



VIRGINIA REAL ESTATE BOARD

VREB *SPEAKING*

www.dpor.virginia.gov

Fall 2008

Message from the Chair



Carol F. Clarke

Twenty years ago we adopted buyer agency in Virginia, as defined by the *Code of Virginia* and regulated by the Board. Here we are in the twenty-first century, and I hear all the time about the hesitancy to represent buyers or explain buyer agency to the real estate purchasing consumer. Buyers need us now more than ever, and we have the obligation to explain what we can do to expedite a positive real estate purchase and experience.

BUYERS WANT REPRESENTATION. They need and deserve our services every bit as much as sellers. The process starts with a buyer consultative interview where the buying process is carefully and completely explained, including the role of the Virginia licensee in the process. It is important that a licensee pay full

attention to the buyer's needs, wants and budget, setting the stage for client confidentiality, educating the buyer to the market and to the consultative services (i.e., advice) a buyer representative can provide.

It is the buyer representative's obligation to thoroughly search the market for properties that meet the buyer's criteria - even those properties, such as FSBOs, that are not listed or marketed through a real estate brokerage company. Many licensees get compensation mixed up with buyer brokerage services. No matter how or what you are compensated, you must treat fairly and provide the same level of services to each and every buyer client. The only exception to this is if there is a written agreement to deliver limited services and that agreement must be fully explained to the buyer client.

The practice of buyer brokerage is empowering to both the purchaser and the licensee. Work hard to perfect your comfort level with the art and skills involved in buyer brokerage. Our rules and regulations require that buyer clients be given equal status and attention as seller clients in the transaction. When you work with buyers, always give them your best.

Please feel free to email me at REBoard@dpor.virginia.gov with your comments or topics you would like to see covered in *VREB Speaking*. I thank all of you for the comments we received on the last issue.

Good Luck,

Carol

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Timothy M. Kaine
Governor

Patrick O. Gottschalk
Secretary, Commerce & Trade

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2008 Meeting Dates

November 6, 2008

2009 Meeting Dates

January 15, 2009

March 26, 2009

May 14, 2009

July 9, 2009

September 17, 2009

November 19, 2009

All meetings are held on the Second Floor of the Perimeter Center at the above address.

BOARD MEMBERS

Carol F. Clarke, Chair
Charlottesville
Licensee Member
Four-year term ends on 6/30/12

Byrl P. Taylor, Vice-Chair
White Stone
Licensee Member
Four-year term ends on 6/30/11

Nathaniel Brown
Charlottesville
Citizen Member
Four-year term ends on 6/30/12

Judith L. Childress
Martinsville
Licensee Member
Four-year term ends on 6/30/12

Marjorie Clark
Richmond
Citizen Member
Four-year term ends on 6/30/10

Florence Daniels
Alexandria
Licensee Member
Four-year term ends on 6/30/10

Scott M. Gaeser
Manakin-Sabot
Licensee Member
Four-year term ends on 6/30/10

Sharon Parker Johnson
South Hill
Licensee Member
Four-year term ends on 6/30/12

R. Schaefer Oglesby
Lynchburg
Licensee Member
Four-year terms ends on 6/30/09

DPOR Staff

Jay DeBoer, Director

Mark Courtney, Deputy Director
Licensing & Regulation Division

Nick Christner, Deputy Director
Compliance & Investigations Division

Steven Arthur, Deputy Director
Administration & Finance Division

Lizbeth Hayes, Director
Fair Housing Office

Trisha Henshaw, Executive Director
Common Interest Community Board

**Real Estate Board Staff**

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Executive Director

Kevin Hoeft
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Maryanne Woo
Licensing Supervisor

Emily Trent
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Who's Looking at Your Clients' Files?

Editor's Note: This article is reprinted with permission from the Spring 2008 ALQ/Real Estate Intelligence Report.

Brokers who wonder what the next big headache in real estate will be may not have to look far to find the answer. In fact, it may be lurking in the file drawers where they keep their closed transactions.

With identity theft all over the headlines and bad guys increasingly finding ingenious ways of coming up with names, addresses, and bank account, Social Security and credit card numbers, the truth is that a lot of sensitive data is routinely being stored in real estate offices and it wouldn't take a computer mastermind to extract it.



In Florida last year, a rash of identity thefts was traced back to a man who worked nights as a janitor at a real estate office. He used his spare time to comb through files that sometimes were left sitting on agents' desks. More recently, authorities in the Midwest found thousands of transaction records from a defunct mortgage broker unceremoniously discarded in a dumpster. No effort had been made to shred sensitive client information.

A quick snapshot survey by the Real Estate Intelligence Report found brokerages keep files: 1) In unlocked file drawers; 2) In the basement; 3) In boxes on the floor of the (unlocked) storage room until they are moved upstairs; 4) In folders on (open) shelves in the conference room; and 5) Under the stairwells.

And then there are those records – who knows how many – that are kept in the trunks of agents' cars or stacked on desks in their home offices.

ARELLO Aware

Debbie Campagnola, CEO of the Association of Real Estate License Law Officials (ARELLO), says many states do not require special security to safeguard private information. She said she is personally aware of offices where transaction documents are just stacked in boxes in a corner.

"Documents aren't usually very well protected," she says. "I imagine there are many brokerages that don't even have a policy with respect to privacy. A lot of brokers have mortgage brokers sitting in their offices. A lot of agents are doing loan originations. They're collecting Social Security numbers and bank account numbers. "There hasn't been very much attention paid to this. Keeping documents secure is as important as security when you set up a showing or put a lockbox on somebody's house."

And none of the above scenarios even considers the data kept on stealable laptop computers and desktop computers that aren't password protected.

Campagnola said state real estate commissions typically require brokers to keep all the paperwork from transactions for several years before being allowed to discard it. Many brokerages keep it longer than necessary "just to be on the safe side."

In some cases, supervising brokers may not even know what documents are held in transaction folders and even sales associates may not know what they've got as they sweep all the pieces of paper off the closing table and into a file when the deal is done.

"That's just not adequate," says Brian Lapidus, COO of the global security firm Kroll International headquartered in New York. "That doesn't even look at the problem from an Internet security viewpoint." "The idea of agents and mortgage brokers keeping data in their cars as they move from place to place is frightening," he said **(Continued on Page 4)**.

Who's Looking at Your Clients' Files? (cont.)

What Can Happen

And what can thieves – either the common variety or the electronic version – do once they have real estate client information?

“If you have a name, an address and a Social Security number, the prospects are endless,” Lapidus said. “Someone can open credit cards in (your client’s) name and run up the charges. They can take out loans and second mortgages. With enough information, they could even sell your home out from under you.”

Credit card companies historically have written off bad debts once a claim has been submitted, but that doesn’t resolve the issue of destroyed credit and the months, and sometimes years, it can take for individuals to restore their good credit, to say nothing of their reputations.

And consumers increasingly are not being very forgiving of companies that lose their data. Earlier this year when the Hannaford Brothers and Sweetbay grocery groups lost track of 4.7 million customer credit card numbers – resulting in an estimated 1,800 cases of fraud – irate consumers filed a class action lawsuit against the supermarkets. “I’d think that sort of publicity would be terrible for a real estate company,” Lapidus said. “Real estate agents build their relationships on trust. If you lose a client’s data, how do they ever work with you again? Or your company?”

The security expert says keeping private information secure is becoming an ever greater challenge but there are things that can be done. First, he says, “don’t collect the information you don’t really need. A lot of businesses collect data because they think they need it. A lot of times they don’t.” And second, “get rid of anything you don’t need after the transaction is done. If you’re a real estate agent, you don’t need a lot of information after the deal is closed. You

don’t need to keep bank statements, tax forms and Social Security numbers. Get rid of them.” A decent shredder costs less than \$50.

Lapidus also says hiring brokers need to be careful about who they bring into their offices as employees – whether as agents, clerical staff or even cleanup crews. “Do background checks,” he said. “Do your due diligence. Make sure your employees are who they say they are. And make sure everyone knows the office policy and what you expect from them. Make sure they understand what your procedures are for handling documents.”



Real estate educators also need to join in this battle. “Agents should be getting training about what kind of data is sensitive and what isn’t,” Lapidus said. Finally, he said, brokers need to have a policy in place in case there is a data breach. “You need to know what to do; how to handle it,” he said. “What is your procedure going to be?”

A company’s ability to guard information could even be a sales tool, Lapidus said. “When you’re marketing yourself and differentiating yourself, this could be one way to do it. You can show your clients you’re aware that problems exist and you’re doing what you can to prevent it.”

Disclose and Win

By Florence Daniels, Board Member

What does disclosure mean? Why is it important to disclose? When is disclosure required? This article will answer these questions by examining the types of disclosure in real estate transactions. To disclose means "to make known, divulge, or uncover." Disclosure, in the practice of real estate, means the giving out of information either voluntarily or to be in compliance with legal regulations or workplace rules.



Disclosure of Licensee Status

When a licensee is involved as a principal in any transaction, he must disclose his licensure status. Is the license active or inactive? Is he licensed in any other state(s)? The licensee must reveal this information because he has knowledge and experience with real estate transactions and negotiations that may give him an unfair advantage over the average consumer.

Disclosure of Interest

When a licensee has an interest, a contemplated interest, or is acting on behalf of a family member in a transaction, he must disclose this. If the licensee's firm or any member of the firm has an interest in a property, then this must be disclosed. It is unlikely that a licensee can be impartial under these circumstances. The disclosure of interest should be made when the licensee has a substantive discussion with a prospect, potential buyer or tenant for a specific property.

Disclosure of Brokerage Relationship

Most problems stem from the failure to disclose a brokerage relationship. § 54.2138.A of the *Code of Virginia* provides a valid *Disclosure of Brokerage Relationship* form. As with disclosure of interest, disclosure of brokerage relationship is made after a substantive discussion on a specified property to one who is not represented by another licensee or to an unrepresented seller commonly known as a FSBO (For Sale by Owner). When a licensee makes a proper **written** disclosure of brokerage relationship and couples that written disclosure with adequate explanation, the consumer is more likely to understand who the licensee represents and confusion is reduced.

Disclosure of Dual Agency

When a licensee represents both parties in a transaction, the licensee shall not disclose confidential information received from one client and disclose or share this with another client unless provided for by law. The *Code of Virginia* provides valid forms or language which can be used for Disclosure of Dual Representation (§ 54.2139.A-D), Disclosure of Designated Representation (§ 54.2139.E-F) and Disclosure of Limited Service Representation (§ 54.2138.1). These disclosures must be in writing and with the written consent of all the parties to the transaction.

Disclosure of Physical Condition Material Adverse Facts

The Board's Regulations (18 VAC 135-20-300.2) require a standard agent to disclose in a timely manner to a prospective purchaser all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. Violation of this disclosure requirement is considered an act of misrepresentation or omission.

Disclosure of All Material Facts

The Board's Regulations (18 VAC 135-20-300.4) require a standard agent to disclose in a timely manner to his client all material facts related to the property or concerning the transaction when the failure to disclose would constitute failure on the licensee's part to exercise ordinary care. "Ordinary care" refers to the care that a reasonable person would exercise under the circumstances. Violation of this disclosure requirement is considered an act of misrepresentation or omission.

Disclosure in On-line Advertising

The Board's Regulations (18 VAC 135-20-190.A) require for on-line advertising: 1) disclosure of the firm's licensed name, the city and state in which the firm's main office is located and the jurisdiction in which the firm holds a license; or 2) the licensee's name, the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license. It is always prudent to frequently review your advertising to make sure your information is correct, current and compliant.

When in doubt - disclose. Of course, some things should not be disclosed, such as sharing confidential information without prior approval. In today's market we are faced with the challenges of disclosure in short sales. If you represent a buyer would you consider disclosure of a short sale a material fact to the transaction? On the other hand, if you represent the seller, this is deemed confidential information. As licensees, we must walk a fine line to protect our clients and ourselves. A clear understanding of disclosure will reduce our risks and increase our rewards.



DISCIPLINARY ACTIONS



The Real Estate Board (the Board) licenses or certifies real estate salespersons, brokers, firms, proprietary schools and pre-license instructors. If a complaint is filed against a licensee who is subject to the laws and regulations of the Board, the complaint is reviewed by the Compliance and Investigations Division (CID) of DPOR to determine if a violation of these laws or regulations may have occurred. If there is probable cause of a violation, an investigation is initiated. If the investigation reveals that one or more violations may have occurred, the licensee receives notice to appear at an informal fact-finding conference (IFF) to address these alleged violations.

In some cases the licensee may be offered a pre-IFF Consent Order. A Consent Order is an agreement between the licensee and the Board consisting of specific violations and sanctions. Pre-IFF Consent Orders eliminate the time and expense associated with conducting an IFF.

If an IFF is held, a recommendation from the IFF hearing officer consisting of proposed violations and sanctions is submitted to the Board for consideration at its next meeting. The Board can take the following disciplinary actions against a licensee: assess a monetary penalty; suspend or revoke a license; place an individual on probation; require additional education; or deny renewal. A licensee can continue to practice throughout the disciplinary process until the Board either revokes or suspends his license.

THE FOLLOWING DISCIPLINARY ACTIONS RENDERED BY THE BOARD AT ITS SEPTEMBER 2008 MEETING CAN BE VIEWED AT: www.dpor.virginia.gov. Click on "License Lookup." Then click on "Search Disciplinary Actions Occurring since April 1, 2002." Then enter the Case Number in the blank "Search" box. Then click on the "Search" button. Then click on the highlighted "File Number." The Order and Report of Findings for that case will appear.

<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2008-03174	Patrick A. Womble Manassas, VA	18 VAC 135-20-210 - Disclosure of Interest 18 VAC 135-20-270 - Conflict of Interest Fined \$600, \$150 Board Costs
2008-02808	Joseph C. Hopkins Midlothian, VA	18 VAC 135-20-310 - Delivery of Instruments License Revocation
2007-03316	Faisal A. Malik Fairfax, VA	18 VAC 135-20-180 - Maintain/Manage Escrow Account(2 counts) 18 VAC 135-20-310 - Delivery of Instruments (2 counts) §54.1-2132.A.4 - Failure to Exercise Ordinary Care License Revocation
2007-03880	Cabell F. Childress Richmond, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$1250, License Probation until completes 6 hours of CE
2007-00444	Charles I. Kirkwood Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$800
2008-02770	William R. Abbott Chesapeake, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$500, \$150 Board Costs, License Revocation
2008-04507	Lazelle D. Bryant Lake Ridge, VA	18 VAC 135-20-210 - Disclosure of Interest Fined \$150, \$150 Board Costs, 3 hours of Continuing Education
2008-03461	Natalie T. Jones Richmond, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, 2 year License Probation w/ Quarterly Reports
2008-04013	Charles J. First Manakin-Sabot, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$750, \$150 Board Costs



DISCIPLINARY ACTIONS (Cont.)



<u>Case No.</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2008-02449	Nadia Darmani Leesburg, VA	18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-280 - Improper Brokerage Commission Fined \$2500, License Probation until completes 8 hours of CE
2008-00348	Kay F. O'Banner Ashburn, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) 18 VAC 135-20-270 - Conflict of Interest (2 counts) 18 VAC 135-20-220 - Disclosure of Brokerage Relationship Fined \$5400, \$150 Board Costs, License Suspension until completes 8 hours of Continuing Education
2008-01522	Tiffany M. Henshaw Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-300 - Misrepresentation /Omission Fined \$1000, License Revocation
2008-00472	Catherine C. Young Berryville, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$900, \$150 Board Costs, 8 hours of Continuing Education
2008-02833	Changsun Yoon Fairfax, VA	18 VAC 135-20-170 - Maintenance of Licenses 18 VAC 135-20-180 - Maintenance/Management Escrow Accounts Fined \$2000, \$350 Costs, 3 Years License Probation, 16 hours CE
2007-04937	Daniel T. Crosby Washington, D.C.	18 VAC 135-20-170 - Maintenance of Licenses 18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$500, License Revocation
2007-04283	Gardiner S. Mulford Stevensburg, VA	§54.1-2131.A.4 - Failure to Exercise Ordinary Care Fined \$500
2008-04741	Thomas E. Cox Danville, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs
2008-02049	Calvin P. Stephens, Jr. Danville, VA	18 VAC 135-20-260 - Unworthiness & Incompetence §54.1-2135.A.1 - Failure to Perform to Prop. Manage. Agree Terms Fined \$1200, \$150 Board Costs, 6 hours of Continuing Education
2008-00858	Tracy M. Edwards Arlington, VA	§54.1-2131.A.4 - Failure to Exercise Ordinary Care Fined \$200, \$150 Board Costs
2007-04636	Patricia A. Hill Alexandria, VA	18 VAC 135-20-300 - Misrepresentation/Omission Fined \$300, \$150 Board Costs, 8 hours of Continuing Education
2008-00416	Betty L. Cline Pounding Mill, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts Fined \$650, \$150 Board Costs, 8 hours of Continuing Education
2007-03860	Angela J. Mairs Fort Washington, MD	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$400, \$150 Board Costs, 8 hours of Continuing Education
2007-04385	Tina M. Condon Rochelle, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-210 - Disclosure of Interest Fined \$600, \$150 Board Costs, 8 hours of Continuing Education
2008-01062	Joyce M. Gaines Stafford, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) §54.1-2131.A.4 - Failure to Exercise Ordinary Care Fined \$2300, \$150 Board Costs, 8 hours of Continuing Education
2009-00439	Coaching Institute Draper, UT	18 VAC 135-20-390 - Withdrawal of Approval Withdrawal of all Board-approved Continuing Education Courses



COMMONWEALTH OF VIRGINIA
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Occupational Regulation*
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Fair Housing

The Fair Housing Board administers and enforces the Virginia Fair Housing Law, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees. Each board investigates housing discrimination through the Virginia Fair Housing Office at the Department of Professional and Occupational Regulation. All fair housing cases must attempt conciliation – an alternative dispute resolution approach using informal negotiation. Successful conciliation agreements are public unless both parties request and agree to a confidentiality clause. If conciliation is unsuccessful in resolving the complaint, the Board determines whether reasonable cause exists to support a charge of discrimination. In cases where the Board determines reasonable cause and issues a charge of discrimination, the Office of Attorney General brings civil suit in circuit court seeking relief for the complainant.

The following case represents fair housing actions rendered by the Real Estate Board at its September 2008 meeting:

<u>Action</u>	<u>Case No.</u>	<u>Case Name</u>
Conciliation Agreement	2008-04618	Joan Heinig v. John H. Jenkins and J & J Real Estate, Ltd. Culpeper, VA