



DAAR Dulles Area
Association of REALTORS[®]
The Association of Choice for Real Estate Professionals™

VIRGINIA RESIDENTIAL AGENCY



1



INTRODUCTION

- Comprehensive summary of Virginia residential agency laws.
- New agency disclosure forms must be used.
- All Virginia licensed real estate brokers and salespersons must comply with Virginia agency law.



2



THE BASICS:

What Agency Means



3



“Agency” means every relationship in which a real estate licensee acts for or represents a person by such person’s express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship, such as an independent contractor.

In an agency relationship, must represent a client as a standard agent or a limited service agent.



4

STANDARD AGENT

A “standard agent” means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in §§ 54.1-2130 et seq. and any additional obligations agreed to by the parties in the brokerage agreement.




5

LIMITED SERVICE AGENT

(FORMERLY KNOWN AS A LIMITED SERVICE REPRESENTATIVE)

Means a licensee who acts for or represents a client with respect to real property containing from 1 to 4 residential units, pursuant to a brokerage agreement that provides that the limited service agent will not provide one or more of the duties set forth in §§ 54.1-2131 thru 54.1-2134.




6

LIMITED SERVICE AGENT (LSA)

1. An LSA has obligations set out in the brokerage agreement, but LSA must provide the client, at the time of entering the brokerage agreement, copies of all disclosures required by federal or state law, or local disclosures expressly authorized by state law; and




7

2. A LSA must disclose to the client in writing:

- (i) Client's rights & obligations under the Residential Property Disclosure Act (§ 55-517);
- (ii) If condo, client's obligation to deliver to buyer, or to receive as buyer, a condo resale certificate; and
- (iii) If property subject to a Property Owners' Association, client's obligation to deliver to purchaser, or to receive as purchaser, the association disclosure packet.




8

INDEPENDENT CONTRACTOR

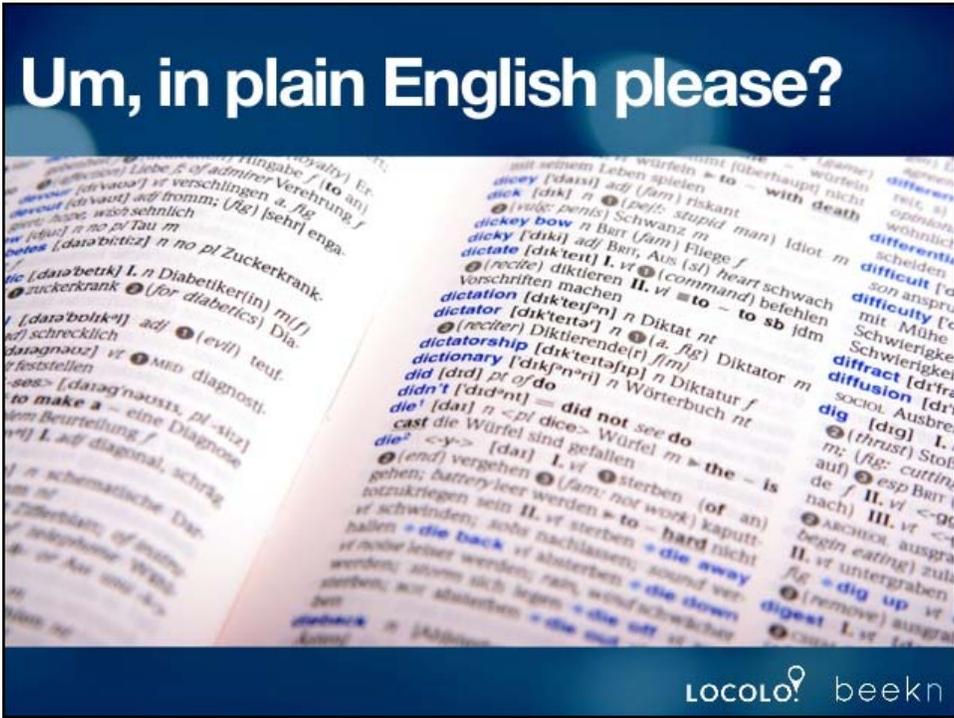
Means a real estate licensee who

- (i) enters into a brokerage relationship based upon a brokerage agreement that specifically states that the licensee is acting as an independent contractor and not as an agent;
- (ii) has the obligations agreed to by the parties in the brokerage agreement; and
- (iii) must comply with the provisions of § 54.1-2131 A 3 through 7, B, and E; § 54.1-2132 A 3 through 7, B, and E; § 54.1-2133 A 3 through 7, B, and E; § 54.1-2134 A 3 through 7, B, and E; and § 54.1-2135 A 2 through 6, C, and D but otherwise shall no obligations under §§ 54.1-2131 thru 54.1-2135.




9

Um, in plain English please?



LOCOLO? beekn

10

INDEPENDENT CONTRACTOR

Means a real estate licensee who:

- enters into a brokerage relationship based upon a brokerage agreement that specifically states that the licensee is acting as an independent contractor and not as an agent;
- has the obligations agreed to by the parties in the brokerage agreement;

(continued)




11

INDEPENDENT CONTRACTOR (CON'T)

- is required to:
 - maintain client confidentiality;
 - exercise ordinary care;
 - account for a client's money and property;
 - disclose material facts to client regarding the property and/or the transaction, and disclose material adverse facts/defective drywall to prospective purchasers or tenants;
 - treat all parties honestly; and
 - disclose the brokerage relationship to all parties; but
- does not have any other duties of a standard agent under Sections 54.1-2131 thru 54.1-2135.





12

CLIENT OR CUSTOMER?

“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. 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.



13

BROKERAGE RELATIONSHIPS



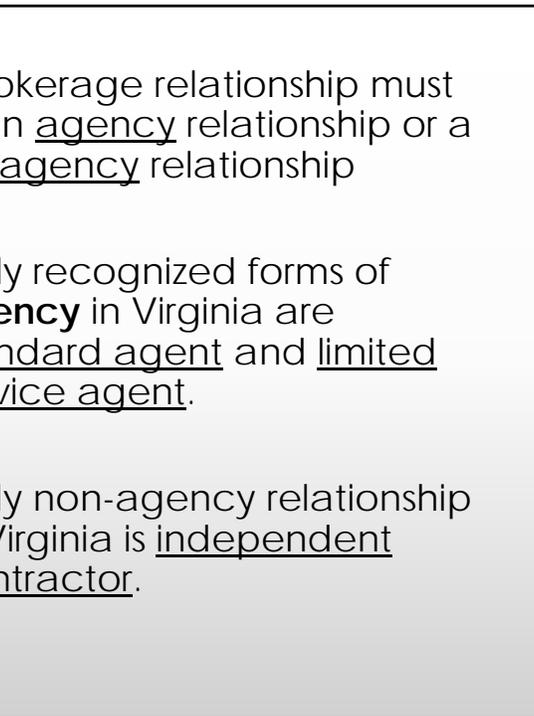
14



“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.



15



A brokerage relationship must be an agency relationship or a non-agency relationship

- Only recognized forms of **agency** in Virginia are standard agent and limited service agent.
- Only non-agency relationship in Virginia is independent contractor.

16



A Virginia real estate licensee must act either as a:

- Standard agent,
- Limited service agent, or
- Independent contractor.



17



**REPRESENTING A CLIENT
AS AN INDEPENDENT
CONTRACTOR.**

18

INDEPENDENT CONTRACTOR

To act as an independent contractor, a real estate licensee enters into a written independent contractor agreement with a client to perform only those services and obligations set forth in the agreement and as required by law.



19

The independent contractor agreement is the brokerage agreement.



The image shows a red 'CONFIRM' stamp over the words 'Brokerage Agreement'. Below it is a wooden block with a ball on top, and some text from a document is visible in the background.

20

INDEPENDENT CONTRACTOR AGREEMENT

MUST CLEARLY STATE THAT THE REAL ESTATE LICENSEE IS:

-  Acting solely as an independent contractor and not as an agent; and
-  Only performing such services as set forth in the agreement and as required by law.

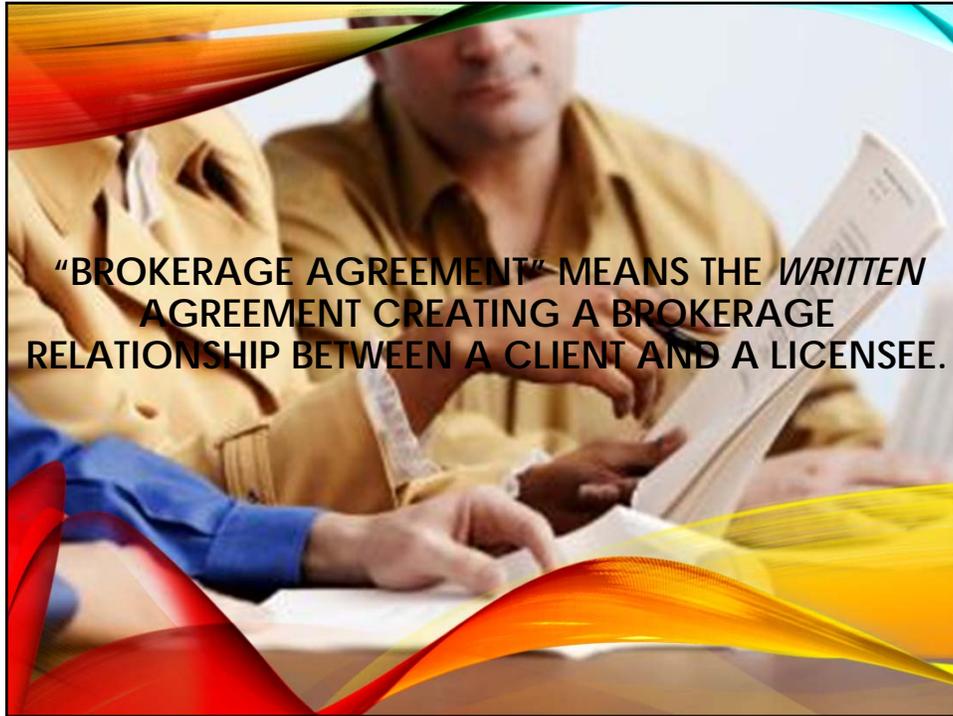
21

EXAMPLE OF SERVICES

(NOT EXHAUSTIVE):

-  List an owner's property for sale in a MLS;
-  Discuss property inquires with agents, provide property info, schedule showing appointments;
-  Assist owner w/residential property and lead-based paint disclosures & association/condo packets;
-  Review and provide advice re: offers/counteroffers received by owner; and/or
-  Prepare a CMA of the owner's property.

22



“BROKERAGE AGREEMENT” MEANS THE *WRITTEN* AGREEMENT CREATING A BROKERAGE RELATIONSHIP BETWEEN A CLIENT AND A LICENSEE.

23

BROKERAGE RELATIONSHIP

Commences at the time a client engages a licensee and continues until:

1. Completion of performance of brokerage agreement; or
2. The earlier of:
 - the expiration date agreed upon by the parties;
 - any mutually agreed upon termination of the agreement;
 - a default by any party under the terms of the brokerage agreement; or
 - a termination due to dual agency.



24

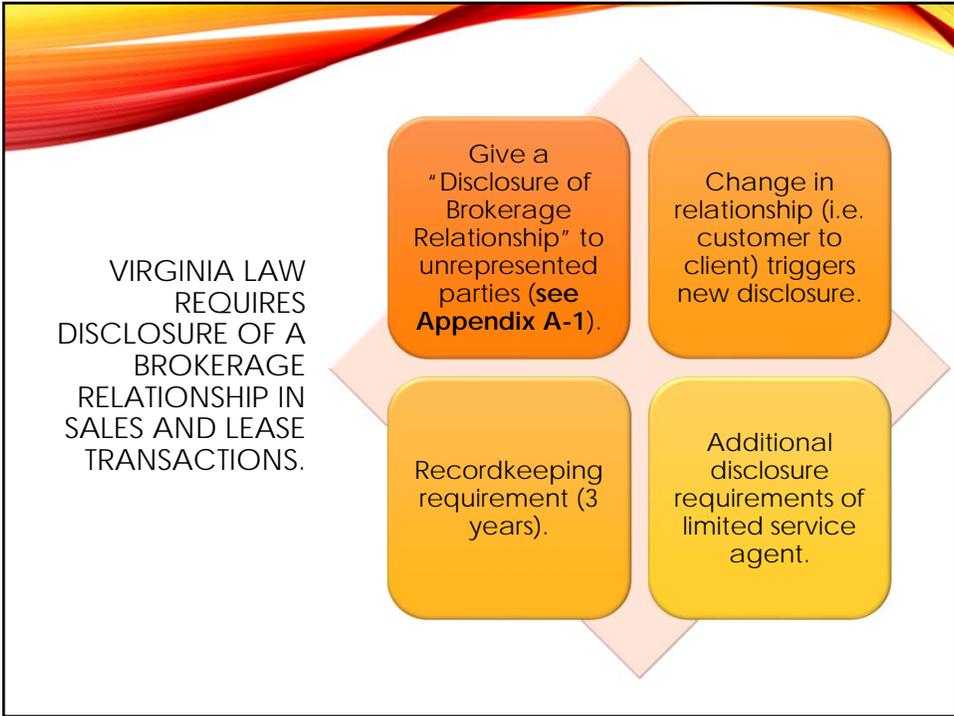
**BROKERAGE
AGREEMENT**

Must state whether the licensee will represent the client as an *agent* or an *independent contractor*.

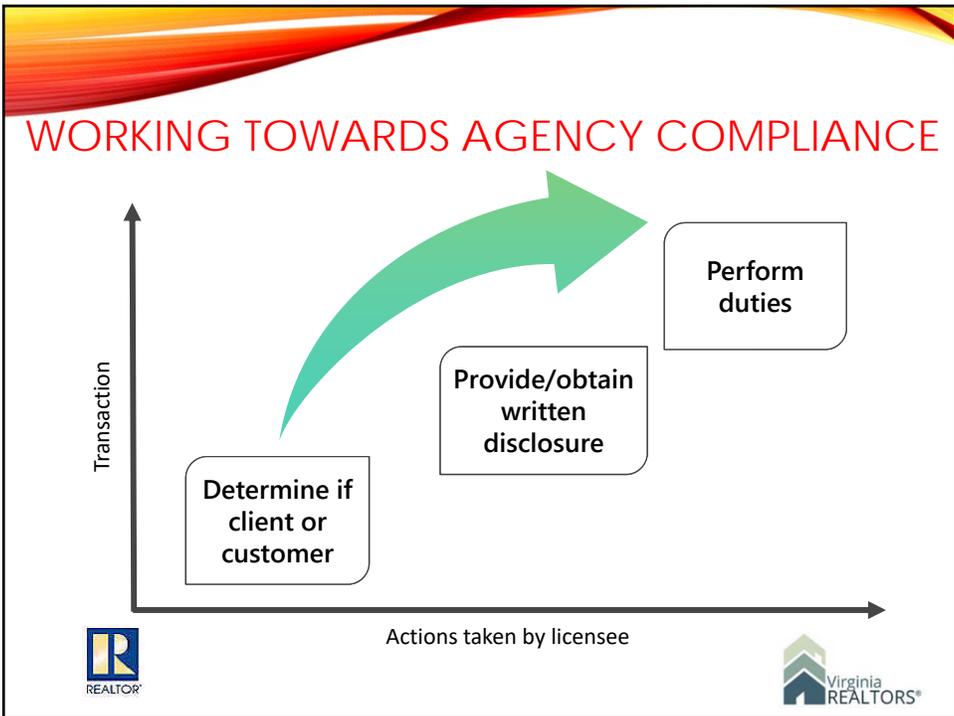
25



26



27



28

BROKERAGE AGREEMENTS MUST:

- Have a definite termination date. If not specified, terminates 90 days after date of *brokerage agreement*;
- *State the amount of the brokerage fees and how and when such fees are to be paid;*
- *State the services to be rendered by the licensee;*
- *Include other terms of the brokerage relationship as agreed to by the client and licensee; and*
- *If dual agency, obtain client's consent on disclosure.*




29

AT END OF BROKERAGE RELATIONSHIP

Unless agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of brokerage agreement, except to:

- (i) account for all moneys and property, and
- (ii) keep confidential all personal and financial information received from the client during the course of the brokerage relationship, unless otherwise provided by law or the client consents in writing to the release of such information.




30

DUTIES OF STANDARD AGENTS



Virginia law sets forth specific duties that a standard agent must follow.



Licensees engaged by sellers -- § 54.1-2131;



Licensees engaged by buyers -- § 54.1-2132;



Licensees engaged by landlord -- § 54.1-2133;



Licensees engaged by tenants -- § 54.1-2134; &



Licensees engaged to manage real estate -- § 54.1-2135.




31

Many standard agency provisions are uniform whether representing a seller, buyer, landlord or tenant. For instance, every licensee must:

- Perform in accordance with the terms of the brokerage agreement;
- Assist in the drafting and negotiation of contracts or leases;
- Maintain the confidentiality of all personal and financial information received from the client during the brokerage;
- Exercise ordinary care;






32

-  Account for all money and property received by the licensee;
-  Disclose to the client material facts related to the property or concerning the transaction of which the licensee has actual knowledge;
-  Comply with fair housing law;
-  Treat all prospective clients honestly and not knowingly give them false information;
-  Disclose the existence of defective drywall to the prospective buyer or tenant; and
-  Disclose the brokerage relationship as provided by law.

33

LICENSEES ENGAGED BY SELLERS MUST ALSO:

<p>01</p> <p>Conduct marketing activities & seek contract terms agreed upon in the brokerage agreement or acceptable to seller;</p>	<p>02</p> <p>Receive and present written offers and counteroffers, even if the property is already under contract;</p>	<p>03</p> <p>Provide reasonable assistance to seller to satisfy seller's contractual obligation and to facilitate the closing; and</p>	<p>04</p> <p>Disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee.</p>
---	--	--	---

34



LICENSEES ENGAGED BY BUYERS MUST ALSO:

-  Seek property of a type and on terms acceptable to the buyer;
-  Receive and present written offers and counteroffers, even if the buyer is already a party to a contract to purchase property; and
-  Provide reasonable assistance to the buyer to satisfy the buyer's contractual obligation and to facilitate the closing.

35



LICENSEES ENGAGED BY THE LANDLORD MUST ALSO:

- Conduct marketing activities and seek a tenant and lease terms agreed upon in the brokerage agreement or acceptable to the landlord;
- Provide reasonable assistance to the landlord to finalize the lease agreement; and
- Disclose to prospective tenants all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee.



36

LICENSEES ENGAGED BY TENANTS MUST ALSO:

- Seek a lease on terms acceptable to the tenant; and
- Provide reasonable assistance to the tenant to finalize the lease agreement.



37

LICENSEES ENGAGED TO MANAGE REAL ESTATE MUST:

- Perform in accordance with the terms of the property management agreement;
- Exercise ordinary care;
- Disclose to the client material facts of which the licensee has actual knowledge;
- Maintain the confidentiality of all personal and financial information received from the client during the brokerage relationship;
- Account in a timely manner for all money and property received by the licensee; (continued)



38

Licenseses engaged to manage real estate must:

- Comply with fair housing law;
- Disclose the existence of defective drywall to the owner; and
- *Enter into a written property management agreement w/owner containing the following terms:*
 - a. A definite termination date or duration (if none, terminates in 90 days);*
 - b. Amount of management fees & how & when such fees are to be paid;*
 - c. Services to be rendered by the licensee; and*
 - d. Other terms agreed to by the owner and property manager.*



39

Dual Agency



40

“Dual agent” or “dual representative” means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction.

The terms are not interchangeable.



41

THE DIFFERENCE BETWEEN THE TERMS IS:

Dual agency

- Licensee acting in an agency relationship (e.g. standard agent or limited service agent) and representing both seller and buyer, or both landlord and tenant, in the same real estate transaction.

Dual representative

- Licensee acting as an independent contractor representing both seller and buyer, or both landlord and tenant, in the same real estate transaction.



42

DUAL AGENCY

- A licensee may not act as a dual standard agent unless the licensee has first obtained the written consent of **all parties** to the transaction given after written disclosure of the consequences of such dual agency. Must be given to both parties prior to the commencement of dual agency.





43

SIMPLE TO REMEMBER:

Dual agency = standard agent or limited service agent

Dual representative = independent contractor




44



Dual Agency & Dual Representation Disclosure



45



Must select one of the following on the new disclosure form (see Appendix A-2) in a dual agency/representation transaction:

-- "One Existing Client One New Client" to represent 1 existing client and 1 new client

OR

-- "Both Clients are Existing Clients" to represent two existing clients (it's a short-form of disclosure)



46

DUAL AGENCY/REPRESENTATION DISCLOSURE (1 EXISTING CLIENT, 1 NEW CLIENT):

1. *Following commencement of dual agency or dual representation, the licensee will be unable to advise either party as to the terms, offers or counteroffers;*
2. *Licensee cannot advise a buyer client as to the suitability of the property, its condition (other than to make any disclosures as required by law of any licensee representing a seller), and cannot advise either party as to repairs of the property to make or request;*

(continued)



47

DUAL AGENCY/REPRESENTATION (CON'T):

3. *Licensee cannot advise either party in any dispute that might later arise relating to the transaction;*
4. *The licensee may be acting without knowledge of the client's needs, client's knowledge of the market, or client's capabilities in dealing with the intricacies of real estate transactions; and*
5. *That either party may engage another licensee at additional cost to represent their respective interests.*



48

ADDITIONAL POINTS:

- *To be in compliance, a dual agency/ dual representation disclosure must:*
 - (i) *be signed by the client and*
 - (ii) **not** *given in a purchase contract, lease or any other transaction document.*

(Must be separate disclosure—not in contract or lease).
- *Even if the disclosure is executed by the clients, a separate written brokerage agreement still must be signed by the clients.*



49

Designated Agency



50

“Designated agent” or “designated representative” means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction. The terms are not interchangeable.



51

THE DIFFERENCE BETWEEN THE TERMS IS:

Designated agency

- Licensee acting as a standard agent or a limited service agent who has been assigned to represent a client.



Designated representative

- Licensee acting as an independent contractor who has been assigned to represent a client.



52

NOTES ON DESIGNATED AGENCY

- A principal or supervising broker may assign different licensees affiliated with the broker as a designated agent/representative to represent different clients in the same transaction to the exclusion of all other licensees in the firm.
- The principal or broker who is supervising the transaction is considered a dual agent or dual representation (whichever is applicable).



53

SIMPLE TO REMEMBER:

Designated agency = standard agent or limited service agent

Designated representative = independent contractor



54

DESIGNATED AGENCY (CONT'D)

- Designated agents/representatives may not disclose, except to the affiliated licensee's broker, personal or financial information received from the clients during the brokerage relationship and any other information that the client requests during the brokerage relationship be kept confidential, unless otherwise provided for by law or the client consents in writing to the release of such information.



55

DISCLOSURES OF DESIGNATED AGENTS/REPRESENTATIVES:

- Designated agents/representatives must be disclosed in a real estate transaction using designated agency/representative disclosure form (**Appendix A-3**).



56

AGENCY RECAP:

- 1 • Disclosure is required
- 2 • Use correct disclosure forms
- 3 • Obtain a client's written consent before acting as a dual/designated agent or representative



57

A Real Life Example of Agency



58

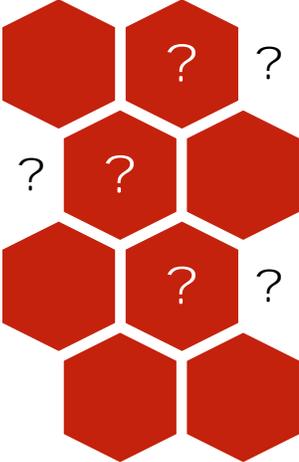
DISCUSSION AND ANALYSIS:

- What did we learn from this scenario
- Best practices
- What to avoid



59

NOW ITS TIME TO TEST YOUR AGENCY KNOWLEDGE



60

Category 1	Category 2	Category 3	Category 4
10	10	10	10
20	20	20	20
30	30	30	30
40	40	40	40
50	50	50	50

61

CATEGORY 1 QUESTIONS FOLLOW



62



115