

ALPHA
COLLEGE
of
Real Estate

Continuing Education

**8-Hour Real Estate Management
and Agent Supervision**

Correspondence Course



26th
Anniversary

Delivering Excellence Since 1985

8 HOUR REAL ESTATE COMPANY MANAGEMENT AND AGENT SUPERVISION COURSE v082411

Business Policies and Procedures Overview

- Purpose of the company rule book
 - Players know how to execute the plays
 - Support the structure and systems of the organization
 - Maintain order and control
 - Sanctions for the offenders

- Rules for creating rules
 - Adopt necessary policies and procedures, but don't bog down the organization with cumbersome processes.
 - Must support the culture of the organization.
 - In writing is the best
 - Must be able to withstand legal scrutiny.
 - Once adopted must be followed. Must have consistency
 - Keep policies current and out of date policies removed
 - Some policies will come easy because they have evolved over time, other will need to be developed.
 - Employee versus Independent Contractor

- Business Ethics
 - Code of Conduct sets the company's value system.
 - Deals with the process not just the end results
 - Personal code and business code of ethics, are they one in the same?
 - How you will deal with customers, business associates and competitors
 - "Do no harm"
 - National Code of Ethics, is it effective?
 - Enforcement, practice what you preach
 - Doing what's right does not always produce financial rewards

- Employee Policies

- Policies Specific to Real Estate Companies
 - Agency
 - Antitrust
 - Equal Opportunity/Fair Housing/Disability
 - Licensing Laws and Regulations

- Independent Contractor Policies
 - Sales Teams
 - Part time, Full time, home office, hiring policies
 - Referrals, procedures for distributing, in-house, between salespersons and to other companies
 - Cooperation among salesperson in house, sharing customers and clients
 - Standards for Servicing clients and customers and clients
 - Open House procedures, safety procedures
 - Transactions
 - Forms

- Agreements
- Escrow
- Litigation and legal expenses
- Settlement
- Commission programs
- Insurance, coinsurance on auto, errors and omissions
- Dues and fees
- Education and designation
- Advertising and marketing procedures
- Internet advertising
- Telephone solicitation
- Telephone Procedures
- Dissemination of information, who disseminates
- Lockboxes and signs
- Postage, printing and direct mail, who pays
- Attendance at meetings
- Sales persons selling and purchasing for themselves
- Handling disputes
- Termination

CREATING A REAL ESTATE COMPANY OFFICE POLICY

Whether you operate a small independent brokerage or a large full service company, the importance of having and utilizing an office policy manual remains the same.

The new Real Estate Board regulations that became effective on April 1, 2008 include under Part 5 the requirement that you maintain in you're; "place of business" the availability of training and written procedures and policies which provide, without limitation, clear guidance in the following areas:

- Proper handling of escrow deposits
- Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management
- Advertising
- Negotiating and drafting of contracts, leases and brokerage agreements
- Use of unlicensed individuals
- Agency relationships
- Distribution of information on new or changed statutory or regulatory requirements
- Disclosure of matters relating to the condition of the property.
- Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia."
- **See Appendix H for additional requirements**

VAR was asked to develop a "template" that you can use to either a). Compare your current manual to what the new regulations require or b). Use as a model to draft your own policy manual from scratch.

We have drawn from the experience of other VAR members, staff and our own legal counsel. What we have developed to assist you is an outline of topics and prompts "links" to other documents (the new regulations and our Code of Ethics) to provide additional information and guidance in shaping your own polices.

Office Policy Topic Areas and Prompts from New Virginia Real Estate Board Regulations

1. Proper Handling of Escrow Accounts
 - Earnest Money Deposits
 - To whom presented?
 - Within what period of time after full ratification?
 - How do we deal with notes, post-dated checks, and delayed delivery of checks? (Contract must reflect such arrangements.)
 - New rules as to when the money can be returned.
 - Security Deposits
 - VRLTA requirements
 - Common law: joint instructions
 - VREB rules: Know when to say no to landlord.
 - Who gets the interest? (The contract/lease must say.)
 - What money goes into which account?

For more information on Escrow Management see Appendix A

2. Fair Housing
 - Agents agree to:
 - keep informed
 - be inclusive in ads
 - inform clients of rights with printed materials and conversations
 - document efforts to provide professional service
 - refuse to tolerate non-compliance
 - learn about people who are different
 - take a positive approach to fair housing and follow spirit and letter of the law
 - What is the firm strategy for developing minority business? For assuring equal housing opportunities?
 - What is the firm's tolerance level for non-compliance?
 - Encourage agents to be aware of discriminatory lending practices.
 - Strategies for dealing with clients who discriminate.

For more information on Fair Housing see Appendix B

3. Advertising
 - “disclosure” rules on e-mails, websites, other electronic ads. What other things does the firm require on agent websites? Does the firm retain the right to consent to format, content?
 - firm policy as to IDX
 - How may teams, business entity salespersons advertise?
 - use of company name, logo, Realtor name, logo.
 - franchise rules, if appropriate
 - NAR policies
 - printed materials, newspaper and magazine, other print ads
 - firm name
 - broker review and approval requirements
 - solicitations/general mailings

For more information on Advertising see Appendix C

4. Negotiating and Drafting Contracts

- Drafting
 - property descriptions (real and personal)
 - financing provisions: familiarity with special programs
 - buyer contingencies: Be specific about who benefits.
 - seller contingencies
 - Are blanks left unfilled?
 - Property condition issues
- Inspections: Be careful about who has termination rights.
- Well (recovery) and septic (bedrooms)
- Title: Move quickly on time-sensitive issues.
- Occupancy
- POAA/Condo
- Megan's Law
- Negotiating Considerations
 - How do we handle:
 - multiple offers
 - counteroffers
 - addenda
 - signatures and initials
 - Are we familiar with all commonly used forms, and how they differ?
 - Familiarity with new SOPs 1-15, 16-13.
 - Code of Ethics limitations and our duties to our clients

5. Use of Unlicensed Assistants

- Knowing the law: The difference between practice of real estate and ministerial, unlicensed activities
- What may our unlicensed assistants do? May they answer clients' questions about property?
- Team limitations
- What UA may NOT do: Show property, handle walk-throughs, negotiate contracts, addenda and amendments
- Who does the UA work for? The team? The firm? Both?

The last published guidance from the VREB on the use of unlicensed assistants was published in "VREB Speaking" in 1992.

For more information on Unlicensed Assistants see Appendix D

6. Agency Relationships

- Who may sign for the firm?
- What authority do agents have to negotiate fees, terms?
- Must buyer agency agreements be in writing? Must they be exclusive? For a minimum duration? May they be terminable by client?
- Dual agency: What limitations? What is the firm attitude about dual agency? When is it inappropriate? May we create it with buyers who approach us about one of our listings? No dual agency when agent is buying the firm's listing, or selling to the firm's buyer client.
- Designated agency: What is the firm attitude?
- Open listings? Co-exclusives?
- What duties does the agent owe the client?
 - Under Virginia Code
 - Under the Code of Ethics

For more about Agency Relationships and Disclosure Responsibilities see Appendix E

7. Disclosure of Property Condition Issues
 - o Firm questionnaire? How do we counsel our sellers about existing defects?
 - o How do we deal with
 - Previous inspection problems?
 - Dueling/inconsistent inspections?
 - Seller representations to us?
 - Being familiar with the issue of misrepresentation. What to avoid saying (“The repairs have been done” versus “Here’s the invoice.”)
 - The requirements of the Virginia Code and VREB regulations
 - Policy of the firm
 - o In writing
 - o When? How?
 - o LBP
 - o Radon
 - o Mold: (Do we recommend tests? Moisture audits? Do we know the source of mold, how to detect it?)
 - o Poly pipes: Settlement funds? Which fittings are present?
 - o Counseling the buyer client on the desirability of inspections. How do we make referrals of professionals for inspections, repairs?
 - o Required documentation.

For more information about a Misrepresentation see Appendix F

8. Education
 - o What the law requires.
 - o What the firm requires.
 - o Available sources of education and resources/materials.
 - o Could your firm benefit from appointing a staff member/associate broker to take on the position of director of firm education, to keep everyone up on available classes, materials, sources?

For more about Education see Appendix G

For more information about a Broker's Supervisory Responsibilities see Appendix H

VAR formed a Working group to review and recommend additional policy areas that could be included in an office policy manual. Here is a list of those additional policy areas:

- I. General Office Information
 - A. Hours of Operation
 - B. Office Address
 - C. Office Opening / Closing Procedures
 - D. Sales Meetings - Time and Locations
- II. NAR Code of Ethics
- III. Listing Procedures - (from the Northern Virginia Association of Realtors Office Policies)
 - A. Completeness / Accuracy of Information
 - B. Tax Records

- C. Existing Deeds of Trust or Liens
 - D. Legal Description
 - E. Room Sizes
 - F. Item that Convey
 - G. Well and Septic
 - H. Home Inspection
 - I. Water and Sewer Hook-Up Charges
 - J. Heating / Air Units
 - K. Floors
 - L. Open Houses
 - M. Other Advice to Sellers
 - N. Any other Individual Company Policies
- IV. Showing Procedures (from the Northern Virginia Association of Realtors Office Policies)
- A. General Procedures, Courtesies and Precautions
(Appointments, Safety Guidelines, Business Cards, Actions While Showing, Etc.)

V. Agent Commissions

These policies could include reference to the VREB regulations on "Improper Brokerage Commission" as well as Code of Ethics references.

For more information on Commissions see appendix I

Appendix A

18 VAC 135-20-180. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the parties to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated (non-consummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee, or (ii) by certified mail return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of non-consummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

c. Lease transactions: rents or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rents and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee has caused noncompliance with this section.

Historical Notes

Derived from VR585-01-1 §5.3, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008.

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

A. A complete record of financial transactions conducted under authority of the principal broker's Virginia license shall be maintained in the principal broker's place of business, or in a designated branch office. When the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia, a copy of these records shall be maintained in the Virginia office. These records shall show, in addition to any other requirements of the regulations, the following information: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.

B. The principal broker shall maintain a bookkeeping or record keeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.

C. Actions constituting improper record keeping include:

1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification, if the transaction fails to close, a complete and legible copy of each disclosure of a brokerage relationship, and each executed contract, agreement, and closing statement related to a real estate transaction, in the broker's control or possession, unless prohibited by law;
2. Having received monies on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing or termination of a lease or conclusion of the licensee's involvement in the lease; and
3. Failing, within a reasonable time, to account for or to remit any monies coming into a licensee's possession which belong to others.

Historical Notes

Derived from Virginia Register Volume 19, Issue 12, eff. April 1, 2003.

Appendix B

FAIR HOUSING

ALL employees of (insert name of firm) will adhere to the Fair Housing provisions as set out in the Code of Virginia. These provisions include, but are not limited to:

§ 36-96.3. Unlawful discriminatory housing practices.

A. It shall be an unlawful discriminatory housing practice for any person:

- 1. To refuse to sell or rent after the making of a bona fide offer or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, national origin, sex, elderliness, or familial status;*
- 2. To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of race, color, religion, national origin, sex, elderliness, or familial status;*
- 3. To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation or discrimination based on race, color, religion, national origin, sex, elderliness, familial status, or handicap. The use of words or symbols associated with a particular religion, national origin, sex, or race shall be prima facie evidence of an illegal preference under this chapter which shall not be overcome by a general disclaimer. However, reference alone to places of worship including, but not limited to, churches, synagogues, temples, or mosques in any such notice, statement or advertisement shall not be prima facie evidence of an illegal preference;*

4. *To represent to any person because of race, color, religion, national origin, sex, elderliness, familial status, or handicap that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;*
5. *To deny any person access to membership in or participation in any multiple listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership, or participation because of race, color, religion, national origin, sex, elderliness, familial status, or handicap;*
6. *To include in any transfer, sale, rental, or lease of housing, any restrictive covenant that discriminates because of race, color, religion, national origin, sex, elderliness, familial status, or handicap or for any person to honor or exercise, or attempt to honor or exercise any such discriminatory covenant pertaining to housing;*
7. *To induce or attempt to induce to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, sex, elderliness, familial status, or handicap;*
8. *To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise discriminate or make unavailable or deny a dwelling because of a handicap of (i) the buyer or renter, (ii) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available, or (iii) any person associated with the buyer or renter;*
9. *To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of a handicap of (i) that person, (ii) a person residing in or intending to reside in that dwelling after it was so sold, rented or made available, or (iii) any person associated with that buyer or renter.*

B. For the purposes of this section, discrimination includes: (i) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by any person if such modifications may be necessary to afford such person full enjoyment of the premises; except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; (ii) a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or (iii) in connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that:

1. *The public use and common use areas of the dwellings are readily accessible to and usable by handicapped persons;*
2. *All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and*
3. *All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. As used in this subdivision the term "covered multi-family dwellings" means buildings consisting of four or more units if such buildings have one or more elevators and ground floor units in other buildings consisting of four or more units.*

C. Compliance with the appropriate requirements of the American National Standards for Building and Facilities (commonly cited as "ANSI A117.1") or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people shall be deemed to satisfy the requirements of subdivision B 3.

D. Nothing in this chapter shall be construed to invalidate or limit any Virginia law or regulation which requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this chapter.

In addition to the above-referenced provisions within the Code of Virginia, ALL employees of (insert name of firm) will adhere to the following REALTOR® Code of Ethics, as they pertain to Fair Housing.

Furthermore and in addition to the above-referenced policies, ALL employees of (insert name of firm) will adhere to the following policies, as they pertain to Fair Housing guidelines.

**Appendix J National Association of REALTORS® Code of Ethics
Article 10**

Furthermore and in addition to the above-referenced policies, ALL employees of (insert name of firm) will adhere to the following policies, as they pertain to Fair Housing guidelines.

They are as follows:

(Insert policies that will pertain to your firm and its employees)

**Appendix C
ADVERTISING**

ALL employees of (insert name of firm) will adhere to the Advertising Regulations as set out in the Virginia Real Estate Board Licensee Regulations.

****Please note the changes to 18 VAC 135-20-190, as they relate to advertising. The new regulations now clearly define Internet advertising and electronic communication, as well as any of communications that need disclosures. The VREB felt that with the emergence of Internet-based, as well as all other electronic, communication mediums licensees needed some guidance on how to treat them.****

These regulations are as follows:

18 VAC 135-20-190. Advertising by licensees.

A. Definitions. The following definitions apply unless a different meaning is plainly required by the context:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

"Disclosure" in the context of online advertising means (i) advertising that contains the firm's licensed name, the city and state in which the firm's main office is located and the jurisdiction in

which the firm holds a license or (ii) advertising that contains the licensee name, the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license.

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

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

"Viewable page" means a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

B. All advertising must be under the direct supervision of the principal broker or supervising broker, in the name of the firm and, when applicable, comply with the disclosure required by §54.1-2138.1 of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.

C. Online advertising.

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

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

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

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

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

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

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

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

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

a. Online listing information must be consistent with the property description and actual status of the listing. The licensee shall update in a timely manner material changes to the listing status authorized by the seller or property description when the licensee controls the online site.

b. The licensee shall make timely written requests for updates reflecting material changes to the listing status or property descriptions when a third party online listing service controls the website displaying the listing information.

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

D. The following activities shall be prohibited:

1. Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person;
2. Failing to include a notice in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised and is not using the services of a licensed real estate entity;
3. Failing to include the firm's licensed name on any sign displayed outside each place of business;
4. Failing to obtain the written consent of the seller, landlord, optionor or licensor prior to advertising a specific identifiable property; and
5. Failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement.

Historical Notes

Derived from VR585-01-1 §5.4, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008.

In addition to the above-referenced Virginia Real Estate Board Regulations, ALL employees of (insert name of firm) will adhere to the following REALTOR® Code of Ethics, as they pertain to advertising.

They are as follows:

Appendix J National Association of REALTORS® Code of Ethics Articles 12 and 16

Furthermore and in addition to the above-referenced policies, ALL employees of (insert name of firm) will adhere to the following policies, as they pertain to advertising.

They are as follows:

(Insert policies that will pertain to your firm and its employees)

Appendix D

USE OF UNLICENSED ASSISTANTS

ALL employees must know and understand the functions of unlicensed assistants and the limitations.

- Unlicensed Assistants MAY:
 - Answer the phone and forward calls to a licensee;
 - Submit listings and changes to a MLS;
 - Follow up on loan commitments after a contract has been negotiated;
 - Assemble documents for closings;

- Secure documents from courthouses, public utilities offices, etc;
- Have keys made for company listings;
- Write ads for approval of licensee and supervising broker and place advertising;
- Record and deposit earnest money, security deposits and advance rents;
- Type contract forms for approval by licensee and supervising broker;
- Monitor licenses and personnel files;
- Compute commission checks;
- Place signs on properties;
- Order items of routine repair;
- Prepare flyers and promotional information for approval by licensee and supervising broker;
- Act as a courier service to deliver documents, pick up keys
- Schedule appointments for showings;

- Unlicensed Assistants MAY NOT:
 - Prepare promotional materials or ads without the review and approval of the licensee and supervising broker
 - Show property;
 - Answer any question on listings, title, financing, closings, etc.
 - Discuss or explain a contract, listing, lease, agreement or other real estate document with anyone outside of the firm;
 - Work as a licensee/secretary in one firm and do real estate related activities within another firm;
 - Be paid on the basis of real estate activity, such as a percentage of commissions, or any amount based on listings, profits, etc.;
 - Negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee.

Appendix E

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 all a cart 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®

In July of 2011 Virginia made changes to the Agency statues which will go into effect in July 2011. These changes are noted below

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. *However, any real estate licensee who acts for or represents a client in an agency relationship shall either represent such client as a standard agent or a limited service agent.*

"Brokerage agreement" means the *written agreement by which a real estate licensee represents a client in creating a brokerage relationship between a client and a licensee.*

"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.

"Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship based upon a brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent; (ii) shall have the obligations agreed to by the parties in the brokerage agreement; and (iii) shall have no obligations under §§ [54.1-2131](#) through [54.1-2135](#)

"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ [54.1-2100](#) et seq.) of Chapter 24 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.

"Property management agreement" means the written agreement between a property manager and the owner of real estate for the management of the real estate.

"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](#); 2011, c. [461](#).)

§ 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.).

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](#); 2011, cc. [34](#), [46](#), [461](#).)

§ 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;
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 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](#); 2011, cc. [34](#), [46](#), [461](#).)

§ 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 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. Changes Effective July 1, 2012

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;

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.

D. Property management agreements shall be in writing and shall:

- 1. Have a definite termination date or duration; however, if a property management agreement does not specify a definite termination date or duration, the agreement shall terminate 90 days after the date of the agreement;*
- 2. State the amount of the management fees and how and when such fees are to be paid;*
- 3. State the services to be rendered by the licensee; and*
- 4. Include such other terms as have been agreed to by the owner and the property manager.*

(1995, cc. [741](#), [813](#); 2011, cc. [34](#), [46](#), [461](#).)

§ 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. Changes Effective July 1, 2012

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 ~~F~~ of § [54.1-2139](#).

B. Brokerage ~~relationships~~ *agreements shall be in writing and shall have:*

- 1. Have a definite termination date; however, if a brokerage relationship does not specify a definite termination date, the brokerage relationship shall terminate ~~ninety~~ 90 days after the date of the brokerage ~~relationship was entered into~~ *agreement**
- 2. State the amount of the brokerage fees and how and when such fees are to be paid;*

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. (2006, c. 627.)

§ [54.1-2139](#). Disclosed dual standard agency authorized. Changes Effective July 1, 2012

A. A licensee may ~~not act as a dual representative only with standard agent unless he has first obtained the written consent of all clients parties to the transaction given after written disclosure of the consequences of such dual standard agency. 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.~~ *shall be in writing and given to both parties prior to the commencement of dual standard agency. The disclosure shall contain the following provisions:*

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1. That following the commencement of dual standard agency, the licensee will be unable to advise either party as to the terms, offers or counteroffers; however, under the limited circumstances specified in subsection C, the licensee may have previously discussed such terms with one party prior to the commencement of dual standard agency;
2. That the licensee cannot advise a buyer client as to the suitability of the property, its condition (other than to make any disclosures as required by law of any licensee representing a seller), and cannot advise either party as to repairs of the property to make or request;
3. That the licensee cannot advise either party in any dispute that might later arise relating to the transaction;
4. That the licensee will be acting without knowledge of the client's needs, client's experience in the market, or client's experience in handling real estate transactions unless he has gained that information from earlier contact with the client under the limited circumstances specified in subsection C; and
5. That either party may engage another licensee if he requires additional representation.

B. Such disclosures shall not be deemed to comply with the requirements set out in this section if (i) not signed by the client or (ii) given in a purchase agreement, lease or any other document related to a transaction. Any disclosure and consent that substantially complies with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF DUAL STANDARD AGENCY

The undersigned do hereby acknowledge disclosure that:

The licensee
(Name of Broker, Firm or Salesperson as applicable)

represents more than one party as a dual standard agent in this real estate transaction as indicated below:

..... Seller(s) and Buyer(s)

..... Landlord(s) and Tenant(s).

The undersigned understand:

1. That following the commencement of dual standard agency, the licensee cannot advise either party as to the terms to offer or accept in any offer or counteroffer; however, the licensee may have advised one party as to such terms prior to the commencement of dual standard agency;
2. That the licensee cannot advise the buyer client as to the suitability of the property, its condition (other than to make any disclosures as required by law of any licensee representing a seller), and cannot advise either party as to what repairs of the property to make or request;
3. That the licensee cannot advise either party in any dispute that arises relating to the transaction;
4. That licensee may be acting without knowledge of the client's needs, client's knowledge of the market, or client's capabilities in dealing with the intricacies of real estate transactions; and

5. That either party may engage another licensee to represent their respective interests.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual standard agency by the licensee.

.....
Date Name (One Party)

.....
Date Name (One Party)

.....
Date Name (Other Party)

.....
Date Name (Other Party)

C. However, if the licensee is currently representing a party as a standard agent and that party desires to engage in a real estate transaction with another current client represented by the licensee as a standard agent, the licensee may engage in dual standard agency provided that prior to commencement of such dual standard agency the following disclosure may be used in lieu of that contained in subsection B.

Otherwise, the dual standard agent shall make the disclosure contained in subsection B. Further, if the licensee represents one party as an independent contractor and another party as a standard agent, the licensee may engage in dual representation only if the disclosure in subsection B is given.

~~B.~~ Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure ~~must~~ shall 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 STANDARD AGENCY WITH EXISTING CLIENTS

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 understand that the foregoing dual ~~representative~~ standard agent may not disclose to either client or such client's designated representative any information that has been given to the dual ~~representative~~ standard agent 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.

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The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual ~~representation~~ *standard agency* by the licensee.

.....
Date Name (One Party)

.....
Date Name (One Party)

.....
Date Name (Other Party)

.....
Date Name (Other Party)

D. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § [54.1-2137](#) requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

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

~~F. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual ~~representation~~ *standard agency* 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~~ *standard agency* in other transactions not involving dual ~~representation~~ *standard agency*.~~

~~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~~

Alpha College of Real Estate

~~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.~~

~~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)~~

§ 54.1-2139.1. Designated standard agency authorized. Changes Effective July 1, 2012

A. A principal or supervising broker may assign different licensees affiliated with the broker as designated standard agent to represent different clients in the same transaction to the exclusion of all other licensees in the firm. Use of such designated standard agents shall not constitute dual standard agency if a designated standard agent 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 standard agent as provided in this article. Designated standard agents 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.

B. Use of designated standard agents 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 shall be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure that complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

DISCLOSURE OF THE USE OF DESIGNATED STANDARD AGENTS

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 understand that the foregoing dual standard agent may not disclose to either client or such client's designated standard agent any information that has been given to the dual standard agent 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 standard agency by the licensee.

The principal or supervising broker has assigned

..... to act as Designated Standard Agent
(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 Standard Agent

(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)

§ 54.1-2139.2. Disclosed dual 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 shall 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 understand 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 (§ 54.1-2130et 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.

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 or to limit the licensee from representing the client who refused the dual representation in other transactions not involving dual representation.

§ 54.1-2139.3. Designated representatives authorized.

A. 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.

B. 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 shall 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 understand 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.

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)

§ 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.)

§ 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.)

§ [54.1-2142.1](#). *Liability for false information.*

For the purposes of §§ [54.1-2131](#) through [54.1-2135](#), a licensee shall not be liable for providing false information if the information was (i) provided to the licensee by the licensee's client; (ii) obtained from a governmental entity; (iii) obtained from a nongovernmental person or entity that obtained the information from a governmental entity; or (iv) obtained from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (a) have actual knowledge that the information was false or (b) act in reckless disregard of the truth.

§ 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.)

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 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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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?

Buyer's agent beware

Here are some tips to avoid breaching your fiduciary duty to buyers:

Specify in writing, in the agency agreement with the buyer, how you plan to search for available properties. You might include something that reads "Broker shall search multiple listing services of which broker is a member" in your written buyer agency agreement or in the literature you give those you don't sign up as buyer clients.

Know your state law. In most states, fiduciary duties exist as a matter of law in agency relationships, in addition to any other duties or obligations specified in your buyer agency agreement. Knowing what your fiduciary duties are can save you money and keep clients happy.

Keep your client's business private. The fact that the buyer is motivated, divorcing, transferring, needs to be near a particular school, or is getting moving expenses paid by a relocation company is confidential information. Therefore, it's a breach of fiduciary duty to tell the other side.

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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?

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?

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?

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?

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?

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.
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.

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.
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.

**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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Appendix F

18 VAC 135-20-300. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee did in fact have at least that quantity for sale or rent;
2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;
3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;
4. Failure by a licensee acting as a standard agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;
5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;
6. Failing to include the complete terms and conditions of the real estate transaction, including but not limited to any lease, property management agreement or offer to purchase;
7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;

8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
 - a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;
 - b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;
 - c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8 a of this section without the prior written consent of the principals to the transaction;
9. Knowingly making any material misrepresentation or making a material misrepresentation; and
10. Making a false promise through agents, salespersons, advertising, or other means.

Historical Notes

Derived from VR585-01-1 §6.11, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008.

**Appendix G
CURRENT EDUCATION REQUIREMENTS**

§ [54.1-2105.03](#). Continuing education; re-licensure of brokers and salespersons (*Effective July 1, 2011*)

The Board may, on a year-by-year basis, readjust the required hours and course topics specified in this subdivision for the next succeeding year, applicable to a licensee in the next renewal period for his license, including the addition of topics deemed by the Board to be essential. Such designation or adjustment by the Board shall be made prior to September 1 of any given calendar year. The action of the Board in making such adjustment shall be subject to § [2.2-4012.1](#).

3. The Board shall approve a continuing education curriculum of not less than three hours, and as of July 1, 2012, every applicant for relicensure as an active broker or salesperson shall complete at a minimum one three-hour continuing education course on the changes to residential standard agency effective as of July 1, 2011, to Article 3 (§ [54.1-2130](#) et seq.) prior to renewal or reinstatement of his license. 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 residential representation shall not be required. A licensee who takes one three-hour continuing education class on residential representation shall satisfy the requirements for continuing education and may, but shall not be required to, take any further continuing education on residential standard agency.

Salespersons need the following:

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

Brokers need 24 hours to include:

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

and management of real estate agents and the management of real estate brokerage firms as are approved by the Board.

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

Appendix H

BROKER SUPERVISION

ALL employees should consult their direct supervisor with questions and/or concerns regarding their duties and responsibilities as a licensed REALTOR®.

Under the direction of the Virginia Real Estate Board Regulations regarding Broker Supervision and Training, (Insert Name of Firm) will provide ALL employees with notice of possible training and/or continuing education opportunities.

****Please note the changes to 18 VAC 135-20-160 as they pertain to Broker Supervision and Training. The new regulations now list subject matter that brokers need to provide either training or accessibility to training. There are also changes that were made to this section regarding licenses. Brokers will no longer need to physically hang all licenses in each office. Brokers just need to maintain the license and have it available, if needed.****

The Virginia Real Estate Board Regulations are as follows:

18 VAC 135-20-160. Place of business.

A. Within the meaning and intent of §54.1-2110 of the Code of Virginia, a place of business shall be an office where:

1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in §54.1-2100 of the Code of Virginia; and

2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.

B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.

C. Every principal broker shall have readily available to the public in the main place of business the firm license, the principal broker license and the license of every salesperson and broker active with the firm. The branch office license and a roster of every salesperson or broker assigned to the branch office shall be posted in a conspicuous place in each branch office.

D. Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions of this subsection. The supervising broker does not relinquish overall responsibility for the supervision of the acts of all licensees assigned to the branch office.

Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to, the following:

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1. The availability of the supervising broker to all licensees under the supervision of the broker to review and approve all documents including but not limited to leases, contracts affecting the firm's clients, brokerage agreements and advertising;
2. The availability of training and written procedures and policies which provide, without limitation, clear guidance in the following areas:
 - a. Proper handling of escrow deposits;
 - b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
 - c. Advertising;
 - d. Negotiating and drafting of contracts, leases and brokerage agreements;
 - e. Use of unlicensed individuals;
 - f. Agency relationships;
 - g. Distribution of information on new or changed statutory or regulatory requirements;
 - h. Disclosure of matters relating to the condition of the property.
 - i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.
3. The availability of the supervising broker in a timely manner to supervise the management of the brokerage services;
4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;
5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office;
6. If a supervising broker is located more than 50 miles from the branch office and there are licensees who regularly conduct business assigned to the branch office, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements in this subsection; and
7. The supervising broker must maintain the records required in this subsection for three years. The records must be furnished to the board's agent upon request.

Historical Notes

Derived from VR585-01-1 §5.1, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008.

Appendix I

COMMISSIONS

(Insert Name of Firm) follows the following policies, as they pertain to the payment of commissions to licensed real estate agents, employed by (Insert Name of Firm).

- (Insert Commission Structure / Policy)

In addition to the above-referenced office procedures, ALL employees of (insert name of firm) will adhere to the following Virginia Real Estate Board Licensee Regulations, as they pertain to Improper Brokerage Commissions.

****Please note the change to 18 VAC 135-20-280 as they pertain to improper brokerage commissions. The new regulations now clearly state that no agent is to receive any commission related to a real estate transaction without prior consent of the principal broker.****

They are as follows:

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

Actions resulting in an improper brokerage commission include:

Offering to pay or paying a commission or other valuable consideration to any person for acts or services performed in violation of Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;

2. Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, from any person except the licensee's principal broker at the time of the transaction, for the performance of any of the acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board or related to any real estate transaction, without the consent of that broker. Unless he has notified the broker in writing of the activity or activities to be pursued and obtained the prior written consent of the principal broker, no salesperson or associate broker shall (i) use any information about the property, the transaction or the parties to the transaction, gained as a result of the performance of acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or (ii) act as an employee of a company providing real estate settlement services as defined in the Real Estate Settlement Procedures Act (12 USC §2601 et seq.) or pursuant to a license issued by the Commonwealth of Virginia to provide real estate settlement services to clients or customers of the firm;

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

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

5. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor; and
6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's client for expenditures made on behalf of that client without the written consent of the client.

Historical Notes

Derived from VR585-01-1 §6.9, eff. July 15, 1987; amended, Virginia Register Volume 5, Issue 23, eff. October 1, 1989; Volume 7, Issue 14, eff. May 15, 1991; Volume 8, Issue 13, eff. May 15, 1992; Volume 11, Issue 18, eff. June 28, 1995; Volume 15, Issue 5, eff. January 1, 1999; Volume 19, Issue 12, eff. April 1, 2003; Volume 24, Issue 11, eff. April 1, 2008.

In addition to the above-referenced provisions within the Virginia Real Estate Board Regulations, ALL employees of (insert name of firm) will adhere to the following REALTOR® Code of Ethics, as they pertain to Commissions.

They are as follows:

**Appendix J National Association of REALTORS® Code of Ethics
Articles 3, 6 and 7**

Appendix J

ETHICS (3 HOURS)

SEE VAR PROFESSIONAL STANDARDS PRE-TEST HANDOUT

Code of Ethics and Standards of Practice
of the NATIONAL ASSOCIATION OF REALTORS®
Effective January 1, 2011

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE s®.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer

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funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. *(Amended 1/00)*

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal. In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. *(Amended 1/07)*

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. *(Amended 1/01)*

• Standard of Practice 1-1

REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. *(Amended 1/93)*

• Standard of Practice 1-2

The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR's® firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR's® firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or REALTOR's® firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 1/95, Amended 1/07)*

• Standard of Practice 1-3

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

• Standard of Practice 1-4

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR's® services. *(Amended 1/93)*

• Standard of Practice 1-5

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

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- **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

- **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/93)*

- **Standard of Practice 1-8**

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/99)*

- **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

- 1) reveal confidential information of clients; or
- 2) use confidential information of clients to the disadvantage of clients; or
- 3) use confidential information of clients for the REALTOR's® advantage or the advantage of third parties unless:
 - a) clients consent after full disclosure; or
 - b) REALTORS® are required by court order; or
 - c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
 - d) it is necessary to defend a REALTOR® or the REALTOR's® employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

- **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

- **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

- **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

- 1) the REALTOR's® company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g. buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

- **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

- 1) the REALTOR's® company policies regarding cooperation;

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- 2) the amount of compensation to be paid by the client;
- 3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
- 4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc., and
- 5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

- **Standard of Practice 1-14**

Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

- **Standard of Practice 1-15**

REALTORS[®], in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS[®] shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

Article 2

REALTORS[®] shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS[®] shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

- **Standard of Practice 2-1**

REALTORS[®] shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR[®] the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

- **Standard of Practice 2-2**

(Renumbered as Standard of Practice 1-12 1/98)

- **Standard of Practice 2-3**

(Renumbered as Standard of Practice 1-13 1/98)

- **Standard of Practice 2-4**

REALTORS[®] shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**

Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. *(Adopted 1/93)*

Article 3

REALTORS[®] shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**

REALTORS[®], acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**

To be effective, any change in compensation offered for cooperative services must be communicated to the other REALTOR[®] prior to the time that REALTOR[®] submits an offer to purchase/lease the property. *(Amended 1/10)*

- **Standard of Practice 3-3**

Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

• **Standard of Practice 3-4**

REALTORS[®], acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

• **Standard of Practice 3-5**

It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

• **Standard of Practice 3-6**

REALTORS[®] shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

• **Standard of Practice 3-7**

When seeking information from another REALTOR[®] concerning property under a management or listing agreement, REALTORS[®] shall disclose their REALTOR[®] status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. *(Amended 1/11)*

• **Standard of Practice 3-8**

REALTORS[®] shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

• **Standard of Practice 3-9**

REALTORS[®] shall not provide access to listed property on terms other than those established by the owner or the listing broker (adopted 1/10)

• **Standard of Practice 3-10**

The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords.

Article 4

REALTORS[®] shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS[®] shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

• **Standard of Practice 4-1**

For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS[®] prior to the signing of any contract. *(Adopted 2/86)*

Article 5

REALTORS[®] shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6

REALTORS[®] shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS[®] shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR[®] or REALTOR's[®] firm may receive as a direct result of such recommendation. *(Amended 1/99)*

• **Standard of Practice 6-1**

REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

Article 7

In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR's® client or clients. *(Amended 1/93)*

Article 8

REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9

REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

• **Standard of Practice 9-1**

For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

• **Standard of Practice 9-2**

When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

Duties to the Public

Article 10

REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, sexual orientation, or national origin. REALTORS® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. *(Amended 1/11)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, or sexual orientation. *(Amended 1/11)*

• **Standard of Practice 10-1**

When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

• **Standard of Practice 10-2**

When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06)*

• **Standard of Practice 10-3**

REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, or national origin. *(Adopted 1/94, Renumbered 1/05 and 1/06)*

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• Standard of Practice 10-4

As used in Article 10 “real estate employment practices” relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05 and 1/06)*

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

• Standard of Practice 11-1

When REALTORS® prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such opinions shall include the following unless the party requesting the opinion requires a specific type of report or different data set:

- 1) identification of the subject property
- 2) date prepared
- 3) defined value or price
- 4) limiting conditions, including statements of purpose(s) and intended user(s)
- 5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
- 6) basis for the opinion, including applicable market data
- 7) if the opinion is not an appraisal, a statement to that effect

(Amended 1/10)

• Standard of Practice 11-2

The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

• Standard of Practice 11-3

When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

• Standard of Practice 11-4

The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

• Standard of Practice 12-1

REALTORS® may use the term “free” and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time. *(Amended 1/97)*

• **Standard of Practice 12-2**

REALTORS® may represent their services as “free” or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time. *(Amended 1/97)*

• **Standard of Practice 12-3**

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTORS® offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

• **Standard of Practice 12-4**

REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 12-5**

REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTORS® firm in a reasonable and readily apparent manner. This Standard of Practice acknowledges that disclosing the name of the firm may not be practical in electronic displays of limited information (e.g., “thumbnails,” text messages, “tweets,” etc.). Such displays are exempt from the disclosure requirement established in this Standard of Practice, but only when linked to a display that includes all required disclosures. *(Adopted 11/86, Amended 1/11)*

• **Standard of Practice 12-6**

REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. *(Amended 1/93)*

• **Standard of Practice 12-7**

Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker. *(Amended 1/96)*

• **Standard of Practice 12-8**

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS® websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTORS® website is no longer current or accurate, REALTORS® shall promptly take corrective action. *(Adopted 1/07)*

• **Standard of Practice 12-9**

REALTOR® firm websites shall disclose the firm’s name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm’s name and that REALTORS® or non-member licensee’s state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-10**

REALTORS® obligation to present a true picture in their advertising and representations to the public includes the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result; or
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers. *(Adopted 1/07)*

• **Standard of Practice 12-11**

REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-12**

REALTORS® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture. *(Adopted 1/08)*

• **Standard of Practice 12-13**

The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. *(Adopted 1/08)*

Article 13

REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14

If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

• **Standard of Practice 14-1**

REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

• **Standard of Practice 14-2**

REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

• **Standard of Practice 14-3**

REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

• **Standard of Practice 14-4**

REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

Duties to REALTORS®

Article 15

REALTORS® shall not knowingly or recklessly make false or misleading statements about competitors, their businesses, or their business practices. *(Amended 1/92)*

• **Standard of Practice 15-1**

REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

• **Standard of Practice 15-2**

The obligation to refrain from making false or misleading statements about competitors', competitors' businesses and competitors' business practices includes the duty to not knowingly or recklessly repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/10)*

• **Standard of Practice 15-3**

The obligation to refrain from making false or misleading statements about competitors, competitors businesses, and competitors' business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. (Adopted 1/10)

Article 16

REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. (Amended 1/04)

• **Standard of Practice 16-1**

Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. (Adopted 1/93, Amended 1/95)

• **Standard of Practice 16-2**

Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. (Amended 1/04)

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR®; and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. (Amended 1/04)

• **Standard of Practice 16-3**

Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. (Amended 1/04)

• **Standard of Practice 16-4**

REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing; i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. (Amended 1/94)

• **Standard of Practice 16-5**

REALTORS® shall not solicit buyer/tenant agreements from buyers/ tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. (Adopted 1/94, Amended 1/98)

• **Standard of Practice 16-6**

When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they

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may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

- **Standard of Practice 16-7**

The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. *(Amended 1/04)*

- **Standard of Practice 16-8**

The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

- **Standard of Practice 16-9**

REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

- **Standard of Practice 16-10**

REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

- **Standard of Practice 16-11**

On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

- **Standard of Practice 16-12**

REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

- **Standard of Practice 16-13**

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement 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 or broker or except where such dealings are initiated by the client.

Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

- **Standard of Practice 16-14**

REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

- **Standard of Practice 16-15**

In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

- **Standard of Practice 16-16**

REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

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- **Standard of Practice 16-17**

REALTORS[®], acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

- **Standard of Practice 16-18**

REALTORS[®] shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

Standard of Practice 16-19

Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 16-20**

REALTORS[®], prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS[®] (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/10)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS[®] (principals) associated with different firms, arising out of their relationship as REALTORS[®], the REALTORS[®] shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter.

In the event clients of REALTORS[®] wish to arbitrate contractual disputes arising out of real estate transactions, REALTORS[®] shall arbitrate those disputes in accordance with the regulations of their Board, provided the clients agree to be bound by the decision.

The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS[®] (principals) to cause their firms to arbitrate and be bound by any award. *(Amended 1/01)*

- **Standard of Practice 17-1**

The filing of litigation and refusal to withdraw from it by REALTORS[®] in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

- **Standard of Practice 17-2**

Article 17 does not require REALTORS[®] to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/93)*

- **Standard of Practice 17-3**

REALTORS[®], when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS[®] absent a specific written agreement to the contrary. *(Adopted 1/96)*

- **Standard of Practice 17-4**

Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent.

Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

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- 2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*
- 3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*
- 4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*
- 5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*

• Standard of Practice 17-5

The obligation to arbitrate established in Article 17 includes disputes between REALTORS[®] (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR[®] (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR's[®] association, in instances where the respondent(s) REALTOR's[®] association determines that an arbitrable issue exists. *(Adopted 1/07)*

The Code of Ethics was adopted in 1913. Amended at the Annual Convention in 1924, 1928, 1950, 1951, 1952, 1955, 1956, 1961, 1962, 1974, 1982, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005 2006 2007, 2008 2009 and 2010.