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SENATE BILL NO. 942

Senate Amendments in [] — January 24, 2011

A *BILL to amend and reenact §§ 54.1-2131, 54.1-2132, 54.1-2133, 54.1-2134, and 54.1-2135 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-225.11, 55-248.12:2, 55-519.2, and 58.1-3284.2, relating to defective drywall; disclosure, assessments.*

Patron Prior to Engrossment—Senator Miller, J.C.

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2131, 54.1-2132, 54.1-2133, 54.1-2134, and 54.1-2135 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-225.11, 55-248.12:2, 55-519.2, and 58.1-3284.2 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. Conducting marketing activities on behalf of the seller in accordance with the brokerage agreement. In so doing, the licensee shall seek 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. 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 seller's objectives;

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

d. Providing reasonable assistance to the seller to satisfy the seller'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 seller consents in writing to the release of such information;

4. Exercise ordinary care;

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

6. Disclose to the seller 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 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. *If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee shall disclose the same to the prospective buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.* As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. 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 or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, 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

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60 brokerage relationship, provide assistance to a buyer or potential buyer by performing ministerial acts.
61 Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to
62 violate the licensee's brokerage relationship with the seller unless expressly prohibited by the terms of
63 the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage
64 or agency relationship with such buyer or potential buyer.

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

68 E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.
69 § 54.1-2132. Licensees engaged by buyers.

70 A. A licensee engaged by a buyer shall:

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

72 2. Promote the interests of the buyer by:

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

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

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

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

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

87 4. Exercise ordinary care;

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

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

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

94 B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false
95 information. *If a licensee has actual knowledge of the existence of defective drywall in a property, the*
96 *licensee shall disclose the same to the buyer. For purposes of this section, "defective drywall" means all*
97 *defective drywall as defined in § 36-156.1.* No cause of action shall arise against any licensee for
98 revealing information as required by this article or applicable law. In the case of a residential
99 transaction, a licensee engaged by a buyer shall disclose to a seller whether or not the buyer intends to
100 occupy the property as a principal residence. The buyer's expressions of such intent in the contract of
101 sale shall satisfy this requirement and no cause of action shall arise against any licensee for the
102 disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.

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

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

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

114 § 54.1-2133. Licensees engaged by landlords to lease property.

115 A. A licensee engaged by a landlord shall:

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

117 2. Promote the interests of the landlord by:

118 a. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement
119 with the landlord. In so doing, the licensee shall seek a tenant at the rent and terms agreed in the
120 brokerage relationship or at a rent and terms acceptable to the landlord; however, the licensee shall not
121 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. Assisting the landlord in drafting and negotiating leases and letters of intent to lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord and tenant pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the landlord 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 landlord consents in writing to the release of such information;

4. Exercise ordinary care;

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

6. Disclose to the landlord 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 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. *If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.* As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. 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 or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, 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 rent 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. Assisting in the drafting and negotiating of leases, letters of intent to lease, and rental 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. 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

183 writing to the release of such information;

184 4. Exercise ordinary care;

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

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

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

191 B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false
192 information. *If a licensee has actual knowledge of the existence of defective drywall in a property, the*
193 *licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective*
194 *drywall" means all defective drywall as defined in § 36-156.1.* No cause of action shall arise against any
195 licensee for revealing information as required by this article or applicable law.

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

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

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

207 § 54.1-2135. Licensees engaged to manage real estate.

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

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

210 2. Exercise ordinary care;

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

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

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

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

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

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

227 D. *If a licensee has actual knowledge of the existence of defective drywall in a property, the licensee*
228 *shall disclose the same to the owner. For purposes of this section, "defective drywall" means all*
229 *defective drywall as defined in § 36-156.1.*

230 § 55-225.11. *Required disclosures for properties with defective drywall; remedy for nondisclosure.*

231 A. *If the landlord of a residential dwelling unit has actual knowledge of the existence of defective*
232 *drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective*
233 *tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided*
234 *prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease*
235 *agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all*
236 *defective drywall as defined in § 36-156.1.*

237 B. *Any tenant who is not provided the disclosure required by subsection A may terminate the lease*
238 *agreement at any time within 60 days of discovery of the existence of defective drywall by providing*
239 *written notice to the landlord in accordance with the lease or as required by law. Such termination*
240 *shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through*
241 *which rent has been paid, whichever is later. In no event, however, shall the effective date of the*
242 *termination exceed one month from the date of mailing. Termination of the lease agreement shall be the*
243 *exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not*
244 *affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or*

the rental agreement.

§ 55-248.12:2. Required disclosures for properties with defective drywall; remedy for nondisclosure.

A. If the landlord of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of notice of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

§ 55-519.2. Required disclosures.

Notwithstanding the exemptions in § 55-518, if the owner of a residential dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit, the owner shall provide to a prospective purchaser a written disclosure that the property has defective drywall. Such disclosure shall be provided to the purchaser on a form provided by the Virginia Real Estate Board and otherwise in accordance with this chapter. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

§ 58.1-3284.2. Assessment of buildings containing defective drywall.

A. An owner of real property that contains defective drywall may request that the commissioner or other assessing official have the building official confirm the presence of defective drywall, based upon a review of test results submitted to the building official from a testing agency approved by the [~~Department of Housing and Community Development~~ building official] and, upon such confirmation by the building official, the commissioner or other assessing official shall determine the amount by which the defective drywall reduces the assessed value of the property, advise the owner of real property in writing, and reassess the real property accordingly. The owner of such real property may provide the Commissioner or other assessing official with a copy of an appraisal to support the reduction in assessed value of the property.

B. The local governing body may, by ordinance, place real property that contains defective drywall in a rehabilitation district for purposes of granting the owner of real property a partial real estate tax exemption pursuant to § 58.1-3219.4.

C. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.