§ 54.1-2140. Compensation shall not imply brokerage relationship.
The payment or promise of payment or compensation to a real estate broker does not create a brokerage relationship between any broker, seller, landlord, buyer or tenant.
(1995, cc. 741, 813.)

§ 54.1-2141. Brokerage relationship not created by using common source information company.
No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord or other licensee solely by reason of using a common source information company. However, nothing contained in this article shall be construed to prevent a common source information company from requiring, as a condition of participation in or use of such common source information, that licensees providing information through such company disclose the nature of the brokerage relationship with the client, including, but not limited to, whether the licensee is acting as (i) an independent contractor, (ii) a limited service 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.)

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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

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

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

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

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

E. Except as expressly set forth in this section, nothing in this article shall affect a person's right to rescind a real estate transaction or limit the liability of (i) a client for the misrepresentation, negligence, gross negligence or intentional acts of such client in connection with a real estate transaction, or (ii) a licensee for the misrepresentation, negligence, gross negligence or intentional acts of such licensee in connection with a real estate transaction.
(1995, cc. 741, 813.)

§ 54.1-2143. Real estate board regulations to be consistent.
Any regulations adopted by the Virginia Real Estate Board shall be consistent with this article, and any such regulations existing as of the effective date of this article shall be modified to comply with the provisions of this article.
(1995, cc. 741, 813.)

§ 54.1-2144. Common law abrogated.
The common law of agency relative to brokerage relationships in real estate transactions to the extent inconsistent with this article shall be expressly abrogated.
(1995, cc. 741, 813.)

§ 54.1-2145.) Article does not limit antitrust laws.
Nothing in this article shall be construed to limit, modify, impair, or supercede the applicability of any federal or state antitrust laws.
(2006, c. 627.)

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

This article was published on: ***08/01/2005***

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 MLSs 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 pro vide 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 co operative 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

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

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.

Reprinted from [REALTOR® Magazine Online 8/01/2005**,] with permission of the NATIONAL ASSOCIATION OF REALTORS®. Copyright** 2005 **All rights reserved.**

BUYER AGENCY CASE STUDY

Buyer Agency

Sarah was excited about signing her first buyer agency contract. She told her buyers she'd look out for their best interests, and they smiled, signed, and said they understood.

Sarah then searched the MLS for possible properties. Several met the criteria indicated on her written buyer agency contract, which detailed what type of home Sarah would search for: "3 bedrooms, 2 baths, 2-car garage, and full basement."
The buyers liked the third property they saw and wanted to make an offer. The home, in a local subdivision, was the Prelude model, with an unfinished basement. The offers went back and forth, and finally a contract for $175,000 was signed.
The buyers were happy with the sales price Sarah had helped negotiate; it was well below the list price of $197,500. Sarah had a great bargaining chip during the negotiation: Even after she had told the listing broker that she was a buyer's agent, as required by NAR's Code of Ethics, she had learned from the listing agent that the sellers were very motivated and that several offers had fallen through. Sarah recommended that the offer be structured to include a large amount of earnest money, a simple and fast loan condition, and a quick close.

The deal closed, and things looked great. Sarah felt confident that she'd represented the buyers properly in every way. However, the next day Sarah got a call from the buyers. Apparently, as they were moving in, a neighbor came over to welcome them to the neighborhood. He mentioned that he also had a Prelude house for sale and that he was selling it as a FSBO. When the neighbor asked what the buyers paid for their new home, they crowed about how great their agent had been to get the house for $175,000.

The neighbor's house was nicer than the one they had bought--it was on a quiet cul-de-sac, and part of the basement was already finished--and it was also priced at $175,000. The buyers were upset and immediately called their attorney.

The attorney explained that since Sarah was a buyer's agent, she had fiduciary duties to the buyers of "loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting." Therefore, unless they agreed otherwise, Sarah had an obligation to search out all available properties for her clients, including those not listed in the MLS.

Sarah had a written buyer agency agreement with the buyers. But even if she'd had only an oral agreement, her fiduciary duties would have been the same in most states.

Rather than litigate, the parties decided to try mediation. The buyers said that they liked their house and trusted their agent but that they never knew she was showing them only properties listed by other licensees in the MLS. They testified that had they known of the FSBO home, they would have tried to buy it first. At the very least, they'd have used the comparable price to negotiate a better price on the house they bought.
Does Sarah have a problem? How do you handle FSBOs as a Buyers Agent?

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

VIRGINIA ASSOCIATION OF REALTORS®
10230 Telegraph Road · Glen Allen, VA 23060-4578 · (804) 264-5033 or (800) 755-8271

Agency Law Questions

1. Since agency disclosure is no longer required to be made to customers that are represented by another agent, should I tell my clients anything about other agents?

2. Does the agency law require that we have an agency disclosure signed at time of substantive discussion or just at time of contract?

3. How do you get compensated if you choose to be a non-agent transaction broker?

4. Will a non-agency relationship, such as “facilitator” or “transaction broker,” have to be offered (or at least explained) to all potential clients as an option?

5. If the broker’s spouse is an agent in that same firm, can the broker still assign their spouse as a designated agent?

6. Does someone acting in a non-agency capacity such as a “facilitator” or “transaction broker” have to disclose whom they represent or is “agency disclosure” only for those acting as agents?

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

7. Can an unlicensed assistant carry out all ministerial acts even though the definition of a ministerial act means, "routine acts that a licensee can perform?"

8. When two agents are working as a team, can one be the designated agent of the buyer and the other the designated agent of the seller?

9. If a buyer is told that his mortgage application is likely to be refused, there is no obligation for the buyer representative to report that to the seller. Could the buyer-broker agreement be modified to authorize the sharing of loan information with the listing agent?

10. While the law only requires the disclosure of adverse material facts about the physical condition of the property, that is very limited. As ethical REALTORS® we want to be fair to all parties. In some circumstances there are some facts I don't want to keep secret. How do we handle these situations? Is there some middle ground?

11. When a company is working on a transaction with designated representatives and a supervising broker is in the dual agency role, what is the role and responsibilities of the other licensees in the firm? Assume a buyer's representative brings in a below--list offer, and the seller refuses. But in the course of the conference the seller reveals a compromise price he would accept. The house doesn't sell, the listing expires, and then the former listing agent has a buyer client who wants the house. Can he reveal the bottom line price to the new client?

12. If a buyer's agent is attending a general preview of a property listed by his firm, and learns information about the motivation of the seller, must he keep it confidential or must he share it with his buyer clients?

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

13. When a principal broker actively sells, can the broker take on the role of designated agent and assign an associate broker or salesperson to be the dual agent?

14. What does a property manager have to disclose to a prospective tenant about the physical condition of the property?

15. Since knowledge and information are not imputed to others under agency law, must the listing agent disclose to both the buyer and the buyer's agent adverse facts about the physical condition of the property, or is telling one or the other good enough?

16. Can a REALTOR® offer to take on more fiduciary responsibilities to gain a competitive advantage over standard agents?

17. What impact, if any, does the role of designated agent have on clients? How does it differ from dual agency from the client's point of view?

18. In relation to confidentiality, are your abilities to represent a new client limited with regard to former listings? Are you a dual agent when showing those properties to new clients?

19. If you have a listing, and one of your buyer clients wants to buy it, what do you do if the seller refuses dual or designated agency?

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

20. Can a broker give advice to "designated agents" in spite of his or her dual agency status without violating the premise of not giving one client the advantage?

21. Do brokers have to designate "designated agents" in writing at the time of the specific contract with clients or is company policy sufficient?

22. Can a brokerage firm exclusively utilize the independent contractor (non-agent facilitator) status in a residential brokerage business?

23. May you ask for financial information from a prospect prior to discussion of agency representation?

24. If explaining financing options is a ministerial act, what is the limit of the agent's liability for making judgment calls about the qualifications of the buyer? How are the seller and the seller's agents to be informed of the buyer's qualifications if the contract is contingent upon financing?

25. Is there any difference when dealing with commercial, industrial or agricultural property?

26. Does each firm have to decide up-front to offer designated representation or is it transaction by transaction?

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

27. If I am showing a buyer client a property and the seller is at home, do I have to give agency disclosure?

28. When attempting to get a listing I learn confidential information about the seller, but I do not get the listing. Later I represent a buyer looking at that property. Am I obligated to keep the seller's information confidential?

29. Is it true that an agent on a listing appointment does not need to present an agency disclosure to that potential client?

30. Once the buyer has made a loan application, does a listing agent have a right to the information that the lender has?

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

Virginia Association of REALTORS®
10230 Telegraph Road · Glen Allen, VA 23060· (804) 264-5033 or (800) 755-8271

Answers to Agency Law Questions

1. Yes. As an agent, you should tell your clients not to have substantive discussion with any other agent. If possible, suggest to a seller client that they vacate the property while it is being shown. If you are representing a buyer, your client should be warned to avoid any substantive discussions with other agents especially if they are visiting an open house.

2. The law requires that you make oral disclosure of your agency relationship to a non-client, who is not represented by another agent at the time of substantive discussion about a certain property. The written confirmation of this disclosure must be given at the earliest practical time.

3. You need to have a written agreement to establish a non-agency relationship and this agreement should spell out how you will be compensated.

4. No. A firm does not have to offer these optional relationships and agents do not have to explain relationships they do not offer.

5. It would be doubtful that spouses could be designated agents on opposite sides of a transaction, but in this case the broker and the spouse are both representing the same client. The broker is still a dual agent and particular care will need to be taken to protect confidential information.

6. Everyone who has a real estate license must follow the agency disclosure requirements in the statute, regardless of what type of brokerage relationship they are providing.

7. Unlicensed assistants can perform several ministerial acts. Mailing a list of local mortgage companies or faxing property information prepared by the agent are examples. Some ministerial acts, such as showing a property or helping the buyer write a contract, are not appropriate for an unlicensed agent to perform.

8. The law does not address teams. If the team is together in every other relationship, then it is doubtful they could be separated for the convenience of one designated relationship. If, however, the team only works together occasionally, then they could probably be separated.

9. Yes. The buyer client can give written consent to release confidential information.

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

10. Your firm can have a policy about this type of thing. For instance, you may want to have your seller clients agree up-front that you will disclose all information pertinent to the transaction. If this is your company policy, you need to be prepared to walk away if a seller refuses to let you disclose this type of information. Keep in mind that personal and financial information is automatically confidential and cannot be released without the client's written consent.

11. For the broker and the seller's designated agent involved, this is confidential information learned in the course of an agency relationship and may not be disclosed. The buyer's designated agent has had no agency relationship with the seller, so they are free to share this information with other clients. Other agents of the firm have not been involved and should not be privy to this information.

12. It will depend on your company policy. If your company uses designated agency, then the buyer agent is obligated to disclose all material information to the buyer client. If your firm practices dual agency, then no confidential information about one party can be shared with the other. This situation does put the agent who inadvertently disclosed the confidential information and the firm in a potentially difficult situation. If your firm chooses to offer designated agency, it is essential that confidential information be protected.

13. It may be possible, but it is not the intent of the law. The law allows for a supervising broker to be the designating broker. The intent of designated agency is to provide full representation to both clients while protecting confidential information. As a practical matter, a principal broker may find it difficult to step out of the broker's role and act as a designated agent.

14. Property managers have the same duty as other agents. They must disclose known material adverse facts about the physical condition of the property.

15. The law requires the seller's agent to make this disclosure to a buyer. If you tell the buyer's agent, they have a duty to tell their client everything material about the property and the transaction. Use your best judgment to determine if the information is getting to the buyer and document your disclosure.

16. If you can convince some potential client that increasing their liability is an advantage, go for it. Virginia's agency law is not just good for real estate agents; it is good for all consumers. The law reduces their liability by making each individual responsible for their own actions and the duties of their agents are now clearly spelled out.

17. Clients are the real benefactors with designated agency because it allows them to be fully represented. In dual agency, the agent's role is limited to that of neutrality, but a designated agent can represent their client's best interest fully.

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

18. You are only a dual agent when you represent both sides of a transaction, so you are not a dual agent in this case because you no longer represent the seller. You do still have a duty of confidentiality to a previous client.

19. The law allows for you to withdraw without liability from representing a party in a particular transaction if they refuse to accept dual agency or designated agency. You may still represent one of the two parties, but all confidential information must be maintained.

20. The designating broker is a dual agent under the new law. They can give advice to both designated agents in a transaction as they see fit, but they cannot disclose confidential information from one party to the other.

21. The law does not require that designation of an agent occur at a particular time. Your office policy should dictate when your firm will designate. The designation will have to occur, though, no later than when the client signs that they agree to designated agency.

22. Yes, if they choose to adopt such a company policy. However, the main reason non-agency relationships were gaining popularity in the marketplace is that Common Law agency included negatives such as vicarious liability for others actions and imputed knowledge. The new law eliminates these liabilities and will likely reduce the popularity of non-agency relationships.

23. You shouldn't. Licensees should discuss how they would work with a consumer before they begin discussing substantive information.

24. For the sake of this question, we will assume that the agent mentioned is the sellers' agent. Unless you are given the express authority of the sellers to make a judgment call as to the buyers' financial qualifications, you should leave the final decision up to the sellers. You can certainly suggest that the property continue to be marketed to seek a back-up contract, or ask for a lender's opinion letter, if there are some concerns or give other such advice, but the final decision should be the client's.
    The second part of this question deals with sellers right to obtain financial information from the buyer. The buyer is not required to disclose financial information, but the seller can ask for financial information as a contingency.

25. The only difference is that in a residential transaction, a buyer agent has to disclose his client's intent to occupy the property as a principal residence.

26. Firms can establish a policy that allows them to select whether to use designated agency or dual agency on a transaction-to-transaction basis.

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com

27. If the property is listed with another agent, you are not required to disclose to the seller that you work for the buyer. If the property is a FSBO, then you would be required to verbally disclose that you represent the buyer if you have substantive discussion about the property with the seller. This verbal disclosure would need to be followed up with written confirmation at the earliest practical time.

28. You do have a duty to your clients to tell them everything you know that is material to the property or the transaction. To prevent this situation from occurring, your company policy may be to warn potential seller clients up-front that they should not tell you anything confidential until after they have selected you to represent them.

29. There is nothing to disclose in this situation. You do not need to disclose your agency status to anyone until you face a situation where you are discussing substantive information about a particular property and then only when you are representing another party to a particular transaction. Buyer agents also have agency disclosure requirements to sellers. Agency disclosure is made to someone who is not your client and who is not represented by another agent in order to tell him or her that you represent someone else. You do not need to tell your client (or in this case, potential client) that you represent them. A listing agreement or buyer representation agreement is all you need to tell a client that you represent them.

30. No. Financial information is confidential and unless the buyer gives written consent to release the information, it cannot be shared with the other party in a transaction.

2009 All Rights Reserved. www.AlphaCollegeOfRealEstate.com