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HOUSE BILL NO. 316

Offered January 11, 2006

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A BILL to amend and reenact §§ 54.1-2130 through 54.1-2134, 54.1-2138, and 54.1-2141 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2138.1, relating to the Real Estate Board; duties of licensees; limited service agents.

Patron—Albo

Referred to Committee on General Laws

_____ *A BILL to amend and reenact §§ 54.1-2130 through 54.1-2134, 54.1-2138, and § 54.1-2141 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2138.1, relating to the Real Estate Board; duties of licensees; limited service agents.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2130 through 54.1-2134, 54.1-2138, and § 54.1-2141 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2138.1, as follows:

§ 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. *Agency includes representation of a client as a standard agent or a limited service agent.* 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~~ *agreement*. A real estate licensee who enters into a brokerage relationship based upon a written ~~contract~~ *which brokerage agreement* that 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~~ *brokerage agreement*, and such real estate licensee and its employees shall have no obligations under §§ 54.1-2131 through 54.1-2135 of this article.

"*Brokerage agreement*" means the agreement by which a real estate licensee represents a client in a brokerage relationship.

"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.

"*Limited service agent or representative*" means a licensee who acts for or represents a client with respect to real property containing from one to four residential units, pursuant to a brokerage agreement that provides that the limited service representative will not provide one or more of the duties set forth in subsection A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service representative shall have the obligations set out in the brokerage agreement, except that a limited service representative shall provide the client, at the time of entering the brokerage agreement, copies of any and all disclosures required by federal or state law, or local disclosures expressly

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59 authorized by state law, and shall disclose to the client the following in writing: (i) the rights and
60 obligations of the client under the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if
61 the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers,
62 or to receive as purchaser, the condominium resale certificate required by §55-79.97; and (iii) if the
63 client is selling a property subject to the Property Owners' Association Act (§55-508 et seq.), the rights
64 and obligations of the client to deliver to the purchasers, or to receive as purchaser, the association
65 disclosure packet required by § 55-512. A limited service representative may act as the agent of the
66 client by so providing in the brokerage agreement. If the brokerage agreement does not so state, the
67 limited service representative shall be deemed as acting as an independent contractor of the client.

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

70 "Standard agent" means a licensee who acts for or represents a client in an agency relationship. A
71 standard agent shall have the obligations as provided in this article and any additional obligations
72 agreed to by the parties in the brokerage agreement.

73 § 54.1-2131. Licensees engaged by sellers.

74 A. A licensee engaged by a seller shall:

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

76 2. Promote the interests of the seller by:

77 a. ~~Seeking~~Conducting marketing activities on behalf of the seller in accordance with the brokerage
78 agreement. In so doing, the licensee shall seek a sale at the price and terms agreed upon in the
79 brokerage relationship or at a price and terms acceptable to the seller; however, the licensee shall not be
80 obligated to seek additional offers to purchase the property while the property is subject to a contract of
81 sale, unless agreed to as part of the brokerage relationship or as the contract of sale so provides;

82 b. ~~Presenting in a timely manner all written offers or counteroffers to and from the seller,~~ Assisting
83 in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate
84 contract, pursuant to § 54.1-2101.1, and in establishing strategies for accomplishing the seller's
85 objectives;

86 c. ~~Receiving and presenting in a timely manner written offers and counteroffers to and from the~~
87 ~~seller and purchasers,~~ even when the property is already subject to a contract of sale; and

88 e. ~~Disclosing to the seller material facts related to the property or concerning the transaction of~~
89 ~~which the licensee has actual knowledge; and~~

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

92 d. ~~Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to~~
93 ~~facilitate settlement of the purchase contract.~~

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

98 4. Exercise ordinary care; and

99 5. ~~Account in a timely manner for all money and property received by the licensee in which the~~
100 ~~seller has or may have an interest;~~

101 6. ~~Disclose to the seller material facts related to the property or concerning the transaction of which~~
102 ~~the licensee has actual knowledge; and~~

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

105 B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false
106 information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts
107 pertaining to the physical condition of the property which are actually known by the licensee. As used in
108 this section, the term "physical condition of the property" shall refer to the physical condition of the
109 land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the
110 land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to
111 governmental land use regulations, and (iii) matters relating to highways or public streets. Such
112 disclosure shall be conspicuous and printed either in bold lettering or all capitals, and shall be
113 underlined or in a separate box. A licensee shall not be liable to a buyer for providing false information
114 to the buyer if the false information was provided to the licensee by the seller or was obtained from a
115 governmental entity or from a person licensed, certified, or registered to provide professional services in
116 the Commonwealth, upon which the licensee relies, and the licensee did not (i) have actual knowledge
117 that the information was false or (ii) act in reckless disregard of the truth. No cause of action shall arise
118 against any licensee for revealing information as required by this article or applicable law. Nothing in
119 this article shall limit in any way the provisions of the Virginia Residential Property Disclosure Act
120 (§ 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 or agency 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 of a type acceptable to the buyer and at a price and with terms acceptable to the buyer; however, the licensee shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the brokerage relationship;

b. ~~Presenting~~ *Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract, pursuant to § 54.1-2101.1, and in establishing strategies for accomplishing the buyer's objectives;*

c. *Receiving and presenting* in a timely manner all written offers or counteroffers to and from the buyer and seller, even when the buyer is already a party to a contract to purchase property; and

e. ~~Disclosing to the buyer 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 buyer has or may have an interest;~~

d. *Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate settlement of the purchase contract.*

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 buyer consents in writing to the release of such information;

4. Exercise ordinary care; and

5. ~~Account in a timely manner for all money and property received by the licensee in which the buyer has or may have an interest;~~

6. *Disclose to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and*

7. 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 sellers 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. In the case of a residential transaction, a licensee engaged by a buyer shall disclose to a seller ~~whether or not the buyer's intent~~ *buyer intends* to occupy the property as a principal residence. *The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.*

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

D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing 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:

182 a. ~~Seeking~~ Conducting marketing activities on behalf of the landlord pursuant to the brokerage
183 agreement with the landlord. In so doing, the licensee shall seek a tenant at the price rent and terms
184 agreed in the brokerage relationship or at a price rent and terms acceptable to the landlord; however, the
185 licensee shall not be obligated to seek additional offers to lease the property while the property is
186 subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession,
187 unless agreed as part of the brokerage relationship, or unless the lease or the letter of intent to lease so
188 provides;

189 b. ~~Presenting~~ Assisting the landlord in drafting and negotiating leases and letters of intent to lease,
190 and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord
191 and tenant, pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a letter of
192 intent to lease; and

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

195 d. Accounting for in a timely manner all money and property received in which the landlord has or
196 may have an interest; Providing reasonable assistance to the landlord to finalize the lease agreement.

197 3. Maintain confidentiality of all personal and financial information received from the client during
198 the brokerage relationship and any other information that the client requests during the brokerage
199 relationship be maintained confidential, unless otherwise provided by law or the landlord consents in
200 writing to the release of such information;

201 4. Exercise ordinary care; and

202 5. Account in a timely manner for all money and property received by the licensee in which the
203 landlord has or may have an interest;

204 6. Disclose to the landlord material facts related to the property or concerning the transaction of
205 which the licensee has actual knowledge; and

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

208 B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false
209 information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse
210 facts pertaining to the physical condition of the property which are actually known by the licensee. As
211 used in this section, the term "physical condition of the property" shall refer to the physical condition of
212 the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the
213 land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to
214 governmental land use regulations, and (iii) matters relating to highways or public streets. Such
215 disclosure shall be conspicuous and printed either in bold lettering or all capitals, and shall be
216 underlined or in a separate box. A licensee shall not be liable to a tenant for providing false
217 information to the tenant if the false information was provided to the licensee by the landlord or was
218 obtained from a governmental entity or from a person licensed, certified, or registered to provide
219 professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (i)
220 have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. No
221 cause of action shall arise against any licensee for revealing information as required by this article or
222 applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the
223 physical condition of the property.

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

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

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

234 § 54.1-2134. Licensees engaged by tenants.

235 A. A licensee engaged by a tenant shall:

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

237 2. Promote the interests of the tenant by:

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

242 b. ~~Presenting~~ Assisting in the drafting and negotiating of leases, letters of intent to lease, and rental
243 applications, and presenting, in a timely fashion, all written offers or counteroffers to and from the

tenant and landlord, pursuant to § 54.1-2101.1, 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; Providing reasonable assistance to the tenant to finalize the lease agreement.

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 writing to the release of such information;

4. Exercise ordinary care; and

5. Account in a timely manner for all money and property received by the licensee in which the tenant has or may have an interest;

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

7. 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. § 54.1-2138. Disclosure of brokerage relationship.

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 and who is not represented by another 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
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.....

Date	Name
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B. A licensee shall disclose to an actual or prospective landlord or tenant, who is not the client of the licensee and who is not represented by another 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

304 writing to all clients and customers already involved in the specific contemplated transaction.

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

308 E. A limited service representative shall also make the disclosure required by § 54.1-2138.1.

309 § 54.1-2138.1. Limited service representative, contract disclosure required.

310 A. A licensee may act as a limited service representative only pursuant to a written brokerage
311 agreement in which the limited service representative (i) discloses that the licensee is acting as a limited
312 service representative; (ii) provides a list of the specific services that the licensee will provide to the
313 client; and (iii) provides a list of the specific duties of a standard agent set out in subsection A 2 of
314 § 54.1-2131, subsection A 2 of § 54.1-2132, subsection A 2 of § 54.1-2133, or subsection A 2 of
315 § 54.1-2134, as applicable, that the limited service representative will not provide to the client. Such
316 disclosure must be conspicuous and printed either in bold lettering or all capitals, and shall be
317 underlined or in a separate box. In addition, a disclosure that contains language that complies
318 substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

319 "By entering into this brokerage agreement, the undersigned do hereby acknowledge their
320 informed consent to the limited service representation by the licensee and do further acknowledge that
321 neither the other party to the transaction nor any real estate licensee representing the other party is
322 under any legal obligation to assist the undersigned with the performance of any duties and
323 responsibilities of the undersigned not performed by the limited service representative."

324 B. A licensee engaged by one client to a transaction and dealing with an unrepresented party or
325 with a party represented by a limited service representative and who, without additional compensation,
326 provides such other party information relative to the transaction or undertakes to assist such other party
327 in securing a contract or with such party's obligations thereunder, shall not incur liability for such
328 actions except in the case of gross negligence or willful misconduct. A licensee does not create a
329 brokerage relationship by providing such assistance or information to the other party to the transaction.
330 A licensee dealing with a client of a limited service representative may enter into an agreement with
331 that party for payment of a fee for services performed or information provided by that licensee. Such
332 payment shall not create a brokerage relationship; however, the licensee providing such services or
333 information for a fee shall be held to the standard ordinary of care in the provision of such services or
334 information.

335 § 54.1-2141. Brokerage relationship not created by using common source information company.

336 No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a
337 seller, landlord or other licensee solely by reason of using a common source information company.
338 However, nothing contained in this article shall be construed to prevent a common source information
339 company from requiring, as a condition of participation in or use of such common source information,
340 that licensees providing information through such company disclose the nature of the brokerage
341 relationship with the client, including, but not limited to, whether the licensee is acting as (i) an
342 independent contractor, (ii) a limited service representative, or (iii) a transaction broker, facilitator or
343 in some other capacity as provided in the brokerage agreement. A common source information company
344 may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt
345 rules providing that absent any disclosure, a licensee providing information through such company may
346 be assumed to be acting as a standard agent. A common source information company shall have the
347 right, but not the obligation, to make information about the nature of brokerage relationships available
348 to its participants and to settlement service it provides including, without limitation, title insurance
349 companies, lenders, and settlement agents.

350 2. That the provisions of this act shall become effective on July 1, 2007.

351 3. That the Real Estate Board shall promulgate regulations to implement the provisions of this act
352 to be effective on July 1, 2007. Further, the Real Estate Board shall establish a continuing
353 education curriculum of not less than two hours, and as of July 1, 2007, every applicant for
354 re-licensure as an active salesperson or broker shall complete at a minimum one two-hour
355 continuing education course on the amendments to the real estate agency laws prior to each
356 renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Real
357 Estate Board which certifies that he does not practice residential real estate and shall not do so
358 during the licensing term, training in limited service agency shall not be required.