

VIRGINIA **REAL ESTATE** Practice & Law

13TH
EDITION



Doris Barrell, GRI, DREI, Consulting Editor

Dearborn
Real Estate Education

Virginia Real Estate Practice & Law

Thirteenth Edition

Doris Barrell, GRI, DREI, Consulting Editor

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SAMPLE

PREFACE

INTRODUCTION

Although real estate activity in Virginia is subject to federal laws and regulations, it is controlled primarily by Virginia's laws, rules, and regulations and in some cases, by state or local common market practice. *Virginia Real Estate Practice & Law* offers real estate professionals a practical handbook of Virginia's real estate laws and rules. Every effort has been made to ensure that the information contained in this book is both relevant and current. There are numerous references to Virginia statutes in the Code of Virginia and the Virginia Administrative Code (VAC), and to the real estate regulations published by the Virginia Real Estate Board (REB). This enables readers to look up the law online or in most public and university libraries.

Virginia Real Estate Practice & Law is a component of Dearborn™ Real Estate Education's Complete Learning System. It may be used effectively with other Dearborn products:

- *Modern Real Estate Practice*
- *Real Estate Fundamentals*
- *Mastering Real Estate Principles*
- *Virginia Real Estate Principles online course*

The conversion chart on the inside front cover indicates which unit or units in some of the national products correspond with your Virginia-specific text. We hope the conversion chart will be helpful as you study for your real estate exam.

Each unit in this book is followed by a quiz. As you finish each unit, and before going on to the next, be sure that you can answer each question and that you understand all the material covered. When you have completed the course, take the 75-question practice examination. An answer key for all questions is included before the Appendix.

ABOUT THE CONSULTING EDITOR

Doris Barrell, GRI, DREI, has been in the real estate business for over 40 years, working first for a builder-developer, then as a general brokerage agent, and for nine years as managing broker for a 60-agent office in Alexandria, Virginia. She has brought this wealth of real-life experience into the classroom and in her writing on the subjects of real estate finance, agency, fair housing, ethics, diversity, and legal and legislative issues.

Doris is author of *Real Estate Finance Today*, *Know the Code: Real Estate Ethics*, *Everyday Ethics in Real Estate*, and *Essentials of Real Estate Finance, 15th Edition*, all published by Dearborn Real Estate Education. She has also been teaching consultant for the International Real Property Foundation, bringing real estate education to countries in Eastern Europe and Southeast Asia. Additionally, Doris has served as a senior instructor for NeighborWorks® America training institutes held in cities throughout the United States and as a Master Trainer for the National Association of REALTORS®.

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This new edition owes much to its reviewer, JoAnn Kokindo, associate broker, Long & Foster Real Estate, Inc.

Earlier editions of *Virginia Real Estate Practice & Law* were made possible with the assistance of Roger Smith, associate broker, Long & Foster Real Estate, Inc.; F.A. Dan Daniels, ABR, principal broker of Governmental Employees Realty Associates, Alexandria, Virginia; and Florence L. Daniels, GRI, Associate Broker of Governmental Employees Realty Associates, Alexandria, Virginia.

SAMPLE

UNIT

1

Virginia Real Estate Law

LEARNING OBJECTIVES

When you have completed this unit, you will be able to accomplish the following.

- › State the purpose and responsibilities of the Department of Professional and Occupational Regulations (DPOR), the Real Estate Board (REB), and the Common Interest Community (CIC) Board.
- › Discuss important provisions of Chapter 21 of Title 54.1.
- › Explain the application of the Virginia Residential Property Disclosure Act in a real estate transaction.
- › Identify other state legislation affecting real estate practice.

KEY TERMS

broker
claimant
firm

principal broker
salesperson
sole proprietor

stigmatized property
subrogate
team

OVERVIEW

The practice of real estate in the Commonwealth of Virginia is governed under the Code of Virginia in Title 54.1 – Professions and Occupations, and Title 55.1 – Property and Conveyances. The Virginia General Assembly is solely responsible for creating and amending the Code of Virginia. The general assembly meets in January or February of each year with any resulting changes to the code usually taking effect on July 1 of the current year (although some exceptions may be made). For example, changes to agency law require a longer time before enactment to allow time for the Virginia Real Estate Board (REB) to prepare new rules, regulations, and required forms.

TITLE 54.1—PROFESSIONS AND OCCUPATIONS

Learning Objective: State the purpose and responsibilities of the Department of Professional and Occupational Regulations (DPOR), the Real Estate Board (REB), and the Common Interest Community (CIC) Board.

Department of Professional and Occupational Regulation (DPOR)

Chapter 3 of Title 54.1 covers the Department of Professional and Occupational Regulation (DPOR). The mission of the DPOR is to serve and protect the public through

- licensure of qualified individuals and businesses in professions that, if not regulated, may harm the public's health, safety, and welfare; and
- enforcement of laws pertaining to professional conduct.

Each of the regulatory boards within the DPOR is a separate board with all administrative functions under the direction and supervision of the director of the DPOR.

Real Estate Board (REB)

As part of the DPOR, the REB is charged with issuing regulations that further describe what will be expected of both salespersons and brokers. The board is authorized to license real estate brokers, salespersons, and firms, to prescribe standards for licensure and professional conduct, and to regulate schools offering real estate courses. The board is also authorized to develop criteria for evaluating and approving continuing education course credits. The board administers the Virginia Real Estate Transaction Recovery Fund and is authorized to administer and enforce the provisions of the Virginia Fair Housing Law. The board is periodically charged to develop a residential property disclosure statement form in accordance with Chapter 7 of Title 55.1. All regulations must be consistent with the Code of Virginia. The agency rules and regulations of the REB can be found in the Virginia Administrative Code (VAC), Title 18—Professional and Occupational Licensing. The REB is Agency 135.

Rules and Regulations

The most recent issue of the rules and regulations for the REB is available from the DPOR at <https://dpor.virginia.gov>. All licensees, real estate brokers, and real estate salespersons are responsible for staying informed about licensing laws, regulations, and current changes. The current real estate regulations went into effect November 1, 2015, with the most recent update as of October 1, 2022.

Information is also available on the internet. Search *Code of Virginia* or *VAC* on the Virginia General Assembly Legislative Information System (LIS) at lis.virginia.gov.

Virginia Real Estate Transaction Recovery Fund

The Virginia Real Estate Transaction Recovery Fund (§ 54.1-2112 et seq.) was established for the purpose of reimbursing parties who suffer monetary loss due to a licensee's improper or dishonest conduct. The recovery fund is supported entirely by assessments paid by licensees, not by any tax revenues.

Maintenance of the Fund

The establishment and maintenance of the fund is the duty of the director of the DPOR. The cost of administering the fund is paid out of interest earned on deposits.

Each new licensee, whether a salesperson or a broker, must pay \$20 into the fund. The fund's minimum balance is \$400,000. If the balance of the fund falls below \$400,000, the REB may assess each active and inactive licensee a proportionate amount to bring the balance to the statutory minimum. No licensee may be assessed more than \$20 during any two-year period ending on June 30 of even-numbered years. Failure to pay the assessment within 30 days of the second notice results in automatic suspension of the licensee's license. The licensee will be suspended until the payment is made of the amount due.

At the close of each fiscal year, if the balance of the fund is more than \$2 million, the excess amount over \$2 million is transferred to the Virginia Housing Trust Fund.

Claims Procedure

The General Assembly, not the Real Estate Board, establishes eligibility criteria for the recovery fund. Claimant should not be a licensee, the representative of a licensee, a spouse or child of the licensee against whom the judgment was awarded or their representative. Legislation passed in 2016 clarified the position of a **claimant** as follows:

- A person who files a claim for payment from the fund must first obtain a judgment against the licensee from a Virginia court of competent authority.
- The person must take all legally available actions for the sale or application of any assets disclosed in the debtor's interrogatories.
- The person must file a claim with the bankruptcy court, if the licensee has filed bankruptcy.

If any portion of the claim remains unsatisfied, the individual may file a claim with the REB requesting payment from the fund for the unsatisfied portion of the claim within 12 months from the date of the final judgment.

Limitation on Recovery

The amount of the claim is limited to actual monetary damages suffered in the transaction, court costs, and attorney's fees. The claim cannot include interest, punitive, or exemplary damages, even though these amounts may have been included in the judgment awarded by the court.

Single transaction: The maximum amount any single claimant may recover from the fund based on a single transaction is \$20,000, regardless of the number of claimants. If there are multiple claims against the same licensee within a single transaction, the total for all recovered claims for that single transaction cannot exceed \$50,000.

Multiple transactions: If the same licensee is involved in multiple fraudulent transactions during any two-year period ending June 30 of even-numbered years, the maximum payment to all claimants combined is \$100,000.

If a payment is made from the fund, the claimant must **subrogate** the rights to the REB. Subrogation permits the REB to take action against the licensee to recover the amount of claims paid due to the licensee's misconduct.

Penalty

Payment from the fund causes the licensee's license to be immediately revoked. The respondent may also be subject to other disciplinary action by the REB. The licensee may not apply for a new license until the fund has been repaid in full, plus interest.

Common Interest Community (CIC) Board

The CIC Board is a separate agency within the DPOR (Agency 48) created in Chapter 23.3 of Title 54.1. The board was established to regulate Common Interest Community managers by means of a licensure program. Also included under the CIC Board are four acts that were formerly regulated by the REB:

- Condominium Act
- Real Estate Time-Share Act
- Real Estate Cooperative Act
- Property Owners' Association Act

Licensure regulations effective July 1, 2012, require each CIC manager to have at least one qualifying supervisory employee with three to five years of experience in providing management services, and has completed a comprehensive CIC Manager Training Program, approved by the CIC Board.

The board is responsible for setting maximum allowable fees for the preparation of condo and POA documents. Filing of annual reports by the owners' associations is also part of the CIC Board requirements.

Agency rules and regulations for the CIC Board are found in the Virginia Administrative Code, Title 18, Agency 48.

Office of the Common Interest Community Ombudsman

The Office of the Common Interest Community Ombudsman was established to assist members in understanding their rights and the processes available to them, to provide information and answer inquiries from members and other citizens, to receive notices of final adverse decisions, to provide information to the director for an annual report, to monitor changes in federal and state laws relating to common interest communities, and to ensure that members have access to the services provided by the CIC office. The office can be reached at 1-804-367-2941 or at cicombudsman@dpor.virginia.gov.

CHAPTER 21

Learning Objective: Discuss important provisions of Chapter 21 of Title 54.1.

Chapter 21 of Title 54.1 covers real estate brokers and salespersons in Article 54.1-2100 (Definitions) through Article 54.1-2146 that allows licensees to maintain required documents electronically in accordance with the Uniform Electronic Transaction Act.

Brokerage Definitions

In Virginia, a real estate broker is defined by statute as

any person or business entity, including, but not limited to, a partnership, association, corporation, or limited liability corporation, who, for compensation or valuable consideration (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest... or time-shares in a time-share program... or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others. (§ 54.1-2100)

In common practice, the word *broker* may refer to a firm, a sole proprietor who transacts real estate business, a supervising broker for a branch office of a larger firm, or a person who holds a broker's license but practices under the supervision of a principal broker (i.e., an associate broker). It is important to note that the brokerage relationship is established between the broker (principal broker or sole proprietor) as the agent and the client as the principal. All supervising brokers, managing brokers, associate brokers, and salespersons are general agents of the principal broker. There can only be one principal broker of a brokerage.

The statutory definition of a real estate salesperson is

any person, or business entity of not more than two persons unless related by blood or marriage, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease, rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon. (§ 54.1-2101)

Although a salesperson may generally perform the same functions as a broker, the salesperson must be employed by or affiliated with a licensed real estate broker. Brokers are expected to supervise all activities of the salespersons affiliated with their company and are responsible for the actions of every salesperson.

Brokers and salespersons can be further defined according to their specific roles within a brokerage firm. Any licensed broker or salesperson may prepare written contracts for the sale, purchase, option, exchange, or rental of real estate provided the preparation of such contracts is incidental to a real estate transaction in which the licensee is involved and does not charge a separate fee for preparing the contract (§ 54.1-2101.1). A *firm* is defined as any sole proprietorship (broker-owned or non-broker-owned) partnership, association, LLC, or corporation, other than a sole proprietorship (principal-broker-owned) that is required by regulation to obtain a separate brokerage firm license.

A *sole proprietor* is an individual, not a corporation, who is doing business under his own name or under a legally registered fictitious name. A licensed broker who is a sole proprietor has the same responsibilities as a principal broker. A sole proprietor who is not licensed must designate a licensed broker to perform the duties of a principal broker.

The principal broker is designated by each firm to ensure compliance with Chapter 21 of Title 54.1 of the Code of Virginia and to receive all communications and notices from the REB that may affect the firm or its licensees. The principal broker has responsibility for the activities of the firm and all of its licensees.

ABOUT DEARBORN REAL ESTATE EDUCATION

For over 60 years, Dearborn has set the standard for real estate education. As a full-service educational publisher, Dearborn offers the best content and support services in the industry. With unsurpassed experience and understanding of the real estate training industry, you can ensure your success with Dearborn.

The strength of our experience lies in our dedication and ability to continually produce the highest quality, up-to-date real estate educational and training content. Our seasoned authors have years of real-world experience and our content spans every stage of a real estate professional's career from prelicensing, exam prep, and continuing education to broker, appraisal, home inspection, and professional development.

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