

LD2896200

## SENATE BILL NO. 989

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on February 20, 1995)

(Patron Prior to Substitute—Senator Schewel)

A BILL to amend the Code of Virginia by adding in Chapter 21 of Title 54.1 an article numbered 3, consisting of sections numbered 54.1-2130 through 54.1-2144, relating to duties of real estate brokers and salespersons.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 21 of Title 54.1 an article numbered 3, consisting of sections numbered 54.1-2130 through 54.1-2144, as follows:

Article 3.

Duties of Real Estate Brokers and Salespersons.

§ 54.1-2130. Definitions.

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage relationship. A real estate licensee who enters into a brokerage relationship based upon a written contract which specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the contract, and such real estate licensee and its employees shall have no obligations under §§ 54.1-2131 through 54.1-2135 of this article.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.

"Client" means a person who has entered into a brokerage relationship with a licensee.

"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee rather than a client.

"Designated agent" or "designated representative" means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction.

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

"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.) of Chapter 21 of this title.

"Ministerial acts" means those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment.

"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 this article.

§ 54.1-2131. Licensees engaged by sellers.

A. A licensee engaged by a seller shall:

1. Perform in accordance with the terms of the brokerage relationship;
2. Promote the interests of the seller by:

a. Seeking a sale at the price and terms agreed upon in the brokerage relationship or at a price and terms acceptable to the seller; however, the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless agreed to as part of the brokerage relationship or as the contract of sale so provides;

b. Presenting in a timely manner all written offers or counteroffers to and from the seller, even when the property is already subject to a contract of sale;

60 c. Disclosing to the seller material facts related to the property or concerning the transaction of  
61 which the licensee has actual knowledge; and

62 d. Accounting for in a timely manner all money and property received in which the seller has or may  
63 have an interest;

64 3. Maintain confidentiality of all personal and financial information received from the client during  
65 the brokerage relationship and any other information that the client requests during the brokerage  
66 relationship be maintained confidential, unless otherwise provided by law or the seller consents in  
67 writing to the release of such information;

68 4. Exercise ordinary care; and

69 5. Comply with all requirements of this article, all applicable fair housing statutes and regulations,  
70 and all other applicable statutes and regulations which are not in conflict with this article.

71 B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false  
72 information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse  
73 facts pertaining to the physical condition of the property which are actually known by the licensee. A  
74 licensee shall not be liable to a buyer for providing false information to the buyer if the false  
75 information was provided to the licensee by the seller and the licensee did not (i) have actual knowledge  
76 that the information was false or (ii) act in reckless disregard of the truth. No cause of action shall  
77 arise against any licensee for revealing information as required by this article or applicable law.  
78 Nothing in this article shall limit in any way the provisions of the Virginia Residential Property  
79 Disclosure Act (§ 55-517 et seq.).

80 C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the  
81 brokerage relationship, provide assistance to a buyer or potential buyer by performing ministerial acts.  
82 Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to  
83 violate the licensee's brokerage relationship with the seller unless expressly prohibited by the terms of  
84 the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage  
85 relationship with such buyer or potential buyer.

86 D. A licensee engaged by a seller does not breach any duty or obligation owed to the seller by  
87 showing alternative properties to prospective buyers, whether as clients or customers, or by representing  
88 other sellers who have other properties for sale.

89 E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

90 § 54.1-2132. Licensees engaged by buyers.

91 A. A licensee engaged by a buyer shall:

92 1. Perform in accordance with the terms of the brokerage relationship;

93 2. Promote the interests of the buyer by:

94 a. Seeking a property at a price and with terms acceptable to the buyer; however, the licensee shall  
95 not be obligated to seek other properties for the buyer while the buyer is a party to a contract to  
96 purchase property unless agreed to as part of the brokerage relationship;

97 b. Presenting in a timely manner all written offers or counteroffers to and from the buyer, even when  
98 the buyer is already a party to a contract to purchase property;

99 c. Disclosing to the buyer material facts related to the property or concerning the transaction of  
100 which the licensee has actual knowledge; and

101 d. Accounting for in a timely manner all money and property received in which the buyer has or  
102 may have an interest;

103 3. Maintain confidentiality of all personal and financial information received from the client during  
104 the brokerage relationship and any other information that the client requests during the brokerage  
105 relationship be maintained confidential unless otherwise provided by law or the buyer consents in  
106 writing to the release of such information;

107 4. Exercise ordinary care; and

108 5. Comply with all requirements of this article, all applicable fair housing statutes and regulations,  
109 and all other applicable statutes and regulations which are not in conflict with this article.

110 B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false  
111 information. No cause of action shall arise against any licensee for revealing information as required by  
112 this article or applicable law. In the case of a residential transaction, a licensee engaged by a buyer  
113 shall disclose to a seller the buyer's intent to occupy the property as a principal residence.

114 C. A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the  
115 brokerage relationship, provide assistance to the seller, or prospective seller, by performing ministerial  
116 acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed  
117 to violate the licensee's brokerage relationship with the buyer unless expressly prohibited by the terms of  
118 the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage  
119 relationship with such seller.

120 D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing  
121 properties in which the buyer is interested to other prospective buyers, whether as clients or customers,

by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.

E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

§ 54.1-2133. Licensees engaged by landlords to lease property.

A. A licensee engaged by a landlord shall:

1. Perform in accordance with the terms of the brokerage relationship;

2. Promote the interests of the landlord by:

a. Seeking a tenant at the price and terms agreed in the brokerage relationship or at a price and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

b. Presenting in a timely manner all written offers or counteroffers to and from the landlord, even when the property is already subject to a lease or a letter of intent to lease;

c. Disclosing to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

d. Accounting for in a timely manner all money and property received in which the landlord has or may have an interest;

3. Maintain confidentiality of all personal and financial information received from the client during 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 landlord consents in writing to the release of such information;

4. Exercise ordinary care; and

5. Comply with all requirements of this article, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. A licensee shall not be liable to a tenant for providing false information to the tenant if the false information was provided to the licensee by the landlord and the licensee did not (i) have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property.

C. A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.

D. A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.

E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

§ 54.1-2134. Licensees engaged by tenants.

A. A licensee engaged by a tenant shall:

1. Perform in accordance with the terms of the brokerage relationship;

2. Promote the interests of the tenant by:

a. Seeking a lease at a price and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

b. Presenting in a timely fashion all written offers or counteroffers to and from the tenant, even when the tenant is already a party to a lease or a letter of intent to lease;

c. Disclosing to the tenant material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

d. Accounting for in a timely manner all money and property received in which the tenant has or may have an interest;

3. Maintain confidentiality of all personal and financial information received from the client during 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 tenant consents in

183 writing to the release of such information;

184 4. Exercise ordinary care; and

185 5. Comply with all requirements of this article, fair housing statutes and regulations, and all other  
186 applicable statutes and regulations which are not in conflict with this article.

187 B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false  
188 information. No cause of action shall arise against any licensee for revealing information as required by  
189 this article or applicable law.

190 C. A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord  
191 or prospective landlord by performing ministerial acts. Performing such ministerial acts that are not  
192 inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship  
193 with the tenant unless expressly prohibited by the terms of the brokerage relationship, nor shall  
194 performing such ministerial acts be construed to form a brokerage relationship with the landlord or  
195 prospective landlord.

196 D. A licensee engaged by a tenant does not breach any duty or obligation to the tenant by showing  
197 properties in which the tenant is interested to other prospective tenants, whether as clients or customers,  
198 by representing other tenants looking for the same or other properties to lease, or by representing  
199 landlords relative to other properties.

200 E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

201 § 54.1-2135. Licensees engaged to manage real estate.

202 A. A licensee engaged to manage real estate shall:

203 1. Perform in accordance with the terms of the property management agreement;

204 2. Exercise ordinary care;

205 3. Disclose in a timely manner to the owner material facts of which the licensee has actual  
206 knowledge concerning the property;

207 4. Maintain confidentiality of all personal and financial information received from the client during  
208 the brokerage relationship and any other information that the client requests during the brokerage  
209 relationship be maintained confidential unless otherwise provided by law or the owner consents in  
210 writing to the release of such information;

211 5. Account for, in a timely manner, all money and property received in which the owner has or may  
212 have an interest; and

213 6. Comply with all requirements of this article, fair housing statutes and regulations, and all other  
214 applicable statutes and regulations which are not in conflict with this article.

215 B. Except as provided in the property management agreement, a licensee engaged to manage real  
216 estate does not breach any duty or obligation to the owner by representing other owners in the  
217 management of other properties.

218 C. A licensee may also represent the owner as seller or landlord if they enter into a brokerage  
219 relationship that so provides; in which case, the licensee shall disclose such brokerage relationships  
220 pursuant to the provisions of this article.

221 § 54.1-2136. Preconditions to brokerage relationship.

222 Prior to entering into any brokerage relationship provided for in this article, a licensee shall advise  
223 the prospective client of (i) the type of brokerage relationship proposed by the broker and (ii) the  
224 broker's compensation and whether the broker will share such salary or compensation with another  
225 broker who may have a brokerage relationship with another party to the transaction.

226 § 54.1-2137. Commencement and termination of brokerage relationships.

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

233 B. Brokerage relationships shall have a definite termination date; however, if a brokerage  
234 relationship does not specify a definite termination date, the brokerage relationship shall terminate  
235 ninety days after the date the brokerage relationship was entered into.

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

243 § 54.1-2138. Disclosure of brokerage relationship.

244 A. Upon having a substantive discussion about a specific property or properties with an actual or

prospective buyer or seller who is not the client of the licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction. Further, except as provided in § 54.1-2139, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

#### DISCLOSURE OF BROKERAGE RELATIONSHIP

The undersigned do hereby acknowledge disclosure that:

The licensee .....

Name of Firm

represents the following party in a real estate transaction:

..... Seller(s) or ..... Buyer(s)

..... Landlord(s) or ..... Tenant(s)

.....

Date

Name

.....

Date

Name

B. A licensee shall disclose to an actual or prospective landlord or tenant, who is not the client of the 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 all applications for lease or in the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, disclosure shall be made in writing no later than the signing of the lease. Such disclosure requirement shall not apply to lessors or lessees in single or multifamily residential units for lease terms of less than two months.

C. If a licensee's relationship to a client or customer changes, the licensee shall disclose that fact in writing to all clients and customers already involved in the specific contemplated transaction.

D. Copies of any disclosures shall be kept by the licensee for a period of three years as proof of having made such disclosure, whether or not such disclosure is acknowledged in writing by the party to whom such disclosure was shown or given.

§ 54.1-2139. Disclosed dual or designated representation authorized.

A. A licensee may act as a dual representative only with the written consent of all clients to the transaction. Such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as provided in this section.

B. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

#### DISCLOSURE OF DUAL REPRESENTATION

The undersigned do hereby acknowledge disclosure that:

The licensee .....

(Name of Broker, Firm or Salesperson

as applicable)

represents more than one party in this real estate transaction

as indicated below:

..... Seller(s) and ..... Buyer(s)

..... Landlord(s) and ..... Tenant(s).

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client with- in the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed

304 dual representation by the licensee.

305  
 306 .....  
 307 Date Name (One Party)  
 308 .....  
 309 Date Name (One Party)  
 310 .....  
 311 Date Name (Other Party)  
 312 .....  
 313 Date Name (Other Party)  
 314

315 C. No cause of action shall arise against a dual representative for making disclosures of brokerage  
 316 relationships as provided by this article. A dual representative does not terminate any brokerage  
 317 relationship by the making of any such allowed or required disclosures of dual representation.

318 D. In any real estate transaction, a licensee may withdraw, without liability, from representing a  
 319 client who refuses to consent to a disclosed dual representation thereby terminating the brokerage  
 320 relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue  
 321 to represent the other client in the transaction nor to limit the licensee from representing the client who  
 322 refused the dual representation in other transactions not involving dual representation.

323 E. A principal or supervising broker may assign different licensees affiliated with the broker as  
 324 designated representatives to represent different clients in the same transaction to the exclusion of all  
 325 other licensees in the firm. Use of such designated representatives shall not constitute dual  
 326 representation if a designated representative is not representing more than one client in a particular  
 327 real estate transaction; however, the principal or broker who is supervising the transaction shall be  
 328 considered a dual representative as provided in this article. Designated representatives may not disclose,  
 329 except to the affiliated licensee's broker, personal or financial information received from the clients  
 330 during the brokerage relationship and any other information that the client requests during the  
 331 brokerage relationship be kept confidential, unless otherwise provided for by law or the client consents  
 332 in writing to the release of such information.

333 F. Use of designated representatives in a real estate transaction shall be disclosed in accordance  
 334 with the provisions of this article. Such disclosure may be given in combination with other disclosures  
 335 or provided with other information, but if so, the disclosure must be conspicuous, printed in bold  
 336 lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially  
 337 in effect with the following shall be deemed in compliance with such disclosure requirement:

#### 338 DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES

339 The undersigned do hereby acknowledge disclosure that:

340  
 341 The licensee .....  
 342 (Name of Broker and Firm)  
 343 represents more than one party in this real estate  
 344 transaction as indicated below:

345  
 346 ..... Seller(s) and ..... Buyer(s)  
 347 ..... Landlord(s) and ..... Tenant(s).  
 348

349 The undersigned understands that the foregoing dual representative  
 350 may not disclose to either client or such client's designated  
 351 representative any information that has been given to the dual  
 352 representative by the other client within the confidence  
 353 and trust of the brokerage relationship except for that information  
 354 which is otherwise required or permitted by Article 3 (§ 54.1-2130  
 355 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be  
 356 disclosed. The undersigned by signing this notice do hereby  
 357 acknowledge their informed consent to the disclosed dual  
 358 representation by the licensee.  
 359

360 The principal or supervising broker has assigned  
 361 ..... to act as Designated Representative  
 362 (Licensee/Sales Associate)

for the one party as indicated below:

..... Seller(s)	or	Buyer(s)
..... Landlord(s)	or	Tenant(s).
	and	

.....to act as Designated Representative  
(Licensee/Sales Associate)

for the other party as indicated below:

..... Seller(s)	or	..... Buyer(s)
..... Landlord(s)	or	..... Tenant(s).

_____	_____
Date	Name (One Party)

_____	_____
Date	Name (One Party)

_____	_____
Date	Name (One Party)

_____	_____
Date	Name (One Party)

§ 54.1-2140. Compensation shall not imply brokerage relationship.

The payment or promise of payment or compensation to a real estate broker does not create a brokerage relationship between any broker, seller, landlord, buyer or tenant.

§ 54.1-2141. Brokerage relationship not created by using common source information company.

No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord or other licensee solely by reason of using a common source information company.

§ 54.1-2142. Liability; knowledge not to be imputed.

A. A client is not liable for (i) a misrepresentation made by a licensee in connection with a brokerage relationship, unless the client knew or should have known of the misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or (ii) the negligence, gross negligence or intentional acts of any broker or broker's licensee.

B. A broker who has a brokerage relationship with a client and who engages another broker to assist in providing brokerage services to such client shall not be liable for (i) a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or (ii) the negligence, gross negligence or intentional acts of the assisting broker or assisting broker's licensee.

C. Clients and licensees shall be deemed to possess actual knowledge and information only. Knowledge or information among or between clients and licensees shall not be imputed.

D. Nothing in this article shall limit the liability between or among clients and licensees in all matters involving unlawful discriminatory housing practices.

E. Except as expressly set forth in this section, nothing in this article shall affect a person's right to rescind a real estate transaction or limit the liability of (i) a client for the misrepresentation, negligence, gross negligence or intentional acts or such client in connection with a real estate transaction, or (ii) a licensee for the misrepresentation, negligence, gross negligence or intentional acts of such licensee in connection with a real estate transaction.

§ 54.1-2143. Real estate board regulations to be consistent.

Any regulations adopted by the Virginia Real Estate Board shall be consistent with this article, and any such regulations existing as of the effective date of this article shall be modified to comply with the provisions of this article.

§ 54.1-2144. Common law abrogated.

The common law of agency relative to brokerage relationships in real estate transactions to the

**422** *extent inconsistent with this article shall be expressly abrogated.*