

PART I.

GENERAL

18 VAC 135-20-10. Definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

“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 licensed employment by or affiliation as an independent contractor licensure with a licensed real estate firm or sole proprietorship in performing those activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia 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 of the Code of Virginia.

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee, as

defined by § 54.1-2130 of the Code of Virginia.

"Firm" means any sole proprietorship (nonbroker 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 ~~affiliated~~ 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 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means ~~any person, partnership, association, limited liability company, or corporation holding a license issued by the Real Estate Board to act as a real estate broker or real estate salesperson, real estate brokers and salespersons as defined, respectively, in §§ 54.1-2100 and 54.1-2101 et seq.~~ of the Code of Virginia.

"Principal broker" means 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 ~~employed by or affiliated~~ 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. The principal broker shall have responsibility for the activities of the firm and all its licensees.

"Principal to a transaction" means a party to a real estate transaction ~~in the capacity of including without limitation a seller; or buyer, lessee or lessor landlord or tenant, optionor or optionee, licensor or licensee. For the purposes of these regulations, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.~~

"Sole proprietor" means any individual, not a corporation, who is trading under the individual's name, or under an assumed or fictitious name pursuant to the provisions of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

"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 in Article 3 (§54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual ~~associate~~ broker who shall be designated by the firm principal broker to supervise the ~~activities of any one of its provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or~~ (ii) the broker, who may be the principal broker, designated by the principal broker to

supervise a designated agent as stated in § 54.1-2130 of the Code of Virginia.

PART II.

ENTRY

18 VAC 135-20-20. Necessity for license.

Refer to § 54.1-2106.1 of the Code of Virginia.

- A. Sole proprietor (principal broker owner). A real estate broker's license shall not be issued to an individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, ~~until~~ only after the individual signs and acknowledges a certificate provided by the board, setting forth 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 where the business is to be conducted. The attention of all applicants and licensees is directed to §§ 59.1-69 through 59.1-76 of the Code of Virginia.

- B. 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 ~~brokerage~~ 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 business. Application Each applicant for such license shall disclose, and the license shall be issued to, the name under which the applicant intends to do or does business and holds itself out to the public. Each applicant shall 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 of the Code of Virginia. 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 brokerage business.~~

1. ~~Sole proprietor (non-broker owner). Each sole proprietor (non-broker owner) acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of the owner; the name and style of the firm; and the address of the office of the real estate entity. Each change in the information contained on the certificate filed with the board must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

2. ~~Partnership. Each partnership acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of~~

~~each person composing the partnership; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

~~3. Association. Each association acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the association; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the association must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

~~4. Corporation. Each corporation acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each officer of the corporation; the name of each licensed shareholder; the name and style of the corporation; the address of the Virginia office of the firm; and the corporation's place of business.~~

~~a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

~~b. The board will not consider the application of any corporation or its officers, employees, or associates until the corporation is authorized to do business in Virginia.~~

~~5. Limited Liability Company. Each limited liability company acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each licensed manager or member of the company; the name and style of the company; and the address of the Virginia office of the company.~~

~~a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

~~b. The board will not consider the application of any limited liability company or its officers, employees, or associates until the limited liability company is authorized to do business in Virginia.~~

C. Branch office license. If a real estate broker maintains more than one place of business within the state, a branch office license shall be issued for each ~~branch office~~ place of business maintained. Application for the license shall be made on forms provided by the board and shall 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 shall be maintained at the branch office location.

18 VAC 135-20-30. Qualifications for licensure.

Every applicant to the Real Estate Board for an individual salesperson's or broker's license shall have the following qualifications:

1. The applicant shall 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.
2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.
3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not 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 or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
4. The applicant shall not have been convicted or found guilty of any crime directly relating to the practice of real estate, regardless of the manner of adjudication, in any

jurisdiction of the United States ~~of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Except for misdemeanor convictions for being drunk in public, driving under the influence, traffic violations, or any misdemeanor conviction that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia.~~ Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt.

5. The applicant shall be at least 18 years old.
6. The applicant, within 12 months prior to making complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board. ~~Complete applications must be received within the 12-month period.~~
7. The applicant shall follow all rules procedures established ~~by the board~~ with regard

to conduct at the examination. ~~Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination.~~ Failure to comply with all ~~rules~~ procedures established by the board with regard to conduct at the examination ~~shall~~ may be grounds for denial of application.

8. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.

18 VAC 135-20-40. Additional qualifications for brokers.

An applicant for an individual license as a real estate broker shall meet the following requirements in addition to those set forth in 18 VAC 135-20-30:

1. The applicant shall meet the current educational requirements of § 54.1-2105 of the Code of Virginia.
2. The applicant shall have been actively engaged as defined in 18 VAC 135-20-10 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 of the Code of Virginia.

18 VAC 135-20-45. Additional qualifications for salesperson's or associate broker's license as a business entity.

An applicant for a salesperson's license as a business entity shall meet the following requirements in addition to those set forth in 18 VAC 135-20-30:

1. Every owner or officer who actively participates in the real estate business shall hold a license as a salesperson or associate broker. ~~The business entity license does not replace the individual license. More than one licensee may be a participant of the business entity.~~
2. ~~There shall be no restrictions on the name of the business entity when two or more licensees are owners or officers.~~ When one licensee is the owner or officer the business entity shall be named in accordance with § 54.1-2106.1.C of the Code of Virginia.
3. ~~Partnership. Each partnership shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the partnership; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

4. ~~Association. Each association shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the association; the name and style of the firm; the address of the Virginia office of the firm; and the length of time for which it is to continue. Every change in the association must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

5. ~~Corporation. Each corporation shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each officer of the corporation; the name of each licensed shareholder the name and style of the corporation; the address of the Virginia office of the firm; and the corporation's place of business.~~
 - a. ~~Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~

 - b. ~~The board will not consider the application of any partnership, association, corporation or limited liability company or its officers, employees, or associates until only after the corporation entity is authorized to conduct business in Virginia in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia.~~

- ~~6. Limited liability company. Each limited liability company shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each licensed manager or member of the company; the name and style of the company; and the address of the Virginia office of the company.~~
- ~~a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.~~
- ~~b. The board will not consider the application of any limited liability company or its officers, employees, or associates until the limited liability company is authorized to do business in Virginia.~~

18 VAC 135-20-50. Concurrent licenses.

Concurrent licenses shall be issued by the board to brokers active in more than one ~~separate legal entity~~ firm upon receipt of a concurrent license form and written affidavits stating that written notice of 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.

18 VAC 135-20-60. Qualifications for licensure by reciprocity.

~~A. Every applicant to the Real Estate Board for a license by reciprocity shall have the qualifications provided in subsection B of this section, except that subdivision B 6 of this section shall only be applicable for salesperson applicants:~~

~~B. 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:~~

- ~~1. The applicant shall be at least 18 years of age.~~
- ~~2. The applicant shall 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.~~
- ~~3. The applicant, within 12 months prior to making application for a license, shall have passed a written examination provided by the board or a testing service acting on behalf of the board covering Virginia real estate license law and the regulations of the Real Estate Board. Complete applications must be received within the 12-month period sign an affidavit stating that he has read and understands the provisions of this chapter and Title 54.1, Chapter 21, of~~

the Code of Virginia.

4. The applicant shall follow all ~~rules~~ procedures established by ~~the board~~ with regard to conduct at the examination. ~~Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination.~~ Failure to comply with all rules procedures established by the board with regard to conduct at the examination ~~shall~~ may be grounds for denial of application.
5. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not 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 or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia.
6. At the time of application for a salesperson's license, the applicant must have been actively engaged ~~in real estate as defined by 18 VAC 135-20-10~~ 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 as defined by 18 VAC 135-20-10 for 36 of the preceding 48 months.~~

These requirements may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

7. The applicant shall 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.

8. The applicant shall not have been convicted or found guilty of any crime directly relating to the practice of real estate, regardless of the manner of adjudication, in any jurisdiction of the United States ~~of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Except for misdemeanor convictions for being drunk in public, driving under the influence, traffic violations, or any misdemeanor conviction that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior criminal convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia.~~ Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be

admissible as prima facie evidence of such conviction or guilt.

9. Applicants for licensure who do not meet the requirements set forth in subdivisions 5 and 8 of this subsection may be approved for licensure following consideration by the board in accordance with § 54.1-204 of the Code of Virginia.

~~C. Additional qualifications for reciprocal licensure as a broker. An individual who is currently licensed as a real estate broker in another jurisdiction may obtain a Virginia real estate broker's license by meeting the requirement set out in subsection D of this section in addition to those set forth in subdivisions B1 through B 5 and B 7 through B 9 of this section.~~

~~D. The applicant shall have been licensed as a real estate broker and actively engaged as a real estate broker or salesperson for at least 36 of the 48 months immediately prior to making application in Virginia (See 18 VAC 135-20-10 for the definition of "actively engaged.")~~

18 VAC 135-20-70. Activation or transfer of license.

- A. Any inactive licensee may ~~affiliate~~ 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 of the Code of Virginia shall be

completed within two years prior to activation of a license. ~~B.~~ Any licensee who has not been ~~actively licensed~~ active with a licensed real estate firm or sole proprietorship for a period of greater than three years shall be required to meet the ~~existing pre-license~~ educational requirements ~~for a salesperson or broker in effect at the time the license activate form for issuance of such license is filed with the board.~~

B. 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 as set forth in 18 VAC 135-20-80.

18 VAC 135-20-80. Application fees.

A. 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.

B. Application fees are as follows:

Salesperson by education and examination	\$75.00
Salesperson by reciprocity	\$64.00
Individual license <u>Salesperson's or associate broker's license as a</u> business entity	\$75.00
Broker by education and examination.....	\$85.00
Broker by reciprocity	\$85.00

Broker concurrent license	\$65.00
Firm license	\$125.00
Branch office license.....	\$65.00
Transfer application	\$ 35.00
Activate application	\$ 35.00
Bad check penalty	\$ 25.00

- C. The fee for examination or re-examination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed \$90.00 per candidate.

PART III.

RENEWAL OF LICENSE

18 VAC 135-20-90. Renewal Required.

Licenses issued under this chapter for salespersons, brokers, and firms shall expire two years from the last day of the month in which they were issued, as indicated on the license, except concurrent broker licenses which shall expire on the same date as the original broker license.

18 VAC 135-20-100. Qualification for renewal; continuing education requirements.

~~A:~~ As a condition of renewal, and pursuant to § 54.1-2105 of the Code of Virginia, all active brokers and salespersons, resident or non-resident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of eight classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18 VAC 135-20-70, Activation of license).

1. Providers shall be those as defined in 18 VAC 135-20-350.

2. ~~Prior to January 1, 1999, three of the eight required hours shall include training in fair housing laws, state real estate laws and regulations. After January 1, 1999, four~~ Four of the eight required hours shall include training in fair housing laws, state real estate laws and regulations, and ethics and standards of conduct. If the licensee submits a notarized affidavit to the board which certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;
- g. Liens;
- h. Real property and title insurance;
- i. Investment;
- j. Taxes in real estate;
- k. Real estate financing;
- l. Brokerage and agency contract responsibilities;

- m. Real property management;
- n. Search, examination and registration of title;
- o. Title closing;
- p. Appraisal of real property;
- q. Planning subdivision developments and condominiums;
- r. Regulatory statutes;
- s. Housing legislation;
- t. Fair housing;
- u. Real Estate Board regulations;
- v. Land use;
- w. Business law;
- x. Real estate economics;
- y. Real estate investments;
- z. Federal real estate law;
- aa. Commercial real estate;
- bb. Americans With Disabilities Act;
- cc. Environmental issues impacting real estate;
- dd. Building codes and design;
- ee. Local laws and zoning;
- ff. Escrow requirements; ~~and~~
- gg. Ethics and Standards of conduct; ~~and~~
- hh. Common interest ownership.

3. ~~Prior to January 1, 1999 licensees holding licenses in other jurisdictions must complete three hours which shall include fair housing laws and, state real estate law and regulations and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection. After January 1, 1999, licensees~~ Licensees holding licenses in other jurisdictions must complete four hours which shall include fair housing laws, state real estate law and regulations and ethics and standards of conduct and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection.
4. The board may approve additional subjects at its discretion and in accordance with § 54.1-2105 of the Code of Virginia.
5. Credit for continuing education course completion is given for each class hour/clock hour, as defined in 18 VAC 135-20-350.
6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide course completion certification as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.
7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.

- ~~B. Applicants for renewal of a license shall meet the standards for entry as set forth in 18 VAC 135-20-30 1, 3 and 4.~~
- ~~C. The board may deny renewal of a license if the applicant has not met the terms of an agreement for licensure or not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the Board, plus any accrued interest.~~

18 VAC 135-20-105. Additional qualifications for renewal of a reciprocal license.

In addition to the requirements set forth in 18 VAC 135-20-100, all licensees 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 covering Virginia real estate license law and regulations of the Real Estate Board.

18 VAC 135-20-110. Procedures for renewal.

- ~~A. The board will mail a renewal application form to the licensee at the last known home address. The board will mail a firm renewal notice to the business address of the firm. These notices shall outline the procedures for renewal. The board will notify the firm 30 days after the expiration of the licenses of salespersons and brokers associated with the firm. Failure to receive these notices does not relieve the licensee of the obligation to renew.~~

- B. Prior to the expiration date shown on the license, each licensee desiring to renew the license shall return to the board the renewal application forms and the appropriate fee as outlined in 18 VAC 135-20-120 of this chapter. Failure to receive notices from the board regarding license renewal does not relieve the licensee of the obligation to renew.

18 VAC 135-20-120. Fees for renewal.

- A. 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.
- B. Renewal fees are as follows:

Salesperson	\$39.00
<u>Individual License Salesperson's or associate broker's license as a</u>	
business entity	\$39.00
Broker	\$42.00
Concurrent Broker	\$42.00
Firm	\$65.00
Branch Office	\$ 38.00

18 VAC 135-20-130. Board discretion to deny renewal.

The board may deny renewal of a license for (i) the same reasons as it may refuse initial licensure or discipline a current licensee; (ii) failure to meet the terms of an agreement for licensure or other board order; or (iii) failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest.

PART IV.

REINSTATEMENT

18 VAC 135-20-140. Failure to renew; reinstatement required.

- A. All applicants for reinstatement must meet all requirements set forth in 18 VAC 135-20-100 ~~A and B~~ of this chapter. 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.
- B. 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 of \$85.00 is required.
- C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.
- D. Any real estate activity conducted subsequent to the expiration may constitute unlicensed activity and be subject to prosecution under Chapter 1 of Title 54.1 of the

Code of Virginia.

18 VAC 135-20-150. Board discretion to deny reinstatement.

~~A. The board may deny reinstatement of a license if the applicant has not met the terms of an agreement for licensure or not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.~~

~~B. The board may deny reinstatement of a license for (i) the same reasons as it may refuse initial licensure or discipline a current licensee; (ii) failure to meet the terms of an agreement for licensure or other board order; or (iii) failure to fully pay monetary penalties and costs imposed by the board, plus any accrued interest.~~

PART V.

STANDARDS OF PRACTICE AND CONDUCT

18 VAC 135-20-155. Grounds for disciplinary action.

The board has the power to fine any licensee, and to suspend or revoke any license issued under the provisions of Title 54.1, Chapter 21 of the Code of Virginia, and this chapter, where the licensee has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 21 of the Code of Virginia, Title 6.1, Chapter 1.3 of the Code of Virginia or any regulation of the board. Any licensee failing to comply with the provisions of Title 54.1, Chapter 21 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.

18 VAC 135-20-160. Place of business.

- A. Within the meaning and intent of § 54.1-2110 of the Code of Virginia, a place of business shall be an office where:
 - 1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate

broker as defined in § 54.1-2100 of the Code of Virginia; and

2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.
- B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.
- C. Every principal broker shall have readily available to the public in the main place of business the firm license, the principal broker license and the license of every salesperson and broker active with the firm. The branch office license and a roster of every salesperson or broker assigned to the branch office shall be available to the public in each branch office.
- D. Each place of business and each branch office shall be supervised ~~and personally managed by an on-premises real estate~~ a supervising broker who shall supervise only that office. 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. Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to, the following:
1. The availability of the supervising broker to all licensees under the

~~supervision of the broker to review and discuss contract provisions,
brokerage agreement provisions and advertising;~~

2. ~~The availability of training and written procedures and policies which
provide, without limitation, clear guidance in the following areas:~~

- a. ~~proper handling of escrow deposits;~~
- b. ~~compliance with federal and state Fair Housing laws and regulations
if the firm engages in residential brokerage, residential leasing, or
residential property management;~~
- c. ~~advertising;~~
- d. ~~negotiating and drafting of contracts, leases and brokerage
agreements;~~
- e. ~~use of unlicensed individuals;~~
- f. ~~agency relationships;~~
- g. ~~distribution of information on new or changed statutory or regulatory
requirements;~~
- h. ~~disclosure of matters relating to the condition of the property.~~
- i. ~~such other matters as necessary to assure the competence of licensees
to comply with this chapter and Title 54.1, Chapter 21 of the Code of
Virginia.~~

~~D. Every individual, partnership, association, limited liability company, or corporation~~

~~acting as a real estate broker may display signage on the outside of each place of business maintained in the Commonwealth for the purpose of transacting business as a real estate broker. If displayed, the sign shall state the name of such individual, partnership, association, limited liability company, or corporation, as set forth on the license issued by the board, and contain the words "real estate," "realty" or other words or phrases designating a member of a generally recognized association or organization of real estate brokers, whichever is applicable.~~

~~E. Every principal broker shall have readily available in the main place of business the firm license, the principal broker license and the license of every salesperson and broker associated with or employed by the entity or firm. The licenses shall be displayed together, not individually, in such a manner that the public can readily determine the names of the licensees. The branch office license and a roster of every salesperson and broker assigned to the branch office shall be displayed in the branch office location.~~

~~F. Notice in writing, accompanied by all the current licenses, shall be given to the board in the event of any change of business name or location. Such notice shall be mailed to the board within 10 calendar days of the change of name or location, whereupon the board shall reissue the licenses for the unexpired period.~~

18 VAC 135-20-170. Maintenance of licenses.

A. Name and address.

1. Salespersons and individual brokers shall at all times keep the board informed of their current name and home address. ~~and changes~~ Changes of name and address must be reported to the board in writing within 30 calendar days of such change. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. ~~A licensee shall notify the board in a written form acceptable to the board within 30 calendar days of any change in the licensee's legal name.~~ 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.

~~B.2.~~ Salespersons and brokers shall ~~only~~ be issued a license only to the place of business of the sole proprietorship or firm with which the salesperson or broker is ~~affiliated or at which such licensee is employed~~ active. ~~The license shall be issued after the sole proprietor or principal broker files a written request on a form supplied by the board.~~

~~3.~~ Principal brokers must at all times keep the board informed of their current firm and branch office addresses and changes of address must be reported to the board in writing within 30 calendar days of such change. A physical address is required. A post office box will not be accepted.

~~C.B.~~ Discharge or termination of active status.

~~Salespersons and brokers on inactive status shall receive written acknowledgment of payment from the board at the time they renew their license, but no license shall be issued since they are not affiliated with a sole proprietorship or firm.~~

~~D.1.~~ When any salesperson or broker is discharged or in any way terminates his employment or affiliation or changes status as a principal or associate broker active status with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of termination or status change. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

2. When any principal broker is discharged or in any way terminates his active status with a firm, it shall be the duty of the firm to notify the board and return the license by certified mail to the board within 3 business days of termination or status change. The firm shall indicate on the license the date of termination, and shall sign the license before returning it. See § 54.1-2109 of the Code of Virginia for termination relating to the death or disability of the principal broker.

~~E.~~ The board, upon receipt of a transfer application or request for placement of a license on inactive status from a salesperson or associate broker, will notify the former

~~principal broker of the licensee's change of affiliation or status at the firm's address of record. If the license has not been received by the board by the date on which above notification is issued, then it shall be the duty of the former principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of the above notification.~~

~~All certificates of licensure in any form are the property of the Real Estate Board. Upon termination of a licensee, closing of a firm, death of a licensee, change of license status, change of licensee name or address such licenses must be returned with proper instructions to the board within 10 calendar days.~~

18 VAC 135-20-180. Maintenance and management of escrow accounts and financial records.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository in Virginia into which 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 in connection with the closing of real estate transactions, money advanced by the broker's client or

expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall 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 shall be held responsible for these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account ~~will necessarily~~ may include monies which shall ultimately belong to the licensee, but such monies shall be separately identified in the escrow account records and shall be 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 shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by ~~18 VAC 135-20-320-5~~ Subsection C.2, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. 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 as prohibited by ~~18 VAC 135-20-320.5~~ Subsection C.2.

B. Disbursement of funds from escrow accounts.

- 1.a. Purchase transactions. Upon the ratification of a contract, 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, unless otherwise agreed to in writing by the parties to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated (non-consummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to ~~each~~ the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee,

or (ii) by ~~regular and certified mail return receipt requested, with a copy to the other party,~~ that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. ~~If the notice is sent within 90 days of the date of non-consummation, the broker may send the notice by receiptable e-mail or facsimile if such e-mail address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.~~

- b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall 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 such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of

Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

- c. Lease transactions: 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 shall 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 and the property management agreement, as applicable.
- 2.a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.
- b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, 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. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

3. 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.
4. A licensee shall not disburse or cause to be disbursed moneys 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.
5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. 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;

2. 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; and

3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by Subsection A.1.

4. 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 as required by this chapter.

5. Failure, 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 with Subsection 4 of this Section.

18 VAC 135-20-185 Maintenance and management of financial records.

~~1.A.~~ A complete record of financial transactions conducted under authority of the principal broker's Virginia license shall 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. These records shall show, in addition to any other requirements of the regulations, the following information: 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.

~~2.B.~~ The principal broker shall maintain a bookkeeping or record keeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.

~~C.~~ Actions constituting improper record keeping include:

~~1.~~ Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification, if the transaction fails to close, 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, in the broker's control or possession, unless prohibited by law;

2. ~~Having received monies 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 of a lease or conclusion of the licensee's involvement in the lease;~~
3. ~~Failing, within a reasonable time, to account for or to remit any monies coming into a licensee's possession which belong to others;~~

18 VAC 135-20-190. Advertising by licensees.

~~The name under which the broker does business and the manner in which the broker advertises shall not imply that the property listed or marketed by the broker for others is "for sale by owner." A broker shall not advertise in any newspaper, periodical, or sign to sell, buy, exchange, rent, or lease property in a manner indicating that the offer to sell, buy, exchange, rent, or lease such property is being made by a person not licensed as a real estate broker. No advertisement shall be inserted in any publication where only a post office box number, telephone number, or street address appears. Every broker, when advertising real estate in any newspaper or periodical, shall affirmatively and unmistakably indicate that the party advertising is a real estate broker.~~

- A. Definitions. The following definitions apply unless a different meaning is plainly required by the context:

~~"Advertising" means any communication, whether oral or written, between a licensee or an entity acting on behalf of one or more licensees and any other person or business entity. It shall include, but is not limited to, telephonic communication, insignias, business cards, advertisements, telephone directory listing, listing agreements, contracts of sale, billboards, signs, letterheads, as well as radio, television, magazine, newspaper, and internet advertisements 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.~~

~~"Disclosure" in the context of on-line advertising means (i) advertising that contains 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 or (ii) advertising that contains 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. "Disclosure" in the context of other advertising means (i) advertising by the firm that contains the firm's licensed name and the firm's address or (ii) advertising by an affiliated licensee that contains the licensee's name, the name of the firm with which the licensee is active and the firm's address.~~

~~"Institutional advertising" means advertising in which neither the licensed name nor any other identification of any licensed individual is disclosed; no real property is identified; and a service mark is identified.~~

"Service mark" means the trade name, or logo, whether or not registered under any federal or state law, which is owned by an entity other than the licensee firm and which the licensee firm has obtained permission to use through agreement, license, franchise, or otherwise.

"Viewable page" means a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

- B. ~~Every licensee is prohibited from advertising and marketing under the licensee's own name, (except for sole proprietors trading under the principal broker's own name) or in any manner offering on behalf of others to buy, sell, exchange, rent, or lease any real property. All advertising and marketing must be under the direct supervision of the principal broker or supervising broker and in the name of the firm. The firm's licensed name must be clearly and legibly displayed on all display signs and other types of advertising and marketing.~~
- C. ~~If a licensee advertises property which he owns or in which he has any ownership interest without using the services of a licensed real estate entity, the licensee shall advertise with the notice that the owner is a real estate licensee, but such advertisement must not indicate or imply that the licensee is operating a real estate brokerage business.~~

D. ~~Service marks and institutional advertising.~~

- ~~1. All institutional advertising shall state that the service being advertised is real estate brokerage, and shall state affirmatively that each licensed firm or sole proprietorship displaying or using the service mark is an independently owned and operated business.~~

- ~~2. Any service mark constituting a part of written noninstitutional advertising shall conspicuously disclose that the licensed brokerage firm or sole proprietorship is independently owned and operated. Disclosure that the licensed brokerage firm or sole proprietorship is independently owned and operated shall not be required in the following categories of written noninstitutional advertising:~~
 - ~~a. "For sale" and "for lease" signs located on the premises of specific property for sale or lease;~~

 - ~~b. Advertising by a licensed firm or sole proprietorship in newspapers, magazines, or other publications of a single specific property for sale or lease when the advertisement occupies no more than 28 of the standard classified advertising lines of the newspaper, magazine, or other publications in which the advertisement is published;~~

~~c. Telephone directory advertisements disclosing that the licensed brokerage firm or sole proprietorship is independently owned and operated is required in "display" advertisements and in "in column informational" or "business card" size advertisements, or their equivalent, appearing in telephone directories.~~

~~3. In oral, noninstitutional advertising, the speaker shall disclose affirmatively the licensee's name, and except in the case of telephone communication, shall disclose that the licensed firm or sole proprietorship is independently owned and operated.~~

Online advertising.

- ~~1. Any online advertising undertaken for the purpose of any licensed activity is subject to the provisions of this chapter.~~
- ~~2. All online advertising that can be viewed or experienced as a separate unit (i.e., e-mail messages and web pages) must contain disclosure as follows:~~
 - ~~a. The web. If a firm or licensee owns a webpage or controls its content, the viewable page must include disclosure or a link to disclosure.~~

- b. E-mail, newsgroups, discussion lists, bulletin boards. All such formats shall include disclosure at the beginning or end of each message. The provisions of this subsection do not apply to correspondence in the ordinary course of business.
- c. 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.
- d. Chat. Disclosure is required prior to providing, or offering to provide, licensable services during the chat session, or in text visible on the same webpage that contains the chat session if the licensee controls the website hosting the chat session.
- e. Voice Over Net (VON). Disclosure is required prior to advertising or the disclosure text must be visible on the same webpage that contains the VON session.
- f. Banner ads. A link to disclosure is required unless the banner ad contains the disclosure.

E. The following activities shall be prohibited:

1. 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;
2. 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;
3. failing to include the firm's licensed name on any sign displayed outside each place of business.
4. failing to obtain the written consent of the seller, landlord, optionor or licensor prior to advertising a specific identifiable property.
5. failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement.

~~PART VI.~~

~~STANDARDS OF CONDUCT~~

~~18 VAC 135-20-200. Grounds for disciplinary action.~~

~~The board has the power to fine any licensee or registrant, and to suspend or revoke any license issued under the provisions of Title 54.1, Chapter 21 of the Code of Virginia, and the regulations of the board, where the licensee has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 21 of the Code of Virginia, Title 6.1, Chapter 1.3 of the Code of Virginia or any regulation of the board.~~

18 VAC 135-20-210. Disclosure of interest.

- A. 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 real property through purchase or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner in writing in the offer to purchase or lease.

- B. A licensee selling or leasing property in which he has any ownership interest must disclose that he is a real estate licensee and he has an interest in the property to any purchaser or lessee in the written offer to purchase, the application, the offer to lease, or the lease, whichever occurs first.

18 VAC 135-20-220. Disclosure of brokerage relationships.

- A. Purchase transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall 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.
2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time 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 with this disclosure requirement.
3. 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, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.
4. Any disclosure required by this subsection 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.

~~5. Any such disclosure shall advise a prospective buyer, seller, landlord, or tenant, who is not the client of the licensee of the duties of real estate brokers and salespersons under Virginia law and that there may be other relevant information concerning the transaction which may be obtained from other sources.~~

B. Lease Transactions.

1. Unless disclosure has been previously made by a licensee, 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 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 shall be made in writing not later than the signing of the lease.

2. This disclosure requirement shall not apply to lessors or lessees in single or

multi-family residential units for lease terms of less than three months.

~~18 VAC 135-20-230. Licensees dealing on own account.~~

~~Any licensee failing to comply with the provisions of Title 54.1, Chapter 21 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.~~

18 VAC 135-20-240. Provision of records to the board.

~~A~~ Unless otherwise specified by the board, or as set forth in § 54.1-2108 of the Code of Virginia, a licensee of the Real Estate Board shall ~~upon demand~~ produce to the board or any of its agents within 10 days of the request any document, book, or record concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10 day period.

18 VAC 135-20-250. Response to inquiry of the board.

A licensee must respond to an inquiry by the board, ~~other than requested under 18 VAC 135-20-240 of this chapter,~~ or its agents within 21 days.

18 VAC 135-20-260. Unworthiness and incompetence.

Actions constituting unworthy and incompetent conduct include:

1. Obtaining a license by false or fraudulent representation;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in this chapter;
3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;
4. As a currently licensed real estate broker, sitting for a real estate licensing examination;
5. Having been convicted or found guilty of any crime directly relating to the practice of real estate, regardless of the manner of adjudication in any jurisdiction of the United States ~~of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed, Except for misdemeanor convictions for being drunk in public, driving under the influence, or traffic violations, all criminal convictions shall be considered part of the totality of the circumstances. 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 for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction or guilt;

6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any felony or of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury convictions as stated in Subsection 5;
7. Having had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.
8. Failing to inform the board in writing within 30 days of a disciplinary action as stated in Subsection 7.
79. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States including without limitation Title VIII of the Civil Rights Act of 1968, (82 Stat. 73) or the Civil Rights Act of 1866 (14 Stat. 27), there being no appeal therefrom or the time for

appeal having elapsed;

810. Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public; and

911. Engaging in improper, fraudulent, or dishonest conduct.

18 VAC 135-20-270. Conflict of interest.

Actions constituting a conflict of interest include:

1. Being ~~employed by, affiliated~~ active with or receiving compensation from a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;
2. 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, ~~as provided by § 54.1-2139 of the Code of Virginia;~~
3. Acting as a standard agent or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).

18 VAC 135-20-280. Improper brokerage commission.

Actions resulting in an improper brokerage commission or fee include:

1. 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, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;
2. Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, ~~from any person except the licensee's principal broker at the time of the transaction,~~ for (i) 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 ~~from any person except the licensee's principal broker at the time of the transaction or related to any real estate transaction, without the consent of that broker;~~ or (ii) ~~the use of 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 without the written consent of the principal broker.~~ No licensee shall act as an employee

of a company providing real estate settlement services as defined in the Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq. or pursuant to a license issued by the Commonwealth of Virginia, to provide real estate settlement services to clients or customers of the firm without written consent of the broker.

3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or more principal(s) to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;
4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;
5. Making a listing contract or lease which 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
6. 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.

18 VAC 135-20-290. Improper dealing.

Actions constituting improper dealing include:

1. Entering a brokerage relationship that (i) does not specify a definite termination date; ~~(ii) does not provide a mechanism for determining the termination date; or (iii) is not terminable by the client;~~
2. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative;
3. Placing a sign on any property without the consent of the owner of the property or the owner's authorized representative;
4. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship; and

18 VAC 135-20-300. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

1. 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, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee did in fact have at least that quantity for sale or rent;
2. Failure by a licensee representing a seller or landlord as a standard agent 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;
3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counter offer, and every written rejection to purchase, option or lease obtained on the property involved;
4. 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;

5. Notwithstanding the provisions of subdivision 4 of this section, 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 unless otherwise provided by law;
6. Failing to include the complete terms and conditions of the real estate transaction in any lease or offer to purchase;
7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;
8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
 - a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;
 - b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other

means without the prior written consent of the principals to the transaction;

- c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8a of this section without the prior written consent of the principals to the transaction.

9. Knowingly making any material misrepresentation or making a material misrepresentation reasonably relied upon by a third party to that party's detriment; and

10. Making a false promise through agents, salespersons, advertising, or other means.

18 VAC 135-20-310. Delivery of instruments.

Actions constituting improper delivery of instruments include:

1. 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;

2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;
3. 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 monies received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of monies received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and
4. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.

~~18 VAC 135-20-320. Record keeping and escrow funds.~~

~~Actions constituting improper record keeping and maintenance of escrow funds include:~~

- ~~1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification, if the transaction fails to close, 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, in the~~

broker's control or possession;

- ~~2. Having received monies 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 of a lease or conclusion of the licensee's involvement in the lease;~~
- ~~3. Failing, within a reasonable time, to account for or to remit any monies coming into a licensee's possession which belong to others;~~
- ~~4. 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;~~
- ~~5. 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; and~~
- ~~6. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by these regulations (see 18 VAC 135-20-180 A 1 of this chapter).~~

and employees.

Any unlawful act or violation of any of the provisions of Title 54.1, Chapter 21 or of Title 36, Chapter 5 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.

18 VAC 135-20-340. Effect of disciplinary action on subordinate licensees.

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 ~~affiliated~~ active with ~~or employed by~~ 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 pursuant to regulation 18 VAC 135-20-170 B.

PART VII VI.

SCHOOLS

18 VAC 135-20-350. Definitions.

The following words and terms, when used in this part, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited university, college, community college, or other school or educational institution," as used in § 54.1-2105 B 1 of the Code of Virginia, means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

"Class hour/clock hour" means 50 minutes.

"Equivalent course" means any course encompassing the basic educational curriculum of Virginia courses and approved by the board.

"Proprietary School" means (i) a privately owned school, (ii) a real estate professional association, or (iii) a related entity, which is not under the authority of the Department of Education, but approved by the Real Estate Board to teach real estate courses.

"Provider" means an accredited university, college, community college, or high school offering adult distributive education courses, or a proprietary school.

18 VAC 135-20-360. Proprietary school standards, instructor qualifications and course requirements.

- A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the standards provided in § 54.1-2105 of the Code of Virginia.

- B. Every applicant to the Real Estate Board for approval as an instructor shall have one of the following qualifications:
 - 1. Baccalaureate degree, a Virginia real estate broker's license, and two years of discipline-free active real estate experience within the past five years;

 - 2. Five years of discipline-free active experience acquired in the real estate field in the past seven years and an active Virginia broker's license; or

 - 3. ~~Qualified experts~~ Expertise in a specific field of real estate who will teach only in the area of their expertise. For example, a licensed real estate appraiser, with at least five years of active appraisal experience in Virginia, may be approved to teach Real Estate Appraisals. Such applicants will be

required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference which will verify the applicant's expertise.

- C. Pre-license courses must be acceptable to the board and are required to have a monitored, final written examination. Those schools which propose to offer pre-licensing courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:

1. Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in 18 VAC 135-20-400. All requests to offer broker courses must include a course syllabus acceptable to the board;
2. Name of the course's text and any research materials used for study assignments;
3. Description of any research assignments;
4. Copies of tests or quizzes;
5. Information explaining how the "Principles" course will require 60 hours of

study, or how each broker related course will require 45 hours of study, in compliance with § 54.1-2105 of the Code of Virginia; and

6. Information about recordkeeping for the type of course delivery.
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- D. Providers of continuing education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course. The board shall approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.
 - E. All schools must establish and maintain a record for each student. The record shall include: the student's name and address; the course name and clock hours attended; the course syllabus or outline; the name or names of the instructor, the date of successful completion and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.
 - F. All schools must provide each student with a certificate of course completion or other document that the student may use as proof of course completion. The certificate or other document shall contain the hours of credit completed.

18 VAC 135-20-370. Fees.

- A. The application fee for original certificate for a proprietary school shall be \$75.00.
- B. The renewal fee for proprietary school certificates expiring biennially on June 30 shall be \$38.00.
- C. If the requirements for renewal of a proprietary school certificate, including receipt of the fee by the board, are not completed within 30 days of the expiration date noted on the certificate, a reinstatement fee of \$85.00 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.
- D. The application for original instructor certificate shall be \$100.00.
- E. The renewal fee for an instructor certificate expiring biennially on June 30 shall be \$50.00.
- F. If the requirements for renewal of an instructor certificate, including receipt of the fee by the board are not completed within 30 days of the expiration date on the

certificate, a reinstatement fee of \$85.00 is required. A certificate may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the certificate may not be reinstated under any circumstances and the applicant must meet all requirements and apply as a new applicant.

- G. The board in its discretion may deny renewal of a certificate for the same reasons it may deny initial approval. ~~Upon such denial, the certificate holder may request that a hearing be held.~~

18 VAC 135-20-380. Posting school certificate of approval and instructor certificates.

Copies of school certificates of approval, and instructor certificates, if applicable, must be available at the location a course is taught.

18 VAC 135-20-390. Withdrawal of approval.

The board may withdraw approval of any school or instructor for the following reasons:

1. The school, instructors, courses, or subjects no longer meet the standards established by the board.
2. The school or instructor solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future

examinations.

3. The school or instructor distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.
4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.
5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

18 VAC 135-20-400. Course content of real estate principals and practices.

The following shall be included in the four-semester-hour or six-quarter-hour course which shall not have less than sixty class hours:

1. Economy and social impact of real estate
2. Real estate market and analysis
3. Property rights
4. Contracts
5. Deeds

6. Mortgages and deeds of trust
7. Types of mortgages
8. Leases
9. Liens
10. Home ownership
11. Real property and title insurance
12. Investment
13. Taxes in real estate
14. Real estate financing
15. Brokerage and agency contract responsibilities
16. Real estate marketing
17. Real property management
18. Search, examination and registration of title
19. Title closing
20. Appraisal of residential and income producing property
21. Planning subdivision developments and condominiums
22. Regulatory statutes
23. Housing legislation
24. Fair housing statutes
25. Real Estate Board regulations

- A. Brokerage shall be a required specific course with three semester hours or six quarter hours, but not less than 45 class hours, constituting a complete course.

- B. "Related subjects," as referred to in § 54.1-2105 of the Code of Virginia, shall be real estate related and shall include, but are not limited to, courses in property management, land planning and land use, business law, real estate economics, and real estate investments.

- C. No more than 45 class hours of broker-related courses shall be accepted in lieu of specific broker courses set forth in § 54.1-2105 of the Code of Virginia.

- D. Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course with a cover letter requesting approval.