

Real Estate Law and VREB Regulations





Objectives



- Look at Real Estate Laws and Regulations
- Look at laws affecting the Real Estate industry
- Look at Regulatory Risks REALTORS® face
- VREB disciplinary actions and how to avoid law violations
- NAR Code of Ethics

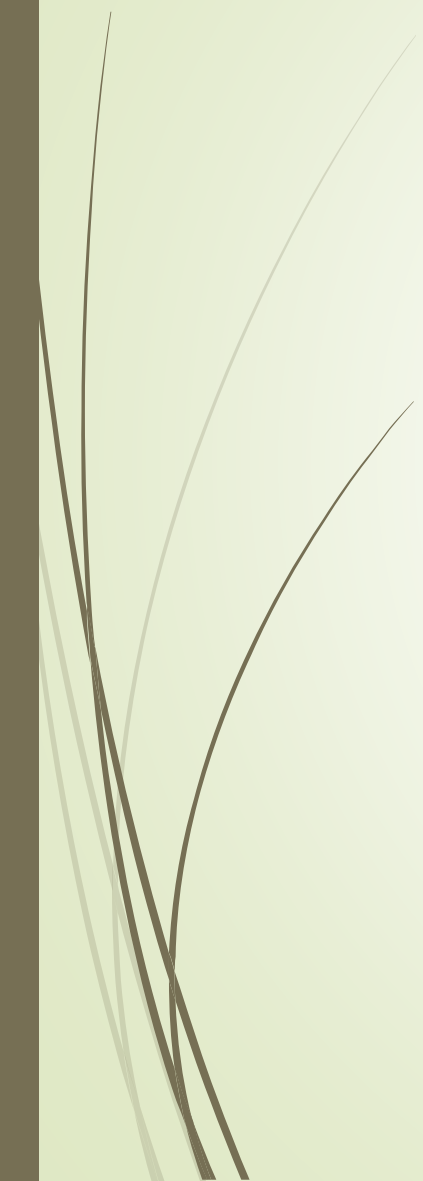


Qualifications for licensure

- Must be at least 18 years old.
- Shall have a high school diploma or its equivalent
- Shall have passed the written examination within 12 months prior to application
- Shall disclose
 - All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within 5 years
 - All felonies
 - All nolo contender shall be considered a conviction under this subsection

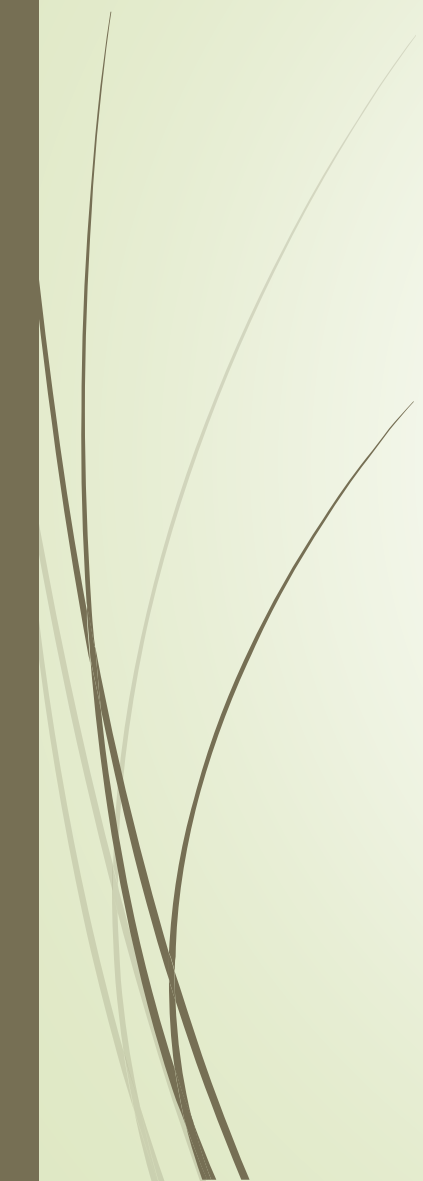


Additional Qualifications for Brokers

- Meet the educational requirements
 - Shall have been actively engaged in real estate for a period of 36 of the 48 months immediately preceding application
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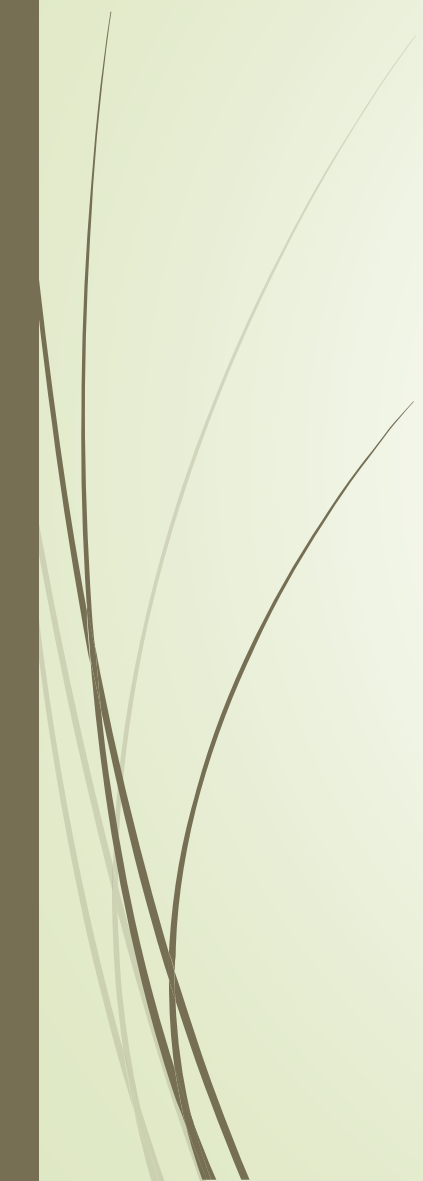


Licensure by Reciprocity

- 
- 1. Be at least 18 years of age
 - 2. Have a high school diploma or its equivalent
 - 3. If currently licensed by another state as a real estate salesperson or broker, must pass Virginia's examination.
 - 4. Sign a statement verifying read and understands provisions of this chapter and Chapter 21 (54.1-21—et seq.) of Title 54.1 of the Code of Virginia




Licensure by Reciprocity – *cont.*

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- 5. Follow all procedures established with regard to conduct at the examination. Failure to comply may be grounds for denial.
 - 6. Be in good standing as a licensee in every jurisdiction where licensed and not have license which was suspended, revoked, or surrendered in connection with a disciplinary action.
 - 7. Must have been actively engaged in real estate for 12 of preceding 36 months (salesperson); 36 of preceding 48 months (broker) or have met educational requirements substantially equivalent to those required in Virginia



Licensure by Reciprocity – *cont.*

- 8. Have a good reputation for honesty, truthfulness, and fair dealing and be competent to transact business as a licensee.
- 9. Shall disclose:
 - a. all misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within 5 years of application
 - b. All felony convictions during lifetime.
 - c. All nolo contender shall be considered a conviction under this subsection

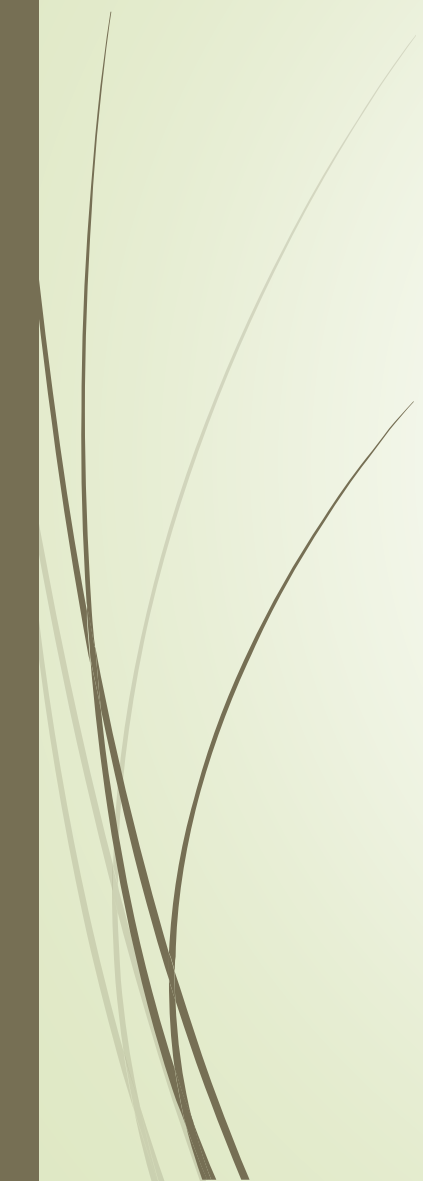


Qualification for Renewal – Continuing Education Requirements

- Effective July 1, 2008
- All active salespersons, except those on active duty, shall be required to complete 16 hours of continuing education classes
 - Classroom
 - Correspondence
- During each licensing term (2 years)



New Licensees

- All new licensees are required to complete 30 hours of Post License education classes within the first year of receiving their license (by the last day of the month in which they were licensed)
 - These must be VREB approved courses
 - Either in the classroom, On-line, or correspondence.
- 



New Licensees *Cont.*

Fair Housing - 2 hours

Real Estate Law and Board Regulations – 6 hours

Ethics and Standards of Conduct – 3 hours

Current Industry Issues and Trends – 2 hours

Virginia Agency Law – 3 hours

Contract Writing – 6 hours

Risk Management – 3 hours

Escrow Requirements – 3 hours

Finance – 2 hours



Salesperson's Classes

- 2 hours of training in fair housing laws
- 3 hours in ethics and standards of conduct
- 1 hour in Virginia real estate laws and regulations with flood information
- 1 hour Virginia agency
- 1 hour contracts
- 8 hours elective

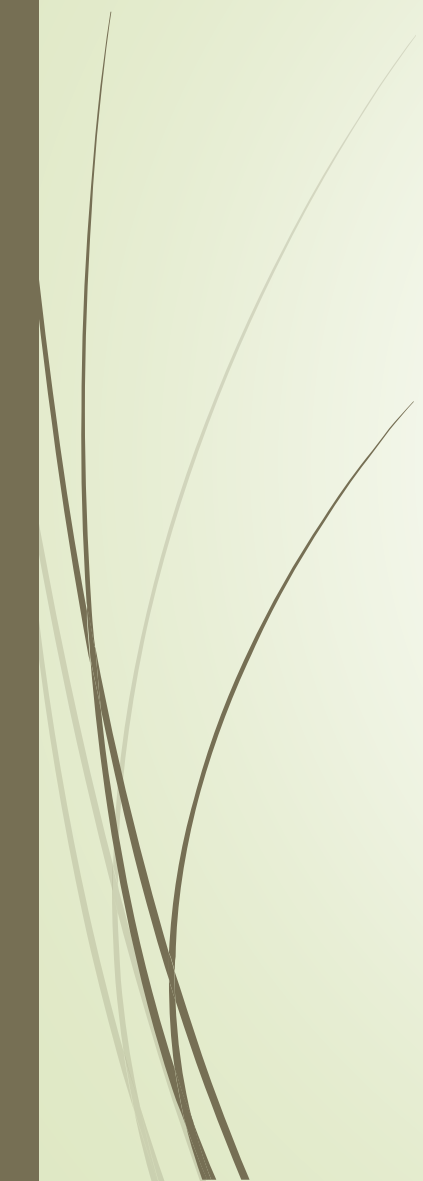


Broker's Classes

- 6 hours in management of real estate agents and brokerage firms
- 2 hours in broker supervision
- 2 hours fair housing laws
- 3 hours in ethics and standards of conduct
- 1 hour in Virginia real estate laws and regulations
- 1 hour Virginia agency
- 1 hour contracts
- 8 hours elective



Definitions

- Principal Broker
 - Supervising Broker
 - Associate Broker
 - Sales Person/Agent/Licensee
- 



Principal Broker

“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 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.



Supervising Broker

“Supervising Broker” means

- (i) the individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or
- (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designed agent as stated in 54.1-2130 of the Code of Virginia



Associate Broker

“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.



Place of Business

- Definition:
 - Place where regularly transact business of a real estate company
 - Can receive business calls and direct business calls to be made
- If a residence must be separate and distinct from the living quarters
- Accessible by the public
- Availability to the public firm license, principal broker license and license of every salesperson and broker active with the firm

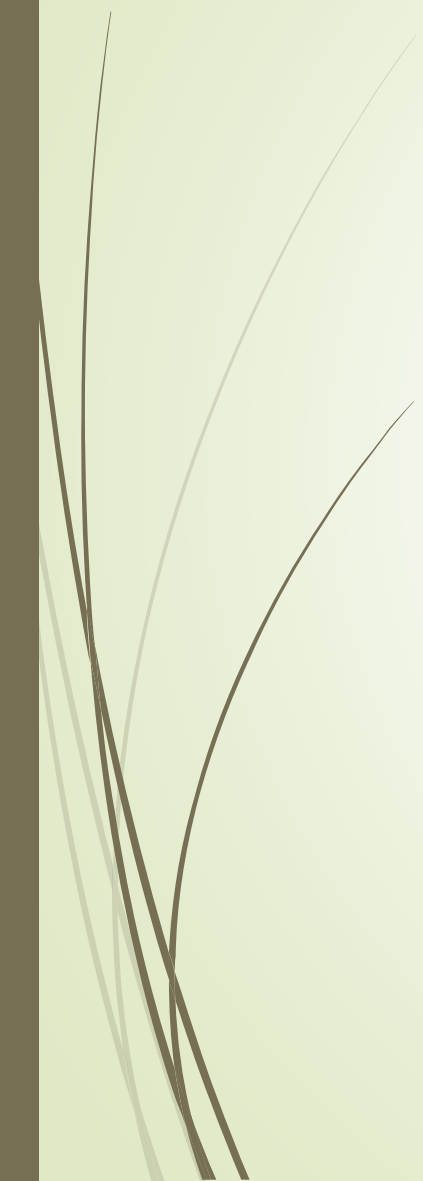


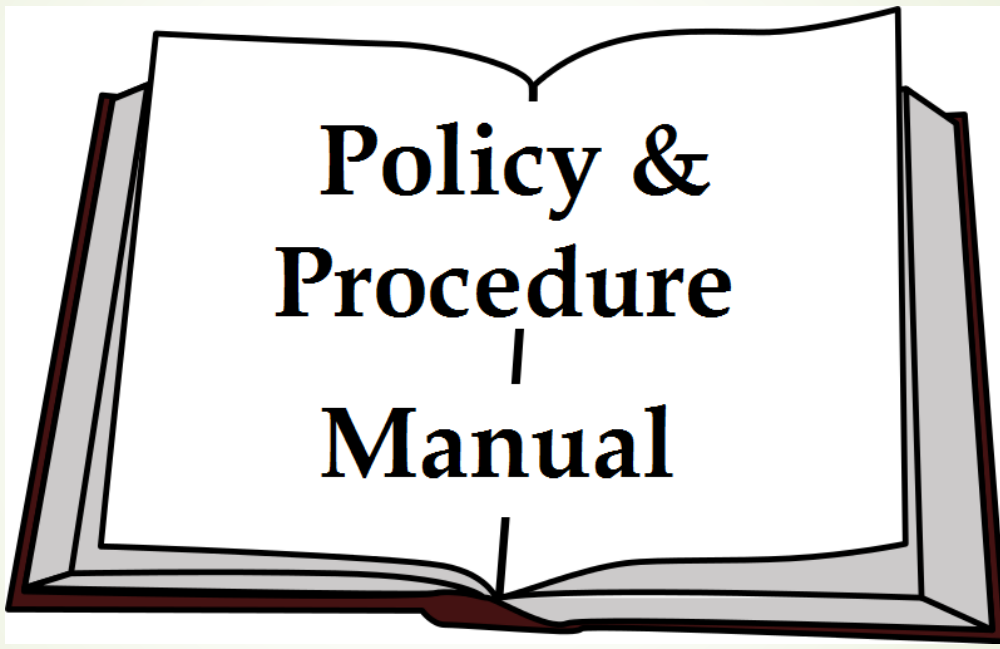
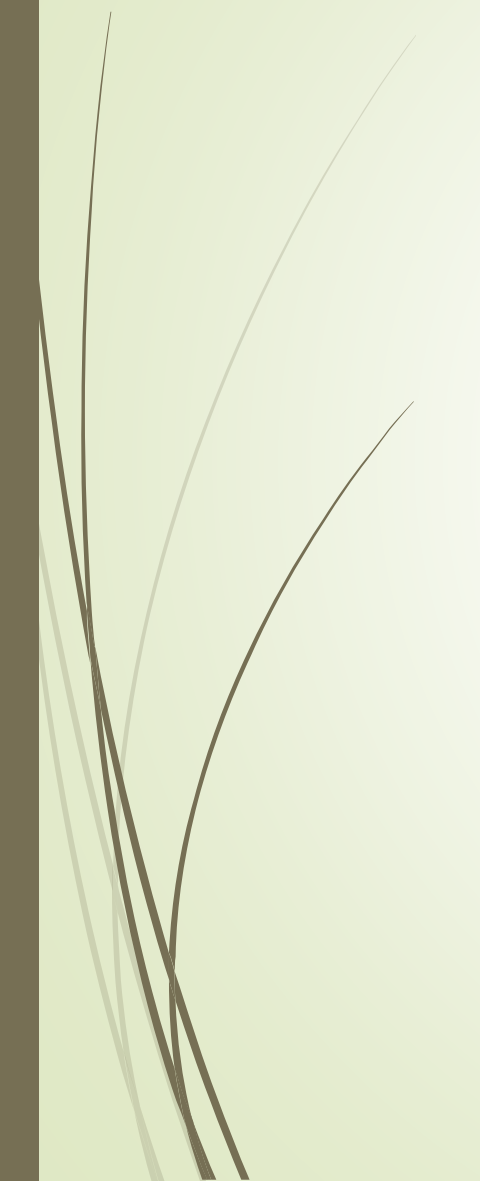

Place of Business – *cont.*

- Branch Office
 - Must have the branch office license posted
 - Roster of every salesperson or broker assigned to the branch
 - Posted in a conspicuous place
- Each place of business and each branch office shall be supervised by a supervising broker
 - Supervision of the provision of real estate brokerage services by salespersons
 - May assign another broker to assist with those duties



Duties of the Supervising Broker

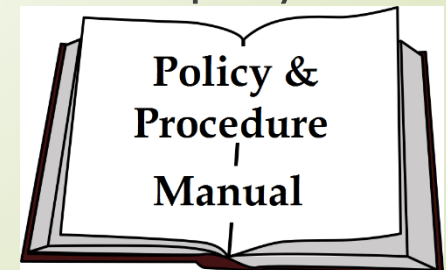
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- Review and approve all documents
 - Training
 - Written Procedures and Policies Manual
 - Timely supervision
 - Brokerage Services provided in accordance with VREB Regulations
 - Compliance by all agents



Policy & Procedure | Manual

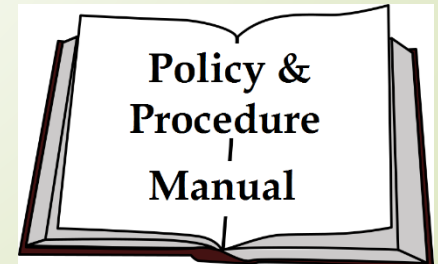
Company Policies and Procedures Manual

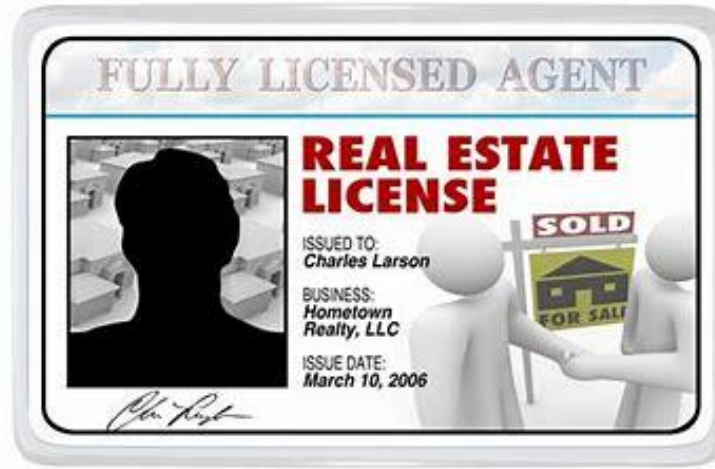
- Must include clear guidance in the following areas:
 - Proper handling of escrow deposits
 - Compliance with federal and state fair housing laws and regulations
 - Advertising
 - Negotiating and drafting of contracts, leases and brokerage agreements
 - Use approved forms
 - Approved by the State, Association or company legal counsel
 - Use of unlicensed individuals
 - Agency relationships



Company Policies and Procedures Manual *Cont.*

- Distribution of information on new or changed statutory or regulatory requirements
- Disclosure of matters relating to the condition of property
- Such other matters as necessary to assure the competence of licensees to comply with the VREB regulations



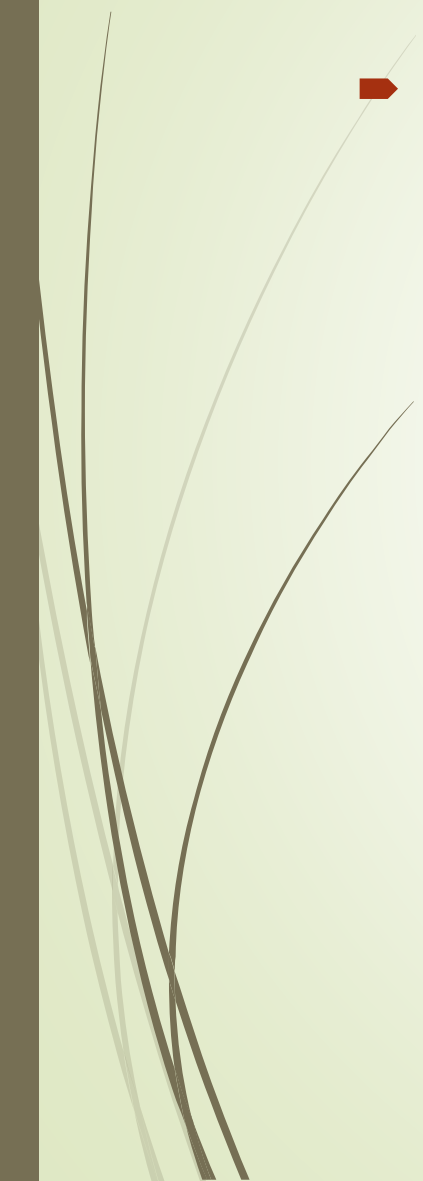


VREB Maintenance of Licenses

- Keep VREB informed of current name and home address
- Keep VREB informed of firm and branch name and addresses and any changes
- Notify VREB within 10 calendar days of termination
 - The principal broker must sign the license before returning it



VREB Disciplinary Actions

- ▶ The Board has the power to –
 - ▶ Fine any licensee
 - ▶ Suspend their license
 - ▶ Revoke their license
 - ▶ Any licensee failing to comply with the provisions of Chapter 21 of the Code of Virginia or the regulations of the real Estate Board may be charged with a violation, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.
- 

Real Estate Escrow Account





Discussion Question....

- When does an EMD have to be deposited?
 - a. Within 3 business days
 - b. Within 5 business days
 - c. Within 7 business days
 - d. Within 10 business days



Discussion Question....

➤ When does an EMD have to be deposited?

b. Within 5 business days following ratification of the contract unless the parties agree to a different timeframe.

Same is true for lease transactions.

Maintenance and Management of Escrow Accounts

- Must keep in **federally insured separate escrow account** in the Commonwealth of Virginia in the name by which the company is licensed
 - Unless otherwise agreed in writing by all principals to the transaction
- The account must be labeled “escrow” and designated as “escrow” accounts with the financial institution.



Escrow Accounts – *Cont.*

- The escrow account may include moneys which shall ultimately belong to the broker
 - Such moneys shall be identified in the escrow account records
 - Shall be paid to the firm by a check drawn on the account when due.
 - Must provide for periodic withdrawals
 - Broker must be able to accurately account for total funds belonging to the licensee and the firm.
- Funds shall not be paid directly to the licensees of the firm



Escrow Accounts –*Cont.*

- Disclosure in the contract of sale or lease must be made if account bears interest and what the disbursement of interest shall be.
- Escrow funds may be used to purchase a certificate of deposit.
 - Pledging of the certificate of deposit or
 - Absence of the original certificate from direct control of the Principal Broker
 - Shall constitute commingling of funds



Disbursement of funds from Escrow Accounts

- Funds must remain in Escrow until the transaction is consummated or terminated.
- If transaction is not consummated, broker shall hold funds in escrow until
 - All principals to the transaction agree in writing to their disposition
 - A court orders disbursement of the funds
 - Broker can pay funds to the principal who is entitled to receive them in accordance with clear and explicit terms of the contract



Disbursement of Escrow Funds, *Cont.*

- There must be sufficient money on deposit in that account to the credit of the individual client or property.
- Unless agreed in writing, expenses incidental to closing, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.



Improper Maintenance of Escrow Funds

- Accepting anything of value not readily negotiable as a deposit
- Commingling funds
- Failure to deposit escrow funds
- Failure to have sufficient balances in an escrow account
- Failure of the Principal Broker to report to the VREB within 3 business days improper conduct of a licensee which has caused noncompliance.





Record Keeping

- Maintain complete **record of financial transactions**
 - At place of business
- Maintain **bookkeeping system**
 - Accurately and clearly disclosing full compliance with escrow regulations
- Maintain for **3 years from date of closing**
 - Or ratification of contract if transaction did not close



INSURANCE

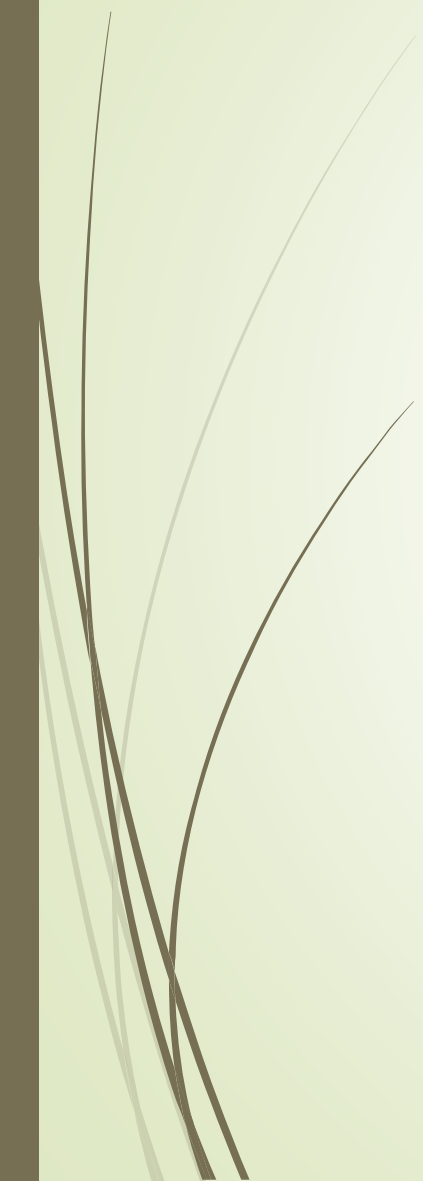


Company E & O Insurance

- Includes the legal defense against a claim as well as damage awards
- Company should offer a group policy which each licensee can participate
- Know the terms, conditions and deductible
- Create policy to insure licensee's know their responsibility




Other Insurances

- Automobile Insurance
 - Check with your broker on other insurances offered and or required
- 



Code of Ethics




National Association of REALTOR'S Code of Ethics

- What is the Code of Ethics ?
- How do I use it in my day to day business practices?



Sections of the Code

- Duties to clients and customers
Articles 1-9
 - Duties to the public
Articles 10-14
 - Duties to other Realtors®
Articles 15-17
- 

Article 1

*"When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to **protect and promote the interests of their client.***

*This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to **treat all parties honestly.***

*When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly."
(Amended 1/01)*





SOP 1-7

“When acting as listing brokers, REALTOR® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing.”

(Amended 1/20)



SOP 1-8

“REALTOR®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing.

Upon the written request of the listing broker who submits a counter-offer to the buyer's tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented.

REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated.” (Adopted 1/93, Amended 1/99, Amended 1/22)

Article 2

"REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction.

REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law."
(Amended 1/00)





Discussion Question

The listing agent has reduced the price in the computer, but gets an offer afterwards at the old, higher price.

Must she disclose the price reduction to the buyer or buyer agent?



Discussion Question

Filming inside a listing

I represent the seller and he is furious because he discovered that a buyer's agent had filmed the inside of his house.

I called the buyer agent, who confirmed that he recorded the interior of the dwelling but only for use by his client.

Did the buyer agent go too far?

Article 3

"REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest.

The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker." (Amended 1/95)





Standard of Practice 3-9

*REALTORS® shall not provide access to listed property on terms other than those established by the owner or the seller.
(Adopted 1/10, Amended 1/23)*

Standard of Practice 3-11

*REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.
(Adopted 1/20, Amended 1/23)*



Discussion Question

Owner/Agent

An agent in my office is selling his own home and has heard that he doesn't have to use the Owner/Agent sign anymore.

Are Owner/Agent signs still required?



Article 4

“REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property, without making their true position known to the owner or the owner's agent or broker.

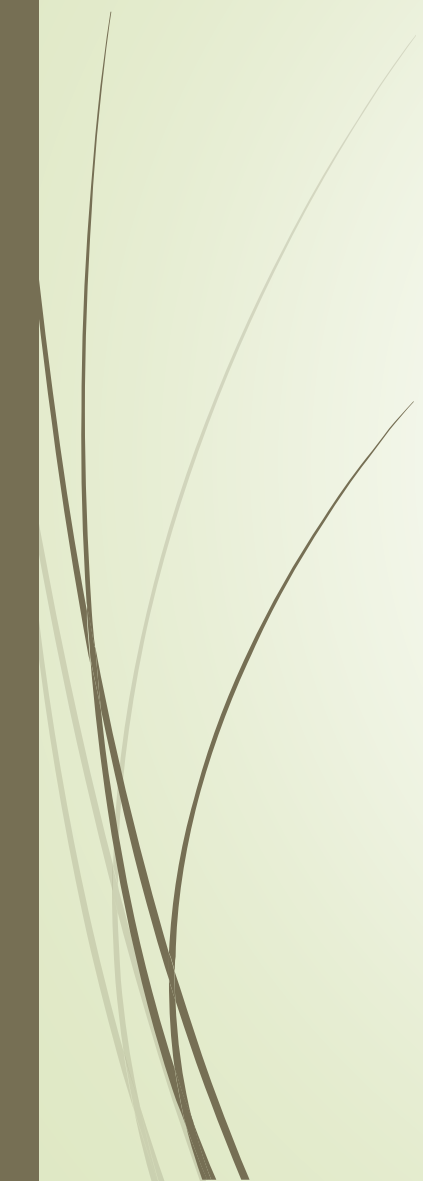
OWNER/AGENT

In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative."
(Amended 1/00)



Article 5

“REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.”



Article 6

“REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client’s knowledge and consent.

When recommending real estate products or services (e.g., homeowner’s insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR’S® firm may receive as a direct result of such recommendation.” (Amended 1/99)





Article 7

Disclose Compensation From More than One Party!

“In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR’S® client or clients.” (Amended 1/93)

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Article 8



“REALTORS® shall keep in a **special account** in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.”

Article 9



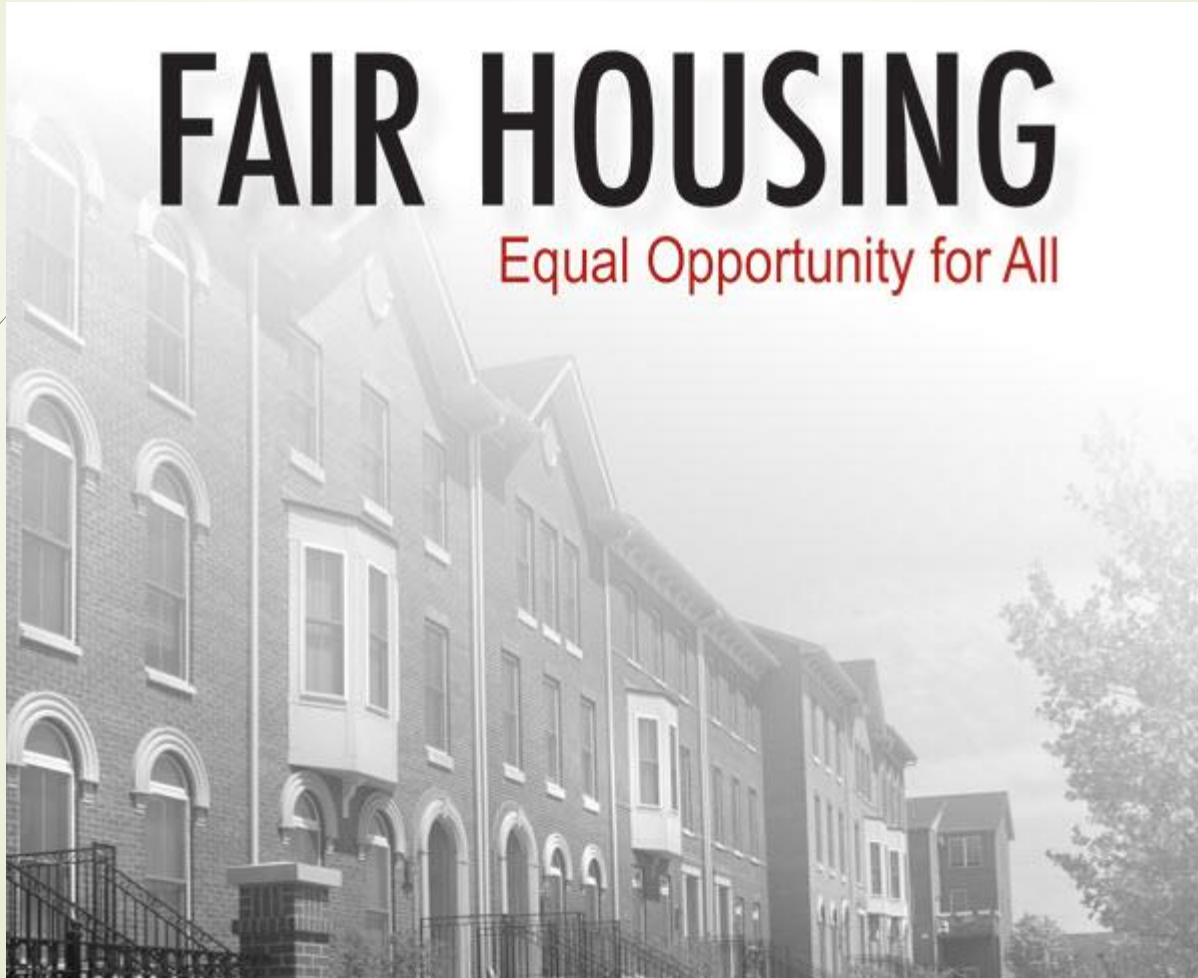
Purchase contracts and leases **should be in writing**, in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties.

A copy of each agreement shall be **furnished to each party** to such agreements upon their signing or initialing.” (Amended 1/04)

Article 10

FAIR HOUSING

Equal Opportunity for All





Article 10

Fair Housing – Protected Classes

- Race
 - Religion
 - Color
 - National Origin
 - Sex
 - Disability
 - Familial Status
-
- Elderliness – VIRGINIA 1972
 - Sexual Orientation – VIRGINIA 2020
 - Gender Identity – VIRGINIA 2020
 - Veteran Status – VIRGINIA 2020
 - Source of Funds – VIRGINIA 2020



Standard of Practice 10-3

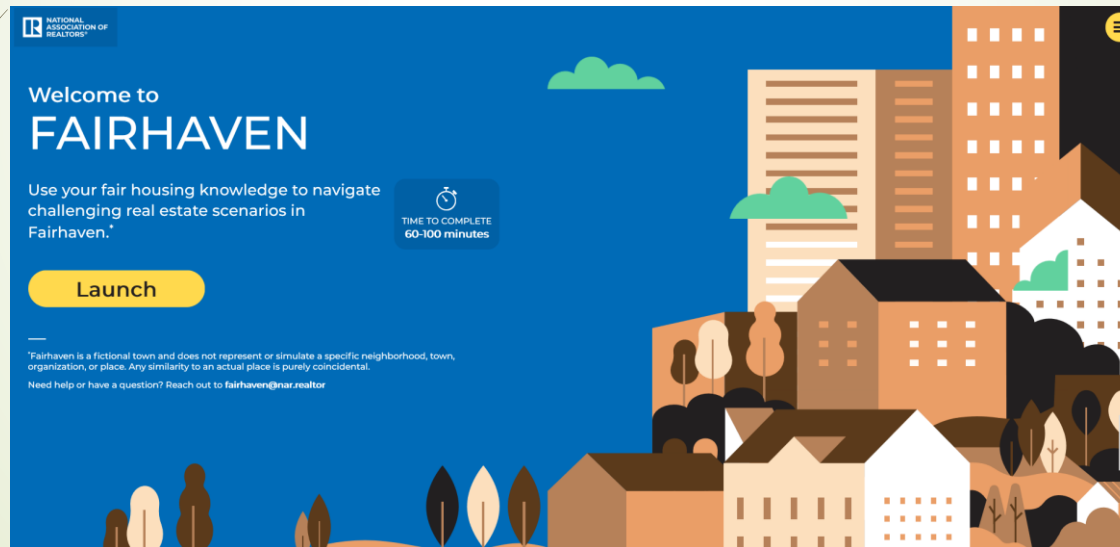
REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.

(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/23)

Standard of Practice 10-5

“REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity.”

Adopted and Effective 11/2020, Amended 1/23

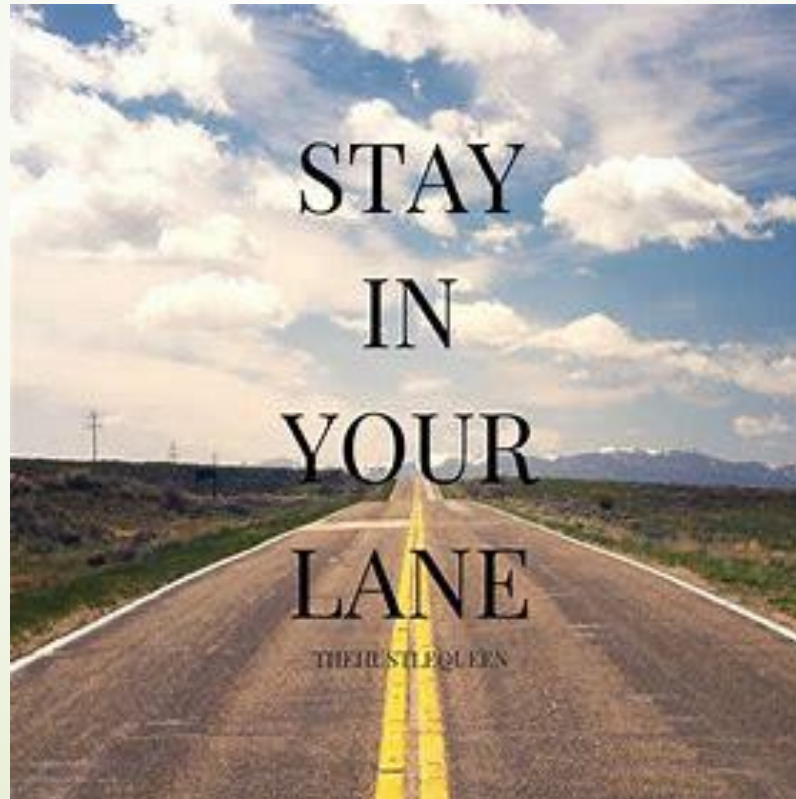



Approved for CE credits through Virginia REALTORS®

Fairhaven: A Fair Housing Simulation 0:45

Article 11

Stay in your field of expertise... 0:49





Discussion Question

Advertising a Sold Property

May a buyer agent who sells another agent's listing advertise that she sold the property?

Article 12


Snapshots



"And this must be the pool you mentioned in the ad."

"REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations.

REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional."
(Amended 1/08)



SOP 12-1

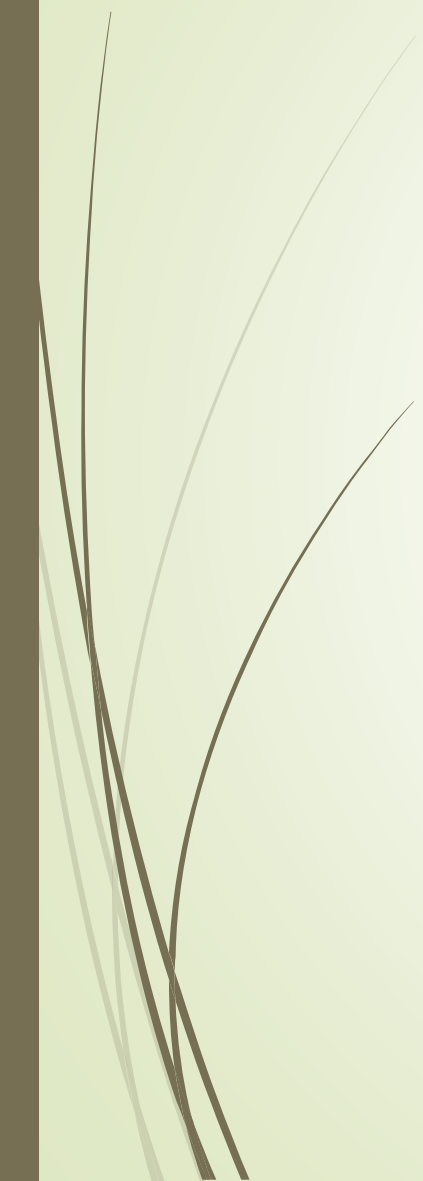
REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services.

(Amended 1/22)



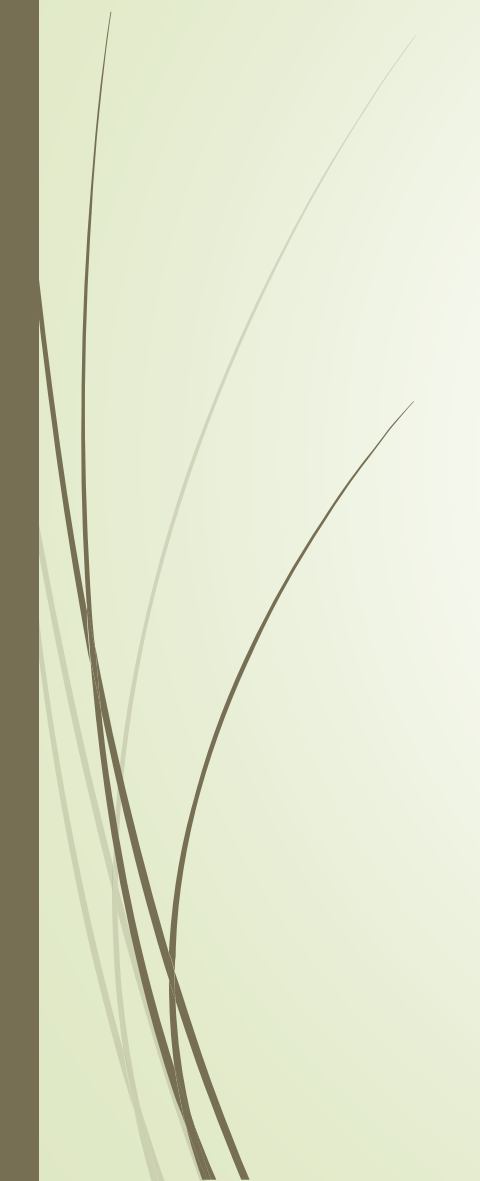
Article 13

"REALTORS® shall not engage in activities that constitute the **unauthorized practice of law** and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it."





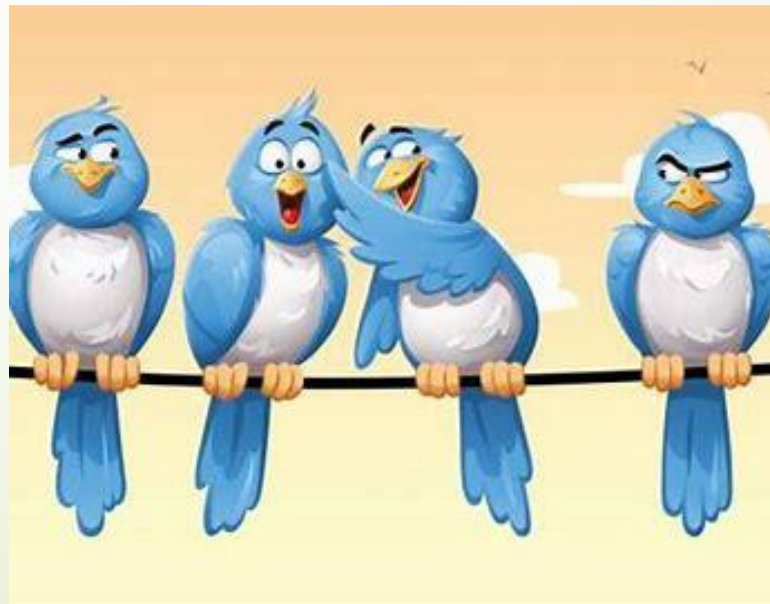
Article 14



"If charged with unethical practice or asked to present evidence or to cooperate in any other way in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunal of the Member Board or affiliated Institute, Society, or Council in which membership is held and shall take no action to disrupt or obstruct such processes." (Amended 1/99)

Article 15 (Amended)

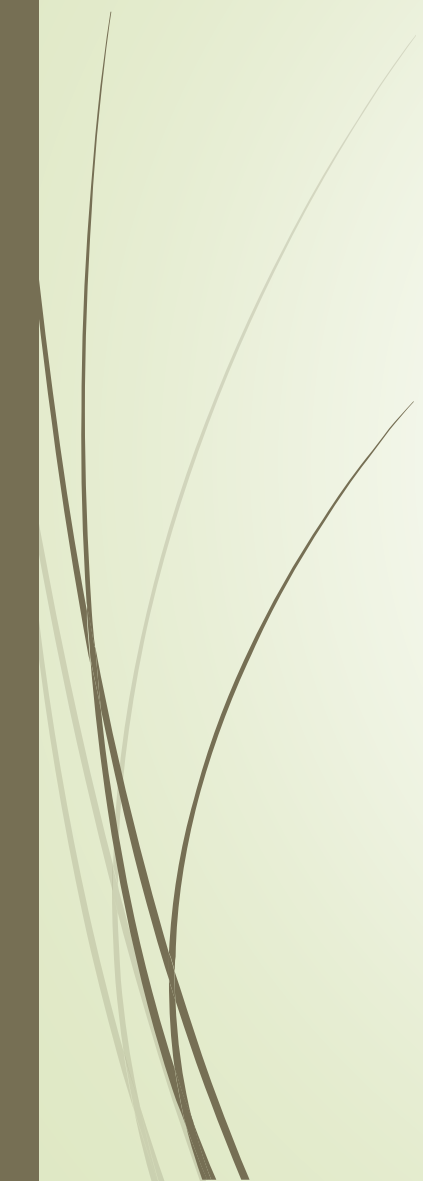
"REALTORS® shall not knowingly or recklessly make **false or misleading statements about other real estate professionals**, their businesses, or their business practices."
(Amended 1/12)





Article 16

“REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients.” (Amended 1/04)



Article 17 (Amended)

“In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate.

If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.



Dispute Resolution – Article 17

- **Mediation and arbitration are alternatives to court**
 - Speedy
 - Affordable
- **Mediation** is a forum in which the parties come together with an impartial mediator and negotiate a resolution to their dispute.
- **Binding arbitration** involves an arbitrator or panel that hears both sides and makes a decision
- **Both sides agree to be bound by the resulting agreement or award.**





REGULATORY RISKS



COMPLIANCE

REGULATIONS

GUIDELINES

Regulatory Risks - **Lead Based Paint**

- Renovations to property built prior to 1978 must be done by certified Renovator
- Certification on Renovators
- Fines
- www.epa.gov/lead website list firms and contractors that are certified.
- REALTOR's must ask if renovation work has been done and get copies of the reports



Regulatory Risks - **Fair Housing**

➤ **Nationally Protected Classes**

- Race
- Color
- Religion
- National Origin
- Sex
- Familial Status
- Disability (handicap)

Virginia Fair Housing Law added

- Elderliness
- Source of Income
- Veteran Status
- Sexual Orientation
- Gender Identity

NAR Code of Ethics added

- Sexual Orientation
- Gender Identity



Regulatory Risks - **Environmental Issues**

- Asbestos
- Lead Based Paint
- Radon
- UFFI or Formaldehyde
- Underground Storage tanks
- Defective Drywall
- Meth Labs



Regulatory Risks **Agency Relationships**



Agency Relationships

- Seller Agency
- Buyer Agency
- Sub-Agency
- Designated Agency
- Dual Agency
- Limited Service Agent
- Independent Contractor



Statutory Duties Owed to the Principal

- Loyalty
- Obedience
- Disclosure
- Confidentiality
- Reasonable care and diligence
- Accounting



Discussion Question Compensation

- A buyer agent claims a cooperating fee because she has a written agency agreement with the buyer. Must the listing agent compensate her on the basis of her agency agreement with the buyer?



Termination of Brokerage Relationship

- Completion of performance
- Expiration date
- Mutual agreement
- Default by either party



Discussion Question

Duties after termination

- Discussion Question: What duties do you owe your client after termination?



Disclosure of Brokerage Relationship to your Non-Client

- Disclosure must be made and consent obtained from the buyer, and/or the seller upon substantive discussion about a specific property with a buyer or seller who is not the client of another licensee.



Disclosure to Non-Client – cont.

- Disclosure
 - Must be in writing at earliest practical time
 - Not later than the time when specific real estate assistance is provided
 - Must be conspicuous, printed in bold lettering, all capitals, underlined or within a separate box.
 - If the relationship changes, licensee must disclose in writing to all clients and customers involved in the transaction
 - Copies of any disclosures relative to fully executed purchase contracts must be kept for three years.



Discussion Question

Compensation – Accepting a commission from buyer & seller

A buyer engaged a broker to find a commercial property. The parties agreed that if the broker found a property that fit the buyer's specifications and price range, he would pay the broker a finder's fee.

Two weeks later, the broker told the buyer that a seller had just listed a property with him that met all the buyer's specifications except that the listed price was a bit higher than the buyer wanted to pay. The buyer inspected the property and liked it but wouldn't compromise on his original price.

Three days later, the broker called the buyer to say that the seller had agreed to the buyer's price. The sale was made and the broker collected a commission from his client, the seller, as well as a finder's fee from the buyer, which was not disclosed to the seller.

The seller learned about the finder's fee a few weeks later and filed a complaint with the local board of REALTORS, charging the broker with duplicity and unprofessional conduct.

The complaint noted that the broker had actually been the agent of the buyer while misrepresenting himself as the agent of the seller. The broker argued that he hadn't accepted the seller's listing until after he had agreed to help the buyer find a property and that the price paid for the property was fair.

What do you think?

Discussion Question

License Status & Compensation

An agent is licensed with a real estate firm and has pending transactions in which the agent is either the listing or selling agent.

Prior to closing, the agent has to return his license to DPOR. With the agent's license now "inactive", can the agent be paid the commission earned on the pending transactions when they close?



Regulatory Risks - RESPA

- The Real Estate Settlement Procedures Act
- Enacted in 1974
- To further national goal of encouraging home ownership
- Intended to protect consumers from abusive practices





RESPA do's

Real estate brokers and agents must comply with the Real Estate Settlement Procedures Act, or RESPA. Violators of RESPA may receive harsh penalties, including triple damages, fines, and even imprisonment. Here are a few examples of what RESPA allows and what they prohibit.

- **Allows** a title agent to provide, during an open house, a modest food tray in connection with the title company's marketing information indicating that the refreshments are sponsored by the title company.
- **Allows** a home inspection company to sponsor association events when representatives from that company also attend and to post a sign identifying its services and sponsorship of the event.
- **Allows** you to jointly advertise with a mortgage broker if you pay a share of the costs in proportion with your prominence in the advertisement.



RESPA do's

- **Allows** a lender to pay you fair market value to rent a desk, copy machine and phone line in your office to pre-qualify applicants.
- **Allows** a hazard insurance company to give you marketing materials such as notepads, pens and desk blotters which promote the hazard insurance company's name.
- **Allows** a title agent to pay for your dinner when business is discussed provided that such dinners are not a regular occurrence.



RESPA Don'ts

- **Prohibits** a title company from regularly providing dinner and reception for real estate agents.
- **Prohibits** acceptance of discounted or free business equipment, such as a free lockbox.
- **Prohibits** acceptance of reimbursement of the cost for an open house lunch from a mortgage broker who doesn't display any marketing materials at the event.
- **Prohibits** acceptance of a dinner paid for by a home inspector who doesn't attend the dinner to market his/her services to you.
- **Prohibits** acceptance of contributions from a title company to offset the cost of a real estate agent's promotional event except to the extent of the value of any marketing done by the title company during that event.



RESPA Don'ts

- **Prohibits** accepting gifts from mortgage brokers, such as paying your greens fees.
 - **Prohibits** a mortgage broker or Title Company from paying for your tickets to a sporting event.
 - **Prohibits** participation in a tropical “get away” weekend, the cost of which is underwritten by a title company, during which only two hours is dedicated to marketing by the title company and the remainder is recreation
- Don't EVER** accept payment from a mortgage lender just for taking a loan application.

Reproduced from a piece by the National Association of REALTORS®.

Regulatory Risks -

Antitrust Traps to Avoid

[NAR Antitrust Video 16:37](#)

- Price/term fixing
- Territorial Assignments
- Boycotts
- Association meetings



Regulatory Risks – **Antitrust Compliance**


- Do not discuss your business with competitors
- Written communications Must be Clear and Explicit
- Do not talk unless you know who you're talking to and what you're talking about
- Do not deceive yourself or let anyone else deceive you into believing that any transgression of the antitrust laws has little risk of discovery
- Do not use such terms as "Please destroy when read"
- If in doubt, consult
- Without clearance, don't do it



Regulatory Risks – **Drones**

- Federal Aviation Administration (FAA) has begun issuing waivers for some drone operators to legally operate.
- All drones prohibited without a waiver
- FAA has an approved list of operations on their website





Regulatory Risks – Advertising by Licensees

- [VAR Advertising Video 6 min](#)
- Definitions:
 - Advertising: 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



Advertising – Cont.

Disclosure: in online advertising

- Firm's Licensed name
- City & State firm's main office is located in
- Jurisdiction firm holds license in
- Licensee's Name and phone #

Disclosure: all other advertising (signs, cards, etc)

- Name of the firm and office phone number
- Licensee's Name and phone #

All advertising must be under the direct supervision of the Principal Broker or supervising Broker

The firm's licensed name must be clearly and legibly displayed on all advertising



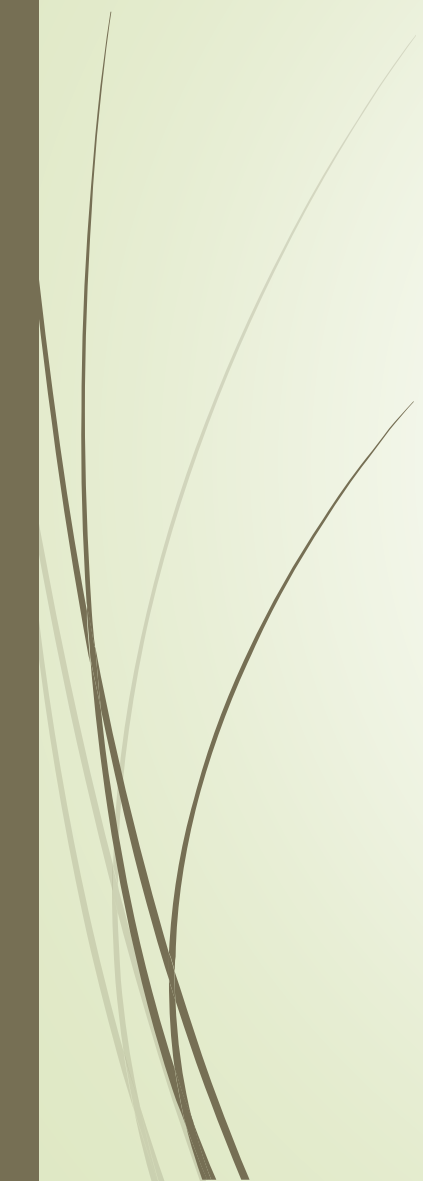
Online Advertising

All online advertising must contain disclosure as follows:

- **Web Pages-** disclosures or link to disclosures
- **E-mail, newsgroups, discussion lists, bulletin boards-** disclosures at the beginning or end of each message
- **Instant messaging,** disclosure not necessary , if provided via another format
- **Chat/based dialogue** -disclosure prior to services
- **Voice Over Net,** disclosure required
- **Banner ads-** include a link to disclosure unless the ad contains it.
- *All online advertising must be kept current and consistent*



Prohibited Online Advertising Practices

- Implying listed property is not listed
 - Not disclosing owner is real estate licensee
 - Not displaying firm's name on signage
 - Not having owners' consent to advertise
- 



On-Line Advertising Liabilities



- What governs our use of on-line marketing?
 - State regulations and licensing laws
 - Code of Ethics
 - HUD – Fair Housing Guidelines
 - Copy right laws
 - Trademark Infringements
 - Anti Trust
 - Intellectual property violation



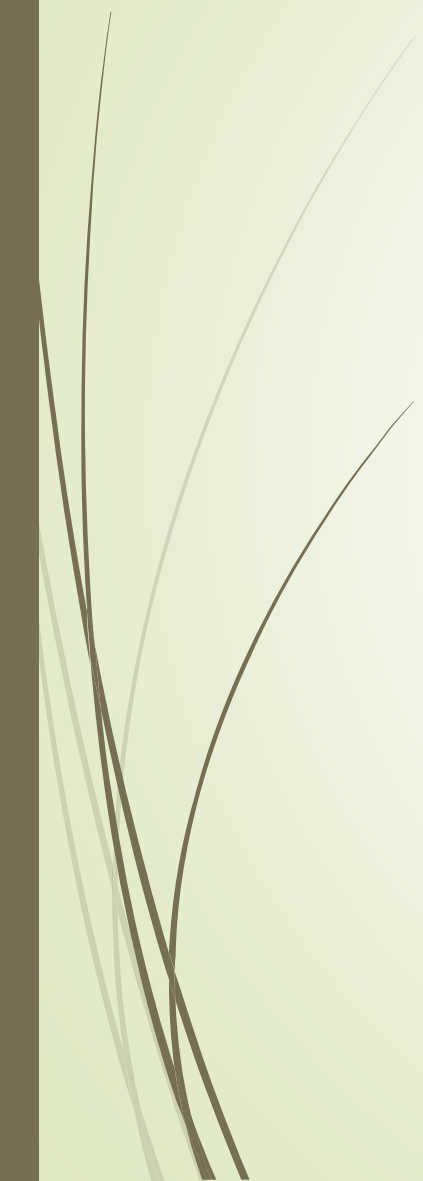
Disclosures

Disclosure of ownership interest

- 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 through purchase, sale or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner, purchaser or lessee in writing in the offer to purchase, the application, the offer to lease or lease.
- This disclosure shall be made to the purchaser, seller or lessee upon having substantive discussions about specific real property.
VAC 135-20-210



Discussion Question Disclosure



The local town manager has been convicted of child molestation and is selling his house before leaving for jail. Is the listing agent required to disclose to prospective purchasers the circumstances of the sale?



Property Disclosures



- Residential Property Disclosure Statement
 - [Maintained by VREB on their website – click here....](#)
- Required disclosures pertaining to a Military Air Installation
 - Disclosure required for properties located in a locality in which a military air installation is located



Property Disclosure *Cont.*

- Meagan's Law
- Disclosure of any known defects
- Virginia Condominium Act
 - If property is subject to the Condominium Act Seller to provide a Resale Certificate
 - Recent changes
- Property Owners Association Disclosure
 - Recent changes
 - Delivery

Do Not Call

Are our policies still in place and being adhered to?

How are we handling company wide procedures?



The screenshot shows the Federal Trade Commission's National Do Not Call Registry website. The header features the FTC logo and the text "FEDERAL TRADE COMMISSION PROTECTING AMERICA'S CONSUMERS". Below the header, there are links for "Back to ftc.gov" and "Español". The main heading is "National Do Not Call Registry" with a house and phone icon. To the right of the heading is a link for "En Español". Below the heading, there are three main action buttons: "Report Unwanted Calls" (green), "Verify Your Registration" (blue), and "Register Your Phone" (orange). Each button has an icon above it: a phone and computer for reporting, a checkmark for verification, and a phone with a checkmark for registration. Below these buttons, a paragraph states: "The National Do Not Call Registry gives you a choice about whether to receive telemarketing calls". Below this paragraph, there are three bullet points: "You can [register](#) your home or mobile phone for **free**.", "After you register, **other types of organizations may still call you**, such as charities, political groups, debt collectors and surveys. To learn more, read our [FAQs](#).", and "If you received an unwanted call after your number was on the National Registry for 31 days, [report it to the FTC](#).". At the bottom, there is a section for "Sellers and telemarketers:" with a link to <https://telemarketing.donotcall.gov> to access the National Do Not Call Registry.

FEDERAL TRADE COMMISSION
PROTECTING AMERICA'S CONSUMERS

[Back to ftc.gov](#) | [Español](#)

[More Information](#) | [Privacy & Security](#) | [Home](#)

 **National Do Not Call Registry** [En Español](#)

 **Report Unwanted Calls**

 **Verify Your Registration**

 **Register Your Phone**

The National Do Not Call Registry
gives you a choice about whether to receive telemarketing calls

- You can [register](#) your home or mobile phone for **free**.
- After you register, **other types of organizations may still call you**, such as charities, political groups, debt collectors and surveys. To learn more, read our [FAQs](#).
- If you received an unwanted call after your number was on the National Registry for 31 days, [report it to the FTC](#).

Sellers and telemarketers:
Go to <https://telemarketing.donotcall.gov> to access the National Do Not Call Registry.


Do Not Text

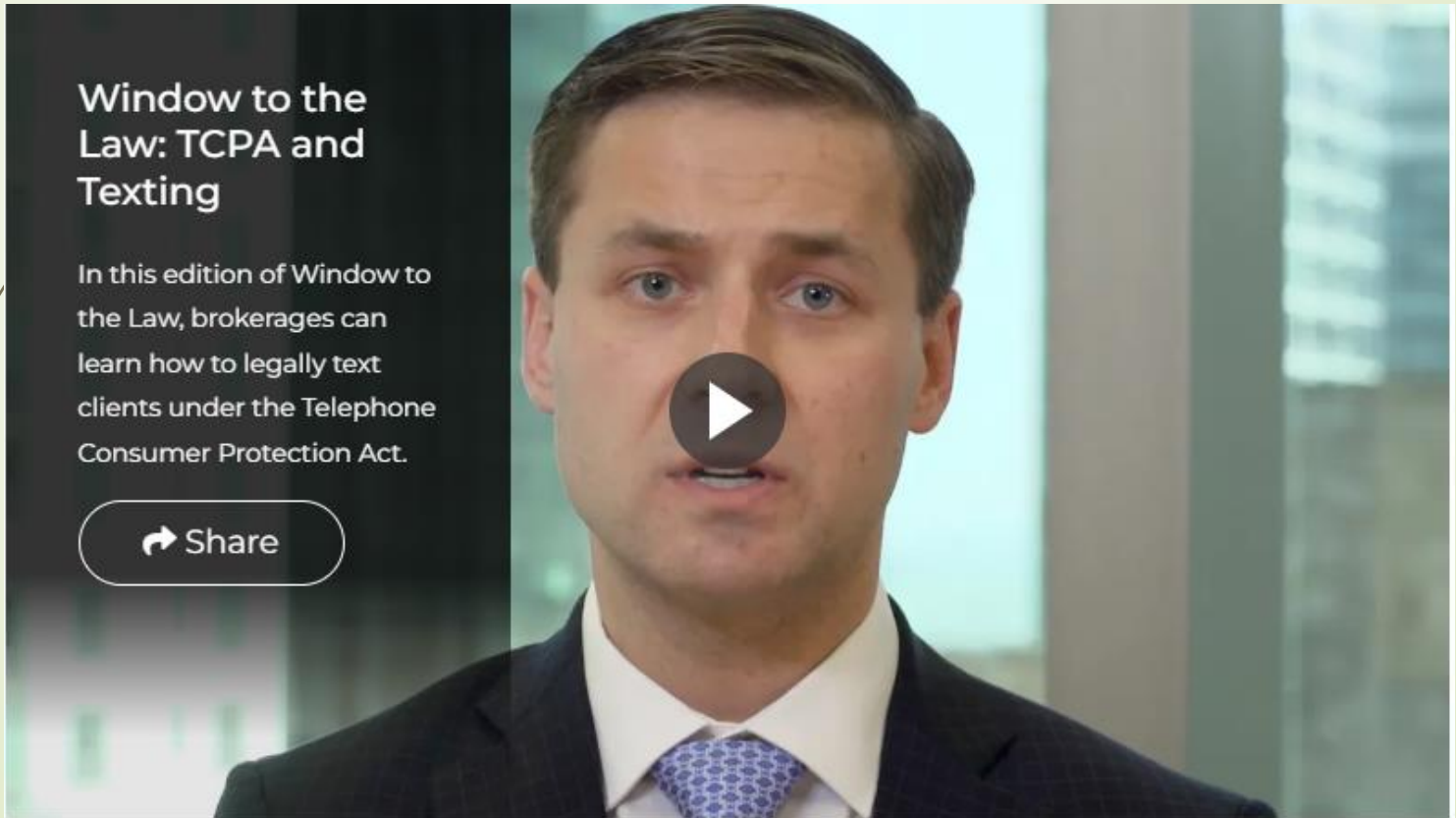
Are our policies still in place and being adhered to?


How are we handling company wide procedures?

Window to the Law: TCPA and Texting

In this edition of Window to the Law, brokerages can learn how to legally text clients under the Telephone Consumer Protection Act.

 Share





Virginia Residential Landlord and Tenant Act

- VRLTA imposes legal duties and obligations on both landlords and tenants
- Applies to most apartment leases
- Does not apply to the rental of a single-family home or condo if the owner owns no more than four units.
- Landlords and tenants may agree to different provisions



VRLTA *Cont.*

- Landlord and tenant may agree that the VRLTA will apply
- If the VRLTA doesn't apply, the Virginia Common Law governs your tenancy
- What items are addressed in the VRLTA law?

Common Interest Community Law

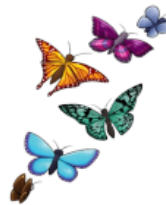
- “Common interest **Community** means real estate with respect to which a person is obligated to pay for real estate, insurance premiums, maintenance, or improvement of other real estate described in a declaration, by virtue of his or her ownership of a unit.”

Spring 2021 Edition

Common Interests

The Newsletter of the Virginia Common Interest Community Board

Spring 2021: Things are Looking Up



Inside this issue:

Board Update	2
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Recent Board Disciplinary Case Decisions	7
Notable Recent Final Determinations from the Ombudsman	8
Board Member List and Meeting Schedule	15


Spring's Greetings! This is the Spring 2021 edition of *Common Interests*, the newsletter for the Common Interest Community Board. Springtime is seen by many as a period for growth and renewal; a season for optimism. Hopefully, this newsletter finds its readers with similar sentiments. This past March marked one year since the Commonwealth was first faced with the COVID-19 public health emergency. As of this writing, millions of Virginians have received a COVID-19 vaccination, with many more expected to be vaccinated in the weeks and months ahead. Conditions are improving, and restrictions imposed over the past year are gradually being lifted. Many are starting to return to life as it was known pre-pandemic. Businesses, public venues, and other community gathering spaces have been opening up, even if at limited capacity.

Along this front, the Governor recently announced that Virginia will ease all distancing and capacity restrictions on May 28; and further announced an end to the state's universal indoor mask mandate. These changes no doubt come as a relief to many. The state of emergency declared by the Governor in March 2020, will end effective June 30, 2021.

As a result of the ending of the state of emergency, several temporary waivers of regulations issued by the Director of DPOR over the last year will be expiring. These include the regulatory waiver extending the validity of common interest community manager licenses, principal or supervisory employee certificates, and common interest community association registrations. (See Pages #3-4 for more on this.)


For the time being, the Department remains closed to the public. The Board's staff continue alternate days working in the office, and working remotely from home. The Board's call center continues to operate at a reduced schedule – from 8:30 a.m. to 1:00 p.m. – but staff remains available during regular business hours from 8:15 a.m. to 5:00 p.m. to respond to emails and ensure processing is completed timely. If you cannot reach us by phone, please feel free to send an email and we will promptly respond.

This issue includes an update on recent disciplinary matters decided by the Board, as well as some notable recent determinations from the Common Interest Community Ombudsman. We also provide an overview of some legislative changes resulting from the



Common Interest Community Law *Cont.*

- Governs condominiums, planned communities, time shares, and cooperatives.
- The Common Interest Community Board carries out the act's regulations
- Office of Common Interest Community Ombudsman provides assistance to both community associations and consumers.



Common Interest Community Law Cont.

- 2020 General Assembly passed bills that changed the common interest communities law either directly or indirectly.
 - **POA & Condo Act Contract Disclosure Statement (HB 176 / SB 672)** (Virginia REALTORS®) These bills amend the Property Owners' Association Act and the Virginia Condominium Act to **allow the parties to agree, in writing, to extend the three-day right of rescission up to an additional four days.** This means that the parties can agree in the contract, or in an amendment to the contract, for the buyer to have additional days **to review the Association packet.** Note that the law does not allow the parties to reduce the number of days to review the Association packet and caps the extension at an additional four days.
 - **3.2 Display of Political Signs in HOAs (HB 720)** This bill adds an item to the required disclosure packet requiring Property Owners' Associations to include a statement setting forth any restrictions as to the size, place, duration, or manner of placement or display of political signs by a lot owner on his lot. This means that if there are any restrictions on political signs within a Property Owners' Association, that information will be included in the disclosure packet the buyer receives.




Service Members Civil Relief Act

- Deals with the rights and protections provided to active duty or deployed military personnel
 - Includes reservists and National Guard
- It is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty and relieve stress on the family members.



Service Members Civil Relief Act, *cont.*

- ▶ Examples of obligations you may be protected against:
 - ▶ Outstanding credit card debt
 - ▶ Mortgage payments
 - ▶ Pending Trials
 - ▶ Taxes
 - ▶ Termination of lease

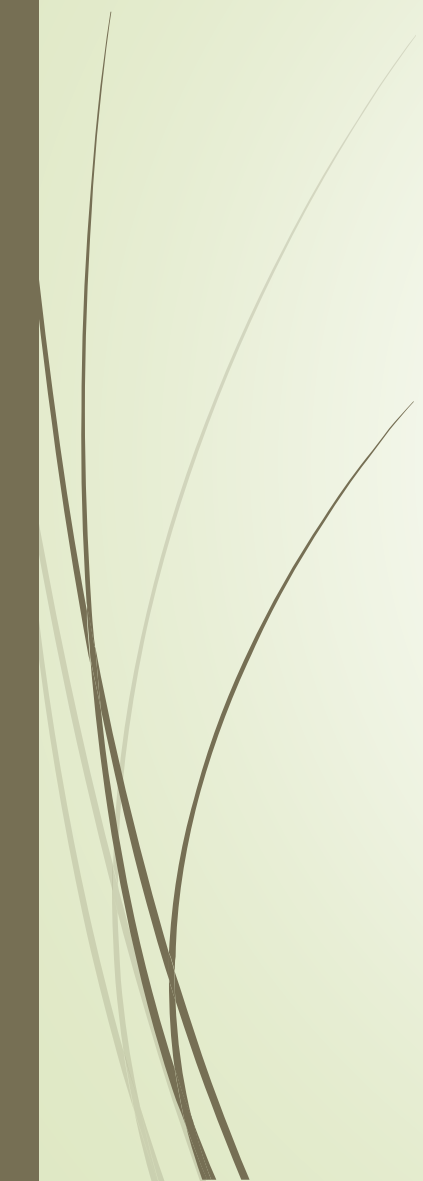


Service Members Civil Relief Act, *cont.*

- Additionally:
 - Ups monthly lease rent from \$1,200 to \$2,932.31 that is protected from eviction. Now adjusted annually to account for inflation
 - Allows service members receiving permanent change of station orders or deployment for 90 days or more right to terminate
 - Clarifies limits on interest on credit obligations.
 - Updates life insurance protections
 - Prevents service members from double taxation



Virginia Uniform Statewide Building Codes (USBC)

- USBC contains building regulations that must be complied with when constructing a new building, structure, or an addition to an existing building.
 - Establishes the minimum safety requirements.
 - Also used when maintaining or repairing an existing building, renovating or changing the use of a building or structure.
 - Enforcement is the responsibility of the local government's building inspections department.
- 



Smoke Detectors

- NFPA 72 – National Fire Alarm Code is a standard published by the National Fire Protection Association.
- **Minimum Requirements under NFPA 72**
 - In each sleeping room
 - Outside of each separate sleeping area in the immediate vicinity of bedrooms
 - On each additional story of a dwelling including basements and cellars.
 - Not crawl spaces and uninhabited attics.
- **Applies only to new construction or renovations in existing homes.**
- Older homes and those managed by property managers do not have to change out existing smoke detectors to be in compliance.



Smoke Detectors *Cont.*

- Interesting facts:
 - 96% of all homes have at least one smoke alarm
 - 2/3 of home fire deaths resulted from fires in homes with no smoke alarms or no working smoke alarms
 - What is the reason most smoke alarms fail?



Misrepresentation/omission

- Using “bait and switch” tactics
- Failure to disclose material adverse fact
 - To your client: all material adverse facts related to the property or concerning the transaction
 - When representing the seller, to a prospective purchaser: all material adverse facts pertaining to the physical condition of the property
- Failing to present promptly to the buyer and seller every written offer, counteroffer, and written rejection to purchase, option or lease



Misrepresentation/Omission

- Making false statements to a lender for the purpose of influencing that lender's actions
- Knowingly making material misrepresentation
- Making false promises through agents, advertising, or other means

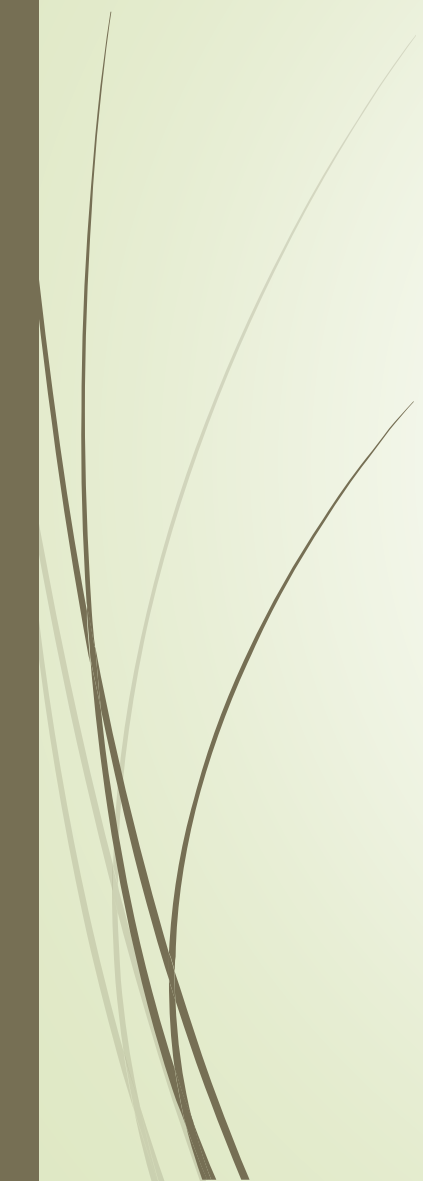


Recent Changes

- Flood Hazard Areas
- Landlord and Tenant changes – family trusts
- Real Estate Transaction Recovery Fund
- POA & COA – time of delivery
- Delinquent water bills – can't charge tenant's bills to owners
- Real Estate Teams



National Flood Insurance

- 
- Flood definition: A general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties (at least one of which is your property) from overflow of inland or tidal waters, from unusual and rapid accumulation or runoff of surface waters from any source, or from mudflow.



The National Flood Insurance Program

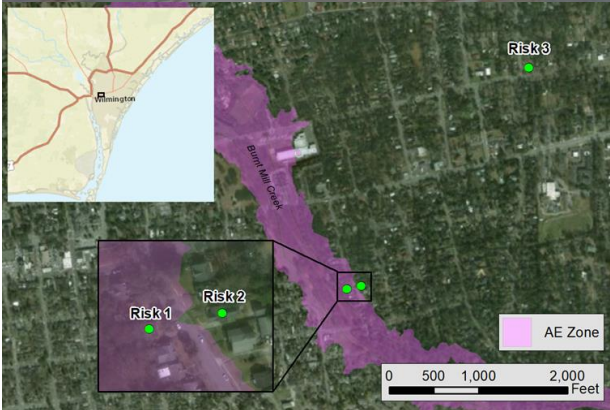
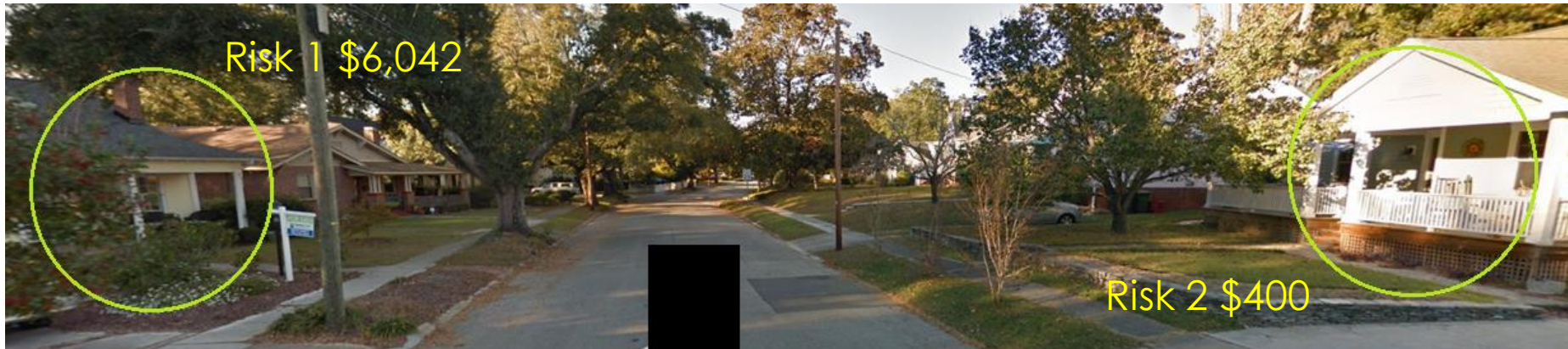
- The National Flood Insurance Program is :
 - Aimed at reducing impact of flooding on private and public
 - Providing affordable insurance for property owners
 - Encouraging communities to adopt and enforce floodplain management regulations
 - Help reduce the socio-economic impact of disasters by
 - Promoting the purchase and retention of Risk Insurance in general and
 - National Flood Insurance in particular.



National Flood Insurance – *Cont.*

- 2014 the Homeowner Flood Insurance Affordability Act became law.
- Administered by FEMA under US Dept. of Homeland Security through state-licensed insurance companies
- FEMA identifies flood hazard areas on Flood Insurance Rate Maps (FIRMS) and Flood Hazard Boundary Maps (FHBMS)
 - FIRMS are the official map of a community delineating special hazard areas and risk premium zones applicable.

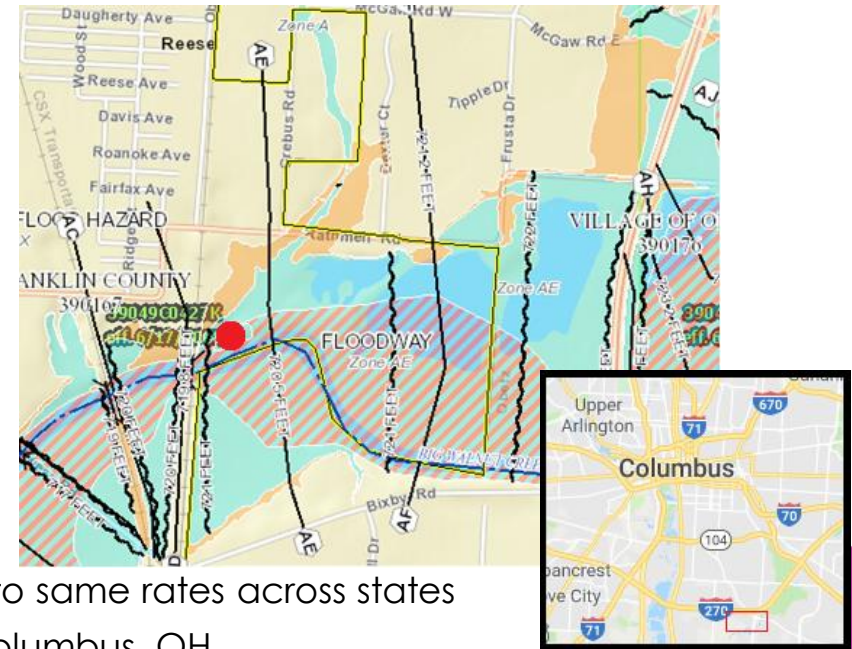
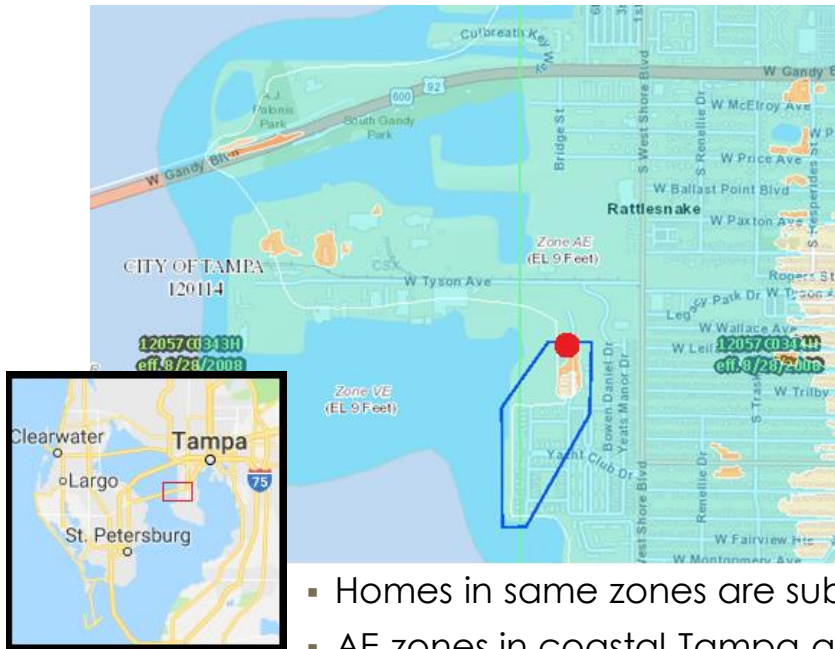
Problem 2: Neighbors with very different rates



- Hypothetical, identical houses*
 - Risk 1 near a creek
 - Risk 2 across the street from Risk 1
 - Risk 3 far away from the creek
- Current NFIP premiums:
 - Risk 1: \$6,042
 - Risk 2: \$400
 - Risk 3: \$400

Source:
Milliman

Problem 3: Many paying more than their share of the risk



- Homes in same zones are subject to same rates across states
- AE zones in coastal Tampa and Columbus, OH
- Identical houses at these locations
 - One-story, frame house worth \$250k
 - First floor 1 foot above base flood elevation
 - No basement, built 1990

Source:
Milliman

Solution 1: Risk Rating 2.0 is product of collaboration and science

TIME: Research, design, analysis, development, and testing translates to 5+ years of work and thousands of hours.

PEOPLE: The cross-functional team of 20+ NFIP program experts, including 8+ full-time actuaries, collaborated with a diverse network of experts from a wide range of disciplines:

- Academics
- Actuaries
- Building scientists
- Engineers
- Insurance industry experts
- Mappers
- Underwriters
- Mitigation experts

TECHNOLOGY: Cutting-edge technology and best available data used to make a modern-day program.

Private Sector
Rate Setting Methods



Private Sector
Catastrophe Models



Government Models, Available Data, and Collaborations



Source: FEMA

Solution 2: Risk Rating 2.0 prices individually rather than by flood zone

Current Rating Methodology

FEMA-sourced data

Rating Variables

- Flood Insurance Rate Map Zone
- Base Flood Elevation
- Foundation Type
- Structural Elevation (Special Flood Hazard Area Only)

1% Annual Chance of Flooding (Frequency)

Fees and Surcharges

Risk Rating 2.0 Methodology*

FEMA-sourced data

Additional data sources: Federal government-sourced data, commercially available third-party

Cost to Rebuild

Rating Variables

- Distance to Coast/Ocean/River
- River Class
- Flood type — Fluvial/Pluvial
- Ground Elevation
- First Floor Height
- Construction Type/Foundation Type

Broader Range of Flood Frequencies

Fees and Surcharges

Source: FEMA

What's Not Changing

- Residential & Commercial Policy Coverage stays the same
- Buyer can still assume/transfer the Seller's policy so no big jumps on day 1.
- Still have 18% or 25% maximum increases for existing policies when transferred
- Still required to have flood insurance if in a Special Flood Hazard Area like AE & VE and have a federally backed mortgage
- Community Rating System (CRS) discounts of 5-45% still apply
- Elevation certificates are now optional and can be used if it will help get more favorable rates

Source: FEMA

What Realtors® Need To Know

- Prepare your clients that change is coming
- Utilize NAR resources provided - Handout NAR FEMA flyer to clients
- Be their calm professional ... Pause – Breathe – Get the facts
- Encourage clients to start early and work with experienced, knowledgeable flood insurance agents to understand process and all their options.
- Don't assume - remember your license and training
- Make sure you have a knowledgeable Insurance Advisor on your team.

NAR Resources for You

NAR Member Information Packet <https://www.nar.realtor/national-flood-insurance-program/fema-risk-rating-2-0-equity-in-action>

FEMA-NAR Flyer for Homeowners <https://www.nar.realtor/national-flood-insurance-program/major-improvements-coming-to-the-national-flood-insurance-program>

NAR Frequently Asked Questions (FAQs) <https://www.nar.realtor/national-flood-insurance-program/faq-fema-risk-rating-2-0-townhall>

NAR Member Legal Guidance <https://www.nar.realtor/flood-insurance#section-166024>

Video: FEMA Risk Rating 2.0: A modern equitable flood insurance system
<https://www.nar.realtor/videos/risk-rating-2-0-part-1-a-modern-equitable-flood-insurance-system>

Video: FEMA Risk Rating 2.0: The Impact on Your Business
<https://www.nar.realtor/videos/risk-rating-2-0-part-2-impact-on-your-business>

Video: NAR-FEMA Townhall <https://www.nar.realtor/videos/nar-town-hall-featuring-fema-senior-executive-david-maustad>



Questions??

