

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 54.1-2130 through 54.1-2134, 54.1-2137, 54.1-2138.1, 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia, relating to duties of real estate brokers and salespersons; licensees engaged by buyers.

[S 1309]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2130 through 54.1-2134, 54.1-2137, 54.1-2138.1, 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2130. Definitions.

As used in this article:

"Agency" means every relationship in which a real estate licensee acts for or represents a person as an agent by such person's express authority in a commercial or residential real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 4 through 7 8 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 4 through 7 8 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135. Any real estate licensee who acts for or represents a client in an agency relationship in a residential real estate transaction shall either represent such client as a standard agent or a limited service agent.

"Agent" means a real estate licensee who is acting as (i) a standard agent in a residential real estate transaction, (ii) a limited service agent in a residential real estate transaction, or (iii) an agent in a commercial real estate transaction.

"Brokerage agreement" means the written agreement creating a brokerage relationship between a client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent the client as an agent or an independent contractor.

"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such 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 to provide brokerage services.~~

"Brokerage services" means (i) those activities described in subsection A of § 54.1-2131, subsection A of § 54.1-2132, subsection A of § 54.1-2133, and subsection A of § 54.1-2134; (ii) activities requiring the exercise of a licensee's professional judgment, discretion, advice, or counsel; or (iii) activities otherwise performed in connection with procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange, or rent real estate on behalf of the client with whom the licensee has an executed brokerage agreement.

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

"Commercial real estate" means any real estate other than (i) real estate containing one to four residential units or (ii) real estate classified for assessment purposes under § 58.1-3230. Commercial real estate shall not include single family residential units, including condominiums, townhouses, apartments, or homes in a subdivision when leased on a unit by unit basis even though these units may be part of a larger building or parcel of real estate containing more than four residential units.

"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.

"Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee

rather than a client.

"Designated agent" or "designated representative" means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction. A designated representative shall only act as an independent contractor.

"Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an agency relationship under brokerage agreements with the clients. A dual representative has an independent contractor relationship under brokerage agreements with the clients. A dual representative shall only act as an independent contractor.

"Independent contractor" means a real estate licensee who (i) enters into a brokerage relationship based upon a brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent; (ii) shall have the obligations agreed to by the parties in the brokerage agreement; and (iii) shall comply with the provisions of subdivisions A 3 through 7 and subsections B and E of § 54.1-2131; subdivisions A 3 4 through 7 8 and subsections B and E of § 54.1-2132; subdivisions A 3 through 7 and subsections B and E of § 54.1-2133; subdivisions A 3 4 through 7 8 and subsections B and E of § 54.1-2134; and subdivisions A 2 through 6 and subsections C and D of § 54.1-2135 but otherwise shall have no obligations under §§ 54.1-2131 through 54.1-2135.

"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.).

"Limited service agent" means a licensee who acts for or represents a client in a residential real estate transaction pursuant to a brokerage agreement that provides that the limited service agent will not provide one or more of the duties set forth in subdivision A 2 of §§ § 54.1-2131, *subdivision A 3 of § 54.1-2132, subdivision A 2 of § 54.1-2133, and subdivision A 3 of § 54.1-2134, inclusive*. A limited service agent shall have the obligations set out in the brokerage agreement, except that a limited service agent shall provide the client, at the time of entering the brokerage agreement, copies of any and all disclosures required by federal or state law, or local disclosures expressly authorized by state law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client under the Virginia Residential Property Disclosure Act (§ 55.1-700 et seq.); (ii) if the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the resale certificate required by § 55.1-2309 ; and (iii) if the client is selling a property subject to the Property Owners' Association Act (§ 55.1-1800 et seq.), the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the resale certificate required by § 55.1-2309.

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

"Property management agreement" means the written agreement between a property manager and the owner of real estate for the management of the real estate.

"Residential real estate" means real property containing from one to four residential dwelling units and the sale of lots containing one to four residential dwelling units.

"Showing property" means (i) taking a prospective buyer or tenant to a property, obtaining access to such property, and taking the individual through the property, including entering a property to provide a live, virtual tour to a prospective buyer or tenant who is not physically present; (ii) responding to questions or providing information about such property that is not of public record while at the property; or (iii) otherwise providing brokerage services while at the property.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship in a residential real estate transaction. A standard agent shall have the obligations as provided in this article and any additional obligations agreed to by the parties in the brokerage agreement.

§ 54.1-2131. Licensees engaged by sellers.

A. A licensee engaged by a seller shall:

1. Perform in accordance with the terms of the brokerage agreement;

2. Promote the interests of the seller by:

a. Conducting marketing activities on behalf of the seller in accordance with the brokerage agreement. In so doing, the licensee shall seek a sale at the price and terms agreed upon in the brokerage agreement or at a price and terms acceptable to the seller; however, the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless agreed to as part of the brokerage agreement or as the contract of sale so provides;

b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the seller's objectives;

c. Receiving and presenting in a timely manner written offers and counteroffers to and from the seller and purchasers, even when the property is already subject to a contract of sale; and

d. Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to facilitate settlement of the purchase contract;

3. Maintain confidentiality of all personal and financial information received from the client during the

brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the seller consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the seller has or may have an interest;

6. Disclose to the seller material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, all fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations ~~which that~~ are not in conflict with this article.

B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property ~~which that~~ are actually known by the licensee. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. As used in this section, the term "physical condition of the property" ~~shall refer~~ refers to the physical condition of the land and any improvements thereon, and ~~shall~~ does not refer to (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, or (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this article shall limit in any way the provisions of the Virginia Residential Property Disclosure Act (§ 55.1-700 et seq.) applicable to residential real estate transactions.

C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to a buyer or potential buyer by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage agreement with the seller unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such buyer or potential buyer.

D. A licensee engaged by a seller does not breach any duty or obligation owed to the seller by showing alternative properties to prospective buyers, whether as clients or customers, or by representing other sellers who have other properties for sale.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 will be provided by an attorney or a nonattorney settlement agent.

G. A licensee engaged by a seller shall not be required to enter into a brokerage agreement with a prospective buyer to show property to the prospective buyer when such showing is conducted pursuant to and in accordance with a brokerage agreement entered into with a seller client.

§ 54.1-2132. Licensees engaged by buyers.

A. A licensee engaged by a buyer shall:

1. Enter into a brokerage agreement with the prospective buyer prior to showing property to such prospective buyer;

2. Perform in accordance with the terms of the brokerage agreement;

3. Promote the interests of the buyer by:

a. Seeking a property of a type acceptable to the buyer and at a price and on terms acceptable to the buyer; however, the licensee shall not be obligated to seek or show other properties for the buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the brokerage relationship;

b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the buyer's objectives;

c. Receiving and presenting in a timely manner all written offers or counteroffers to and from the buyer and seller, even when the buyer is already a party to a contract to purchase property; and

d. Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate settlement of the purchase contract;

3. 4. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the buyer consents in writing to the release of such information;

4. 5. Exercise ordinary care;

5- 6. Account in a timely manner for all money and property received by the licensee in which the buyer has or may have an interest;

6- 7. Disclose to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7- 8. Comply with all requirements of this article, all fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations ~~which~~ *that* are not in conflict with this article.

B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false information. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the buyer. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. In the case of a residential transaction, a licensee engaged by a buyer shall disclose to a seller whether or not the buyer intends to occupy the property as a principal residence. The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.

C. A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to the seller, or prospective seller, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage agreement with the buyer unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such seller.

D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing properties in which the buyer is interested to other prospective buyers, whether as clients or customers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. Nothing in this section shall be construed to require a licensee to disclose whether settlement services under Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 will be provided by an attorney or a nonattorney settlement agent.

~~G. Notwithstanding any other provision of law requiring written brokerage agreements or governing the duties of licensees, nothing in this chapter shall be construed to require that a written agreement between a licensee and a prospective buyer be executed prior to the licensee's showing properties to the prospective buyer.~~

§ 54.1-2133. Licensees engaged by landlords to lease property.

A. A licensee engaged by a landlord shall:

1. Perform in accordance with the terms of the brokerage agreement;
2. Promote the interests of the landlord by:

a. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement with the landlord. In so doing, the licensee shall seek a tenant at the rent and terms agreed in the brokerage agreement or at a rent and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;

b. Assisting the landlord in drafting and negotiating leases and letters of intent to lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord and tenant pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the landlord to finalize the lease agreement;

3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the landlord consents in writing to the release of such information;

4. Exercise ordinary care;

5. Account in a timely manner for all money and property received by the licensee in which the landlord has or may have an interest;

6. Disclose to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

7. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations ~~which~~ *that* are not in conflict with this article.

B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false

information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse facts pertaining to the physical condition of the property ~~which~~ *that* are actually known by the licensee. If a licensee has actual knowledge of the existence of any pipe, pipe or plumbing fitting, fixture, solder, or flux that does not meet the federal Safe Drinking Water Act definition of "lead free" pursuant to 42 U.S.C. § 300g-6 in a residential property, the licensee shall disclose the same to the prospective tenant. As used in this section, the term "physical condition of the property" ~~shall refer~~ *refers* to the physical condition of the land and any improvements thereon, and ~~shall~~ *does not* refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property.

C. A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or the brokerage agreement, provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.

D. A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

F. A licensee engaged by a landlord shall not be required to enter into a brokerage agreement with a prospective tenant to show property to the prospective tenant when such showing is conducted pursuant to and in accordance with a brokerage agreement entered into with a landlord client.

§ 54.1-2134. Licensees engaged by tenants.

A. A licensee engaged by a tenant shall:

1. *Enter into a brokerage agreement with the prospective tenant prior to showing property to such prospective tenant;*

2. Perform in accordance with the terms of the brokerage agreement;

~~2-~~ 3. Promote the interests of the tenant by:

a. Seeking a lease at a rent and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek *or show* other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;

b. Assisting in the drafting and negotiating of leases, letters of intent to lease, and rental applications, and presenting, in a timely fashion, all written offers or counteroffers to and from the tenant and landlord pursuant to § 54.1-2101.1, even when the tenant is already a party to a lease or a letter of intent to lease; and

c. Providing reasonable assistance to the tenant to finalize the lease agreement;

~~3-~~ 4. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the tenant consents in writing to the release of such information;

~~4-~~ 5. Exercise ordinary care;

~~5-~~ 6. Account in a timely manner for all money and property received by the licensee in which the tenant has or may have an interest;

~~6-~~ 7. Disclose to the tenant material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and

~~7-~~ 8. Comply with all requirements of this article, fair housing statutes and regulations for residential real estate transactions as applicable, and all other applicable statutes and regulations ~~which~~ *that* are not in conflict with this article.

B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false information. If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose the same to the prospective tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law.

C. A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord or prospective landlord by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the tenant unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be

construed to form a brokerage relationship with the landlord or prospective landlord.

D. A licensee engaged by a tenant does not breach any duty or obligation to the tenant by showing properties in which the tenant is interested to other prospective tenants, whether as clients or customers, by representing other tenants looking for the same or other properties to lease, or by representing landlords relative to other properties.

E. Licensees in residential real estate transactions shall disclose brokerage relationships pursuant to the provisions of this article.

~~F. Notwithstanding any other provision of law requiring written brokerage agreements or governing the duties of licensees, nothing in this chapter shall be construed to require that a written agreement between a licensee and a prospective tenant be executed prior to the licensee's showing properties to the prospective tenant.~~

§ 54.1-2137. Commencement and termination of brokerage relationships; brokerage agreements required.

A. The brokerage relationships set forth in this article shall commence at the time that a client engages a licensee to provide brokerage services and shall continue until (i) completion of performance in accordance with the brokerage agreement or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage agreement or in any amendments thereto, (b) any mutually agreed upon termination of the brokerage agreement, (c) a default by any party under the terms of the brokerage agreement, or (d) a termination as set forth in subsection G of § 54.1-2139.

B. Except as otherwise provided in this article, a licensee shall enter into a brokerage agreement with a prospective client prior to providing brokerage services. A licensee shall not be required to enter into a brokerage agreement prior to preparing property-specific materials with the intent to obtain a brokerage relationship with a prospective client.

C. Brokerage agreements shall be in writing and shall:

1. Have a definite termination date; however, if a brokerage agreement does not specify a definite termination date, the brokerage agreement shall terminate 90 days after the date of the brokerage agreement;

2. State the amount of the brokerage fees and how and when such fees are to be paid;

3. State the services to be rendered by the licensee;

4. Include such other terms of the brokerage relationship as have been agreed to by the client and the licensee; and

5. In the case of brokerage agreements entered into in conjunction with the client's consent to a dual representation, the disclosures set out in subsection A of § 54.1-2139.

~~G. D. Except as otherwise agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of performance of the brokerage agreement, except to (i) account for all moneys and property relating to the brokerage relationship and (ii) keep confidential all personal and financial information received from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information.~~

§ 54.1-2138.1. Limited service agent in a residential real estate transaction, contract disclosure required.

A. A licensee may act as a limited service agent in a residential real estate transaction only pursuant to a written brokerage agreement in which the limited service agent (i) discloses that the licensee is acting as a limited service agent; (ii) provides a list of the specific services that the licensee will provide to the client; and (iii) provides a list of the specific duties of a standard agent set out in subdivision A 2 of § 54.1-2131, subdivision A 2 3 of § 54.1-2132, subdivision A 2 of § 54.1-2133, or subdivision A 2 3 of § 54.1-2134, as applicable, that the limited service agent will not provide to the client. Such disclosure shall be conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate box. In addition, a disclosure that contains language that complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

"By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service agent in a residential real estate transaction by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service agent."

A limited service agent shall disclose dual agency in accordance with § 54.1-2139.

B. A licensee engaged by one client to a residential real estate transaction and dealing with an unrepresented party or with a party represented by a limited service agent and who, without additional compensation, provides such other party information relative to the transaction or undertakes to assist such other party in securing a contract or with such party's obligations thereunder, shall not incur liability for such actions except in the case of gross negligence or willful misconduct. A licensee does not create a brokerage relationship by providing such assistance or information to the other party to the transaction. A licensee

dealing with a client of a limited service agent may enter into an agreement with that party for payment of a fee for services performed or information provided by that licensee. Such payment shall not create a brokerage relationship; however, the licensee providing such services or information for a fee shall be held to the ordinary standard of care in the provision of such services or information.

§ 54.1-2139. Disclosed dual agency and dual representation authorized in a residential real estate transaction.

A. A licensee may not act as a dual agent or dual representative in a residential real estate transaction unless he has first obtained the written consent of all parties to the transaction given after written disclosure of the consequences of such dual agency or dual representation. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such disclosure shall be in writing and given to both parties prior to the commencement of such dual agency or dual representation.

B. If the licensee is currently representing a party as an agent or independent contractor representative and that party desires to engage in a real estate transaction with another existing client represented by the licensee, the licensee may engage in dual representation provided that prior to commencement thereof the disclosure required by this section is given to both of the licensee's existing clients.

C. If the licensee is currently representing a party as an agent or independent contractor representative and the licensee proposes to represent a new client in a dual representation, the licensee may only engage in such dual representation if prior to commencement thereof, the disclosure required by this section is given to the licensee's one existing client and one new client.

D. Such disclosures shall not be deemed to comply with the requirements in this section if (i) not signed by the client or (ii) given in a purchase agreement, lease, or any other document related to a transaction. However, such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as required in this section.

E. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B C of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

F. No cause of action shall arise against a dual agent or dual representative for making disclosures of brokerage relationships as provided by this article. A dual agent or dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual agency or dual representation.

G. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual agency or dual representation hereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction nor to limit the licensee from representing the client who refused the dual agency or dual representation in other transactions not involving the dual agency or dual representation.

H. The dual agency or dual representation disclosure in a residential transaction shall contain the following provisions and disclosure that substantially complies with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION IN A RESIDENTIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:

The licensee _____ (name of broker or salesperson) associated with _____ (Brokerage Firm) represents more than one party in this residential real estate transaction as follows:

A. Brokerage Firm represents the following party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

Brokerage Firm represents another party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

B. Brokerage Firm disclosure and client acknowledgement of the following (select one):

☐ Brokerage Firm represents two existing clients in the transaction and the undersigned acknowledge the following:

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be

disclosed.

☐ Brokerage Firm represents one existing client and one new client in the transaction and the undersigned acknowledge the following:

The undersigned understand:

1. That following the commencement of dual agency or representation, the licensee cannot advise either party as to the terms to offer or accept in any offer or counteroffer; however, the licensee may have advised one party as to such terms prior to the commencement of dual agency or representation;

2. That the licensee cannot advise the buyer client as to the suitability of the property, its condition (other than to make any disclosures as required by law of any licensee representing a seller), and cannot advise either party as to what repairs of the property to make or request;

3. That the licensee cannot advise either party in any dispute that arises relating to the transaction;

4. That the licensee may be acting without knowledge of the client's needs, client's knowledge of the market, or client's capabilities in dealing with the intricacies of real estate transactions; and

5. That either party may engage another licensee at additional cost to represent their respective interests.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

_____	_____
Date	Name (One Party)

_____	_____
Date	Name (One Party)

_____	_____
Date	Name (Other Party)

_____	_____
Date	Name (Other Party)

§ 54.1-2139.01. Disclosed dual agency and dual representation in commercial real estate transactions authorized.

A. A licensee may act as a dual agent or dual representative in a commercial real estate transaction only with the written consent of all clients to the transaction. A dual agent has an agency relationship under the brokerage agreements with the clients. A dual representative has an independent contractor relationship under the brokerage agreements with the clients. Such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as provided in this section.

B. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure shall be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION IN A COMMERCIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:

The licensee _____ (name of broker or salesperson) associated with _____ (Brokerage Firm) represents more than one party in this commercial real estate transaction as follows:

Brokerage Firm represents the following party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ agent ☐ independent contractor

Brokerage Firm represents another party (select one):

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ agent ☐ independent contractor

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

_____	_____
Date	Name (One Party)

_____	_____
Date	Name (One Party)

Date	Name (One Party)
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Date	Name (One Party)
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C. The obligation to make the disclosures required by this section shall not relieve the licensee of the obligations set out in subsection B C of § 54.1-2137 requiring all brokerage relationships to be set out in a written agreement between the licensee and the client.

D. No cause of action shall arise against a dual representative for making disclosures of brokerage relationships as provided by this article. A dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual representation.

E. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual representation thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction or to limit the licensee from representing the client who refused the dual representation in other transactions not involving dual representation.

§ 54.1-2139.1. Designated standard agency or designated representation authorized in a residential real estate transaction.

A. A principal or supervising broker may assign different licensees affiliated with the broker as designated agent or representative to represent different clients in the same residential real estate transaction to the exclusion of all other licensees in the firm. Use of such designated agents or representatives shall not constitute dual agency or representation if a designated agent or representative is not representing more than one client in a particular real estate transaction; however, the principal or broker who is supervising the transaction shall be considered a dual agent or representative as provided in this article. Designated agents or representatives may not disclose, except to the affiliated licensee's broker, personal or financial information received from the clients during the brokerage relationship and any other information that the client requests during the brokerage relationship be kept confidential, unless otherwise provided for by law or the client consents in writing to the release of such information.

B. Use of designated agents or representatives in a residential real estate transaction shall be disclosed in accordance with the provisions of this article. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure shall be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure that complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

DISCLOSURE OF DESIGNATED AGENTS OR REPRESENTATIVES IN A RESIDENTIAL REAL ESTATE TRANSACTION

The undersigned do hereby acknowledge disclosure that:

The licensee _____ (Name of Broker and Firm) represents more than one party in this residential real estate transaction as indicated below:

_____ Seller(s) and Buyer(s)

_____ Landlord(s) and Tenant(s).

The undersigned understand that the foregoing dual agent or representative may not disclose to either client or such client's designated agent or representative any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The principal or supervising broker has assigned _____ to act as Designated Agent or Representative (broker or salesperson) for the one party as indicated below:

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

_____ (broker or salesperson) to act as Designated Agent or Representative for the other party as indicated below:

☐ Seller(s) ☐ Buyer(s) ☐ Landlord(s) ☐ Tenant(s)

As a (select one):

☐ standard agent ☐ limited service agent ☐ independent contractor

The undersigned by signing this notice do hereby acknowledge their consent to the disclosed dual representation by the licensee.

Date	Name (One Party)
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Date	Name (One Party)
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548 Date Name (One Party)

549 _____

550 Date Name (One Party)

551 C. The obligation to make the disclosures required by this section shall not relieve the licensee of the
552 obligations set out in subsection ~~B~~ C of § 54.1-2137 requiring all brokerage relationships to be set out in a
553 written agreement between the licensee and the client.

554 D. No cause of action shall arise against a designated agent or representative for making disclosures of
555 brokerage relationships as provided by this article. A designated agent or representative does not terminate
556 any brokerage relationship by the making of any such allowed or required disclosures of dual representation.

557 E. In any residential real estate transaction, a licensee may withdraw, without liability, from representing a
558 client who refuses to consent to a disclosed designated agency or representation agreement thereby
559 terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the
560 licensee to continue to represent the other client in the transaction or to limit the licensee from representing
561 the client who refused the designated agency or representation relationship in other transactions not involving
562 designated representation.