16-Hour Continuing Education
Correspondence Course

28th Anniversary
 Delivering Excellence Since 1985
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LEGAL UPDATES AND EMERGING TRENDS (1 HOUR)

VREB REGULATION UPDATES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 VAC 135-20-300 amended to clarify actions constituting misrepresentation or omission.
18 VAC 135-20-345 added to allow the board to suspend, revoke or fail to renew all licenses held by an individual broker at once.

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

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

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

CONTINUING EDUCATION UPDATES

§ 54.1-2105.03. Continuing education; re-licensure of brokers and salespersons.

C. The Board shall establish procedures for the carryover of continuing education credits completed by licensees from the licensee’s current license period to the licensee’s next renewal period.

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

Salespersons need the following continuing education following their first renewal: 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.

RENEWAL FEES AS OF APRIL 1, 2008

18 VAC 135-20-120. Fees for renewal. A. All fees for renewals are nonrefundable, and the date of receipt by the board or
its agent is the date which will be used to determine whether it is on time.

B. Renewal fees are as follows:

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<th>Role</th>
<th>Fee</th>
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<tr>
<td>Salesperson</td>
<td>$65.00</td>
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<tr>
<td>Salesperson’s or associate broker’s license as a business entity</td>
<td>$90.00</td>
</tr>
<tr>
<td>Broker</td>
<td>$80.00</td>
</tr>
<tr>
<td>Concurrent Broker</td>
<td>$80.00</td>
</tr>
<tr>
<td>Firm</td>
<td>$160.00</td>
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<tr>
<td>Branch Office</td>
<td>$90.00</td>
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**ENTRY FEES AS OF APRIL 1, 2008**

**18 VAC 135-20-80. Application fees.**
A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.
B. Application fees are as follows:

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<th>Fee</th>
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<td>Salesperson by education and examination</td>
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<td>Salesperson by reciprocity</td>
<td>$150.00</td>
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<td>Salesperson’s or associate broker’s license as a business entity</td>
<td>$190.00</td>
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<td>Broker by education and examination</td>
<td>$190.00</td>
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<tr>
<td>Broker by reciprocity</td>
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<td>Broker concurrent license</td>
<td>$140.00</td>
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<td>Firm license</td>
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</table>

**2012 Virginia Real Estate Law Update**

§ 54.1-2105. General powers of Real Estate Board; regulations; educational and experience requirements for licensure.
E. The Board may establish criteria delineating the permitted activities of unlicensed individuals employed by real estate licensees or under the supervision of a real estate broker.

§ 54.1-2105.03. Continuing education; re-licensure of brokers and salespersons.
C. The Board shall establish procedures for the carryover of continuing education credits completed by licensees from the licensee's current license period to the licensee's next renewal period.

§ 54.1-2106.1. Licenses required.
A. No business entity, other than a sole proprietorship, shall act, offer to act, or advertise to act, as a real estate firm without a real estate firm license from the Board. Such firm may be granted a license in a fictitious name. No business entity shall be granted a firm license.
unless (i) every managing member of a limited liability company, officer of a corporation, partner within a partnership, or associate within an association who actively participates in the firm brokerage business holds a license as a real estate broker; and (ii) every employee or independent contractor who acts as a salesperson for such business entity holds a license as a real estate salesperson or broker. An individual holding a broker's license may operate a real estate brokerage firm which he owns as a sole proprietorship without any further licensure by the Board, although such individual shall not operate the brokerage firm in a fictitious name. However, nothing herein shall be construed to prohibit a broker operating a brokerage firm from having a business entity separate from the brokerage firm for such broker's own real estate business, provided that such separate business entity otherwise complies with this section. A non-broker-owned sole proprietorship shall obtain a license from the Board.

§ 54.1-2106.2. (Effective January 1, 2013) Certification of audit on renewal of firm or sole proprietorship license.

When submitting a renewal of any firm or sole proprietorship license, the principal broker or supervising broker of the firm shall certify that he has audited or has caused to be audited the operations, policies, and procedures of the firm to assure compliance with the provisions of this chapter and with regulations adopted by the Board. Such audit shall be conducted at least once during each term of licensure, and the completed audit form developed by the Board, signed by the principal or supervising broker, shall be kept on the premises of the firm or sole proprietorship and shall be produced for inspection or copying upon request by an authorized agent of the Board.

(2012, c. 750.)

§ 54.1-2110.1. Duties of supervising broker.

A. 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 required by this section, but such designation shall not relieve the supervising broker of responsibility for the supervision of the acts of all licensees assigned to the branch office.

B. As used in this section, "reasonable and adequate supervision" by the supervising broker shall include the following:

1. Being available to all licensees under his supervision at reasonable times to review and approve all documents, including leases, contracts, brokerage agreements, and advertising as may affect the firm's clients and business;

2. Ensuring the availability of training opportunities and that the office has written procedures and policies that provide clear guidance in the following areas:

a. Handling of escrow deposits in compliance with law and regulation;

b. Complying with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;

c. Advertising and marketing of the brokerage firm;

d. Negotiating and drafting of contracts, leases, and brokerage agreements;

e. Exercising appropriate oversight and limitations on the use of unlicensed assistants, whether as part of a team arrangement or otherwise;

f. Creating agency or independent contractor relationships and elements thereof;

g. Distributing information on new or amended laws or regulations; and
h. Disclosing required information relating to the physical condition of real property;
3. Ensuring that the brokerage services are carried out competently and in accordance with the
provisions of this chapter; and
4. Maintaining the records required by this subsection for three years. The records shall be
furnished to the Board's agent upon request.
C. Any supervising broker who resides more than 50 miles from a branch office under his
supervision, having licensees who regularly conduct business assigned to such branch office, shall
upgrade in writing quarterly on a form provided by the Board that the supervising broker has
complied with the requirements of this section.
(2012, c. 750.)

2011 Virginia Real Estate Law Update

HB 1907 Real Estate “Agency” (Del. J. Miller) Passed

Real Estate Board; licensure and practice of real estate. Requires the Real Estate Board to approve a
continuing education program of at least three hours on the changes in the law made by this bill as a
prerequisite for renewal or reinstatement of a broker or salesperson license. The bill further limits the liability
of real estate licensees in their real estate dealings. The bill (i) defines the terms for property management
agreements and brokerage agreements, and sets out required provisions in such agreements; (ii) revises the
dual representation provisions for real estate licensees and provides standard disclosure forms to be used in
connection therewith; (iii) revises the designated dual representation provisions for real estate licensees and
provides standard disclosure forms to be used in connection therewith; (iv) allows all required documents
and records to be maintained by real estate licensees to be kept in electronic form; and (v) revises the
required disclosures under the Virginia Residential Property Disclosure Act and requires certain disclosures
to be made on the Virginia Real Estate Board’s Web site. The bill contains technical amendments and
contains a delayed effective date for certain provisions contained in the bill.

HB 1908 Recordation and grantor taxes; changes basis on which taxes are calculated on property
conveyance. Jackson H. Miller

Recordation and grantor taxes. Changes the basis on which recordation and grantor taxes are calculated
on the conveyance of real estate to the consideration for the property conveyed, effective July 1, 2013.
Under current law, the basis is the greater of such consideration or the actual value of the property
conveyed. For a three-year period, the bill also expands the reduced recordation tax accorded to deeds of
trust securing a refinanced mortgage with the same lender, to all such refinancings, regardless of lender.
Finally, the bill increases the penalty for fraudulent understatement of the consideration for the property
conveyed, from an amount equal to the tax due on the understatement to twice that amount.

SB 931 Transfer fee covenants; shall not run with title to real property & not enforceable against owner. Ryan
T. McDougle

Transfer fee covenants. Provides that a transfer fee covenant recorded in the Commonwealth on or after
July 1, 2011, shall not run with the title to real property and is not binding on, or enforceable against, any
subsequent owner, purchaser, or mortgagee of any interest in real property. The bill further provides that any
lien purporting to secure the payment of a transfer fee under a transfer fee covenant recorded in the
Commonwealth on or after July 1, 2011, is void and unenforceable.

HB 1610 Defective Chinese drywall; disclosure of information, real estate tax exemption. G. Glenn Oder

Defective Chinese drywall; disclosure, assessed value, real estate tax exemption. Requires licensees
engaged by sellers and buyers, and landlords who have actual knowledge of defective Chinese drywall in a
dwelling unit, to disclose that information to the prospective tenant or buyer. If a tenant is not provided
disclosure within 60 days of discovery of defective drywall he may terminate the lease. The bill also provides,
upon confirmation by a building official that defective Chinese drywall is present, that the commissioner or other assessing official may reassess the property accordingly. Local governments may also designate the property as a rehabilitation district for purposes of granting the owner a partial real estate tax exemption. This bill is a recommendation of the Housing Commission. This bill is identical to SB 942.

SB 1350 Real property tax assessments; appeals. Thomas K. Norment, Jr.

**Real property tax assessments; appeals.** Specifies that the burden of proof is on a taxpayer, when he appeals the assessment of real property to a board of equalization or to a circuit court, to show by a preponderance of the evidence that the property in question is valued at more than fair-market value or the assessment is not uniform in its application. The bill includes requirements on assessors to provide certain notice and to furnish certain information in appeals of assessments. The bill is applicable to tax years beginning on or after January 1, 2012.

HB 1931 Zoning; cluster development subject to land use ordinance of locality. Daniel W. Marshall, III

**Zoning; clustering.** Provides that a cluster development is otherwise subject to applicable land use ordinances of the locality; however, the locality shall not impose more stringent land use requirements for such cluster development. Also, the locality shall not prohibit extension of water or sewer from an adjacent property to a cluster development provided the cluster development is located within an area designated for water and sewer service by a county, city, or town.

HB 1674 Common interest communities; definitions, fees for disclosure packets. Brenda L. Pogge | **Common interest communities; definitions; fees for disclosure packets.** Delays until July 2012 the time by which an employee of a common interest community manager must hold a certificate from the Common Interest Community Board. The bill, in cases where a receiver has been appointed, allows the receiver to recover the unpaid portion of any attorney fees, costs, and expenses from the Common Interest Community Management Recovery Fund, if there are sufficient funds in that fund. The bill reduces from 90 to 45 days the time when the selling owner will be responsible for the fees for preparation of the disclosure packet when no settlement occurs on the unit or lot. The bill contains technical amendments.

**2010 Virginia Real Estate Law Update**

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

Bill Text: [http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP018+pdf](http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP018+pdf)

**Landlord and tenant laws; landlord and tenant obligations.** Clarifies that the judgment rate of interest includes any and all amounts covered by the judgment. The bill, among other things, also:

- requires the executive secretary of the supreme court to permit electronic interface with case management systems and for the general district courts to allow private vendors to electronically file civil actions on forms developed by the executive secretary;
- provides that the homestead exemption does not apply to a money judgment for nonpayment of rent for which a writ of garnishment is issued, and which does not request a writ of fieri facias or levy on the real or personal property of the debtor;
- revises the ratio utility billing system for landlords and tenants and states that the use of a ratio utility billing system is not within the jurisdiction of the State Corporation Commission;
- allows certain people to prepare, execute, file, and have served on other parties, in any proceeding in a general district court, a warrant in debt, warrant in detinue, distress warrant, summons for unlawful detainer, suggestion for summons in garnishment, garnishment summons, writ of
possession, writ of fieri facias, interpleader, and civil appeal notice without the intervention of any attorney;

- adds a definition of "commencement date of the rental agreement" and its effective date to the Virginia Residential Landlord and Tenant Act;
- revises the definition of "security deposit" under the Virginia Residential Landlord and Tenant Act;
- revises the damage and renter’s insurance coverage provisions of the Virginia Residential Landlord and Tenant Act;
- allows tenant records to be disclosed to a local commissioner of the revenue, under certain circumstances, and to the commanding officer, military housing officer, or military attorney of the tenant;
- allows the landlord to withhold a portion of the security deposit until final settlement of utility bills; and
- changes the times that trigger the payment of interest by the landlord on a security deposit. The bill also contains technical amendments.

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

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

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

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

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

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

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

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

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

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

**Bill Text:** [http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+SB64ER2+pdf](http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+SB64ER2+pdf)

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

**Bill Text:** [http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0373+pdf](http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0373+pdf)

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

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

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

**Bill Text:** [http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB46ER2](http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB46ER2)

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

**Bill Text:** [http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0498+pdf](http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0498+pdf)

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

**Bill Text:** [http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB233ER2+pdf](http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB233ER2+pdf)

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

**Real property tax assessment.** Provides:

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

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

Common interest communities; exemptions from licensure; powers and duties of Common Interest Community Board.
Provides that a resident who provides bookkeeping, billing, or record keeping services to his association for compensation is not required to be licensed as a common interest community manager provided the fidelity bond maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person. The bill requires that of the three citizen members of the Common Interest Community Board, one such member must serve or have served on the governing board of an association that is not professionally managed at the time of appointment. The bill contains technical amendments.

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

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

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

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

Virginia Residential Property Disclosure Act; wastewater systems.
Adds the following seller’s representation to a prospective purchaser of residential property:

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

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

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

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

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

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

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

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

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

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

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

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

Appeal of board of zoning appeals decisions.

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

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

Urban development areas

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

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

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

Stormwater management facilities; liability

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

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

The immunity granted by this provision does not extend to actions or omissions by the landowner constituting intentional or willful misconduct or gross negligence.
Bill Text: http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB1100ER2+pdf

Property Owners’ Association Act; authority of board of directors; parking. Provided that to the extent the declaration gives the board of directors the authority to adopt rules and regulations relating to the parking of motor vehicles by lot owners, such rules may establish a parking space designation plan which makes parking spaces available to less than all of the lot owners. The bill provides that if such a plan is adopted, the common expenses attributable to such parking spaces may be specially assessed against the lot owners involved.

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

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

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

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

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

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

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

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

Bill Text: http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0154+pdf
Residential Property Disclosure Law

§ 55-517. Applicability.
The provisions of this chapter apply only with respect to transfers by sale, exchange, installment land sales contract, or lease with option to buy residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesperson. For the purposes of this chapter, a “real estate contract” means a contract for the sale, exchange, or lease with the option to buy residential real estate subject to this chapter. (1992, c. 717; 2007, c. 265.)

§ 55-518. Exemptions.

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

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale or by a deed in lieu of a foreclosure, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance. Also, transfers by an assignment for the benefit of creditors pursuant to Chapter 9 (§ 55-156 et seq.) and transfers pursuant to escheats pursuant to Chapter 9 (§ 55-156 et seq.).

2. Transfers to a beneficiary of a deed of trust pursuant to a foreclosure sale or by a deed in lieu of foreclosure, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.

3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

4. Transfers from one or more co-owners solely to one or more other co-owners.

5. Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.

6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.

7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.

8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.
9. Transfers involving the first sale of a dwelling; provided, that this exemption shall not apply to the disclosures required by § 55-519.1.

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

§ 55-519. Required disclosures.

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

1. The owner makes no representations with respect to the matters set forth and described at a website maintained by the Real Estate Board and that the purchaser is advised to consult this website for important information about the real property; and

2. The owner represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions of the property of which the owner has been notified in writing by the locality, except as disclosed on the disclosure statement, nor any pending violation of the local zoning ordinance that the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as disclosed on the disclosure statement.

B. At the website referenced in subdivision A 1, the Real Estate Board shall include language providing notice to the purchaser that by delivering the residential property disclosure statement:

1. The owner makes no representations or warranties as to the condition of the real property or any improvements thereon, and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary including obtaining a certified home inspection, as defined in § 54.1-500, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;

2. The owner makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;
4. The owner makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) adopted by the locality where the property is located pursuant to § 10.1-2109 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on a parcel of residential real property;

5. The owner makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 and that purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract;

6. The owner makes no representations with respect to whether the property is within a dam break inundation zone. Such disclosure statement shall advise purchasers to exercise whatever due diligence they deem necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones;

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

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

C. Any buyer who is a party to a real estate purchase contract subject to this section may provide in such contract that the disclosures provided on the Real Estate Board website be printed off and provided to such buyer.


§ 55-519.1. Required disclosures pertaining to a military air installation.
The owner of residential real property located in any locality in which a military air installation is located shall disclose to the purchaser whether the subject parcel is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map by the locality in which the property is located on a form provided by the Real Estate Board. Such disclosure shall state the specific noise zone or accident potential zone, or both, in which the property is located according to the official zoning map. (2005, c. 510; 2007, c. 265.)

§ 55-519.2. Required disclosures; defective drywall.
Notwithstanding the exemptions in § 55-518, if the owner of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit, the owner shall provide to a prospective purchaser a written disclosure that the property has defective drywall. Such disclosure shall be provided to the purchaser on a form provided by the Virginia Real Estate Board and otherwise in accordance with this chapter. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.
§ 55-520. Time for disclosure; termination of contract.

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

B. If the disclosure statement required by this chapter is delivered to the purchaser after the acceptance of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure statement in person; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;

3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

If the purchaser terminates a real estate purchase contract in compliance with this chapter, the termination shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser.

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

§ 55-521. Owner liability.

A. Except with respect to the disclosures required by § 55-519.1, the owner shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if, (i) the error, inaccuracy or omission was not within the actual knowledge of the owner or was based on information provided by public agencies or by other persons providing information that is required to be disclosed pursuant to this chapter, or the owner reasonably believed the information to be correct, and (ii) the owner was not grossly negligent in obtaining the information from a third party and transmitting it. The owner shall not be liable for any error, inaccuracy, or omission of any information required to be disclosed by § 55-519.1 if the error, inaccuracy, or omission was the result of information provided by an officer or employee of the locality in which the property is located.
B. The delivery by a public agency or other person, as described in subsection C below, of any information required to be disclosed by this chapter to a prospective purchaser shall be deemed to comply with the requirements of this chapter and shall relieve the owner of any further duty under this chapter with respect to that item of information.

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

§ 55-522. Change in circumstances.
If information disclosed in accordance with this chapter is subsequently rendered or discovered to be inaccurate as a result of any act, occurrence, information received, circumstance or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting there from does not constitute a violation of this chapter. However, at or before settlement, the owner shall be required to disclose any material change in the disclosures made relative to the property or certify to the purchaser at settlement that the disclosures made relative to the property are substantially the same as it was when the disclosure form was provided. If, at the time the disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the owner, the owner may state that the information is unknown or may use an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the actual knowledge of the owner, and is not used for the purpose of circumventing or evading this chapter. (1992, c. 717; 2007, c. 265.)

§ 55-523. Duties of real estate licensees.
A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner’s rights and obligations under this chapter. A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser’s rights and obligations under this chapter. Provided a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction under this chapter, and shall not be liable to any party to a residential real estate transaction for a violation of this chapter or for any failure to disclose any information regarding any real property subject to this chapter. (1992, c. 717.)

§ 55-524. Actions under this chapter.
A. Notwithstanding any other provision of this chapter or any other statute or regulation, no cause of action shall arise against an owner or a real estate licensee for failure to disclose that an occupant of the subject real property, whether or not such real property is subject to this chapter, was afflicted with human immunodeficiency virus (HIV) or that the real property was the site of:

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

2. A homicide, felony, or suicide.

B. The purchaser’s remedies hereunder for failure of an owner to comply with the provisions of this chapter are as follows:
1. If the owner fails to provide the disclosure statement required by this chapter, the contract may be terminated subject to the provisions of subsection B of § 55-520.

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

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

§ 55-525. Real Estate Board to develop form; when effective.
An owner shall be required to make disclosures required by this chapter for real property subject to a real estate purchase contract which is fully executed by all parties thereto on and after January 1, 2008. On or before January 1, 2008, the Real Estate Board shall develop the form for the residential property disclosure statement in accordance with § 54.1-2105.1. The Board may at any time amend the form as the Board deems necessary and appropriate. (1992, c. 717; 1993, c. 848; 2007, c. 265.)

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

National Do Not Call Registry Update
October 8, 2003

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

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

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

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

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

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

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

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

To Call or Not to Call Webcast

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

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The CAN-SPAM Act: Requirements for Commercial E-mailers

The CAN-SPAM Act of 2003 (Controlling the Assault of Non-Solicited Pornography and Marketing Act) establishes requirements for those who send commercial email, spells out penalties for spammers and companies whose products are advertised in spam if they violate the law, and gives consumers the right to ask emailers to stop spamming them.

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

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

What the Law Requires

Here's a rundown of the law’s main provisions:

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

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

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

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

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

**Penalties**

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

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

- "harvest" email addresses from Web sites or Web services that have published a notice prohibiting the transfer of email addresses for the purpose of sending email
- generate email addresses using a "dictionary attack" — combining names, letters, or numbers into multiple
permutations use scripts or other automated ways to register for multiple email or user accounts to send commercial email relay emails through a computer or network without permission – for example, by taking advantage of open relays or open proxies without authorization.

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

use another computer without authorization and send commercial email from or through it use a computer to relay or retransmit multiple commercial email messages to deceive or mislead recipients or an Internet access service about the origin of the message falsify header information in multiple email messages and initiate the transmission of such messages register for multiple email accounts or domain names using information that falsifies the identity of the actual registrant falsely represent themselves as owners of multiple Internet Protocol addresses that are used to send commercial email messages.

Additional Rules

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

See the FTC Web site at www.ftc.gov/spam for updates on implementation of the CAN-SPAM Act. The FTC maintains a consumer complaint database of violations of the laws that the FTC enforces. Consumers can submit complaints online at http://www.ftc.gov/ and forward unwanted commercial email to the FTC at spam@uce.gov.

Your Opportunity to Comment

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

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them. To file a complaint or to get free information on consumer issues, visit http://www.ftc.gov/ or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

April 2004
FAIR HOUSING (3 HOURS)

Fair Housing Laws prohibit discrimination on the basis of the protected classes in the sale or rental of dwellings. Agents and brokers in the commonwealth are required to abide by both federal and state statutes with respect to fair housing.

FAIR HOUSING REGULATIONS
Effective September 22, 2007

STATUTES
Title 36, Chapter 5.1

9960 Mayland Drive, Suite 400
Richmond, Virginia 23233
804-367-8500
www.dpor.virginia.gov
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The definitions provided in the Virginia Fair Housing Law, as they may be supplemented herein, shall apply throughout this chapter.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise:

"Authorized representative" means (i) an attorney licensed to practice law in the Commonwealth, or (ii) a law student appearing in accordance with the third-year student practice rule, or (iii) a non-lawyer under the supervision of an attorney and acting pursuant to Part 6, §1, Rule 1 (UPR 1-101(A)(1)) of the Rules of the Supreme Court of Virginia, or (iv) a person who, without compensation, advises a complainant, respondent, or aggrieved person in connection with a complaint, a conciliation conference or proceeding before the board. When a complainant, respondent, or aggrieved person authorizes a person to represent him under subdivision (iv) of this definition, such authority shall be made to the board, in writing or orally in an appearance before the board, and shall be accepted by the representative by sending a written acknowledgement to the board or by the representative's appearance before the board.

"Board" means the Real Estate Board or the Fair Housing Board.

"Broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fair housing administrator" means the individual employed and designated as such by the Director of the Department of Professional and Occupational Regulation.

"Fair housing law" means the Virginia Fair Housing Law, Chapter 5.1 (§36-96.1 et seq.) of Title 36 of the Code of Virginia, effective July 1, 1991.

"Person in the business of selling or renting dwellings" means any person who (i) within the preceding 12 months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; (ii) within the preceding 12 months, has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or (iii) is the owner of any dwelling designed or intended for occupancy by or occupied by, five or more families.
"Receipt of notice" means the day that personal service is completed by handing or delivering a copy of
the document to an appropriate person or the date that a document is delivered by certified mail, or three
days after the date of the proof of mailing of first class mail.

Historical Notes

Derived from VR585-01-05 §1.1, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff.

18VAC135-50-20. Purpose.

This chapter governs the exercise of the administrative and enforcement powers granted to and the
performance of duties imposed upon the Real Estate Board and the Fair Housing Board by the Virginia
Fair Housing Law. In accordance with § 54.1-2344 of the Code of Virginia, the Real Estate Board is
responsible for the administration and enforcement of the Fair Housing Law with respect to real estate
licensees or their agents or employees who have allegedly violated or violated the Fair Housing Law.
The Fair Housing Board is responsible for the administration and enforcement of the Fair Housing Law
with respect to all others who have allegedly violated or violated the Fair Housing Law.

This chapter provides the board's interpretation of the coverage of the fair housing law regarding
discrimination related to the sale or rental of dwellings, the provision of services in connection
therewith, and the availability of residential real estate-related transactions.

Historical Notes

Derived from VR585-01-05 §1.2, eff. December 1, 1991.


This chapter shall be construed to further the policies and purposes of the Virginia Fair Housing Law.
The board does not intend that a failure by the board to comply with this chapter should constitute a
jurisdictional or other bar to administrative or legal action unless otherwise required under this chapter
or the law. The board further intends that this chapter shall impose obligations, rights and remedies
which are substantially equivalent to those provided by the federal fair housing law and regulations.

Historical Notes

Derived from VR585-01-05 §1.3, eff. December 1, 1991; amended, Virginia Register Volume 19, Issue 24, eff.

18VAC135-50-40. [Repealed]

Historical Notes

Derived from VR585-01-05 §1.4, eff. December 1, 1991; repealed, Virginia Register Volume 19, Issue 24, eff.

It is the policy of Virginia to provide, within constitutional limitations, for fair housing throughout the Commonwealth and to impose obligations, rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices because of race, color, religion, sex, handicap, elderliness, familial status, or national origin in the sale, rental, advertising of dwellings, inspection of dwellings or entry into a neighborhood, in the provision of brokerage services, financing or the availability of residential real estate-related transactions.

Historical Notes


18VAC135-50-60. Notice.

Whenever any person is required by these regulations to give notice to any other person of any fact, matter, or event, then such notice shall be written, and delivery of such notice shall be sufficient if the person giving notice demonstrates that he has used any of the following methods: (i) certified mail, (ii) personal service which means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served; and (iii) first class mailing with proof of mailing.

This section shall in no way be construed to invalidate delivery of notice in any case in which it can be shown that the person intended to receive the notice actually received it.

Historical Notes

Derived from VR585-01-05 §1.6, eff. December 1, 1991.

PART II.
Regulated Conduct
Article 1
Prohibited Practices

18VAC135-50-70. Real estate practices prohibited.

This chapter provides the board's interpretation of conduct that is unlawful housing discrimination under §36-96.3 of the Code of Virginia. The list of unlawful discriminatory housing practices contained in §36-96.3 of the Virginia Fair Housing Law is to be construed as broadly as possible. In general, the prohibited actions are set forth under sections of these regulations which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under other sections in these regulations.

Historical Notes

18VAC135-50-80. Unlawful refusal to sell or rent or to negotiate for the sale or rental.

Prohibited actions under this section include, but are not limited to:

1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
5. Evicting tenants because of their race, color, religion, sex, handicap, familial status, elderliness, or national origin or because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of a tenant's guest.

Historical Notes


18VAC135-50-90. Discrimination in terms, conditions and privileges and in services and facilities.

Examples of prohibited actions under this section include, but are not limited to:

1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Limiting the use of privileges, services or facilities associated with a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness or national origin of an owner, tenant or a person associated with him.
5. Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

Historical Notes

18VAC135-50-100. Other prohibited sale and rental conduct.

A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development.

Prohibited actions under subsection A of this section which are generally referred to as unlawful steering practices, include, but are not limited to:

1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin or because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons in a community, neighborhood or development.
2. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.
3. Communicating to any prospective purchaser that he would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Assigning any person to a particular section of a community, neighborhood or development or to a particular floor or section of a building because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. It shall be unlawful because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited activities relating to dwellings sales and rental practices under this subsection include, but are not limited to:

1. Discharging or taking other adverse action against an employee, broker, or agent because he refused to participate in a discriminatory housing practice.
2. Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, handicap, familial status, elderliness, or national origin or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Refusing to provide municipal services or property or hazard insurance for dwelling or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes
18VAC135-50-110. Discriminatory advertisements, statements and notices.

A. It shall be unlawful 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 which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, elderliness, or national origin, or an intention to make any such preference, limitation, or discrimination.

B. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.

C. Discriminatory notices, statements, and advertisements include, but are not limited to:
   1. Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, elderliness or national origin.
   2. Expressing to agents, brokers, employees, prospective sellers, or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, elderliness, or national origin of such person.
   3. Selecting media or locations for advertising the sale or rental of dwelling which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
   4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

D. Publishers' notice. All publishers shall publish at the beginning of the real estate advertising section a notice such as that appearing in Table III, Appendix I to 24 CFR Part 109, Ch. 1 (4-1-00 edition). The notice shall include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

E. Fair housing poster requirements.
   1. Persons subject to §36-96.3 of the Virginia Fair Housing Law shall post and maintain a HUD approved fair housing poster as follows:
   2. With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.
      a. With respect to all other dwellings covered by the Virginia Fair Housing Law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.
b. With respect to those dwellings to which subdivision 1 b of this subsection applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.

3. The poster requirement does not apply to vacant land, or any single-family dwelling, unless such dwelling (i) is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 b (ii) of this subsection, or (ii) is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 a of this subsection.

4. All persons subject to §36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

5. All persons subject to 18VAC135-50-140, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.

6. Location of posters. All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.

7. Availability of posters. All persons subject to this part may obtain fair housing posters from the Virginia Department of Professional and Occupational Regulation. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department of Professional and Occupational Regulation. Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the administrator pursuant to Part III of this chapter.

Historical Notes

18VAC135-50-120. Discriminatory representations on the availability of dwellings.

A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin, to provide inaccurate or untrue information about the availability of dwelling for sale or rental.

B. Prohibited actions under this section include, but are not limited to:

1. Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

2. Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin preclude the sale or rental of a dwelling to a person.

3. Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

4. Limiting information by word or conduct regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

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5. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes
Derived from VR585-01-05 §2.6, eff. December 1, 1991.


A. It shall be unlawful to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, elderliness, or national origin or with a handicap.

B. Prohibited actions under this section include, but are not limited to:

1. Engaging in conduct (including uninvited solicitations for listing) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.

2. Encouraging any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, elderliness or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

Historical Notes
Derived from VR585-01-05 §2.7, eff. December 1, 1991.

18VAC135-50-140. Discrimination in the provision of brokerage services.

Prohibited actions under this section include, but are not limited to:

1. Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, elderliness, or national origin.

2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

3. Imposing different standards or criteria for membership in a real estate sales, rental, or exchange organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

4. Establishing geographic boundaries or office location or residence requirements for access to or membership 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, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes
18VAC135-50-150. [Repealed]

Historical Notes

Derived from VR585-01-05 §2.9, eff. December 1, 1991; repealed, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.

18VAC135-50-160. Discrimination in the making of loans and in the provision of other financial assistance.

A. It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. Prohibited practices under this section include, but are not limited to, failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.

Historical Notes

Derived from VR585-01-05 §2.10, eff. December 1, 1991.

18VAC135-50-170. Discrimination in the purchasing of loans.

A. It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.

B. Unlawful conduct under this section includes, but is not limited to:

1. Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons in such neighborhoods or communities.

2. Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

3. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

C. This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status, elderliness, or national origin.

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18VAC135-50-180. Discrimination in the terms and conditions for making available loans or other financial assistance.

A. It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. Unlawful conduct under this section includes, but is not limited to:
   1. Using different policies, practices or procedures in evaluating or in determining credit worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
   2. Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes
Derived from VR585-01-05 §2.12, eff. December 1, 1991.

18VAC135-50-190. Unlawful practices in the selling, brokering, or appraising of residential real property.

A. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. For the purposes of this section the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

C. Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, elderliness, or national origin.

Historical Notes
18VAC135-50-200. General prohibitions against discrimination because of handicap.

A. Definitions. As used in this section unless a different meaning is plainly required by the context:
"Accessible," when used with respect to the public and common use areas of a building containing
covered multi-family dwellings, means that the public or common use areas of the building can be
approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to
and usable by" is synonymous with "accessible." A public or common use area that complies with the
appropriate requirements of ANSI A117.1-1986 or with any other standards adopted as part of
regulations promulgated by HUD providing accessibility and usability for physically handicapped
people is accessible within the meaning of this section.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in
a building or within a site that can be negotiated by a person with a severe disability using a wheelchair
and that is also safe for and usable by people with other disabilities. Interior accessible routes may
include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking
access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate
requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations
promulgated by HUD, is an "accessible route."

"ANSI A117.1" means the American National Standard for buildings and facilities providing
accessibility and usability for physically handicapped people. This incorporation by reference was
approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.
Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York,
New York 10018.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling
units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected
by an accessible route to public transportation stops, to accessible parking and passenger loading zones,
or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a
comparable standard complies with the requirements of this paragraph.

"Common use areas" shall include, but not be limited to, rooms, spaces, or elements inside or outside of
a building which are not part of the dwelling unit and which are made available for the use of residents
of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse
rooms, mailrooms, recreational areas and passageways among and between buildings.

"Controlled substance" means any drug or other substance as defined in Virginia or federal law.

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of
dwelling units include: a single family home; an apartment unit within an apartment building; and in
other types of dwellings in which sleeping accommodations are provided but toileting or cooking
facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which
people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters
intended for occupancy as a residence for homeless persons.
"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

The following terms, as used in the definition of "handicap" contained in §36-96.1:1 of the Code of Virginia, shall mean:

"Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" means:

1. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
3. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Physical or mental impairment" includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including...
individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

B. General prohibitions against discrimination because of handicap. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this subdivision does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

1. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy; Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;
2. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;
3. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
4. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

C. Reasonable modifications of existing premises.

1. It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.
2. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

D. Reasonable accommodations. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.
E. Design and construction requirements. Covered multi-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.

Historical Notes


Nothing in the Virginia Fair Housing Law regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this section, "housing for older persons" includes:

1. Housing provided under any state or federal program determined by the Secretary of Housing and Urban Development to be specifically designed and operated to assist elderly persons;

2. 62 or over housing. The provisions regarding familial status in these regulations shall not apply to housing intended for, and solely occupied by persons 62 years of age or older. Housing satisfies the requirements of this exemption even though:
   a. There are persons residing in such housing on September 13, 1988, who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
   b. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or older;
   c. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

3. 55-or-over housing. The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the following requirements:
   a. At least 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this section until 25% of the units in the facility are occupied.

(1) For purposes of this section, "occupied unit" means:
   a. A dwelling unit that is actually occupied by one or more persons on the date that the exemption for 55-or-older housing is claimed; or
   b. A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(2) For purposes of this section, occupied by at least one person 55 years of age or older means that on the date the exemption for 55-or-older housing is claimed:
   c. At least one occupant of the dwelling is 55 years of age or older; or
   d. If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date of which the unit was vacated was 55 years of age or older.

(3) Newly constructed housing for first occupancy after March 12, 1989, need not comply with the requirements of this section until at least 25% of the units are occupied. For purposes of this section, newly constructed housing includes
facilities or communities that have been wholly unoccupied for at least 90 days prior to re-occupancy due to renovation or rehabilitation.

b. Housing satisfies the requirements of the 55 or older exemption even though:
   (1) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age provided the employees perform substantial duties directly related to the management or maintenance of the housing facility or community.
   (2) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents and who are under the age of 55.
   (3) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80% of the units are occupied by at least one person who is 55 years of age or older.

c. Where application of the 80% rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

d. Each housing facility or community may determine the age restriction for units that are not occupied by at least one person 55 years of age or older so long as the housing facility or community complies with the provisions of 18VAC135-50-220.

Historical Notes


18VAC135-50-212. Intent to operate as 55 or over housing.

A. In order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors are considered relevant in determining whether the housing facility or community has complied with this requirement:
   1. The manner in which the housing facility or community is described to prospective residents;
   2. Any advertising designed to attract prospective residents;
   3. Lease provisions;
   4. Written rules, regulations, covenants, deeds or other restrictions;
   5. The maintenance and consistent application of relevant procedures;
   6. Actual practices of the housing facility or community; and
   7. Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

B. Phrases such as "adult living," "adult community," "40-and-over community," or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

C. If there is language in deeds or other community or facility documents that is inconsistent with the intent to provide housing for persons who are 55 years of age or older, the board shall consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section.
D. A housing facility or community may allow occupancy by families with children as long as it meets the requirements of 18VAC135-50-210 3 a and subsection A of this section.

Historical Notes


A. In order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a housing complaint filed under the Virginia Fair Housing Law, verification of compliance with these regulations through reliable surveys and affidavits.

B. A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

C. The procedures described in subsection B of this section must provide for regular updates through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years.

D. The following documents are considered reliable documentation of the age of the occupants of the housing facility or community.
   1. Driver's license;
   2. Birth certificate;
   3. Passports;
   4. Immigration cards;
   5. Military identification;
   6. Any other state, local, national or international official documents containing a birth date of comparable reliability; or
   7. A certification in a lease, application, affidavit, or other document signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older.

E. If the occupants of a unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit occupied by at least one person 55 years of age or older. Such evidence may include:
   1. Government records or documents, such as a census; or
   2. Prior forms or applications; or
   3. A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under penalty of perjury.

F. Surveys and verification procedures that comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

G. Occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

Historical Notes
18VAC135-50-217. Good faith defense against civil money damages.

A. A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified as 55-or-older housing.

B. A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies as 55-or-older housing.

C. For purposes of this section, an authorized representative, of a housing facility or community means the individual, committee, management company, owner, or other entity having responsibility for adherence to the requirements established by these regulations.

D. A person shall not be entitled to the good faith belief defense if the person has actual knowledge that the housing facility or community does not, or will not qualify as 55-or-older housing. Such a person will be ineligible for the good faith belief defense regardless of whether the person received or viewed the written assurance described in subsection B of this section.

Historical Notes


18VAC135-50-220. Interference, coercion or intimidation.

A. This section provides the board's interpretation of the conduct that is unlawful under §36-96.5 of the Virginia Fair Housing Law.

B. It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Virginia Fair Housing Law and these regulations.

C. Conduct made unlawful under this section includes, but is not limited to, the following:

1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

2. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of such persons, or of visitors or associates of such persons.

3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of that person or of any person associated with that person.
4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.
5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the fair housing law.

Historical Notes


Article 2
Advertising

18VAC135-50-230 to 18VAC135-50-250. [Repealed]

Historical Notes


Nothing in this section shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

Historical Notes

Derived from VR585-01-05 §2.20, eff. December 1, 1991.

18VAC135-50-270. Use of words, phrases, symbols and visual aids.
The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the fair housing law, the board will consider the use of these and comparable words, phrases, symbols, and forms to determine a possible violation of the law and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the law is likely to result.

1. Words descriptive of dwelling, landlord and tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.
2. Words indicative of race, color, religion, sex, handicap, familial status, elderliness or national origin.
   a. Race: Negro, Black, Caucasian, Oriental, American Indian.
   b. Color: White, Black, Colored.
   e. Sex: The exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or intending to imply that
the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

f. Handicap: crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this section restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

g. Familial status: adults, children, singles, mature persons. Nothing in this section restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in 18VAC135-50-210.

h. Elderliness: elderly, senior citizens, young, old, active, available to those between 25 and 55.

3. Catch words. Words and phrases used in a discriminatory context should be avoided, e.g., "restricted," "exclusive," "private," "integrated," "traditional," "board approval," "membership approval."

4. Symbols or logotypes. Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.

5. Colloquialisms. Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.

6. Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference.

7. Area (location) description. Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

Historical Notes


18VAC135-50-280. Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the fair housing law. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

1. Selective geographic advertisements. Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly
advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

2. Selective use of equal opportunity slogan or logo. When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

3. Selective use of human models when conducting an advertising campaign. Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs, or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

Historical Notes

Derived from VR585-01-05 §2.22, eff. December 1, 1991.

18VAC135-50-290. Fair housing policy and practices.

In the investigation of complaints, the board will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law.

1. Use of equal housing opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, elderliness, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. See Appendix I to 24 CFR Part 109, Ch. 1 (4/1/00 edition) for suggested use of the logotype, statement, or slogan and size of logotype and copies of the suggested equal housing opportunity logotype, statement and slogan.

2. Use of human models. Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, elderliness, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, elderliness, or national origin, and is not for the exclusive use of one such group. Human models include any depiction of a human being, paid or unpaid, resident or nonresident.

Historical Notes

18VAC135-50-300. Submission of information to file a complaint.

A. The administrator or his designee will receive complaint information concerning alleged discriminatory housing practices from any person. Where the information constitutes a complaint within the meaning of the fair housing law and these regulations and is furnished by an aggrieved person, a complaint will be considered filed in accordance with 18VAC135-50-350. Where additional information is required for the purpose of perfecting a complaint under the law, the administrator or his designee will advise what additional information is needed and will provide appropriate assistance in the filing of the complaint.

B. Complaint information may also be made available to any appropriate federal, state or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant.

C. The administrator or his designee may counsel with an aggrieved party about the facts and circumstances which constitute the alleged discriminatory housing practices. If the facts and circumstances do not constitute discriminatory housing practices, the administrator or his designee shall so advise the aggrieved party. If the facts and circumstances constitute alleged discriminatory housing practices, the administrator or his designee shall assist the aggrieved party in perfecting a complaint.

Historical Notes


18VAC135-50-310. Who may file a complaint.

Any aggrieved person or the administrator on behalf of the board may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.

Historical Notes

Derived from VR585-01-05 §3.2, eff. December 1, 1991.
18VAC135-50-320. Persons against whom complaints may be filed.

A. A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

B. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of dwellings, or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

Historical Notes

Derived from VR585-01-05 §3.3, eff. December 1, 1991.


Aggrieved persons may provide information to be contained in a complaint by telephone to fair housing office staff. Staff in the fair housing office will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and affirmed in accordance with 18VAC135-50-340 A.

Historical Notes


18VAC135-50-340. Form and content of a complaint.

A. Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or if the complaint is filed by the administrator on behalf of the board, it must be signed and affirmed by the administrator. The signature and affirmation may be made at any time during the investigation. The affirmation shall state "I declare under penalty of perjury that the foregoing is true and correct."

B. The administrator may require complaints to be made on prescribed forms. The complaint forms will be available through the Department of Professional and Occupational Regulation. Notwithstanding any requirement for use of a prescribed form, the Department of Professional and Occupational Regulation will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the fair housing law (including any such statement filed with a substantially equivalent local agency) as a fair housing law complaint. Personnel in the fair housing office will provide appropriate assistance in filling out forms and filing a complaint.

C. Each complaint must contain substantially the following information:
   1. The name and address of the aggrieved person.
   2. The name and address of the respondent.
   3. A description and address of the dwelling which is involved, if appropriate.
   4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

Historical Notes

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18VAC135-50-350. Date of filing of a complaint.

A. Except as provided in subsection B of this section, a complaint is filed when it is received by the board or dual filed with the federal government in a form that reasonably meets the standards of 18VAC135-50-340.

B. The administrator may determine that a complaint is filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone and reduced to writing by an employee of the board) identifying the parties and describing generally the alleged discriminatory housing practice.

C. Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the last alleged occurrence of that practice.

Historical Notes


18VAC135-50-360. Amendment of complaint.

Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: (i) amendments to cure technical defects or omissions, including failure to sign or affirm a complaint, (ii) to clarify or amplify the allegations in a complaint, or (iii) to join additional or substitute respondents. Except for the purposes of notifying respondents, under 18VAC135-50-380, amended complaints will be considered as having been made as of the original filing date.

Historical Notes

Derived from VR585-01-05 §3.6, eff. December 1, 1991.

18VAC135-50-370. Service of notice on aggrieved person.

Upon the filing of a complaint, the administrator or his designee will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:

1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.
2. Include a copy of the complaint.
3. Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under the Virginia Fair Housing Law and these regulations.
4. Advise the aggrieved person of his right to commence a civil action under the fair housing law, in state circuit court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which an action arising from a breach of a conciliation agreement under the law is pending.
5. Advise the aggrieved person that retaliation against any person because he made a complaint or testified, assisted, or participated in an investigation or conciliation under these regulations is a discriminatory housing practice that is prohibited under the law and these regulations.

Historical Notes

Derived from VR585-01-05 §3.8, eff. December 1, 1991.

18VAC135-50-380. Respondent to be notified of complaint.

A. Within 10 days of the filing of a complaint under 18VAC135-50-350 or the filing of an amended complaint under 18VAC135-50-360, the administrator or his designee will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under Part V of these regulations as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of the identification.

B. 
1. The notice will identify the alleged discriminatory housing practice upon which the complaint is based, and include a copy of the complaint and copies of any supporting documentation referenced in the complaint which are received with the complaint.
2. The notice will state the date that the complaint was accepted for filing.
3. The notice will advise the respondent of the time limits applicable to complaint processing under these regulations and of the procedural rights and obligations of the respondent under the law and these regulations, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice. The administrator, upon request, has the discretion to extend this time period for a reasonable time.
4. The notice will advise the respondent of the aggrieved person's right to commence a civil action under the law, in a state circuit court, no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or, not later than two years after the occurrence or termination of the alleged discriminatory housing practice, whichever is longer.
5. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the administrator's belief that the joined person is properly joined as a respondent.
6. The notice will advise the respondent that retaliation against any person because he made a complaint or testified, assisted, or participated in an investigation or conciliation under this part is a discriminatory housing practice that is prohibited under the law and these regulations.
7. The notice may invite the respondent to enter into a conciliation agreement for the purpose of resolving the complaint.
8. The notice may include an initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.

Historical Notes

Derived from VR585-01-05 §3.9, eff. December 1, 1991.

The respondent may file an answer after receipt of the notice described in 18VAC135-50-380. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be in writing under oath or affirmation by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."

Historical Notes


Article 3
Investigations

18VAC135-50-400. Investigations.

A. Upon the filing of a complaint, the administrator shall investigate the allegations. The purposes of an investigation are:
   1. To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.
   2. To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.
   3. To develop factual data necessary for the administrator on behalf of the board to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

B. Based on the authority delegated to the fair housing administrator by the Board, the administrator may investigate housing practices to determine whether a complaint should be filed. Such an initiation may include using testers and other established practices or procedures.

Historical Notes


Where the administrator determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the administrator may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the law.

Historical Notes
18VAC135-50-420. Conduct of investigation.

A. In conducting investigations under these regulations, the voluntary cooperation of all persons will be sought to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.

B. The administrator and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in a court of law. The administrator or his designee, on behalf of the board, shall also have the power to issue subpoenas described under the law, in support of the investigation.

Historical Notes

Derived from VR585-01-05 §3.12, eff. December 1, 1991.

18VAC135-50-430. Cooperation with federal agencies.

The administrator, in processing complaints under the Virginia Fair Housing Law, may seek the cooperation and utilize the services of federal, state and local agencies, including any agency having regulatory or supervisory authority over financial institutions.

Historical Notes


18VAC135-50-440. Completion of investigation.

The investigation will remain open until a determination regarding reasonable cause is made or a conciliation agreement is executed and approved.

Historical Notes


18VAC135-50-450. Final investigative report.

At the end of each investigation under this article, the administrator or his designee will prepare a final investigative report. The investigative report will contain the names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses who request anonymity. The board, however, may be required to disclose the names of such witnesses in the course of a civil action under the fair housing law.

Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in 18VAC135-50-510, the administrator will make information derived from an investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the
completion of an investigation, the administrator shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.

Historical Notes


**18VAC135-50-460. Conciliation process.**

In conciliating a complaint, the administrator will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.

Historical Notes


**18VAC135-50-470. Conciliation agreement.**

A. The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the aggrieved person are described in 18VAC135-50-480 and the Virginia Fair Housing Law. The provisions that may be sought for the vindication of the public interest are described in 18VAC135-50-490.

B. The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the board.

Historical Notes


**18VAC135-50-480. Relief sought for aggrieved persons during conciliation.**

A. The following types of relief may be sought for aggrieved persons in conciliation:
   1. Monetary relief in the form of compensatory and punitive damages and attorney fees;
   2. Other equitable relief including, but not limited to, access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or
   3. Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.
B. The conciliation agreement may provide for binding arbitration or other methods of resolving a dispute arising from the complaint. Arbitration may award appropriate relief as described in subsection A of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration or other methods of dispute resolution.

Historical Notes

Derived from VR585-01-05 §3.19, eff. December 1, 1991.

18VAC135-50-490. Conciliation provisions relating to public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

1. Elimination of discriminatory housing practices.
3. Remedial affirmative activities to overcome discriminatory housing practices.
4. Reporting requirements.
5. Monitoring and enforcement activities.

Historical Notes

Derived from VR585-01-05 §3.20, eff. December 1, 1991.

18VAC135-50-500. Termination of conciliation process.

A. The administrator may terminate his efforts to conciliate the complaint if the respondent fails or refuses to confer with the administrator or his designee; the aggrieved person or the respondent fails to make a good faith effort to resolve any dispute; or the administrator finds, for any reason, that voluntary agreement is not likely to result.

B. Where the aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the administrator will terminate conciliation unless the court specifically requests assistance from the board.

Historical Notes

Derived from VR585-01-05 §3.21, eff. December 1, 1991.


A. Except as provided in subsection B of this section and 18VAC135-50-450 C, nothing that is said or done in the course of conciliation under this article may be made public or used as evidence in subsequent civil actions under the Virginia Fair Housing Law or this chapter without the written consent of the persons concerned.

B. Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the board determines that disclosure is not required to further the purposes of the fair housing law. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the board may publish tabulated descriptions of the results of all conciliation efforts.
18VAC135-50-520. Review of compliance with conciliation agreement.

The administrator may, from time to time, review compliance with the terms of any conciliation agreement. Whenever there is reasonable cause to believe that a respondent has breached a conciliation agreement, the board shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under the Virginia Fair Housing Law for the enforcement of the terms of the conciliation agreement.

Historical Notes


18VAC135-50-530. Reasonable cause determination.

A. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the board shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in the appropriate state court.

B. In all cases not involving the legality of local zoning or land use laws or ordinances:

1. If the board determines that reasonable cause exists, the board will issue a charge under §36-96.14 of the fair housing law and these regulations on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.

2. If a no reasonable cause determination is made, the board shall: Issue a short and plain written statement of the facts upon which the no reasonable cause determination was based; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) in writing within 30 days of such determination by certified mail or personal service; and make public disclosure of the dismissal.

Historical Notes


18VAC135-50-540. Local zoning and land use.

If the board determines that the matter involves the legality of local zoning or land use laws or ordinances, in lieu of making a determination regarding reasonable cause, the investigative materials...
shall be referred to the Attorney General for appropriate action under the fair housing law, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.

Historical Notes

Derived from VR585-01-05 §3.25, eff. December 1, 1991.


The board may not issue a charge regarding an alleged discriminatory housing practice if an aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the board will so notify the aggrieved person and the respondent by certified mail or personal service.

Historical Notes

Derived from VR585-01-05 §3.26, eff. December 1, 1991.

18VAC135-50-560 to 18VAC135-50-590. [Repealed]

Historical Notes

Derived from VR585-01-05 §3.27 to 3.30, eff. December 1, 1991; repealed, Virginia Register Volume 19, Issue 24, eff. September 10, 2003.
NOTICE
Included in this booklet are relevant excerpts from the Code of Virginia. Please note that the Virginia General Assembly is responsible for creating and amending the Code, not the Real Estate and Fair Housing Boards. The version contained herein contains all changes, if any, that have been made by the General Assembly through the 2007 session. Any changes made during the 2007 session became effective July 1, 2007, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulation and statutes. Please consult the General Assembly or your local library for annual changes.

§ 36-96.1. Declaration of policy.

A. This chapter shall be known and referred to as the Virginia Fair Housing Law.

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and insured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

(1972, c. 591, §§ 36-86, 36-87; 1973, c. 358; 1978, c. 138; 1989, c. 88; 1991, c. 557.)

§ 36-96.1:1. Definitions.

For the purposes of this chapter, unless the context clearly indicates otherwise:

"Aggrieved person" means any person who (i) claims to have been injured by a discriminatory housing practice or (ii) believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Complainant" means a person, including the Fair Housing Board, who files a complaint under § 36-96.9.

"Conciliation" means the attempted resolution of issues raised by a complainant, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, their respective authorized representatives and the Fair Housing Board.

"Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

"Discriminatory housing practices" means an act that is unlawful under §§ 36-96.3, 36-96.4, 36-96.5, or § 36-96.6.
"Dwelling" means any building, structure, or portion thereof that is occupied as, or designated or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

"Elderliness" means an individual who has attained his fifty-fifth birthday.

"Familial status" means one or more individuals who have not attained the age of 18 years being domiciled with (i) a parent or other person having legal custody of such individual or individuals or (ii) the designee of such parent or other person having custody with the written permission of such parent or other person. The term "familial status" also includes any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years. For purposes of this section, "in the process of securing legal custody" means having filed an appropriate petition to obtain legal custody of such minor in a court of competent jurisdiction.

"Family" includes a single individual, whether male or female.

"Handicap" means, with respect to a person, (i) a physical or mental impairment that substantially limits one or more of such person's major life activities; (ii) a record of having such an impairment; or (iii) being regarded as having such an impairment. The term does not include current, illegal use of, or addiction to a controlled substance as defined in Virginia or federal law. Neither the term "individual with handicap" nor the term "handicap" shall apply to an individual solely because that individual is a transvestite.

"Lending institution" includes any bank, savings institution, credit union, insurance company or mortgage lender.

"Person" means one or more individuals, whether male or female, corporations, partnerships, associations, labor organizations, fair housing organizations, civil rights organizations, organizations, governmental entities, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

"Respondent" means any person or other entity alleged to have violated the provisions of this chapter, as stated in a complaint filed under the provisions of this chapter and any other person joined pursuant to the provisions of § 36-96.9.

"Restrictive covenant" means any specification in any instrument affecting title to real property that purports to limit the use, occupancy, transfer, rental, or lease of any dwelling because of race, color, religion, national origin, sex, elderliness, familial status, or handicap.

"To rent" means to lease, to sublease, to let, or otherwise to grant for consideration the right to occupy premises not owned by the occupant.

§ 36-96.2. Exemptions.

A. Except as provided in subdivision A 3 of § 36-96.3 and subsections A, B, and C of § 36-96.6, this chapter shall not apply to any single-family house sold or rented by an owner, provided that such private individual does not own more than three single-family houses at any one time. In the case of the sale of any single-family house by a private individual-owner not residing in the house at the time of the sale or who was not the most recent resident of the house prior to sale, the exemption granted shall apply only with respect to one such sale within any 24-month period; provided that such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of, more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be exempt from the application of this chapter only if the house is sold or rented (i) without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, salesperson, or of the facilities or the services of any person in the business of selling or renting dwellings, or of any employee, independent contractor, or agent of any broker, agent, salesperson, or person and (ii) without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of this chapter. However, nothing herein shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other professional assistance as necessary to perfect or transfer the title. This exemption shall not apply to or inure to the benefit of any licensee of the Real Estate Board or regulant of the Fair Housing Board, regardless of whether the licensee is acting in his personal or professional capacity.

B. Except for subdivision A 3 of § 36-96.3, this chapter shall not apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

C. Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preferences to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, elderliness, familial status, or handicap. Nor shall anything in this chapter apply to a private membership club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members. Nor, where matters of personal privacy are involved, shall anything in this chapter be construed to prohibit any private, state-owned or state-supported educational institution, hospital, nursing home, religious or correctional institution, from requiring that persons of both sexes not occupy any single-family residence or room or unit of dwellings or other buildings, or restrooms in such room or unit in dwellings or other buildings, which it owns or operates.
D. Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law.

E. It shall not be unlawful under this chapter for any owner to deny or limit the rental of housing to persons who pose a clear and present threat of substantial harm to others or to the dwelling itself.

F. A rental application may require disclosure by the applicant of any criminal convictions and the owner or managing agent may require as a condition of acceptance of the rental application that applicant consent in writing to a criminal record check to verify the disclosures made by applicant in the rental application. The owner or managing agent may collect from the applicant moneys to reimburse the owner or managing agent for the exact amount of the out-of-pocket costs for such criminal record checks. Nothing in this chapter shall require an owner or managing agent to rent a dwelling to an individual who, based on a prior record of criminal convictions involving harm to persons or property, would constitute a clear and present threat to the health or safety of other individuals.

G. Nothing in this chapter limits the applicability of any reasonable local, state or federal restriction regarding the maximum number of occupants permitted to occupy a dwelling. Owners or managing agents of dwellings may develop and implement reasonable occupancy and safety standards based on factors such as the number and size of sleeping areas or bedrooms and overall size of a dwelling unit so long as the standards do not violate local, state or federal restrictions. Nothing in this chapter prohibits the rental application or similar document from requiring information concerning the number, ages, sex and familial relationship of the applicants and the dwelling's intended occupants.

§ 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.


§ 36-96.4. Discrimination in residential real estate-related transactions; unlawful practices by lenders, insurers, appraisers, etc.; deposit of state funds in such institutions.

A. It shall be unlawful for any person or other entity, including any lending institution, whose business includes engaging in residential real estate-related transactions, to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, or in the manner of providing such a transaction, because of race, color, religion, national origin, sex, elderliness, familial status, or handicap. It shall not be unlawful, however, for any person or other entity whose business includes engaging in residential real estate transactions to require any applicant to qualify financially for the loan or loans for which such person is making application.

B. As used in this section, the term "residential real estate-related transaction" means any of the following:

1. The making or purchasing of loans or providing other financial assistance (i) for purchasing, constructing, improving, repairing, or maintaining a dwelling or (ii) secured by residential real estate; or
2. The selling, brokering, insuring or appraising of residential real property. However, nothing in this chapter shall prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, elderliness, familial status, or handicap.

C. It shall be unlawful for any state, county, city, or municipal treasurer or governmental official whose responsibility it is to account for, to invest, or manage public funds to deposit or cause to be deposited any public funds in any lending institution provided for herein which is found to be committing discriminatory practices, where such findings were upheld by any court of competent jurisdiction. Upon such a court's judicial enforcement of any order to restrain a practice of such lending institution or for said institution to cease or desist in a discriminatory practice, the appropriate fiscal officer or treasurer of the Commonwealth or any political subdivision thereof which has funds deposited in any lending institution which is practicing discrimination, as set forth herein, shall take immediate steps to have the said funds withdrawn and redeposited in another lending institution. If for reasons of sound economic management, this action will result in a financial loss to the Commonwealth or any of its political subdivisions, the action may be deferred for a period not longer than one year. If the lending institution in question has corrected its discriminatory practices, any prohibition set forth in this section shall not apply.

(1972, c. 591, § 36-90; 1973, c. 358; 1989, c. 88; 1991, c. 557.)

§ 36-96.5. Interference with enjoyment of rights of others under this chapter.

It shall be an unlawful discriminatory housing practice for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or
enjoyed, or on the account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this chapter.

(1972, c. 591, § 36-93; 1973, c. 358; 1991, c. 557.)

§ 36-96.6. Certain restrictive covenants void; instruments containing such covenants.

A. Any restrictive covenant and any related reversionary interest, purporting to restrict occupancy or ownership of property on the basis of race, color, religion, national origin, sex, elderliness, familial status, or handicap, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, are declared to be void and contrary to the public policy of this Commonwealth.

B. Any person who is asked to accept a document affecting title to real or leasehold property may decline to accept the same if it includes such a covenant or reversionary interest until the covenant or reversionary interest has been removed from the document. Refusal to accept delivery of an instrument for this reason shall not be deemed a breach of a contract to purchase, lease, mortgage, or otherwise deal with such property.

C. No person shall solicit or accept compensation of any kind for the release or removal of any covenant or reversionary interest described in subsection A. Any person violating this subsection shall be liable to any person injured thereby in an amount equal to the greater of three times the compensation solicited or received, or $500, plus reasonable attorneys' fees and costs incurred.

D. A family care home, foster home, or group home in which physically handicapped, mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family when construed any restrictive covenant which purports to restrict occupancy or ownership of real or leasehold property to members of a single family or to residential use or structure.


§ 36-96.7. Familial status protection not applicable to housing for older persons.

A. Nothing in this chapter regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this section, "housing for older persons" means housing: (i) provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or (ii) intended for, and solely occupied by, persons sixty-two years of age or older; or (iii) intended for, and solely occupied by, at least one person fifty-five years of age or older per unit. The following criteria shall be met in determining whether housing qualifies as housing for older persons under clause (iii) of this subsection:

1. At least eighty percent of the occupied units are occupied by at least one person fifty-five years of age or older per unit; and

2. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

B. Housing shall not fail to meet the requirements for housing for older persons by reason of:

1. Persons residing in such housing as of September 13, 1988, who do not meet the age requirements of clauses (ii) and (iii) of subsection A, provided that new occupants of such housing meet the age requirements of those clauses; or
2. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the provisions of clauses (ii) and (iii) of subsection A.

(1991, c. 557; 1992, c. 322; 2000, c. 30.)

§ 36-96.8. Powers of Real Estate Board and Fair Housing Board.

A. The Real Estate Board and the Fair Housing Board, as provided in this chapter, have the power for the purposes of this chapter to initiate and receive complaints, conduct investigations of any violation of this chapter, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge and refer it to the Attorney General for action.

B. The Real Estate Board and the Fair Housing Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.


§ 36-96.9. Procedures for receipt or initiation of complaint; notice to parties; filing of answer.

A. A complaint under § 36-96.8 shall be filed with the Board in writing within one year after the alleged discriminatory housing practice occurred or terminated.

B. Any person not named in the complaint and who is identified as a respondent in the course of the investigation may be joined as an additional or substitute respondent upon written notice to such person by the Board explaining the basis for the Board's belief that such person is properly joined as a respondent.

C. Any respondent may file an answer to a complaint. Complaints and answers must be made in writing, under oath or affirmation, and in such form as the Board requires. Complaints and answers may be reasonably and fairly amended at any time.

D. Upon the filing of a complaint or initiation of a complaint by the Board or its designee, the Board shall provide written notice to the parties as follows:
   1. To the aggrieved person acknowledging the filing and advising such person of the time limits and choice of forums under this chapter; and
   2. To the respondent, not later than ten days after such filing or the identification of an additional respondent under subsection B, identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this chapter with a copy of the original complaint and copies of any supporting documentation referenced in the complaint.

(1991, c. 557.)

§ 36-96.10. Procedures for investigation.

A. The Board shall commence proceedings with respect to a complaint within thirty days after receipt of the complaint, and shall complete the investigation within 100 days thereof unless it is impracticable to do so. If the Board is unable to complete the investigation within 100 days after the receipt of the
complaint, the aggrieved person and the respondent shall be notified in writing of the reasons for not doing so.

B. When conducting an investigation of a complaint filed under this chapter, the Board shall have the right to interview any person who may have any information which may further its investigation and to request production of any records or documents for inspection and copying in the possession of any person which may further the investigation. Such persons shall be interviewed under oath. The Board or its designated subordinates shall have the power to issue and serve a subpoena to any such person to appear and testify and to produce any such records or documents for inspection and copying. Said subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served as part of a civil action in the Commonwealth of Virginia. In case of refusal or neglect to obey a subpoena, the Board may petition for its enforcement in the Circuit Court for the City of Richmond. The hearing on such petition shall be given priority on the court docket over all cases which are not otherwise given priority on the court docket by law.

C. At the end of each investigation under this section, the Board shall prepare a final investigative report containing:
   1. The names and dates of contacts with witnesses;
   2. A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
   3. A summary description of other pertinent records;
   4. A summary of witness statements; and
   5. Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

D. The Board shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the Board's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(1975, c. 566, § 36-94.1; 1991, c. 557; 1998, c. 634.)

§ 36-96.11. Reasonable cause determination and effect.

The Board shall, within 100 days after the filing of a complaint, determine, based on the facts and after consultation with the Office of the Attorney General, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or unless the Board has approved a conciliation agreement with respect to the complaint. If the Board is unable to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur within 100 days after receipt of the complaint, the aggrieved person and the respondent shall be notified in writing of the reasons therefor.

(1991, c. 557; 1998, c. 634.)
§ 36-96.12. No reasonable cause determination and effect.

If the Board determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the Board shall promptly dismiss the complaint notifying the parties within thirty days of such determination. The Board shall make public disclosure of each dismissal.

(1991, c. 557.)

§ 36-96.13. Conciliation.

During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the Board, the Board shall, to the extent feasible, engage in conciliation with respect to such complaint.

A. A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant, and shall be subject to approval by the Board.

B. A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

C. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the Board determines that disclosure is not required to further the purposes of this chapter.

D. Whenever the Board has reasonable cause to believe that a respondent has breached a conciliation agreement, the Board may refer the matter to the Attorney General with a recommendation that a civil action be filed under § 36-96.17 for the enforcement of such agreement.

(1991, c. 557; 1992, c. 322.)


Upon failure to resolve a complaint by conciliation and after consultation with the Office of the Attorney General, the Board shall issue a charge on behalf of the aggrieved person or persons and shall immediately refer the charge to the Attorney General, who shall proceed with the charge as directed by § 36-96.16. The Board may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of a trial of a civil action commenced by the aggrieved party under an Act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

1. Such charge:
   a. Shall consist of a short and plain statement of the facts upon which the Board has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;
   b. Shall be based on the final investigative report; and
   c. Need not be limited to the acts or grounds alleged in the complaint filed under § 36-96.9.

2. After the Board issues a charge under this section, the Board shall cause a copy thereof to be served on each respondent named in such charge and on each aggrieved person on whose behalf the complaint was filed.

(1991, c. 557.)
§ 36-96.15. Prompt judicial action.

If the Board concludes at any time following the filing of a complaint and after consultation with the Office of the Attorney General, that prompt judicial action is necessary to carry out the purposes of this chapter, the Board may authorize a civil action by the Attorney General for appropriate temporary or preliminary relief. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such action. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with the Virginia Rules of Civil Procedure. The commencement of a civil action under this section shall not affect the initiation or continuation of administrative proceedings by the Board under § 36-96.8.

(1991, c. 557.)

§ 36-96.16. Civil action by Attorney General upon referral of charge by the Real Estate Board.

A. Not later than thirty days after a charge is referred by the Board to the Attorney General under § 36-96.14, the Attorney General shall commence and maintain a civil action seeking relief on behalf of the complainant in the circuit court for the city, county, or town in which the unlawful discriminatory housing practice has occurred or is about to occur.

B. Any aggrieved person with respect to the issues to be determined in a civil action pursuant to subsection A may intervene as of right.

C. In a civil action under this section, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may grant, as relief, any relief which a court could grant with respect to such discriminatory housing practice in a civil action under § 36-96.18. Any relief so granted that would accrue to an aggrieved person under § 36-96.18 shall also accrue to the aggrieved person in a civil action under this section. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court in the course of the action brought under this section.

D. In any court proceeding arising under this section, the court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs.

(1991, c. 557; 1994, c. 814.)

§ 36-96.17. Civil action by Attorney General; matters involving the legality of any local zoning or other land use ordinance; pattern or practice cases; or referral of conciliation agreement for enforcement.

A. If the Board determines, after consultation with the Office of the Attorney General, that an alleged discriminatory housing practice involves the legality of any local zoning or land use ordinance, instead of issuing a charge, the Board shall immediately refer the matter to the Attorney General for civil action in the appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice.
B. Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this chapter, or that any group of persons has been denied any of the rights granted by this chapter and such denial raises an issue of general public importance, the Attorney General may commence a civil action in the appropriate circuit court for appropriate relief.

C. In the event of a breach of a conciliation agreement by a respondent, the Board may authorize a civil action by the Attorney General. The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief. A civil action under this subsection shall be commenced no later than the expiration of ninety days after the referral of such alleged breach.

D. The Attorney General, on behalf of the Board, or other party at whose request a subpoena is issued, under this chapter, may enforce such subpoena in appropriate proceedings in the appropriate circuit court.

E. In a civil action under subsections A, B, and C, the court may:
   1. Award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation of this chapter as is necessary to assure the full enjoyment of the rights granted by this chapter.
   2. Assess a civil penalty against the respondent (i) in an amount not exceeding $50,000 for a first violation; and (ii) in an amount not exceeding $100,000 for any subsequent violation.
   3. Award the prevailing party reasonable attorney's fees and costs. The Commonwealth shall be liable for such fees and costs to the extent provided by the Code of Virginia.
   4. The court or jury may award such other relief to the aggrieved person, as the court deems appropriate, including compensatory damages, and punitive damages without limitation otherwise imposed by state law.

F. Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection A, B or C which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a party to a conciliation agreement. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under § 36-96.18.

(1991, c. 557; 1994, c. 814.)

§ 36-96.18. Civil action; enforcement by private parties.

A. An aggrieved person may commence a civil action in an appropriate United States district court or state court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this chapter, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

B. An aggrieved person may commence a civil action under § 36-96.18 A no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, whichever is later. This subsection shall not apply to actions arising from a breach of a conciliation agreement. An aggrieved person may commence a civil action under this section whether or not a complaint has been filed under § 36-96.9 and without regard to the status of any such complaint. If the Board or a federal agency has obtained a conciliation agreement with the consent of an aggrieved person, no action may be
filed under this section by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

C. In a civil action under subsection A, if the court or jury finds that a discriminatory housing practice has occurred or is about to occur, the court or jury may award to the plaintiff, as the prevailing party, compensatory and punitive damages, without limitation otherwise imposed by state law, and the court may award reasonable attorney's fees and costs, and subject to subsection D, may grant as relief, any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such practice or order such affirmative action as may be appropriate.

D. Relief granted under subsection C shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving bona fide purchasers, encumbrancer or tenant, without actual notice of the filing of a complaint with the Board or civil action under this chapter.

E. Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon intervention, the Attorney General may obtain such relief as would be available to the private party under subsection C.


§ 36-96.19. Witness fees.

Witnesses summoned by a subpoena under this chapter shall be entitled to the same witness and mileage fees as witnesses in proceedings in the courts of the Commonwealth. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by that party or, where a party is unable to pay the fees, by the Board.

(1991, c. 557.)

§ 36-96.20. Additional powers of the Real Estate Board; action on real estate licenses.

A. In any case in which the Board has received or initiated a complaint and conducted an investigation of any violation of this chapter and determined that there exists reasonable cause to believe that a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees have engaged in discriminatory housing practices prohibited by the Virginia Fair Housing Law (§ 36-96.1 et seq.) or the Virginia Equal Credit Opportunity Act (§ 59.1-21.19 et seq.), the Board shall immediately attempt to resolve the matter by conference and conciliation, and upon failure to resolve the matter in such manner, may initiate an administrative hearing to determine whether to revoke, suspend or fail to renew the license or licenses in question. Not less than 10 days prior to the initial conference hereunder, the Board shall prepare and deliver to the respondent or respondents a written report setting forth the scope, findings and conclusions of the investigation conducted under this section.

B. If any person operating under a real estate license issued by the Board, pursuant to the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, is found by a court to have violated any provision of this chapter and this fact is so certified to the Board, the Board, after notification to the licensee, shall take
appropriate action to consider suspension or revocation of the license of the licensee. (1972, c. 591, §§ 36-94, 36-95.2; 1973, c. 372; 1975, c. 566; 1984, c. 271; 1987, c. 167; 1991, c. 557; 1992, c. 84; 2003, c. 575.)

§ 36-96.21. Powers of counties, cities and towns.

A. Any county, city or town which has any ordinance in effect on January 1, 1991, enacted under the Virginia Fair Housing Law (§ 36-86 et seq.), the Virginia Human Rights Act (§ 2.2-3900 et seq.), or any other applicable state law may continue to enforce such ordinance and may amend the ordinance, provided the amendment is not inconsistent with this chapter. Nothing herein shall be construed to prohibit any county, city or town under this subsection from submitting amended ordinances to the U.S. Department of Housing and Urban Development for substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

B. The governing body of any county, city or town may enact ordinances in accordance with the provisions of this chapter provided that (i) such ordinances conform to this chapter and are enacted prior to September 30, 1992, and (ii) such amended ordinances are submitted to the U.S. Department of Housing and Urban Development for a determination of substantial equivalency pursuant to Title VIII, Civil Rights Act of 1968 (42 U.S.C. §§ 3604-3606), as amended.

(1972, c. 591, § 36-96; 1975, c. 345; 1982, c. 113; 1991, c. 557; 1996, cc. 173, 369.)

§ 36-96.22. Application of chapter.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect the other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

(1991, c. 557.)

§ 36-96.23. Construction of law.

Nothing in this chapter shall abridge the federal Fair Housing Act of 1968 (42 U.S.C. § 3601 et seq.) as amended.

(1991, c. 557.)
HOME Fair Housing Audit 2007 - 2008 Results Summary

Compliance with Accessibility Requirements
(Seven cities of Hampton Roads, central Virginia)

Site visits to 20 complexes with permits ranging from 2003 – 2008 for the Fair Housing Office, an additional 13 in Tidewater

One site appeared to have no violations. The rest (97%) had from one to eight potential violations of the accessibility requirements.

- Some violations were minor (environmental controls ½” too high)
- Some violations are defended by the complex as the result of site impracticability
- Based on the date of the Certificate of Occupancy some complexes may be past the date for enforcement action

Testing for Treatment of Home Seekers
(Seven cities of Hampton Roads)

I. Race: differential treatment between African-Americans and whites

50 matched pair tests
- 66% of African-American testers received less favorable treatment than whites (some localities much higher)
- 70% of the sites were managed by property management companies or involved a licensed real estate agent (about 50%)

II. Families with children

20 tests
- 15% discouraged
- 85% accepted at the two person per bedroom standards

III. People with disabilities

Will unit allow reasonable modifications (installation of grab bars)?

25 tests
- 20% rejected or discouraged
- 80% would permit

Will unit make reasonable accommodation (service animal where “no pets” or silent on pets)?

- 76% rejected, discouraged or imposed fees
- 24% willing to make accommodation

IV. Housing Choice Voucher holders:

Will housing providers with units that would meet rent reasonableness test for vouchers accept a voucher?

20 tests
- 85% discouraged or rejected
- 15% were willing to accept a voucher

Examples of differences in treatment on the basis of race:

- Testers visited the property on the same afternoon. The black tester was told the rents were between $1049 and $1104; the white tester was told to ignore the prices in the brochure as the agent could offer specials reducing the rents to $969-999.

- The black tester was told that one unit would be available that month; the white tester was told by the same agent on the same day that several one and two bedroom units were currently available. The black tester asked to see the unit but was told it could not be shown; the white tester was given the keys to view the unit after the agent checked her ID.
• Both testers asked about a one bedroom unit for the end of November. The black tester was told nothing was available until next month; the white tester was told there are two vacant units.

• Both testers talked to the same agent within an hour of each other about a one bedroom apartment. The black tester was told one unit would be available with $132 application fee and one month’s rent ($929) security deposit; the white tester was told a few one bedrooms would be available that month and the following month with a $32 application fee and security deposit of $250.

• Both testers asked the same agent for information on a one bedroom apartment. The black tester was told one unit would be available; the white tester was told two units would be available. Both testers were told the unit was unavailable to show until after cleaning, but the agent offered to show the white tester a two bedroom unit while the black tester was told to come back the following day. The agent offered an application to the white tester but not to the black tester. The white tester received follow up correspondence from the agent while the black tester did not.

• Both testers were told that no one bedroom apartments were currently available. The black tester was told she would have to complete and submit an application with the fee in order to be placed on the waiting list; the same agent took the white tester’s contact information and put her on the waiting list.

• Both testers asked about one bedroom apartments for the end of January. The black tester was told one unit would be available for $679 and a security deposit of $99; the white tester was told that two different one bedroom units would be available for rent, one for $649 and one with a den for $679 and that they were running a special waiving the security deposit.

• Both testers talked with the same agent about a one bedroom unit. The agent told the black tester they had nothing available and to just try back in a couple of months; the same agent told the white tester to call back in January (2 weeks later) to see if they had received any notices.

• The testers saw the same agent on the same day. The black tester was told nothing was available and told the apartment she was shown was already rented. The white tester was shown the same unit and told it was available along with several other units. The black tester asked about a waiting list, and was told they had a waiting list, but that people rarely move.

• Both testers saw the same agent on the same day. The landlord told the white tester that the apartment was immediately available for $800. Thirty minutes later he told the black tester that the $800 apartment was gone, but he had one for $900. He told the black tester “we are very selective about who we let in”, asked her about her profession, her income, her credit, told her only the person who signs the lease is allowed to stay in the unit, told her “we are really meticulous” and asked her if she is a clean person, asked whether she can afford the apartment, and told her there is no need for her to take an application until she decides on the place. The white tester was asked no questions about her income, cleanliness, ability to afford the apartment, and was told that he does not check credit and that he does not have applications. He told the white tester he could tell she was “his kind of person”, asked if she wanted the unit and got her contact information.

• The testers spoke to the same agent within a half hour of each other. The black tester was told that one 1 bedroom unit would be available; the white tester was told they had plenty of one bedrooms available.

• The testers were given similar information about the availability of a single family house, and both were given applications; however, the white tester was told that if any of the information on the application was “too personal”, she should mention it and they would “work something out.”
21st CENTURY – EQUAL ACCESS TO HOUSING?
BLACKS FACE DISCRIMINATION 60% OF THE TIME IN HAMPTON ROADS’ RENTAL MARKET WHILE MANY ILLEGAL BARRIERS CONTINUE FOR THOSE WITH DISABILITIES

Housing Opportunities Made Equal, Inc., (HOME) a non-profit fair housing and housing counseling agency headquartered in Richmond, Virginia, today released the results of a study of the rental market in Hampton Roads which evaluated the barriers to housing for African-Americans and people with disabilities. According to HOME, African-Americans seeking apartments in the Hampton Roads area were treated less favorably than Caucasians 60% of the time. People who need accessible apartments also face difficulties: 96% of multi-family apartments opened after March of 1991 do not meet federal and state accessibility requirements.

HOME used matched pair testing, a controlled investigative procedure in which two individuals are sent separately to inquire about a housing unit, to evaluate the treatment that African-Americans are likely to receive. Differences in treatment included the white tester being offered an apartment and asked for a deposit, while the black tester was not offered an apartment; the black tester being offered one apartment for $575 while the white tester was offered a range of apartments, the most expensive of which was $515; when black and white testers both asked for 2 bedroom apartments for May 1, the black tester was told none were available and availability would be “no time soon” and was referred to another complex, while the white tester was told 2 bedroom apartments would be available in June and offered a one bedroom apartment immediately; both testers called for an appointment on a Saturday: the black tester was told the office was closed on Saturdays, the white tester was offered an appointment Saturday morning.

According to Constance Chamberlin, President of HOME, these findings are consistent with studies done nationally by the U.S. Department of Housing and Urban Development, which indicate that African-Americans can expect to receive less favorable treatment at least 50% of the time when they look for a place to rent.

"Where we live makes an important difference in the quality of our lives and the opportunities we can give our children," said Ms. Chamberlin. “It is very disturbing to find that the housing choices of African-Americans are still being limited to such an extent more than 30 years after the Federal Fair Housing Act was passed. These results show that Virginia still has a long way to go before we can truly say that we are a land of equal opportunity.” Black testers received less favorable treatment than white testers in 60% of the tests. Both testers received similar treatment in 23% of the tests, and the white tester received less favorable treatment in 17% of the tests. The rate of differential treatment favoring the white tester in each jurisdiction was Hampton 100% (only one test site), Newport News 54%, Virginia Beach 62%, Norfolk 64%, Portsmouth 80% and Suffolk 100% (only one test site).

The one locality for which these results were not consistent was Chesapeake, in which two of the 5 completed tests (40%) showed similar treatment of the testers and three (60%) showed differential treatment favoring the African-American testers. In matched pair testing, the individuals are matched in every relevant respect except for the characteristic being tested – in this case, race. Equally qualified individuals should receive similar treatment and information, and the information and behavior revealed in the tests can then be compared. Testing has been upheld by the courts (and is supported by Congress) as a way of determining the existence of housing discrimination. It is frequently the only way to uncover unlawful treatment, since individuals who are given misleading or inaccurate information about the availability of rental units have no way of knowing that they have been treated any differently from anyone else.

According to HOME, people who need an accessible apartment also faced barriers: 96% of those apartments required by law to meet certain accessibility guidelines were not in compliance. 46% had major deficiencies which would render it difficult if not impossible for someone in a wheelchair to live in the apartment or enjoy the full range of amenities.
“The Fair Housing Amendments Act of 1988 requires that modest accessibility requirements be incorporated into the design of these buildings,” according to Ms. Chamberlin. “It is unconscionable that thirteen years after the law was passed, apartments are still being built that don’t meet the needs of people with disabilities.” Design problems that rendered apartments inaccessible were found both inside the apartment units and in the common areas. Some apartments had fewer than the required number of accessible units. Others had narrow halls and doorways within the apartment unit that would prevent someone in a wheelchair from maneuvering or even entering certain rooms; environmental controls set so high on the wall that they were difficult or impossible to reach from a sitting position; bathrooms without reinforced walls or grab bars; and bathroom doors that opened inward so they could not be closed if someone in a wheelchair was inside. Exterior design flaws included steps or high thresholds preventing access to apartments or amenities such as laundry rooms, steps or curbs without curb cuts barring access to mailboxes or trash dumpsters, and ramps that were too steep to use.

HOME evaluated the apartment complexes against seven requirements set out in the fair housing laws:
- a building entrance wide enough for a wheelchair, accessible by a route without steps;
- accessible public and common use areas;
- doors that allow passage by a person in a wheelchair; an accessible route into and through the dwelling unit;
- light switches, thermostats, and other environmental controls in accessible locations;
- reinforcements in bathroom walls for later installation of grab bars; and
- kitchens and bathrooms that allow a wheelchair to maneuver about the space.

HOME is a private, non-profit fair housing organization formed in 1971, whose mission is to ensure equal opportunity in housing for all persons through counseling, education, and advocacy. HOME provides training and technical assistance to housing providers to encourage them to offer their properties on a non-discriminatory basis; provides free information, assistance, and counseling services to consumers on rental, landlord-tenant, homeownership and fair housing issues; and administers a variety of financial assistance programs for first time homebuyers and those in danger of eviction and foreclosure. HOME also assists local governments in evaluating fair housing issues and developing policies and procedures to eliminate barriers to equal opportunities in housing, and investigates allegations of housing-related discrimination. The work resulting in this audit was partially funded by a grant from the U.S. Department of Housing and Urban Development, through its Fair Housing Initiatives Program.

For further information about any of HOME’s services, or for a copy of the report, please call 804-354-0641.

HOUSING OPPORTUNITIES MADE EQUAL
2202 West Broad Street, Suite 200, Richmond, VA 23220
RECENT CASES

CASE # 1

United States v. Robert L. Kreisler, Jr., a/k/a Bob Peterson, et al. (D. Minn.) UPDATED: 8/17/06

On August 29, 2006, the Court approved and entered a Consent Decree in United States v. Kreisler, Jr., a/k/a Bob Peterson, et al. (D. Minn.). The United States’ pattern or practice complaint, filed on July 9, 2003, alleged, inter alia, that Kreisler violated the Fair Housing Act when he discriminated against black tenants at two apartment complexes which he owns and manages by: evicting blacks while not evicting similarly situated non-blacks, requiring black tenants to vacate their apartments permanently due to “renovation work” while not requiring non-black tenants to do so, and failing to provide necessary and requested maintenance to black tenants while providing such maintenance to non-black tenants.

Under the terms of the Consent Decree, which must still be approved by the court, the Defendants must pay $525,000 to 19 households, hire an independent management company to operate the rental properties, post and publish a nondiscrimination policy, and correct the rental records of several former tenants against whom Defendants filed unlawful detainer actions. The Defendants will also pay a $50,000 civil penalty.

CASE # 2

Father and daughter win $11,000 cash settlement in Phoenix, AZ familial status lawsuit

Anna Chasteen, the owner and operator of Carol Mary Apartments in downtown Phoenix agreed to pay $11,000 in June to settle a federal fair housing lawsuit. Chasteen will also submit to fair housing monitoring by the Arizona Fair Housing Center. The suit also named Ermil Chasteen and Willetta Investments, the corporate owner of the complex, as defendants.

Owner and agent cited safety concerns when refusing to rent to families with children

William C. Rodriguez and the Arizona Fair Housing Center filed the lawsuit alleging familial status discrimination after Rodriguez attempted to rent an apartment for himself and his daughter in 1999. Rodriguez’s daughter was four years old at the time.

Ermil Chasteen, the former owner of the complex who died during the litigation of the lawsuit, told Rodriguez that children were not accepted at Carol Mary Apartments for “safety reasons.” Rodriguez submitted a rental application anyway, and another agent of the complex informed him that children weren’t allowed in second floor units and that no ground floor units were available. The agent also cited safety considerations for the discriminatory policy.

Testing proved familial status discrimination

Rodriguez contacted the Arizona Fair Housing Center and told them about what he had encountered at the Carol Mary complex. The Center conducted two paired tests on the complex as part of a thorough investigation. In both tests, testers who asserted that they had children were told that no units were available, while testers who asserted that they had no children were told about available units and encouraged to apply.

Arizona attorneys Albert M. Flores and Philip Austin represented Rodriguez and the Center during the litigation.

Rodriguez v. Chasteen
Case No. CIV 2001-1372 PHX SRB (D. Az.)
The Honorable Susan R. Bolton, U.S. District Judge
Complaint filed: July 24, 2001
Consent Order approved: June 11, 2003
CASE # 3

Discriminatory statements and actions against Latinos costs CA mobile home park owners $70,000

The owners of Golden Gate Trailer Park in Greenbrae, California have paid a $70,000 settlement in a case involving discrimination against Latinos. In addition, the Defendants in the case will attend fair housing training, post all vacancies at a community organization serving Latinos, provide translation services for prospective Spanish-speaking tenants, and distribute a nondiscrimination policy to all employees.

In December 1999, a white former tenant of the park, filed a fair housing complaint with the U.S. Department of Housing and Urban Development and the California Department of Fair Employment and Housing (DFEH) with the assistance of Fair Housing of Marin (FHOM), a nonprofit fair housing agency serving northern California. Smith and FHOM later filed a federal lawsuit in the U.S. District Court of Northern California.

Defendants retaliated against white tenant who complained of discrimination against Latinos

The former tenant and FHOM asserted in their complaints that the owners and manager of Golden Gate discriminated against Latinos and prevented the man from renting his space in the park to Latinos. When he complained of the discrimination, the defendants retaliated against him by making threats, denying approval to prospective tenants who wanted to rent his park space, leveling complaints of rules infractions, and eventually evicting him from the park.

In the federal complaint, the plaintiffs asserted that Wallace and Dora Holmes made discriminatory statements about Latinos and instructed Greg McGovern, the resident manager, to steer Latinos away from the park and to make it hard for Latinos to apply for housing or lots within the park. Allegedly, Dora Holmes instructed McGovern to steer all Latinos applicants to an adjacent trailer park, telling him, “Once you let one of them in, you have a whole bunch move in after. Next thing you know, you have shitty diapers all over the driveway, and who needs that?” The Defendants also allegedly placed Latino applicants on a waiting list for vacancies but never called Latinos on the list when spaces became available.

Different terms and conditions for Latinos

The Defendants allegedly required prospective Latino tenants to own their own mobile home towing vehicles if they wished to place a mobile home within the park. Latinos were also required to pay credit check fees and fill out applications while in the rental office. The same was not required of non-Latino tenants. McGovern allegedly ejected Latino visitors to the park and was purposefully rude to Latinos to discourage them from applying to live in the park. McGovern allegedly told tenants at the park that “Mexicans cause trouble” and that he tried hard to keep “Mexicans out of the park.” He also allegedly said that it was difficult to do so because of fair housing laws in place.

FHOM heard from at least four former, current, or prospective residents of Golden Gate who expressed concerns about national origin discrimination in the park. DFEH’s investigation revealed that no Latinos lived in Golden Gate Trailer Park at the time the plaintiffs filed complaints and that the only minorities present in the park were one African American man and one Asian woman, both of whom lived with white tenants at the park. During the DFEH investigation, McGovern admitted to investigators that Wallace and Dora Holmes had given him explicit instructions to discriminate against Latinos.

The plaintiffs withdrew their complaints from DFEH and filed a federal lawsuit against the Defendants with the assistance of California civil rights attorney Scott Chang.

The Consent Decree in the case requires the Defendants to pay $20,000 to FHOM, $15,000 to the former tenant, $20,000 in legal fees, and to forgive a $15,000 unlawful detainer judgment the park had obtained against him.

Fair Housing of Marin v. Golden Gate Trailer Park
Case No. 3:02-cv-01604 (N.D. Cal.)
The Honorable Thelton E. Henderson, U.S. District Judge
Scott Chang, attorney for Plaintiffs

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Federal complaint filed: April 3, 2002
Consent Order: April 16, 2003

CASE # 4

NC Consumers Collect $20.2 million in Associates Settlement
(Tarboro, NC) – Two years after filing a lawsuit alleging unfair housing practices, Tarboro residents and the Town of Tarboro have reached a settlement with the Town of Tarboro. The settlement opens the door for the development of affordable multi-family housing in areas that had been restricted by the Town’s changes to its Unified Development Ordinance (UDO) following the Hurricane Floyd floods.

“We wanted to see our clients have a reasonable chance to return to affordable housing in Tarboro, their home town,” declared Hazel Mack-Hilliard, senior managing attorney for Legal Aid of NC-Wilson Office, who led the team of attorneys who challenged the restrictions. “We believe that the removal of the May 2000 amendments to Tarboro’s zoning ordinance will bring developers back to Tarboro and renew interest in building affordable housing.”

In the settlement, the Town of Tarboro agreed to restore all land that its zoning changes had removed from multi-family apartment construction and to reduce some costly requirements for setbacks, fencing, traffic studies and on-site management. The Town also agreed to pay the named plaintiffs a total of $95,500 for damages, including $21,000 to the NC Fair Housing Center, a statewide nonprofit organization dedicated to equal housing opportunity.

“We alleged in the lawsuit that our clients had been harmed by the Town’s moratorium and zoning changes,” noted Mack-Hilliard. “In our view, it appeared that both the moratorium and the zoning ordinance were discriminatory and needed either to be modified or to be set aside, which the Town of Tarboro ultimately agreed to do as part of the settlement.”

In September 1999, East Tarboro, primarily a low-income, African-American community, was flooded and devastated by Hurricane Floyd. With no alternative rental housing available, the Federal Emergency Management Agency (FEMA) set up a temporary trailer park, the Keehlin FEMA Temporary Housing Site, in Tarboro to help house those who had lost their residences in the flood.

Two developers approached the Town of Tarboro in late 1999 and early 2000 to seek permission to build affordable multi-family apartments, with funding coming through the NC Housing Finance Agency.

However, at an emergency meeting of the Tarboro Town Council in March 2000, the Town adopted a moratorium on all multi-family construction. Then in May 2000, the UDO was amended to remove certain tracts of land from apartment construction and to impose substantial restrictions and costly requirements to the remaining parcels of land where apartments could be built. One developer dropped its plan to build altogether; the other developer, Pendergrant, Inc., saw its plans for Hawthorne Court Apartments delayed for many months.

In April 2001, after having been contacted by the East Tarboro residents, attorneys from Legal Aid of NC (LANC) began to examine the zoning changes and the availability of land after the new UDO.

“We found that Tarboro’s May 2000 ordinances had dramatically reduced the amount of land available in Tarboro upon to build multi-family apartments in Tarboro where decent and affordable multi-family housing was already in short supply,” stated Mack-Hilliard, “Simply put, those people who had lost their housing during the floods were now locked out of Tarboro by the Town’s ordinances. We could not allow apparently discriminatory and unfair ordinances to, in effect, kick minority residents out of town.”

During the summer of 2001, a litigation team from multiple nonprofit, legal services organizations was assembled to meet with some of the residents who had previously lived in East Tarboro rental housing and to consider possible courses of action. The team included attorneys from LANC, the North Carolina Justice &
Community Development Center, the Land Loss Prevention Project, local private counsel and the NC Fair Housing Center (NCFHC).

“The Center contacted many public and private multi-family developers who felt that the zoning ordinance passed by the Town of Tarboro would add tens of thousands of dollars to development costs and would make the future projects unprofitable,” said Stella Adams, NCFHC’s executive director. “While we were pleased to see that Hawthorne Court was being constructed through our efforts, the Center joined with the individual residents to ensure that multi-family housing would be a viable option for Tarboro families in the future.”

Fourteen Tarboro residents became named plaintiffs in the lawsuit filed in September 2001. The residents sued the Town of Tarboro. In their complaint, the residents alleged that the Town discriminated against them on the basis of race and familial status in violation of the Fair Housing Act when it adopted the March 2000 moratorium on multi-family housing and amended its UDO in May 2000.

Following a year of discovery that included dozens of depositions, the residents and the Town agreed to mediation in January 2003. During mediation, the Town agreed to the changes to the UDO and monetary damages for the plaintiffs. The residents in turn modified their damages claims against the Town.

"The NC Fair Housing Center is extremely pleased with this result,” stated Adams, “and our congratulations to the Tarboro residents and to the legal aid community for its commitment to ensure equal justice. We also hope that this will serve as a cautionary tale to other communities that would use their governmental powers to deny housing opportunities to people of color or families with children.” Mack-Hilliard agreed. “We think that the Tarboro situation resulted in a win-win agreement,” remarked Mack-Hilliard. “Everybody deserves the opportunity to have a decent place to live. And in this case, citizens spoke up to ensure that such fair housing opportunity is available in Tarboro.”

Legal Aid of North Carolina is a 501(c)3, nonprofit organization that provides free, legal representation in civil matters to eligible clients in North Carolina through 25 offices and four project units across the state.

CASE #5

Family Could Receive as Much as an Additional $21,500

(Louisville, Ky., March 11, 2003) -- A single mother with five children has settled a federal fair housing discrimination lawsuit against the owner of a mobile home park in Louisville. Russell Brown, the owner of Brown’s Mobile Home Park, allegedly discriminated against Sarah Webb and her children by denying them a lease, charging them higher rent, and attempting to evict them because of the size of her family.

The Kentucky Fair Housing Council assisted Webb in filing a housing discrimination complaint with the US Department of Housing and Urban Development (HUD), and a federal lawsuit against Brown and the other owners and managers of Brown’s Mobile Home Park in April and May 2002. Both the HUD complaint and the federal lawsuit alleged that Brown refused to deal with Webb due to her five minor children and attempted to evict Ms. Webb based on her familial status.

The written Park Rules at Brown’s Mobile Home Park included discriminatory and illegal provisions like “families may have no more than two children,” “there is a $5.00 additional (rent) charge for each child,” “children must be kept on individual lot,” “children are not allowed to play or ride in front of the office or the park,” “children should be off the street by sunset,” and “all youth, 16 years of age and older must be off the street by 10:00 p.m., all youth under 16 years of age must be off the street by dark.” These restrictions against families with children violate the fair housing laws of Louisville, the State of Kentucky, and the United States.

Webb purchased a mobile home located in Brown’s Mobile Home Park in January 2002. When Webb spoke with another resident at the park about renting the lot upon which her mobile home was set, she was told that the owner tended to “overlook” rental applications from families with more than two children.

Webb later had a conversation with Brown, the co-owner of the park, in which he inquired as to the names and ages of her children, and discouraged her from moving into the mobile home. Brown told her that he would put a rental application in her mailbox but never did.
Needing a place to stay, Webb and her children moved into the mobile home as planned. Webb then faced numerous attempts by Brown to force her family out of the park. Webb continued to live in the park, and attempted to pay rent, although Brown continually refused her payment. In late March, Brown began eviction proceedings against the Webb family, claiming that she had violated the lease agreement because she had bought a mobile home from another owner and refused to move it after she gave her notice. However, Webb had never been given the opportunity to sign a lease agreement.

The Fair Housing Council with the assistance of the Legal Aid Society of Louisville eventually won an injunction in federal court to prevent Brown from attempting to evict Webb until her complaints of familial status discrimination were resolved.

Webb’s housing discrimination complaint at HUD was referred to the Louisville & Jefferson County Human Relations Commission for investigation. Charles Ighagbon, the Commission’s housing compliance supervisor, successfully conciliated the complaint. The March 7, 2003 settlement agreement between Webb and the Defendants resolves the HUD complaint and the federal lawsuit. Webb received a lump sum payment of $5,000.00, and she will be allowed to live in Brown’s Mobile Home Park rent-free for the next ten years. If Brown sells the park within the next ten years, he agrees to pay Ms. Webb $2,150.00 for each remaining year in the ten-year span.

Galen Martin, the Fair Housing Council’s executive director, called the settlement a great resolution to the complaint. “Families with children have the same rights to housing as everyone else. Landlords and other housing providers cannot place restrictions on families due to their size, and they cannot place unreasonable restrictions on children. This settlement sends a strong message to housing providers who think they can treat families with children differently than their other tenants.”

Alex Rose, the Fair Housing Council’s former staff attorney, said that just because housing providers rent to families with children, it doesn’t mean they can impose unfair rules against them. “To limit the number of children in a home – but not the number of adults – is ridiculous and illegal. The same is true when it comes to charging families additional rent for each child they have and telling parents when and where their children can play.”

Tony Baize, the Fair Housing Council’s assistant director, said that discrimination against families with children continues to be rampant in Kentucky and southern Indiana. “Unlike racial discrimination, which has – for the most part – become a covert activity, discrimination against families with children continues to occur out in the open. Congress passed fair housing protections for families with children nearly 15 years ago, and housing providers are still bold enough to have anti-children rules and policies. The fact that the Defendants put their anti-children rules in writing in this case shows the brazenness of this type of overt discrimination.”

Gretchen C. Avery and Robert Smith of the Legal Aid Society of Louisville also worked on this case. Avery handled represented Webb in the unlawful eviction actions by Brown and contacted the Fair Housing Council to investigate the acts of discrimination she felt might have occurred.

“This settlement is another example of the great work that the Fair Housing Council does,” Smith said. Photos of Webb, complaint documents, court rulings, and copies of the now-rescinded Brown’s Mobile Home Park rules are available from the Fair Housing Council. Requests for interviews for Ms. Webb should be directed to the Fair Housing Council. A Webb family photo will be available soon.

The Kentucky Fair Housing Council is a private nonprofit agency dedicated to eradicating housing discrimination in Kentucky and southern Indiana. The Council offers legal services to victims of housing discrimination and assists them in filing complaints with HUD, the Kentucky Commission on Human Rights, the Indiana Civil Rights Commission, and the Louisville Metro Human Relations Commission. The Council also files lawsuits in state and federal court.
Persons who believe they have been denied housing because of their race, color, national origin, sex, religion, family status, disability, or sexual orientation should contact the Fair Housing Council at 502-583-3247. Outside Louisville, complainants can call 800-558-3247.

CASE # 6

Shelton, Conn. Landlord Pays $9,000 in Section 8 Complaint

(Shelton, Conn., April 17, 2003) -- Gafur Imetovski, owner of a 3-family house in Shelton, Ct, has learned a costly lesson, and the cost to him is exactly $9,000 which he had to pay to settle a housing discrimination complaint filed by a Section 8 tenant.

In December, 2001, Ebony Perez, a single mother with two young daughters, claims she responded to an ad placed by Imetovski for a first floor rental when she was told by him that he was not accepting Section 8. According to Perez, he informed her the reason he wasn't taking Section 8 because, "They want me to fix too much!" She claims Imetovski would only rent to her if she did so without her Section 8 rental subsidy. "I don't want to get involved with those people -- I want someone with no problem," Perez quotes him as saying.

Perez reported the incident to the Ansonia Section 8 Office and she was in turn referred to the Fair Housing Association of Connecticut in Bridgeport. After conducting a test to gather the necessary evidence, they assisted her in filing her complaint with the Connecticut Commission On Human Rights & Opportunities. Connecticut law prohibits landlords from discriminating against tenants on rental assistance programs, which falls under the category of discrimination against one's "source of income." (Only a handful of states offer such protection.)

In February this year, the Connecticut Commission made a cause finding, which means they believe after the completion of a full investigation that Imetovski discriminated against Perez. Following the cause finding, the parties negotiated a settlement which required Imetovski to pay $9,000 as compensation.

The settlement agreement included a statement that Imetovski is not admitting liability or violation of the Conn. Fair Housing law. The settlement also requires Imetovski to participate in a comprehensive fair housing training seminar to be conducted by the Connecticut Fair Housing Center in Hartford.

Perez’s attorney, Alan Rosner of Bridgeport, said he was satisfied with the settlement he was able to negotiate for his client but was sorry the case took so long to resolve. Perez admitted that the delay was frustrating but looking at the bright side commented, "Good things come sometimes to those who are willing to wait!"

CASE # 7

The Law & You
Innocent by design
BY OLIVER FRASCONA

True story: James Normal had three years of real estate experience. He had attended fair housing training and prided himself on treating all clients and customers equally.

When his listing at 123 Spring St. sold, he prepared a "Just Sold" postcard—as he always did—and mailed it to everyone within five blocks of the house.

A few days later, Jim got the call: Harry and Beth Seller had received the postcard and wanted Jim to "tell us what our house is worth."

Jim prepared a CMA and a listing contract, with the address, commission, and other information already filled in, as he always did.

He arrived at 6 p.m., and by 8 p.m. he had the listing. The neighborhood didn't have a lot of sold comps, but
the CMA indicated $129,950 as the top of the market. Harry knew the market was hot and insisted on listing for $139,950. Jim put in the listing contract that even if the house sold for that price, there might be an appraisal problem.

On his way back to the office, Jim considered going home instead and putting the listing in the MLS the next morning, but he knew that as the seller's agent, it was his duty to expose the property to as many people as possible as soon as possible. So he entered it in the MLS and then went home to bed.

By 9 a.m., three showings were scheduled. By 10:30 a.m., the first offer came in at $142,500. Jim immediately called Harry to present the offer. Jim said, "I have good news and bad news: The price is $142,500."

Jim explained that the house was unlikely to be appraised that high and that the buyer wanted a 90 percent loan, leaving little room for variance.

The second offer was for $145,750, a 90 percent loan, and $1,000 in earnest money. Jim called Harry, who said, "Since you're my agent, call back the salesperson for the first buyer and tell him the amount of the second offer." Jim wasn't sure whether he should do that, so he called the company attorney, who confirmed that it was legal in his state and that as the seller's agent, he should make the call.

The salesperson who'd made the first offer was upset and implied that calling to reveal the price of the second offer was unethical. Jim felt uneasy but didn't let the broker distract him from carrying out his client's wishes.

A third salesperson called and asked Jim to pick up an offer at his office. The offer was $151,500. Even with the 80 percent loan, the appraisal would be problematic. Jim called Harry again, and again verified things with the attorney. This time he asked the attorney for a confirming letter and then called the salespeople who'd brought in the first and second offers.

The fourth offer came in at $153,750. Again Jim did as he was told and called the salespeople with the previous offers, though the salespeople were getting more angry with each call. The fifth offer came in at $156,750, a 50 percent loan, $5,000 in earnest money, and a clause stating that "buyer realizes that although the lender might provide the amount indicated, the property might be worth less than the sales price."

Jim again talked to Harry and called the earlier salespeople as requested.

That evening as Jim approached Harry's house to present the offers, the fifth salesperson, who was parked outside, got out of her car to tell Jim, "If there's a counteroffer, we're ready." Jim then presented the offers to Harry and Beth in the order they were received. He also brought the CMA and notes on the strengths and weaknesses of each offer, as he always did.

Harry and Beth, who'd never sold a house, decided to counter the fifth buyers at $159,950. They also wanted the contract to be contingent on their finding suitable replacement housing.

Jim gave the salesperson for the fifth buyers the counteroffer, which was accepted. Jim called the other salespeople with the news, being careful not to indicate the sales price. By that point, he anticipated unhappy salespeople and maybe even threats of ethics complaints, but he hadn't anticipated the reaction of the fourth salesperson, who said, "I'm calling HUD. My buyers are black, and we know we were discriminated against."

The HUD investigator requested files from Jim's other transactions and asked many questions, but the one asked most often was, "Is this the way you always do it?"
The estimated cost of trial was $25,000. The plaintiffs' attorney indicated they'd settle for $20,000. Since Jim had done nothing wrong, he decided not to settle.

In the end, Harry and Beth never found a replacement house, and the deal never closed. The listing has long since expired.

What will be the key or keys to Jim's defense?
Innocent By Design Case Study Outcome

The morals of the story:
§ Know your state law on contract presentation and price disclosure.
§ If you're a seller's agent, be a seller's agent and follow the seller's instructions.
§ Consistency is the only defense that always works.
§ When in doubt, ask an attorney. At least it shows that you tried to do things right.
§ Provide equal and professional service to everyone.

Case # 8

COMMONWEALTH of VIRGINIA
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Statement of Attorney General Mims

~ On Wythe County settling with the Commonwealth regarding allegations of discrimination against the disabled, equal-housing violations ~

RICHMOND – Attorney General Bill Mims released the following statement today regarding Wythe County’s agreement to comply with Virginia's Fair Housing Law as part of a consent order resolving a civil lawsuit filed by the Attorney General’s Office against Wythe County for violations of that Law:
"I commend the Wythe County Board of Supervisors for reaching a settlement with our client, the Virginia Fair Housing Board, and agreeing to comply with Virginia’s Fair Housing Law.

“This legal action was not taken lightly. The principles involved – ensuring fair housing for all Virginians and providing a continuum of community care for children who have mental disabilities – are fundamental."

The case involves an application by Camelot of Virginia LLC to establish a group home in Wythe County for up to eight children under the age of 18 who have mental disabilities. A “needs assessment” showed this area is underserved, with children having to travel hours for services provided by such a group home. The County discriminated against this proposed group home by passing an ordinance intended to block group homes in Wythe County. During meetings and public comment sessions, Wythe County Supervisors declared their opposition to the proposed group home and promised citizens that they would do whatever it took to stop “this type of facility.”

Virginia’s Fair Housing Law makes it unlawful for a government entity to discriminate or deny a dwelling to any person because of disability. Further, Virginia law generally provides that restrictive covenants and zoning ordinances must treat group homes intended for eight or fewer mentally disabled residents as a residential occupancy by a single family, and no conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such group homes.

The settlement is in the form of a Consent Order presented for entry by the Wythe County Circuit Court. The Board of Supervisors agrees to remove discriminatory barriers aimed at group homes with eight or fewer disabled residents, issue public apologies, offer and attend training on fair housing policies, and display Fair Housing brochures prominently at its Board of Supervisor meetings.

“Virginia has made positive strides to reform children’s mental health law and policies, particularly by emphasizing the importance of services in the community,” Attorney General Mims added. “I recognize and respect a locality’s ability to direct its own affairs within the bounds of the law. However, that public good must yield to a higher priority -- non-discrimination against children based upon mental disabilities.”
FAIR HOUSING IN PROPERTY MANAGEMENT

Drafting Tenant and Community Rules
A good rule to follow when drafting rules or regulations is to draft them so they don’t single out children or members of a protected class. Rather than having a sign that says, "Children are prohibited from running in the common areas," say "No running in the common areas." Instead of saying," children keep off the grass," have the sign read, "Keep off the grass." Rules and regulations that apply to "all residents" are less suspect than rules that single out children.

If you need to single out children consider doing so on the basis of health and safety considerations. For example, if you have a workout room with exercise equipment ask the manufacturer to inform you what the age is for using the equipment without supervision. Then post a sign such as "According to the manufacturer this equipment may not be used by anyone under 14 years old, unless accompanied by an adult.

Screening Applicants
If you're a housing provider one way to reduce the probability of having a complaint filed against you is to treat everyone the same. Having written guidelines that you follow with each applicant may help you treat everyone the same. Therefore whether you’re managing hundreds of units for a large company or an individual who owns and rents a few units you should establish written guidelines for everything: from how you expect the rent to be paid, to your eviction process to how you expect tenant’s to behave while living in your dwelling.

Part of your screening guidelines should include an applicant's ability to timely pay the rent. Therefore, you may ask the applicant to provide employment, income and credit verification information. How much income and how long of an employment history you require depends on your housing market. You should set standards that allow you to compete for applicants. But setting standards too high may be viewed as trying to keep certain groups of people out of your rentals.

In addition to asking an applicant to verify their income and credit history you may also ask an applicant to provide character references. Character references may indicate what type of personal history your applicant has. If the applicant has a certain criminal history you may chose not to rent to them. These may include applicants who are convicted rapists or burglars. In fact you may chose to exclude any applicant who has a conviction that could present a safety issue for other residents in your complex.

Conduct Criminal Background Checks
If you’re concerned about renting to certain convicted criminals you may establish a criminal background check as part of your application criteria. In establishing a criminal background check keep the following in mind: put your policy in writing; get the applicant's permission to conduct the background check; enforce the policy consistently and if you reject the applicant tell them why.

Consistently applying a criminal background check policy means that you apply the policy to everyone. You apply it to the young and old and to everyone in between.

Even if you don’t establish a criminal background check you're not going to accept every applicant. Rejecting applicants for legitimate credit or income or character reasons should not invite a complaint if you follow certain procedures. As noted you should establish written rental criteria that helps an applicant understand how his application will be screened. Then apply your criteria consistently. If you reject an applicant send them a letter explaining why you rejected them and finally keep excellent records.

Dealing with Problem Tenants
OK so you've approved an application and the tenant moves in. Shortly after the tenant moves in however, you start getting complaints. The newest tenant is apparently harassing other tenants. And you're also getting complaints that they're playing their stereo to loud. What should you do?

When tenants break the rules you should apply the consequences fairly, consistently and according to established procedures. What consequences you apply depends on your procedures and on the records you’ve kept. Some of the records that you should keep include complaints that tenants file against other tenants; complaints that involve the police; letters that you sent to and received from the tenant about lease violations as well as other relevant letters and information. Keeping detailed and accurate records will be important if you have to defend why you evicted the tenant.

If you don’t keep good records or if you keep poor records proving that you evicted a tenant for a non-discriminatory reason may be more difficult.
Handling Maintenance Requests
How are maintenance and repair requests handled in your complex? Does your staff process repair requests from some tenants more quickly than from others? If so it could lead to a fair housing complaint. Generally, repairs should be done in the order that they are received with emergency repairs taking precedence over routine repairs.
Your tenants should understand how you process repair requests and they should understand how long it will take before you get to their request. If an emergency repair takes you or your staff away from a scheduled routine repair call the affected tenant and explain what happened. Among the things that you can do to reduce the probability of having a housing complaint filed against you is to be professional, be consistent, communicate with your tenants and keep excellent records.
Tenants on the other hand need to understand that routine and non-emergency repairs may take a few days and even longer to repair.

Evaluating Requests for Reasonable Accommodations and Modifications from Disabled Tenants
While reasonable modifications have to do with allowing a disabled tenant to make a physical change to his unit or to a common area, a reasonable accommodation requires the landlord to change or modify some rule, practice, policy or service when doing so may be necessary to afford the tenant equal opportunity to use and his or her unit. For more information on reasonable accommodations, follow the link below.

Housing and Disabilities: Reasonable Accommodations and Modifications

Establishing Occupancy Standards
Occupancy standards have to do with how many people may live in a unit. In December of 1998 the Department of Housing and Urban Development (HUD) published a statement of the standards that it would review when evaluating a housing provider’s occupancy standards to determine whether actions under the provider’s policies may constitute discriminatory conduct under the Fair Housing Act on the basis of familial status, which means on the basis of having children in the family.
Since this office follows the occupancy statement that HUD issued in December of 1998, we have reproduced a few paragraphs of HUD’s statement.
…the Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act. … However, the reasonableness of any occupancy policy is rebuttable…Thus in reviewing occupancy cases HUD will consider the size and number of the bedrooms and other special circumstances. The following principles and hypothetical examples should assist you in determining whether the size of the bedrooms or special circumstances would make an occupancy policy unreasonable.

Size of bedrooms and unit
Consider two theoretical situations in which a housing provider refused to permit a family of five to rent a two-bedroom dwelling based on a “two people per bedroom” policy. In the first, the complainants are a family of five who applied to rent an apartment with two large bedrooms and spacious living areas. In the second, the complainants are a family of five who applied to rent a mobile home space on which they planned to live in a two-bedroom mobile home. Depending on the other facts, issuance of a charge might be warranted in the first situation, but not in the second.

The size of the bedrooms also can be a factor suggesting that a determination of no reasonable cause is appropriate. For example, if a mobile home is advertised as a "two-bedroom" home, but one bedroom is extremely small, depending on all the facts, it could be reasonable for the park manager to limit occupancy of the home to, two people.

Age of children
The following hypothetical involving two housing providers who refused to permit three people to share a bedroom illustrates this principle. In the first, the complainants are two adult parents who applied to rent a one-bedroom apartment with their infant child, and both the bedroom and the apartment are large. In the second, the complainants are a family of two adult parents and one teenager who applied to rent a one-
bedroom apartment. Depending on the other facts, issuance of a charge might be warranted in the first hypothetical, but not in the second.

**Configuration of unit**
The following imaginary situations illustrate special circumstances involving unit configurations. Two condominium associations each reject a purchase by a family of two adults and three children based on a rule limiting sales to buyers who satisfy a "two-people per bedroom policy" occupancy policy. The first association manages a building in which the family of the five sought to purchase a unit consisting of two bedrooms plus a den or study. The second manages a building in which the family of five sought to purchase a two-bedroom unit which did not have a study or den. Depending on the other facts, a charge might be warranted in the first situation, but not in the second.

**Other physical limitations of housing**
In addition to physical considerations such as the size of each bedroom and the overall size and configuration of the dwelling, the Department will consider limiting factors identified by housing providers, such as the capacity of septic, sewer or other building systems.

**State and local law**
If a dwelling is governed by state or local government occupancy requirements, and the housing provider's occupancy policies reflect those requirements, HUD would consider the governmental requirements as a special circumstance tending to indicate that the housing provider's occupancy policies are reasonable.

**Other relevant factors**
Other relevant factors supporting a reasonable cause recommendation based on the conclusion that the occupancy policies are pretextual would include evidence that the housing provider has 1) made discriminatory statements; 2) adopted discriminatory rules governing the use of common facilities; 3) taken other steps to discourage families with children from living in its housing; or 4) enforced its occupancy policies only against families with children.

The Building Officials and Code Administrators handbook states that for health and safety reasons you need 70 square feet of bedroom space for one occupant. If you have more than one occupant you need 50 square feet per person. If you have a unit with one-bedroom that measures 10 x 8 or 80 square feet it would be too small for two people. But if you have a unit with one-bedroom that measures 10 x 16 it may be big enough for three people.

Housing providers should strive to balance the requirement to implement a reasonable occupancy standard against their right to protect their property from overcrowding. Housing providers should also strive to balance the requirement to implement a reasonable occupancy standard against their right to protect their investment. Under some circumstances a large unit with three bedrooms may reasonably accommodate seven or eight people without creating an overcrowded situation and without jeopardizing the housing provider's investment. Under other circumstances a unit with three bedrooms may only reasonably accommodate five people. Each situation and complex has to be evaluated based on its own merit.

**AMERICANS WITH DISABILITIES ACT**
Public Law 101-336 prohibits discrimination on the basis of disability by private entities in places of public accommodation and commercial facilities must be designed and constructed so as to be readily accessible to, and usable by persons with disabilities, and requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible to persons with disabilities.

Disabilities are broadly defined as a physical or mental impairment; that substantially limits one or more of the major life activities of such individual; has a record of such impairment; is regarded as having such an impairment.

Regarded as having such an impairment is broadly defined as (a) having a physical or mental impairment that does not substantially limit major life activities, but is treated by a recipient as constituting such a limitation, (b) has a physical or mental impairment that substantially limits major life activities only as a result
of the attitudes of others toward such impairment; or (c) has none of the impairments defined in the law, but is treated by a recipient as having such an impairment.

For instance—persons with severe burns often encounter discrimination in community activities, resulting in substantial limitation of major life activities. These persons are covered under © above based on the attitudes of others towards the impairment, even if they do not view themselves as impaired.

Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, hearing impairments, epilepsy, cerebral palsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

Homosexuality and bisexuality are not physical or mental impairments under the ADA. Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

“Major Life Activities” include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working.

In order to provide a course or tenant in an accessible place or manner, a private entity may need to: modify the course format or requirements; provide auxiliary aids; administer the course in a facility that is accessible for providing alternative comparable arrangements. Additional information may be obtained from Disability rights hot line at 1-800-552-3962.
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 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; “broker” 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. (Adopted 1/93)

• **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.

• **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, or by other parties, 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;
  2) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
  3) the potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord’s agent, etc., and
  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)

• **Standard of Practice 1-16**
  Information concerning latent material defects is not considered confidential information under this Code of Ethics. (Adopted 1/93, Amended 1/01)
REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. (Adopted 1/12)

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 the seller/landlords. (Adopted 1/11)

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, national origin, or sexual orientation. 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, national origin, or sexual orientation. (Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/11)

**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 REALTOR®’s 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 REALTOR®’s 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 the 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 REALTOR®’s 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 REALTOR®’s 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 Internet content posted, and 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 and other content in any way that produces a deceptive or misleading result;
3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
4) presenting content developed by others without either attribution or without permission, or
5) to otherwise mislead consumers. *(Adopted 1/07, Amended 1/13)*

• **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 other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

• **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 other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, 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 1/07, Amended 1/12)*

• **Standard of Practice 15-3**
The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their 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, Amended 1/12)

**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 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®

  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 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)

**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 1/98, Amended 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 mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by the resulting agreement or award. (Amended 1/12)

**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 mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board’s facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

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 1/12)

**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)

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 seller or landlord 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 1/07)

• **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)


**Explanatory Notes**

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in Interpretations of the Code of Ethics. Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

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Case 1

REALTOR® A, who operated a brokerage business in many areas of the city, was also a homebuilder. For the homes he built, he maintained a separate sales force and consistently refused to permit other REALTORS® to show his new homes.

This practice came to the attention of an officer of the Board of REALTORS® who made a complaint which was referred to the Professional Standards Committee by the Grievance Committee.

At the hearing, the Hearing Panel asked REALTOR® A to answer charges that his policy violated Article(s) ? of the Code of Ethics.

He contended that in selling his own new homes there was no client that he was not acting in the capacity of a broker, but as owner-seller, and that, under the circumstances, the Article did not apply to his marketing the houses he built.

What, if any, Articles were violated?

Case 2

REALTOR® A, who managed a 30-year-old apartment building for Client B, proposed a complete modernization plan for the building, obtained Client B’s approval, and carried out the work. Shortly after completion of the work, Client B filed a complaint with the Board of REALTORS® charging REALTOR® A with unethical conduct for receiving rebates or “kickbacks” from the contractors who did the work.

At the hearing, Client B presented written statements from the contractors to substantiate his charges.

REALTOR® A defended himself by stating that he had carried out all work involving the preparation of specifications, solicitation of bids, negotiations with the contractors, scheduling work, and supervising the improvement program; that he had presented all bids to the owner who had authorized acceptance of the most favorable bids; and that he and Client B had agreed on an appropriate fee for this service.

REALTOR® A also presented comparative data to show that Client B had received good value for his money.

After all of the contracts were signed and the work was under way, REALTOR® A found that his fee was inadequate for the time the work required; that he needed additional compensation but didn’t want to add to his client’s costs; and that when he explained his predicament to the contractors and asked for moderate rebates, they agreed.

Questioning by panel members revealed that the contractors felt that since they were being asked for rebates by the man who would supervise their work, they felt that they had no choice but to agree.

What, if any, Articles were violated?
Case 3

REALTOR® A had taken two offers to buy a commercial property listed with him to the owner, Client B. Both offers had been considerably below the listed price, and on REALTOR® A’s advice, Client B had rejected both. REALTOR® C came to REALTOR® A seeking a cooperative arrangement on REALTOR® A’s listing, which was agreeable to REALTOR® A. REALTOR® C brought a contract to REALTOR® A from a prospective buyer, a bank, offering more than the previous proposals, but still 10 percent less than the listed price. REALTOR® A took the offer to Client B and again advised him not to accept an offer at less than the full listed price. Again, the client acted on REALTOR® A’s advice. The bank revised its offer, proposing to pay the listed price. This offer was accepted by Client B, the owner.

About a month after the closing, the Board of REALTORS® received a letter from a director of the bank that had purchased Client B’s property, charging REALTOR® A and REALTOR® C with unethical conduct and duplicity which had resulted in the bank’s paying an excessive price for the property. The complaint stated that REALTOR® C was a stockholder in a corporation, one of whose officers was a director of the bank; that REALTOR® C, in a transaction that was handled through REALTOR® A, had evidently used his connection with the bank to induce the bank to buy at a price higher than the market; and that neither of the two REALTORS® had disclosed to the other officers of the bank the connection that existed between them and one officer of the bank.

At the hearing, REALTOR® A defended his actions by stating that he knew nothing of any business relationship between REALTOR® C, the cooperating broker and the buyer; that he had acted wholly in accordance with the best interests of his client, the seller. REALTOR® C demonstrated that he had negotiated solely with the president of the bank; that the director of the bank who happened to be an officer of a corporation in which he, REALTOR® C, held stock was at no time contacted during the negotiations; that the matter had never been discussed with that individual.

What, if any, Articles were violated?

Case 4

REALTOR® A had a 90-day exclusive listing on Seller X’s property. Seller X instructed REALTOR® A to list the property at $150,000 based upon the sales price of a neighbor’s house, which had sold a month earlier.

REALTOR® A aggressively marketed the property, filing the listing with the Board’s MLS, running a series of advertisements in the local newspaper, holding several “Open Houses,” and distributing flyers on the property at local supermarkets. REALTOR® A, whose listing contract was nearing expiration, held another “Open House” on the property, which resulted in an offer to purchase from Buyer Y at $15,000 less than the listed price. REALTOR® A, convinced that this was the best offer Seller X was likely to obtain, persuaded Seller X to accept the offer. Seller X expressed dissatisfaction with REALTOR® A’s failure to obtain a full price offer, but signed the purchase agreement nonetheless.

The next day, REALTOR® B, a cooperating broker, delivered to REALTOR® A a full price offer on Seller X’s property from Buyer Z. Buyer Z had attended an earlier “Open House” and was very enthusiastic about the home’s location, stating that it would be perfect for his mother.

REALTOR® A advised REALTOR® B and Buyer Z, that an offer had already been accepted by Seller X and that he, REALTOR® A, would not present Buyer Z’s offer. REALTOR® B and Buyer Z then promptly filed a complaint with the Board charging REALTOR® A with a violation of the Code of Ethics.
At the hearing, REALTOR® A stated that he felt he was under no obligation to present Buyer Z’s offer, since the listing agreement did not specifically provide that subsequent offers would be presented to the seller. Further, REALTOR® A felt that such a practice could only lead to controversy between buyers and sellers, as well as result in breached contracts. “Why get everyone in an uproar,” said REALTOR® A, “by presenting offers after one has been accepted? And what would I do if Seller X wanted to back out of the first purchase contract and accept Buyer Z’s offer?”

What, if any, Articles were violated?

Case 5

REALTOR® A, who held an exclusive listing of Client B’s property, invited REALTOR® C to cooperate with him. When REALTOR® C, shortly thereafter, received an offer to purchase the property and took it to REALTOR® A, the latter took REALTOR® C with him to present the offer to Client B, and negotiations for the sale were started. He next day, REALTOR® C called on Client B alone, recommended that he accept the offer which was at less than the listed price, and Client B agreed. The contract was signed and the sale was made.

These facts were detailed in a complaint by REALTOR® A to the Board of REALTORS® charging REALTOR® C with unethical conduct in violation of Article(s) ? having made his second contact with the client without his, REALTOR® A’s consent.

At the subsequent hearing, REALTOR® C defended his actions on the basis that since he had been invited to cooperate with REALTOR® A, and particularly since REALTOR® A had invited him to be present when his offer was presented to the seller, REALTOR® C had assumed that he had REALTOR® A’s consent for subsequent direct contacts with Client B. He stated further that he had a good reason for going alone because in his first visit to the client, REALTOR® A had undertaken to present his, REALTOR® C’s, offer without fully understanding it and had made an inept presentation. Questioning by members of the Hearing Panel revealed that there had been some important considerations that REALTOR® A had not understood or explained to the client.

What, if any, Articles were violated?

Case 6

REALTOR® A had listed Seller S’s vintage home. Buyer B made a purchase offer that was contingent on a home inspection. The home inspection disclosed that the gas furnace was in need of replacement because unacceptable levels of carbon monoxide were being emitted.

Based on the home inspector’s report, Buyer B chose not to proceed with the purchase.

REALTOR® A told Seller S that the condition of the furnace and the risk that it posed to the home’s inhabitants would need to be disclosed to other potential purchasers. Seller S disagreed and instructed REALTOR® A not to say anything about the furnace to other potential purchasers. REALTOR® A replied that was an instruction he could not follow so REALTOR® A and Seller S terminated the listing agreement.

Three months later, REALTOR® A noticed that Seller S’s home was back on the market, this time listed with REALTOR® Z. His curiosity piqued, REALTOR® A phoned REALTOR® Z and asked whether there was a new furnace in the home. “Why no,” said REALTOR® Z, “Why do you ask?” REALTOR® A told REALTOR® Z about the home inspector’s earlier findings and suggested that REALTOR® Z check with the seller to see if repairs had been made.
When REALTOR® Z raised the question with Seller S, Seller S was irate. “That’s none of his business,” said Seller S when REALTOR® Z advised him that potential purchasers would have to be told about the condition of the furnace since it posed a serious potential health risk.

Seller S filed an ethics complaint against REALTOR® A alleging that the physical condition of his property was confidential; that REALTOR® A had an ongoing duty to respect confidential information gained in the course of their relationship; and that REALTOR® A had breached Seller S’s confidence by sharing information about the furnace with REALTOR® Z.

What, if any, Articles were violated?

Case 7

Client A dropped in to see his friend, REALTOR® B, who had recently provided professional services to Client A’s company. Client A said the company was sending him on business to the Far East; that the trip would involve a good deal of air travel in remote areas; and that he would like to leave a power of attorney with his wife while he was gone “just in case.” He asked REALTOR® B if he would prepare a power of attorney for him and REALTOR® B said, “It’s a simple document. I’ll be glad to prepare one for you,” and did.

This action came to the attention of the Grievance Committee of the Board of REALTORS®, which, after review, filed a complaint with the Board’s Professional Standards Committee, charging REALTOR® B with a violation of Article(s) ? of the Code of Ethics.

REALTOR® B’s defense was that he understood Client A’s request to be essentially for a real estate service since from his general knowledge of Client A’s personal affairs, he knew that Client A could have no reason for giving his wife a power of attorney except to put her in a position to act in real estate transactions. He contended that because his preparation of a legal document was directly related to real estate matters, he had rendered real estate, not legal, services to Client A.

What, if any, Articles were violated?

Case 8

REALTOR® A was asked to list a neglected house that obviously needed a wide range of repairs. He strongly advised the owner that it would be to his advantage to put the house in good repair before offering it for sale, but the owner wanted it sold at once on an “as is” basis. REALTOR® A wrote a novel advertisement offering a “clunker” in poor condition as a challenge to an ambitious do-it-yourself hobbyist.

A few days later, Sales Associate B, who was not a Board member, from REALTOR® A’s office showed the house to a retired couple who liked the location and general features, and who had been attracted by the ad because the husband was looking forward to applying his “fix-up” hobby to improving a home. The sale was made. Shortly thereafter, REALTOR® A was charged by the buyer with having misrepresented the condition of the property.

REALTOR® A accompanied Sales Associate B to the hearing, armed with a copy of his candid advertisement. The hearing established that the buyer fully understood that the house was generally in poor condition, but that while inspecting the house with a view to needed repairs, Sales Associate B had commented that since the house was of concrete block and stucco construction, there would be no termite worries since termites could not enter that type of construction. Sales Associate B confirmed this and his belief that the statement was
correct. However, after the sale was made, the buyer ripped out a sill to replace it and found it swarming with termites, with termite damage to floors in evidence. Further questioning established that there had been no evidence of termite infestation prior to the sale, and that the Sales Associate had volunteered an assurance that he thought was well grounded.

REALTOR® A, prior to the conclusion of the hearing, offered to pay the cost of exterminating the building and the cost of lumber to repair termite damage in view of Sales Associate B’s failure to recommend a termite inspection, which was the usual and customary practice in this area. The complainant stated that this would satisfy him completely.

What, if any, Articles were violated?

Case 9

REALTORS® A and B were members of the same Board and Participants in the Multiple Listing Service. REALTOR® A cooperating with REALTOR® B on REALTOR® B’s listing, presented an offer to purchase signed by buyers offering the listed price, and a check for earnest money. The only contingency was a mortgage contingency, and REALTOR® A shared with REALTOR® B qualifying information about the buyers indicating there should be no problem securing a mortgage. The following day, REALTOR® B returned the offer to REALTOR® A with “REJECTED” written on it and initialed by the seller, and explained that the seller had accepted another offer secured by one of REALTOR® B’s sales associates. REALTOR® A inquired about the seller’s reason for rejecting the full price offer with only a mortgage contingency, and what had caused the seller to accept the other offer. REALTOR® B responded that he did not know, but with equal offers, he supposed the seller would favor the offer secured by the listing broker.

Later, REALTOR® A met the seller at a social event. The seller thanked him for his efforts in connection with the recent sale of the seller’s home. The seller hoped REALTOR® A understood there was nothing personal in his decision, adding that the money he saved through his “special agreement” with REALTOR® B had been the deciding factor. When REALTOR® A asked about the “special agreement,” the seller explained he had signed a listing agreement for the sale of his property which authorized the submission of the listing to the Multiple Listing Service and specified a certain amount of compensation. However, the seller stated that he had also signed an addendum to the listing agreement specifying that if REALTOR® B sold the listing through his own office, a percentage of the agreed compensation would be discounted to the seller’s credit, resulting in a lower commission payable by the seller.

REALTOR® A filed a written complaint with the Board of REALTORS® against REALTOR® B, alleging a violation of Article(s) ?. After its review of the complaint, the Grievance Committee requested that an ethics hearing be arranged.

REALTOR® A, in restating his complaint to the Hearing Panel, said that REALTOR® B’s failure to disclose the actual terms and conditions of the compensation offered through the Board MLS resulted in concealment and misrepresentation of pertinent facts to REALTOR® A and to the prospective buyers served by REALTOR® A who had, in good faith, offered to purchase the property at the listed price with only a mortgage contingency. REALTOR® A told the Hearing Panel that if he had known the facts which were not disclosed by REALTOR® B, he could have fully and accurately informed the buyers who could have taken those facts into consideration when making their offer. As it was, said REALTOR® A, the buyers acting in good faith were deceived by facts unknown to them because they were unknown to REALTOR® A. Further, REALTOR® A said that REALTOR® B’s failure to fully disclose the true terms and conditions relating to compensation made it impossible to have a responsible relationship with REALTOR® B and make proper value judgments as to accepting the offer of compensation.
REALTOR® B stated that it was his business what he charged and the Board or MLS could not regulate his charges for his services. If he wished to establish a dual commission charge by agreement with his client, that was his right, and there was no need or right of the Board or MLS to interfere.

What, if any, Articles were violated?

Case 10

REALTOR-ASSOCIATE® D, associated with the firm of REALTOR® A, obtained an offer to buy a property at less than the listed price. The offer was rejected. The property had been exclusively listed by REALTOR® B and had been published through the Multiple Listing Service of the local Board of REALTORS®. The owner received no further offers and at the expiration of the exclusive listing with REALTOR® B, he approached REALTOR® C and exclusively listed the property with him.

About this time, REALTOR-ASSOCIATE® D, terminated his association with REALTOR® A, and became affiliated with REALTOR® C's organization.

The prospect who had made the unsuccessful offer on the property continued to seek the assistance of REALTOR-ASSOCIATE® D and made another offer on the property, this time at the full listed price. REALTOR-ASSOCIATE® D and REALTOR® C, the listing broker, submitted this offer to the owner, and it was accepted.

A few months following the sale, the purchaser complained to the Board of REALTORS® that REALTOR-ASSOCIATE® D had made a statement that a "visible gas pipeline easement extended to property but did not go onto any part of the property." The complainant presented evidence that the easement, in fact, crossed the property, and the complainant charged REALTOR® C and REALTOR-ASSOCIATE® D with misrepresentation.

The complainant was reviewed by the Grievance Committee and then referred to the Board’s Professional Standards Committee which promptly scheduled a hearing and asked REALTOR® C and REALTOR-ASSOCIATE® D to be present to answer charges of unethical conduct in violation of Article(s) ? of the Code of Ethics.

At the hearing, REALTOR-ASSOCIATE® D confirmed that he had made the statement attributed to him; that he thought it was correct because the information had been given to him by a neighboring property owner. Questioning revealed that REALTOR-ASSOCIATE® D had made no effort to verify the information from authoritative sources. REALTOR® C protested he knew nothing about the matter; that he had not been present when REALTOR-ASSOCIATE® D made the statement; that he was not responsible for the oral statements made by a REALTOR-ASSOCIATE®; and that REALTOR-ASSOCIATE® D’s first contact with the buyer had occurred while REALTOR-ASSOCIATE® D was associated with REALTOR® A.

What, if any, Articles were violated?
Case 11

Following a round of golf early one morning, Homeowner A approached REALTOR® X. “We’ve outgrown our home and want to list it with you,” said Homeowner A. “I’m sorry,” said REALTOR® X, “but I represent buyers exclusively.” “Then how about REALTOR® Z?,” asked Homeowner A, “I’ve heard good things about him.” “I don’t know if I would do that,” said REALTOR® X, “while he does represent sellers, he doesn’t cooperate with buyer brokers and, as a result, sellers don’t get adequate market exposure for their properties.”

Later that day, Homeowner A repeated REALTOR® X’s remark to his wife who happened to be a close friend of REALTOR® Z’s wife. Within hours, REALTOR® Z had been made aware of REALTOR® X’s remarks to Homeowner A earlier in the day. REALTOR® Z filed a complaint against REALTOR® X charging him with making false and misleading statements. REALTOR® Z’s complaint was considered by the Grievance Committee which determined that an ethics hearing should be held.

At the hearing REALTOR® Z stated, “I have no idea what REALTOR® X was thinking about when he made his comments to Homeowner A. I always cooperated with other REALTORS®” REALTOR® X replied, “That’s not so. Last year you had a listing in the Multiple Listing Service and when I called to make an appointment to show the property to the buyer, you refused to agree to pay me.” REALTOR® Z responded that he had made a formal offer to sub agency through the MLS with respect to the property but had chosen not to offer compensation to buyer agents through the MLS. He noted, however, that the fact that he had not made a blanket offer to compensation to buyer agents should not be construed as a refusal to cooperate and that he had, in fact, cooperated with REALTOR® X in the sale of that very property.

What, if any, Articles were violated?

Case 12

REALTORS® A and B were partners in a building company. They both held membership in the XYZ Board of REALTORS® and were Participants in the Board’s Multiple Listing Service. After many successful years, they decided to terminate their partnership with REALTOR® A continuing the building business and REALTOR® B forming a new residential brokerage company. As part of their termination agreement, REALTOR® B agreed not to build new homes in the XYZ Board’s jurisdiction for a period of twelve months.

Six months later, REALTOR® A filed a written request for arbitration with the Secretary of the XYZ Board of REALTORS®. In his request, REALTOR® A outlined the terms of their partnership termination agreement pointing out the REALTOR® B had continued to build new homes in violation of their agreement. REALTOR® A demanded that the Board take action to enforce the agreement and compel REALTOR® B to refrain from any further construction.

The Board Secretary forwarded the arbitration request to the Grievance Committee for review.

What is the main issue of this case?

What Articles, if any, were violated?
Case #12-New

REALTOR® A, a residential broker in a major metropolitan city, spent several weeks each year in his cabin in the north woods where he planned to retire one day. Even while at home in the city, REALTOR® A stayed abreast of local news, events, and especially the local real estate market by subscribing to the print and on-line editions of the local newspaper. He also bookmarked a number of north woods brokers’ websites to stay current with the market and to watch for potential investment opportunities.

One evening while surfing the Internet, REALTOR® A came across a URL he was unfamiliar with – northwoodsandlakesmls.com. REALTOR® A was pleased to see the MLS serving the area where he vacationed for so many years had created a publicly accessible website. Clicking on the link, he was surprised to find that the website he was connected with was not an MLS’s website but instead was REALTOR® Z’s company website. Having had prior dealings with REALTOR® Z, REALTOR® A spent some time carefully scrutinizing the website. He noted, among other things, that the name of REALTOR® Z’s firm did not include the letters MLS.

REALTOR® A sent an e-mail to the association’s executive officer asking whether REALTOR® Z had been authorized by the association to use the URL northwoodsandlakesmls.com and whether the association felt it presented a true picture as required by Article 12 of the Code of Ethics. The association executive responded that their association did not assign, review, or approve URLs used by their members, but added that if REALTOR® A felt a possible violation of the Code of Ethics had occurred, the appropriate step was to file an ethics complaint. REALTOR® A did just that, alleging in his complaint that when he clicked on what appeared to be a real estate–related URL that included the letters “MLS” he expected to be connected with a website operated by a multiple listing service. He stated he felt that REALTOR® Z’s URL was deceptive and did not meet Article 12’s true picture test.

At the hearing, REALTOR® Z defended his URL on a number of grounds including the fact that he was a participant in good standing in the MLS and that he was authorized under the MLS’s rules to display other participants’ listings on his website. “If I used ‘MLS’ in the name of my firm, I could see how that might be perceived as something less than a true picture,” he argued, “but by simply using MLS in my URL I am telling consumers that they can get MLS–provided information about properties in the north woods from me. What could be truer than that?”

What Articles, if any, were violated?

Case 13

REALTOR® A received a letter from the ABC College in another city stating that one of its old graduates in REALTOR® A’s city had willed a vacant property in that community to the college. The letter explained that the college had no use for the property, and wanted REALTOR® A to sell it at its fair market value. The proceeds would go to the endowment fund of the college. REALTOR® A suggested a price for the property, an exclusive listing contract was executed, and in less than a month the lot was sold and settlement made with the college. Two weeks later, a trustee of the college, who handled its investments, filed a complaint against REALTOR® A charging negligence in knowledge of proposed local legislation which had resulted in sale of the property at approximately one-eighth of its fair market value. The Grievance Committee referred it for hearing before a panel of the Professional Standards Committee.

The Professional Standards Committee scheduled a hearing and notified REALTOR® A and the college trustee to be present. The hearing developed these facts:

(1) The client’s property was in an area which had been approved for rezoning from residential to commercial use in a general revision of the local zoning map and ordinance that was in preparation. (2) Although specific sections of the revisions, including the section involving the lot in question, had been tentatively approved, final approval had not been given to the complete revision at the time of the sale, but this action had taken place a few days following the sale. For several months prior to the sale there had been a public notice of the proposal...
to rezone affixed to a sign near one corner of the property. (3) In his one inspection of the property, REALTOR® A had not noticed the sign. (4) Other sales in the rezoned area substantiated the client’s belief that the shift to commercial zoning supported a value at approximately eight times the price received for the lot.

REALTOR® A’s defense was that the ordinance putting the rezoning into effect had not been enacted at the date of his sale of the client’s property, and that he had no knowledge at the time of the rezoning proposal.

What, if any, Articles were violated?

Answers to Ethics Cases

Case 1: Refusal to Extend Cooperation in Sale of New Homes

The Hearing Panel concluded REALTOR® A’s defense was valid; that he was a principal; that Article 3 permitted him, as the builder-owner, to decide what marketing procedure would be in his best interest; and that although other REALTORS® might disagree with his decision, he was not in violation of Article 3.

Case 2: Acceptance to Rebates from Contractors

The Hearing Panel concluded that REALTOR® A was in violation of Article 6 of the Code of Ethics and that if he had miscalculated his fee with Client B, his only legitimate recourse would have been to renegotiate this fee with Client B.

Case 3: Indirect Interest in Buyer

It was the conclusion of the Hearing Panel that the indirect relationship between REALTOR® C and the buyer was not of a nature to require a formal disclosure; that REALTOR® C could not be held to be in violation of Article 4. The panel pointed out, however, that in a borderline case where it could be reasonably inferred that a relationship did exist, the spirit of Article 4 would be better served if disclosure were made to avoid any possibility of unfortunate or unfounded suspicions.

Case 4: Obligation to Present Subsequent Offers After an Offer to Purchase Has Been Accepted by the Seller

The Hearing Panel found REALTOR® A in violation of Article 1. In their “Findings of Fact and Conclusions,” the hearing Panel cited REALTOR® A’s lack of understanding of the requirements of Article 1, as interpreted by Standard of Practice 1-7. The panel noted that state law did not prohibit the presentation of offers after an offer had been accepted by the seller; that the fact that the listing contract was silent on whether subsequent offers would be presented did not relieve REALTOR® A from the obligation to present such offers; that as the agent of the seller, REALTOR® A must always act in the seller’s best interest and advise the seller of all offers submitted; and that should the seller wish to consider accepting a subsequent offer, REALTOR® A must advise the seller to seek the advice of legal counsel.

Case 5: Assumed Consent for Direct Contact

The conclusion of the panel was that the consent of the listing broker required by Article 16, as interpreted by Standard of Practice 16-13, cannot be assumed, but must be express; and that REALTOR® C had violated Article 16 by negotiating directly with REALTOR® A’s client without REALTOR® A’s consent.

The Hearing Panel disagreed with Seller S’s contentions. It noted that while REALTORS® do, in fact, have an obligation to preserve confidential information gained in the course of any relationship with the client, Standard of Practice 1-9 specifically provides that latent material defects are not considered “confidential information” under the Code of Ethics. Consequently, REALTOR® A’s disclosure did not violate Article 1 of the Code of Ethics.

Case 7: Preparation of Instrument Unrelated to Real Estate Transaction

It was the judgment of the Hearing Panel that REALTOR® B’s defense was without merit; that by preparing the power of attorney, he had engaged in the practice of law in violation of Article 13 of the Code.

Case 8: Responsibility for Sales Associate’s Error

It was the Hearing Panel’s view that while REALTOR® A’s actions were commendable, and would be taken into account by the Hearing Panel, REALTOR® A was still responsible for the errors and misstatements of the sales associates affiliated with him. The Hearing Panel concluded that REALTOR® A was in violation of Article 2.

Case 9: REALTORS® Obligation to Disclose Dual Commission Arrangements

The Hearing Panel agreed that it was REALTOR® B’s right to establish his fees and charges as he saw fit, and that the Board or MLS could not and would not interfere. However, the Hearing Panel noted that his complete freedom to establish charges for his services did not relieve him of his obligation to fully disclose the real terms and conditions of the compensation offered to the other Participants of the Multiple Listing Service, and did not justify his failure to disclose the dual commission arrangement. In the case of a dual commission arrangement, the listing broker must disclose not only the existence of the “special arrangement” but also must disclose, in response to an inquiry from a potential cooperating broker, the differential that would result in the total commission in a cooperative transaction. The Hearing Panel concluded that by submitting a listing to the MLS indicating that he was offering a certain amount of compensation to cooperating brokers while other relevant terms and conditions were not disclosed to the other MLS Participants, he had concealed and misrepresented real facts and was in violation of Article 3 of the Code of Ethics.

Case 10: REALTORS® Responsibility for REALTOR-ASSOCIATE®’S Statement

It was concluded by the Hearing Panel that REALTOR® C and REALTOR-ASSOCIATE® D were in violation of Article 2 of the Code of Ethics in a way that materially imposed upon the buyer, who actually received measurably less in his package of ownership rights when he purchased the property than he was led to believe he was buying. Since it had been demonstrated that REALTOR-ASSOCIATE® D made the statement containing misinformation on a pertinent fact while he was affiliated with REALTOR® C, and in view of the fact that REALTOR® C was the exclusive agent of the seller at the time, REALTOR® C was held to be responsible.

He was advised that a REALTOR® is definitely responsible for pertinent statements of his salespersons in real estate transactions. REALTOR® C and REALTOR-ASSOCIATE® D were found in violation of Article 2.

Case 11: Intentional Misrepresentation of a Competitor's Business Practices

The Hearing Panel, in its deliberations, noted that cooperation and compensation are not synonymous and though formal blanket offers of cooperation and compensation can be communicated through Multiple Listing Services, even when they are not, cooperation remains the norm expected REALTORS®. However, to
characterize REALTOR® Z’s refusal pay requested compensation as a “refusal to cooperate” and make the assumption and subsequent statement that REALTOR® Z “did not cooperate with buyer agents” was false, misleading, and not based on factual information. Consequently, REALTOR® X was found in violation of Article 15.

Case 12: Appeal of Grievance Committee Decision

The Board of Directors noted that Article 17 of the Code of Ethics requires arbitration of disputes “…between REALTORS® associated with different firms arising out of their relationship as REALTORS®.”

If REALTOR® A were requesting arbitration of a dispute arising out of a real estate transaction (such as dispute concerning entitlement to commissions or sub agency compensation), this would be a properly arbitrable matter. However, the Directors noted that the dispute in question related to the provisions of a partnership termination agreement, which the Board had no authority to enforce. The Directors advised that while the Board’s arbitration facilities were available to settle disputes between members, buyers, and sellers related to real estate transactions, the Board’s authority did not extend to ordering performance of contracts since this was properly the privilege of the courts.

Case Interpretation #12-New

The hearing panel disagreed with REALTOR® Z’s reasoning. While REALTOR® Z’s website included information about other participants’ listings that the MLS had provided -and that REALTOR® Z was authorized to display – the fact remained that a real estate–related URL that included the letters MLS would lead reasonable consumers to conclude that the website would be an MLS’s, and not a broker’s website. REALTOR® Z was found in violation of Article 12 as interpreted by Standard of Practice 12-10.

Case 13: Knowledge of Proposed Legislation

The Hearing Panel’s conclusion was that REALTOR® A had violated Article 1 and was definitely deficient in his professional obligations in this instance; that before suggesting a price to his client he should have checked the property carefully enough to have seen the notice concerning a proposal for rezoning; and that as a REALTOR® active in the area he should have been aware of the extensive changes that were being proposed in his city’s zoning ordinance. Such knowledge was within his obligation under Article 1 to protect the best interests of his client.

The board has the power to fine any licensee, and to suspend or revoke any license issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter where the licensee has been found to have violated or cooperated with others in violating any provision of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1 of the Code of Virginia or any regulation of the board. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia may be charged with improper dealings, regardless of whether those acts are in the licensee’s personal capacity or in his capacity as a real estate licensee.

18 VAC 135-20-160. Place of business. **SEE 2012 Virginia Real Estate Law Update for legislative changes to this section of the regulations.**

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

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

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

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

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

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

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

1. The availability of the supervising broker to all licensees under the supervision of the broker to review and discuss contract provisions, approve all documents including but not limited to leases, contracts affecting the firm’s clients, brokerage agreements provisions agreements and advertising;

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.

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;

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;

The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office;

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

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.


A. Name and address.

1. Salespersons and individual brokers shall at all times keep the board informed of their current name and home address. Changes of name and address must be reported to the board in writing within 30 calendar days of such change. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use. The professional name shall include the licensee's first or last name and shall not include any titles.

2. Salespersons and brokers shall be issued a license only to the place of business of the sole proprietorship or firm with which the salesperson or broker is active.

3. Principal brokers must at all times keep the board informed of their current firm and branch office name and addresses and changes of name and address must be reported to the board in writing within 30 calendar days of such change. A physical address is required. A post office box will not be accepted.
B. Discharge or termination of active status.

1. When any salesperson or broker is discharged or in any way terminates his active status with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of termination or status change. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

2. When any principal broker is discharged or in any way terminates his active status with a firm, it shall be the duty of the firm to notify the board and return the license by certified mail to the board within three business days of termination or status change. The firm shall indicate on the license the date of termination, and shall sign the license before returning it.

See §54.1-2109 of the Code of Virginia for termination relating to the death or disability of the principal broker.

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 there from, in which case the terms of the lease or other applicable law shall control.
Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to
receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow
account required by the lease without the written consent of the tenant.

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


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

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

C. Actions constituting improper record keeping include:

1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification, if the transaction fails to close, a complete and legible copy of each disclosure of a brokerage relationship, and each executed contract, agreement, and closing statement related to a real estate transaction, in the broker's control or possession, unless prohibited by law;

2. Having received monies on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing or termination of a lease or conclusion of the licensee's involvement in the lease; and

3. Failing, within a reasonable time, to account for or to remit any monies coming into a licensee's possession which belong to others.
18 VAC 135-20-190. Advertising by licensees.

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

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

"Disclosure" in the context of online advertising means (i) advertising that contains the firm's licensed name, the city and state in which the firm's main office is located and the jurisdiction in which the firm holds a license or (ii) advertising that contains the licensee name, the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license.

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

"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


Historical Notes


If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property through purchase, sale or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner, purchaser or lessee in writing in the offer to purchase, the application, the offer to lease or lease. This disclosure shall be made to the purchaser, seller or lessee upon having substantive discussions about specific real property.

A. Purchase transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents in a brokerage relationship, as that term is defined in §54.1-2130 of the Code of Virginia.

2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of §54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.

3. A licensee acting as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of §54.1-2139 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.

4. Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by §54.1-2138 of the Code of Virginia.

B. Lease transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

2. This disclosure requirement shall not apply to lessors or lessees in single or multi-family residential units for lease terms of less than two months.

Historical Notes


Historical Notes

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18 VAC 135-20-240. Provision of records to the board.
Unless otherwise specified by the board, or as set forth in § 54.1-2108 of the Code of Virginia, a licensee of the Real Estate Board shall produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

18 VAC 135-20-250. Response to inquiry of the board.
A licensee must respond to an inquiry by the board, other than requested under 1823 VAC 135-20-240, or its agents within 21 days.

18 VAC 135-20-260. Unworthiness and incompetence.
Actions constituting unworthy and incompetent conduct include:

1. Obtaining a license by false or fraudulent representation;

2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in this chapter;

3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;

4. As a currently licensed real estate broker, sitting for a real estate licensing examination;

5. Having been convicted or found guilty, regardless of the manner of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending there from or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision 5 of this section;

7. Having had a license as a real estate broker or real estate salesperson that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction.

8. Failing to inform the board in writing within 30 days of a disciplinary action as stated in subdivision 7 of this section.

9. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States including without limitation Title VIII of the Civil Rights Act of 1968, (82 Stat. 73) or the Civil Rights Act of 1866 (14 Stat. 27), there being no appeal there from or the time for appeal having elapsed;

10. Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public; and

11. Engaging in improper, fraudulent, or dishonest conduct.
18 VAC 135-20-270. Conflict of interest.

Actions constituting a conflict of interest include:

1. Being active with or receiving compensation from a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;

2. Acting for more than one client in a transaction governed by the provisions of § 54.1-2139 of the Code of Virginia without first obtaining the written consent of all clients;

3. Acting as a standard agent or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).


Actions resulting in an improper brokerage commission include:

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

2. Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, from any person except the licensee's principal broker at the time of the transaction, for the performance of any of the acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or (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.


18 VAC 135-20-290. Improper dealing.

Actions constituting improper dealing include:

1. Entering a brokerage relationship that does not (i) specify a definite termination date; (ii) provide a mechanism for determining the termination date; or (iii) is not terminable by the client;

2. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative;

3. Placing a sign on any property without the consent of the owner of the property or the owner's authorized representative; and

4. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship.

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

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee did in fact have at least that quantity for sale or rent;

2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;

3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;

4. Failure by a licensee acting as a standard agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;

5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;

6. Failing to include the complete terms and conditions of the real estate transaction, including but not limited to any lease, property management agreement or offer to purchase;

7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;

8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;

b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;

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

18 VAC 135-20-310. Delivery of instruments.

Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each principal to a transaction, complete and legible copies of any written disclosures required by §§ 54.1-2138 and 54.1-2139 of the Code of Virginia, listings, leases, offers to purchase, counteroffers, addenda, ratified agreements, and other documentation required by the agreement;

2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;

3. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of monies received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of monies received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and

4. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.


18 VAC 135-20-330. Principal and supervising broker's responsibility for acts of licensees and employees.
Any unlawful act or violation of any of the provisions of Chapter 21, (§ 54.1-2100 et seq.) of Title 54.1 or of Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia or of the regulations of the board by any real estate salesperson, employee, partner or affiliate of a principal broker, supervising broker or both, may not be cause for disciplinary action against the principal broker, supervising broker, or both, unless it appears to the satisfaction of the board that the principal broker, supervising broker, or both, knew or should have known of the unlawful act or violation and failed to take reasonable action under the circumstances to remedy the situation.
Action by the board resulting in the revocation, suspension, or denial of renewal of the license of any principal broker or sole proprietor shall automatically result in an order that the licenses of any and all individuals active with the affected firm be returned to the board until such time as they are reissued upon the written request of a sole proprietor or principal broker pursuant to regulation 18 VAC 135-20-170 B.

The board has the power to fine any licensee, and to suspend or revoke any license issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter where the licensee has been found to have violated or cooperated with others in violating any provision of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1 of the Code of Virginia or any regulation of the board. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia may be charged with improper dealings, regardless of whether those acts are in the licensee’s personal capacity or in his capacity as a real estate licensee.

CASE # 18  IMPROPER BROKERAGE COMMISSION

Mary Williams has been a licensed real estate salesperson for 15 years, and has been affiliated with the ABC REAL ESTATE firm for the past 5 years. While she would describe her “practice” as comfortable, she would also tell you that she has to hustle to continue to sell at her present yearly rate.

One of Ms. Williams’ marketing tools has been to maintain contact with her clients with mail-outs that thank them for their business and to send birthday cards and other seasonal celebratory notes. Ms. Williams firmly believes that happy and satisfied customers will recommend her services to others. And, this has proven to be true for her.

Along these lines, whenever Ms. Williams was able to determine that one of her former clients had referred customers to her, she would send that person(s) a gift certificate for dinner for two at one of the nicer restaurants in town. The gift certificates would always be mailed with a letter thanking the person for their continued support and, essentially, requesting that the person continue to refer her to other potential clients. Often, Ms. Williams would send two or more gift certificates to one person who made multiple referrals over the course of time.

Class Discussion
Board regulation states that improper brokerage commissions include payment of commissions or other valuable considerations to any person(s) for acts that might be construed as practicing real estate. Does this case scenario fall into that category? After all, every “referral” does not result in a sale.

CASE STUDY 95-012/FALL 96 - IMPROPER DEALINGS

A listing agreement was entered into by Owner 1 and XYZ Realty, as agent, on September 12, 1992 to sell property located at 987 West Road, In Town, Virginia. On January 31, 1993, the principal broker of XYZ Realty notified owner 1 that he was released from the listing agreement. However, on March 12, 1993, XYZ Realty advertised the subject property for sale in the In Town Multiple Listing Service Book.

Class Discussion
Could this be a violation of the Virginia real estate licensing regulations? If so, which one?
Answers to Case Studies

Case # 18 Improper Brokerage Commission

It appears that the gift of a certificate to a “nicer restaurant” to a former client was tied directly to a referral by that former client which resulted in a real estate transaction closing. To receive a referral fee or valuable consideration, the former client would have to be licensed. The board would then have to determine if the gift certificates to a “nicer restaurant” was valuable consideration. It is illegal to receive or pay an improper brokerage commission.

Case Study 95-012/Fall 96 - Improper Dealings

Case Outcome

Among the actions constituting improper dealing include offering real property for sale or for lease without the knowledge and consent of the owner or the owner’s authorized agent or on any terms other than those authorized by the owner or the owner’s authorized agent.

REAL ESTATE CONTRACTS (1 HOUR)

ESSENTIAL ELEMENTS

In order for a contract to be legally valid, and hence binding and enforceable, the following five requirements must be met:

1. Legally competent parties
2. Mutual agreement
3. Lawful objective
4. Consideration or cause
5. Contract in writing when required by law

If these considerations are met, any party to the contract may, if the need arises, call upon a court of law to either enforce the contract as written or award money damages for nonperformance. In reality, a properly written contract seldom ends in court because each party knows it will be enforced as written. It is the poorly written contract or the contract that borders between enforceable and unenforceable that ends in court. A judge must then decide if a contract actually exists and the obligations of each party. Using the courts, however, is an expensive and time-consuming method of interpreting an agreement. It is much better to have a correctly prepared contract in the first place.

In order for a contract to be legally enforceable, all parties entering into it must be legally competent. In deciding competency, the law provides a mixture of objective and subjective standards. The most objective standard is that of age. A person must reach the age of majority to be legally capable of entering into a contract. Minors do not have contractual capability. In most states the age for entering into legally binding contracts is 18 years. The purpose of majority laws is to protect minors from entering into contracts that they may not be old enough to understand. Most contracts made with minors, except those for necessities, such as food and clothing, are voidable by the minor at the minor’s option, and remain voidable at the minor’s option for a reasonable time after attaining the age of majority. However, if the adult was unaware of the minor’s status, the contract may be voidable at the option of either party.

Regarding intoxicated persons, if there was a deliberate attempt to intoxicate a person for the purpose of approving a contract, the intoxicated person, upon sobering up, can call upon the courts to cancel the contract.

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If the contracting party was voluntarily drunk to the point of incompetence, when he is sober he may ratify or deny the contract if he does so promptly. However, some courts look at the matter strictly from the standpoint of whether the intoxicated person had the capability of formulating the intent to enter into a contract. Obviously, there are some fine and subjective distinctions here, and a judge may interpret them differently than the parties to the contract. The points made in this paragraph also apply to a person who contracts while high on marijuana or other legal or illegal drugs.

Persons of unsound mind who have been declared incompetent by a judge may not make a valid contract, and any attempt to do so results in a void contract. The solution is to contract through the person appointed to act on behalf of the incompetent. If a person has not been judged legally incompetent but nonetheless appears incapable of understanding the transaction in question, the contract may be voidable at the option of the court or the court-appointed guardian. If a person is judged to have been lucid upon entering into a contract, the contract remains valid even though he/she is later declared incompetent.

The requirements of mutual agreement (also called mutual consent, or mutual assent, or meeting of the minds) means that there must be agreement to the provisions of the contract by the parties involved. In other words, there must be a mutual willingness to enter into a contract. The existence of mutual agreement is evidenced by the words and acts of the parties indicating that there is a valid offer and an unqualified acceptance. In addition, there must be "reality of consent" meaning there is no fraud, misrepresentation or mistake, and the agreement must be genuine and freely given.

STATUTE OF FRAUDS

The Statute of Frauds is based on the original English Statute for Prevention of Frauds and Perjuries of 1677. The Statute of Frauds requires that all contracts for the sale of land or any interest exceeding one year be in writing and signed by the parties to be enforceable. Real estate transactions are governed under the Statute of Frauds because, for one reason, no two parcels of land are exactly alike. Virginia contract law prevents the enforcement of an oral contact or promise. When a deed is in writing, there is no chance of error and this is important because there is no substitute for a particular parcel of real estate. Leases for one year or less are not required to be in writing in order to be enforceable.

§ 54.1-2101.1. Preparation of real estate contracts by real estate licensees.
Notwithstanding any rule of court to the contrary, any person licensed under this chapter may prepare written contracts for the sale, purchase, option, exchange, or rental of real estate provided the preparation of such contracts is incidental to a real estate transaction in which the licensee (i) is involved and (ii) does not charge a separate fee for preparing the contracts.
(1997, cc. 200, 231.)

PURCHASE AGREEMENTS

Purchase contract, purchase offers or sales agreement.

Bilateral, executory contract.
In other words, the parties do not fully perform their obligations at the time the agreement is signed.

Equitable title
Once the parties have signed the purchase agreement, the buyer acquires an interest in the property. This right should not be confused with legal title, which is the buyer's evidence that he is the rightful owner. Equitable title simply means the buyer has the ultimate right to receive legal title.

Legal title,
is conveyed at closing by the seller delivering a properly executed deed to the buyer.

Merges with the deed
Not only does the sales contract establish the legal rights and obligations of the buyer and seller, but it also determines what goes into the deed. At closing, the sales contract as title passes to the buyer. The sales contract becomes a dead instrument. In some cases it is important that the sales contract not merge with the deed and continue to be an enforceable contract after closing.

Survival clause,
This provision prevents the contract, or any specific covenant in the contract, from merging with the deed.

TYPICAL PROVISIONS

The typical provisions found in a form contract are as follows:

DATE:
Although not an essential element, it is important to establish the date an offer is made because offers will expire after the lapse of a reasonable period of time.

PARTIES:
A sales contract must name a legally competent buyer and seller if the agreement is to be enforceable. The seller should be named exactly since he is to execute the deed of conveyance, the buyer should be named exactly since he plans to accept title.

MUTUAL AGREEMENT:
There must be an agreement by the seller to sell and an agreement by the purchaser to buy the property in question. The absence of such an agreement may void the contract since the exchange of promises compromises the consideration.

LEGAL DESCRIPTION:
An enforceable contract must contain a legal description, which unquestionably identifies the property to be bought and sold. It is preferable to use a legal description furnished by the seller. If there is a dispute later as to the validity of the description, the broker would not be held liable for negligence in preparing the contract. A street address may be included to further identify the property, but it should not be relied upon as a complete legal description.

All improvements, appurtenances, and fixtures on the described land are automatically included in the sale. Disputes often arise, however, because it is unclear whether certain items are personal property or fixtures. Misunderstandings and possible legal problems can be avoided by listing in the contract those items that could possibly be construed as personal property. Items such as drapes, appliances, and mirrors frequently are sources of disputes concerning ownership. It should also be made clear that the items listed are to be included in the purchase price, or excluded as the case may be.

PRICE AND TERMS:
A definite purchase must be stated in the contract. If the purchase requires the buyer to obtain financing, the contract should state the exact loan amount, interest rate, plus the number of years over which the loan is to be repaid. Where the purchaser is to take over the seller's existing loan, the contract should specify how and when the seller's equity is to be paid and the buyer's liability for repayment of the loan.

EARNEST MONEY:
Earnest money is the buyer's initial deposit, which serves as evidence of intent to fulfill his obligations under the contract. It is not essential in order to create a binding contract. While it is customary for earnest money to be paid by check or in cash, it may be a promissory note due and payable at or before closing, or it may be a money order, certificate of deposit, or other things of value. The form of earnest money must be disclosed in the contract. Otherwise, the broker is held liable if the deposit proves of no value. For example, if the broker accepted a promissory note and failed to disclose this fact to the seller, the broker may be required to pay the note if the buyer defaulted. The broker must have the seller's permission to accept an earnest money deposit that is not readily negotiable.
The amount of the earnest money deposit and who is to hold the deposit are negotiated between the buyer and seller. If the earnest money is to be held by a broker, it must be promptly deposited into the broker’s escrow account upon the creation of a valid contract.

Note: VREB Regulation requires upon contract ratification, earnest money deposits and down payments be placed in an escrow account by the end of the 5th business banking day unless otherwise agreed to in writing by the parties to the transaction.

**TYPE OF DEED:**
The type of deed the seller agrees to deliver at closing should be specified in the contract. Deeds typically named for this purpose are general warranty, special warranty, bargain and sale, grant, and quitclaim. If the type of deed is not specified, the seller would be allowed to use a special warranty deed or a quitclaim deed, depending on the particular state.

**MARKETABLE TITLE:**
Generally, the contract states that the seller agrees to convey a good and marketable title to the buyer at closing. A marketable title is one insurable by a title insurance company at its regular rates. It is a title free from defects leaving no doubt as to who the owner is. Title is generally conveyed, subject to certain existing encumbrances and restrictions.

**DESTRUCTION OF THE PREMISES:**
If the property is destroyed or substantially damaged by fire or other casualty before the transaction is closed (i.e., while the buyer has equitable title), some states place the burden of loss on the buyer. Other states have enacted the Uniform Vendor and Purchaser Risk Act, which places the risk of loss on the seller (vendor) until the buyer is given possession of the property.

**PROPERTY CONDITION:**
Buyer usually accepts property in its present condition unless otherwise agreed to.

Home Inspection and Walk through Clauses:
These clauses typically allow for inspection by a professional prior to closing

**CONTINGENCIES:**

**POSSESSION:**
The date the buyer may take possession of the property should be specified in the contract by agreement. If the contract is silent as to the date of possession, the right of possession is granted to the buyer with delivery of the deed.

**CLOSING DATE:**
A closing date agreeable to both parties should be stated in the contract along with the exact time and place, if known. The closing date should be set with consideration given to the type of financing involved and to the time needed for an attorney to prepare evidence of good title. For instance, more time is usually needed when new financing is required than when an existing loan is assumed. If a specific date is not mentioned, then the parties would have a reasonable time to close the transaction. In order to ensure that a date is faithfully observed, the phrase “time is of the essence,” must be included.

**BROKER’S COMMISSION:**
This provision recognizes the broker as the one who negotiated the transaction and assures him of his commission if either party defaults.

**SIGNATURES:**
For a sales contract to be enforceable, it must be properly signed by all the parties.
POWER OF ATTORNEY:
In Virginia, the power of attorney must specify the transaction and the parties involved: a general power of attorney will not suffice. The power of attorney must be notarized and recorded with the deed.

OPTIONS

An option is a unilateral contract which involves either the right to buy or the right to lease real estate. The owner or lessor is called the optionor; the prospective buyer or lessee is the optionee. In an option, the optionor grants the optionee an irrevocable and exclusive right to buy or lease the optionor’s property at a fixed price within a specified period of time. For the option to be enforceable it must be in writing and signed by the optionor. Also, the optionee must pay the optionor a valuable consideration. Although it is customary for option money to be applied to the purchase price (or rent) when the option is exercised, it is always a matter of negotiations. Option money purchases “time” and does not provide the optionee with an interest in the property.

The optionee assumes no obligation with an option other than payment of the consideration. Should he choose to exercise his right, the optionor is obligated to sell or lease at a fixed price. If not exercise within the time period specified, the option expires and all option money is forfeited.

LEASES

A lease is a bilateral contract involving two parties: the lessor (usually the owner) and the lessee (also called the tenant). Under a lease the lessee agrees to pay the lessor rent for the exclusive right to possession and control of certain property. A special lease agreement, known as a sale-leaseback agreement, is used primarily for financing commercial properties. It is typically used by owners who want to raise additional capital for their business. The property is sold to an investor with the right to lease it back and continue the business. Rights and obligations of the parties in a lease are discussed in more detail in a later chapter.

LAND CONTRACT

A land contract is also known as an installment contract and contract for deed. This type of contract is usually used when sufficient financing is not available to the buyer from a lending institution. It may be used to buy any type of real estate, not just land. When a land contract is used, the buyer usually makes a small downpayment, takes possession, and agrees to pay taxes, insurance, and installments of principal and interest to the seller over a long period of time. The main feature of this arrangement is that the seller retains legal title as security for payment of the full purchase price. The buyer is not entitled to the deed until all installments have been made and all other obligations under the contract fulfilled. While the land contract is executory, the buyer has equitable title.

A right of first refusal, or first right of refusal (FRR), is the right of a person to have the first opportunity either to purchase or lease real property. Unlike an option, however, the holder of a right of first refusal has no right to purchase until the owner actually offers the property for sale.

Under an option to purchase, the optionee can decide whether or not to exercise the option at a fixed price during the option period. In a right of first refusal, however, the holder can exercise the right, only if the owner has decided to sell or lease the property.
CONTRACT REVIEW QUESTIONS

1. What contract form are you using, are you familiar with its pre-printed terms?

2. Are you using the correct legal names, and addresses of the buyer’s and sellers?

3. Are you using the correct and complete legal description of the property?

4. How are the buyers going to take title?

5. Are the buyers and sellers using a power of attorney and do you have a copy?

6. What real and personal items are conveying? The listing is not always correct. Are the items conveying in “as is” condition?

7. Do your financing terms add up?

8. Who is going to hold the earnest money deposit?

9. Will you need a “time is of the essence” clause or is approximate closing date ok?

10. Who is paying the closing cost, points, pre-paid item, MIP, VA funding fee? On an assumption, who pays the next payment due? Will the points have to be locked in with the mortgage company and who will do that?

11. Who is the settlement agent and who picks the settlement agent? Will you use an Attorney or a lay settlement company?

12. Contingency clause’s, who has the right to void and when?

13. Will the buyer need or want a home inspection, Termite inspection or other inspections, i.e.; well, septic? Will the inspector have to be licensed?

14. Who will pay for the cost of repairs required by the appraisal or home inspections? Will there be a limit to the cost of these repairs paid by either party? Does the repair require a permit or the contractor to be licensed?

15. Does the age of the property, built prior to 1978, require a lead base paint disclosure?

16. Are the appropriate Home Owners Association and or Condo language included in the contract?

17. Have all of the applicable disclosures been made, i.e. environmental, flood plain, Historical District, property condition, state or federal required?
CONTRACT CASE STUDIES AND ANSWERS

1. Question: The seller is presented an offer exactly meeting his asking price and terms. He refuses to accept the offer. Does the buyer have any cause of action against the seller?

Answer: The buyer has no cause of action against the seller; there was no contract with the seller. Only the listing company may have cause against the seller for commissions.

2. Question: The buyer writes an offer, through his agent, stating on the face of the offer that the offer expires at noon on March 15th, 03. The seller accepts the offer at 1 pm on March 15th, 03. What is the status of the offer?

Answer: The offer died at noon. The seller has made a counteroffer, and it is now up to the buyer if he wants to accept it.

3. Question: The purchaser submits an offer, but it has no earnest money specified. Is this offer valid or void?

Answer: The offer is valid. The Purchase price is the consideration. The only reason for earnest money is to have some of the purchaser's money up front if he should default. Earnest money is not needed to form a valid contract.

4. Question: A sixteen-year-old boy entered into a contact to purchase real estate with the owner, who was a man some forty-five to fifty years old. The seller changed his mind and wanted to void the contract. He said he could do so because the buyer lacked legal capacity to contact since he was a minor. Can he do so?

Answer: no, the minor, not the adult, can only void the contract.

5. Question: Sam Buyer comes to town without his wife seeking a home to buy. He finds one he likes and tells the agent he is ready to sign an offer for it with a financing contingency. The agent tells him that his wife will need to sign the offer to make it legal. Sam Buyer tells the agent his wife is unemployed, earns no income and he has the money for the down payment in an account under his name only and he can qualify for the house on his income. He states he does not need his wife's signature to buy. Who is right, the agent or Sam Buyer?

Answer: Sam is a married person can purchase property in his/her name only. There would be two reasons to obtain the wife’s signature. (1), if her income is needed to qualify for the loan or (2), a sales tool. Neither applies in this case.
VIRGINIA AGENCY LAW (2 HOUR)

§ 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 agreement. 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 comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of §54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§54.1-2131 through 54.1-2135. 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 creating a brokerage relationship between a client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent the client as an agent or an independent contractor.

"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.

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under the provisions of Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1. Commercial real estate shall not include single family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"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. A designated representative shall only act as an independent contractor.

"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. A dual agent has an agency relationship under brokerage agreements with the clients. A dual representative has an independent contractor relationship under brokerage agreements with the clients. A dual representative shall only act as an independent contractor.

"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 comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise 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.).

"Limited service agent" means a licensee who acts for or represents a client with respect to real property containing from one to four residential dwelling units, pursuant to a brokerage agreement that provides that the limited service agent 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 agent shall have the obligations set out in the brokerage agreement, except that a limited service agent 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.

"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.

"Residential real estate" means real property containing from one to four residential dwelling units.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in this article and any additional obligations agreed to by the parties in the brokerage agreement.
§ 54.1-2131. Licensees engaged by sellers.
A. A licensee engaged by a seller shall:

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

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 agreement 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 agreement 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;

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. If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee shall disclose the same to the prospective buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. 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. 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 agreement, 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 agreement with the seller unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage 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.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a nonattorney settlement agent.


§ 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 agreement;

   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;

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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. If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee shall disclose the same to the buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. 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 agreement, 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 agreement with the buyer unless expressly prohibited by the terms of the brokerage agreement, 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.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a non-attorney settlement agent.

(1995, cc. 741, 813; 2006, c. 627; 2011, cc. 34, 46; 2012, c. 750.)

§ 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 agreement;

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 agreement 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 agreement, 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. If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in §36-156.1. 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. 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 agreement, 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 agreement, 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; 2012, c. 750.)

§ 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 agreement;

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 agreement, 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; and

   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. If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. 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 agreement, 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; 2011, cc. 34, 46; 2012, c. 750.)

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

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

2. Exercise ordinary care;

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

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. If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee shall disclose the same to the owner. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

E. 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.
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 agreement or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage agreement or in any amendments thereto, (b) any mutually agreed upon termination of the brokerage agreement, (c) a default by any party under the terms of the brokerage agreement, or (d) a termination as set forth in subsection F of § 54.1-2139.

B. Brokerage agreements shall be in writing and shall:

1. Have a definite termination date; however, if a brokerage agreement does not specify a definite termination date, the brokerage agreement shall terminate 90 days after the date of the brokerage agreement;

2. State the amount of the brokerage fees and how and when such fees are to be paid;

3. State the services to be rendered by the licensee;

4. Include such other terms of the brokerage relationship as have been agreed to by the client and the licensee; and

5. In the case of brokerage agreements entered into in conjunction with the client's consent to a dual representation, the disclosures set out in subsection A of § 54.1-2139.

C. Except as otherwise agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of performance of the brokerage agreement, except to (i) account for all moneys and property relating to the brokerage relationship and (ii) keep confidential all personal and financial information received from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information. (1995, cc. 741, 813; 2011, c. 461; 2012, c. 750.)

A. Upon having a substantive discussion about a specific property or properties with an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by
another licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction. Further, except as provided in § 54.1-2139, 54.1-2139.1, 54.1-2139.2, or 54.1-2139.3, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

**DISCLOSURE OF BROKERAGE RELATIONSHIP**
The undersigned do hereby acknowledge disclosure that:

The licensee .................... (name of broker or salesperson)
associated with ....................Name of Brokerage Firm
represents the following party in a real estate transaction:

....... Seller(s) or ........ Buyer(s)
....... Landlord(s) or ........ Tenant(s)

................... ....................
Date             Name
................... ....................
Date             Name

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

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

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

E. A limited service agent shall also make the disclosure required by § 54.1-2138.1. (1995, cc. 741, 813; 1997, cc. 86, 119; 2006, c. 627; 2012, c. 750.)

§ 54.1-2138.1. Limited service agent, contract disclosure required.
A. A licensee may act as a limited service agent only pursuant to a written brokerage agreement in which the limited service agent (i) discloses that the licensee is acting as a limited service agent; (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 agent 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 agent 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 agent." A limited service agent shall disclose dual agency in accordance with § 54.1-2139.

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 agent 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 thereunder, 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 agent 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; 2012, c. 750.)

§ 54.1-2139. Disclosed dual agency and dual representation authorized in a residential real estate transaction.

A. A licensee may not act as a dual agent or dual representative in a residential real estate transaction unless he has first obtained the written consent of all parties to the transaction given after written disclosure of the consequences of such dual agency or dual representation. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such disclosure shall be in writing and given to both parties prior to the commencement of such dual agency or dual representation.

B. If the licensee is currently representing a party as an agent or independent contractor representative and that party desires to engage in a real estate transaction with another existing client represented by the licensee, the licensee may engage in dual representation provided that prior to commencement thereof the disclosure required by this section is given to both of the licensee's existing clients.

C. If the licensee is currently representing a party as an agent or independent contractor representative and the licensee proposes to represent a new client in a dual representation, the licensee may only engage in such dual representation if prior to commencement thereof, the disclosure required by this section is given to the licensee's one existing client and one new client.
D. Such disclosures shall not be deemed to comply with the requirements 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. However, 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 required in this section.

E. 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.

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

G. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual agency or dual representation hereby 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 agency or dual representation in other transactions not involving the dual agency or dual representation.

H. The dual agency or dual representation disclosure in a residential transaction shall contain the following provisions and disclosure that substantially complies with the following shall be deemed in compliance with this disclosure requirement:

<table>
<thead>
<tr>
<th>DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION IN A RESIDENTIAL REAL ESTATE TRANSACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>The undersigned do hereby acknowledge disclosure that:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>The licensee ..............................................................</td>
</tr>
<tr>
<td>(name of broker or salesperson)</td>
</tr>
<tr>
<td>associated with ...........................................................</td>
</tr>
<tr>
<td>(Brokerage Firm)</td>
</tr>
<tr>
<td>represents more than one party in this residential real estate transaction as follows:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>A. Brokerage Firm represents the following party (select one):</td>
</tr>
<tr>
<td>[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>As a (select one):</td>
</tr>
<tr>
<td>[ ] standard agent [ ] limited service agent [ ] independent contractor</td>
</tr>
<tr>
<td>Brokerage Firm represents another party</td>
</tr>
<tr>
<td>(select one):</td>
</tr>
</tbody>
</table>
As a (select one):
[ ] standard agent [ ] limited service agent [ ] independent contractor

B. Brokerage Firm disclosure and client acknowledgement of the following

(select one):

[ ] Brokerage Firm represents two existing clients in the transaction and the undersigned acknowledge the following:

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or 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.

[ ] Brokerage Firm represents one existing client and one new client in the transaction and the undersigned acknowledge the following:

The undersigned understand:
1. That following the commencement of dual agency or representation, 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 agency or representation;
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 the 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 at additional cost to represent their respective interests.

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)

(1995, cc. 741, 813; 2011, c. 461; 2012, c. 750.)
§ 54.1-2139.01. Disclosed dual agency and dual representation in commercial real estate transactions authorized.

A. A licensee may act as a dual agent or dual representative in a commercial real estate transaction only with the written consent of all clients to the transaction. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. 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 AGENCY OR DUAL REPRESENTATION IN A COMMERCIAL REAL ESTATE TRANSACTION**

The undersigned do hereby acknowledge disclosure that:

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

(name of broker or salesperson)

associated with .........................................................

(Brokerage Firm)

represents more than one party in this commercial real estate transaction as follows:

Brokerage Firm represents the following party (select one):
[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):
[ ] standard agent [ ] limited service agent [ ] independent contractor

Brokerage Firm represents another party (select one):
[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):
[ ] standard agent [ ] limited service agent [ ] independent contractor

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

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

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

............... ............
Date Name (One Party)
C. 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.

D. 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.

E. 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. (2012, c. 750.)

§ 54.1-2139.1. Designated standard agency or designated representation authorized.
A. A principal or supervising broker may assign different licensees affiliated with the broker as designated agent or representative to represent different clients in the same transaction to the exclusion of all other licensees in the firm. Use of such designated agents or representatives shall not constitute dual agency or representation if a designated agent or 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 agent or representative as provided in this article. Designated agents or 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 agents or 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 that complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

**DISCLOSURE OF DESIGNATED AGENTS OR 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 agent or representative may not disclose to either client or such client's designated agent or representative any information that has been given to the dual agent or 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 principal or supervising broker has assigned 
.................... to act as Designated Agent or Representative 
(broker or salesperson) 
for the one party as indicated below:

[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):
[ ] standard agent [ ] limited service agent [ ] independent contractor 
.................... to act as Designated Agent or Representative 
(broker or salesperson) for the other party as indicated below:

[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):
[ ] standard agent [ ] limited service agent [ ] independent contractor

The undersigned by signing this notice do hereby acknowledge their 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. 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.

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

E. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed designated agency or representation agreement 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 designated agency or representation relationship in other transactions not involving designated representation. (2011, c. 461; 2012, c. 750.)
§§ 54.1-2139.2, 54.1-2139.3.
Repealed by Acts 2012, c. 750, cl. 2.

§ 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 agent, or (iii) a standard agent 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; 2012, c. 750.)

§ 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. (2011, c. 461.)

§ 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.)

§ 54.1-2146. Licensee maintenance of records. Any document or record required to be maintained by a licensee under this chapter may be an electronic record in accordance with the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). (2011, c. 461.)

TEST YOUR AGENCY KNOWLEDGE
True or False:

1. ___ A standard agent acts for or represents customers in an agency relationship.

2. ___ A standard agent owes the same statutory duties to a customer as she does to her client.

3. ___ A limited service agent may act as the agent of the client only by a written brokerage agreement.

4. ___ Independent contractor is a form of agency, but an independent contractor has no obligations under Sections 54.1-2131 through 54.1-2135.

5. ___ Brokerage agreements must be in writing and must contain a termination date or term of duration or other mechanism for determining a termination date.

6. ___ Upon having a substantive conversation about a property with an actual or prospective buyer who is not the client of the licensee and who is not represented by another licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction.

7. ___ Copies of any disclosures relative to a fully executed purchase agreement shall be kept by the licensee for a period of three years.

8. ___ Brokerage agreements must state the amount of brokerage fees and how and when such fees are to be paid, along with the services to be rendered by the licensee.

9. ___ A standard agent acting as a buyer’s agent is not required to disclose to the buyer materials facts related to the property.

10. ___ Designated agency requires a principal or supervising broker to assign one agent to represent the seller and one agent to represent the buyer (both from the same firm).

11. ___ Licensees engaged by sellers must disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee.

12. ___ Licensees engaged by a buyer are not required to receive and present offers and counteroffers to the buyer after the buyer is already a party to another contract to property.

13. ___ Property management agreements do not need to be in writing if the duration of the agreement is less than one year.
14. ___ Dual agent means a licensee who has a brokerage relationship with both the seller and landlord.

15. ___ Following the commencement of a dual agency, the licensee will be unable to advise either party as to the terms, offers or counteroffers relating to a contract.

16. ___ Your firm, Incredible Agents Realty Company, chooses not to practice dual agency. You are a listing agent working for a seller and an unrepresented buyer asks you to represent them as a buyer’s agent on your seller’s property. You may refuse because you cannot be forced into dual agency.

17. ___ Even if a disclosure of dual agency is executed by the clients, a separate written brokerage agreement still must be signed by the clients.

18. ___ The principal broker or the supervising broker who is supervising the transaction is considered a dual agent.

19. ___ The obligation to maintain client confidentiality ceases after one year following settlement or termination of the transaction, whichever occurs first.

20. ___ Only brokers are required to timely account for all money received by a salesperson.

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**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 REALTOR®’s 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.
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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PROFESSIONAL RISK FACING THE REAL ESTATE AGENT (1 HOUR)

I. Environmental Hazards
   A. Solid/Liquid/Gas/Airborne
   B. Toxic
      1. Death
      2. Violent Illness
   C. Corrosive
      1. Acidic
      2. Burning of Skin
   D. Reactive
      1. Unstable
      2. Explosions/toxic fumes
   E. Ignitable
      1. Friction-sensitive
      2. dangerous-heat/smoke
   F. Radioactive

II. Specific Hazards
   A. Asbestos
      1. What is it
         a. Fibrous material
         b. Fire retardant
         c. Insulation
      2. Where found
         a. Pipe wrapping
         b. Around furnaces
         c. Vinyl flooring
         d. Ceiling tiles/sprayed ceilings
         e. Exterior roofing/shingles/siding
         f. Door gaskets-stoves, furnaces, ovens
         g. Some textured paints, patching compounds
         h. Mixed with bonding agents/sprayed on ducts, pipes, beams
      3. How is it hazardous
         a. When fibers inhaled
            i. Cause asbestos-scarring of lung
            ii. Lung cancer
            iii. Mesothelioma-cancer of chest cavity
      4. Friable Asbestos
         a. Crumbly, loose particles
      b. Most dangerous/ inhalation of loose fibers
      5. Causes of Friable Asbestos
         a. Cleaning, repair
         b. Renovation
         c. A/C Operation
         d. General Deterioration
         e. Sanding, Drilling, Etc.
      6. Non- Friable Asbestos
         a. Usually not loose, crumbly
      b. Usually mixed with bonding agent; Cement, plastics
      7. Correction/ Removal
         a. Experts with proper equipment, Etc.
         b. Air Quality tested after removal
         c. Encased
         d. Non- Friable, left sometimes
Note: • There is no “safe” level of asbestos. Environmental Protection Agency and Occupational Safety and Health Administration (OSHA) have authority

• Permissible exposure limit for an 8-hour period is 0.2 fibers per cubic centimeter.

• Removal of more than 230 square feet or 160 linear feet require notification to the local EPA office.

• Experts advise if asbestos material in good condition- and – in an area where it will usually disturbed, leave it in place.

• Additional information- Dept. of Toxic Substances, 1500 East Main Street, #124, Richmond, VA. 23218, (804) 786-1763

B. Formaldehyde

1. Colorless, gaseous chemical compound
2. Used for insulation prior to early 80’s as part of foam type insulation
3. In glues, resins, preservatives, bonding agents, pressed wood materials, i.e. furniture, cabinets…
4. Causes cancer in animals- threat to humans not determined
5. Emissions decrease over two to three years

Note: • Formaldehyde not commercially used much now. And research has shown that older uses probably create no health problems now, since the emissions have decreased or in some cases no longer exists.

C. Radon

1. Naturally occurring gas
2. Odorless, tasteless, radioactive
3. Second largest cause of lung cancer
4. Found where uranium is present
5. Found in areas of phosphate, granite, shale
6. Rises through cracks/ spaces in foundations/ slabs
7. Well water, not usually municipal water
8. Seal foundation cracks, ventilate building

Note: • National Hot Line phone- 1-800-SOS-RADON (1-800-468-0138) or (804) 786-5932.

D. Indoor Air Quality

1. “Sick Building” well constructed, energy efficient
2. Symptoms include headache, fatigue, skin/eye irritations, allergies, upper respiratory

Note: • If indoor air problem appear, testing of ventilation, temperature, humidity and specific sampling for contaminants recommended.

E. Lead/ Lead Based Paint

1. Where found-
   a. Lead pipes
   b. Paint houses built prior to 1978
      i. Usually walls, woodwork, window frames
      ii. Lead dust, paint chips, chewable or transferred by hands to mouth
2. Dangers
   a. Damage child’s brain, nervous system, kidneys, hearing, coordination, affect learning, cause blindness, death
   b. Problems in pregnancy

3. Remedies, if found
   a. Professional clean up
   b. Occupant can
      i. Wash toys frequently
      ii. Keep child away from chips, dust
      iii. Wet mop floors, wipe surfaces often
      iv. Do not use vacuum, dust will come through

Note: • Anyone can get lead poisoning, but usually it affects children because they often put things in their mouths or transfer contaminants from hands to mouth.

   • Symptoms include crankiness, stomach aches, headaches, vomiting, tired, hyperactive or possibly playing with children who have these symptoms.

   • Presence of lead can be determined by a blood test.

   • EPA and HUD released new regulations for properties built in 1978 or before. Effective 9/6/96 for owners of more than four properties and effective 12/6/96 for owners of 1-4 properties.

   • Sellers of their agents distribute a federal lead hazard information pamphlet, obtained from the National Lead Information Clearing House before any purchase offers can be accepted.

   • Property owners must provide copies of any records or prior test results pertaining to lead-based paint to purchasers or tenants.

   • Purchasers must be allowed an additional 10 day opportunity to conduct a risk assessment or inspection of the property for lead-based paint or lead-based paint hazards… which must occur before the purchasers obligations under contract become binding.

   • Exemptions include properties, which are leased 100 days or fewer, without the possibility of renewal or extension.

   • Additional information: Department of Toxic Substances, 1500 East Main Street, #124 Richmond, VA. 23218 (804) 786-1763.

F. Underground Storage Tanks
   1. Considered underground if 10% of volume, including piping under ground.
   2. Must store regulated substance
   3. Can contaminate ground water supply
   4. Exceptions to Laws
      a. Septic tank
      b. Pipelines
      c. Farm/ Residential tanks, under 1,000 gallons
      d. Heating oil tanks (under 5000 gallons and used on premises where stored)
   5. May be filled with sand, gravel, etc.
   6. Problems arise if filled with liquid
   7. Remedies
      a. Phase I assessment- Physical examination, review history
      b. Phase II assessment- Soil samples at different locations
c. Phase III assessment- Action plan for corrective action
8. Contaminants found in tank
   a. Tank tightness test
      i. Is tank leaking? How much?
      ii. Threat to public welfare/ health?
      iii. Remediation needed?

Note: • Costs of removing leaking tanks and cleaning up contaminated soil can be exceedingly high. Based on the size of the tank, the amount of contaminants leaked, and the amount of contaminated soil, the cost can be up to a million dollars. EPA estimates say that about 40% of underground tanks, nationwide, are leaking and discharging hazardous materials.

• Suspecting that an underground tank exists, whether leaking or not, should be a warning that a potential problem exists.

• Tank tightness test referenced to fill the tank with a liquid, then make periodic checks to see of the liquid is disappearing form the tank. This will tell if there is a leak and if so, how bad.

G. Water Quality/ Ground Water Contamination
   1. Radon, lead pipes, leaking underground tanks
   2. Chemical wastes, pesticides, fertilizers
   3. Faulty septic tanks

Note: • Tests have proven that in some instances contaminated wells and/or wells with high levels of chemicals and acids have caused serious illness in residents drinking water.

• National Hotline 1-800-426-4791 or write to Water Control Board, 4900 Cox Road, Glen Allen, VA> 23060 (804) 527-5000

H. Polychlorinated Biphenyls (PCB’s)
   1. Considered toxic waste
   2. Used electrical transformers, capacitors, heat transfer, hydraulic systems, and other electrical equipment
   3. Can cause adverse reproductive effects, tumor development

I. Electro Magnetic Fields (EMF)
   1. Large, high powered stanchion type wires
   2. They hum all the time. Have you ever listened?
   3. Possible humming is producing radioactive waves aimed at ground
   4. Possible rays are dangerous within 1000 feet

J. Fluoride
   1. Causes chalky discoloration, pitting, dark brown stains on teeth, causes chipping/breaking
   2. Affects children primarily

K. Federal Legislation
   A. Resources Conservation and Recovery Act of 1976 (RCRA)
   B. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA)-Superfund

L. Potentially Responsible Parties
   A. Property owners
B. Lenders by Foreclosure
C. Landlords for tenant actions

Note: ● Current property owners can be responsible for the clean up of damage done by previous owners. Lenders who foreclose on property and become the owners can be liable. Landlords, who allow tenants to pollute the environment, can be held responsible for the clean up. Property owners can also be held liable for clean up of the property, even though the damage was done by an adjoining or nearby landowner or tenant.

M. Innocent Landowner Defense
   A. Inquire into past ownership
   B. May lose property/ equity
   C. May limit liability attaching to other property value

Note: ● To use “innocent” landowner defense, the owner must show that he/she has made all appropriate and customary inquiries into the past ownership/ use of the property.

   ● It is possible, the current owner will lose the property in the question, but the defense might save other properties the person owns.

N. De Minimus Settlement
   A. Innocent landowner
   B. Conduct all appropriate inquiry
   C. No “specialized” knowledge
   D. Relation of purchase price to value
   E. Obviousness of presence of contamination
   F. Detect contamination

Note: ● Sometimes a settlement can be reached which will limit the amount of cost to the owner. But, the owner must show that he/she acquired the property with out knowledge- or reason to believe- that there was a hazard.

   ● The owner must also show that he/she has no specialized knowledge, which would have led to their possibility knowing about the hazard.

Anti- Trust

I. The Sherman Act
   A. Conspiracy for restraint of trade illegal

II. Court interpretation- Standard Oil v. United States
   A. Rule of Reason
   B. Contracts, combinations, conspiracies that “unreasonably restrain trade”

III. Contracts, Combinations, Conspiracies
    A. Require two or more entities acting in concert

IV. Price Fixing
    A. "This what all brokers charge?"
    B. "This is the usual rate of commission?"

V. Market Allocation
    A. “I want to specialize in land. If you will send me all the leads you get on land listings, I will send you all the residential leads I get.”
    B. “If you will send me all the leads for the first time home buyers, I will send you all the leads I get for move up buyers.”
VI. Boycott
A. “You don’t want to list with that company, no body works on their listings.”
B. “I don’t like the way he does business. Let’s not cooperate with him anymore.”

VII. Tying Arrangements
A. “If I sell you this property, then you must agree to list it with me if you decide to sell it later.”
B. “If I sell you this house, then you must agree to list your present home with this broker.”

VIII. “Per Se Offenses”
A. Only question- did defendant participate?
B. Unreasonableness is presumed- no evidence from defendant
C. Include
   1. Market Division
   2. Bid rigging
   3. Conspiracies to fix prices (paid/charged)
   4. Some group boycotts
   5. Some trying arrangements

IX. Enforcement/ Penalties
A. Criminal and/or civil actions by justice department
B. Individual fined up to $100,000/ put in prison up to three years, or both
C. Corporation fined up to $1,000,000
D. Harmed individuals may recover damages for injuries to business or property up to three times actual damages
E. Payment of plaintiffs attorney/court costs
F. Court supervision of business for 10 years

Note: • In 1950 the Supreme Court specifically noted that “trade” as used in the Sherman Act, included real estate brokerage. Commission rates are most often the object of price fixing; it can also include term of listings, forms of compensation, types of listings, etc.

• The rule of reason from the Supreme Court holds that every business contract is a restraint on trade, but it was interpreted by the Supreme Court to mean only those contracts, agreements, etc., which “unreasonably” restrain trade.

• A Montgomery County real estate broker announced at a board meeting that he was going to raise his commission rate and did not care what the others did. The others raised their commissions. The courts held that his announcement was “an invitation to conspire” and they were all found guilty and suffered much, much financial loss.

• Charlottesville Association of Realtors and local newspaper, suit over association magazine. Successfully defended but legal fees over $1,000,000.

Misrepresentation/ Non-Disclosure
I. Intentional Misrepresentation
   A. Active Fraud
      a. False representation of fact
      b. Intent to induce person to rely on information
      c. Person did rely on information given
      d. Damage results
   B. Person given information may/may not have asked questions
II. Intentional Concealment
   A. Passive Fraud
   B. Knowingly failing to disclose material fact
   C. Person need not have asked questions
   D. Damage results

III. Negligent Misrepresentation
   A. False statement about material fact
   B. Broker/Agent did not know facts
      1. May have relied on client information
      2. Did not adequately check to determine if correct
   C. Should have known false
   D. Damage resulting

III. Negligent Non-Disclosures
   A. Failing to disclose material fact
   B. Failure to exercise adequate care in obtaining information

V. Negligent Advice
   A. Advice suggestion/representation statement of fact
   B. Incorrect professional advice
   C. Broker/agent should have known advice wrong

Note: ● Active Fraud- making a false statement, knowing it is false. Passive Fraud- Failure to disclose material fact known by you. Negligent Misrepresentation- making a false statement, which you did not know, was false. Negligent Non-Disclosure- failure to disclose a material fact, because you did not know it, because you did not exercise due care in obtaining your facts. Negligent Advice- giving incorrect professional advice when you knew, or should have known, it was false.

   ● Courts have held that consumer protection laws using the terms “Goods and Services” can be construed to apply real estate transactions. “Unfair Acts” is also a term used. The buyer/seller seeking to sue must show detriment to himself by relying on the broker’s wrong representation.

Advertising- Truth in Lending- Regulation Z

I. Trigger Terms
   A. 5% down
   B. Pay only $400 a month
   C. Only 360 monthly payments
   D. Pay less than $400 a month
   E. 30 year loan available

II. Disclosures needed- Trigger Terms
   A. Cash price of home
   B. Cash down payment
   C. Amount of monthly payment (P&I)
   D. Insurance/tax additional
   E. Interest rates, including APR
   F. Number of monthly payments
III. Non-Trigger Terms

A. 12% APR mortgage available
B. Easy monthly payments
C. Graduates payment mortgage available
D. Terms do not fit your budget
E. VA/FHA financing available

- Advertising a graduated payment mortgage requires all of the different payments that are required during the term of the mortgage.

Managing/Reducing Risks

I. Protective Clauses
   1. Home inspection
   2. Mediation Arbitration
   3. Environmental inspections
   4. Lead based paint/ radon, etc.

IV. Risk Control
   A. Know your market area
   B. Work only within your expertise

Note:  • Never give advice on environmental issues or other potential risks.

   • Always advise clients/ customers if there seems to be a potential risk that they should obtain audits or complete information.

   • If real estate agents spot what could be a potential risk, recommend that the buyer/ seller obtain specialized advice, or walk from the listing/ sale.
VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT (30 MINUTES)
THIS SECTION CONTAINS SOME HIGHLIGHTS OF THE VIRGINIA LANDLORD AND TENANT ACT.
ALL STUDENTS SHOULD REFERENCE THE VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT FOR
PRACTICAL APPLICATION OF THE ACT

Purpose of the Act. To protect the rights of landlords and tenants in Virginia as these rights relate to
properties under rental agreements.

"Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord for the purpose of
being considered as a tenant for a dwelling unit. An application fee shall not exceed $50, exclusive of any
actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-
occupancy checks on the applicant. However, where an application is being made for a dwelling unit which is a
public housing unit or other housing unit subject to regulation by the Department of Housing and Urban
Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to
a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.
55-248.6:1 Any landlord may require an application fee and a separate application deposit. If the applicant
fails to rent the unit for which application was made, from the application deposit the landlord shall refund to
the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the
application all sums in excess of the landlord's actual expenses and damages together with an itemized list of
said expenses and damages. If, however, the application fee or deposit was made by cash, certified check,
cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to
rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to
comply with this section, the applicant may recover as damages suffered by him that portion of the fee
wrongfully withheld and reasonable attorney's fees.
(1977, c. 427; 1985, c. 208; 1993, c. 382; 2000, c. 760; 2003, c. 416; 2008, c. 489.)

Security Deposits. The landlord may require the tenant to provide a security deposit at the time the property
is leased. The security deposit is to protect the landlord against unpaid rents or damage (other than normal
wear and tear) caused by the tenant during the lease period.

The security deposit cannot exceed an amount equal to two months' rent and must be returned, in
whole or in part, to the tenant within 45 days after the tenant vacates the property.

The landlord is required to make a final inspection of the dwelling within 72 hours of the termination
of the lease. The landlord must notify the tenant of the date and time of the inspection, and the inspection must
be at a reasonable time.

The tenant has the right to be present during the landlord's inspection but must advise the landlord in
writing of the intent to be present.

If the landlord intends to withhold a portion of the security deposit to cover damages or losses, the
tenant must be provided a written itemized list of such deductions.

When security deposits are held more than 13 months, the landlord is required to pay interest to the
tenant at four percentage points below the Federal Reserve Discount Rate (determined on January 1 of each
calendar year) from the date of deposit. Such interest shall be computed in complete one-year increments.
(Example: Deposit held for 21 months would generate 12 months of interest.)

Violation of Rental Agreements.

If a tenant is in violation of the terms of a lease or is in violation of the law, the landlord must notify the tenant
in writing of the violation and allow time for the tenant to correct the violation.

With a couple of exceptions, the notice must allow the tenant 21 days to remedy the situation. If it is not
remedied, the lease will terminate at the end of 30 days. If repairs, replacement, or cleaning will correct the
violation, the landlord may enter the property, correct the problem and charge the tenant the cost incurred.
The landlord may do this as promptly as may be required in an emergency or after notice to the tenant if no
emergency exists.
If a landlord is in violation of the terms of a lease or is in violation of the law, the tenant must notify the landlord in writing of the violation and allow 30 days for the violation to be corrected. Emergency situations, such as no heat or water warrant quicker action on the part of the landlord.

If a tenant chooses to remain in the property even though the violation has not been corrected, he or she should continue to make rental payments within five days of the rental due date, but the tenant can file for relief with the General District Court in the location of the property. To terminate a lease, a tenant must file a claim with the General District Court.

**Right of Redemption.** If a tenant has been evicted based on default of rent, tenant may redeem possession if payments of rent, late charges, and attorney fees are made. Tenants are precluded from invoking the right of redemption more than once in a 12-month period.

**Possession of Firearms.** Landlord can condition tenancy to prohibit or restrict lawful possession of firearms, unless required by Federal law or regulation.

**Inspection Report.** Landlord may adopt a written policy allowing a tenant to prepare the written check-in inspection report and submit it to the landlord or the landlord may within 5 day of occupancy submit a written report to the tenant itemizing damages to the dwelling unit existing at time of occupancy. The reports will be deemed correct unless the landlord or tenant objects in writing within five days. A report that is prepared jointly must be signed by both parties and each shall receive a copy. A joint report shall be deemed correct at the time both parties sign.

**Disclosures.**

The landlord must disclose to the tenant the name and address of (1) the persons authorized to manage the premises, and (2) the owner, or a person who acts in legal matters for the owner. Also, tenants moving in must be notified of any planned conversion in the next six months that would displace them.


As part of the written report of the move-in inspection required by § 55-248.11:1, the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection.

**(2004, c. 226; 2008, c. 640.)**

§ 55-248.12:1. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

A. Notwithstanding the provisions of subdivision A 10 of § 55-248.5, the landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident zone shall be deemed false and shall be deemed corrected by the correct information, subject to the provisions of subdivision A 10 of § 55-248.5.

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potential zone shall be deemed as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time during the first 30 days of the lease period by sending to the landlord by certified or registered mail, return receipt requested, a written notice of termination. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

§ 55-248.12:2. Required disclosures for properties with defective drywall; remedy for nondisclosure.
A. If the landlord of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, “defective drywall” means the same as that term is defined in § 36-156.1.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of notice of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

Confidentiality of Financial Information. A landlord or managing agent may not release information about a tenant or prospective tenant to a third party unless: tenant gives prior written permission; information is a matter of public record; information is a summary of the tenants rent payment record, including the periodic rent payment: the information is requested by a law enforcement official; the information is provided in an emergency; the information is a copy of a non-compliance notice that has not been remedied or termination notice given to the tenant and the tenant did not remain in the premises thereafter; a tenant designates a third party to receive duplicate copies of a summons

Change in Ownership. If the dwelling is sold, the new owner is bound to honor any rental agreement existing at the time of the sale. However, the original landlord is still responsible for all money or property owed to the tenant, unless it was transferred to the new landlord with his consent and that of the tenant.

§ 55-248.15:01. Notice to tenant in event of foreclosure.
A. The landlord shall notify the tenant, by certified mail, of a mortgage default, notice of mortgage acceleration, or notice of foreclosure sale relative to the loan on the dwelling unit within ten business days after the landlord receives written notice from the lender.

B. Failure of the landlord to provide the notice required by this section shall immediately terminate the rental agreement at the option of the tenant and, notwithstanding subsection A of § 55-248.15:1, the tenant shall be entitled to return of the security deposit and any accrued interest, without any deductions, damages, or charges by the landlord, within 10 days after termination of the tenancy and delivery of possession.
C. If the dwelling unit is vacant, the landlord shall disclose to any prospective tenant in writing at or before the commencement of the tenancy of a mortgage default, notice of mortgage acceleration, or notice of foreclosure sale relative to the dwelling unit.

**Right of Access by Landlord.** The right of access by a landlord to a dwelling is restricted, except in the case of abandonment by the tenant or an emergency condition within the dwelling unit. In all other cases, the landlord must give the tenant timely notice of this intent to enter, and may only enter at reasonable times.

§ 55-248.13:3. Notice to tenants for insecticide or pesticide use.

A. The landlord shall give written notice to the tenant no less than forty-eight hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the forty-eight-hour notice is not required. Tenants who have concerns about specific insecticides or pesticides shall notify the landlord in writing no less than twenty-four hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord, and if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.

B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed in or upon such premises where the insecticide or pesticide will be applied at least forty-eight hours prior to the application.

**Absence by Tenant.** If a tenant plans to be absent from the dwelling unit for a period of time greater than seven days, the law allows a landlord the right of access to the premises at reasonable times to protect his property. If the terms of the rental agreement require notification of an absence by a tenant in excess of seven days, and the tenant fails to do so, the landlord has the right to recover any damages or losses which occur during the tenant's absence. For example: If the water pipes freeze and break during a period of absence, and the tenant failed to notify the landlord of his absence, then it becomes the responsibility of the tenant to pay for damages and the cost of repairs.

§ 55-248.32. Remedy by repair, etc.; emergencies.

If there is a violation by the tenant of § 55-248.16 or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefore to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

In case of emergency the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefore to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning, or may engage a third party to do so.

(1974, c. 680; 2000, c. 760; 2009, c. 663.)

**Abandonment by Tenant.** If a tenant abandons a dwelling unit before the expiration of the rental agreement, and the landlord finds a new tenant to rent the unit, then the rental agreement is terminated as of the date the new tenancy begins. The landlord may collect damages (accrued rent, advertising costs, etc.) during the time...
the dwelling is vacant. Alternatively, a landlord may consider a rental agreement to be terminated immediately upon learning of the abandonment, if he is willing to accept the abandonment as a surrender.

If any items of personal property are left in the premises, or in any storage area provided by the landlord, after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided he has: (i) given a termination notice to the tenant in accordance with this chapter, which includes a statement that any items of personal property left in the premises would be disposed of within the twenty-four hour period after termination, (ii) given written notice to the tenant in accordance with § 55-248.33, which includes a statement that any items of personal property left in the premises would be disposed of within the twenty-four hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the premises would be disposed of within twenty-four hours after expiration of a ten-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55-248.6. The tenant shall have the right to remove his personal property from the premises at reasonable times during the twenty-four hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the twenty-four hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant, including the reasonable costs incurred by the landlord in selling, storing or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55-248.15:1. The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in accordance with Title 8.01 and execution of such writ has been completed pursuant to § 8.01-470.

§ 55-248.38:2. Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.
Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled thereto, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction from the landlord's or at such other reasonable times until the landlord has disposed of the property as provided herein. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided herein, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the
landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as security deposit under applicable law.

The notice posted by the sheriff setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include in the said notice a copy of this statute attached to, or made a part of, this notice.

(2001, c. 222; 2006, c. 129.)

**Notice of Termination.**

- Week-to-week requires one week notice.
- Month-to-month requires one month notice.
- Year-to-year requires 90-day notice.

**Exemptions to the Act.**

- Nonresidential rentals
- Single-family houses, when the owner rents no more than than ten single-family houses; if the property is located in any city or jurisdiction that has either an urban county executive or county manager form of government, the total number of rental units combined (both single family and condominium) cannot exceed four. This will also include duplexes.
- Condominiums, when the landlord rents four units or fewer

All apartments, regardless of number owned and rented are subject to the Landlord Tenant Act.

**COMMON INTEREST COMMUNITIES**

§ 54.1-2345. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Association" includes condominium, cooperative, or property owners' associations.

"Board" means the Common Interest Community Board.

"Common interest community" means real estate located within the Commonwealth subject to a declaration which contains lots, at least some of which are residential or occupied for recreational purposes, and common areas to which a person, by virtue of his ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration. provided that for the purposes of this chapter only, a common interest community shall not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) or any additional land that is a part of such registration.

"Common interest community manager" means a person or business entity, including but not limited to a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area as a regular annual assessment or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money as a regular annual assessment in connection with the provision of
maintenance or services or both for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition.

"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.

Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative

"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

(2008, cc. 851, 871.)

§ 54.1-2346. License required; certification of employees; renewal; provisional license.
A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this chapter prior to engaging in such management services.

B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111.

C. On or after July 1, 2012, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be $10,000.
E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

F. The Board shall issue a provisional license to any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009. Such provisional license shall expire on June 30, 2012, and may not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.


§ 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this chapter shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;

2. An employee of an association from providing management services for that association's common interest community;

3. A resident of a common interest community acting without compensation from providing management services for that common interest community;

4. A resident of a common interest community from providing bookkeeping, billing, or record keeping services for that common interest community for compensation, provided the blanket fidelity policy maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;

5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;

6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;

7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;

8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;

9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or

10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to
§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of §§ 54.1-201 and 54.1-202, the Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of (i) $1,000, or such other amount as the Board may establish by regulation, or (ii) five hundredths of one percent (0.05%) of the gross receipts from common interest community management during the preceding calendar year. For the purposes of clause (ii), no minimum payment shall be less than $10. The annual payment shall be remitted to the State Treasurer and shall be placed to the credit of the Common Interest Community Management Fund established pursuant to § 55-529;

2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;

3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program as developed by the Virginia Association of Realtors or other organization, and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529;

4. Approve the criteria for accredited common interest community manager training programs;

5. Approve accredited common interest community manager training programs;

6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter; and

7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services for compensation to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.

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B. 1. The Board shall have the sole responsibility for the administration of this chapter and for the promulgation of regulations to carry out the requirements thereof.

2. **The Board shall also be responsible for the enforcement of this chapter, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.**

3. For purposes of enforcement of this chapter or Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, any requirement for the conduct of a hearing shall be satisfied by an informal fact-finding proceeding convened and conducted pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.


**VIRGINIA CONDOMINIUM ACT (1 HOUR)**

As real estate professionals, you will undoubtedly be involved in transactions that involve either the development or the resale of condominium properties. The following is an overview of the Virginia law. As with all things legal, the Condominium Act is not uniform in every state.

The Virginia Condominium Act was established July 1, 1974 and supersedes what was known as the Horizontal Property Act. The latter primarily addressed multi-unit structures, whereas the new statute has broadened the definition of a condominium regime. The Condominium Act is administered by the Common Interest Community Board.

§ 55-79.41. Definitions.

When used in this chapter:

"Capital components" means those items, whether or not a part of the common elements, for which the unit owners' association has the obligation for repair, replacement or restoration and for which the executive organ determines funding is necessary.

"Common elements" means all portions of the condominium other than the units.

"Common expenses" means all expenditures lawfully made or incurred by or on behalf of the unit owners' association, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the condominium instruments.

“Common interest community manager” means the same as that term is defined in § 54.1-2345.

"Condominium" means real property, and any incidents thereto or interests therein, lawfully submitted to this chapter by the recordation of condominium instruments pursuant to the provisions of this chapter. No project shall be deemed a condominium within the meaning of this chapter unless the undivided interests in the common elements are vested in the unit owners.

"Condominium instruments" is a collective term referring to the declaration, bylaws, and plats and plans, recorded pursuant to the provisions of this chapter. Any exhibit, schedule, or certification accompanying a condominium instrument and recorded simultaneously therewith shall be deemed an integral part of that condominium instrument. Any amendment or certification of any condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium
"Condominium unit" means a unit together with the undivided interest in the common elements appertaining to that unit. (Cf. the definition of unit, infra.).

"Contractable condominium" means a condominium from which one or more portions of the submitted land may be withdrawn in accordance with the provisions of the declaration and of this chapter. If such withdrawal can occur only by the expiration or termination of one or more leases, then the condominium shall not be deemed a contractable condominium within the meaning of this chapter.

"Conversion condominium" means a condominium containing structures which before the recording of the declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

"Convertible land" means a building site; that is to say, a portion of the common elements, within which additional units and/or limited common elements may be created in accordance with the provisions of this chapter.

"Convertible space" means a portion of a structure within the condominium, which portion may be converted into one or more units and/or common elements, including but not limited to limited common elements in accordance with the provisions of this chapter. (Cf. the definition of unit, infra.).

"Declarant" means any person, or group of persons acting in concert, that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, including an institutional lender which may not have succeeded to or accepted any special declarant rights pursuant to § 55-79.74:3; (ii) reserves or succeeds to any special declarant right; or (iii) applies for registration of the condominium. However, for the purposes of clauses (i) and (iii), the term "declarant" shall not include an institutional lender which acquires title by foreclosure or deed in lieu thereof unless such lender offers to dispose of its interest in a condominium unit not previously disposed of to anyone not in the business of selling real estate for his own account, except as otherwise provided in § 55-79.74:3. The term "declarant" shall not include an individual who acquires title to a condominium unit at a foreclosure sale.

"Dispose" or "disposition" refers to any voluntary transfer of a legal or equitable interest in a condominium unit to a purchaser, but shall not include the transfer or release of security for a debt.

"Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Any term used in this definition that is defined in § 59.1-480 of the Uniform Electronic Transactions Act shall have the meaning set forth in such section.

"Executive organ" means an executive and administrative entity, by whatever name denominated, designated in the condominium instruments as the governing body of the unit owners' association.

"Expandable condominium" means a condominium to which additional land may be added in accordance with the provisions of the declaration and of this chapter.

"Financial update" means an update of the financial information referenced in subdivisions C 2 through C 7 of § 55-79.97.

"Future common expenses" means common expenses for which assessments are not yet due and payable.

"Identifying number" means one or more letters and/or numbers that identify only one unit in the condominium.

"Institutional lender" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts.
including but not limited to real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Land" is a three-dimensional concept and includes parcels with upper or lower boundaries, or both upper and lower boundaries, as well as parcels extending ab solo usque ad coelum. Parcels of airspace constitute land within the meaning of this chapter. Any requirement in this chapter of a legally sufficient description shall be deemed to include a requirement that the upper or lower boundaries, if any, of the parcel in question be identified with reference to established datum.

"Leasehold condominium" means a condominium in all or any portion of which each unit owner owns an estate for years in his unit, or in the land within which that unit is situated, or both, with all such leasehold interests due to expire naturally at the same time. A condominium including leased land, or an interest therein, within which no units are situated or to be situated shall not be deemed a leasehold condominium within the meaning of this chapter.

"Limited common element" means a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.

"Meeting" or "meetings" means the formal gathering of the executive organ where the business of the unit owners' association is discussed or transacted.

"Nonbinding reservation agreement" means an agreement between the declarant and a prospective purchaser which is in no way binding on the prospective purchaser and which may be canceled without penalty at the sole discretion of the prospective purchaser by written notice, hand-delivered or sent by United States mail, return receipt requested, to the declarant or to any sales agent of the declarant at any time prior to the formation of a contract for the sale or lease of a condominium unit or an interest therein. Such agreement shall not contain any provision for waiver or any other provision in derogation of the rights of the prospective purchaser as contemplated by this subsection, nor shall any such provision be a part of any ancillary agreement.

"Offer" means any inducement, solicitation, or attempt to encourage any person or persons to acquire any legal or equitable interest in a condominium unit, except as security for a debt. Nothing shall be considered an "offer" which expressly states that the condominium has not been registered with the Common Interest Community Board and that no unit in the condominium can or will be offered for sale until such time as the condominium has been so registered.

"Officer" means any member of the executive organ or official of the unit owners' association.

"Par value" means a number of dollars or points assigned to each unit by the declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may, but need not, be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure shall affect the par value of any unit, or any undivided interest in the common elements, voting rights in the unit owners' association or liability for common expenses assigned on the basis thereof.

"Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

"Purchaser" means any person or persons, other than a declarant, who acquire by means of a voluntary transfer a legal or equitable interest in a condominium unit, other than (i) a leasehold interest, including renewal options, of less than 20 years or (ii) as security for a debt.
"Resale certificate update" means an update of the financial information referenced in subdivisions C 2 through C 9 and C 12 of § 55-79.97. The update shall include a copy of the original resale certificate.

"Settlement agent" means a person other than a party to the real estate transaction who provides escrow, closing or settlement services in connection with a transaction related to real estate in this Commonwealth and who is listed as the settlement agent on the settlement statement for such transaction. Any person, other than a party to the transaction, who conducts the settlement conference and receives or handles money shall be deemed a "settlement agent" subject to the applicable requirements of this chapter.

"Size" means the number of cubic feet, or the number of square feet of ground and/or floor space, within each unit as computed by reference to the plat and plans and rounded off to a whole number. Certain spaces within the units including, without limitation, attic, basement, and/or garage space may, but need not, be omitted from such calculation or partially discounted by the use of a ratio, so long as the same basis of calculation is employed for all units in the condominium, and so long as that basis is described in the declaration.

"Special declarant rights" means any right reserved for the benefit of a declarant, or of a person or group of persons that becomes a declarant, to (i) expand an expandable condominium, (ii) contract a contractable condominium, (iii) convert convertible land or convertible space or both, (iv) appoint or remove any officers of the unit owners' association or the executive organ pursuant to subsection A of § 55-79.74, (v) exercise any power or responsibility otherwise assigned by any condominium instrument or by this chapter to the unit owners' association, any officer or the executive organ, or (vi) maintain sales offices, management offices, model units and signs pursuant to § 55-79.66.

"Unit" means a portion of the condominium designed and intended for individual ownership and use. (Cf. the definition of condominium unit, supra.) For the purposes of this chapter, a convertible space shall be treated as a unit in accordance with subsection (d) of § 55-79.62.

"Unit owner" means one or more persons who own a condominium unit, or, in the case of a leasehold condominium, whose leasehold interest or interests in the condominium extend for the entire balance of the unexpired term or terms. This term shall not include any person or persons holding an interest in a condominium unit solely as security for a debt.

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(d) Subject to the provisions of subsection (c) hereof, all space, interior partitions and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit.

(e) Any shutters, awnings, doors, windows, window boxes, doorsteps, porches, balconies, patios and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common element appertaining to that unit exclusively; provided that if a single unit's electrical master switch is located outside the designated boundaries of the unit, the switch and its cover shall be deemed a part of the common elements.

(1974, c. 416; 1982, cc. 206, 545.)

An owner, legal or natural, of property may commit that property to a condominium regime. The owner is referred to as the declarant in that he must declare the intent to have the property considered a "condominium".

The declarant shall provide declaration instruments to the Common Interest Community Board, which include, but are not limited to, the following:

- The name of the condominium and the name must include the word condominium
- The legal description of the property to be converted
- Plats and/or plans that identify each unit within the boundaries of the property
- An exact description of the boundaries of each individual unit, both horizontal and vertical
- The designation and description of common elements and limited common elements and
- The exact allocation of the undivided ownership interest in the common elements of the regime
- If property being converted to condominium is currently leased, names of each lessee and expiration date of lease

In addition to the above items, the declarant shall also submit a copy of the by-laws under which the condominium will operate. These by-laws shall be specific, but are not limited to the following matters:

- Establishment of Condominium Owners' Association, Board of Directors, and how officers will be elected
- The accounting and management records that shall be maintained
- Scheduled meetings of all owners (at least annually) and of governance organization
- Statutory requirements for meeting notices (21 days)
- The covenants, conditions, and restrictions (CCR's) that shall apply to all owners.
Public Offering Statement

The declarant shall also provide a public offering statement (POS) to include all declaration documentation and by-laws and shall, in addition, provide the following information:

- The name of the declarant and address
- A narrative description of the condominium to include the number of units and any future planned units
- Copies of management contracts and a statement of the relationship between the declarant and any contractor
- General status of construction or improvements
- Encumbrances, liens, and easements affecting title
- Financing terms if offered by the declarant
- Proposed first-year budget and unit assessments

This POS shall be provided with any contract for the initial sale (the first sale) of a condominium.

The initial purchaser of the condominium has a 10-day right to rescind the contract, without penalty. The 10 days begins on the date of contract ratification or upon receipt, by the purchaser, of the POS, whichever is later. The exercise of the right to rescind the contract may be for any reason.

Transfer of Ownership

At closing, the buyer acquires a fee simple ownership interest in his or her individual unit and an undivided percentage interest in the common elements of the condominium. The declarant is responsible for all units in the regime until any unit is sold. Upon sale, the buyer is responsible for his or her individual unit. The declarant remains responsible for the management and maintenance of the entire project until 75% of the units are sold. At this time, the responsibilities shift to the association of unit owners. The declarant remains as a member of the association by virtue of the fact that he is owner of all unsold units.

Voting Rights

Each unit owner is assigned an ownership interest and voting rights in the governance of the condominium. The interest is generally in proportion to the unit size and amenities. A 3-bedroom unit would have a larger interest than would a 2-bedroom unit. The exact proportion of ownership assigned to each unit is detailed in the declaration documents.

By-Law Changes

By vote of the members of the condominium the by-laws of the condominium may be changed. The statute specifies that 33-1/3% of voting interest may effect such changes. However, the by-laws may require a higher or lower percentage, but in no case may the required percentage be less than 25%. The amendment of by-laws may require the consent of a mortgagee if any on the project. Notice in writing to mortgagee is required. It must be sent by certified mail, return receipt requested.
Termination

Should the unit owners decide to dissolve, abandon, or terminate the condominium regime, it could be done. However, such action would require approval of 80%, or four-fifths of the voting interest of the association.

Right of Attachment

The unit owners' association, by statute, has a lien on every condominium unit for unpaid assessments levied against the unit. Such lien shall be junior to real estate tax liens or other liens recorded prior to the filing of the original declaration.

Resale of Condominium Unit

§ 55-79.97. Resale by purchaser.

A. In the event of any resale of a condominium unit by a unit owner other than the declarant, and subject to the provisions of subsection F and § 55-79.87 A, the unit owner shall disclose in the contract that (i) the unit is located within a development which is subject to the Condominium Act, (ii) the Act requires the seller to obtain from the unit owners' association a resale certificate and provide it to the purchaser, (iii) the purchaser may cancel the contract within three days after receiving the resale certificate or being notified that the resale certificate will not be available, (iv) if the purchaser has received the resale certificate, the purchaser has a right to request a resale certificate update or financial update in accordance with § 55-79.97:1, as appropriate, and (v) the right to receive the resale certificate and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the resale certificate shall be deemed not to be available if (a) a current annual report has not been filed by the unit owners' association with either the State Corporation Commission pursuant to § 13.1-936 or the Common Interest Community Board pursuant to § 55-79.93:1, (b) the seller has made a written request to the unit owners' association that the resale certificate be provided and no such resale certificate has been received within 14 days in accordance with subsection C, or (c) written notice has been provided by the unit owners' association that a resale certificate is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the resale certificate shall be current as of a date specified on the resale certificate. A resale certificate update or a financial update may be requested as provided in § 55-79.97:1, as appropriate. The purchaser may cancel the contract (i) within three days after the date of the contract, if the purchaser receives the resale certificate on or before the date that the purchaser signs the contract; (ii) within three days after receiving the resale certificate if the resale certificate is hand delivered or delivered by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the resale certificate is sent to the purchaser by United States mail. Notice of cancellation shall be provided to the unit owner or his agent by one of the following methods:

a. Hand delivery;

b. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;

c. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

d. Overnight delivery using a commercial service or the United States Postal Service.
In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the unit owner shall cause any deposit to be returned promptly to the purchaser.

A resale certificate shall include the following:

1. An appropriate statement pursuant to subsection H of § 55-79.84 which need not be notarized and, if applicable, an appropriate statement pursuant to § 55-79.85;

2. A statement of any expenditure of funds approved by the unit owners' association or the executive organ which shall require an assessment in addition to the regular assessment during the current or the immediately succeeding fiscal year;

3. A statement, including the amount, of all assessments and any other fees or charges currently imposed by the unit owners' association, together with any known post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition and maintenance of the condominium unit and the use of the common elements, and the status of the account;

4. A statement whether there is any other entity or facility to which the unit owner may be liable for fees or other charges;

5. The current reserve study report or a summary thereof, a statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the executive organ;

6. A copy of the unit owners' association's current budget or a summary thereof prepared by the unit owners' association and a copy of the statement of its financial position (balance sheet) for the last fiscal year for which a statement is available, including a statement of the balance due of any outstanding loans of the unit owners' association;

7. A statement of the nature and status of any pending suits or unpaid judgments to which the unit owners' association is a party which either could or would have a material impact on the unit owners' association or the unit owners or which relates to the unit being purchased;

8. A statement setting forth what insurance coverage is provided for all unit owners by the unit owners' association, including the fidelity bond maintained by the unit owners' association, and what additional insurance coverage would normally be secured by each individual unit owner;

9. A statement that any improvements or alterations made to the unit, or the limited common elements assigned thereto, are or are not in violation of the condominium instruments;

10. A copy of the current bylaws, rules and regulations and architectural guidelines adopted by the unit owners' association and the amendments thereto;

11. A statement of whether the condominium or any portion thereof is located within a development subject to the Property Owners' Association Act (§ 55-508 et seq.) of Chapter 26 of this title;

12. A copy of the notice given to the unit owner by the unit owners' association of any current or pending rule or architectural violation;

13. A copy of any approved minutes of the executive organ and unit owners' association meetings for the six calendar months preceding the request for the resale certificate;

14. Certification that the unit owners' association has filed with the Common Interest Community Board the annual report required by § 55-79.93:1; which certification shall indicate the filing number assigned by the Common Interest Community Board and the expiration date of such filing;

15. A statement of any limitation on the number of persons who may occupy a unit as a dwelling; and
16. A statement setting forth any restrictions, limitation or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, time, place, and manner of placement or display of such flag.

Failure to receive a resale certificate shall not excuse any failure to comply with the provisions of the condominium instruments, articles of incorporation, or rules or regulations.

The resale certificate shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the resale certificate shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the resale certificate shall be delivered. The resale certificate shall be delivered within 14 days of receipt of such request. The resale certificate shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or his authorized agent may request that the resale certificate be provided in hard copy or in electronic form. A unit owners' association or common interest community manager may provide the resale certificate electronically; however, the seller or his authorized agent shall have the right to request that the resale certificate be provided in hard copy. The seller or his authorized agent shall continue to have the right to request a hard copy of the resale certificate in person at the principal place of business of the unit owners' association. If the seller or his authorized agent requests that the resale certificate be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the seller or his authorized agent to pay any fees to use the provider's electronic network or system. If the seller or his authorized agent asks that the resale certificate be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the resale certificate in electronic format at no additional charge.

E. Subject to the provisions of § 55-79.87, but notwithstanding any other provisions of this chapter, the provisions and requirements of this section shall apply to any such resale of a condominium unit created under the provisions of the Horizontal Property Act (§ 55-79.1 et seq.).

F. The resale certificate required by this section need not be provided in the case of:

1. A disposition of a unit by gift;
2. A disposition of a unit pursuant to court order if the court so directs;
3. A disposition of a unit by foreclosure or deed in lieu of foreclosure; or
4. A disposition of a unit by a sale at auction, when the resale certificate was made available as part of the auction package for prospective purchasers prior to the auction.

G. In any transaction in which a resale certificate is required and a trustee acts as the seller in the sale or resale of a unit, the trustee shall obtain the resale certificate from the unit owners' association and provide the resale certificate to the purchaser.


**Right of Rescission**

The buyer may rescind the contract within **3 days** following contract ratification or receipt of the condominium documents, whichever is later. The statute of limitation for any fraud involved is two years after closing.

**§ 55-79.97:1. Fees for resale certificate.**
A. The unit owners’ association may charge fees as authorized by this section for the inspection of the property, the preparation and issuance of the resale certificate required by § 55-79.97, and for such other services as are set out in this section.

B. A reasonable fee may be charged by the preparer of the resale certificate as follows for:

1. The inspection of the unit, as authorized in the declaration and as required to prepare the resale certificate, a fee not to exceed $100;

2. The preparation and delivery of the resale certificate in (i) paper format, a fee not to exceed $150 for no more than two hard copies, or (ii) electronic format, a fee not to exceed $125, for no more than two electronic copies. Only one fee shall be charged for the preparation and delivery of the resale certificate;

3. At the option of the seller or his authorized agent, with the consent of the unit owners’ association or the common interest community manager, expediting the inspection, preparation, and delivery of the resale certificate, an additional expedite fee not to exceed $50;

4. At the option of the seller or his authorized agent, an additional hard copy of the resale certificate, a fee not to exceed $25 per hard copy;

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the resale certificate; and

6. A post-closing fee to the purchaser of the unit, collected at settlement, for the purpose of establishing the purchaser as the owner of the unit in the records of the unit owners’ association, a fee not to exceed $50.

Neither the unit owners’ association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request for the resale certificate is made. The resale certificate shall state that all fees and costs for the resale certificate shall be the personal obligation of the unit owner and shall be an assessment against the unit and collectible as any other assessment in accordance with the provisions of the condominium instruments and § 55-79.83, if not paid at settlement or within 45 days of the delivery of the resale certificate, whichever occurs first.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the resale certificate are completed within five business days of the request for a resale certificate.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the unit owners’ association or its common interest community manager for compliance with the duties and responsibilities of the unit owners’ association under this section. The unit owners’ association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so that the seller or his authorized agent will know such fees at the time of requesting the resale certificate.

D. Any fees charged pursuant to this section shall be collected at the time settlement occurs on the sale of the unit and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the resale certificate, except for the costs of any resale certificate update or financial update, which costs shall be the responsibility of the requestor, payable at settlement. Neither the unit owners’ association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate.

E. If settlement does not occur within 45 days of the delivery of the resale certificate, or funds are not collected at settlement and disbursed to the unit owners’ association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the resale certificate against the unit owner, (ii) the personal obligation of the unit owner, and (iii) an assessment against the unit and collectible as any other
assessment in accordance with the provisions of the condominium instruments and § 55-79.83. The seller may pay the unit owners' association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the unit owners' association. The unit owners' association shall pay the common interest community manager the amount due from the unit owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.

G. If a resale certificate has been issued within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent or the purchaser or his authorized agent, may request a resale certificate update. The requestor shall specify whether the resale certificate update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The resale certificate update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the resale certificate update or financial update may be charged by the preparer, not to exceed $50. At the option of the purchaser or his authorized agent, the requestor may request that the unit owners' association or the common interest community manager perform an additional inspection of the unit, as authorized in the declaration, for a fee not to exceed $100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. Neither the unit owners' association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the resale certificate update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. No unit owners' association or common interest community manager may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request the specified update in person at the principal place of business of the unit owners' association. If the requestor asks that the specified update be provided in electronic format, neither the unit owners' association nor its common interest community manager may require the requester to pay any fees to use the provider's electronic network or system. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When a resale certificate has been delivered as required by § 55-79.97, the unit owners’ association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the unit with respect to any violation of the condominium instruments as of the date of the statement unless the purchaser had actual knowledge that the contents of the resale certificate were in error.

L. If the unit owners' association or its common interest community manager has been requested in writing to furnish the resale certificate required by § 55-79.97, failure to provide the resale certificate substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject unit. The preparer of the resale certificate shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $1,000. The purchaser shall nevertheless be obligated to abide by the condominium instruments, rules and regulations, and architectural guidelines of the unit owners' association as to all matters arising after the date of the settlement of the sale.

PROPERTY OWNERS ASSOCIATION (30 MINUTES)
§ 55-508. Applicability.

A. This chapter shall apply to developments subject to a declaration, as defined herein, initially recorded after January 1, 1959, associations incorporated or otherwise organized after such date, and all subdivisions created under the former Subdivided Land Sales Act (§ 55-336 et seq.). For the purposes of this chapter, as used in the former Subdivided Land Sales Act, the terms:

"Covenants," "deed restrictions," or "other recorded instruments" for the management, regulation and control of a development shall be deemed to correspond with the term "declaration";

"Developer" shall be deemed to correspond with the term "declarant";

"Lot" shall be deemed to correspond with the term "lot"; and

"Subdivision" shall be deemed to correspond with the term "development."

This chapter shall be deemed to supersede the former Subdivided Land Sales Act (§ 55-336 et seq.), and no development shall be established under the latter on or after July 1, 1998. This chapter shall not be construed to affect the validity of any provision of any declaration recorded prior to July 1, 1998; however, any development established prior to the enactment of the former Subdivided Land Sales Act may specifically provide for the applicability of the provisions of this chapter.

This chapter shall not be construed to affect the validity of any provision of any prior declaration; however, to the extent the declaration is silent, the provisions of this chapter shall apply. If any one lot in a development is subject to the provisions of this chapter, all lots in the development shall be subject to the provisions of this chapter notwithstanding the fact that such lots would otherwise be excluded from the provisions of this chapter. Notwithstanding any provisions of this chapter, a declaration may specifically provide for the applicability of the provisions of this chapter. The granting of rights in this chapter shall not be construed to imply that such rights did not exist with respect to any development created in the Commonwealth before July 1, 1989.

B. This chapter shall not apply to the (i) provisions of documents of, (ii) operations of any association governing, or (iii) relationship of a member to any association governing condominiums created pursuant to the Condominium Act (§ 55-79.39 et seq.), cooperatives created pursuant to the Virginia Real Estate Cooperative Act (§ 55-424 et seq.), time-shares created pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.), or membership campgrounds created pursuant to the Virginia Membership Camping Act (§ 59.1-311 et seq.). This chapter shall not apply to any nonstock, nonprofit, taxable corporation with nonmandatory membership which, as its primary function, makes available golf, ski and other recreational facilities both to its members and the general public.


§ 55-509. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Property Owners' Association Act.

"Association" means the property owners' association.

"Board of directors" means the executive body of a property owners' association, or a committee which is exercising the power of the executive body by resolution or bylaw.
"Capital components" means those items, whether or not a part of the common area, for which the association has the obligation for repair, replacement or restoration and for which the board of directors determines funding is necessary.

"Common area" means property within a development which is owned, leased or required by the declaration to be maintained or operated by a property owners' association for the use of its members and designated as common area in the declaration.

"Common interest community" means the same as that term is defined in § 55-528.

"Common interest community manager" means the same as that term is defined in § 54.1-2345.

"Declarant" means the person or entity signing the declaration and its successors or assigns who may submit property to a declaration.

"Declaration" means any instrument, however denominated, recorded among the land records of the county or city in which the development or any part thereof is located, that either (i) imposes on the association maintenance or operational responsibilities for the common area or (ii) creates the authority in the association to impose on lots, or on the owners or occupants of such lots, or on any other entity any mandatory payment of money in connection with the provision of maintenance and/or services for the benefit of some or all of the lots, the owners or occupants of the lots, or the common area. "Declaration" includes any amendment or supplement to the instruments described in this definition. "Declaration" shall not include a declaration of a condominium, real estate cooperative, time-share project or campground.

"Development" means real property located within this Commonwealth subject to a declaration which contains both lots, at least some of which are residential or are occupied for recreational purposes, and common areas with respect to which any person, by virtue of ownership of a lot, is a member of an association and is obligated to pay assessments provided for in a declaration.

"Disclosure packet update" means an update of the financial information referenced in subdivisions A 2 through A 9 of § 55-509.5. The update shall include a copy of the original disclosure packet.

"Financial update" means an update of the financial information referenced in subdivisions A 2 through A 7 of § 55-509.5.

"Lot" means (i) any plot or parcel of land designated for separate ownership or occupancy shown on a recorded subdivision plat for a development or the boundaries of which are described in the declaration or in a recorded instrument referred to or expressly contemplated by the declaration, other than a common area, and (ii) a unit in a condominium association or a unit in a real estate cooperative if the condominium or cooperative is a part of a development.

"Meeting" or "meetings" means the formal gathering of the board of directors where the business of the association is discussed or transacted.

"Professionally managed" means a common interest community that has engaged (i) a common interest community manager to provide management services to the community or (ii) a person as an employee for compensation to provide management services to the community, other than a resident of the community who provides bookkeeping, billing, or recordkeeping services for that community.

"Property owners' association" or "association" means an incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration.

"Settlement agent" means the same as that term is defined in § 55-525.16.

§ 55-509.4. Contract disclosure statement; right of cancellation.

A. Subject to the provisions of subsection A of § 55-509.10, a person selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

For purposes of clause (iii), the association disclosure packet shall be deemed not to be available if (a) a current annual report has not been filed by the association with either the State Corporation Commission pursuant to § 13.1-936 or with the Common Interest Community Board pursuant to § 55-516.1, (b) the seller has made a written request to the association that the packet be provided and no such packet has been received within 14 days in accordance with subsection A of § 55-509.5, or (c) written notice has been provided by the association that a packet is not available.

B. If the contract does not contain the disclosure required by subsection A, the purchaser's sole remedy is to cancel the contract prior to settlement.

C. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet prepared in accordance with this section; however, a disclosure packet update or financial update may be requested in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate. The purchaser may cancel the contract: (i) within three days after the date of the contract, if on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or is notified that the association disclosure packet will not be available; (ii) within three days after receiving the association disclosure packet if the association disclosure packet or notice that the association disclosure packet will not be available is hand delivered or delivered by electronic means and a receipt obtained; or (iii) within six days after the postmark date if the association disclosure packet or notice that the association disclosure packet will not be available is sent to the purchaser by United States mail. The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the association disclosure packet will not be available and the association disclosure packet is not delivered to the purchaser. Notice of cancellation shall be provided to the lot owner or his agent by one of the following methods:

1. Hand delivery;

2. United States mail, postage prepaid, provided the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing;

3. Electronic means provided the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or

4. Overnight delivery using a commercial service or the United States Postal Service.

In the event of a dispute, the sender shall have the burden to demonstrate delivery of the notice of cancellation. Such cancellation shall be without penalty, and the seller shall cause any deposit to be returned promptly to the purchaser.

D. Whenever any contract is canceled based on a failure to comply with subsection A or C or pursuant to subsection B, any deposit or escrowed funds shall be returned within 30 days of the cancellation, unless the parties to the contract specify in writing a shorter period.
E. Any rights of the purchaser to cancel the contract provided by this chapter are waived conclusively if not exercised prior to settlement.

F. Except as expressly provided in this chapter, the provisions of this section and § 55-509.5 may not be varied by agreement, and the rights conferred by this section and § 55-509.5 may not be waived.

(2008, cc. 851, 871; 2010, c. 165.)

§ 55-509.5. Contents of association disclosure packet; delivery of packet.

A. The association shall deliver, within 14 days after receipt of a written request and instructions by a seller or his authorized agent, an association disclosure packet as directed in the written request. The information contained in the association disclosure packet shall be current as of a date specified on the association disclosure packet. If hand or electronically delivered, the written request is deemed received on the date of delivery. If sent by United States mail, the request is deemed received six days after the postmark date. An association disclosure packet shall contain the following:

1. The name of the association and, if incorporated, the state in which the association is incorporated and the name and address of its registered agent in Virginia;

2. A statement of any expenditure of funds approved by the association or the board of directors that shall require an assessment in addition to the regular assessment during the current year or the immediately succeeding fiscal year;

3. A statement, including the amount of all assessments and any other mandatory fees or charges currently imposed by the association, together with any post-closing fee charged by the common interest community manager, if any, and associated with the purchase, disposition, and maintenance of the lot and to the right of use of common areas, and the status of the account;

4. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges;

5. The current reserve study report or summary thereof, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;

6. A copy of the association's current budget or a summary thereof prepared by the association, and a copy of its statement of income and expenses or statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association;

7. A statement of the nature and status of any pending suit or unpaid judgment to which the association is a party and that either could or would have a material impact on the association or its members or that relates to the lot being purchased;

8. A statement setting forth what insurance coverage is provided for all lot owners by the association, including the fidelity bond maintained by the association, and what additional insurance would normally be secured by each individual lot owner;

9. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned thereto are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association;

10. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to place a sign on the owner's lot advertising the lot for sale;

11. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size, place, and manner of
placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag;

12. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association;

13. A copy of any approved minutes of the board of directors and association meetings for the six calendar months preceding the request for the disclosure packet;

14. A copy of the notice given to the lot owner by the association of any current or pending rule or architectural violation;

15. A copy of the fully completed one-page cover sheet developed by the Common Interest Community Board pursuant to § 54.1-2350; and

16. Certification that the association has filed with the Common Interest Community Board the annual report required by § 55-516.1, which certification shall indicate the filing number assigned by the Common Interest Community Board, and the expiration date of such filing.

B. Failure to receive copies of an association disclosure packet shall not excuse any failure to comply with the provisions of the declaration, articles of incorporation, bylaws, or rules or regulations.

C. The disclosure packet shall be delivered in accordance with the written request and instructions of the seller or his authorized agent, including whether the disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. The disclosure packet required by this section, shall not, in and of itself, be deemed a security within the meaning of § 13.1-501.

D. The seller or his authorized agent may request that the disclosure packet be provided in hard copy or in electronic form. An association or common interest community manager may provide the disclosure packet electronically; however, the seller or his authorized agent shall have the right to request that the association disclosure packet be provided in hard copy. The seller or his authorized agent shall continue to have the right to request a hard copy of the disclosure packet in person at the principal place of business of the association. If the seller or his authorized agent requests that the disclosure packet be provided in electronic format, neither the association nor its common interest community manager may require the seller or his authorized agent to pay any fees to use the provider's electronic network or system. If the seller or his authorized agent asks that the disclosure packet be provided in electronic format, the seller or his authorized agent may designate no more than two additional recipients to receive the disclosure packet in electronic format at no additional charge.

(2008, cc. 851, 871.)

§ 55-509.6. Fees for disclosure packet; professionally managed associations.

A. A professionally managed association or its common interest community manager may charge certain fees as authorized by this section for the inspection of the property, the preparation and issuance of the disclosure packet required by § 55-509.5, and for such other services as set out in this section. The seller or his authorized agent shall specify whether the disclosure packet shall be delivered electronically or in hard copy, and shall specify the complete contact information for the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent or settlement agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is delivered to the seller or his authorized agent.

B. A reasonable fee may be charged by the preparer as follows for:

1. The inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration and as required to prepare the association disclosure packet, a fee not to exceed $100;
2. The preparation and delivery of the disclosure packet in (i) paper format, a fee not to exceed $150 for no more than two hard copies or (ii) electronic format, a fee not to exceed $125 for no more than two electronic copies. Only one fee shall be charged for the preparation and delivery of the disclosure packet;

3. At the option of the seller or his authorized agent, with the consent of the association or the common interest community manager, expediting the inspection, preparation and delivery of the disclosure packet, an additional expedite fee not to exceed $50;

4. At the option of the seller or his authorized agent, an additional hard copy of the disclosure packet, a fee not to exceed $25 per hard copy;

5. At the option of the seller or his authorized agent, a fee not to exceed an amount equal to the actual cost paid to a third-party commercial delivery service for hand delivery or overnight delivery of the association disclosure packet; and

6. A post-closing fee to the purchaser of the property, collected at settlement, for the purpose of establishing the purchaser as the owner of the property in the records of the association, a fee not to exceed $50.

Except as otherwise provided in subsection E, neither the association nor its common interest community manager shall require cash, check, certified funds or credit card payments at the time the request for the disclosure packet is made. The disclosure packet shall state that all fees and costs for the disclosure packet shall be the personal obligation of the lot owner and shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516, if not paid at settlement or within 45 days of the delivery of the disclosure packet, whichever occurs first.

For purposes of this section, an expedite fee shall only be charged if the inspection and preparation of delivery of the disclosure packet are completed within five business days of the request for a disclosure packet.

C. No fees other than those specified in this section, and as limited by this section, shall be charged by the association or its common interest community manager for compliance with the duties and responsibilities of the association under this chapter. The association or its common interest community manager shall publish and make available in paper or electronic format, or both, a schedule of the applicable fees so the seller or his authorized agent will know such fees at the time of requesting the packet.

D. Any fees charged pursuant to this section shall be collected at the time of settlement on the sale of the lot and shall be due and payable out of the settlement proceeds in accordance with this section. The seller shall be responsible for all costs associated with the preparation and delivery of the association disclosure packet, except for the costs of any disclosure packet update or financial update, which costs shall be the responsibility of the requestor, payable at settlement. Neither the association nor its common interest community manager shall require cash, check, certified funds, or credit card payments at the time of the request is made for the association disclosure packet.

E. If settlement does not occur within 45 days of the delivery of the disclosure packet, or funds are not collected at settlement and disbursed to the association or the common interest community manager, all fees, including those costs that would have otherwise been the responsibility of the purchaser or settlement agent, shall be (i) assessed within one year after delivery of the disclosure packet against the lot owner, (ii) the personal obligation of the lot owner, and (iii) an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association. The association shall pay the common interest community manager the amount due from the lot owner within 30 days after invoice.

F. The maximum allowable fees charged in accordance with this section shall adjust every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor.
G. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request.

H. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request.

I. A reasonable fee for the disclosure packet update or financial update may be charged by the preparer not to exceed $50. At the option of the purchaser or his authorized agent, the requestor may request that the association or the common interest community manager perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed $100. Any fees charged for the specified update shall be collected at the time settlement occurs on the sale of the property. Neither the association nor its common interest community manager, if any, shall require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

J. No association or common interest community manager may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requestor asks that the specified update be provided in electronic format, neither the association nor its common interest community manager may require the requester to pay any fees to use the provider’s electronic network or system. A copy of the specified update shall be provided to the seller or his authorized agent.

K. When an association disclosure packet has been delivered as required by § 55-509.5, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

L. If the association or its common interest community manager has been requested in writing to furnish the association disclosure packet required by § 55-509.5, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

(2008, cc. 851; 2009, c. 557; 2011, cc. 334, 577, 585.)

§ 55-509.7. Fees for disclosure packets; associations not professionally managed.

A. An association that is not professionally managed may charge a fee for the preparation and issuance of the association disclosure packet required by § 55-509.5. Any fee shall reflect the actual cost of the preparation of the association disclosure packet, but shall not exceed $0.10 per page of copying costs or a total of $100 for all costs incurred in preparing the association disclosure packet. The seller or his authorized agent shall specify whether the association disclosure packet shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the disclosure packet shall be delivered. If the seller or his authorized agent specifies that delivery shall be made to the purchaser or his authorized agent, the preparer shall provide the disclosure packet directly to the designated persons, at the same time it is
delivered to the seller or his authorized agent. The association shall advise the requestor if electronic delivery of the disclosure packet or the disclosure packet update or financial update is not available, if electronic delivery has been requested by the seller or his authorized agent.

B. No fees other than those specified in this section shall be charged by the association for compliance with its duties and responsibilities under this section. Any fees charged pursuant to this section shall be collected at the time of delivery of the disclosure packet. If unpaid, any such fees shall be an assessment against the lot and collectible as any other assessment in accordance with the provisions of the declaration and § 55-516. The seller may pay the association by cash, check, certified funds, or credit card, if credit card payment is an option offered by the association.

C. If an association disclosure packet has been issued for a lot within the preceding 12-month period, a person specified in the written instructions of the seller or his authorized agent, including the seller or his authorized agent, or the purchaser or his authorized agent may request a disclosure packet update. The requestor shall specify whether the disclosure packet update shall be delivered electronically or in hard copy and shall specify the complete contact information of the parties to whom the specified update shall be delivered. The disclosure packet update shall be delivered within 10 days of the written request therefor.

D. The settlement agent may request a financial update. The requestor shall specify whether the financial update shall be delivered electronically or in hard copy, and shall specify the complete contact information of the parties to whom the update shall be delivered. The financial update shall be delivered within three business days of the written request therefor.

E. A reasonable fee for the disclosure packet update or a financial update may be charged by the preparer not to exceed $50. At the option of the purchaser or his authorized agent, the requestor may request that the association perform an additional inspection of the exterior of the dwelling unit and the lot, as authorized in the declaration, for a fee not to exceed $50. Any fees charged for the specified update shall be collected at the time of delivery of the update. The association shall not require cash, check, certified funds, or credit card payments at the time the request is made for the disclosure packet update. The requestor may request that the specified update be provided in hard copy or in electronic form.

F. No association may require the requestor to request the specified update electronically. The seller or his authorized agent shall continue to have the right to request a hard copy of the specified update in person at the principal place of business of the association. If the requestor asks that the specified update be provided in electronic format, the association shall not require the requestor to pay any fees to use the provider's electronic network or system. If the requestor asks that the specified update be provided in electronic format, the requestor may designate no more than two additional recipients to receive the specified update in electronic format at no additional charge. A copy of the specified update shall be provided to the seller or his authorized agent.

G. When a disclosure packet has been delivered as required by § 55-509.5, the association shall, as to the purchaser, be bound by the statements set forth therein as to the status of the assessment account and the status of the lot with respect to any violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association as of the date of the statement unless the purchaser had actual knowledge that the contents of the disclosure packet were in error.

H. If the association has been requested to furnish the association disclosure packet required by this section, failure to provide the association disclosure packet substantially in the form provided in this section shall be deemed a waiver of any claim for delinquent assessments or of any violation of the declaration, bylaws, rules and regulations, or architectural guidelines existing as of the date of the request with respect to the subject lot. The association shall be liable to the seller in an amount equal to the actual damages sustained by the seller in an amount not to exceed $500. The purchaser shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters arising after the date of the settlement of the sale.

(2008, cc. 851, 871; 2010, c. 165; 2011, c. 334.)
§ 55-509.8. Properties subject to more than one declaration.

If the lot is subject to more than one declaration, the association or its common interest community manager may charge the fees authorized by § 55-509.6 or § 55-509.7 for each of the applicable associations, provided however, that no association shall charge inspection fees unless the association has architectural control over the lot.

(2008, cc. 851, 871.)

§ 55-509.9. Requests by settlement agents.

A. The settlement agent may request a financial update from the preparer of the disclosure packet. The preparer of the disclosure packet shall, upon request from the settlement agent, provide the settlement agent with written escrow instructions directing the amount of any funds to be paid from the settlement proceeds to the association or the common interest community manager. There shall be no fees charged for a response by the association or its common interest community manager to a request from the settlement agent for written escrow instructions, however a fee may be charged for a financial update pursuant to this chapter.

B. The settlement agent, when transmitting funds to the association or the common interest community manager, shall, unless otherwise directed in writing, provide the preparer of the disclosure packet with (i) the complete record name of the seller, (ii) the address of the subject lot, (iii) the complete name of the purchaser, (iv) the date of settlement, and (v) a brief explanation of the application of any funds transmitted or by providing a copy of a settlement statement, unless otherwise prohibited.

(2008, cc. 851, 871.)

§ 55-509.10. Exceptions to disclosure requirements.

A. The contract disclosures required by § 55-509.4 and the association disclosure packet required by § 55-509.5 shall not be provided in the case of:

1. A disposition of a lot by gift;
2. A disposition of a lot pursuant to court order if the court so directs;
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure;
4. A disposition of a lot by a sale at an auction, where the association disclosure packet was made available as part of an auction package for prospective purchasers prior to the auction sale; or
5. A disposition of a lot to a person or entity who is not acquiring the lot for his own residence or for the construction thereon of a dwelling unit to be occupied as his own residence, unless requested by such person or entity. If such disclosures are not requested, a statement in the contract of sale that the purchaser is not acquiring the lot for such purpose shall be conclusive and may be relied upon by the seller of the lot. The person or entity acquiring the lot shall nevertheless be obligated to abide by the declaration, bylaws, rules and regulations, and architectural guidelines of the association as to all matters.

B. In any transaction in which an association disclosure packet is required and a trustee acts as the seller in the sale or resale of a lot, the trustee shall obtain the association disclosure packet from the association and provide the packet to the purchaser.

C. In the case of an initial disposition of a lot by the declarant, the association disclosure packet required by § 55-509.5 need not include the information referenced in subdivisions A 2, A 3, A 5 nor A 9 of § 55-509.5, and it shall include the information referenced in subdivisions A 16 of § 55-509.5 only if the association has filed an annual report prior to the date of such disclosure packet.

(2008, cc. 851, 871; 2009, c. 69.)
REAL ESTATE TRANSFER DISCLOSURE FOR PROPERTIES LOCATED IN A LOCALITY
IN WHICH A MILITARY AIR INSTALLATION IS LOCATED

1. As of the date of this Disclosure, the undersigned property owner(s) represent that the real property described below is located in a Noise Zone and/or Accident Potential Zone (APZ), as shown or referenced on the Official Zoning Map designated by the locality in which the property is located.

   ______ No (Please sign below) ______ Yes (Please complete the information below)

2. The following are representations made by the property owner(s), as required by Section 55-519.1 of the Code of Virginia:

   A. As of the date of this Disclosure the real property located at (Street Address, Locality and Zip Code)_________________________________________, ______________, Virginia is located within the following Noise Zone and/or Accident Potential Zone (APZ), as shown or referenced on the Official Zoning Map of (Name of Locality)_______________________________:

      Noise Zone – (Initial One)
      ________ / ________ <65 dB DNL ________ / ________ 65-70 dB DNL ________ / ________ 70-75 dB DNL ________ / ________ >75 dB DNL

      Accident Potential Zone (APZ) – (Initial One)
      ________ / ________ None (outside APZs) ________ / ________ APZ-2 ________ / ________ APZ-1 ________ / ________ Clear Zone

   B. The abbreviation “DNL” refers to a day-night average sound level. The frequency of actual single noise events may vary over time depending on the operational needs of the military. **Single noise events may result in significantly higher noise levels than the average level(s) in any of the Noise Zones listed above.**

   C. Noise Zones and Accident Potential Zones are subject to change. For this reason, it should not be assumed that the property will remain in the same Noise Zone and/or Accident Potential Zone.

   Additional information may be obtained from the locality.

   In the event the owner fails to provide the disclosure required by § 55-519.1, or the owner misrepresents, willfully or otherwise, the information required in such disclosure, except as result of information provided by an officer or employee of the locality in which the property is located, the purchaser may maintain an action to recover his actual damages suffered as the result of such violation. Notwithstanding the provisions of this disclosure, no purchaser of residential real property located in a noise zone designated on the official zoning map of the locality as having a day-night average sound level of less than 65 decibels shall have a right to maintain an action for damages pursuant to this section.
The owner(s) state that they reasonably believe the information contained herein is true and accurate and further acknowledge that they have been informed of their rights and obligations under the Virginia Residential Property Disclosure Act.

Owner ________________________________ Date __________________

Owner ________________________________ Date __________________

Purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have been informed of their rights and obligations under the Virginia Residential Property Disclosure Act.

Purchaser ______________________________ Date __________________

Purchaser ______________________________ Date __________________

11/18/10
RESIDENTIAL PROPERTY DISCLOSURES
NOTICE TO SELLER AND PURCHASER

The Virginia Residential Property Disclosure Act (§ 55-517 et seq. of the Code of Virginia) governs the information owners must disclose to prospective purchasers of real property. Certain transfers of residential property are excluded from the requirements (see § 55-518).

1. **CONDITION:** The owner(s) makes no representations or warranties as to the condition of the real property or any improvements thereon, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary including obtaining a certified home inspection, as defined in § 54.1-500, in accordance with the terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.

2. **ADJACENT PARCELS:** The owner(s) makes no representations with respect to any matters that may pertain to parcels adjacent to the subject parcel, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary with respect to adjacent parcels in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.

3. **HISTORIC DISTRICT ORDINANCE(S):** The owner(s) makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary with respect to any historic district designated by the locality pursuant to §15.2-2306, including review of any local ordinance creating such district or any official map adopted by the locality depicting historic districts, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.

4. **RESOURCE PROTECTION AREAS:** The owner(s) makes no representations with respect to whether the property contains any resource protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.) adopted by the locality where the property is located pursuant to § 10.1-2109, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement on the parcel of residential real property.
5. **SEXUAL OFFENDERS:** The owner(s) makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§ 19.2-387 et seq.) of Title 19.2, and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary with respect to such information, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

6. **DAM BREAK INUNDATION ZONE(S):** The owner(s) makes no representations with respect to whether the property is within a dam break inundation zone and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary with respect to whether the property resides within a dam break inundation zone, including a review of any map adopted by the locality depicting dam break inundation zones.

7. **STORMWATER DETENTION:** The owner(s) makes no representations with respect to the presence of any stormwater detention facilities located on the property and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary to determine the presence of any stormwater detention facilities on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.

8. **WASTEWATER SYSTEM:** The owner(s) makes no representations with respect to the presence of any wastewater system, including the type or size thereof or associated maintenance responsibilities related thereto, located on the property and the purchaser(s) is advised to exercise whatever due diligence the purchaser(s) deems necessary to determine the presence of any wastewater system on the property, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to that contract.
**Additional Written Disclosure Requirements**

**FIRST SALE OF A DWELLING:** Section 55-518.B. contains other disclosure requirements for transfers involving the first sale of a dwelling because the first sale of a dwelling is exempt from the disclosure requirements listed above. The builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code.

**PLANNING DISTRICT 15:** In addition, for property that is located wholly or partially in any locality comprising Planning District 15, the builder or owner, if the builder is not the owner of the property, shall disclose in writing whether the builder or owner has any knowledge of (i) whether mining operations have previously been conducted on the property or (ii) the presence of abandoned mines, shafts, or pits, if any.

The disclosures required by this subsection shall be made by a builder or owner (i) when selling a completed dwelling, before acceptance of the purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder or owner may have to the purchaser. The disclosure required by this subsection may be made on this disclosure form. If no defects are known by the builder to exist, no written disclosure is required by this subsection.

**Section 55-519.1** contains a disclosure requirement for properties located in any locality in which there is a military air installation.

**Section 32.1-164.1:1** contains a disclosure requirement regarding the validity of septic system operating permits.

See also the Virginia Condominium Act (§ 55-79.39 et seq.), the Virginia Cooperative Act (§ 55-424 et seq.) and the Virginia Property Owners’ Association Act (§ 55-508 et seq.).
DISCLOSURE REGARDING VALIDITY OF SEPTIC SYSTEM OPERATING PERMIT

PROPERTY ADDRESS/LEGAL DESCRIPTION: _____________________________________________
("Property")

OWNER(S): _________________________________________________________________
("Owner")

PURCHASER(S): _____________________________________________________________
("Purchaser")

The following disclosure ("Disclosure") is made specifically in accordance with and pursuant to the requirements of Section 32.1-164.1:1 of the Code of Virginia:

The onsite sewage system ("Septic System") which serves the Property is presently subject to certain repair and/or maintenance requirements ("Requirements") imposed by the State Board of Health ("Board"), as further described below. Owner has obtained a valid waiver ("Waiver") of such Requirements from the Board. Such waiver is not transferable, and shall be null and void upon Settlement hereunder, and at such time the Purchaser shall be required to comply with the Board’s regulatory requirements for additional treatment or pressure dosing before an operating permit for the Septic System may be reinstated.

[The Requirements, as described in the Waiver, are as follows: __________________________]

Pursuant to §32.1-164.1:1 of the Code of Virginia, the Owner is required to deliver the Disclosure to the Purchaser prior to the acceptance of a real estate purchase contract ("Contract") in respect to the Property. If the Disclosure is delivered to the Purchaser after the acceptance of the Contract, the Purchaser's sole remedy shall be to terminate the Contract at or prior to the earliest of the following: (i) three (3) days after delivery of the Disclosure in person; (ii) five (5) days after the postmark if the Disclosure is deposited in the United States mail, postage prepaid, and properly addressed to the Purchaser; (iii) settlement upon purchase of the Property; (iv) occupancy of the Property by the Purchaser; (v) the execution by the Purchaser of a written waiver of the Purchaser's right of termination under §32.1-164.1:1 of the Code of Virginia, contained in a writing separate from the Contract; or (vi) the Purchaser making written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan.

In order to terminate the Contract when permitted by §32.1-164.1:1 of the Code of Virginia, the Purchaser shall, within the time required, give written notice to the Owner either by hand delivery or by United States mail postage prepaid, and properly addressed to the Owner. If the Purchaser terminates the Contract in compliance with §32.1-164.1:1 of the Code of Virginia, the termination shall be without penalty to the Purchaser, and any deposit made by Purchaser to Owner or an escrow holder in connection with such Contract shall be promptly returned to the Purchaser. Any rights of the Purchaser to terminate the Contract provided by §32.1-164.1:1 of the Code of Virginia shall end if not exercised prior to the earlier of (i) the making of a written application to a lender for a mortgage loan where the application contains a disclosure that the right to terminate shall end upon the application for a mortgage loan or (ii) settlement or occupancy by the Purchaser, in the event of a sale of the Property, or occupancy of the Property, in the event of a lease with option to purchase.
The owner(s) acknowledge having carefully examined this statement and further acknowledge that they have been informed of their rights and obligations under §32.1-164.1:1 of the Code of Virginia.

____________________ _____________ _____________________ ___________
Owner    Date   Owner    Date

The purchaser(s) acknowledge receipt of this statement and further acknowledge that they have been informed of their rights and obligations under §32.1-164.1:1 of the Code of Virginia.

____________________ _____________ _____________________ ___________
Purchaser   Date   Purchaser   Date
TEST YOUR AGENCY KNOWLEDGE

Answer Key

True or False:

1. F A standard agent acts for or represents customers in an agency relationship.
2. F A standard agent owes the same statutory duties to a customer as she does to her client.
3. T A limited service agent may act as the agent of the client only by a written brokerage agreement.
4. F Independent contractor is a form of agency, but an independent contractor has no obligations under Sections 54.1-2131 through 54.1-2135.
5. T Brokerage agreements must be in writing and must contain a termination date or term of duration or other mechanism for determining a termination date.
6. T Upon having a substantive conversation about a property with an actual or prospective buyer who is not the client of the licensee and who is not represented by another licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction.
7. T Copies of any disclosures relative to a fully executed purchase agreement shall be kept by the licensee for a period of three years.
8. T Brokerage agreements must state the amount of brokerage fees and how and when such fees are to be paid, along with the services to be rendered by the licensee.
9. F A standard agent acting as a buyer’s agent is not required to disclose to the buyer materials facts related to the property.
10. T Designated agency requires a principal or supervising broker to assign one agent to represent the seller and one agent to represent the buyer (both from the same firm).
11. T Licensees engaged by sellers must disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee.
12. F Licensees engaged by a seller are not required to receive and present offers and counteroffers to the seller after the seller is already a party to another contract to property.
13. F Property management agreements do not need to be in writing if the duration of the agreement is less than one year.

14. F Dual agent means a licensee who has a brokerage relationship with both the seller and landlord.

15. T Following the commencement of a dual agency, the licensee will be unable to advise either party as to the terms, offers or counteroffers relating to a contract.

16. T Your firm, Incredible Agents Realty Company, chooses not to practice dual agency. You are a listing agent working for a seller and an unrepresented buyer asks you to represent them as a buyer’s agent on your seller’s property. You may refuse because you cannot be forced into dual agency.

17. T Even if a disclosure of dual agency is executed by the clients, a separate written brokerage agreement still must be signed by the clients.

18. T The principal broker or the supervising broker who is supervising a designated agency transaction is considered a dual agent.

19. F The obligation to maintain client confidentiality ceases after one year following settlement or termination of the transaction, whichever occurs first.

20. F Only brokers are required to timely account for all money received by a salesperson.
New Laws for 2013

By John G. “Chip” Dicks, VAR Legislative Counsel

The 2013 session of the General Assembly was dominated by transportation — the bill that finally passed will, hopefully, provide much-needed funds for areas of the commonwealth where roads and public transit options need the most work.

VAR spent a good deal of effort on that bill, working with legislators and the governor’s office to ensure that Virginia’s transportation needs were addressed, while not unduly burdening homeowners with the cost of the current and future projects we need. The state’s aging transportation infrastructure has already been having an effect on businesses, and it was clear more money was needed — and that everyone would benefit from the improvements.

VAR members put this legislation at the top of the list with more than 3,500 “call to action” responses and more than 400 Realtors contacting their legislators as part of the Day on the Hill. Participation counts and VAR members made a big difference in getting the transportation legislation passed.

The final bill signed by Governor McDonnell isn’t perfect — no legislation this complex (and affecting so many) will be. But we’re confident it’s a major step forward.

While transportation got the most airtime, VAR also passed a number of other bills involving the business of real estate. Some of them will have a significant impact, while others are more technical. All are designed to make Virginia’s Realtors’ jobs a little easier.
REALTORS ARE SHIELDED FROM LIABILITY IF A PUBLIC RECORD IS INACCURATE

It’s one thing to be punished for your own mistake. It’s quite another to face a lawsuit because of someone else’s error. Yet that’s just what we heard was happening: Realtors and brokers were being sued because of incorrect information in MLS listings — even when that information came from public records.

Because Realtors frequently rely on government records, client disclosures, or information from other professionals — such as surveyors or engineers — when they advertise properties, these kinds of suits would turn ordinary property transactions into research, insurance, and litigation nightmares.

Thankfully, we were able to pass an immunity law for Realtors — something that’s almost unheard of these days. It says, essentially, that Realtors and brokers cannot be held liable for incorrect information they obtain from a reputable source in a civil lawsuit or in a regulatory proceeding at the Real Estate Board.

Companies will still want their agents to double check data, and it is important to remember that an agent can still be held liable if they are grossly negligent or act in reckless disregard of the truth.

POA AND CONDO DISCLOSURE PACKETS MUST INCLUDE OWNER-OCCUPIED VS. RENTED UNITS

With so many buyers relying on FHA financing, it’s important to know whether a seller is able to accept it. That’s a huge issue with condos, because each complex has to be “certified” by FHA before the government will back a loan.

FHA has specific guidelines for that certification; one important factor is the number of owner-occupied units. If potential buyers knew up front whether a particular complex met that FHA requirement, it could save a lot of trouble — why bother making an offer if you know you can’t get FHA financing because there are too many rental units?

Unfortunately, not every condo complex would provide that information, so buyers and their Realtors would often have to get deep into the transaction before learning whether financing was even available.

That will change on July 1, 2013, when that information — the number of owner-occupied vs. rental units in a complex — must be disclosed with the standard POA/condo packet given to prospective buyers. Seeing the right ratio won’t guarantee that FHA will approve a loan, but it will at least let Realtors know if they can save themselves and their clients some time and hassle.

You must disclose if a home was once a meth lab

Once a house is used to manufacture illegal methamphetamines, it’s currently an uncertain and difficult path to make it safe again. That’s why, starting July 1, 2014, you must disclose to any potential buyers if the seller has actual knowledge that a home was once used to create meth, unless the home has been cleaned to Virginia Department of Health guidelines. (This is similar to the law requiring disclosure of Chinese drywall.) The Health Department guidelines won’t become final until 2014, which is why there is a delayed effective date.

“Overcrowded” is now clearly defined

Real estate agents need to know about the potential for conflict in two sets of requirements for the number of people who can live in a rental house. HUD has a “two persons per bedroom” in many situations (but not all) as a maximum occupancy standard. If you violate the HUD standard, you may be violating the fair housing laws.

The Virginia Uniform Statewide Building Code contains a minimum occupancy standard which requires at least 50 square feet per person per bedroom. Real estate agents need to measure the square footage of bedrooms in rental housing to make
sure you comply with the building code standards. This legislation frames these two sets of requirements in state law.

All fair-housing cases involving Realtors will be heard by the Real Estate Board
Fair-housing cases against non-real estate licensees are heard by the Fair Housing Board. Fair housing cases against real estate licensees are heard by the Virginia Real Estate Board. Because a growing number of fair housing cases are filed against the real estate agent and the non-licensee property owner, the same case could be heard by both boards. The new law gives the REB jurisdiction in all cases where one of the cases involves a licensed real estate agent.

Electronic payments are treated like other payments
More and more landlords and property managers are beginning to accept electronic payments from tenants. The new law says that if a tenant fails to make an electronic payment on the designated date, the landlord can pursue civil action as if it had been a bad check. This allows the landlord to recover a civil penalty in most cases of $250, costs of court, and attorney’s fees.

Commercial appraisal management companies are regulated just like residential ones
Residential appraisal management companies are regulated by the Virginia Real Estate Appraiser Board, but there was a question about commercial AMCs... until now. Starting July 1, 2013, the REAB’s authority clearly covers regulation of commercial AMCs.

Changes were made to the Residential Landlord Tenant Act
This legislation makes some significant changes to the VRLTA, including authority for: landlords to have lease provisions for an early termination of the lease; real estate licensees to go to court and get judgment and possession against a tenant who appears in court; landlords or property managers to pay an abandoned security deposit to the Virginia Tax Department at the end of one year instead of having to hold that deposit in your real estate escrow account for seven years; and a bunch of other good stuff.

Some issues with the handling of renters’ escrow funds are fixed
This new law clearly sets forth how escrow funds must be handled by real estate licensees. Most funds must be placed in the real estate escrow account within five business days of receipt. The legislation makes it clear that an application deposit must be deposited in the real estate escrow account within five business days of the approval of the tenant’s rental application.

IN PROGRESS: FIRST-TIME HOMEBUYERS SAVINGS ACCOUNTS
This has potential for prospective homeowners throughout the commonwealth: We want to create “first-time homebuyer’s savings accounts.”

Just as Virginia 529 college savings plans allow individuals and families to contribute funds tax free for a future college education, these accounts would let people set aside money to be used for a first property purchase.

There were some questions about the fiscal impact of our original bill; banks were concerned with the additional regulatory responsibilities for handling these accounts. Rather than rush a scaled-back version of the bill, we asked the legislation be held for further study so it’s ready for the 2014 General Assembly.

We rely on your ideas and your feedback — our goal is to make and keep Virginia a Realtor-friendly state.

Stay informed. Get involved. And bookmark RealtorsChoose.com where you can keep track of all our work on Capitol Square.