

Principles of Real Estate Virginia Law: I

Overview



Virginia Law: Licensing

Part I: General

The Commonwealth of Virginia has established, as an exercise of the police power of the state, the Virginia real estate license law as it relates to real estate brokers and salespeople.

The purpose of the law and the Virginia Real Estate Board is to protect the public interest against fraud, misrepresentation, dishonesty, and incompetence in real estate transactions.

Under Virginia law, real estate includes condominiums, leaseholds, timesharing, and any other interest in real property. Cooperative apartments are also included, even though the shares held by members of the co-op are considered personal property.



A real estate licensee is governed by real estate state law, federal laws and real estate regulations. Throughout this section we will reference all of these laws.

NOTE: Do not confuse the board with the Virginia Association of REALTORS®, National Association of REALTORS®, or the local association of REALTORS®.

Part I: The Real Estate Board

The board is composed of nine members, seven of whom must have been licensed real estate brokers or salespeople for at least the past five consecutive years, and two citizen members. For implementation purposes, one licensee and one citizen were appointed effective July 1, 1994.

Appointments are made by the governor for terms of four years. A member may be reappointed for one additional four-year term.

Members of the board select the chairperson.

The board has the authority to do the following:

- **Issue and renew real estate licenses**
- **Suspend, revoke, or deny renewal of licenses**
- **Determine license fees**
- **Levy fines for violations of license law or rules and regulations**

In addition, the board is charged with the responsibility of administering:

- **The Virginia Fair Housing Act**
- **The Virginia Real Estate Transaction Recovery Fund**

The board does not do the following:

- **Arbitrate disputes between salespeople and brokers**
- **Arbitrate disputes between brokers**
- **Establish commission rates or commission splits**
- **Standardize listing agreements, sales contracts, or any other forms used in the industry**

Part I: Licensure



Under [54.1-2107](#) any **single act for compensation of buying or selling** real estate of or for another, or offering for another to buy or sell or exchange real estate, or **leasing, or renting**, or offering to rent real estate, except as specifically excepted in [54.1-2103](#), **constitutes** the person, firm, partnership, co-partnership, association, or corporation **acting as a real estate broker or real estate salesperson**.

The departments of Professional and Occupational Regulation (DPOR) and Health Professions (DHP) have the authority to enforce the licensure and regulatory provisions of [Title 54.1](#) through instituting proceeds in general district courts or circuit courts to recover civil penalties. The bill provides that the civil penalty must be at least \$200 but no more than \$1,000 per violation, with each unlawful act constituting a separate violation.

In no event can the civil penalties against any one person, partnership, corporation or other entity exceed \$10,000 per year.

Part I: Exemptions

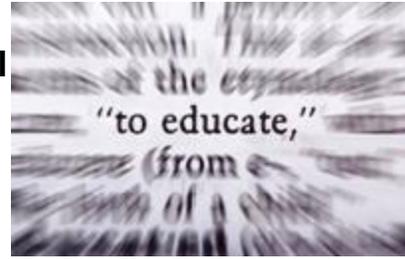
The following people and business operations are not required to have real estate licenses:

- **Owners, lessors, and their employees dealing with their own property.**
- **People acting as attorneys-in-fact under a power-of-attorney** for final consummation of contracts for sale, lease, or exchange of real estate **without compensation.**
- Attorneys-at-law in the performance of duties that include the sale of real estate condemnation proceedings, etc.
- Receivers, trustees in bankruptcy, administrators, executors or other people acting under order of any court.
- Trustees acting under trust agreements, deeds of trust or wills, or their regular salaried employees.
- Corporations managing rental housing when officers, directors, and members in the ownership corporation manages no other property for others.
- **Auctioneers in selling real estate at public auction when employed by the owner.** An auctioneer cannot advertise that he or she is authorized to sell real estate.
- **Salaried people employed by licensed brokers who only show units for rent and are employed on the premises only to manage the property.** Those people **cannot** negotiate rents, security deposits or leases, and all money collected must be payable to the broker or owner.
- A landlord's current tenant can receive a referral fee if the current tenant finds a tenant to occupy another vacant unit owned by the tenant's landlord.

Part I: Terminology

The following definitions apply in terms of licensing regulations:

- **"Active"** means any broker or salesperson who is under the supervision of a principal or supervising broker of a firm or sole proprietor and who is performing those activities defined in [54.1-2100](#) and [54.1-2101](#) of the Code of Virginia.
- **"Actively engaged"** means active licensure with a licensed real estate firm or sole proprietorship in performing activities defined in [54.1-2100](#) and [54.1-2101](#) for an average of at least 40 hours per week. This requirement may be waived at the discretion of the board in accordance with [54.1-2105](#).
- **"Actively engaged in the brokerage business"** means anyone who holds an active real estate license.
- **"Associate broker"** means any individual licensee holding a broker's license other than one who has been designated as the principal broker.
- **"Firm"** means any sole proprietorship (non-broker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker-owned), which is required by [18 VAC 135-20-20 B](#) to obtain a separate brokerage firm license. The firm's licensed name may be any assumed or fictitious name properly filed with the board.
- **"Inactive status"** refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not active with a firm or sole proprietorship and who is not performing any of the activities defined in [54.1-2100](#) and [54.1-2101](#).
- **"Principal broker"** means the individual broker designated by each firm to assure compliance with [Title 54.1](#) 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 will have the responsibilities of the principal broker. The principal broker has the responsibility for the activities of the firm and all its licensees.

- **"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.
- **"Real estate salesperson"** means any person, or business entity of not more than two people 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.

- "Supervising broker" means:
 - The individual broker designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespeople assigned to branch offices.

Part II: Getting A License

Once a license applicant has met all the requirements and has taken the examination, the testing service will notify that person whether he or she has passed the exam.

- If an applicant is affiliated with a broker, the broker must certify the application. When the board has approved the application, a license will be issued and sent to the broker, and the licensee is considered to have active status.
- If an applicant is not affiliated with a broker, he or she may apply for inactive status. Although the person has a license, he or she may not engage in acts of brokerage or earn any compensation, including referral fees, during the period that his or her license is in inactive status. If inactive, the license remains with the board.



All initial applications for licensure must be made within 12 months of examination date. Failure to apply within this time will require that the exam be retaken.

All individual licenses hang in the main office under the custody and control of the principal broker. Those assigned to a branch office may never actually see their own license.

Part II: Necessity for License

The need for licensure is addressed by [18 VAC 135-20-20](#). Those guidelines include:

- **Sole proprietor (principal broker owner):** A real estate broker's license is issued to an individual trading under an assumed or fictitious name, only after the individual signs and acknowledges a certificate provided by the board that establishes the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business.

Each certificate must be attested by the clerk of court of the county or jurisdiction wherein the business is to be conducted.



- **Sole proprietor (non-broker owner), partnership, association, limited liability company, or corporation:** Every sole proprietor (non-broker owner), partnership, association, limited liability company, or corporation **must secure a real estate license for its firm before transacting real estate business.**

This license is separate and distinct from the individual broker license required of each partner, associate, manager of a limited liability company, and officer of a corporation who is active in the firm's brokerage business. The license will be issued in the name under which the applicant intends to do or does business. Each applicant must also disclose the business address of the firm. The board will consider the application of any partnership, association, corporation or limited liability company only after the entity is authorized to conduct business in accordance with [59.1-69 through 59.1-76](#).

- **Branch office license:** If a real estate broker maintains more than one place of business within the state, a branch office license must be issued for each place of business.

The license must reveal the name of the firm, the location of the branch

office, and the name of the supervising broker for that branch office. The branch office license must be maintained at the branch office location. The branch office license and a roster of every salesperson or broker assigned to the branch office must be available to the public in each branch office

Part II: One Principal

There is only one principal broker for each firm regardless of the number of agents affiliated with that firm or the number of offices the firm operates.

Only the principal broker or an associate broker may be designated to manage an office.



Part II: Licenses Required



Guidelines under [54.1-2106.1](#) direct that **no business entity, other than a sole proprietorship, can act, offer to act, or advertise to act, as a real estate firm without a license.**

No business entity will be granted a firm license unless:

- **Every *managing member of a limited liability company* or officer of a corporation who actively participates in the firm brokerage business holds a license as a real estate broker**

- **Every employee or independent contractor who acts as a salesperson for such business entity holds a license as a real estate salesperson or broker.**

An individual holding a broker's license may operate a real estate brokerage firm which he owns as a sole proprietorship without any further licensure by the board, although that individual cannot operate under a fictitious name. A non-broker-owned sole proprietorship must obtain a license.

Also:

- **No individual can act as a broker without a real estate broker's license.** An individual who holds a broker's license can act as a salesperson for another broker.
- **No individual can act as a salesperson without a salesperson's license.** A business entity may act as a salesperson with a separate business entity salesperson's license

No business entity shall be granted a business entity salesperson's license unless every owner or officer who actively participates in the brokerage business holds a license as a salesperson or broker.

Part II: Qualifications for Licensure

Every applicant for an individual salesperson's or broker's license must have the following qualifications:

- The applicant must have a **good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.**
- The applicant **must meet the current educational requirements** by achieving a passing grade in all required courses of [54.1-2105](#) prior to the time the applicant sits for the licensing examination and applies for licensure.
- The applicant must be **in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant cannot have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action.**

- The applicant **must be at least 18 years old**
- The applicant **must have a high school diploma or its equivalent**
- The applicant, **within 12 months prior to making complete application for a license, must have passed a written examination provided by the board or by a testing service acting on behalf of the board.** The board will require proof of identity prior to an applicant taking the state examination.
- The applicant **must follow all procedures established with regard to conduct at the examination.** Failure to comply with all procedures established with regard to conduct at the examination may be grounds for denial of application.

Applicants for licensure who do not meet the requirements may be approved for licensure following consideration by the board.

Part II: Applicant Disclosure

Each applicant for licensure must **disclose**:

- **All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application.**
- **All felony convictions during his lifetime.** Any plea of **nolo contendere** is considered a conviction. The record of a conviction received from a court is accepted as **prima facie** evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with [54.1-204](#).

Part II: Additional Requirements for Brokers

An applicant for an individual license as a real estate broker must also meet the following requirements:

- The applicant must meet the current educational requirements of [54.1-2105](#).
- The applicant must have been actively engaged as a real estate salesperson for a period of 36 of the 48 months immediately preceding application. This requirement may be waived at the discretion of the board in accordance with [54.1-2105](#).

Part II: Concurrent Licenses

Concurrent licenses can be issued by the board to brokers active in more than one firm after the board receives a concurrent license form and written statements verifying the applicant's concurrent licensure status has been provided to the principal broker of each firm with which the applicant is and will be associated. Payment is required for each license.

A concurrent license will not be issued to an individual applying to be associated with a firm if that individual has an expired license associated with the same firm and the expired license may be reinstated.

Part II: Licensure by Reciprocity

An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:



- The applicant must be **at least 18 years of age**.
- The applicant must **have a high school diploma or its equivalent**.
- The applicant must have received the salesperson or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.
- The applicant must sign a statement verifying that he has read and understands the provisions of [Title 54.1](#).
- The applicant must follow all procedures established with regard to conduct at the examination.
- The applicant must be in **good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed** and the applicant cannot have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action.
- At the time of application for a salesperson's license, the applicant must have been actively engaged for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have been actively engaged for 36 of the

- preceding 48 months.
- The applicant **must have a good reputation** for honesty, truthfulness, and fair dealing; and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

All disclosures concerning felony and misdemeanor charges must also be made.

Part II: Activation or Transfer of License

Any inactive licensee may activate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board. Continuing education pursuant to [54.1-2105](#) must be completed within two years prior to activation of a license.

Any licensee who has not been active with a licensed real estate firm or sole proprietorship for a period of greater than three years will be required to meet the existing pre-license educational requirements.



Any licensee may transfer from one licensed real estate firm or sole proprietorship to another by completing and submitting to the board a transfer application and the fee.

Part II: Application Fees

All application fees for licenses are nonrefundable and the **date of receipt by the board or its agent is the date which will be used to determine whether it is on time.**

Application fees are as follows:

Salesperson by education and examination	\$150.00 Fee)
Salesperson by reciprocity	\$150.00 Fee)
Business Entity Add –On Application	no fee
Business Entity Individual License Application	\$210.00
Business Entity Transfer Application	\$60.00
Associate Broker, Principle Broker, Sole Proprietor by education and examination	\$210.00
Associate Broker, Principle Broker, Sole Proprietor by reciprocity	\$210.00
Broker concurrent license	\$140.00
Firm license	\$270.00
Branch office license	\$190.00
Transfer application	\$60.00
Activate application	\$60.00
Upgrade to Broker Application	\$85.00

Part III: Renewal of License

Licenses issued for salespeople, brokers, and firms expire biennially two years from the last day of the month in which they were issued.

The exception is concurrent broker licenses, which expire on the same date as the original broker license.



Part III: Renewal Requirements

Post-licensing education and continuing education are technically two different requirements.

- **Post licensing education must be completed regardless of whether the person is inactive or active** in order to renew the license.
- **Continuing education is not required to be completed if your license is inactive in order for you to renew your license.** You must complete continuing education if you are active or want to become active.



The 30 hours of post licensing must be completed within one year of licensure regardless of whether the license is active or inactive

Active licensees who are called to duty in the armed forces may complete these courses within six months of their release from active duty.

Part III: Qualifications of Renewal

Salespeople will need the following to meet the continuing education requirements:

- **A minimum of three hours of ethics**
- **Two hours of fair housing**
- **One hour of legal updates**
- **One hour of agency**
- **One hour of contracts**
- **Plus eight hours of elective credits**

Salespeople holding licenses in other jurisdictions must complete eight hours, including fair housing laws, state real estate laws and regulations, ethics and standards of conduct, agency and contracts and may substitute education completed in their



jurisdiction for the remaining hours.

Brokers will need **24 hours** to include:

- **A minimum of three hours of ethics**
- **Two hours of fair housing**
- **One hour of legal updates**
- **One hour of agency**
- **One hour of contracts**
- **Eight hours** of elective credits
- **Eight hours of courses relating to supervision and management of real estate agents and the management of real estate brokerage firms as are approved by the board.**

Brokers holding licenses in other jurisdictions must complete 16 hours. Those hours must include supervision and management of real estate agents and the management of real estate brokerage firms, fair housing laws, state real estate laws and regulations, ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours.

Part III: Additional Qualifications

In addition to the requirements set forth in [18 VAC 135-20-100](#), all licensees, including those licensees who upgrade to broker prior to renewal and those who obtained their license by reciprocity in accordance with [18 VAC 135-20-60](#) **must pass a written examination provided by the board or a testing service acting on behalf of the board within two years after initial licensure prior to renewal.**

Part III: Procedures for Renewal

Prior to the expiration date shown on the license, each licensee who wants to renew his or her license shall return to the board the renewal application forms and the appropriate fee.

Failure to receive notices from the board regarding license renewal does not relieve the licensee of the obligation to renew.

Part III: Fees for Renewal



All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date which will be used to determine whether it is on time.

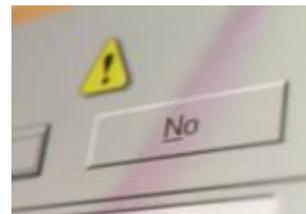
Renewal fees are as follows:

- **Salesperson - \$65**
- **Business Entity - \$90**
- **Broker/Sole Proprietor - \$90**
- **Concurrent Broker - \$80**
- **Firm - \$160**
- **Branch - \$90**

Part III: Denying Approval

The board may deny renewal of a license for:

- **The same reasons as it may refuse initial licensure or discipline a current licensee**
- **Failure to meet the terms of an agreement for licensure or other board order**
- **Failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest.**



Part IV: Reinstatement



All applicants for reinstatement must meet all requirements in [18 VAC 135-20-100](#).

Applicants for reinstatement of an active license must have completed the continuing education requirement in order to reinstate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a reinstatement fee is required as follows:

- **Salesperson - \$100**
- **Salesperson of association broker licensed as a business entity - \$135**
- **Broker - \$120**
- **Concurrent Broker - \$120**
- **Firm - \$245**
- **Branch Office - \$135**

*A licensee may not practice real estate business while his or her license has expired. **If the licensee does not reinstate their license within one year from expiration, the licensee will lose his or her license.** Any real estate activity conducted during this 30-day period constitutes unlicensed activity.*

Part IV: Denying Reinstatement

The board may deny reinstatement of a license for:

- **The same reasons as it may refuse initial licensure or discipline a current licensee**
- **Failure to meet the terms of an agreement for licensure or other board order**
- **Failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest**

Part V: Standards Practice and Conduct



This section will outline the Virginia regulations surrounding maintenance of escrow accounts and licenses, and rules involving advertising and conduct.

Part V: Grounds for Disciplinary Action

According to [18 VAC 135-20-155](#), the Virgin Real Estate Board has the power to fine any licensee, and to suspend or revoke any license issued under the provisions of [Chapter 21 \(54.1-2100 et seq.\)](#) of Title 54.1 of the Code of Virginia, for instances in which the licensee has been found to have violated or cooperated with others in violating any provision of [Chapter 21 \(54.1-2100 et seq.\)](#) of Title 54.1 of the Code of Virginia, [Chapter 1.3 \(6.1-2.19 et seq.\)](#) of Title 6.1 of the Code of Virginia or any regulation of the board.

Any licensee failing to comply with the provisions of [Chapter 21 \(54.1-2100 et seq.\)](#) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by [54.1-2100](#) and [54.1-2101](#) of the Code of Virginia may be charged with improper dealings, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

Part V: Place of Business

Through [18 VAC 135-20-160](#), and [54.1-2110](#) of the code a place of business is considered an office where:

- **The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts business**
- The principal broker and his employees or associates can receive or direct business



Regulations dictate that no place of business be located in a residence, unless it is separate from the living quarters and accessible to the public.

Part V: At the Main Office

The main office of a firm must be **supervised by a supervising broker** and have certain items available to the public. Those include:

- **The firm license**
- **The principal broker license**
- **The license of every salesperson and broker active with the firm**

Part V: Branch Offices

Main offices differ from branch offices in terms of the items that must be available, and the supervision required.

Branch offices must have the license and a roster of every salesperson or broker assigned to that office posted in a conspicuous place and available to the public.

Each branch office must also be supervised by a supervising broker. The supervising broker must "exercise reasonable and adequate supervision" of those in that particular office; but he or she can designate another broker to assist.

Whether the supervision is "reasonable and adequate" is defined by regulations as including the following factors:

- The supervising broker must be available to all licensees to review and discuss contract provisions and approve all documents
- The availability of training and written procedures and policies. Those procedures and policies include clear guidance on:
 - Proper handling of escrow deposits
 - Compliance with federal and state fair housing laws and regulations
 - Advertising;
 - Negotiating and drafting of contracts and agreements
 - Use of unlicensed individuals and
 - Agency relationships;
- The supervising broker must also be available in a timely manner to supervise the management of the brokerage services in accordance with [Chapter 21 \(54.1-2100 et seq.\) of Title 54.1 of the Code of Virginia](#)

The supervising broker must maintain the records required by Virginia law for three years.

Part V: Maintenance of Licenses

[18VAC135-20-170](#) deals with maintenance of licenses. Under that regulation:

- **Salespeople and individual brokers must keep the board informed of their current name and home address. Any change of name or**

address must be reported to the board in writing within 30 calendar days of that change.

A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use. **The professional name must include the licensee's first or last name and cannot include any titles.**

- **A license will be issued to salespeople and brokers only to the place of business with which the salesperson or broker is active.**
- **Principal brokers keep the board informed of their current firm and branch office name and addresses and changes of name and address must be reported to the board in writing within 30 calendar days of the change.** A physical address is required. A post office box will not be accepted.

Part V: Discharge or Termination of Active Status

In terms of terminations:

- **When any salesperson or broker is discharged or in any way terminates his active status with a sole proprietorship or firm, the sole proprietor or principal broker must return the license by certified mail to the board within 10 calendar days of the date of termination or status change.** The sole proprietor or principal broker must indicate on the license the date of termination.
- **When any principal broker is discharged or in any way terminates his active status with a firm, the firm must notify the board and return the license by certified mail to the board within three business days of termination or status change.** The firm shall indicate on the license the date of termination.

[See 54.1-2109 of the Code of Virginia for termination relating to the death or disability of the principal broker.](#)

Part V: Maintenance of Escrow Accounts



The maintenance and management of escrow accounts is covered by [18 VAC 135-20-180](#).

Under that regulation:

- **If money is held in escrow, each firm or sole proprietorship must maintain it in one or more federally insured separate escrow accounts.** The account must be in the firm's name and will hold all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses, and money advanced by the broker's client or expended on behalf of the client.
- **The balance in the escrow accounts must be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship.**

The principal broker is responsible for these accounts, as is the supervising broker and any other licensee with escrow account authority

- **All money in the escrow accounts, checks and bank statements must be labeled "escrow" and designated as such**
- **Funds deposited in the escrow account may include money that may ultimately belong to the licensee, but that money must be separately identified in the escrow account records and paid to the firm by a check drawn on the escrow account when**

the funds become due to the licensee.

Funds in an escrow account cannot be paid directly to the licensees of the firm.

- **If escrow funds are used to purchase a certificate of deposit, the "pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling."**

Part V: Disbursement from Escrow Accounts: Purchase Transactions

Disbursements from escrow accounts are broken down into lease transactions and purchase transactions under [18 VAC 135-20-180](#).

In terms of purchase transactions:

- **Earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification of a contract.** The exception to this is if there is agreement in writing by the parties to the transaction.

The money must remain in escrow account until the transaction has been consummated or terminated.

In the event the transaction is not consummated, the funds must be held in escrow until one of the following occurs:

- **all principals to the transaction have agreed in writing as to the disposition**
- **a court of competent jurisdiction orders a disbursement of the funds**
- **The broker can pay the funds to the principal who is entitled to receive them in accordance with the "clear and explicit terms of the contract."** Under this scenario, **written notice must be given to the principal to the transaction who did not to receive the deposit.**

Part V: Disbursement from Escrow Accounts: Lease Transactions

Lease transactions covered under the regulation include items involving security deposits and rent.

Included in the regulations are:

- **Security deposits. Any security deposit held must be placed in an escrow account by the end of the fifth business banking day following receipt**, unless otherwise agreed to in writing by the principals to the transaction.
- **Each security deposit must be treated in accordance with the security deposit provisions of the [Virginia Residential Landlord and Tenant Act](#).**

Unless the landlord has become entitled to receive the security deposit or a portion thereof, the security deposit cannot be removed from an escrow account required by the lease without the written consent of the tenant.

In terms of rents or escrow fund advances:

- **Unless otherwise agreed in writing by all principals to the transaction, all rents and other money paid to the licensee in connection with the lease must be placed in an escrow account by the end of the fifth business banking day following receipt**, unless otherwise agreed to in writing by the principals to the transaction, and remain in that account until paid in accordance with the terms of the lease or the property management agreement.

Unless otherwise agreed in writing by the principals to the lease or property management agreement, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable.

Other provisions include:

- On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.
- A licensee cannot disburse money from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

Part V: Disbursement from Escrow Accounts: Improper Maintenance

Under the regulations, improper maintenance of escrow funds includes any of the following:

- **Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable**, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;
- **Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;**
- **Failure to deposit escrow funds in an account or accounts**
- **Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship; and**
- **Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee has caused noncompliance.**

Part V: Maintenance and Management of Financial Records

[18 VAC 135-20-185](#) covers maintenance and management of financial records. According to those provisions:

- **A complete record of financial transactions must be maintained in the principal broker's place of business, or in a designated branch office. When the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia, a copy of these records shall be maintained in the Virginia office.**

The records must show: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.

Part V: Management of Financial Records: Improper Record Keeping

Improper record keeping under the regulations include:

- **Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification a complete and legible copy of each disclosure of a brokerage relationship, and each executed contract, agreement, and closing statement related to a real estate transaction**
- **Having received money on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing or termination.**
- **Failing, within a reasonable time, to account for or to remit any money coming into a licensee's possession which belongs to others**

Part V: Advertising by Licensees

[18 VAC 135-20-190](#) covers advertising by licensees, and much of its substance involves how terms are defined:

For example:

- **Advertising** means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real

estate activity.

- **Institutional advertising** means advertising in which no real property is identified.
- **Viewable page** is a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

All advertising must be under the direct supervision of the principal broker or supervising broker, in the name of the firm and, when applicable, comply with the disclosure required by [54.1-2138.1 of the Code of Virginia](#).

Part V: Disclosure in Advertising

Regardless of the form, the firm's licensed name must be clearly and legibly displayed on all advertising.

Disclosure, itself, is separated into **online advertising and all other advertising**. Those provisions include:

- **Online advertising in the firm's name** must provide disclosure through the **firm's licensed name, the city and state in which the firm's main office is located and the jurisdiction in which the firm holds a license**.
- **Online advertising that includes the licensee's name** must contain the **licensee name, the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license**.
- For **other advertising**, disclosure includes:
 - **Advertising by the firm** must include the **firm's licensed name and the firm's address**
 - Advertising by an **affiliated licensee** must include the **licensee's name, the name of the firm with which the licensee is active and the firm's address**.

Part V: Online Advertising

The regulations define the types of disclosure required by the various forms of online advertising.

All online advertising that can be viewed or experienced as a separate

unit must contain disclosure as follows:

- **The web.** If a firm or licensee owns a Web page or controls its content, the viewable page **must include disclosure or a link to disclosure.**
- **E-mail, newsgroups, discussion lists, bulletin boards.** All such formats shall include **disclosure at the beginning or end of each message.**
- **Instant messages.** Disclosure is not necessary in this format if the firm or licensee provided the disclosures via another format prior to providing, or offering to provide, licensed services.
- **Chat/Internet-based dialogue.** Disclosure is required prior to providing, or offering to provide, licensable services during the chat session, or in text visible on the same Web page that contains the chat session if the licensee controls the Web site hosting the chat session.
- **Voice Over Net.** Disclosure is required prior to advertising or the disclosure text must be visible on the same Web page that contains the VON session.
- **Banner ads.** A link to disclosure is required unless the banner ad contains the disclosure.

Part V: Online Advertising and Updates

All online listings advertised must be kept current and consistent as follows:

- **Online listing information must be consistent with the property description and actual status of the listing.** The licensee must **update material changes** to the listing status or property description in a timely manner when the licensee controls the online site.
- **When a third-party controls the Web site,** the licensee must **make written requests for updates reflecting material changes to the listing status or property descriptions in a timely manner**
- **All listing information must indicate in a readily visible manner the date that the listing information shown was last updated.**

Part V: Advertising-Prohibited Activities

Prohibited activities involving advertising include:

- **Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person;**
- **Failing to include a notice in all advertising that the owner is a real estate licensee** if the licensee owns or has any ownership interest in the property advertised and is not using the services of a licensed real estate entity;
- **Failing to include the firm's licensed name** on any sign displayed outside each place of business;
- **Failing to obtain the written consent of the seller, landlord, optionor or licensor** prior to advertising a specific identifiable property; and
- **Failing to identify the type of services offered** when advertising by general description a property not listed by the party making the advertisement.

Part V: Disclosure of Interest

Disclosure of interest is covered by [18 VAC 135-20-210](#), and includes the following:

- **"If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property ... the licensee must disclose that information to the owner, purchaser or lessee in writing."**

The disclosure must be made **upon having substantive discussions** about specific property.

Part V: Disclosure of Brokerage Relationships: Purchase Transactions

Disclosure of brokerage relationships is covered by [18 VAC 135-20-220](#) and is

divided into **purchase and lease transactions.**

In terms of purchase transactions.

- Unless disclosure has been previously made by a licensee, **a licensee must disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents** in a brokerage relationship, as that term is defined in [54.1-2130 of the Code of Virginia](#).
- The **disclosure must be made in writing at the earliest practical time**, but in no event later than when specific real estate assistance is first provided. Any disclosure complying with the provisions of [54.1-2138 A of the Code of Virginia](#) shall be deemed in compliance.
- **A licensee acting as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time.** Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of [54.1-2139 of the Code of Virginia](#). Such disclosure shall be given to, and consent obtained from:
 - The buyer not later than the time an offer to purchase is presented
 - the seller not later than the time the offer to purchase is presented to the seller.

Any disclosure may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by [54.1-2138 of the Code of Virginia](#).

Part V: Disclosure: Lease Transactions

In terms of lease transactions:

- **A licensee must 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 the application for lease or the lease itself, whichever occurs first. If the

terms of the lease do not provide for such disclosure, the disclosure must be made in writing not later than the signing of the lease.

This disclosure requirement does not apply to lessors or lessees in single or multi-family residential units for lease terms of less than two months.

Part V: Provision of Records and Responses to the Board

Unless otherwise specified by the board, or in [54.1-2108 of the Code of Virginia](#), a licensee must produce to the board or any of its agents any document, book, or record concerning any real estate transaction in which the licensee was involved within 10 days of the request.



The board may extend that time frame if "extenuating circumstances" prohibit delivery within the 10-day period.

If an inquiry is not covered by the 10-day regulation, a licensee must respond to that inquiry by the board within 21 days.

Part V: Unworthiness and Incompetence

[18 VAC 135-20-260](#) lists the actions that constitute **unworthiness and incompetence**.



Those actions include:

- **Obtaining a license by false or fraudulent representation;**
- **Holding more than one license as a real estate broker or salesperson in Virginia**
- **As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license**
- **As a currently licensed real estate broker, sitting for a real estate licensing examination;**

- **Having been convicted or found guilty of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony with no appeal pending or possible.**
 - Review of convictions shall be subject to the requirements of [54.1-204 of the Code of Virginia](#). Any plea of **nolo contendere** shall be considered a conviction. The record of a conviction certified or authenticated is admissible as **prima facie** evidence of conviction or guilt;
- **Failing to inform the board in writing within 30 days of pleading guilty** of or being convicted or found guilty of any convictions covered;
- **Having had a license as a real estate broker or real estate salesperson that was suspended, revoked, or surrendered in connection with a disciplinary action, or failing to inform the board in writing within 30 days of a disciplinary action.**
- Having been found in a court or an administrative body to have violated the [Virginia Fair Housing Act](#), or the fair housing laws of any jurisdiction of the United States.
- **Failing to safeguard the interests of the public;** and
- **Engaging in improper, fraudulent, or dishonest conduct.**

Part V: Conflict of Interest

Conflict of interest is covered in [18 VAC 135-20-270](#) and includes.

- **Being active or receiving compensation from a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;**
- **Acting for more than one client in a transaction** governed by the provisions of [54.1-2139 of the Code of Virginia](#) **without first obtaining the written consent of all clients;**
- Acting as a standard agent or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).

Part V: Improper Brokerage Commission

[18 VAC 135-20-280](#) involves improper brokerage commission and includes:

- **Offering to pay or paying a commission or other valuable consideration to any person for acts or services performed in violation**

Of [Chapter 21 \(54.1-2100 et seq.\)](#) of Title 54.1 of the Code of Virginia.

However, **referral fees and shared commissions may be paid to any real estate entity licensed in any jurisdiction or any referral entity in the United States**

- **Accepting a commission or other valuable consideration from any person except the licensee's principal broker at the time of the transaction**, for the performance of any of the acts specified in [Chapter 21 \(54.1-2100 et seq.\)](#) of Title 54.1 of the Code of Virginia or the regulations of the board or related to any real estate transaction, without the consent of that broker.
- Unless he has obtained the prior written consent of the principal broker, no salesperson or associate broker can:
 - **use any information about the property, the transaction or the parties to the transaction, gained as a result of the performance of acts** specified in [Chapter 21 \(54.1-2100 et seq.\)](#) of Title 54.1 of the Code of Virginia OR
 - **act as an employee of a company providing real estate settlement services** as defined in the [Real Estate Settlement Procedures Act](#)
- **Receiving a fee for services required by the terms of the real estate contract when such costs are to be paid by either one or more principals to the transaction** unless it is revealed in writing to the principal(s) prior to ordering or contracting for the services;
- **Offering or paying any money or other valuable consideration for services to any party other than the principals to a transaction** without revealing it in writing to the principal(s) prior to the time of ordering or contracting for the services;
- Making a listing contract or lease that provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor; and
- Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's client for expenditures made on behalf of that client without the written consent of the client.

Part V: Improper Dealing

Improper dealing is covered by [18 VAC 135-20-290](#) and involves:

- **Entering a brokerage relationship that does not specify** or provide a mechanism for determining **a definite termination date; Or IS NOT** terminable by the client;
- **Offering real property for sale or for lease without the knowledge and consent of the owner** or on any terms other than those authorized by the owner
- **Placing a sign on any property without the consent of the owner**
- **Advertising for sale, rent, or lease without including in the advertisement the name of the firm or sole proprietorship.**

Part V: Misrepresentation/Omission

Misrepresentation and omission are covered in [18 VAC 135-20-300](#) and includes the following actions:

- **Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised**
- **Failure by a licensee representing a seller or landlord to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;**
- **Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;**
- **Failure by a licensee acting as a standard agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;**
- **A licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential**

information relating to the transaction obtained during the representation of another client in the same dual representation;

- **Failing to include the complete terms and conditions of the real estate transaction**
- Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;
- **Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security**
- **Knowingly making any material misrepresentation**
- **Making a false promise** through agents, salespeople, advertising, or other means.

Part V: Improper Delivery

Improper delivery of instruments includes:

- **Failing to make prompt delivery to each principal to a transaction, complete and legible copies of any written disclosures** required by [54.1-2138](#) and [54.1-2139](#) of the Code of Virginia, listings, leases, offers to purchase, counteroffers, addenda, ratified agreements, and other documentation required by the agreement;
- Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;
- **Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of money received by the licensee**
- **Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument**

Part V: Broker's Responsibility for Employee Actions

Principal and supervising broker's responsibility for acts of licensees and employees provides that any unlawful act or violation of any of the provisions of [Chapter 21, \(54.1-2100 et seq.\)](#) of Title 54.1 or of [Chapter 5.1 \(36-96.1 et seq.\)](#) of Title 36 of the Code of Virginia or of the regulations of the board by any real estate salesperson, employee, partner or affiliate of a principal broker, supervising broker or both, may not be cause for disciplinary



action against the principal broker, supervising broker, or both, unless it appears to the satisfaction of the board that the principal broker, supervising broker, or both, knew or should have known of the unlawful act or violation and failed to take reasonable action under the circumstances to remedy the situation.

Part V: Disciplinary Action

Action by the board resulting in the revocation, suspension, or denial of renewal of the license of any principal broker or sole proprietor shall automatically result in an order that the licenses of any and all individuals active with the affected firm be returned to the board until such time as they are reissued upon the written request of a sole proprietor or principal broker.

Part V: Disciplinary Action and Concurrent Licenses

The board shall **suspend, revoke or deny renewal of existing concurrent broker licenses when the board suspends, revokes or denies renewal of another broker's license held by the same individual.**

Part V: Complaint Procedure

Upon receipt of a complaint, the board will investigate. The board can also investigate any licensee on its own motion, even if no complaint has been received. Those with a complaint against a licensee involving possible violation of licensure law may file such complaint with the board. Only those complaints within the scope of board authority will be investigated. Other matters will be referred to the proper regulatory agency

The licensee named in the complaint is notified by the board as soon as possible in order for him or her to respond. The principal broker of the licensee is also notified. The board may convene an informal fact-finding hearing in an attempt to resolve the matter quickly and bring the licensee into compliance with the law or regulation, or it may request a formal hearing, which will be conducted by a hearing officer appointed by the Virginia Supreme Court.

The licensee has the right to be represented by counsel and bring witnesses to present evidence on his or her behalf. The board may subpoena any

person if it is believed that person's testimony is essential to the case. If the board decides to hold a formal hearing, all proceedings are conducted in accordance with the [Administrative Process Act of the Code of Virginia](#).

If the licensee is found guilty, the board may impose monetary penalties of up to \$1,000 per violation and may suspend, revoke, or deny renewal of the person's license. Since the board is not a court of law, decisions of the board can be appealed to a court of competent jurisdiction within 30 days.

There are two instances in which disciplinary action will result in automatic license suspension or revocation:

- Any licensee **who does not pay the assessment, within the specified time, to the [Transaction Recovery Fund](#) will have his or her license automatically suspended.**
- If a payment is made from the **Transaction Recovery Fund, the license of the licensee named in the complaint will be automatically revoked.**

Part V: Handling Escrow Accounts

In the event the board becomes aware of possible wrongdoing by a broker with regards to the proper handling of an escrow account, the board will request an injunction from a court barring any further activity by the broker with the account until an investigation has been completed.

During the time of the injunction, the board will also request that the court appoint a receiver to take over the handling of the account until such time as the investigation is completed and the broker's guilt or innocence is determined.

If found guilty, the broker is responsible for paying the receiver's fee out of his/her own funds. If unable to pay it, the fee will be paid from the [Transaction Recovery Fund](#) or from funds received by the board, and the broker's license would be immediately revoked.

If the broker is not found guilty, the receiver's fee would be paid by the board. Such payments shall be paid from funds received by the board.

Law I: Notes

When reviewing this section, keep the following in mind:

- **Licenses are either suspended or revoked by the board.** They are not repealed or cancelled.
- **Licenses must be renewed within 30 days after expiration.** If licenses are not renewed within 30 days after expiration, then licenses will lapse if they are not reinstated within 12 months after the expiration date.
- **Valuable consideration is considered to be money, gifts, trips, and meals. This also applies to referral fees or finder's fees in addition to commissions.**
- **Death of a Broker.** If a sole proprietor or the only broker in a firm dies or becomes disabled, the board may authorize an individual **to conclude the business of the broker.** Such appointed individuals may be:
 - An adult member of the broker's family
 - An unlicensed employee of the broker
 - The executor or administrator of the broker's estate

If none of these people are available or acceptable to the board, it may appoint any other suitable person. The person appointed may only act in **such a way as to conclude the business of the broker and may act in this capacity for a period of not longer than 180 days.**

- **Local Governmental Bodies.** Cities, counties, or towns within the may require the licensing, taxation, or regulation of any real estate brokerage business within its jurisdiction. Any requirements of local government authorities would be in addition to those contained in the real estate licensure law and cannot replace or relax any of the statewide statutes.
- **Only brokers, lawyers, title companies and their title agents may conduct closings** in Virginia. All must register with the Virginia State Bar.