



# **Real Estate Training**

**Brokerage Definitions,  
Duties and Disclosures**

**Principal Broker** - The individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker.

1. Has complete responsibility for everything that happens in the firm. (18 VAC 135-20-10)
2. Responsible to maintain the license of every-one under his authority and make them available to the public. (18 VAC 135-20-160.C)
3. Responsible for the firms escrow account. (18 VAC 135-20-180.A.1)
4. Responsible for placing funds in the escrow account which are designated to be there. (18 VAC 135-20-180.B.1.a)
5. Responsible to report any licensee under their supervision who violates the escrow provision. (18 VAC 135-20-180.C.5)
6. Responsible for maintaining financial records at the place of business. 18 VAC 135-20-185.A)
7. Responsible for having a bookkeeping system which accurately reflects the financial status of the firm. (18 VAC 135-20-185.B)
8. Responsible for keeping copies of all the firms records for three years as prescribed by regulation. (18 VAC 135-20-185.C.1)
9. Responsible for all advertising. (18 VAC 135-20-190.B)
10. Responsible for the actions of all licensees under their supervision and if he/she had knowledge, responsible to take action. (18 VAC 135-20-330)

**Supervising Broker** - The individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices.

**Associate Broker** - Any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

**Real Estate Sales Person** - any person, or business entity of not more than two persons unless related by blood or marriage, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange of real estate, or to lease, rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon.

**Standard Agent** - Means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided under 54.1-2132 to 54.1-2134.

**Principal to a Transaction** - Means a party to a real estate transaction including without limitation a seller or buyer, landlord or tenant, optionor or optionee, licensor or licensee. For purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

**Client** - means a person who has entered into a brokerage relationship with a licensee.

. . . Duties to a Client

54.1-2131 to 54.1-2134

The Virginia agency statute establishes specific duties for a licensee who is in an agency relationship with a seller, buyer, landlord, or tenant. These statutory duties for a client require licensees to

1. Perform according to the terms of the brokerage relationship;
2. Promote the best interests of the client by
  - *seeking a sale (or lease) at the price and terms established in the brokerage relationship, or at some other price and terms acceptable to the client (once the property is under contract, the licensee is not expected to continue to pursue additional offers unless he or she is required to do so under the brokerage agreement or sales contract);*
  - *presenting all written offers and counteroffers in a timely manner, even after the property is under contract;*
  - *disclosing to the client all material facts, related to the property or concerning the transaction; of which the licensee has actual knowledge;*
  - *accounting in a timely manner for all money and property received in which the client has or may have an interest;*

3. Maintain *confidentiality* of all personal and financial information received from the client during the brokerage relationship, and all information characterized as confidential by the client, unless the seller consents in writing to its release or unless the licensee is required by law to release the information-under Virginia law, such confidential information is to remain confidential forever;
4. exercise ordinary care; and
5. comply with all applicable laws, including fair housing statutes and regulations and all other statutes and regulations required by the state.

Additional Disclosure Required by Buyer's Agent

In the case of a residential transaction, a licensee must disclose to the seller the buyer's *intent* to *occupy* the property as a principal residence. [§54.12132B] This disclosure is often stated in the body of a purchase agreement.

Property Management

Licenses who are engaged to manage real estate are required by Virginia law to perform according to the management agreement, exercise ordinary care, disclose all material facts concerning the property of which the licensee has actual knowledge, maintain confidentiality of information, account for all money and property received, and comply with all relevant real estate and fair housing laws and regulations. The licensee is expected to perform his or her services in accordance with the property management agreement. Licensees are permitted to represent other owners in the management of real property and to represent the owner as seller or landlord under a brokerage agreement. [§54.1-2135] The broker is a General Agent to the owner of the property under a Property Management Agreement.

Establishing the Brokerage Relationship

Prior to entering into any brokerage relationship provided for in this article, a licensee shall advise the prospective client of (i) the type of brokerage relationship proposed by the broker and (ii) the broker's compensation and whether the broker will share such salary or compensation with another broker who may have a brokerage relationship with another party to the transaction.

Commencement and Termination of Brokerage Relationship

The brokerage relationship begins at the time a client engages a licensee. Ideally, the relationship terminates when the brokerage agreement's terms have been completely performed. However, the relationship may also be terminated by set forth in this article shall commence at the time that a client engages a licensee and shall continue until

- any date of expiration agreed upon by the parties;
- any mutually agreed upon termination of the relationship;

- a default by any party under the terms of the brokerage relationship; or
- the licensee's withdrawal when a client refuses to consent to disclosed dual agency. (§ 54.1-2139)

**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.

#### . . .Duties to a Customers

Customers, the parties with whom the license does *not* have a brokerage relationship, must be treated honestly and may not knowingly be given false information. In addition, they must be informed of any material adverse facts regarding the property's physical condition of which the licensee has actual knowledge. No legal action may be brought against a licensee for making such required disclosures:

A licensee will not be held liable for providing false information if the false information was provided to the licensee by the seller; and the licensee did not actually know that the information was false; or did not act in reckless disregard of the truth. [§54-2131B]

A licensee having a brokerage relationship with a client is permitted to assist customers by performing ministerial acts. The performance of ministerial acts does not violate the licensee's brokerage relationship with the client. Similarly, the brokerage relationship is not violated if the licensee shows alternative properties to prospective buyers or tenants or represents other sellers (or landlords).

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

**Buyer's Broker or Selling Agent** - The real estate agent representing the buyer rather than listing the property. The listing and selling agent may be the same person or company.

**Listing Agent** - The real estate agent who obtains the listing, as opposed to the selling agent.

**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.

- In Virginia, a licensee may represent both parties in the same real estate transaction seller and buyer or landlord and tenant only with the written consent of all clients in the transaction. The client's signature on the written disclosure form is presumptive evidence of the brokerage relationship.
- A dual representative does not terminate any brokerage relationship by making the required disclosures of dual representation. [§54.1-2139C] A licensee may withdraw from representing a client who refuses to consent to disclosed dual agency. The licensee may withdraw under such circumstances without liability and may continue to represent the other client. Further, the licensee may continue to represent in other transactions the client who refused dual representation. [§54.1-2139D]

**Designated Agent or Designated Representative** - 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.

- A principal or supervising broker may assign different affiliated licensees as *designated representatives* to represent different clients in the same transaction. The appointment of designated representatives excludes other licensees in the firm from involvement in the transaction. *The use of designated representatives does not constitute dual representation if each designee represents only one client in a particular real estate transaction.* [§54.1-2139E]
- The designated representatives are pledged to maintain all confidential information received from their clients. Such information may be shared with the principal or supervising broker who remains in the position of a dual representative with equal responsibilities to both clients. The disclosure must be made in writing.

## Brokerage Disclosures

Virginia agency law requires full disclosure of any existing brokerage relationships. It is essential that the party to the transaction who is not the client of the licensee, and who is not represented by another licensee clearly understands that the licensee represents only his or her client. Although the licensee is required to treat a customer honestly and to disclose any material adverse facts about the physical condition of the property, the agent's primary responsibility is to protect and promote the best interest of his or her client.

At the time of the first substantive discussion about a specific property with an actual or prospective buyer, seller, landlord, or tenant who is not a client of the licensee and who is not represented by another licensee, a licensee required to disclose any broker relationship he or she has with any other party to the transaction. The disclosure must be made orally no later than the time when specific real estate assistance is first provided and in writing at the earliest practical time for sales transactions and at the time of the application or lease, whichever is first, for rental transactions. Disclosure not required for lease terms of less than two months.

Note: The Disclosure of Brokerage Relationship is only to be signed by the person who is *not* the client. The client will sign either an Exclusive Right to Represent, buyer agency agreement, or an Exclusive Right to Sell, listing agreement. The point of disclosure is for the person who is *not* a client to understand that the licensee represents the other party to the transaction.

If the required disclosure is given in combination with other disclosures or information, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. [§54.1-2139B]

If the licensee's relationship with any party to the transaction changes, all clients and customers involved in the transaction must be informed in writing of the change. Copies of all disclosures must be kept for three years.

### Seller's Disclosures

The Virginia Residential Property Disclosure Act [§55-517 et seq.] requires that sellers disclose all material information about the property being sold or allows the seller to file a disclaimer. The act applies to residential property consisting of one to four units and to sales, options, installment sales, or leases with option-to-buy. The law applies to the sale of most residential property whether or not a real estate professional is involved. If a licensee is involved the disclosure should be obtained when the listing is taken. The disclosure must be made *prior* to acceptance of an offer. If the

disclosure is not made *prior* to acceptance, the purchaser will have specified rights to terminate the contract.

Sellers must disclose certain known information about the property. The information includes:

- The property's age and physical condition, structural defects, termites, environmental hazards and land use issues;
- The type of water and sewage, plumbing, electrical, heating, ventilation, and air conditioning (HVAC systems);
- The type of insulation, roof condition and material;
- Notification of the purchaser's responsibility to obtain information on registered sexual offenders.
- Subsequent to the delivery of the disclosure statement to the buyer, the owner is required to disclose any material changes or certify to the buyer that the property is substantially the same as when the disclosure was provided. [§55-522].