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**HOUSE BILL NO. 898**

Offered January 22, 1996

*A BILL to amend and reenact §§ 54.1-2130 and 54.1-2139 of the Code of Virginia, relating to designated agents and designated representatives.*

Patrons—Clement; Senator: Hawkins

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:****1. That §§ 54.1-2130 and 54.1-2139 of the Code of Virginia are amended and reenacted as follows:**

§ 54.1-2130. (Effective October 1, 1995) 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.

§ 54.1-2139. (Effective October 1, 1995) Disclosed dual 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)

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60 represents more than one party in this real estate transaction as  
61 indicated below:

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

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

64 The undersigned understands that the foregoing dual representative  
65 may not disclose to either client or such client's designated  
66 representative any information that has been given to the dual  
67 representative by the other client within the confidence and  
68 trust of the brokerage relationship except for that information  
69 which is otherwise required or permitted by Article 3  
70 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of  
71 Virginia to be disclosed. The undersigned by signing this notice  
72 do hereby acknowledge their informed consent to the disclosed dual  
73 representation by the licensee.

74 .....  
75 Date Name (One Party)

76 .....  
77 .....  
78 Date Name (One Party)

79 .....  
80 Date Name (Other Party)

81 .....  
82 Date Name (Other Party)

83

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

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

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

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

107

108 ~~DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES~~

109 ~~The undersigned do hereby acknowledge disclosure that:~~

110 ~~The licensee .....  
111 (Name of Broker, Firm or Salesperson as applicable)~~

112 ~~represents more than one party in this real estate transaction as  
113 indicated below:~~

114 ~~..... Seller(s) and Buyer(s)~~

115 ~~..... Landlord(s) and Tenant(s).~~

116 ~~The undersigned understands that the foregoing dual representative  
117 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 within 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 dual~~  
~~representation by the licensee.~~  
~~The principal or supervising broker has assigned~~  
~~..... to act as Designated Representative~~  
~~(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 one party as indicated below:~~  
~~..... Seller(s) or ..... Buyer(s)~~  
~~..... Landlord(s) or ..... Tenant(s).~~  
~~.....~~  
~~.....~~  
~~Date Name (One Party)~~  
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~~Date Name (One Party)~~  
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