



Limited Service Agency – Continuing Education Course

Virginia Real Estate Board Approval #056438

This course is designed to allow real estate licensees to satisfy the educational requirements of the limited service agency law as set forth in Section 54.12105(E), a minimum two hour course required prior to license renewal or reinstatement. The course consists of an overview and background of limited service brokerages; the Virginia limited services agency statutes, discussions regarding each of the statutes and a final examination.

INSTRUCTIONS:

- 1) Please read all the materials covering the limited service agency laws.
- 2) Circle answers on the final exam.
- 3) **Fax*** us the 1) final exam, 2) signed affidavit and 3) course evaluation.

Note: The Virginia Real Estate Board requires a notarized affidavit.

Upon passing the course, we will certify course completion with the Virginia Real Estate Board and forward via email a Certificate of Completion for your files. You will then have completed the one-time requirement for taking the two hour limited service agency continuing education course.

Act Web Services
***Fax # 703-466-0812**
703-476-1747 or toll free (866) 907-1747
contact@actwebservices.com

A licensed instructor is available weekdays to answer questions on course content.

Limited Service Agency - Background and Overview

The new limited service agency law in Virginia is the result of changes in the real estate industry. The traditional real estate agency relationship, based on common law and custom, consisted of a commission based pricing model where real estate brokers provided a complete “bundled” set of services to sellers and buyers. Each state required brokers and agent to become licensed to provide these services and established rules and regulations to govern the real estate transaction process.

Recently the real estate industry has seen an increasing number of alternative models to the traditional agency structure. Many of the changes are the result of the Internet. Consumers can place and view homes and detailed listing information online. As a result of increased consumer involvement, some brokers now provide a limited set of services or allow clients to choose from a menu of "unbundled" or a la carte services. The brokers charge the client based on either a lower commission rate or a fee for specific services or a combination of methods. These “limited service” brokerages have resulted in new laws to deal with changing times.

In response to these changes, some states passed legislation to require licensees to provide a minimum level of service in representing consumers. Proponents stated the “minimum service” laws would provide a basic, reliable level of assistance and would not force full service agents to be in the position of having to provide information and services to an unrepresented agent. However, the U.S. Department of Justice has generally opposed such laws stating the laws restrict consumer choice and discourage the use of lower cost limited service brokerages. Virginia took a different approach.

Instead of requiring “minimum services” Virginia enacted the “limited service agency” law, which requires licensees to disclose in writing what services the agent will and will not provide. The Department of Justice supported the Virginia legislation. The new law, effective July 1, 2007, allows representation by limited service brokerages with specific guidelines and pursuant to a written brokerage agreement.

The Virginia law added to the basic duties of a licensee, whether representing seller, buyer, landlord or tenant. These “additional duties” are actually duties that had traditionally been performed by brokers and expected by consumers. Virginia decided to make the law more specific as to what is required of a “full service” agent. For example, it added that licensees assisting in drafting documents, negotiating transactions, establishing strategies and providing assistance to the client to satisfy the client’s contract obligations. These changes not only clarify a licensee’s duties. They allow the limited service agencies to more specifically state what would and would not be provided.

In addition to what is required of limited service agencies, the new law provides rules for licensees who are dealing with an unrepresented party or one represented by a limited service brokerage. Generally such a licensee may provide assistance to an unrepresented party for free or for pay. The rules for potential liability in such cases are also explained.

Great! That should help give you a good background and overview of the limited service agency law.

Now we will review each statute followed by a short discussion with comments of interest. Here are the statutes we will review. All statutes are revised from prior versions except newly enacted statutes which are noted as “new”.

§ 54.1-2105 General powers of Real Estate Board; regulations; educational and experience requirements for licensure; continuing education. (Only Section E included)

§ 54.1-2130 Definitions.

§ 54.1-2131 Licensees engaged by sellers

§ 54.1-2132 Licensees engaged by buyers

§ 54.1-2133 Licensees engaged by landlords to lease property

§ 54.1-2134 Licensees engaged by tenants

§ 54.1-2138 Limited service representative, contract disclosure required (new)

§ 54.1-2141 Brokerage relationship not created by using common source information company

§ 54.1-2145 Article does not limit antitrust laws (new)

Please note that the newly enacted portions of the statutes are underlined for clarity.

In some cases, the entire statute is newly enacted and thus completely underlined. The new law generally applies to sellers and purchaser, but also to leases. References made during this course to purchases generally also apply to leases. References to brokers or agents generally apply to all real estate licensees.

The Limited Service Representative may be referred to in the course with the initials “LSR.” This is not an official term and is only used in the course to make the text shorter and thus easier to read.

Disclaimer

To the extent that any restatement, discussion or course content regarding the new limited service agency law stated by this course is interpreted to add, subtract or potentially conflict in any way with the statutes, one should rely solely on the statutes and existing laws and regulations in making determinations regarding conduct or decisions in regard to limited service agency. This should apply to any continuing education course, but it is emphasized here due to recent nature of the legislation and the new concepts involved. If you have a question regarding the content of this course, please contact the school.

Now, on to the statutes and discussion of each!



§ 54.1-2105. General powers of Real Estate Board; regulations; educational and experience requirements for licensure; continuing education. (Only Section E included)

E. The Board shall include in its regulations educational requirements as a condition for relicensure of brokers and salespersons to whom active licenses have been issued by the Board beyond those now specified by law as conditions for licensure. Brokers and salespersons to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 16 hours of classroom or correspondence or other distance learning instruction during each licensing term. Of the total 16 hours, the curriculum shall include a minimum of eight required hours to include ethics and standards of conduct, fair housing, legal updates and emerging trends, real estate agency, and real estate contracts. Fair housing requirements shall consist of a minimum of two hours including an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1, 2007, every applicant for relicensure as an active salesperson or broker shall complete at a minimum one two-hour continuing education course on limited service agency prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board which certifies that he has taken a two-hour continuing education course on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the Board, which, in the determination of the Board, covered substantially the information in a continuing education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee submits a notarized affidavit to the Board which certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required. A licensee who takes one two-hour continuing education class on limited service agency shall satisfy the requirements for continuing education and may but shall not be required to take any further continuing education on limited service agency.

DISCUSSION:

The required minimum two (2) hour limited service agency course applies to all agents. It is required for all renewals from July 1, 2007 to June 30, 2009. Agents who are renewing for the first time require the 30 hours of post-license courses plus this one-time two hour course. Agents who are renewing for the second time or later are required to take the 16 hours of continuing education courses plus this one-time two hour course. Agents who do not and will not during their license term practice residential real estate may submit an affidavit to the Board for exemption from this course. Upon completion of this Board-approved two hour limited service agency course, you may but will not be required to take any further limited service agency education.

§ 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 by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship.

Agency includes representation of a client as a standard agent or a limited service agent.

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 have no obligations under §§ 54.1-2131 through 54.1-2135 of this article.

"Brokerage agreement" means the agreement by which a real estate licensee represents a client in a brokerage relationship.

"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.

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

"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.

"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.

"**Licensee**" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.) of Chapter 21 of this title.

"Limited service representative" means a licensee who acts for or represents a client with respect to real property containing from one to four residential units, pursuant to a brokerage agreement that provides that the limited service representative will not provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service representative shall have the obligations set out in the brokerage agreement, except that a limited service representative 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 (§ 55-517 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 condominium resale certificate required by § 55-79.97; and (iii) if the client is selling a property subject to the Property Owners' Association Act (§ 55-508 et seq.), the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet required by § 55-512. A limited service representative may act as the agent or representative of the client only by so providing in writing in the brokerage agreement. If the brokerage agreement does not so state, the limited service representative shall be deemed as acting as an independent contractor of the client.

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

"**Standard agent**" means a licensee who acts for or represents a client in an agency relationship. 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.

DISCUSSION:

The definition of "agency" has been expanded to include both client representation as a standard agent or a limited service agent.

A definition has been created for a "brokerage agreement", which is one where a licensee represents a client in a brokerage relationship.

The definition of "limited service representative" applies to a licensee acting for or representing a client in regard to 4 or less residential units. The LSR is one who will not provide at least one of the duties required of a standard agent, as noted in Virginia Code Sections 54.1-1231 to 54.1-2135. The LSR must specify these obligations in the brokerage agreement. However, in addition to the obligations required by the brokerage agreement, the law does provide that the LSR must provide copies of all disclosures required by federal, state or local authorities as may be authorized by state law, including:

- 1) The Virginia Residential Property Disclosure Act as stated in Va Code Section 55-517 to 55-525. This Act generally requires the seller to provide a disclosure or

- disclaimer form to the purchaser prior to the acceptance of the purchase contract and the contract termination rights of the purchaser in the event seller does not comply with the Act. The LSR must disclose the rights and obligations of this Act to the client. In order to assure compliance with Section 55-525, where a purchaser is represented by a LSR, it is suggested the seller's agent should also make the same disclosure to each purchaser in writing;
- 2) In the event of a condominium sale, the requirement to of the seller to deliver to the purchaser the condominium resale certificate as required by Section 55-79.97 under the Condominium Act. This law, briefly stated, requires seller to provide purchaser with condominium documents containing specific detailed information from the unit owner's association and allows purchaser to cancel the contract within three days of receiving the certificate; and
 - 3) In the event of a property subject to the Property Owners' Association Act as defined starting in Va. Code Section 55-508 , the requirement of seller to deliver to purchaser the Association Disclosure Packet required by Va. Code Section 55-512. This law, briefly stated, requires the seller to provide purchaser with association documents containing specific detailed information from the property owner's association and allows purchaser to cancel the contract within three days of receiving the packet.

Finally, the LSR may only act as an agent or representative of the client where specifically stated in the brokerage agreement. Absent such statement, the LSR will be deemed an independent contractor.

§ 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 relationship;
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 relationship 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 relationship 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 applicable fair housing statutes and regulations, and all other applicable statutes and regulations which 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 are actually known by the licensee. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall 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 conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate box. A licensee shall not be liable to a buyer for providing false information to the buyer if the false information was provided to the licensee by the seller or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. 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 (§ 55-517 et seq.).

C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage relationship, 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 relationship with the seller unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage or agency 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 shall disclose brokerage relationships pursuant to the provisions of this article.

DISCUSSION:

The new provisions help to establish what will differentiate a “full service” agent from a LSR. The LSR must specify in writing that which will or will not be provided. These new requirements are in addition to the previously required services as stated in the statute.

Briefly stated, the revised statute expanded the duties owed by a standard agent to include the following:

- conducting marketing activities;
- assisting in drafting of documents, in negotiations and in developing selling strategies;
- receiving offers and counteroffers as well as presenting them;
- providing reasonable assistance to satisfy the seller’s contract obligations and facilitating settlement of the purchase contract.

This section creates a more specific disclosure requirement if the seller’s agent has actual knowledge of material adverse facts regarding the physical condition of the property. The new law defines physical condition as only the land and improvements, specifically excluding matters outside the boundaries of the land or as to adjacent properties, governmental land use regulations, highways or streets. The disclosure must be conspicuous and bold lettering or all caps, plus underlined or in a separate box. Further, the licensee is not liable for false information if 1) it was provided by the seller or obtained from a governmental entity or from Virginia certified professional and 2) the licensee did not know or act in reckless disregard of the truth.



54.1-2132. Licensees engaged by buyers

A. A licensee engaged by a buyer shall:

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

2. 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 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. 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. Exercise ordinary care;

5. 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. Disclose to the buyer 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 applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false information. 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 relationship, 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 relationship with the buyer unless expressly prohibited by the terms of the brokerage relationship, 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 shall disclose brokerage relationships pursuant to the provisions of this article.

DISCUSSION:

The new provisions help to establish what will differentiate a “full service” agent from a LSR. The LSR must specify in writing that which will or will not be provided. These new requirements are in addition to the previously required services as stated in the statute.

Briefly stated, the revised statute expanded the duties owed by a standard agent to include these additional requirements:

- Seeking a property of a type acceptable to the buyer
- Assisting in drafting of documents, in negotiations and in developing buying strategies
- Receiving offers and counteroffers as well as presenting them.

This section also added that, while a licensee still must disclose to the seller whether the buyer intends to occupy a property as a principal residence, the licensee can not be held liable regarding such a disclosure where the buyer has expressed such an intent in the sales contract.



§ 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 relationship;
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 relationship 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 relationship, 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, and all other applicable statutes and regulations which 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 are actually known by the licensee. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall 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 conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate box. A licensee shall not be liable to a tenant for providing false information to the tenant if the false information was provided to the licensee by the landlord or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. 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 relationship, 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 relationship, 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 shall disclose brokerage relationships pursuant to the provisions of this article.

DISCUSSION:

The new provisions help to establish what will differentiate a “full service” agent from a LSR. The LSR must specify in writing that which will or will not be provided. These new requirements are in addition to the previously required services as stated in the statute.

Briefly stated, the revised statute expanded the duties owed by a standard agent to include the following:

- Conducting marketing activities
- Assisting in drafting of documents, in negotiations and in developing selling strategies
- Providing reasonable assistance to satisfy the landlord’s lease obligations and facilitating commencement of the lease.

This section also creates more specific disclosure requirements regarding “physical condition of the property” as well as a definition of physical condition. This tracks the same language as stated in the licensee representing a seller, as noted earlier.



§ 54.1-2134 Licensees engaged by tenants

A. (Effective July 1, 2007) A licensee engaged by a tenant shall:

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

2. 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 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 relationship, 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;

c. Providing reasonable assistance to the tenant 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 tenant 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 tenant has or may have an interest;

6. Disclose to the tenant 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, and all other applicable statutes and regulations which are not in conflict with this article.

B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false information. 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 relationship, 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 shall disclose brokerage relationships pursuant to the provisions of this article.

DISCUSSION:

The new provisions help to establish what will differentiate a “full service” agent from a LSR. The LSR must specify in writing that which will or will not be provided. These new requirements are in addition to the previously required services as stated in the statute.

Briefly stated, the revised statute expanded the duties owed by a standard agent to include the following:

- Assisting in drafting of documents and in negotiations
- Providing reasonable assistance to finalize the lease agreement



§ 54.1-2138.1. Limited service representative, contract disclosure required.

A. A licensee may act as a limited service representative only pursuant to a written brokerage agreement in which the limited service representative (i) discloses that the licensee is acting as a limited service representative; (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 of § 54.1-2132, subdivision A 2 of § 54.1-2133, or subdivision A 2 of § 54.1-2134, as applicable, that the limited service representative 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 representation 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 representative."

B. A licensee engaged by one client to a transaction and dealing with an unrepresented party or with a party represented by a limited service representative 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 representative 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.

DISCUSSION:

To act as a LSR, a licensee must have a written brokerage agreement whereby he/she must:

- 1) disclose he/she is acting as a LSR,
- 2) provide a list of specific services that will be provided,
- 3) provide a list of specific duties not to be provided that are required of a standard agent. The list of duties that will or will not be provided are stated in their respective statutory sections above for representing a seller, buyer or landlord.

Significantly, the disclosure above must be 1) conspicuous and printed in bold or all caps and 2) underlined or in a separate box and 3) include language in the brokerage agreement that substantially states that the client a) acknowledges and consents to the limited service representation and that b) neither the other party or other party's representative has any obligation to perform any of the services not to be provided by the LSR.

Part B explains the requirements of a licensee dealing with a LSR (or an unrepresented party). The party with a complete or partial lack of representation may seek information or assistance from such a licensee. The licensee may decide to provide information or assistance the other party in regard to the contract terms, performance or obligations. In such a case, the law states a brokerage relationship would not be formed. The question becomes the potential liability of the licensee. Generally, if the licensee has an agreement where the other party will pay for the information or services, the licensee will be held to the ordinary standard of care. On the other hand, if the licensee does so without payment, the licensee will not incur liability except in the case of gross negligence or willful misconduct. Thus, the licensee could be protected if negligent, but not if grossly negligent. However, the question of gross negligence compared to negligence is a matter of the degree. Gross negligence, which is in between simple negligence and willful misconduct, involves a higher degree of reckless conduct. In any event, the licensee is at a lesser degree of risk where no compensation is involved in providing assistance or information to the other party.

§ 54.1-2141. Brokerage relationship not created by using common source information company.

No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord or other licensee solely by reason of using a common source information company. However, nothing contained in this article shall be construed to prevent a common source information company from requiring, as a condition of participation in or use of such common source information, that licensees providing information through such company disclose the nature of the brokerage relationship with the client, including, but not limited to, whether the licensee is acting as (i) an independent contractor, (ii) a limited service representative, or (iii) a transaction broker, facilitator or in some other capacity as provided in the brokerage agreement. A common source information company may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt rules providing that absent any disclosure, a licensee providing information through such company may be assumed to be acting as a standard agent. A common source information company shall have the right, but not the obligation, to make information about the nature of brokerage relationships available to its participants and to settlement service it provides including, without limitation, title insurance companies, lenders, and settlement agents.

DISCUSSION:

While an MLS is a common source information company, there are other companies that compile property information including internet based companies. This statute makes it clear that a brokerage relationship is not created solely because the licensee uses such a common source information company. However, the new language adds rules in this regard. If a licensee participates in or uses the common source company, the company may require the licensee to disclose status information. The company requirements may include, among other things, whether the licensee is or is not a 1) independent contractor, 2) limited service representative and 3) transaction broker, facilitator or other relationship to the client. Such a company may at its option also require disclosure of a standard agency relationship and create a rule that such a relationship is automatically assumed absent a separate disclosure. Finally such a company may disclose this information regarding the licensee's relationship to its participants including all its settlement related entities including title companies, lenders and settlement agents. Thus, the common source information company will be able to require disclosure of the relationship status of a licensee, whether a limited service representative, standard agent or other. Further, the company will be able to make a full disclosure of this information to its participants and related entities.

§ 54.1-2145. Article does not limit antitrust laws.

Nothing in this article shall be construed to limit, modify, impair, or supercede the applicability of any federal or state antitrust laws.

DISCUSSION:

This section simply clarifies that the new laws do not limit or change any antitrust laws.

End of reading materials. Please continue to the Final Exam, Affidavit & Course Evaluation to complete this course.