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SENATE BILL NO. 758

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 15, 2018)

(Patron Prior to Substitute—Senator Sturtevant)

A BILL to amend and reenact §§ 54.1-2100, 54.1-2101, 54.1-2106.1, and 54.1-2110.1 of the Code of Virginia, relating to professions and occupations; real estate licenses; real estate teams.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2100, 54.1-2101, 54.1-2106.1, and 54.1-2110.1 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2100. Definitions.

As used in this chapter:

"Distance learning" means instruction delivered by an approved provider through a medium other than a classroom setting. Such courses shall be those offered by an accredited institution of higher education, high school offering adult distributive education courses, other school or educational institution, or real estate professional association or related entities.

"Real estate broker" means any ~~person~~ individual or business entity, including, ~~but not limited to~~, a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest as defined in § 55-426, or time-shares in a time-share program even though they may be deemed to be securities; or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others.

"Real estate team" means two or more individuals, one or more of whom is a real estate salesperson or broker, who (i) work together as a unit within the same brokerage firm, (ii) represent themselves to the public as working together as one unit, and (iii) designate themselves by a fictitious name.

"Supervising broker" means a real estate broker who has been designated by a principal broker to supervise the provision of real estate brokerage services by associate brokers and salespersons assigned to a branch office or a real estate team.

§ 54.1-2101. Real estate salesperson defined.

For the purposes of this chapter, "real estate salesperson" means any ~~person~~ individual, or business entity of ~~not more than two persons unless related by blood or marriage~~, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange of real estate, or to lease, rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon.

§ 54.1-2106.1. Licenses required.

A. No business entity, other than a sole proprietorship, shall act, offer to act, or advertise to act, as a real estate firm without a real estate firm license from the Board. Such firm may be granted a license in a fictitious name. No business entity shall be granted a firm license unless (i) every managing member of a limited liability company, officer of a corporation, partner within a partnership, or associate within an association who actively participates in the firm brokerage business holds a license as a real estate broker; and (ii) every employee or independent contractor who acts as a salesperson for such business entity holds a license as a real estate salesperson or broker. An individual holding a broker's license may operate a real estate brokerage firm which he owns as a sole proprietorship without any further licensure by the Board, although such individual shall not operate the brokerage firm in a fictitious name. However, nothing herein shall be construed to prohibit a broker operating a brokerage firm from having a business entity separate from the brokerage firm for such broker's own real estate business, provided that such separate business entity otherwise complies with this section. A non-broker-owned sole proprietorship shall obtain a license from the Board.

B. No individual shall act as a broker without a real estate broker's license from the Board. An individual who holds a broker's license may act as a salesperson for another broker. A broker may be an owner, member, or officer of a business entity salesperson as defined in subsection C.

C. No individual shall act as a salesperson without a salesperson's license from the Board. A business entity may act as a salesperson with a separate business entity salesperson's license from the Board. No business entity shall be granted a business entity salesperson's license unless every owner or officer who actively participates in the brokerage business of such entity holds a license as a salesperson or broker from the Board. The Board shall establish standards in its regulations for the names of business entity salespersons when more than one licensee is an owner or officer.

60 *D. No group of individuals consisting of one or more real estate brokers or real estate salespersons,*
61 *or a combination thereof, shall act as a real estate team without first obtaining a business entity*
62 *salesperson's license from the Board. A real estate team may hire one or more unlicensed assistants as*
63 *otherwise provided by law.*

64 *E. If any principal broker maintains more than one place of business within the Commonwealth, such*
65 *principal broker shall be required to obtain a branch office license from the Board for each place of*
66 *business maintained. A copy of the branch office license shall be kept on the premises of the branch*
67 *office.*

68 **§ 54.1-2110.1. Duties of supervising broker.**

69 A. Each place of business ~~and~~, each branch office, *and each real estate team* shall be supervised by
70 a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the
71 provision of real estate brokerage services by associate brokers and salespersons assigned to the branch
72 office *or real estate team*. The supervising broker may designate another broker to assist in
73 administering the provisions required by this section, but such designation shall not relieve the
74 supervising broker of responsibility for the supervision of the acts of all licensees assigned to the branch
75 office *or real estate team*.

76 B. As used in this section, "reasonable and adequate supervision" by the supervising broker shall
77 include the following:

78 1. Being available to all licensees under his supervision at reasonable times to review and approve all
79 documents, including leases, contracts, brokerage agreements, and advertising as may affect the firm's
80 clients and business;

81 2. Ensuring the availability of training opportunities and that the office has written procedures and
82 policies that provide clear guidance in the following areas:

83 a. Handling of escrow deposits in compliance with law and regulation;

84 b. Complying with federal and state fair housing laws and regulations if the firm engages in
85 residential brokerage, residential leasing, or residential property management;

86 c. Advertising and marketing of the brokerage firm *and any affiliated real estate teams or business*
87 *entities*;

88 d. Negotiating and drafting of contracts, leases, and brokerage agreements;

89 e. Exercising appropriate oversight and limitations on the use of unlicensed assistants, whether as part
90 of a team arrangement or otherwise;

91 f. Creating agency or independent contractor relationships and elements thereof;

92 g. Distributing information on new or amended laws or regulations; and

93 h. Disclosing required information relating to the physical condition of real property;

94 3. Ensuring that the brokerage services are carried out competently and in accordance with the
95 provisions of this chapter; ~~and~~

96 4. *Undertaking reasonable steps to ensure compliance by all licensees assigned to a branch office*
97 *with the provisions of this chapter and applicable Board regulations, including ensuring that licensees*
98 *possess a current license issued by the Board*;

99 5. *Ensuring that affiliated real estate teams or business entities are operating in accordance with the*
100 *provisions of this chapter and applicable Board regulations*;

101 6. *Ensuring that brokerage agreements include the name and contact information of the supervising*
102 *broker*; *and*

103 7. Maintaining the records required by this subsection for three years. The records shall be furnished
104 to the Board's agent upon request.

105 C. Any supervising broker who resides more than 50 miles from a branch office under his
106 supervision, having licensees who regularly conduct business assigned to such branch office, shall certify
107 in writing quarterly on a form provided by the Board that the supervising broker has complied with the
108 requirements of this section.

109 ~~D. No later than January 1, 2017~~ *As a condition of the renewal of a branch office license, the*
110 *supervising broker for a branch office shall provide to the Board the name and license number of the*
111 *supervising broker for the branch office. Thereafter, upon the renewal of the license of each real estate*
112 *licensee working in such affiliated with the branch office or upon the transfer of a licensee to such*
113 *office, the broker shall provide to the Board the name and license number of each real estate licensee*
114 *working in the branch office on the broker acknowledgement form created at the time of the renewal in*
115 *a format deemed acceptable by the Board.*

116 **2. That the provisions of this act shall become effective on January 1, 2019.**