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HOUSE BILL NO. 864

Offered January 10, 2018
Prefiled January 9, 2018

A BILL to amend and reenact §§ 54.1-2105, 54.1-2105.01, 54-2105.1, 54.1-2137, 55-519, 55-520, and 55-525 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2108.2, relating to the Real Estate Board; powers and duties; escrow funds; education.

Patrons—Ingram and Simon

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2105, 54.1-2105.01, 54.1-2105.1, 54.1-2137, 55-519, 55-520, and 55-525 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2108.2 as follows:

§ 54.1-2105. General powers of Real Estate Board; regulations; educational and experience requirements for licensure.

A. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.

B. The Board shall adopt regulations establishing minimum educational requirements as conditions for licensure. Board regulations relating to initial licensure shall include the following requirements:

1. Every applicant for an initial license as a real estate salesperson shall have:

a. At a minimum, a high school diploma or its equivalent; and

b. Completed a course in the principles of real estate that carried an academic credit of at least four semester hours, but not less than 60 hours of classroom, correspondence, or other distance learning instruction, offered by an accredited institution of higher education, high school offering adult distributive education courses, or other school or educational institution offering an equivalent course.

2. Every applicant for an initial license as a real estate broker shall have:

a. At a minimum, a high school diploma or its equivalent; and

b. Completed not less than 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses offered by an accredited institution of higher education or other school or educational institution offering equivalent courses.

3. Every applicant for a license by reciprocity as a real estate salesperson or real estate broker shall have:

a. Completed *(i)* a course in the principles of real estate that is comparable in content and duration and scope to that required in subdivision 1 or *(ii)* 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses that are comparable in content and duration and scope to that required in subdivision 2; and

b. If currently licensed by another state as a real estate salesperson or broker, passed Virginia's examination.

C. The Board may waive any requirement under the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. No regulation imposing educational requirements for initial licensure beyond those specified by law shall apply to any person who was licensed prior to July 1, 1975, and who has been continuously licensed since that time, except that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed as a broker from the educational requirements established for brokers.

D. The Board shall establish criteria to ensure that prelicensure and broker licensure courses meet the standards of quality deemed by the Board to be necessary to protect the public interests. For correspondence and other distance learning instruction offered by an approved provider, such criteria may include appropriate testing procedures. The Board may establish procedures to ensure the quality of the courses.

Noncollegiate institutions shall not be authorized to grant collegiate semester hours for academic credit.

The specific content of the real estate courses shall be in real estate brokerage, *provided that for brokers at least two hours of instruction shall include an overview of the broker supervision requirements under this Code and Board regulations,* real estate finance, real estate appraisal, real estate law, and such related subjects as are approved by the Board.

E. The Board may establish criteria delineating the permitted activities of unlicensed individuals employed by real estate licensees or under the supervision of a real estate broker.

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F. The Board may take a disciplinary case against a licensee under advisement, defer a finding in such case, and dismiss such action upon terms and conditions set by the Board.

§ 54.1-2105.01. Educational requirements for all salespersons within one year of licensure.

A. The Board shall establish guidelines for ~~an~~ *a post-license* educational curriculum of at least 30 hours of classroom, or correspondence or other distance learning, instruction, in specified areas, which shall be required of all salespersons within ~~one~~ *the initial* year of ~~issuance~~ ~~of~~ ~~a~~ ~~license~~ ~~by~~ ~~the~~ ~~Board~~ *licensure*. Failure of a new licensee to complete the 30-hour *post-licensure* curriculum within one year of ~~obtaining~~ ~~a~~ ~~real~~ ~~estate~~ ~~salesperson's~~ ~~license~~ *from the last day of the month in which his license was issued* shall result in the license being placed on inactive status by the Board until the curriculum has been completed.

B. To establish the guidelines required by this section, the Board shall establish an industry advisory group composed of representatives of the practices of (i) residential real estate, (ii) commercial real estate, and (iii) property management. The industry advisory group shall consist of licensed real estate salespersons and real estate brokers who shall be appointed by and shall meet at the direction of the Board~~,~~ ~~at~~ ~~least~~ ~~annually,~~ to update the guidelines. The Board shall review and may approve educational curricula developed by an approved school or other provider of real estate education authorized by this chapter. The industry advisory group shall serve at no cost to the Board.

C. The curricula for new licensees shall include topics that new licensees need to know in their practices, including contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, flood hazard areas and the National Flood Insurance Program, property owners' and condominium association law, landlord-tenant law, Board regulations, *real estate-related finance,* and such other topics as designated by the Board. The ~~continuing~~ *post-licensure* education requirements of this section for new licensees shall be in lieu of the continuing education requirements otherwise specified in this chapter and Board regulations.

§ 54.1-2105.1. Other powers and duties of the Real Estate Board.

In addition to the provisions of §§ 54.1-2105.01 through 54.1-2105.04, the Board shall:

1. Develop a residential property disclosure statement form for use in accordance with the provisions of Chapter 27 (§ 55-517 et seq.) of Title 55 *and maintain such statement on its website*. The Board shall also ~~include~~ *develop and maintain* on its website ~~the~~ ~~notice~~ ~~required~~ ~~by~~ ~~subsection~~ ~~B~~ ~~of~~ ~~§ 55-519~~ *a one-page form to be signed by the parties acknowledging that the purchaser has been advised to review the residential property disclosure statement on the Board's website*; and

2. Inform licensed brokers, in a manner deemed appropriate by the Board, of the broker's ability to designate an agent pursuant to § 54.1-2109 in the event of the broker's death or disability.

§ 54.1-2108.2. Protection of escrow funds, etc., held by a real estate broker in the event of termination of a real estate purchase contract.

Notwithstanding any other provision of law, for purchase transactions:

1. Upon the ratification of a contract, an earnest money deposit received by the principal broker or supervising broker or his associates shall 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 principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated.

2. In the event that the transaction is not consummated, the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in a written agreement as to their disposition, upon which the funds shall be returned to the agreed-upon principal as provided in such written agreement; (ii) a court of competent jurisdiction orders such disbursement of the funds; (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section; or (iv) the broker releases 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 that established the earnest money deposit.

At the option of a broker, written notice may be sent by the broker that release of such funds shall be made unless a written protest is received from the principal who is not receiving the funds by such broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the parties to the transaction in accordance with the contract, but if the contract does not specify a method of delivery, one of the following methods complies with this section: (a) hand delivery; (b) United States mail, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (c) electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (d) overnight delivery using a commercial service or the United States Postal Service. Except as provided in the clear and explicit terms of the contract, no broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. A broker who complies

with this section shall be immune from liability to any of the parties to the contract.

3. A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77.

4. If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 and otherwise comply with the provisions of § 54.1-2108.1.

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

A. The brokerage relationships set forth in this article shall commence at the time that a client engages a licensee and shall continue until (i) completion of performance in accordance with the brokerage agreement or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage agreement or in any amendments thereto, (b) any mutually agreed upon termination of the brokerage agreement, (c) a default by any party under the terms of the brokerage agreement, or (d) a termination as set forth in ~~subsection F~~ *subsection G* of § 54.1-2139.

B. Brokerage agreements shall be in writing and shall:

1. Have a definite termination date; however, if a brokerage agreement does not specify a definite termination date, the brokerage agreement shall terminate 90 days after the date of the brokerage agreement;

2. State the amount of the brokerage fees and how and when such fees are to be paid;

3. State the services to be rendered by the licensee;

4. Include such other terms of the brokerage relationship as have been agreed to by the client and the licensee; and

5. In the case of brokerage agreements entered into in conjunction with the client's consent to a dual representation, the disclosures set out in subsection A of § 54.1-2139.

C. Except as otherwise agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of performance of the brokerage agreement, except to (i) account for all moneys and property relating to the brokerage relationship and (ii) keep confidential all personal and financial information received from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information.

§ 55-519. Required disclosures for buyer to beware; buyer to exercise necessary due diligence.

A. The owner of the residential real property shall furnish to a purchaser a residential property disclosure statement for the buyer to beware of certain matters that may affect the buyer's decision to purchase such real property. Such statement shall be ~~on a form~~ provided by the Real Estate Board on its website.

B. The residential property disclosure statement provided by the Real Estate Board on its website shall include the following:

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

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

3. The owner makes no representations to any matters that pertain to whether the provisions of any historic district ordinance affect the property and purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary with respect to any historic district designated by the locality pursuant to § 15.2-2306, including review of (i) any local ordinance creating such district, (ii) any official map adopted by the locality depicting historic districts, and (iii) any materials available from the locality that explain (a) any requirements to alter, reconstruct, renovate, restore, or demolish buildings or signs in the local historic district and (b) the necessity of any local review board or governing body approvals prior to doing any work on a property located in a local historic district, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

4. The owner makes no representations with respect to whether the property contains any resource

protection areas established in an ordinance implementing the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) adopted by the locality where the property is located pursuant to § 62.1-44.15:74 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary to determine whether the provisions of any such ordinance affect the property, including review of any official map adopted by the locality depicting resource protection areas, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

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

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

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

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

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

10. The owner makes no representations with respect to whether the property is located in one or more special flood hazard areas and purchasers are advised to exercise whatever due diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas, (ii) review of any map depicting special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract;

11. The owner makes no representations with respect to whether the property is subject to one or more conservation or other easements and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract; and

12. The owner makes no representations with respect to whether the property is subject to a community development authority approved by a local governing body pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2 and that purchasers are advised to exercise whatever due diligence a particular purchaser deems necessary in accordance with terms and conditions as may be contained in the real estate purchase contract, including determining whether a copy of the resolution or ordinance has been recorded in the land records of the circuit court for the locality in which the community development authority district is located for each tax parcel included in the district pursuant to § 15.2-5157, but in any event, prior to settlement pursuant to such contract.

C. The residential property disclosure statement shall be delivered in accordance with § 55-520.

§ 55-520. Time for disclosure; termination of contract.

A. The owner of residential real property subject to this chapter shall provide notification to the purchaser of any disclosures required by this chapter prior to the ratification of a real estate purchase contract or otherwise be subject to the provisions of subsection B. The disclosures required by this chapter shall be ~~on forms~~ provided by the Real Estate Board on its website.

B. If the disclosures required by this chapter are delivered to the purchaser after ratification of the real estate purchase contract, the purchaser's sole remedy shall be to terminate the real estate purchase contract at or prior to the earliest of (i) three days after delivery of the disclosure statement in person or by electronic delivery; (ii) five days after the postmark if the disclosure statement is deposited in the United States mail, postage prepaid, and properly addressed to the purchaser; (iii) settlement upon purchase of the property; (iv) occupancy of the property by the purchaser; (v) the purchaser making

written application to a lender for a mortgage loan where such application contains a disclosure that the right of termination shall end upon the application for the mortgage loan; or (vi) the execution by the purchaser after receiving the disclosure statement required by this chapter of a written waiver of the purchaser's right of termination under this chapter contained in a writing separate from the real estate purchase contract. In order to terminate a real estate purchase contract when permitted by this chapter, the purchaser must, within the times required by this chapter, give written notice to the owner by one of the following methods:

1. Hand delivery;

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

3. Electronic delivery; or

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

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

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

§ 55-525. Real Estate Board to develop form; when effective.

An owner shall be required to make disclosures required by this chapter for real property subject to a real estate purchase contract ~~which~~ *that* is fully executed by all parties ~~thereto on and after January 1, 2008~~. ~~On or before January 1, 2008, the~~ *The* Real Estate Board shall develop the form for *signature by the parties advising the purchaser to review* the residential property disclosure statement *on the Board's website* in accordance with § 54.1-2105.1. The Board may at any time amend *the residential property disclosure statement and* the form *for signature by the parties* as the Board deems necessary and appropriate.

2. That the provisions of the first enactment of this act amending §§ 54.1-2105 and 54.1-2105.01 of the Code of Virginia shall become effective on January 1, 2019.