

A photograph of three business professionals in a hallway. A woman on the left is handing a set of keys to a man on the right. A woman stands in the middle, looking on. They are all dressed in business attire. The background shows a modern building interior with a door and a window.

# *Virginia Agency Law*

# Overview of the Law

Virginia Licensing Law defines Agency as:

“Every relationship in which a real estate licensee acts for or represents a person by such person’s express authority in a real estate transaction.”

National Association of Realtors Code of Ethics  
under Article 1 requires:

“When representing a buyer, seller, landlord,  
tenant, or other client as an agent , REALTORS  
pledge themselves to protect and promote  
the interest of their client. . .”

# Why have agency?

- Protects consumers in the Real Estate transaction
- It's in the best interest of your Client
- Enforced by the Code of Ethics
- Adds value to the transaction by representing the interest of your client

# What does not create a Brokerage Relationship?

- Participation in MLS
- Accepting compensation from a party
- Performing ministerial acts

# Terminology

- Brokerage agreement
  - An agreement by which a real estate licensee represents a client in a brokerage relationship
- Brokerage relationship
  - The contractual relationship between a client and a real estate licensee who has been engaged by the client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client

# Terminology - continued

- Client
  - VREB says: A person who has entered into a brokerage relationship with a licensee
  - Code of Ethics says: person or entity with who a REALTOR or a REALTOR'S firm has an agency or legally recognized non-agency relationship

# Terminology - continued

- Customer
  - VREB says: A person who has not entered into a brokerage relationship with a licensee but for whom licensee performs ministerial acts in a real estate transaction
    - Without a brokerage relationship with such person, it is presumed that person is a customer
  - Code of Ethics says: a party to a real estate transaction who receives information, services or benefits but has no contractual relationship with the Realtor or the Realtor's firm.



# Terminology - continued

- Prospect
  - Code of Ethics says: a purchaser, seller, tenant or landlord who is not subject to a representation relationship with the REALTOR or REALTOR's firm.

# Terminology - continued

- Designated Agent or Designated Representative
  - A licensee who has been assigned by a principal or supervising broker to represent a client
  - A different client in the same transaction is also represented by the principal or broker
- Dual Agent
  - A licensee who has a brokerage relationship with both seller and buyer, or landlord and tenant, in the same real estate transaction

# Terminology - continued

- Licensee
  - VREB says: Real estate brokers and salespersons
- Agent
  - Code of Ethics says: a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation

# Terminology - continued

- Limited Service Agent or Representative
  - A licensee who acts for or represents a client with respect to real property pursuant to a brokerage agreement
  - Provides that a Limited Service Representative shall not provide one or more of the duties of a standard agent
  - Must provide all disclosures required by federal or state law, or local disclosures expressly authorized by state law

# Limited Service Agent

- Means a licensee who acts for or represents a client with respect to real property containing from 1 to 4 residential units, pursuant to a brokerage agreement that provides that the limited service agent will not provide one or more of the duties set forth in the Code.

# Terminology - continued

- Ministerial Acts
  - Those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment.
- Standard Agent
  - A licensee who acts for or represents a client in an agency relationship.

# Terminology - continued

- Informed Consent
  - A person's approval based on a full disclosure of facts needed to make the decision intelligently

# We're Just Buying...

Does your brokerage agreement need to be in writing?



# How is an agency Relationship formed?

- Section 54.1-2137 of the Virginia Code – Brokerage Agreements must be in writing
- Code of Ethics – “Whenever possible....all agreements....are in writing”

# Agency Relationships

- A written brokerage agreement must have:
  1. A definite termination date (default 90 days)
  2. The amount of the brokerage fee and how and when the fees are to be paid
  3. The services to be rendered by the licensee
  4. Any other terms agreed to by the client and licensee

# Statutory Duties Owed to a Principal

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

# Agency Relationships

- What if the buyer refuses to sign a Buyer Brokerage Agreement?

# Owner/Agent Signage

An agent in my office is selling his own home through the firm and has heard that he doesn't have to use the Owner/Agent sign - are Owner/Agent signs still required?

# Before Entering into a Brokerage Relationship

- Advise the prospective client
  - The type of brokerage relationship offered by the broker
    - Agency form
    - Written, clear disclosure
    - Disclosure must be made to all parties
    - Disclosure must be timely
  - When the agency begins and when it ends
    - Signed Agency Form
    - Verbal Agreements
  - The broker's compensation and cooperation with other companies

# Compensation

- Does having a written buyer agency agreement guarantee you compensation?
- Does the promise of payment of compensation to a real estate broker create a brokerage relationship?

# 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.
  - It must be timely
  - Prior to signing of a listing agreement or buyer agency agreement



# Disclosure to Non-Client - continued

- 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.

# Seller Agency

- Agent works only for the Seller
- Owes Statutory duties to the Seller
- Seller's agents include all persons licensed with the brokerage firm
- Other brokerage firms may accept an offer to work with the listing broker's firm as the Seller's agent, sub-agency

# Seller Agency - continued

- The role of the Seller in the home selling process:
  - Decide on list price
  - Prepare property for marketing
  - Make property available to be shown
- The role of the Listing agent in the home selling process
  - Provide competitive pricing information
  - Introduce property to the market
  - Present property to agents, buyers & appraiser
  - Give seller accurate feedback
  - Recommend changes to pricing and marketing

# Question...

What if I represent a seller and an interested buyer wants me to write the offer but does not want representation?

Do I have to sign a Buyer Broker Agreement with him?

# We're Just Looking...

An unrepresented prospective buyer sees a For Sale sign and calls me to show him the property.

Am I required to have a written Buyer Brokerage Agreement?

# Buyer Agency

- Agent works only for the buyer
- Owes statutory duties to the buyer the same as Seller agent owes his client
- Must be evidenced by a written Buyer Representation Agreement
- Should fully explain what the buyer expects of the licensee during the period of representation

# An Unhappy Buyer

**An agent was approached to assist a buyer in finding a home.**

**The agent asked whether the buyer had signed an agreement to work exclusively with another agent, and was told by the buyer that although he had, he was very unhappy with that agent and wished to be released from his agreement.**

**Can the second broker work with the buyer under these circumstances? Why or why not?**

# Dual Agency

- A disclosed dual agent works for both the Buyer and the Seller
- A firm must first obtain the informed written consent of the buyer and the seller
- Disclosure must be conspicuous, printed in bold lettering, all capitals, underlined or within a separate box.



# Designated Agency

- A form on Dual Agency
- Broker may assign or designate different agents within the company to represent different clients in the same transaction
  - Broker is the Dual Agent
  - Other agents in the company, who are not designated, may represent another party and should not be provided with any confidential information

# Sub-Agency

- An Agent of An Agent
  - Owes the same fiduciary duties
  - Subagency usually arises when a cooperating sales associate from another brokerage firm, who is not representing a buyer, shows listed property to a buyer.
    - Cannot assist the buyer in any way that would be detrimental to the seller
    - Buyer customer should be treated honestly
    - Disclosure to non-client

# What can a Subagent do for a Buyer?

- A subagent representing the seller **cannot**:
  - Suggest the price to offer for a home
  - Reveal information about the seller’s financial condition or moving plans that might influence the negotiation
  - Assist in negotiating the sale on behalf of the buyer
  - Refer to the buyer as the “client” or “my buyer”
  - Refer the buyer and subagent as “we” or “us” and the seller and listing agent as “they” or “them”

# Subagent /buyer- continued

- A subagent representing the seller can:
  - Show the buyer listed properties and point out amenities
  - Make factual representations about the property's conditions and status
  - Transmit any offers made by the buyer to the seller or listing broker
  - Inform the buyer about the availability of financing, legal services, home inspections, and title companies

# Limited Service Agent

- The following disclosures must be made:
  - Disclosure of limited service is required in writing
  - A list of the specific services to be provided to a client
  - A list of the specific services provided by a standard agent that the limited service representative will not provide

# Limited Service Agent- continued

- A licensee representing a client to a transaction and dealing with an unrepresented party or with a party represented by a limited service representative may:
  - Provide the other party with information to the transaction
  - Assist in securing a contract
  - Enter into an agreement for payment of a fee for services performed or information provided

# Agency and For Sale By Owner FSBO

- Disclosure to your Non-Client
  - Duties
    - Non-fiduciary
    - Honesty
    - No misrepresentation
    - Disclosure of material property facts
    - Accounting for escrow
- Agent may assist but not advocate for customer

# Agency Relationships and The Code of Ethics

- Standard of Practice 1-12: When entering into listing contracts, REALTORS must advise potential clients of:
  - The REALTOR's company policies regarding cooperation and amount of any compensation that will be offered to subagents, buyer agents, and brokers acting in legally recognized non-agency capacities
  - The fact that buyer agents, even if compensated by listing brokers, or sellers may represent the interest of buyer
  - Any potential for listing brokers to act as disclosed dual agents



# Agency and Code of Ethics- continued

- Standard of Practice 1-13: When entering into buyer agreements, REALTORS must advise potential clients of
  - REALTOR's company policies regarding cooperation
  - The amount of compensation to be paid by the client
  - The potential for additional or offsetting compensation from other brokers, sellers or other parties
  - Any potential for buyer agent to act as a disclosed dual agent
  - The possibility that sellers or their representatives may not treat the existence, terms or conditions of offers as confidential.

# Agency and Code of Ethics - continued

- Article 16: Realtors shall not engage in any practice or take any action inconsistent with the exclusive representation or exclusive brokerage relationship agreements that other REALTORS have with clients
  - You may not solicit a listing currently listed exclusively with another broker
  - You may contact the seller directly if the listing agent withholds the date of the listing, expiration date or nature of such listing
  - You may discuss the terms upon which you might take a future listing with a seller if seller contacts you.

# Teams and Agency

- Possible conflicts of interest should be disclosed

# Teams and Agency

- Ways to lessen the risk of agency liability
  - Have buyer side and listing sides of the team work in different spaces instead of sharing an office
  - If your team holds meetings, hold separate meetings for listing-side and buyer-side team members

# Teams and Agency

- Limit access to client files and information
- Train licensed and unlicensed team members on maintaining client confidences around the office
- Work with your broker to develop a written policy of your team's intention to maintain client confidences, and how you plan to achieve that.

# Disclosures Required in Virginia

- Disclosure to the seller client and buyer client of material facts related to the property or concerning the transaction of which the licensee has actual knowledge.
- Disclosure of brokerage relationship
  - Disclosure of who you represent to your “non client” and who are not represented by another agent

# Disclosure Forms

- Find the VR disclosure forms [here...](#)

# Come Along With Me...Or Not

An agent has decided to leave Firm A for Company B.

Does he have the right to contact Firm A's clients directly before the agent notifies Firm A that he is leaving, in an effort to induce the clients to come with him?

Why or why not?



# Termination of Brokerage Relationship

- At completion of performance
- At earlier of:
  - Expiration date agreed to by the parties
  - A mutually agreed upon termination of the relationship
  - A default by either party under terms of brokerage agreement
- Duties owed Client after termination:
  - Accountability of all moneys
  - Keep confidential all personal & financial information

# Real Estate Agency

- Questions?
  - Ask your Broker
  - Seek Legal Counsel



**Williamsburg Real Estate School  
Continuing Education or Post License Education Credit**

**PLEASE PRINT CLEARLY: FORM MUST BE TURNED AT END OF CLASS TO RECEIVE CREDIT.**  
There will be a \$10 charge assessed for forms turned in after the day of the class.

PLEASE INDICATE NAME BELOW **EXACTLY** AS IT APPEARS ON YOUR REAL ESTATE LICENSE.

<b>FIRST NAME - PRINT CLEARLY</b>			
<b>MIDDLE NAME OR INITIAL</b>			
<b>LAST NAME</b>			
<b>FIRM NAME</b>			
<b>EMAIL ADDRESS</b>			
<b>DAYTIME PHONE NO.</b>			
<b>COURSE NAME</b>	<b>Virginia Agency Law</b> <b>Approved for Agency Law PL</b> <b>Approved for 1 hour Agency &amp; 2 hours Real Estate Related CE</b> <b>Approved for 3 hours Broker Management BR</b>		
<b>COURSE DATE</b>	Thursday, April 4, 2024		
<b>LICENSE NUMBER (10 DIGITS):</b>	_0_	_2_	_2_
	_5_	_ _	_ _
<b>CREDIT TYPE REQUESTED</b> <i>(Check one)</i> <i>PL credit is required for salespersons in their first year of real estate.</i>	<b>PL # 28088</b>	<b>CE # 28087</b>	<b>BR # 28089</b>
<b>X</b>			

**Signature - Required: My signature certifies that I was present for this entire session and am entitled to receive continuing education credit. (Partial attendance does not give continuing education or class credit.)**



**Course Evaluation & Suggestion Card**

Instructor: Karen Schureman

Class: Virginia Agency Law

Date: April 4, 2024

Please answer the following questions with the scale ..... #1 poor - #3 excellent

- |  |   |   |   |
|--|---|---|---|
| 1. Will the material be useful in your daily real estate activities? | 1 | 2 | 3 |
| 2. Was the instructor well organized?                                | 1 | 2 | 3 |
| 3. Was the class interesting? Did it keep your attention?            | 1 | 2 | 3 |
| 4. Were your questions answered during class?                        | 1 | 2 | 3 |

5. Suggestions for class improvement may include -

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