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**HOUSE BILL NO. 2443**

Offered January 20, 1997

*A BILL to amend and reenact §§ 54.1-2131 through 54.1-2135 of the Code of Virginia, relating to professions and occupations; duties of real estate brokers and salespersons.*

Patron—Keating (By Request)

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-2131 through 54.1-2135 of the Code of Virginia are amended and reenacted as follows:**

§ 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;

c. Disclosing to the seller 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 seller has or may have an interest; *and*

*e. Counseling the seller about market conditions, valuation of property, and contract price, terms and conditions;*

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 *to be maintained as confidential*, unless otherwise provided by law or the seller consents in writing to the release of such information;

4. Exercise ordinary care; and

5. Comply with all requirements of this article, all applicable 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 buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers 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 buyer for providing false information to the buyer if the false information was provided to the licensee by the seller 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 article shall limit in any way the provisions of the Virginia Residential Property Disclosure Act (§ 55-517 et seq.).

C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to a buyer or potential buyer 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 seller 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 buyer or potential buyer.

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

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

§ 54.1-2132. Licensees engaged by buyers.

A. A licensee engaged by a buyer shall:

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

2. Promote the interests of the buyer by:

a. Seeking a property at a price and with terms acceptable to the buyer; however, the licensee shall

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60 not be obligated to seek other properties for the buyer while the buyer is a party to a contract to  
61 purchase property unless agreed to as part of the brokerage relationship;

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

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

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

68 e. *Counseling the buyer about market conditions, valuation of property, and contract price, terms*  
69 *and conditions;*

70 3. Maintain confidentiality of all personal and financial information received from the client during  
71 the brokerage relationship and any other information that the client requests during the brokerage  
72 relationship *to be maintained as confidential* unless otherwise provided by law or the buyer consents in  
73 writing to the release of such information;

74 4. Exercise ordinary care; and

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

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

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

87 D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing  
88 properties in which the buyer is interested to other prospective buyers, whether as clients or customers,  
89 by representing other buyers looking at the same or other properties, or by representing sellers relative  
90 to other properties.

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

92 § 54.1-2133. Licensees engaged by landlords to lease property.

93 A. A licensee engaged by a landlord shall:

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

95 2. Promote the interests of the landlord by:

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

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

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

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

107 e. *Counseling the landlord about market conditions, valuation of property, and lease price, terms and*  
108 *conditions;*

109 3. Maintain confidentiality of all personal and financial information received from the client during  
110 the brokerage relationship and any other information that the client requests during the brokerage  
111 relationship *to be maintained as confidential*, unless otherwise provided by law or the landlord consents  
112 in writing to the release of such information;

113 4. Exercise ordinary care; and

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

116 B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false  
117 information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse  
118 facts pertaining to the physical condition of the property which are actually known by the licensee. A  
119 licensee shall not be liable to a tenant for providing false information to the tenant if the false  
120 information was provided to the licensee by the landlord and the licensee did not (i) have actual  
121 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; *and*

e. *Counseling the tenant about market conditions, valuation of property, and lease price, terms and conditions;*

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 *to be maintained as confidential unless otherwise provided by law or the tenant 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 landlords honestly and shall not knowingly give them false information. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law.

C. A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord or prospective landlord 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 tenant unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with the landlord or prospective landlord.

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

E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article. § 54.1-2135. Licensees engaged to manage real estate.

A. A licensee engaged to manage real estate shall:

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

2. Exercise ordinary care;

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

4. *Counsel the owner about market conditions, valuation of property, and contract price, terms and conditions;*

45. 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 *to be maintained as confidential unless otherwise provided by law or the owner consents in*

183 writing to the release of such information;

184 56. Account for, in a timely manner, all money and property received in which the owner has or  
185 may have an interest; and

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

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

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