

2011



## NEW LAWS VIRGINIA REALTORS® NEED TO KNOW ABOUT

On July 1, most of Virginia's new laws take effect. Here are the ones Realtors® need to know about.

The 2011 Session of the General Assembly, like every other session, produced many changes in Virginia law. Most of these will take effect on July 1. VAR's legislative team was able to secure many changes during this year's General Assembly session that will have a profound effect on your real estate business.

### **Virginia Residential Property Disclosure Act and form:**

Beginning in July, the disclosures that appear on the form provided by sellers to purchasers of residential property will change dramatically.

The current list of disclosures/disclaimers on that form will move to a website maintained by the Real Estate Board — thus eliminating the risk of using an out-of-date form (and threatening your contract). The form will direct the purchaser to view that website. Of course, you can print the site's contents and provide it to the purchaser at the seller's discretion or if required by contract.

### **Clarification that licensee may maintain electronic real estate records:**

Although a related provision has been Virginia law for several years, there has been conflict over whether real estate records are permitted to be maintained exclusively in electronic form. This legislative change makes it absolutely clear that licensees may maintain their records in electronic form rather than having to retain all-paper copies, in accordance with the Uniform Electronic Transactions Act.

### **Clarification of civil immunity for inaccurate information received from clients or from public records:**

A licensee shall not be liable for false information if the information was received from a client, from public records, or from reliance on the representations of another regulated professional. Note, though, that knowledge of the falsehood or reckless disregard of the truth removes this immunity.

### **Private transfer fees on property will be banned in Virginia:**

Some developers have created a financing scheme which imposes a transfer fee, usually buried in the documents creating a project and customarily 1% of the purchase price, which is collected and paid to the developer each time the property is sold over the next 99 years. Such fees will be unenforceable in Virginia after July 1, 2011. However, fees charged by and payable to homeowners associations, condominiums, and cooperatives may continue to be collected.

### **Real Estate Board will have flexibility to require new CE topics on an accelerated basis:**

The Virginia Real Estate Board will be able to require by regulation that additional CE courses be created and offered to respond to changes in the market and industry (such as foreclosure and short sales) more rapidly than they currently are able to do. These courses would be for both brokers and sales agents — and would fall in the "electives" portion. No increase in overall hours could be required without additional legislation.

### **Burden of Proof in Assessment Appeals will be lower:**

*In tax years starting on and after January 1, 2012*, there will be clear requirements as to what the assessor must provide to taxpayers when property is reassessed. In an appeal to the Board of Equalization or to circuit court, the burden of proof for the taxpayer will be lowered from a "clear and convincing" standard (80+%) to a "preponderance of the evidence" standard (51%).

### **Additional amendments to Property Owners' Association and Condominium Acts:**

The provisional Common Interest Community Manager License will be extended for one additional year; educational courses sponsored by Realtor® organizations may be used for qualification as a manager.

Associations may *not* charge fees regarding inspections and disclosure packages that are not expressly set out in the law. Also, an association may collect its fees for a disclosure package if a sale has failed to close within 45 days. Professionally-managed associations are brought within the purview of the law, even if otherwise exempt.

### **Owners and real estate licensees representing owners and sellers must disclose known defective ("Chinese") drywall wherever found:**

This applies to both sales and leasing transactions and to all configurations of owners, sellers, buyers, and tenants and potential tenants. Disclosure is required of REO and foreclosed property holders as well, *unlike* the requirements of the Virginia Residential Property Disclosure Act.

Owners of property containing this drywall may appeal to the local government to have the property reassessed to show its diminished value. Localities may include such properties in a rehabilitation district, providing a partial tax exemption to the owner.

Additionally, many core provisions of real estate agency law in the Commonwealth were amended this year, with changes taking effect in July of 2012. Between now and then, a three-hour continuing education course will be developed and offered to licensees. It will cover changes in the basic brokerage and agency laws and must be taken in the next license renewal cycle, beginning July 1, 2012. The course will be widely available in late fall and winter. For more details on this, see VAR's website.

Get the full report on how the new legislation affects your business at  
[www.VARealtor.com/LegalArticles](http://www.VARealtor.com/LegalArticles)