

# • MAINTENANCE OF ESCROW ACCOUNTS • DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNT • ACTIONS INCLUDING IMPROPER MAINTENANCE OF ESCROW FUNDS

### 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.

### 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

FUNDS TO BE PLACED IN ESCROW ACCOUNTS

✓ 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.

### **EXCEPTION:**

✓ 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.

ESCROW ACCOUNTS

MUST BE LABELED AS SUCH

"ESCROW" AND THE ACCOUNT SHALL BE LABELED

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

### **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WITHDRAWN WITHIN 6 MONTHS OF BECOMING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

# 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.

# DISBURSEMENT OF FUNDS FROM ESCROW ACCOUNTS

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.
- WILL REMAIN IN ACCOUNT UNTIL PAID IN ACCORDANCE WITH THE LEASE AND/OR PROPERTY MANAGEMENT AGREEMENT

# ESCROW ACCOUNTS

- 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.

### OTHER ESCROW REQUIREMENTS

- IF FUNDS ARE PLACE 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.
- UNLESS AGREED IN WRITING, EXPENSES INCIDENTAL TO CLOSING A TRANSACTION SHALL NOT BE DEDUCTED FROM A DEPOSIT OR DOWN PAYMENT

# IMPROPER MAINTENANCE OF ESCROW ACCOUNTS

- 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

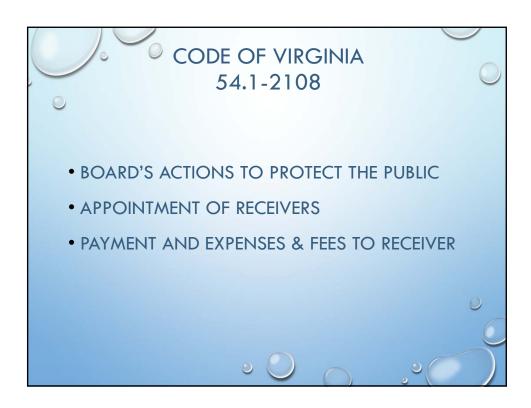
# IMPROPER RECORD KEEPING

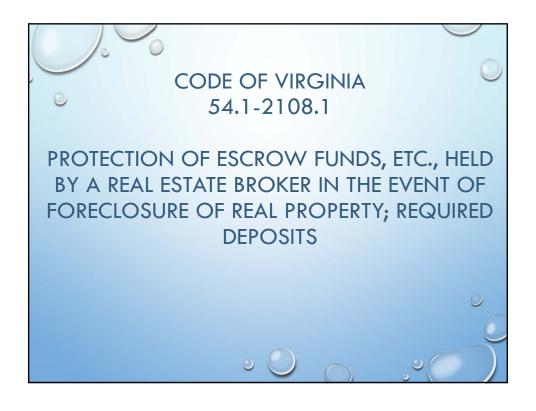
- FAILING TO RETAIN FOR A PERIOD OF 3 YEARS FROM THE DATE OF THE CLOSING OR RATIFICATION IF THE TRANSACTION FAILS TO CLOSE, A COMPLETE AND LEGIBLE COPY OF;
- DISCLOSURE OF BROKERAGE RELATIONSHIP
- EACH EXECUTED CONTRACT
- AGREEMENTS
- CLOSING STATEMENT

### IMPROPER RECORD KEEPING

- EAILING 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.

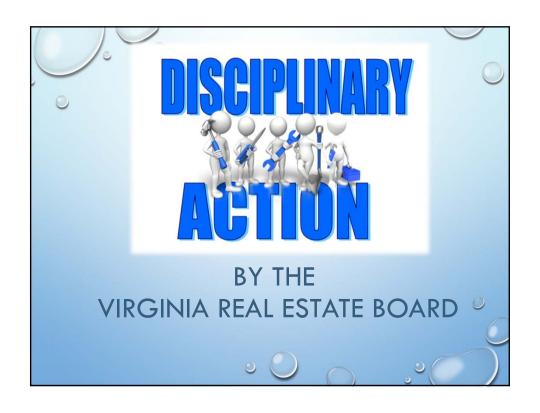






### CODE OF VIRGINIA 54.1-2108.1

- RIGHT TO FILE INTERPLEADER ACTION
- FORECLOSURE CONSIDERED A TERMINATION OF CONTRACT
- WHAT HAPPENS TO TENANT'S SECURITY DEPOSIT IN RESIDENTIAL DWELLING UNIT-AT DATE OF FORECLOSURE
- HANDLING PRE-PAID RENT
- HANDLING SECURITY DEPOSITS
- HANDLING FUNDS MADE BY PROSPECTIVE TENANT
- FUNDS TO REMAIN IN ACCOUNT UNTIL DISBURSED IN ACCORDANCE WITH A THE TERMS OF LEASE, PROPERTY MANAGEMENT AGREEMENT OR APPLICABLE STATUTORY PROVISIONS.





# Real Estate Escrow & Trust Account Requirements & Management (3 Classroom Hours) Timed Outline

| I.  | Where can our Rules and Regulations be found  | 5 Minutes  |
|-----|---|------------|
|     | <ul> <li>A. Virginia Administrative Code (VAC) 18 VAC 135-20-180 &amp; 18 VAC 135-20-185</li> <li>B. Code of Virginia Title 54.1-2180 &amp; 2108.1</li> <li>C. Realtor Code of Ethics (for members of NAR)</li> </ul> |            |
| II. | . Who Must Have an Escrow Account and Why   | 15 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 those accounts.                    |            |
|     | having signatory authority on these accounts  B. Who maintains the account  |            |
|     | <ul><li>C. Financial Institution requirements – federally insured</li><li>D. Definitions</li></ul>  |            |
|     | <ol> <li>Commingling –mixing broker personal funds with</li> </ol>  |            |
|     | other people's funds  2. Conversion – the use of other people's funds   |            |
|     | 2. Conversion – the use of other people's funds   |            |
| Ш   | I. Virginia Real Estate Board Regulations 18 VAC 135-20-180   |            |
|     | A. Maintenance of Escrow Accounts   | 30 Minutes |
|     | <ul> <li>Federally insured depository requirements</li> </ul>   |            |
|     | <ul> <li>d. what funds to be placed in escrow accounts</li> <li>e. Balance of escrow account</li> </ul>   |            |
|     | f. Responsibility for account   |            |
|     | g. Account clearly labeled  |            |
|     | <ul> <li>2. Funds deposited and paid</li> <li>a. Separately identified</li> <li>b. Not paid directly to licensee from account</li> <li>c. Withdrawal requirements</li> </ul>  |            |
|     | Pledging or Hypothecation of Money  |            |
|     | a. Direct control of funds  |            |
|     | b. Commingling  |            |

| BREAK   |  |  |  |
|---|--|--|--|
| B. Disbursement of Funds from Escrow Accounts   |  |  |  |
| IV. Virginia Real Estate Board Regulations 18 VAC 135-20-18520 Minutes  A. Maintenance & Management of Financial Records  |  |  |  |
| <ol> <li>Where records are kept</li> <li>What information financial records must contain</li> <li>Who maintains financial records</li> <li>Actions constitution improper record keeping         <ul> <li>a. Failure to acknowledge in agreement anything of value not readily negotiable</li> <li>b. Commingling</li> <li>c. Failure to deposit escrow funds in proper account</li> <li>d. Failure to have sufficient balances to cover escrow funds held</li> <li>e. Failing to report to board improper conduct under this section</li> </ul> </li> </ol> |  |  |  |
| BREAK   |  |  |  |
| V. Code of Virginia §54.1-21085 Minutes Protection of Escrow Funds, etc., Held by Broker  |  |  |  |
| <ul><li>A. Board's actions to protect public</li><li>B. Appointment of receivers</li><li>C. Payment of expenses &amp; fees to receiver</li></ul>  |  |  |  |

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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.

### VII. Disciplinary Actions by the Virginia Real Estate Board ......20 Minutes

- A. (Handout) A snapshot of the VREB meetings January and March 2012 over 40% of the cases pertained to Escrow mismanagement!
- B. Where to find cases involving escrow mismanagement.
- C. A discussion of several recent disciplinary actions by the VREB. (names of licensees, principals to the transaction and company names omitted)

The following are samples of cases instructor will discuss with the class demonstrating the board's authority and sanctions against licensees who fail to follow and comply with the escrow rules and regulations.

- 1. Case #1 File # 2013-01504
- 2. Case #2 File # 2013-00816
- 3. Case #3 File # 2012-02619
- 4. Case #4 File # 2012-01295
- 5. Case #5 File # 2013-01981
- 6. Case # 6 File # 2011-02715

| VIII. Conclusion                                    | 5 Minutes |
|---|-----------|
| A. Review of what we learned B. Questions & Answers |           |
|   |           |

TOTAL TIME.....(not including breaks)......150 Minutes