

# BROKER SUPERVISION & ESCROW MANAGEMENT

AN OVERVIEW OF ESCROW, SUPERVISION, ADVERTISING  
&  
OFFICE POLICIES & PROCEDURES



**DAAR** Dulles Area  
Association of REALTORS®  
The Association of Choice for Real Estate Professionals

**Broker Supervision & Escrow Management  
4 Classroom Hours – Timed Outline**

**Section 1 – Escrow Management...(2 hours)**

**I. Where can our Rules and Regulations be found.....3 Minutes**

- A. Virginia Administrative Code (VAC)  
18 VAC 135-20-180 & 18 VAC 135-20-185
- B. Code of Virginia Title 54.1-2180 & 2108.1
- C. Realtor Code of Ethics (for members of NAR)

**II. Who Must Have an Escrow Account and Why.....7 Minutes**

- A. Who is responsible – Principal broker, supervising broker, any licensee with escrow account authority. – new changes to include principal broker having signatory authority on these accounts
- B. Who maintains the account
- C. Financial Institution requirements – federally insured
- D. Definitions
  - 1. Commingling –mixing broker personal funds with other people’s funds
  - 2. Conversion – the use of other people’s funds

**III. Virginia Real Estate Board Regulations 18 VAC 135-20-180. ....40 Minutes**

- A. Maintenance of Escrow Accounts
  - 1. If money is held in escrow
    - a. Name on account
    - b. Separate from brokers general funds
    - c. Federally insured depository requirements
    - d. what funds to be placed in escrow accounts
    - e. Balance of escrow account
    - f. Responsibility for account
    - g. Account clearly labeled
  - 2. Funds deposited and paid
    - a. Separately identified
    - b. Not paid directly to licensee from account
    - c. Withdrawal requirements
  - 3. Pledging or Hypothecation of Money
    - a. Direct control of funds
    - b. Commingling
- B. Disbursement of Funds from Escrow Accounts
  - 1. Purchase Transactions
    - a. Deposit requirements
    - b. How long funds are held in escrow
    - c. Disbursement requirements
    - d. Disputes over escrow

BREAK.....10 Minutes

**Virginia Real Estate Board Regulations  
18 VAC 135-20-180 (Continued).....15 Minutes**

- 2. Lease Transactions
  - a. Security deposits – new changes
  - b. Compliance with Virginia Landlord Tenant Act
  - c. Disbursement of security deposit from escrow
  - d. Rent and other money paid
- 3. Other Escrow Requirements
  - a. Payment on interest bearing accounts
  - b. Sufficient funds credited to individual
  - c. What cannot be deducted from funds

**IV. Virginia Real Estate Board Regulations 18 VAC 135-20-185.....12 Minutes**

- A. Maintenance & Management of Financial Records
  - 1. Where records are kept
  - 2. What information financial records must contain
  - 3. Who maintains financial records
  - 4. Actions constitution improper record keeping
    - a. Failure to acknowledge in agreement anything of value not readily negotiable
    - b. Commingling
    - c. Failure to deposit escrow funds in proper account
    - d. Failure to have sufficient balances to cover escrow funds held
    - e. Failing to report to board improper conduct under this section

**V. Code of Virginia §54.1-2108 .....3 Minutes**

Protection of Escrow Funds, etc., Held by Broker

- A. Board’s actions to protect public
- B. Appointment of receivers
- C. Payment of expenses & fees to receiver

**VI. Code of Virginia §54.1-2108.1 .....20 Minutes**

Protection of Escrow Funds, etc., held by a real estate broker in the event of foreclosure of real property; required deposits.

- A. Right to file interpleader action
- B. Foreclosure considered a termination of contract  
Earnest Money may be returned to purchaser if contract provides, without further consent from or notice to the parties.
- C. Tenant in residential dwelling unit – at date of foreclosure,

landlord will return security deposit to tenant with any applicable interest regardless of any contractual agreements between landlord and their successors in interest. May make lawful deductions from the deposit in accordance with applicable law.

- D. Prepaid rent more than one month prior to the rent due date must be placed in broker's escrow account by the end of the 5<sup>th</sup> business banking day rent paid less than one month in advance is current rent and can be placed in the operating account unless otherwise agreed to in writing.
- E. Security deposits paid to a real estate licensee acting on behalf of a landlord will be placed in escrow account by the end of the 5<sup>th</sup> business banking day unless otherwise agreed to in writing.
- F. Any deposits paid by prospective tenant for the purpose of being considered as a tenant shall be placed in escrow by the end of the 5<sup>th</sup> business banking day following approval of application by landlord, unless otherwise agreed to in writing.
- G. Funds shall remain in escrow until disbursed in accordance with the terms of lease, property management agreement, or applicable statutory provisions.

BREAK..... 10 Minutes

## Section 2 – Broker Supervision

### VII. Virginia Real Estate Board Regulations – 18 VAC 135-20-160 ..... 5 Minutes Place of Business

- A. Definition of a place of business – where the place of business in regularly transacted and where business calls are made, directed and received.
  - 1. May be in a residence – separate and distinct from the living quarters and accessible by the public
- B. Licenses are kept by the broker
  - 1. all licenses except the branch office license is to be maintained in main office available to the public for inspection
  - 2. Branch office licenses are kept in the branch office along with a posted roster listing every licensee assigned to that office. Branch office license and roster posted in a conspicuous place.

### VIII. Virginia Real Estate Board Regulations – 18 VAC 135-20-165 .....45 minutes Duties of a Supervising Broker

- A. Each place of business and branch office shall be supervised by a supervising broker.
  - 1. Must exercise reasonable and adequate supervision
  - 2. May designate another broker to assist in administering the provisions of this subsection but does not relinquish

overall responsibility.

3. Reasonable and adequate supervision includes but not limited to:
  - a. Availability to all licensees to review and approve all documents including leases, contracts, brokerage agreements and advertising.
  - b. Availability of training and written policy and procedures that include
    - i. advertising
    - ii. proper handling of escrow deposits
    - iii. negotiating and drafting contracts, leases, and brokerage agreements
    - iv. use of unlicensed assistances
    - v. agency relationships
    - vi. distribution of information on new or changed statutory or regulatory requirements
    - vii. disclosure of matters relating to the condition of the property
    - viii. other such matters as necessary to assure the competence of licensees to comply with this chapter
4. Availability in a timely manner to supervise the management of brokerage services
5. Ensure brokerage services are carried out competently in accordance with the regulations
6. Reasonable steps to ensure compliance by all licensees assigned to the branch office including ensuring the licensees have an active, current license
7. Take reasonable steps to ensure only licensee undertake activities requirement a license which include;
  - a. showing property
  - b. hold an open house
  - c. answer questions on listings, title, financing, closing, contracts, brokerage agreements and legal documents
  - d. discuss, explain, interpret, or negotiate a contract, listing, lease agreement or property management agreement with anyone outside of the firm
  - e. negotiate or agree to any commission, commission split, management fee or referral fee.
8. Adequate supervision over the activities of the unlicensed employees or assistants under the supervision of the broker including;
  - a. perform general clerical duties, answering phones, responding by electronic media reading information shown on the listing, providing or transmitting objective written marketing or MLS information on the listing
  - b. submit listings and changes to MLS
  - c. follow up on loan commitment after contracts have been ratified

- d. have keys made for listings
  - e. compute commission checks
  - f. place signs on properties
  - g. act as a courier service
  - h. schedule appointments
  - i. record and deposit earnest money deposits, security deposits and advance rents
  - j. prepare contract forms for approval of the licensee and supervising broker
  - k. prepare promotional materials and advertisements for approval of the licensee and supervising broker
  - l. assemble closing documents
  - m. obtain required public information from governmental entities
  - n. monitor license and personnel files
  - o. order routine repairs as directed by licensee
  - p. may be compensated for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction
  - q. any other activities undertaken in the regular course of business for which a real estate license is not required.
9. Supervising Broker is located more than 50 miles from the place of business or branch office – must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with a the requirements of this subsection
  10. Maintain records required for three years. furnished to the board upon request.

BREAK.....10 Minutes

**IX. Maintenance of Licenses – 18 VAC 135-20-170 .....15 Minutes**

- A. Name and Address – keeping the REB informed at all times of current name & home address changes
  1. Must notify the board with 30 days of change
  2. Use of Professional name
  3. Licenses issued to the place of business
  4. Principal broker duty to keep board informed of current firm and branch office name and address
  5. Changes must be reported with 30 calendar days
  6. Physical address is required – no Post Office box will be accepted
- B. Discharge or Termination of Active Status
  1. Returning license to board
  2. time frame
  3. procedures for returning license or notifying board
  4. effect on licensees if principal broker’s license is returned
    - a. Sole Proprietor
    - b. Incorporated firm

**Section 3- Advertising**

- X. Virginia Real Estate Board Regulations – 18 VAC 135-20-190 .....20 Minutes**
  - Advertising by Licensees**
    - A. Definitions
      - 1. 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.
      - 2. Disclosure – firm requirements, individual licensee requirement
      - 3. Viewable page
    - B. Responsibility of Principal or Supervising broker
    - C. Online Advertising (electronic media)
      - 1. Requirements for disclosure
        - a. information must be consistent with the property description and actual status of listing
        - b. Timely updates reflecting material changes to the listing status or property description when third party controls the website
    - D. Prohibited Activities
      - 1. Implying that the property is listed by an unlicensed person
      - 2. Failing to disclose the owner is a real estate licensee (note change from not necessary if listed with firm to new reg.)
      - 3. Failing to include the firm’s name on signage
      - 4. Failing to obtain written permission to advertise property
      - 5. Failing to advertise the type of service offered

**Section 4 – Other Noteworthy Things**

- XI. DPOR Forms.....10 Minutes**
  - A. Real Estate Firm/Sole Proprietorship Audit Form
  - B. Supervising Broker Certification Form
  - C. Signature Authority Application
- XII. DPOR Guidance Documents.....5 Minutes**
  - A. Broker Price Opinion Guidance Document
  - B. Transfers of Active Licenses
  - C. Guidance Document of Necessity for Brokerage Agreements

**TOTAL TIME (including three 10 minute breaks).....230 Minutes**

**BROKER SUPERVISION  
&  
ESCROW MANAGEMENT**

*An overview of  
Escrow, Supervision, Advertising  
&  
Office Policies & Procedures*

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**ESCROW MANAGEMENT**

*An overview of  
**BROKER'S RESPONSIBILITIES FOR ESCROW  
FUNDS HELD ON BEHALF OF THE PUBLIC***

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## WHERE ARE THE RULES AND REGS FOUND??

**CODE OF VIRGINIA** - VIRGINIA STATUTE CREATES

VAC

TITLE 54.1-2106.1 GIVES AUTHORITY TO VREB

**VAC (VIRGINIA ADMINISTRATIVE CODE)** -

DEFINES THE RULES AND REGS.

18VAC135-20-20. NECESSITY FOR LICENSE

TITLE 18 (PROFESSIONAL AND OCCUPATIONAL  
LICENSING)

SECTION 135 (REAL ESTATE BOARD)

**REALTOR® CODE OF ETHICS** – NAR



## ESCROW MANAGEMENT

Who is Responsible?

- Principal Broker
- Supervising Broker with escrow account authority
- Any Licensee with escrow account authority

WHO MAINTAINS?

ACCOUNT MUST BE FEDERALLY INSURED

## ESCROW MANAGEMENT DEFINITIONS

### **Commingling**

The illegal act of placing client or customer funds with personal funds

### **Conversion**

The use of escrow funds for personal use



**WHICH ARTICLE OF THE  
REALTORS® CODE OF ETHICS  
ADDRESS ESCROW ACCOUNT  
MANAGEMENT?**

## ARTICLE 8

### Realtors® Code of Ethics 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.



## VREB REGULATIONS 18 VAC 135-20-180

- Maintenance of Escrow Accounts
- Disbursement of Funds from Escrow Account
- Actions including improper maintenance of escrow funds

## **MAINTENANCE OF ESCROW ACCOUNTS**

### **NAME ON ACCOUNT**

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.

**FUNDS MUST BE PLACED IN AN ACCOUNT SEPARATE FROM BROKER'S GENERAL FUNDS.**

## **MAINTENANCE OF ESCROW ACCOUNTS**

### **FUNDS TO BE PLACED IN ESCROW ACCOUNTS**

- ✓ 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

**MAINTENANCE OF ESCROW ACCOUNTS**

FUNDS TO BE PLACED IN ESCROW ACCOUNTS CTD.

- ✓ 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.

***UNLESS ALL PARTIES AGREE OTHERWISE IN WRITING***

**MAINTENANCE OF ESCROW ACCOUNTS**

BALANCE OF ESCROW ACCOUNT

SUFFICIENT AT ALL TIMES TO ACCOUNT FOR ALL FUNDS THAT ARE DESIGNATED TO BE HELD BY THE FIRM OR SOLE PROPRIETORSHIP.

## MAINTENANCE OF ESCROW ACCOUNTS

ESCROW ACCOUNTS MUST BE  
LABELED AS SUCH

ALL CHECKS AND BANK STATEMENTS  
SHALL BE LABELED "ESCROW" AND  
THE ACCOUNT SHALL BE  
DESIGNATED AS "ESCROW"  
ACCOUNT WITH THE FINANCIAL  
INSTITUTION WHERE SUCH AN  
ACCOUNT IS ESTABLISHED.



## MAINTENANCE OF ESCROW ACCOUNTS

### FUNDS DEPOSITED AND PAID

- ◎ FUNDS MUST BE SEPARATELY IDENTIFIED IN ESCROW ACCOUNT RECORDS
- ◎ FUNDS SHALL NOT BE PAID DIRECTLY TO LICENSEE
- ◎ FUNDS THAT ULTIMATELY BELONG TO THE LICENSEE DOES NOT CONSTITUTE COMMINGLING

## MAINTENANCE OF ESCROW ACCOUNTS

### FUNDS DEPOSITED AND PAID

FUNDS BELONGING TO THE LICENSEE MUST BE WITHDRAWN WITHIN 6 MONTHS OF BECOMING THE LICENSEE'S PERSONAL FUNDS - THIS INCLUDES ANY INTEREST PAID ON THE ACCOUNT

## MAINTENANCE OF ESCROW ACCOUNTS

FUNDS 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

**hy·poth·e·cate**

[hə'pəTHəkāt, hī'pəTHəkāt]

VERB

pledge (money) by law to a specific purpose

## **DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS**

UPON RATIFICATION OF A CONTRACT, EARNEST MONEY AND DOWN PAYMENT DEPOSITS RECEIVED BY THE PRINCIPAL BROKER OR SUPERVISING BROKER MUST BE PLACED IN AN ESCROW ACCOUNT BY THE END OF THE 5<sup>TH</sup> BUSINESS BANKING DAY FOLLOWING RATIFICATION UNLESS OTHERWISE AGREED TO IN WRITING BY ALL THE PARTIES TO THE TRANSACTION



## **DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS**



ALL FUNDS PLACED IN AN ESCROW ACCOUNT MUST REMAIN IN THE ACCOUNT UNTIL THE TRANSACTION HAS BEEN CONSUMMATED OR TERMINATED.



## **DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS**

IF TRANSACTION IS NOT CONSUMMATED OR TERMINATED THE FUNDS MUST REMAIN IN THE ESCROW ACCOUNT UNTIL:

- ⦿ ALL PARTIES AGREE IN WRITING AS TO THE DISBURSEMENT OF THE FUNDS
- ⦿ A COURT OF COMPETENT JURISDICTION ORDERS SUCH DISBURSEMENT

## **DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS**

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. TO DO THIS THE BROKER MUST:

- ⦿ GIVE WRITTEN NOTICE TO ALL PARTIES
- ⦿ HAND DELIVERY
- ⦿ CERTIFIED MAIL
- ⦿ BY E-MAIL OR FAX IF IT IS WITHIN 90 DAYS OF THE DATE OF NON-CONSUMMATION
- ⦿ SEND TO ADDRESS PROVIDED IN CONTRACT OR LAST KNOWN ADDRESS
- ⦿ PARTIES HAVE 30 DAYS TO RESPOND IF PROTESTED

## **DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS**

UNLESS OTHERWISE AGREED TO IN WRITING BY ALL PRINCIPALS TO THE TRANSACTION, A LICENSEE SHALL NOT BE ENTITLED TO ANY PART OF THE EARNEST MONEY DEPOSIT OR ANY OTHER MONEY PAID TO THE LICENSEE AS PART OF THE TRANSACTION UNTIL THE TRANSACTION HAS BEEN CONSUMMATED.



## **Lease Transactions**

- ◎ ALL MONIES RECEIVED BY THE LICENSEE IN CONNECTION WITH A LEASE SHALL BE DEPOSITED BY THE END OF THE 5<sup>TH</sup> BUSINESS BANKING DAY FOLLOWING RECEIPT.
- ◎ ESCROW FUNDS WILL REMAIN IN ACCOUNT UNTIL PAID IN ACCORDANCE WITH THE LEASE AND/OR PROPERTY MANAGEMENT AGREEMENT



### Lease Transactions

- ⦿ A LICENSEE SHALL NOT BE ENTITLED TO ANY PART OF THE SECURITY DEPOSIT OR ANY OTHER MONEY PAID TO THE LICENSEE AS COMMISSION EXCEPT IN ACCORDANCE WITH THE TERMS OF THE LEASE OR PROPERTY MANAGEMENT AGREEMENT.
- ⦿ UNLESS THE LANDLORD BECOMES ENTITLED TO RECEIVE THE SECURITY DEPOSIT, THE MONEY SHALL NOT BE REMOVED FROM THE ESCROW ACCOUNT WITHOUT THE WRITTEN CONSENT OF THE TENANT.

### Lease Transactions

- ⦿ IF FUNDS ARE PLACED IN AN INTEREST BEARING ACCOUNT, ALL PARTIES TO THE TRANSACTION MUST BE INFORMED AS TO THE DISBURSEMENT OF THE INTEREST
- ⦿ A LICENSEE SHALL NOT DISBURSE MONEY FROM AN ESCROW OR PROPERTY MANAGEMENT ACCOUNT UNLESS SUFFICIENT MONEY IS ON DEPOSIT IN THAT ACCOUNT TO THE CREDIT OF THE INDIVIDUAL CLIENT OR PROPERTY INVOLVED.

### IMPROPER MAINTENANCE OF ESCROW ACCOUNTS

- ✓ UNLESS AGREED IN WRITING, PAYING EXPENSES INCIDENTAL TO CLOSING A TRANSACTION FROM A DEPOSIT OR DOWN PAYMENT
- ✓ ACCEPTING ANY NOTE, NONNEGOTIABLE INSTRUMENT OR ANYTHING OF VALUE NOT READILY NEGOTIABLE AS A DEPOSIT WITHOUT ACKNOWLEDGING ITS ACCEPTANCE IN THE AGREEMENT.
- ✓ COMMINGLING
- ✓ FAILURE TO DEPOSIT ESCROW FUNDS IN AN ACCOUNT DESIGNATED TO RECEIVE ONLY SUCH FUNDS

### IMPROPER MAINTENANCE OF ESCROW ACCOUNTS

FAILING AS A PRINCIPAL BROKER TO REPORT TO THE BOARD WITHIN 3 BUSINESS DAYS INSTANCES WHERE THE PRINCIPAL BROKER REASONABLY BELIEVES THE IMPROPER CONDUCT OF A LICENSEE HAS CAUSED NONCOMPLIANCE WITH THIS SECTION



## **MAINTENANCE & MANAGEMENT OF FINANCIAL RECORDS**

- COMPLETE FINANCIAL RECORDS MUST BE KEPT BY THE PRINCIPAL BROKER AT THE BROKER'S PLACE OF BUSINESS OR IN A DESIGNATED BRANCH OFFICE.
- BROKER'S NOT IN VIRGINIA WHO HAVE A VIRGINIA OFFICE MUST KEEP A COPY OF THE RECORDS IN THE VIRGINIA OFFICE.

## **MAINTENANCE & MANAGEMENT OF FINANCIAL RECORDS**

RECORDS MUST CONTAIN THE FOLLOWING INFORMATION:

- FROM WHOM THE MONEY WAS RECEIVED
- THE DATE OF RECEIPT
- PLACE OF DEPOSIT
- DATE OF DEPOSIT
- FINAL DISPOSITION OF THE FUNDS

## IMPROPER RECORD KEEPING

FAILING TO RETAIN FOR A PERIOD OF 3 YEARS FROM THE DATE OF THE CLOSING OR RATIFICATION IF THE TRANSACTION FAILS TO CLOSE, A COMPLETE AND LEGIBLE COPY OF:

- ⦿ DISCLOSURE OF BROKERAGE RELATIONSHIP
- ⦿ EACH EXECUTED CONTRACT
- ⦿ AGREEMENTS
- ⦿ CLOSING STATEMENT

... CTD

- ⦿ FAILING TO MAINTAIN A COMPLETE AND ACCURATE RECORD OF MONIES RECEIVED AND DISBURSED FOR A PERIOD OF 3 YEARS FROM DATE OF CLOSING OR TERMINATION OF A LEASE OR CONCLUSION OF THE LICENSEE'S INVOLVEMENT IN THE LEASE
- ⦿ FAILING WITHIN A REASONABLE TIME TO ACCOUNT FOR OR TO REMIT ANY MONIES COMING INTO THE LICENSEE'S POSSESSION WHICH BELONG TO OTHERS.

### **CODE OF VIRGINIA 54.1-2108**

Protection of Escrow Funds, etc. held by broker

- BOARD'S ACTION TO PROTECT PUBLIC: FILE A PETITION
- APPOINTMENT OF RECEIVERS - DETERMINED BY COURT
- PAYMENTS OF EXPENSES AND FEES TO RECEIVER - IF NOT BOARD WILL DETERMINE WHETHER THE FUNDS CAN BE PAID OUT OF THE TRANSACTION RECOVERY FUND (30 DAYS)

### **CODE OF VIRGINIA §54.1-2108.1**

PROTECTION OF ESCROW FUNDS, ETC., HELD BY A REAL ESTATE BROKER IN THE EVENT OF FORECLOSURE OF REAL PROPERTY; REQUIRED DEPOSITS.

- Right of broker holding escrow to file interpleader action
- Foreclosure considered a termination of contract
- Earnest Money may be returned to purchaser if contract provides, without further consent from or notice to the parties
- Tenant in residential dwelling unit – at date of foreclosure, landlord will return security deposit to tenant with any applicable interest regardless of any contractual agreements between landlord and their successors in interest.
- May make lawful deductions from the deposit in accordance with applicable law.



## CTD...

- Prepaid rent > 1 month prior to the rent due date must be placed in broker's escrow account by the end of the 5<sup>th</sup> business banking day.  
< 1 month → operating account.
- Security deposits ... will be placed in escrow account by the end of the 5<sup>th</sup> business banking day unless otherwise agreed to in writing.
- Any deposits paid for the purpose of being considered as a tenant shall be placed in escrow by the end of the 5<sup>th</sup> business banking day following *approval of application by landlord*, unless otherwise agreed to in writing.
- Funds shall remain in escrow until disbursed in accordance with the terms of lease, property management agreement, applicable statutory provisions.

## THE END OF ESCROW PORTION!





# BROKER SUPERVISION

*An overview of Supervision, Advertising & Office Policies & Procedures*



## VIRGINIA REAL ESTATE BOARD REGULATIONS

**- 18 VAC 135-20-160**

### PLACE OF BUSINESS

**DEFINITION OF A PLACE OF BUSINESS:** WHERE THE BUSINESS IS REGULARLY TRANSACTED AND WHERE BUSINESS CALLS ARE MADE, DIRECTED AND RECEIVED.

**MAY BE IN A RESIDENCE – SEPARATE AND DISTINCT FROM THE LIVING QUARTERS AND ACCESSIBLE BY THE PUBLIC**

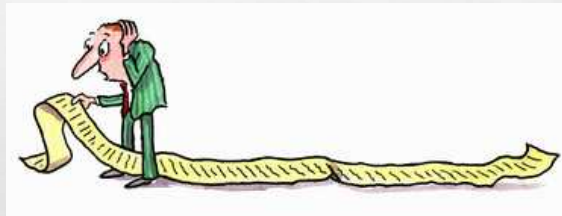


## LICENSES

- Licenses are kept by the broker
- all licenses except the branch office license is to be maintained in main office available to the public for inspection
- Branch office licenses are kept in the branch office along with a posted roster listing every licensee assigned to that office.
- Branch office license and roster posted in a conspicuous place.

## VIRGINIA REAL ESTATE BOARD REGULATIONS – 18 VAC 135-20-165

### DUTIES OF A SUPERVISING BROKER



## **MAINTENANCE OF LICENSES – 18 VAC 135-20-170**

Name and Address – keeping the REB informed at all times of current name & home address changes.

1. Must notify the board with 30 days of change
2. Use of Professional name
3. Licenses issued to the place of business
4. Principal broker duty to keep board informed of current firm and branch office name and address
5. Changes must be reported with 30 calendar days
6. Physical address is required – no Post Office box will be accepted

## **Discharge or Termination of Active Status**

1. Returning license to board
2. Time frame – 10 days 3 days
3. Procedures for returning license or notifying board
4. Effect on licensees if principal broker's license is returned
  - a. Sole Proprietor
  - b. Incorporated firm

## 18 VAC 135-20-190 ADVERTISING BY LICENSEES

### Definitions


1. 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.
2. Disclosure – firm requirements, individual licensee requirement
3. Viewable page – a page that may or may not scroll beyond the borders of the page as well as the use of framed pages.

## ADVERTISING BY LICENSEES

VREB regulations and the Code require that you disclose the following in any communication that could be construed as advertising:

- Your name
- Your firm name and where it's located (either the main office or the office you work out of)
- What states or regions you're licensed in

**The one-click-away rule:** Those disclosures must be made either in the message itself or on a Web site that's one click away from the message.



## Cheat sheet: online disclosures

*You must include on any message that could be considered advertising:*

- Your name
- Your firm name and where it's located (either the main office or the office you work out of)
- What states or regions you're licensed in

*Where those disclosures (or a link directly to them) need to go:*

**E-mail** — At the bottom of every message (i.e., in your signature line)

**Your blog or site:** So it's visible on every page of the site (e.g., in the sidebar) or on the bottom of every post

**Message-board post:** At the bottom of each message

**Twitter:** In your profile, so it appears under your picture on your main page

**Facebook:** At the bottom of every message (because Facebook doesn't show your "About Me" information on your profile page)

**Image/video sharing site (e.g., Pinterest, Flickr, YouTube):** In the description of every picture or video

## PROHIBITED ACTIVITIES

1. Implying that the property is listed by an unlicensed person
2. Failing to disclose the owner is a real estate licensee
3. Failing to include the firm's name on signage
4. Failing to obtain written permission to advertise property
5. Failing to advertise the type of service offered

## **OTHER NOTEWORTHY THINGS**

### **XI. DPOR Forms**

- A. Real Estate Firm/Sole Proprietorship Audit Form
- B. Supervising Broker Certification Form
- C. Signature Authority Application

### **XI. DPOR Guidance Documents**

- A. Broker Price Opinion Guidance Document
- B. Transfers of Active Licenses
- C. Guidance Document of Necessity for Brokerage Agreements



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

**A. Maintenance of escrow accounts.**

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.
2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.
3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.



## **B. Disbursement of funds from escrow accounts.**

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



Residential Landlord and Tenant Act, Chapter 13.2 (§55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

- c. Lease transactions: rents or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rents and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.
2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.
  - b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.
3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.
5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

**C. Actions including improper maintenance of escrow funds include:**

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;
2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;
3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;
4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and
5. Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee has caused noncompliance with this section.

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

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

- B. The principal broker shall maintain a bookkeeping or record keeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.
- C. Actions constituting improper record keeping include:
1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification, if the transaction fails to close, a complete and legible copy of each disclosure of a brokerage relationship, and each executed contract, agreement, and closing statement related to a real estate transaction, in the broker's control or possession, unless prohibited by law;
  2. Having received monies on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing or termination of a lease or conclusion of the licensee's involvement in the lease; and
  3. Failing, within a reasonable time, to account for or to remit any Monies coming into a licensee's possession which belong to others.

**Code of Virginia § 54.1-2108.  
Protection of Escrow Funds, etc., Held by Broker.**

No licensee or any agent of the licensee shall divert or misuse any funds held in escrow or otherwise held by him for another. Where escrow funds or other funds are held by the licensee or his agents and the Real Estate Board or its agents have reason to believe that the licensee is not able to adequately protect the interests of persons involved, or his conduct threatens their interests, the Board shall file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by the licensee. If the court finds him unable to make such payment, the Board shall determine whether the expenses and fees shall be paid from the Virginia Real Estate Transaction Recovery Fund or from funds received by the Board. Such determination shall be made within thirty days of the Board's receipt of the court-approved receiver invoices. If the court finds that the licensee was without fault and that he is found not to have violated any provisions of this chapter or of the regulations of the Board, then the receiver's expenses and fees shall be paid by the Board. Such payments shall be paid from funds received by the Board.

(1973, c. 487, § 54-764.5; 1988, c. 765; 1997, c. 82; 1998, c. 29.)

**Code of Virginia § 54.1-2108.1  
Protection of escrow funds, etc., held by a real estate broker in the event of  
foreclosure of real property; required deposits.**

A. Notwithstanding any other provision of law:

1. If a licensed real estate broker or an agent of the licensee is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the licensee or an agent of the licensee shall have the right to file an interpleader action pursuant to § 16.1-77.

2. If there is in effect at the date of the foreclosure sale, a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a licensee shall be paid to a party to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract and the licensee or an agent of the licensee may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such

provisions of the real estate purchase contract without further consent from, or notice to, the parties.

3. If there is in effect at the date of the foreclosure sale, a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing herein shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

**B. Notwithstanding any other provision of law:**

1. Any prepaid rent paid more than one month prior to the rent due date to a real estate licensee acting on behalf of a landlord client 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 a lease transaction. Any rent paid less than one month prior to the rent due date shall be current rent and may be deposited into an operating account of the real estate licensee.

2. Any security deposits paid to a real estate licensee acting on behalf of a landlord client 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 a lease transaction.

3. Any application deposit as defined by § 55-248.4 paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a real estate licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord, unless otherwise agreed to in writing by the principals to a lease transaction.

4. Such funds shall remain in an escrow account until disbursed in accordance with the terms of the lease, the property management agreement, or the applicable statutory provisions, as applicable.

(2010, c. 181; 2013, c. 489.)

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

- A. Within the meaning and intent of §54.1-2110 of the Code of Virginia, a place of business shall be an office where:**
1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in §54.1-2100 of the Code of Virginia; and
  2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.
- B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.**
- C. Every principal broker shall have readily available to the public in the main place of business the firm license, the principal broker license and the license of every salesperson and broker active with the firm. The branch office license and a roster of every salesperson or broker assigned to the branch office shall be posted in a conspicuous place in each branch office.**
- D. Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions of this subsection. The supervising broker does not relinquish overall responsibility for the supervision of the acts of all licensees assigned to the branch office. Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to, the following:**
1. The availability of the supervising broker to all licensees under the supervision of the broker to review and approve all documents including but not limited to leases, contracts affecting the firm's clients, brokerage agreements and advertising;
  2. The availability of training and written procedures and policies which provide, without limitation, clear guidance in the following areas:
    - a. Proper handling of escrow deposits;
    - b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
    - c. Advertising;

- d. Negotiating and drafting of contracts, leases and brokerage agreements;
  - e. Use of unlicensed individuals;
  - f. Agency relationships;
  - g. Distribution of information on new or changed statutory or regulatory requirements;
  - h. Disclosure of matters relating to the condition of the property.
  - i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.
3. The availability of the supervising broker in a timely manner to supervise the management of the brokerage services;
  4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;
  5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office;
  6. If a supervising broker is located more than 50 miles from the branch office and there are licensees who regularly conduct business assigned to the branch office, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements in this subsection; and
  7. The supervising broker must maintain the records required in this subsection for three years. The records must be furnished to the board's agent upon request.

**18 VAC 135-20-170. Maintenance of licenses.**

**A. Name and address.**

1. Salespersons and individual brokers shall at all times keep the board informed of their current name and home address. Changes of name and address must be reported to the board in writing within 30 calendar days of such change. The board shall not be responsible for the licensee's 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 135-20-190. 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.

# Forms & Guidance Documents

1. Real Estate Firm/Sole Proprietorship Audit Form
2. Supervising Broker Certification Form
3. Signature Authority Application
4. Broker Price Opinion Guidance Document
5. Transfers of Active Licenses Guidance Document
6. Guidance Document of Necessity for Brokerage Agreements
7. Summary of Rights and Obligations of Sellers and Purchasers  
Under the Virginia Residential Property Disclosure Act.



## REAL ESTATE FIRM/SOLE PROPRIETORSHIP AUDIT

The Principal Broker/Sole Proprietor or Supervising Broker is required to audit the operations, policies and procedures of the firm/sole proprietorship or cause to have an audit conducted of its operations, policies and procedures at least once during each licensure term. This audit is to assure compliance with the provisions of Chapter 21 of the *Code of Virginia* and the Real Estate Board's regulations. The completed audit form must be signed by the Principal Broker/Sole Proprietor or Supervising Broker of the firm/sole proprietorship and **shall be kept on the premises of the firm or sole proprietorship**. This form shall be produced for inspection or copying upon request of an authorized agent of the Real Estate Board. This audit does not preclude a random inspection of the firm/sole proprietorship and the Real Estate Board may use the information in the completed audit when conducting an inspection.

**All NO answers require further explanation on page 5.**

FIRM/SOLE PROPRIETORSHIP NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

Is the place of business located in  an office building or  a residence

If the place of business is located in a residence, is it separate and distinct from the living quarters, and accessible by the public?

Yes  No

Firm/Sole Proprietorship License Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

**Principal Broker License:**

NAME	LICENSE NO.	EXP. DATE	POSTED/ AVAILABLE	LOCATION
			<input type="checkbox"/> Y <input type="checkbox"/> N	

**Supervising Broker Licenses:**

	NAME	LICENSE NO.	EXP. DATE	POSTED/ AVAILABLE	LOCATION
1				<input type="checkbox"/> Y <input type="checkbox"/> N	
2				<input type="checkbox"/> Y <input type="checkbox"/> N	
3				<input type="checkbox"/> Y <input type="checkbox"/> N	
4				<input type="checkbox"/> Y <input type="checkbox"/> N	
5				<input type="checkbox"/> Y <input type="checkbox"/> N	

**Broker/Salesperson Licenses:**

TOTAL NUMBER	ALL CURRENT	LICENSE/ ROSTER	POSTED/ AVAILABLE	LOCATION
	<input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> L <input type="checkbox"/> R	<input type="checkbox"/> Y <input type="checkbox"/> N	



**Place of Business**

**18-VAC 135-20-160:**

The principal broker has 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.	<input type="checkbox"/> Y <input type="checkbox"/> N
The branch office license and a roster of every salesperson or broker assigned to the branch office is posted in a conspicuous place in each branch office.	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
Each place of business and each branch office is supervised by a supervising broker who exercises reasonable and adequate supervision of the provision of real estate brokerage services by brokers and salespersons assigned to it.	<input type="checkbox"/> Y <input type="checkbox"/> N
If the 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, has the supervising broker certified in writing on a quarterly basis on a board form that the supervising broker complied with the requirements of this subsection?	<input type="checkbox"/> Y <input type="checkbox"/> N

Factors to be considered in determining whether the supervision is reasonable and adequate:

Is the supervising broker available to all licensees under his/her supervision in a timely manner?	<input type="checkbox"/> Y <input type="checkbox"/> N
<b>Is training available and are there written procedures and policies which provide clear guidance and effective oversight by the principal or supervising broker in the following areas:</b>	
Proper handling of escrow deposits?	<input type="checkbox"/> Y <input type="checkbox"/> N
Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
Advertising and marketing?	<input type="checkbox"/> Y <input type="checkbox"/> N
Negotiating and drafting of contracts, leases and brokerage agreements?	<input type="checkbox"/> Y <input type="checkbox"/> N
Use of unlicensed individuals?	<input type="checkbox"/> Y <input type="checkbox"/> N
Creating agency or independent contractor relationships?	<input type="checkbox"/> Y <input type="checkbox"/> N
Distribution of information on new or changed statutory or regulatory requirements?	<input type="checkbox"/> Y <input type="checkbox"/> N
Disclosure of matters relating to the condition of the property?	<input type="checkbox"/> Y <input type="checkbox"/> N
Such other matters as necessary to assure the competence of licensees to comply with the Real Estate Board's regulations and Chapter 21 of Title 54.1 of the Code of Virginia?	<input type="checkbox"/> Y <input type="checkbox"/> N
Have all records required in this subsection been maintained for three years?	<input type="checkbox"/> Y <input type="checkbox"/> N

**Maintenance of Licenses**

**18-VAC 135-20-170:**

The principal broker has kept the board informed of the current firm name.	<input type="checkbox"/> Y <input type="checkbox"/> N
The principal broker has kept the board informed of the current firm and branch office addresses.	<input type="checkbox"/> Y <input type="checkbox"/> N
The principal broker has returned to the board all licenses of brokers and salespersons who no longer work for the firm within 10 days of the termination.	<input type="checkbox"/> Y <input type="checkbox"/> N

**Maintenance and Management of Escrow Accounts**

**18 VAC 135-20-180:**

As of the date of the audit:

How many pending sales does the firm have for which it is holding earnest money deposits?	
How many property management clients does the firm have?	
How many properties does the firm manage for which it is holding security deposits?	
Are there funds earned by the firm/licensee which have not been withdrawn within 6 months?	<input type="checkbox"/> Y <input type="checkbox"/> N



Were the funds from escrow paid to the firm when the funds became due to the licensee?	<input type="checkbox"/> Y <input type="checkbox"/> N
Is the firm holding only the funds required to be deposited in the escrow account?	<input type="checkbox"/> Y <input type="checkbox"/> N

Please list the authorized signatories on the escrow accounts and provide the other requested information below.

	BANK NAME/ AUTHORIZED SIGNATURES	ACCOUNT NAME	Last 4 digit of ACCOUNT NO.	TYPE OF FUND (EMD/SD/Rents)	CURRENT BALANCE
1					
2					
3					
4					
TOTAL STATED EARNEST MONEY DEPOSIT LIABILITY					
TOTAL STATED SECURITY DEPOSIT LIABILITY					

**18 VAC 135-20-180 (A):** Maintenance of escrow accounts.

<p>If the firm holds down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, moneys advanced, or other escrow funds received on behalf of its client or any other person:</p> <p>Is the account maintained in the firm's licensed name?</p> <p>Is the account in a federally insured depository?</p> <p>Is the account labeled "escrow" on the account name, checks, and bank statements?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>If the escrow funds were used to purchase a CD:</p> <p>The broker has not pledged/hypothecated the CD?</p> <p>Does the broker have the original CD?</p> <p>Does the broker retain direct control over the CD?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>

**18 VAC 135-20-180(B):** Disbursement of funds from escrow accounts.

Were the earnest money deposit funds deposited within 5 business banking days following ratification, or in accordance with the written terms of the contract?	<input type="checkbox"/> Y <input type="checkbox"/> N
<p>Does the property management agreement call for a specific security deposit amount?</p> <p>If yes, does the security deposit amount on the property management agreement match the corresponding lease security deposit?</p> <p>Were the security deposits deposited into escrow within 5 business banking days following receipt unless otherwise agreed to in writing by the principals to the transaction?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> N/A</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
If the escrow account bears interest, is there a written disclosure in the contract of sale or lease regarding the disbursement of interest?	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A
If moneys were disbursed from escrow accounts, was there sufficient money on deposit in that account to the credit of the individual client or property involved?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were expenses incidental to closing a transaction deducted from a deposit, unless otherwise agreed to in writing by all principals to the transaction?	<input type="checkbox"/> Y <input type="checkbox"/> N



**18 VAC 135-20-180(C):** Actions including improper maintenance of escrow funds.

If there were any notes, nonnegotiable instruments, or anything of value not readily negotiable, accepted as a deposit on a contract, offer to purchase, or lease, was its acceptance acknowledged in the agreement?	<input type="checkbox"/> Y <input type="checkbox"/> N
Were the funds properly maintained in the escrow account with no commingling of funds?	<input type="checkbox"/> Y <input type="checkbox"/> N
Does it appear from the escrow account bank statements that funds designated for escrow were deposited into escrow accounts and not into operating or other firm accounts?	<input type="checkbox"/> Y <input type="checkbox"/> N
Are the balances in the escrow accounts sufficient to account for all funds designated to be held by the firm?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did the principal broker report the improper conduct of a licensee for noncompliance with escrow issues within 3 business days?	<input type="checkbox"/> Y <input type="checkbox"/> N

**Maintenance and Management of Financial Records****18 VAC 135-20-185:**

Are the firm's financial transaction records maintained in the principal broker's place of business, or a branch office?	<input type="checkbox"/> Y <input type="checkbox"/> N
Do the records show:	
from whom the money was received?	<input type="checkbox"/> Y <input type="checkbox"/> N
the date of receipt?	<input type="checkbox"/> Y <input type="checkbox"/> N
the place of deposit?	<input type="checkbox"/> Y <input type="checkbox"/> N
the date of deposit?	<input type="checkbox"/> Y <input type="checkbox"/> N
after the transaction has been completed, the final disposition of the funds?	<input type="checkbox"/> Y <input type="checkbox"/> N
Does the bookkeeping or record keeping system maintained by the principal broker clearly and accurately disclose full compliance with this section?	<input type="checkbox"/> Y <input type="checkbox"/> N
Are the accounting records in sufficient detail to provide necessary information to determine such compliance?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did the broker retain each disclosure of brokerage relationship, each executed contract, agreement and closing statement for a period of 3 years?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did the broker receive money on behalf of others and maintain a complete and accurate record of such receipts and disbursements for a period of 3 years?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did the broker account for or remit any monies in a licensee's possession which belonged to others?	<input type="checkbox"/> Y <input type="checkbox"/> N

**Advertising by Licensees****18 VAC 135-20-190:**

Was all advertising under the direct supervision of the principal broker?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did all advertising contain the firm's licensed name?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did online advertising comply with the provisions of board regulation 18 VAC 135-20-190.C?	<input type="checkbox"/> Y <input type="checkbox"/> N
Was the advertising clear that the property listed and advertised by the firm was not for sale, exchange, rent or lease by the owner or an unlicensed person?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did any of the advertising include a notice that the owner is a licensee if the licensee owns or has ownership interest in the property advertised and is not using the services of a licensed real estate entity?	<input type="checkbox"/> Y <input type="checkbox"/> N
Is the firm's licensed name on sign(s) displayed outside each place of business?	<input type="checkbox"/> Y <input type="checkbox"/> N
Was the written consent of the seller, landlord, optionor or licensor obtained before advertising the specific property?	<input type="checkbox"/> Y <input type="checkbox"/> N
Did any of the advertising fail to identify the type of services offered when advertising by general description a	<input type="checkbox"/> Y <input type="checkbox"/> N



property not listed by the party making the advertisement?

**Improper Brokerage Commission**

**18 VAC 135-20-280:**

Did the firm/sole proprietorship pay a commission or any valuable consideration to licensed person(s) only?  Y  N

**ADDITIONAL EXPLANATION**

Please provide further explanation below for any **NO** answers, or for any answers above for which inadequate space was provided. If you require additional space to answer a question, please include a further written response as part of this document.

If you are using this form to enter a voluntary compliance program pursuant to §54.1-2111.1 of the Code of Virginia, please provide a written statement with a plan for rectifying the noncompliance within 90 days from the date of submission to the Board.

**AUDIT DECLARATION AFFIRMATION**

As the principal broker or supervising broker, I have personally completed or personally overseen the completion of this audit and have personally reviewed and verified the responses in the audit. I understand the importance of the broker's duty to exercise reasonable supervision and control in assuring compliance with the law and regulations, and have made every effort to comply.

I hereby declare and affirm all responses are true, full, complete and accurate to the best of my knowledge. I further understand any false, misleading or incomplete answers to this audit may result in disciplinary action.

Printed name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

**THIS FORM SHALL BE KEPT AND MAINTAINED ON THE PREMISES OF THE FIRM OR SOLE PROPRIETORSHIP.  
DO NOT RETURN THIS FORM TO THE REAL ESTATE BOARD.**





**Real Estate Board  
 SIGNATURE AUTHORITY FORM  
 No Fee Required**

- ▶ The Supervising Broker of a branch office associated with a firm automatically has signature authority and is not required to complete this form
- ▶ This form is to be completed by the Principal Broker of the firm named in question #3.
- ▶ This form gives signature authority to the Associate Broker named in question #1 as long as they hold a current license with the firm named below.

1. Associate Broker Legal Name

\_\_\_\_\_ Last \_\_\_\_\_ First \_\_\_\_\_ Middle \_\_\_\_\_ Generation \_\_\_\_\_

2. Associate Broker Virginia Real Estate License Number

0	2	2	5						
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DO NOT INCLUDE DASHES (1234567890)

3. Firm Name \_\_\_\_\_

4. Firm Trade Name \_\_\_\_\_

5. Firm's Mailing Address \_\_\_\_\_

\_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

6. Firm's Telephone Number

\_\_\_\_\_ Primary Telephone \_\_\_\_\_ Fax \_\_\_\_\_

7. Firm's E-mail Address \_\_\_\_\_

8. Firm's Virginia Real Estate License Number

0	2	2	6						
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DO NOT INCLUDE DASHES (1234567890)

9. Firm's Principal Broker

\_\_\_\_\_ Last \_\_\_\_\_ First \_\_\_\_\_ Middle \_\_\_\_\_ Generation \_\_\_\_\_

10. Firm Principal Broker's Virginia Real Estate License Number

0	2	2	5						
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DO NOT INCLUDE DASHES (1234567890)

11. Associate Broker's Signature \_\_\_\_\_

Date \_\_\_\_\_

12. **Principal Broker's Statement**

I, the above-named firm's Principal Broker, hereby give signature authority to the above-named Associate Broker that works for the above-named firm. This signature authority privilege will remain on the associate broker's record until the associate broker transfers the license, inactivates the license, or the principal broker submits a request in writing to remove this privilege

Principal Broker's Signature \_\_\_\_\_

Date \_\_\_\_\_

## **Broker Price Opinion Guidance Document**

The Real Estate Board is issuing this guidance document in order to assist its licensees in understanding the requirements of § 54.1-2010.A.1 of the *Code of Virginia* as a means of providing information or guidance of general applicability to the public:

To ensure that the Real Estate Board's broker and salesperson licensees comply with § 54.1-2010.A.1 of the *Code of Virginia*, the Board prohibits any licensee who provides a valuation or analysis of real estate (such as a Broker Price Opinion) for a fee in the ordinary course of business from holding himself out as a real estate appraiser. Such valuation or analysis shall not be referred to as an appraisal, and it shall not be used in lieu of an appraisal performed by a certified or licensed appraiser when an appraisal is required by federal or state law or regulation.

Further, in accordance with 18 VAC 135-20-300.8 of the Board's Regulations, any licensee who knowingly makes any false statement or report, or willfully misstates the value of any land, property or security for the purpose of influencing in any way the action of a lender may be in violation of the Board's regulation prohibiting misrepresentation or omission.

Further, in accordance with 18 VAC 135-20-160 of the Board's Regulations, every principal broker or supervising broker of a place of business or branch office shall exercise reasonable and adequate supervision of the provision of real estate brokerage services (to include the valuation or analysis of real estate, e.g., Broker Price Opinions) by associate brokers and salespersons assigned to the place of business or branch office.

Further, in accordance with 18 VAC 135-20-280.2 of the Board's regulations, it is improper to accept a commission or other valuable consideration (including fees for Broker Price Opinions), as a real estate salesperson or associate broker, from any person except the licensee's principal broker at the time of the transaction, for performance of any of the acts specified in Chapter 21 (§54.1-2100 et seq.) of the *Code of Virginia* or the regulations of the board or related to any real estate transaction without the consent of the broker.

Further, in accordance with 18 VAC 135-20-330 of the Board's Regulations, principal and supervising brokers may be held responsible for failing to take reasonable action to remedy situations that lead to unlawful acts or regulatory violations by licensees and employees under their supervision.

## **PURPOSE**

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As a means of providing information or guidance of general applicability to the public, the Real Estate Board is issuing this guidance document in order to assist its licensees in understanding the requirements of Real Estate Board regulation 18 VAC 135-20-70.

To ensure that the Real Estate Board's broker and salesperson licensees comply with **18 VAC 135-20-70. Activation or transfer of license.**, the Board directs licensees to review the following information.

## **BACKGROUND**

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The following are relevant excerpts from the Real Estate Board Regulations:

### **18 VAC 135-20-10. Definitions.**

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Active" means any broker or salesperson who is under the supervision of a principal or supervising broker of a firm or sole proprietor and who is performing those activities defined in §§54.1-2100 and 54.1-2101 of the Code of Virginia.

### **18 VAC 135-20-70. Activation or transfer of license.**

- A. Any inactive licensee may activate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board. Continuing education pursuant to § 54.1-2105 of the Code of Virginia shall be completed within two years prior to activation of a license. Any licensee who has not been active with a licensed real estate firm or sole proprietorship for a period of greater than three years shall be required to meet the existing pre-license educational requirements.
  
- B. Any licensee may transfer from one licensed real estate firm or sole proprietorship to another by completing and submitting to the board a transfer application and the fee as set forth in 18 VAC 135-20-80.

**REAL ESTATE BOARD | Guidance Document**  
**Transfers of Active Licenses**  
May 9, 2013



## **SUMMARY**

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An active licensee may transfer his license to another firm as long as his license is not expired. In order to transfer his license, the licensee is required to submit a complete application and fee to the Board. This guidance document clarifies when the Board considers the license transferred to the new firm/sole proprietorship.

The Board considers a license transferred when the Department of Professional and Occupational Regulation receives the **application and fee** submitted by the licensee and his new broker. If the Board's staff ascertains the application is not complete, staff will notify the licensee and new broker who submitted the application of the deficiencies. If the licensee and/or the broker fail to correct such deficiencies with ten (10) business days of the initial date of notification by the Board, the licensee may be viewed as working outside the brokerage firm. Both the broker and the licensee who submitted the incomplete application may be subject to disciplinary action by the Board.



Guidance Document on necessity for brokerage agreements

As a means of providing information or guidance of general applicability to the public, the Real Estate Board is issuing this guidance document in order to assist its licensees in understanding the requirements of § 54.1-2137 of the *Code of Virginia*.

To ensure that the Real Estate Board's broker and salesperson licensees comply with § **54.1-2137. Commencement and termination of brokerage relationships**, the Board directs licensees to review the following information.

The following are relevant excerpts from the *Code of Virginia*:

**§ 54.1-2137. Commencement and termination of brokerage relationships.**

....

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.

....

**§ 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.

....

**§ 54.1-2130. Definitions.**

As used in this article: ...

"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.

....

"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.

....

"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.

....

The Code of Virginia requires a written brokerage agreement when a brokerage relationship, as defined in § 54.1-2130, is created. When a customer becomes a client is based upon the party's intent. A licensee needs to use his judgment based upon a customer's words and actions to make a determination as to when the intent to enter into a brokerage relationship is established and therefore, requires a brokerage agreement. Is the party looking for the licensee to provide advice and counsel requiring the licensee to exercise his judgment or discretion 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? If so, this would require a written brokerage agreement as these acts don't fall within the definition of ministerial acts. Has the party engaged the licensee 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? If yes, then a brokerage relationship is established and this requires a written brokerage agreement.

Below are some examples of situations which require the licensee to use his judgment to determine the party's intent:

- Many acts may be ministerial or could require a written brokerage agreement depending on the party making the request and his intent. For example, showing a house may be ministerial if the licensee takes the party to see what the typical features are in homes in the market area or to gather information on the market or area. However, if the party asks the licensee to show him real estate because his intent is to have the licensee procure someone who is ready, able and willing to sell, buy, option, exchange, or rent real estate then a brokerage relationship exists requiring a written brokerage agreement.
  - Another example relates to a request for a multiple listing service (MLS) search. If a party requests a licensee to provide MLS search results without the intent to engage the licensee 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 then a written brokerage agreement is not necessary. However, if a party requests MLS search results having the intent to engage the licensee 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 then a written brokerage agreement is necessary.

- If a party asks the licensee for general information about items such as tax rates, HOA dues, schools or typical features of property in the area, these acts appear to be ministerial. However, if the party asks these questions about specific property because his intent is to have the licensee procure someone who is ready, able and willing to sell, buy, option, exchange, or rent real estate, or if he asks the licensee to provide the licensee's opinion as to those features or properties that have those features, then a brokerage relationship exists requiring a written brokerage agreement.
- Many licensees may perform marketing activities in order to induce a party to engage them 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. For instance, if a party asks the licensee to provide him with a valuation or analysis of real estate or an MLS search for informational purposes and does not yet intend to engage the licensee to procure a buyer or seller for the real estate, a written brokerage agreement is not necessary. However, if at the time the party asks the licensee to provide the valuation and the party intends to use the valuation or analysis of the real estate for the purpose of having that licensee procure a buyer for the real estate, then a written brokerage agreement is needed.
  - As a further example, a licensee may provide marketing materials and a competitive market analysis to a prospective seller who is interviewing for the purpose of retaining a licensee to sell their property, without the necessity of a written brokerage agreement.

The party's intent can change during the performance of ministerial acts by the licensee. The licensee needs to be aware of when the intent of the party changes from that of customer to client, and get the party to sign a written brokerage agreement before performing any non-ministerial acts for that party. It is important for brokers to have policies in place to guide their licensees, based upon the firm's business practices, in determining when a written brokerage agreement is required and procedures for obtaining such agreements.



## SUMMARY OF RIGHTS AND OBLIGATIONS OF SELLERS AND PURCHASERS UNDER THE VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT



Virginia's Residential Property Disclosure Act (the "Act") (Virginia Code §55-517 et seq.) requires real estate licensees to inform the parties to a transaction with whom they deal of their rights and obligations under the Act. The licensee providing this information to you is prepared to answer any questions you may have about what the Act means to you, and to furnish you with a copy of the Act at your request.

The Act applies to sales, exchanges, installment sales, or leases with option to purchase of residential real property improved with one to four dwelling units. The Act does not apply to: transfers pursuant to court order (in estate administration, pursuant to writ execution, foreclosure, bankruptcy, condemnation, or by decree for specific performance); transfers among co-owners; transfers among spouses; transfers among parents or grandparents and their children or grandchildren; tax sales; transfers involving a government or housing authority; or (subject to certain exceptions discussed below) sales of new homes.

The Act requires sellers to furnish purchasers with a disclosure statement developed by the Virginia Real Estate Board. The statement must be furnished to the purchaser before final ratification of the purchase contract or the purchaser may terminate the contract or sue later for damages. The statement will direct purchasers to the RESIDENTIAL PROPERTY DISCLOSURES web page ([http://www.dpor.virginia.gov/News/Residential\\_Property\\_Disclosures/](http://www.dpor.virginia.gov/News/Residential_Property_Disclosures/)) for important information about the real property. Purchasers are advised to consult the webpage.

A seller, in furnishing a disclosure statement, makes no representations or warranties as to the condition of the property or any improvements located thereon nor with respect to the matters set forth and described at the RESIDENTIAL PROPERTY DISCLOSURES web page ([http://www.dpor.virginia.gov/News/Residential\\_Property\\_Disclosures/](http://www.dpor.virginia.gov/News/Residential_Property_Disclosures/)). Purchaser is advised to exercise whatever due diligence purchaser deems necessary including a certified home inspection, as defined in §54.1-500, in accordance with the terms and condition of the purchase contract, but in any event prior to settlement.

A builder of a new home must disclose to a purchaser in writing all known material defects which would constitute a violation of any applicable building code. In addition, for property located wholly or partially in any locality comprising Planning District 15 (the City of Richmond, the Town of Ashland, and the counties of Charles City, Chesterfield, Goochland, Hanover, Henrico, New Kent and Powhatan), the builder (or seller, if the owner is not the builder) shall disclose in writing whether mining operations have previously been conducted on the property or the presence of any abandoned mines, shafts or pits. This disclosure does not abrogate any warranty or other obligations the builder may have to the purchaser, and must be made (i) when selling a completed home, before acceptance of the purchase contract, or (ii) when selling a home before or during construction, after issuance of a certificate of occupancy. No disclosure or statement of any kind is required if there is no such information to disclose. Any required disclosure may be, but need not be, contained in the disclosure statement described in this Summary.

A purchaser must be furnished with a disclosure statement signed by the seller prior to final ratification of the purchase contract. If such statement is not received by final ratification, the purchaser's sole remedy shall be to terminate the purchase contract by sending written notice to the seller either by hand delivery or U. S. Mail, postage prepaid, at or prior to the earliest of (i) 3 days after receiving the statement (if delivered in person); (ii) 5 days after postmark (if sent by U. S. Mail, postage prepaid); (iii) settlement; (iv) occupancy by purchaser; (v) purchaser's making written application for a mortgage loan if such application discloses that the termination right ends upon application; (vi) purchaser's execution of a written waiver of the right to terminate (such waiver may not be in the purchaser contract).

If the seller fails to provide the required disclosure statement, the contract may be terminated as set forth above. If the seller fails to provide the required disclosure statement, or the seller misrepresents, willfully or otherwise, the information required in such disclosure, except as a result of information provided by the locality in which the property is located, the purchaser may bring an action to recover actual damages suffered as a result of such violation. No purchaser of 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 such damages. Any such action must be brought within one year of the date the purchaser received the disclosure statement. If no disclosure statement was provided to the purchaser, the action must be brought within one year of the date of settlement, or purchaser's occupancy of the property by lease with option to purchase.

Purchasers should be aware that neither a seller nor a real estate licensee is obligated to disclose facts or occurrences which have no effect on the physical structure of the property, its physical environment, or the improvements located thereon, or the fact that the property was the site of a homicide, felony, or suicide. Furthermore, it is a violation of federal law to disclose whether a previous occupant of the property was afflicted with the HIV virus or has AIDS.

Purchasers should be aware that in providing a disclosure statement:

(a) The seller is making no representations with respect to any matters that may pertain to parcels adjacent to the subject property. Purchasers should exercise whatever due diligence they deem necessary with respect to adjacent parcels in accordance with the terms and conditions of the purchase contract, but in any event prior to settlement on the subject property.

(b) The seller makes no representations as to any matters that pertain to whether the provisions of any historic district ordinance affect the property. Purchasers are advised to exercise whatever due diligence they deem 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 purchase contract, but in any event prior to settlement on the property.

(c) The seller 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. Purchasers should exercise whatever due diligence they deem 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 purchase contract, but in any event prior to settlement on the property.

(d) The seller makes no representations with respect to information on any sexual offenders registered under Chapter 23 (§19.2-387 et seq.) of Title 19.2. Purchasers are advised to exercise whatever due diligence they deem necessary with respect to such information, in accordance with the terms and conditions of the purchase contract, but in any event prior to settlement. Such information may be obtained by contacting the local police department or the Department of State Police, Central Criminal Records Exchange, at (804) 674-2000, or on the Internet at [www.vsp.state.va.us/vsp.html](http://www.vsp.state.va.us/vsp.html).

(e) The seller makes no representations with respect to whether the property is within a dam break inundation zone. Purchaser is advised to exercise whatever due diligence the purchaser 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.

(f) The undersigned 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.

(g) The undersigned 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.

(h) The owner makes no representations with respect to any right to install or use solar energy collection devices on the property.

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

If the property is located in a locality in which a military air installation is located, the seller must provide purchasers with a disclosure statement setting forth whether the property is located in a noise zone or accident potential zone, or both, if so designated on the official zoning map of the locality. Such disclosure shall state the specific noise or accident potential zone, or both, in which the property is located.

Please acknowledge receiving a copy of this summary by signing below.

Date \_\_\_/\_\_\_/\_\_\_

Date \_\_\_/\_\_\_/\_\_\_

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