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**HOUSE BILL NO. 567**

Offered January 13, 2016

Prefiled January 11, 2016

*A BILL to amend and reenact §§ 54.1-2105, 54.1-2105.3, 54.1-2110.1, 54.1-2130 through 54.1-2135, 54.1-2138, 54.1-2138.1, 54.1-2139.01, 54.1-2139.1, 54.1-2141, 54.1-2142, and 54.1-2142.1 of the Code of Virginia, relating to the Real Estate Board; duties of real estate licensees; residential real estate transactions.*

Patrons—Miller and Mason

Referred to Committee on General Laws

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

**1. That §§ 54.1-2105, 54.1-2105.3, 54.1-2110.1, 54.1-2130 through 54.1-2135, 54.1-2138, 54.1-2138.1, 54.1-2139.01, 54.1-2139.1, 54.1-2141, 54.1-2142, and 54.1-2142.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 54.1-2105. General powers of Real Estate Board; regulations; educational and experience requirements for licensure.**

A. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.

B. The Board shall adopt regulations establishing minimum educational requirements as conditions for licensure. Board regulations relating to initial licensure shall include the following requirements:

1. Every applicant for an initial license as a real estate salesperson shall have:

a. At a minimum, a high school diploma or its equivalent; and

b. Completed a course in the principles of real estate that carried an academic credit of at least four semester hours, but not less than 60 hours of classroom, correspondence, or other distance learning instruction, offered by an accredited university, college, community college, high school offering adult distributive education courses, or other school or educational institution offering an equivalent course.

2. Every applicant for an initial license as a real estate broker shall have:

a. At a minimum, a high school diploma or its equivalent; and

b. Completed not less than 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses offered by an accredited university, college, community college, or other school or educational institution offering equivalent courses.

3. Every applicant for a license by reciprocity as a real estate salesperson or real estate broker shall have:

a. Completed a course in the principles of real estate that is comparable in content and duration and scope to that required in subdivision 1 or 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses that are comparable in content and duration and scope to that required in subdivision 2; and

b. If currently licensed by another state as a real estate salesperson or broker, passed Virginia's examination.

C. The Board may waive any requirement under the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. No regulation imposing educational requirements for initial licensure beyond those specified by law shall apply to any person who was licensed prior to July 1, 1975, and who has been continuously licensed since that time, except that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed as a broker from the educational requirements established for brokers.

D. The Board shall establish criteria to ensure that prelicensure and broker licensure courses meet the standards of quality deemed by the Board to be necessary to protect the public interests. For correspondence and other distance learning instruction offered by an approved provider, such criteria may include appropriate testing procedures. The Board may establish procedures to ensure the quality of the courses.

Noncollegiate institutions shall not be authorized to grant collegiate semester hours for academic credit.

The specific content of the real estate courses shall be in real estate brokerage, real estate finance, real estate appraisal, real estate law, and such related subjects as are approved by the Board.

E. The Board may establish criteria delineating the permitted activities of unlicensed individuals employed by real estate licensees or under the supervision of a real estate broker.

*F. The Board may take a disciplinary case against a licensee under advisement, defer a finding in*

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59 *such case, and dismiss such action upon terms and conditions set by the Board.*

60 **§ 54.1-2105.03. Continuing education; relicensure of brokers and salespersons.**

61 A. Board regulations shall include educational requirements as a condition for relicensure of brokers  
62 and salespersons to whom active licenses have been issued by the Board beyond those now specified by  
63 law as conditions for licensure.

64 1. Brokers to whom active licenses have been issued by the Board shall be required to satisfactorily  
65 complete courses of not less than 24 hours of classroom or correspondence or other distance learning  
66 instruction during each licensing term. Of the total 24 hours, the curriculum shall consist of:

67 a. A minimum of eight required hours to include at least three hours of ethics and standards of  
68 conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging trends,  
69 flood hazard areas and the National Flood Insurance Program, real estate agency, and real estate  
70 contracts;

71 b. A minimum of eight hours of courses relating to supervision and management of real estate agents  
72 and the management of real estate brokerage firms as are approved by the Board; and

73 c. Eight hours of general elective courses as are approved by the Board.

74 The Board may, on a year-by-year basis, adjust the required hours and course topics specified in this  
75 subdivision for the next succeeding year, applicable to a licensee in the next renewal period for his  
76 license, including the addition of topics deemed by the Board to be essential. Such designation or  
77 adjustment by the Board shall be made prior to September 1 of any given calendar year. The action of  
78 the Board in making such adjustment shall be subject to § 2.2-4012.1.

79 The fair housing requirements shall include an update on current cases and administrative decisions  
80 under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he  
81 does not practice residential real estate and shall not do so during the licensing term, training in fair  
82 housing shall not be required; instead, such licensee shall receive training in other applicable federal and  
83 state discrimination laws and regulations.

84 2. Salespersons to whom active licenses have been issued by the Board shall be required to  
85 satisfactorily complete courses of not less than 16 hours of classroom or correspondence or other  
86 distance learning instruction during each licensing term. Of the total 16 hours, the curriculum shall  
87 consist of:

88 a. A minimum of eight required hours to include at least three hours of ethics and standards of  
89 conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging trends,  
90 real estate agency, real estate contracts, and flood hazard areas and the National Flood Insurance  
91 Program; and

92 b. Eight hours of general elective courses as are approved by the Board.

93 The Board may, on a year-by-year basis, readjust the required hours and course topics specified in  
94 this subdivision for the next succeeding year, applicable to a licensee in the next renewal period for his  
95 license, including the addition of topics deemed by the Board to be essential. Such designation or  
96 adjustment by the Board shall be made prior to September 1 of any given calendar year. The action of  
97 the Board in making such adjustment shall be subject to § 2.2-4012.1.

98 3. The Board shall approve a continuing education curriculum of not less than three hours, and as of  
99 July 1, 2012, every applicant for relicensure as an active broker or salesperson shall complete at a  
100 minimum one three-hour continuing education course on the changes to residential standard agency  
101 effective as of July 1, 2011, to Article 3 (§ 54.1-2130 et seq.) prior to renewal or reinstatement of his  
102 license. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice  
103 residential real estate and shall not do so during the licensing term, training in residential representation  
104 shall not be required. A licensee who takes one three-hour continuing education class on residential  
105 representation shall satisfy the requirements for continuing education and may, but shall not be required  
106 to, take any further continuing education on residential standard agency.

107 The fair housing requirements shall include an update on current cases and administrative decisions  
108 under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he  
109 does not practice residential real estate and shall not do so during the licensing term, training in fair  
110 housing shall not be required; instead, such licensee shall receive training in other applicable federal and  
111 state discrimination laws and regulations.

112 4. For correspondence and other distance learning instruction offered by an approved provider, the  
113 Board shall establish the appropriate testing procedures to verify completion of the course and require  
114 the licensee to file a notarized affidavit certifying compliance with the course requirements. The Board  
115 may establish procedures to ensure the quality of the courses. The Board shall not require testing for  
116 continuing education courses completed through classroom instruction.

117 B. Every applicant for relicensure as an active salesperson or broker shall complete the continuing  
118 education requirements prior to each renewal or reinstatement of his license. The continuing education  
119 requirement shall also apply to inactive licensees who make application for an active license.  
120 Notwithstanding this requirement, military personnel called to active duty in the armed forces of the

United States may complete the required continuing education within six months of their release from active duty.

C. The Board shall establish procedures for the carryover of continuing education credits completed by licensees from the licensee's current license period to the licensee's next renewal period.

*D. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship as demonstrated to the Board.*

**§ 54.1-2110.1. Duties of supervising broker.**

A. Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions required by this section, but such designation shall not relieve the supervising broker of responsibility for the supervision of the acts of all licensees assigned to the branch office.

B. As used in this section, "reasonable and adequate supervision" by the supervising broker shall include the following:

1. Being available to all licensees under his supervision at reasonable times to review and approve all documents, including leases, contracts, brokerage agreements, and advertising as may affect the firm's clients and business;

2. Ensuring the availability of training opportunities and that the office has written procedures and policies that provide clear guidance in the following areas:

a. Handling of escrow deposits in compliance with law and regulation;

b. Complying with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;

c. Advertising and marketing of the brokerage firm;

d. Negotiating and drafting of contracts, leases, and brokerage agreements;

e. Exercising appropriate oversight and limitations on the use of unlicensed assistants, whether as part of a team arrangement or otherwise;

f. Creating agency or independent contractor relationships and elements thereof;

g. Distributing information on new or amended laws or regulations; and

h. Disclosing required information relating to the physical condition of real property;

3. Ensuring that the brokerage services are carried out competently and in accordance with the provisions of this chapter; and

4. Maintaining the records required by this subsection for three years. The records shall be furnished to the Board's agent upon request.

C. Any supervising broker who resides more than 50 miles from a branch office under his supervision, having licensees who regularly conduct business assigned to such branch office, shall certify in writing quarterly on a form provided by the Board that the supervising broker has complied with the requirements of this section.

*D. No later than January 1, 2017, the supervising broker for a branch office shall provide to the Board the name and license number of the supervising broker for the branch office. Thereafter, upon the renewal of the license of each licensee working in such branch office or upon the transfer of a licensee to such office, the broker shall provide to the Board the name and license number of each real estate licensee working in the branch office on the broker acknowledgement form created by the Board.*

**§ 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 *commercial or residential* real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. 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 agreement. A real estate licensee who enters into a brokerage relationship based upon a written 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 brokerage agreement, and such real estate licensee and its employees shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135. Any real estate licensee who acts for or represents a client in an agency relationship *in a residential real*

182 *estate transaction* shall either represent such client as a standard agent or a limited service agent.

183 "Brokerage agreement" means the written agreement creating a brokerage relationship between a  
184 client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent  
185 the client as an agent or an independent contractor.

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

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

190 "Commercial real estate" means any real estate other than (i) real estate containing one to four  
191 residential units or (ii) real estate classified for assessment purposes under the provisions of Article 4 (§  
192 58.1-3229 et seq.) of Chapter 32 of Title 58.1. Commercial real estate shall not include single family  
193 residential units, including condominiums, townhouses, apartments, or homes in a subdivision when  
194 leased on a unit by unit basis even though these units may be part of a larger building or parcel of real  
195 estate containing more than four residential units.

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

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

203 "Designated agent" or "designated representative" means a licensee who has been assigned by a  
204 principal or supervising broker to represent a client when a different client is also represented by such  
205 principal or broker in the same transaction. A designated representative shall only act as an independent  
206 contractor.

207 "Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both  
208 seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an  
209 agency relationship under brokerage agreements with the clients. A dual representative has an  
210 independent contractor relationship under brokerage agreements with the clients. A dual representative  
211 shall only act as an independent contractor.

212 "Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship  
213 based upon a brokerage agreement that specifically states that the real estate licensee is acting as an  
214 independent contractor and not as an agent; (ii) shall have the obligations agreed to by the parties in the  
215 brokerage agreement; and (iii) shall comply with the provisions of subdivisions A 3 through 7 and  
216 subsections B and E of § 54.1-2131; subdivisions A 3 through 7 and subsections B and E of  
217 § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3  
218 through 7 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C  
219 and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135.

220 "Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.).

221 "Limited service agent" means a licensee who acts for or represents a client with respect to real  
222 property containing from one to four residential dwelling units, pursuant to a brokerage agreement that  
223 provides that the limited service agent will not provide one or more of the duties set forth in subdivision  
224 A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service agent shall have  
225 the obligations set out in the brokerage agreement, except that a limited service agent shall provide the  
226 client, at the time of entering the brokerage agreement, copies of any and all disclosures required by  
227 federal or state law, or local disclosures expressly authorized by state law, and shall disclose to the  
228 client the following in writing: (i) the rights and obligations of the client under the Virginia Residential  
229 Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a condominium, the rights and  
230 obligations of the client to deliver to the purchasers, or to receive as purchaser, the condominium resale  
231 certificate required by § 55-79.97; and (iii) if the client is selling a property subject to the Property  
232 Owners' Association Act (§ 55-508 et seq.), the rights and obligations of the client to deliver to the  
233 purchasers, or to receive as purchaser, the association disclosure packet required by § 55-509.5.

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

236 "Property management agreement" means the written agreement between a property manager and the  
237 owner of real estate for the management of the real estate.

238 "Residential real estate" means real property containing from one to four residential dwelling units.

239 "Standard agent" means a licensee who acts for or represents a client in an agency relationship *in a*  
240 *residential real estate transaction*. A standard agent shall have the obligations as provided in this article  
241 and any additional obligations agreed to by the parties in the brokerage agreement.

242 **§ 54.1-2131. Licensees engaged by sellers.**

243 A. *Except as otherwise provided in the brokerage agreement*, a licensee engaged by a seller shall:

1. Perform in accordance with the terms of the brokerage agreement;
  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 agreement 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 agreement 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 for residential real estate transactions as applicable, 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 residential 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 or (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. 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.) applicable to residential real estate transactions.
- C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage agreement, 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 agreement with the seller unless expressly prohibited by the terms of the brokerage agreement, 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 in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.
- F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a nonattorney settlement agent.
- § 54.1-2132. Licensees engaged by buyers.**
- A. Except as otherwise provided in the brokerage agreement, a licensee engaged by a buyer shall:
1. Perform in accordance with the terms of the brokerage agreement;
  2. Promote the interests of the buyer by:
    - a. Seeking a property of a type acceptable to the buyer and at a price and on 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. 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

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;

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 for residential real estate transactions as applicable, 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. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. 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 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 agreement, 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 agreement with the buyer unless expressly prohibited by the terms of the brokerage agreement, 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 in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 will be provided by an attorney or a nonattorney settlement agent.

G. Notwithstanding any other provision of law requiring written brokerage agreements or governing the duties of licensees, nothing in this chapter shall be construed to require that a written agreement between a licensee and a prospective buyer be executed prior to the licensee's showing properties to the prospective buyer.

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

A. Except as otherwise provided in the brokerage agreement, a licensee engaged by a landlord shall:

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

2. Promote the interests of the landlord by:

a. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement with the landlord. In so doing, the licensee shall seek a tenant at the rent and terms agreed in the brokerage agreement or at a rent 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 agreement, 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 *for residential real estate transactions as applicable*, 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 *residential* 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. 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 agreement, 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 agreement, 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 *in residential real estate transactions* 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 agreement;

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 agreement, 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; and

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 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 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 *for residential real estate transactions as applicable*, and all other applicable statutes and regulations which are not in conflict with this article.

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

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

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

443 E. Licensees *in residential real estate transactions* shall disclose brokerage relationships pursuant to  
444 the provisions of this article.

445 F. *Notwithstanding any other provision of law requiring written brokerage agreements or governing*  
446 *the duties of licensees, nothing in this chapter shall be construed to require that a written agreement*  
447 *between a licensee and a prospective tenant be executed prior to the licensee's showing properties to the*  
448 *prospective tenant.*

449 **§ 54.1-2135. Licensees engaged to manage real estate.**

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

- 451 1. Perform in accordance with the terms of the property management agreement;
- 452 2. Exercise ordinary care;
- 453 3. Disclose in a timely manner to the owner material facts of which the licensee has actual  
454 knowledge concerning the property;
- 455 4. Maintain confidentiality of all personal and financial information received from the client during  
456 the brokerage relationship and any other information that the client requests during the brokerage  
457 relationship be maintained confidential unless otherwise provided by law or the owner consents in  
458 writing to the release of such information;

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

461 6. Comply with all requirements of this article, fair housing statutes and regulations *for residential*  
462 *real estate transactions as applicable*, and all other applicable statutes and regulations which are not in  
463 conflict with this article.

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

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

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

473 E. Property management agreements *in residential real estate transactions* shall be in writing and  
474 shall:

- 475 1. Have a definite termination date or duration; however, if a property management agreement does  
476 not specify a definite termination date or duration, the agreement shall terminate 90 days after the date  
477 of the agreement;
- 478 2. State the amount of the management fees and how and when such fees are to be paid;
- 479 3. State the services to be rendered by the licensee; and
- 480 4. Include such other terms as have been agreed to by the owner and the property manager.

481 F. *The provisions of this section shall not apply to licensees engaged in commercial real estate*  
482 *transactions.*

483 **§ 54.1-2138. Disclosure of brokerage relationship in residential real estate transactions.**

484 A. Upon having a substantive discussion about a specific property or properties *in a residential real*  
485 *estate transaction* with an actual or prospective buyer or seller who is not the client of the licensee and  
486 who is not represented by another licensee, a licensee shall disclose any broker relationship the licensee  
487 has with another party to the transaction. Further, except as provided in § 54.1-2139, or 54.1-2139.1;  
488 54.1-2139.2, or 54.1-2139.3, such disclosure shall be made in writing at the earliest practical time, but  
489 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 IN A RESIDENTIAL REAL ESTATE TRANSACTION**

The undersigned do hereby acknowledge disclosure that:

The licensee \_\_\_\_\_ (name of broker or salesperson) associated with \_\_\_\_\_ (Name of Brokerage Firm) represents the following party in a *residential* 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 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 writing to all clients and customers already involved in the specific contemplated transaction.

D. Copies of any disclosures relative to fully executed purchase contracts 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.

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

**§ 54.1-2138.1. Limited service agent in a residential real estate transaction, contract disclosure required.**

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

"By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service agent *in a residential real estate transaction* by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service agent."

A limited service agent shall disclose dual agency in accordance with § 54.1-2139.

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

**§ 54.1-2139.01. Disclosed dual agency and dual representation in commercial real estate transactions authorized.**

A. A licensee may act as a dual agent or dual representative in a commercial real estate transaction only with the written consent of all clients to the transaction. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor

relationship under the brokerage agreements with the clients. 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 shall 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 AGENCY OR DUAL REPRESENTATION IN A COMMERCIAL REAL ESTATE TRANSACTION**

The undersigned do hereby acknowledge disclosure that:

The licensee \_\_\_\_\_ (name of broker or salesperson) associated with \_\_\_\_\_ (Brokerage Firm) represents more than one party in this commercial real estate transaction as follows:

Brokerage Firm represents the following party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ ~~standard~~ agent ☒ ~~limited service agent~~ ☐ independent contractor

Brokerage Firm represents another party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ ~~standard~~ agent ☒ ~~limited service agent~~ ☐ independent contractor

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or 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.

_____	_____
Date	Name (One Party)
_____	_____
Date	Name (One Party)
_____	_____
Date	Name (One Party)
_____	_____
Date	Name (One Party)

C. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

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

E. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual representation thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or to limit the licensee from representing the client who refused the dual representation in other transactions not involving dual representation.

**§ 54.1-2139.1. Designated standard agency or designated representation authorized in a residential real estate transaction.**

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

B. Use of designated agents or representatives in a *residential* real estate transaction shall be disclosed in accordance with the provisions of this article. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure shall be conspicuous,

printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure that complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

**DISCLOSURE OF DESIGNATED AGENTS OR REPRESENTATIVES IN A RESIDENTIAL REAL ESTATE TRANSACTION**

The undersigned do hereby acknowledge disclosure that:

The licensee \_\_\_\_\_ (Name of Broker and Firm) represents more than one party in this *residential* real estate transaction as indicated below:

\_\_\_\_\_ Seller(s) and Buyer(s)

\_\_\_\_\_ Landlord(s) and Tenant(s).

The undersigned understand that the foregoing dual agent or representative may not disclose to either client or such client's designated agent or representative any information that has been given to the dual agent or 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 principal or supervising broker has assigned \_\_\_\_\_ to act as Designated Agent or Representative (broker or salesperson) for the one party as indicated below:

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

\_\_\_\_\_ (broker or salesperson) to act as Designated Agent or Representative for the other party as indicated below:

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

The undersigned by signing this notice do hereby acknowledge their consent to the disclosed dual representation by the licensee.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (One Party)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (One Party)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (One Party)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (One Party)

C. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

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

E. In any *residential* real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed designated agency or representation agreement thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or to limit the licensee from representing the client who refused the designated agency or representation relationship in other transactions not involving designated representation.

**§ 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. However, nothing contained in this article shall be construed to prevent a common source information company from requiring, as a condition of participation in or use of such common source information, that licensees providing information through such company disclose the nature of the brokerage relationship with the client, including, but not limited to, whether the licensee is acting as (i) an independent contractor, (ii) a limited service agent, ~~or~~ (iii) a standard agent, *or* (iv) *an agent* as provided in the brokerage agreement. A common source information company may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt rules providing that absent any disclosure, a licensee providing information through such company may be assumed to be acting as a standard agent. A common source information company shall have the right, but not the obligation, to make information about the nature of brokerage relationships available to its participants and to settlement service it provides including, without limitation, title insurance companies, lenders, and

676 settlement agents.

677 **§ 54.1-2142. Liability; knowledge not to be imputed.**

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

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

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

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

691 E. Except as expressly set forth in this section, nothing in this article shall affect a person's right to  
692 rescind a real estate transaction or limit the liability of (i) a client for the misrepresentation, negligence,  
693 gross negligence or intentional acts of such client in connection with a real estate transaction, or (ii) a  
694 licensee for the misrepresentation, negligence, gross negligence or intentional acts of such licensee in  
695 connection with a real estate transaction. *However, nothing in this article shall create a civil cause of*  
696 *action against a licensee.*

697 **§ 54.1-2142.1. Liability for false information.**

698 A licensee shall not be liable for providing false information if the information was (i) provided to  
699 the licensee by the licensee's client; (ii) obtained from a governmental entity; (iii) obtained from a  
700 nongovernmental person or entity that obtained the information from a governmental entity; or (iv)  
701 obtained from a person licensed, certified, or registered to provide professional services in the  
702 Commonwealth, upon which the licensee relies, and the licensee did not (a) have actual knowledge that  
703 the information was false or (b) act in reckless disregard of the truth. This includes any regulatory  
704 action brought under this chapter and any civil actions filed. *However, nothing in this article shall*  
705 *create a civil cause of action against a licensee.*