

# New Real Estate Board Regulations



# History

- The Real Estate Board conducted a required review of its regulations in 2013.
- Industry participants submitted 20+ pages of suggested changes to the regulations.
- Industry representatives testified at a special hearing called to discuss the suggested changes.
- The new regulations will take effect **November 1, 2015**.

# Advertising

- New “electronic media” advertising disclosures:
  - Firm advertising:
    - Firm’s licensed name
    - The city and state in which the firm’s main office or branch office is located.
  - Licensee advertising:
    - Licensee’s name
    - Licensee’s affiliated firm name
    - The city and state in which the licensee’s place of business is located.

# Advertising

- “All electronic media advertising that can be viewed or experienced as a separate unit (i.e., email messages and web pages) must contain disclosure which shall be viewable on the main page or is no more than one click away from the main page.”
- Viewable page: “A page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.”

# Advertising

- What the new language means:

- The VREB Regulations:

## *Main Page*

- **Require** a firm or licensee to include all required electronic media disclosures on their main page;

## *Non-Main Online Pages*

- **Allow** a firm or licensee to include all required electronic media disclosures on each individual online page/email; **or**
    - **Allow** a link to those electronic media disclosures on the viewable main page.

# Advertising

## Big Code of Ethics Wrinkle

- However, NAR SOP 12-5 requires the firm name to be displayed in a reasonable and readily apparent way in all advertisements and only allows the link to replace the firm name “in electronic displays of limited information (e.g., “thumbnails, text messages, “tweets”, etc.)”.
  - Implication – Non-main pages must include the firm name; not just a link.
- Also, please remember there is an additional Code requirement for firm and REALTOR websites - they must at a minimum clearly display the firm/REALTOR’s name and states of licensure (see SOP 12-9).
  - Implication – If it is a firm or Realtor’s site, the firm/REALTORS® name and respective states of licensure must be on non-main pages as well.
- **Practice Tip: Include all VREB disclosures AND states of licensure on all firm and REALTOR Pages. On other electronic advertising sites, at least include the firm name and you can link to your main page.**

# Advertising

- Print Advertising
  - Firm advertisement - disclose firm name (ex. Newspaper Ad)
  - Licensee advertisement – disclose firm name and licensee's name
- Signs - For sale and for lease signs placed on the property must at least include the firm's name and the firm's primary or branch office telephone number.
- Business cards – Must at least include the firm name, licensee's name and “contact information.” Contact information means telephone number or web address.

# Advertising

- **Agent/Owner-** Agents must include in **all** advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised.
  - **New:** This agent/owner advertising disclosure applies *even if* the property is listed with a firm.
  - This is actually a return to “the way it was in the old days”



# Escrow

- “The principal broker shall have **signatory authority** on all escrow accounts maintained by the firm.”
- “If money is to be held in escrow, each firm or sole proprietorship shall maintain **in the name by which it is licensed** one or more federally insured separate escrow accounts in a federally insured depository ~~in Virginia~~ into which....
- Application deposits are defined – they must be placed in escrow **by the end of the fifth business banking day following approval of the rental application by the landlord** unless all principals to the lease have agreed otherwise in writing.

# Escrow

- Disbursement of funds for a Purchase Transaction – if the deal is not consummated, and all principals to the transaction have agreed in writing as to the EMD disposition, **the funds shall be returned to the agreed upon principal within 20 days of the agreement.**
- Interpleader option is now explained in regulations for disbursement.
  - Interpleader in foreclosure situations is also explained.
- The regulations also explain the effects of foreclosure on a ratified contract and EMD disbursement. Also, explain the effects of foreclosures on security deposits and tenants.
- Unless agreed by principals in writing, prepaid rents and funds paid to licensee in connection with lease must be deposited in escrow within 5 business days of receipt.

# Licensure/Broker Supervision

- The new regulations create a process for brokers to exchange their licenses for that of a salesperson.
- **Clarification:** “A licensee who submits an activate application to the board shall not conduct business with real estate firm or sole proprietor set forth in the application until the application is processed and the license is issued by the board.
- The transfer agreement is now in the regulations: “Any licensee may transfer from one licensed firm or sole proprietorship to another by completing and submitting to the board a transfer application and the fee...”

# Licensure/Broker Supervision

- **“The transfer application shall include the signature of the new principal broker or supervising with signature authority who will be responsible for the licensee’s real estate activities and shall be effective upon the principal or supervising broker’s execution of the transfer application.” (*DPOR Online Application*)**
- **Credit Carryover: “Any continuing education credits completed by the licensee in excess of that required in the current license term that are obtained in the six months immediately prior to the license expiration date shall carry over into the next two-year renewal period.”**

# Licensure/Broker Supervision

- Reminder: A licensee is prohibited from practicing real estate after his license expires even though DPOR's system lists him as Active. There is a 30 day grace period after license expiration for licensees affiliated with a firm to meet renewal requirements before License Lookup shows the licensee as inactive, but the grace period does not allow the licensee to practice during the period. Please see the regulation below that sets out this prohibition:
- ***18 VAC 135-20-140.D states, "A licensee may not perform activities defined in...the Code of Virginia with an expired license." "Any real estate activity conducted subsequent to the expiration date may constitute unlicensed activity and be subject to prosecution".***

# Licensure/Broker Supervision

- New requirement for home offices: “No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence **with its own entrance** and is accessible by the public.” (also a “retro” reg)
- New branch office duty: “The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office, **including but not limited to ensuring the licensees have an active, current license.**”

# Licensure/Broker Supervision

- The Board clarified what constitutes licensed activity:

The supervising broker undertakes reasonable steps to ensure only licensees undertake activities requiring a license, **including but are not limited to: (sic)**

- a. Show property;
- b. Hold an open house;
- c. Answer questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents;
- d. Discuss, explain, interpret, or negotiate a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and
- e. Negotiate or agree to any commission, commission split, management fee, or referral fee.

# Licensure/Broker Supervision

- The Board clarified limits on unlicensed assistants/employees.

The supervising broker shall provide adequate supervision over the unlicensed employee(s) or assistants under the supervision of a broker as they perform the following permitted activities:

- a. Perform general clerical duties, including answering the phones, responding by electronic media, and providing information shown on the listing;
- b. Submit listings and changes to MLS;
- c. Follow up on loan commitments after contracts have been ratified;
- d. Have keys made for listings;
- e. Compute commission checks;



# Licensure/Broker Supervision

- f. Place signs on properties;
- g. Act as a courier service;
- h. Schedule appointments;
- i. Record and deposit earnest money deposits, security deposits, and advance rents;
- j. Prepare contract forms for approval of the licensee and supervising broker;
- k. Prepare promotional materials and advertisements for approval of the licensee and supervising broker;
- l. Assemble closing documents;

# Licensure/Broker Supervision

- m. Obtain required public information from governmental entities;
- n. Monitor license and personnel files;
- o. Order routine repairs as directed by licensee;
- p. Are compensated for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and
- q. Perform any other activities undertaken in the regular course of business for which a license is not required.

# Specifically Prohibited Escrow Acts

- “A licensee making an earnest money deposit payable to himself or negotiating the check without written authority.”
- “A licensee submitting copies of the same earnest money deposit check for inclusion with multiple offers.”
- “A licensee representing in offers he received the earnest money deposit when he has not or he knows the check is worthless;
- “A licensee misrepresenting who is holding the earnest money deposit.”

# Actions Failing to Safeguard Public

- “A broker failing to ensure licensees for whom the broker has oversight responsibility hold active licenses while practicing real estate.”
  - This new wording reinforces the obligation of brokers to monitor the license status of those they supervise.
- “A licensee failing to submit to the broker in a timely manner, all earnest money deposits, contracts, listing agreements, deeds of lease, or any other documents for which the broker has oversight responsibility.”
  - This new regulation places a burden on licensees to timely deliver to the broker all relevant documents related to a transaction.

# Actions Failing to Safeguard Public

- “A licensee negotiating leases for a third party through an unlicensed firm or without a principal broker.”
  - This regulation is trying to target leasing outside a licensed firm. Leasing for a third party is a licensed activity that must be done by a licensee through a licensed firm under the supervision of a principal broker.
- “A licensee operating an unlicensed firm or acting as a principal broker.”
  - Targeting same activity as previous bullet.

# Actions Failing to Safeguard Public

- “A licensee practicing real estate with an inactive or expired license.”
  - A licensee is prohibited from practicing real estate after his license expires even though DPOR’s system lists him as Active. There is a 30 day grace period after license expiration for licensees affiliated with a firm to meet renewal requirements before License Lookup shows the licensee as inactive, but the grace period does not allow the licensee to practice during the period. Please see the regulation below that sets out this prohibition:
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# Actions Failing to Safeguard Public

- “A licensee ~~providing lockbox codes to an unlicensed person~~ allowing unsupervised access to the home.”
- “A licensee failing to inform the broker of a transaction.”
  - Surprisingly, this is a common problem.
- “A licensee attempting to divert commission from the firm or sole proprietorship and direct payment to a licensee or an unlicensed individual who is not a party to the transaction.”

# Record Retention

- Clarified different time periods for specific documents held by a principal broker or supervising broker.
  - “Failing to retain **for three years from the date of execution**, each *brokerage agreement*, each *disclosure and consent to dual agency or dual representation*, and each *disclosure and consent to designated agency or designated representation*.
  - Each *disclosure of a brokerage relationship to an unrepresented party* shall be retained **for three years from the date provided to the party**.
  - Failing to retain **for three years from the date of closing or from ratification, if the transaction fails to close**, a complete and legible copy of each *executed contract of sale*, any *executed release of contract*, any *executed lease agreement*, any *executed property management agreement*, and each *settlement statement* related to a real estate transaction, in the broker’s control or possession unless prohibited by law.



# Record Retention

- “Failing to maintain a *complete and accurate record of such receipts and their disbursements for moneys received on behalf of others for a period* of **three years from the date of the closing or termination of the sales transaction or termination of a lease or conclusion of the licensee’s involvement in the lease.**”

# Audit Statutes Codified

- The Voluntary Compliance Program is now included in the regulations. Note that immunity only applies to the principal broker and supervising broker who conduct an audit and submit a voluntary compliance plan.
- The Procedures to comply with the mandatory audit statute are now in the regulations.

# Text Of Regulations

- <http://register.dls.virginia.gov/details.aspx?id=5119>
- Comment period before adoption ended 9/23 – Wednesday

There were no additional comments.

# Questions?



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