Information provided to Housing Commission
Mortgage Work Group - August 10, 2006

Real Estate Board Regulations – Broker Responsibility

- The regulations contain a general provision relating to the broker's responsibility for acts of licensees and employees.

  18 VAC 135-20-330. Principal and supervising broker's responsibility for acts of licensees and employees.

  Any unlawful act or violation of any of the provisions of Chapter 21 (§54.1-2100 et seq.) of Title 54.1 or of Chapter 5.1 (§36-96.1 et seq.) of Title 36 of the Code of Virginia or of the regulations of the board by any real estate salesperson, employee, partner or affiliate of a principal broker, supervising broker, or both, may not be cause for disciplinary action against the principal broker, supervising broker, or both, unless it appears to the satisfaction of the board that the principal broker, supervising broker, or both, knew or should have known of the unlawful act or violation and failed to take reasonable action under the circumstances to remedy the situation.

- The regulations prohibit a licensee from providing settlement services to clients or customers of the firm without the written consent of the broker (paragraph 2).

  18VAC135-20-280. Improper brokerage commission.

  Actions resulting in an improper brokerage commission include:

  1. Offering to pay or paying a commission or other valuable consideration to any person for acts or services performed in violation of Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;

  2. Accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, from any person except the licensee's principal

broker at the time of the transaction, for (i) the performance of any of the acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board or related to any real estate transaction, without the consent of that broker; or (ii) the use of any information about the property, the transaction or the parties to the transaction, gained as a result of the performance of acts specified in Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia without the written consent of the principal broker. No licensee shall act as an employee of a company providing real estate settlement services as defined in the Real Estate Settlement Procedures Act (12 USC §2601 et seq.) or pursuant to a license issued by the Commonwealth of Virginia to provide real estate settlement services to clients or customers of the firm without written consent of the broker;

3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or more principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

5. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor; and

6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's client for expenditures made on behalf of that client without the written consent of the client.

- Other related provisions

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

    A. If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire real property through purchase or lease and the licensee is a party to the transaction, the licensee must disclose that information to the owner in writing in the offer to purchase or lease.

    B. A licensee selling or leasing property in which he has any ownership interest must disclose that he is a real estate licensee and he has an interest in the

property to any purchaser or lessee in the written offer to purchase, the application, the offer to lease, or the lease, whichever occurs first.

- 18VAC135-20-220. Disclosure of brokerage relationships.

  A. Purchase transactions.

  1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents in a brokerage relationship, as that term is defined in §54.1-2130 of the Code of Virginia.

  2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of §54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.

  3. A licensee acting as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of §54.1-2139 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.

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

  B. Lease transactions.

  1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

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

- 18VAC135-20-270. Conflict of interest.

  Actions constituting a conflict of interest include:

  1. Being active with or receiving compensation from a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;

  2. Acting for more than one client in a transaction governed by the provisions of §54.1-2139 of the Code of Virginia without first obtaining the written consent of all clients; and

  3. Acting as a standard agent or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).

- Settlement agents – The regulations give the Board the authority to discipline a real estate broker who is also registered as a settlement agent with the Virginia State Bar. There are currently 15 licensed real estate brokers registered with the Bar. The Board verifies the statutory bonding and insurance requirements. The Board has never had a disciplinary case against a settlement agent.

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