

**Project 599 - Final**

**REAL ESTATE BOARD**

**Amendment to Real Estate Licensing Regulations**

**18VAC135-20-10. 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.

"Actively engaged" means active licensure with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 40 hours per week. This requirement may be waived at the discretion of the board in accordance with §54.1-2105 of the Code of Virginia.

"Actively engaged in the brokerage business" means anyone who holds an active real estate license. [ " ]

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by §54.1-2130 of the Code of Virginia.

"Firm" means any sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker

owner), which is required by 18VAC135-20-20 B to obtain a separate brokerage firm license. The firm's licensed name may be any assumed or fictitious name properly filed with the board.

"Inactive status" refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not active with a firm or sole proprietorship and who is not performing any of the activities defined in §§54.1-2100 and 54.1-2101 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means real estate brokers and salespersons as defined in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees.

"Principal to a transaction" means a party to a real estate transaction including without limitation a seller or buyer, landlord or tenant, optionor or optionee, licensor or licensee. For the purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

"Sole proprietor" means any individual, not a corporation, who is trading under the individual's name, or under an assumed or fictitious name pursuant to the provisions of Chapter 5 (§59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

"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 Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designated agent as stated in §54.1-2130 of the Code of Virginia.

## Part II

### Entry

#### **18VAC135-20-30. Qualifications for licensure.**

Every applicant to the Real Estate Board for an individual salesperson's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of §54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.

3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

~~4. The applicant shall not have been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of §54.1-204 of the Code of Virginia. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose the following information:~~

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and

b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be

accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with §54.1-204 of the Code of Virginia.

5. The applicant shall be at least 18 years old.

6. The applicant shall have a high school diploma or its equivalent.

~~6.~~ 7. The applicant, within 12 months prior to making complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board.

~~7.~~ 8. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established with regard to conduct at the examination may be grounds for denial of application.

~~8.~~ 9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board ~~in accordance with §54.1-204 of the Code of Virginia.~~

#### **18VAC135-20-60. Qualifications for licensure by reciprocity.**

An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:

1. The applicant shall be at least 18 years of age.

2. The applicant shall have a high school diploma or its equivalent.

~~2.~~ 3. The applicant shall have received the salesperson's or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.

~~3.~~ 4. The applicant shall sign a statement verifying that he has read and understands the provisions of this chapter and Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

~~4.~~ 5. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established by the board with regard to conduct at the examination may be grounds for denial of application.

~~5.~~ 6. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.

~~6.~~ 7. At the time of application for a salesperson's license, the applicant must have been actively engaged as defined by 18VAC135-20-10 for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have been actively engaged as defined by 18VAC135-20-10 for 36 of the preceding 48 months. These requirements may be waived at the discretion of the board in accordance with §54.1-2105 of the Code of Virginia.

~~7.~~ 8. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

~~8. The applicant shall not have been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony there being no appeal pending therefrom or the time for appeal having elapsed. Review of prior criminal convictions shall be subject to the requirements of §54.1-204 of the Code of Virginia. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.~~

9. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose the following information:

a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and

b. All felony convictions during his lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with §54.1-204 of the Code of Virginia.

~~9.10.~~ Applicants for licensure who do not meet the requirements set forth in subdivisions ~~5~~ 6 and ~~8~~ 9 of this subsection may be approved for licensure

following consideration by the board ~~in accordance with §54.1-204 of the Code of Virginia.~~

**18VAC135-20-100. Qualification for renewal; continuing education requirements.**

[ As Effective until June 30, 2008, as ] a condition of renewal, and pursuant to §54.1-2105 of the Code of Virginia, all active brokers and salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of ~~eight~~ 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of postlicense education regardless of whether his license is active or inactive. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation of license).

1. Providers shall be those as defined in 18VAC135-20-350.
2. ~~Four~~ Eight of the ~~eight~~ 16 required hours shall include two hours of training in fair housing laws, and a minimum of one hour each in state real estate laws and regulations, and ethics and standards of conduct, agency and contracts [ for brokers. Eight of the 16 required hours shall include two hours of training in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in state real estate laws and regulations, agency, and contracts for salespersons ]. If the licensee submits a notarized affidavit to the board which certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive

training in other applicable federal and state discrimination laws and regulations.

The remaining hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;
- g. Liens;
- h. Real property and title insurance;
- i. Investment;
- j. Taxes in real estate;
- k. Real estate financing;
- l. Brokerage and agency contract responsibilities;
- m. Real property management;
- n. Search, examination and registration of title;
- o. Title closing;
- p. Appraisal of real property;
- q. Planning subdivision developments and condominiums;
- r. Regulatory statutes;
- s. Housing legislation;

- t. Fair housing;
- u. Real Estate Board regulations;
- v. Land use;
- w. Business law;
- x. Real estate economics;
- y. Real estate investments;
- z. Federal real estate law;
- aa. Commercial real estate;
- bb. Americans With Disabilities Act;
- cc. Environmental issues impacting real estate;
- dd. Building codes and design;
- ee. Local laws and zoning;
- ff. Escrow requirements;
- gg. Ethics and standards of conduct; and
- hh. Common interest ownership.

3. Licensees holding licenses in other jurisdictions must complete ~~four~~ eight hours [ ] which shall include fair housing laws, state real estate laws and regulations ~~and~~, ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection.

4. The board may approve additional subjects at its discretion and in accordance with §54.1-2105 of the Code of Virginia.

5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.

6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide ~~course~~ documentation of completion certification as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.

7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.

**[ 18VAC135-20-101. Qualification for renewal; continuing education requirements.**

Effective July 1, 2008, as a condition of renewal, and pursuant to §54.1-2105 of the Code of Virginia, all active salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of post-license education regardless of whether his license is active or inactive. All active brokers, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 24 classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation of license).

1. Providers shall be those as defined in 18VAC135-20-350;

2. For salespersons, eight of the required 16 hours shall include two hours of training in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in state real estate laws and regulations, agency and contracts. For brokers, 16 of the 24 required hours shall include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours of training in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in state real estate laws and regulations, agency and contracts. If the licensee submits a notarized affidavit to the board that certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

a. Property rights;

b. Contracts;

c. Deeds;

d. Mortgages and deeds of trust;

e. Types of mortgages;

f. Leases;

g. Liens;

h. Real property and title insurance;

i. Investment;

j. Taxes in real estate;

k. Real estate financing;

l. Brokerage and agency contract responsibilities;

m. Real property management;

n. Search, examination and registration of title;

o. Title closing;

p. Appraisal of real property;

q. Planning subdivision developments and condominiums;

r. Regulatory statutes;

s. Housing legislation;

t. Fair housing;

u. Real Estate Board regulations;

v. Land use;

w. Business law;

x. Real estate economics;

y. Real estate investments;

z. Federal real estate law;

aa. Commercial real estate;

bb. Americans With Disabilities Act;

cc. Environmental issues impacting real estate;

dd. Building codes and design;

ee. Local laws and zoning;

ff. Escrow requirements;

gg. Ethics and standards of conduct; and

hh. Common interest ownership.

3. Salespersons holding licenses in other jurisdictions must complete eight hours, which shall include fair housing laws, state real estate laws and regulations, ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection. Brokers holding licenses in other jurisdictions must complete 16 hours that shall include supervision and management of real estate agents and the management of real estate brokerage firms, fair housing laws, state real estate laws and regulations, ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection.

4. The board may approve additional subjects at its discretion and in accordance with §54.1-2105 of the Code of Virginia.

5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.

6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide documentation of completion as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.

7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses. ]

**18VAC135-20-105. Additional qualifications for renewal of a reciprocal license.**

In addition to the requirements set forth in 18VAC135-20-100, all licensees, including those licensees who upgrade to broker prior to renewal, who obtained their license by reciprocity in accordance with 18VAC135-20-60 must pass a written examination provided by the board or a testing service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.

**18VAC135-20-160. 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 ~~available to the public~~ posted in a conspicuous place in each branch office.

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

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

**18VAC135-20-170. 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.

**18VAC135-20-180. 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 (nonconsummation), 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 nonconsummation, 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. ~~Failure~~ 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 ~~subdivision 4 of this subsection~~ this section.

#### **18VAC135-20-190. 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 ~~and~~, 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~~ 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.

**18VAC135-20-210. Disclosure of interest.**

A. If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property through purchase, sale or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner, purchaser or lessee in writing in the offer to purchase, the application, the offer to lease or lease. This disclosure shall be made to the purchaser, seller or lessee upon having substantive discussions about specific real property.

~~B. A licensee selling or leasing property in which he has any ownership interest must disclose that he is a real estate licensee and he has an interest in the property to any purchaser or lessee in the written offer to purchase, the application, the offer to lease, or the lease, whichever occurs first.~~

**18VAC135-20-220. Disclosure of brokerage relationships.**

A. Purchase transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the

person whom the licensee represents in a brokerage relationship, as that term is defined in §54.1-2130 of the Code of Virginia.

2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of §54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.

3. A licensee acting as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of §54.1-2139 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.

4. Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by §54.1-2138 of the Code of Virginia.

#### B. Lease transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such

disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

2. This disclosure requirement shall not apply to lessors or lessees in single or multi-family residential units for lease terms of less than ~~three~~ two months.

**[ 18VAC135-20-280. Improper brokerage commission.**

Actions resulting in an improper brokerage commission include:

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

2. Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, from any person except the licensee's principal broker at the time of the transaction, for ~~(i)~~ the performance of any of the acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board or related to any real estate transaction, without the consent of that broker; ~~or (ii) the~~ Unless he has notified the broker in writing of the activity or activities to be pursued and obtained the prior written consent of the principal broker, no salesperson or associate broker shall (i) use or any

information about the property, the transaction or the parties to the transaction, gained as a result of the performance of acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia ~~without the written consent of the principal broker.~~ No licensee shall or (ii) act as an employee of a company providing real estate settlement services as defined in the Real Estate Settlement Procedures Act (12 USC §2601 et seq.) or pursuant to a license issued by the Commonwealth of Virginia to provide real estate settlement services to clients or customers of the firm ~~without written consent of the broker;~~

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

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

5. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor; and

6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's client for expenditures made on behalf of that client without the written consent of the client. ]

**18VAC135-20-300. Misrepresentation/omission.**

Actions constituting misrepresentation or omission, or both, include:

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

6. Failing to include the complete terms and conditions of the real estate transaction in , including but not limited to any lease, property management agreement or offer to purchase;
7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;
8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
  - a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;
  - b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;
  - c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8 a of this section without the prior written consent of the principals to the transaction;
9. Knowingly making any material misrepresentation or making a material misrepresentation ~~reasonably relied upon by a third party to that party's detriment;~~ and
10. Making a false promise through agents, salespersons, advertising, or other means.

**18VAC135-20-345. Effect of disciplinary action on concurrent licenses.**

The board shall suspend, revoke or deny renewal of existing concurrent broker licenses when the board suspends, revokes or denies renewal of another broker's license held by the same individual.

**18VAC135-20-360. Proprietary school standards, instructor qualifications and course requirements.**

A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the standards provided in §54.1-2105 of the Code of Virginia.

B. Every applicant to the Real Estate Board for approval as an instructor for prelicense education shall have [ ~~completed a "train the trainer" course or its equivalent~~ and shall have ] one of the following qualifications:

1. Baccalaureate degree, a Virginia real estate broker's license, and two consecutive years of discipline-free active real estate experience ~~within the past five years~~ immediately prior to application;
2. Five consecutive years of discipline-free active experience acquired in the real estate field ~~in the past seven years~~ immediately prior to application and an active Virginia broker's license; or
3. Expertise in a specific field of real estate ~~who will teach only in the area of their expertise. For example, a licensed real estate appraiser, with at least five~~ three years of active appraisal experience in Virginia, ~~may be approved to teach Real Estate Appraisals~~ that field. Such applicants will teach only in the area of their expertise and will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference which will verify the applicant's expertise.

C. Every applicant to the Real Estate Board for approval as an instructor for continuing education and postlicense education shall have expertise in a specific field of real estate with at least three years of active experience and will teach only in the area of their expertise. Such applicants will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference that will verify the applicant's expertise.

~~C.~~ D. Prelicense courses must be acceptable to the board and are required to have a monitored, final written examination. Those schools which propose to offer prelicensing courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:

1. Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in 18VAC135-20-400. All requests to offer broker courses must include a course syllabus acceptable to the board;
2. Name of the course's text and any research materials used for study assignments;
3. Description of any research assignments;
4. Copies of test or quizzes;
5. Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with §54.1-2105 of the Code of Virginia; and
6. Information about recordkeeping for the type of course delivery.

~~D.~~ E. Providers of continuing education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance

learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course. The board shall approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in §§54.1-2100 and 54.1-2101 of the Code of Virginia.

F. Approval of prelicense, continuing education and postlicense education courses shall expire on December 31 five years from the year in which the approval was issued, as indicated on the approval document.

~~E.~~ G. All schools must establish and maintain a record for each student. The record shall include: the student's name and address, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, the date of successful completion, and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.

~~F.~~ H. All schools must provide each student with a certificate of course completion or other ~~document~~ documentation that the student may use as proof of course completion. ~~The certificate or other document~~ Such documentation shall contain the hours of credit completed.

[ I. All providers of continuing education courses shall electronically transmit course completion data to the board in an approved format within five days of the completion of each individual course. The transmittal will include each student's name, license number or social security number; the date of successful completion of the course; the school's code; and the board's code. ]

**18VAC135-20-370. Fees.**

A. The application fee for an original certificate for a proprietary school shall be \$190.

B. The renewal fee for proprietary school certificates expiring ~~biennially on June 30~~ every two years from the last day of the month in which they were issued shall be \$90.

C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$135 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant. If the renewal requirements are not completed within 30 days of the expiration date noted on the proprietary school approval, the proprietary school shall no longer offer board-approved courses.

D. The application for an original prelicense education instructor certificate shall be \$190.

E. The renewal fee for ~~an~~ a prelicense instructor certificate expiring ~~biennially on June 30~~ every two years from the last day of the month in which it was issued shall be \$75.

F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date on the certificate, a reinstatement fee of \$110 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval.

**18VAC135-20-390. Withdrawal of approval.**

The board may withdraw approval of any school, course or instructor for the following reasons:

1. The school, instructors, courses, or subjects no longer meet the standards established by the board.
2. The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.
3. The school or instructor distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.
4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.
5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

**FORMS**

Activate/Transfer Application, 02AT (~~1/02~~ rev. [ 4/07 8/07 ] ).

Add-on Business Entity License Application, 02ADDBUS (~~1/02~~ rev. ~~4/07~~ (rev. 8/07 ] ).

Broker Education Requirements for Non-Reciprocal Examinees, 02BEDREQ (rev. ~~8/02~~ 6/07).

Branch Office License Application, 02BRANCH (rev. ~~8/02~~ [ ~~4/07~~ 8/07 ]).

Business Entity License Application, 02BUSENT (rev. ~~4/02~~ [ ~~4/07~~ 8/07 ]).

Business Entity License Transfer Application, 02BUSTR (rev. ~~4/02~~ [ ~~4/07~~ 8/07 ]).

Certificate of Ownership/Individual Trading Under an Assumed or Fictitious Name Application, 02CRTOWN (~~4/02~~ (rev. ~~7/03~~ 8/07 )).

Certification Request, 02CRTREQ (~~4/02~~ (rev. ~~4/07~~ 8/07 )).

Concurrent Broker Application, 02CONCUR (~~4/02~~ (rev. ~~4/07~~ 8/07 )).

Consent To Suits and Service of Process Form, 02CTS (rev. ~~8/02~~ [ ~~7/03~~ 8/07 ])

Experience Verification Form, 02EXP (rev. ~~4/02~~ [ ~~4/07~~ 8/07 ]).

Firm License Application, 02FIRM (rev. ~~4/03~~ [ ~~4/07~~ 8/07 ]).

Firm Name/Address Change Form, 02FNACHG (rev. ~~4/02~~ [ ~~4/07~~ 8/07 ]).

Firm Principal Broker/Officer Change Form, 02PBOCHG (rev. ~~4/02~~ [ ~~4/07~~ 8/07 ]).

Principal Broker and Sole Proprietor By Exam & Upgrade License Application, 02PBSPLIC (rev. ~~8/02~~ [ ~~4/07~~ 8/07 ]).

Reciprocity Applicant Instructions, 02RECINS (rev. ~~4/02~~ 5/07).

Salesperson and Associate Broker License By Reciprocity & Upgrade Application, ~~02SABLIC~~ 02SABPKG (rev. ~~8/02~~ [ ~~4/07~~ 8/07 ]).

Supervising Broker for Branch Office/Change Form, 02SBCHG (rev. ~~4/02~~ [ ~~4/07~~ 8/07 ]).

Virginia Salesperson Upgrading to Associate Broker License by Exam Application, 02UABLIC (rev. [ ~~4/07~~ 8/07 ] ).

Post License Education and Continuing Education Course Approval Application, 02CRS (rev. [ ~~8/05~~ 8/07 ] ).

Pre-licensing Education Instructor Application, 02INSTR (rev. [ ~~10/04~~ 8/07 ] ).

Principal Broker and Sole Proprietor License by Reciprocity Application, 02PBPKG (rev. [ ~~5/07~~ 8/07 ] ).

Proprietary School Certification Application, 02SCHL (rev. [ ~~9/04~~ 8/07 ] ).

Salesperson License by Exam Application, 02SALIC (rev. [ ~~4/07~~ 8/07 ] ).

Place License Inactive Form, 02INA (rev. [ ~~4/07~~ 8/07 ] ).

[ Supervising Broker Certification Form, 02SBCERT (eff. 4/08). ]

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

\_\_\_\_\_ (Signature of certifying official)

Name and title of certifying official: \_\_\_\_\_

Name of agency: \_\_\_\_\_

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