



## VIRGINIA REAL ESTATE BOARD

# VREB *SPEAKING*

[www.dpor.virginia.gov](http://www.dpor.virginia.gov)

Summer 2008

### Message from the Chair



**Carol F. Clarke**

The day-to-day practice of real estate gives us many opportunities to face challenges and solve problems. Our current industry climate favors the buyer. Inventory is plentiful and buyers have greater choice than in the early part of this decade.

We use a variety of means and methods to engage the public and create the perception of a "good" buyer's market. However, in our zeal to create sales, we must remember some things. We cannot accept bonus commissions or any sort of incentives without the broker's permission AND without the agreement and acceptance of a buyer client should you be in a client relationship with the buyer. Our WRIT-TEN buyer agency agreements delineate the terms, conditions and compensation between the

buyer and broker (agent) and the buyer client. ANY change in the terms, conditions or compensation MUST be accepted by the buyer, preferably in writing at the time it is offered. Waiting until the settlement table is too late!

All commission dollars flow through the broker (including bonuses), and the broker must agree to any incentives, including trips, tangible goods, etc., before the agent may accept such incentives.

A broker (or agent) may not accept referral fees from a non-licensed individual. Recently a question was asked about an advertisement an agent posted in a community newsletter, offering to pay a certain dollar amount for leads in the neighborhood. This is a violation of the Board's regulations. Only a licensed broker (agent) may accept referral fees for sending business to another licensed entity.

The practice of buyer representation was instituted in the Commonwealth twenty years ago. I still find many brokers and agents who do not understand, adequately explain or implement buyer agency. I will discuss buyer agency in greater detail in my next column, and I welcome your input. Please email me at [re-board@dpor.virginia.gov](mailto:re-board@dpor.virginia.gov) with your thoughts and questions on this subject.

Happy Summer,

Carol

P.S. Congratulations to Nathaniel Brown and Judith Childress on their re-appointment to the Board and welcome back to Sharon Johnson!

Virginia Real Estate Board  
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Richmond, VA 23233  
804-367-8526

Timothy M. Kaine  
Governor

Patrick O. Gottschalk  
Secretary, Commerce & Trade

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### 2008 Meeting Dates

September 18, 2008  
November 6, 2008

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

The Board's 2009 Meeting Dates have not been set.

**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**

Christine Martine  
Executive Director

Kevin Hoeft  
Education Administrator

Maryanne Woo  
Office Manager

Emily Trent  
Administrative Assistant

**Board Contact Information**

Executive Director - 804-367-8552

Licensing Section - 804-367-8526

Education Section - 804-367-2406

Fax Number - 804-527-4298

E-mail - REBoard@dpor.virginia.gov

Web - www.dpor.virginia.gov

DPOR Main Number - 804-367-8500

Complaints Section - 804-367-8504

Common Interest Community Board- 804-367-8510

## Real Estate Board Guidance Documents

The Real Estate Board has approved three Guidance Documents this year: 1) *Pre-license Instructors*; 2) *Instructor Qualifications*; and 3) *Continuing and Post License Education Reporting Requirements*. Guidance Documents are defined in §2.2-4001 of the *Code of Virginia* as “any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations.”

The Board developed these Guidance Documents to answer real estate policy questions that were not clearly addressed in the *Code of Virginia* or the Board's Regulations. For example, the *Pre-license Instructor Guidance Document* clarifies that anyone who teaches a Board-approved real estate pre-license education course must be certified by the Board as a Pre-license Instructor. The *Code of Virginia* and the Board's Regulations taken together strongly imply this requirement, but one could possibly interpret them as not requiring a Pre-license Instructor Certification to teach a Board-approved pre-license course. The Board eliminated this uncertainty by interpreting Virginia's real estate laws and its own regulations as requiring the Pre-license Instructor Certification to teach a Board-approved pre-license course.

The *Instructor Qualifications Guidance Document* clarifies the types of documentation that a pre-license, continuing or post license education instructor applicant must submit to the Board to demonstrate expertise in the field of

real estate in which the applicant is seeking approval to teach.

The *Continuing and Post License Education Reporting Requirements Guidance Document* clarifies that Board-approved education providers have five “business” days to transmit electronically continuing and post license education course completion information to the Board. The Board's current regulation states that education providers must report this information within “five” days. Several education providers informed the Board that it is difficult for them to transmit electronically course completion information to the Board within five calendar days.

These Guidance Documents are now part of the Board's official public policy, and can be viewed on-line at: <http://www.townhall.virginia.gov/L/GDocs.cfm?boardid=91>.

### Residential Property Disclosure Statement Form Revised

The Real Estate Board revised the *Residential Property Disclosure Statement Form* in accordance with legislation passed during the 2008 General Assembly session. The revised form adds a provision concerning dam break inundation zones. Dam break inundation zone information may be obtained directly from the locality in which the property is located. The revised *Residential Property Disclosure Statement Form* is available on the Board's website at: [www.dpor.virginia.gov](http://www.dpor.virginia.gov).

## Fair Housing

Pursuant to the Freedom of Information Act (FOIA) policy of the Department of Professional and Occupational Regulation for Fair Housing case files, only complaint dismissals resulting from the Board's determination that **no reasonable cause exists** to believe that a discriminatory housing practice occurred, shall be disclosed to the public. Upon request, and following completion of the Board's investigation, information derived from an investigation and any final investigative report may be made available to only the aggrieved person(s) and the respondent(s). Written conciliation agreements shall be made public **unless** the complainant and the respondent agree in writing that the agreement is to remain confidential, and the Board determines that disclosure is not required to further the purposes of the Fair Housing Law. Case names can be obtained from the Board minutes located on the Townhall website. The Board made a finding of reasonable cause or approved conciliation agreements for the following cases at its May and July 2008 meetings:

<u>Action</u>	<u>Case No.</u>	<u>Case Name</u>
Conciliation Agreement	2008-01209	Katrina Rollins v. D.M. Rothwell, Inc. and Betty Rothwell



## 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 public can view the Board's Final Orders and Consent Orders on the DPOR website at [www.dpor.virginia.gov](http://www.dpor.virginia.gov). Click on "License Lookup." Then click on "Search Disciplinary Actions Occurring since April 1, 2002." A search page will appear with directions on how to search for Board disciplinary actions against its licensees.

The following cases are disciplinary actions rendered by the Board in May and July of 2008:

<b><u>Case No.</u></b>	<b><u>Licensee</u></b>	<b><u>Violations &amp; Sanctions</u></b>
2008-01288	Charles Futrell Richmond, VA	18 VAC 135-20-260 - Unworthiness & Incompetence No Sanction
2008-01543	Barry A. Perlow Ashburn, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, Voluntary License Surrender
2008-01175	Susan B. Miller Romney, WV	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, License Probation until July 15, 2010
2008-01176	James E. Miller, II Romney, WV	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, License Probation until July 15, 2010
2008-00242	John MacGregor Elder Winchester, VA	18 VAC 135-20-185 - Maintenance/Management Financial Records (3 counts) 18 VAC 135-20-240 - Provision of Records to the Board Fined \$3,450, \$150 Board Costs, Revocation of Broker's License & Issuance of Salesperson License; Quarterly Reporting to the Board
2007-04749	Daniela C. Dixon Spotsylvania, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$1000, \$150 Board Costs, 3 hours Continuing Education
2007-04868	Jeffrey Salisbury Manassas, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$400, License Revocation
2008-00180	Anthony Hajasz, Jr. Virginia Beach, VA	18 VAC 135-20-240 - Provision of Records to the Board 18 VAC 135-20-185 - Maintenance/Management Financial Records (2 counts) Fined \$2000, \$150 Board Costs, License Revocation



## DISCIPLINARY ACTIONS (Cont.)



<u>Case No.</u>	<u>Licensee</u>	<u>Violations &amp; Sanctions</u>
2007-02044	John M. Cronin Alexandria, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-240 - Provision of Records to the Board 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-185 - Maintenance/Management Financial Records (2 counts) Fined \$4000, License Revocation
2007-02621	John M. Cronin Alexandria, VA	18 VAC 135-20-170 - Maintenance of Licenses (2 counts) 18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-240 - Provision of Records to the Board 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-310 - Delivery of Instruments 18 VAC 135-20-185 - Maintenance/Management Financial Records (2 counts) Fined \$5950, License Revocation
2008-00462	Kimberley Keller Blair Fredericksburg, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (3 counts) \$150 Board Costs, License Revocation
2008-00295	Gary A. Zayakosky Hampton, VA	§54.1-2138.A - Disclosure of Brokerage Relationship Fined \$450, \$150 Board Costs
2007-04327	Clifton N. Holmquist Virginia Beach, VA	18 VAC 135-20-310 - Delivery of Instruments Fined \$450, \$150 Board Costs, 12 hours Continuing Education
2007-03110	Henry Johnson Parksley, VA	18 VAC 135-20-210 - Disclosure of Interest 18 VAC 135-20-310 - Delivery of Instruments Fined \$900, \$150 Board costs, 4 hours Continuing Education
2008-02315	Christopher J. Dunlap Danville, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, 2-year License Probation
2007-04591	Vincent W. Elliott Independence, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$750, \$150 Board Costs, 8 hours Continuing Education
2008-01855	Mary A. Bowman Harrisonburg, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, 2-year License Probation
2007-03612	Donice C. Stewart Suitland, MD	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-185 - Maintenance/Management Financial Records 18 VAC 135-20-240 - Provision of Records to the Board Fined \$4500, License Revocation
2007-01153	Dawn L. Mills Martinsville, VA	18 VAC 135-20-310 - Delivery of Instruments Fined \$500, \$500 Board Costs, License Probation until complete 4 hours Continuing Education
2007-00951	Sonia M. Nidhan Suffolk, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (5 counts) Fined \$7500, License Revocation
2007-04375	Andrew James Walker Bristow, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (4 counts) Fined \$7500, License Revocation
2008-02249	Sandra Y. Vipperman Richmond, VA	§54.1-2135.A.1 - Failure to Perform According to the Terms of the Property Management Agreement Fined \$200, \$150 Board Costs

## Changes in Common Interest Community Regulation

The 2008 General Assembly enacted, and the Governor signed, legislation creating the **Common Interest Community Board** (the Board) and the **Office of the Common Interest Community Ombudsman** at the Department of Professional and Occupational Regulation (DPOR).



The new law is effective July 1, 2008, and DPOR is working on the necessary staffing, regulatory and programmatic elements required to implement its provisions as quickly as possible. At the same time, the Governor is seeking to identify members to serve on the newly created Board.

The Common Interest Community (CIC) Board is composed of 11 members: three CIC Managers, one attorney who represents associations, one CPA who provides services to associations, one timeshare industry representative, two developers of associations, and three citizens (one who serves on an association governing body & two association residents).

The new law transfers authority for Title 55 provisions – the Property Owners' Association Act, the Condominium Act, the Cooperative Act, and the Timeshare Act – from the Real Estate Board to the CIC Board. The Real Estate Board will, however, retain enforcement jurisdiction over licensed brokers/salespersons who are simultaneously li-

censed as CIC Managers. Existing Real Estate Board regulations affecting CICs and property registration remain in effect until the new CIC Board adopts its own emergency regulations.

The new law provides for three levels of regulation for CIC management services: licensure for CIC Managers (corporations, partners or sole proprietors); mandatory certification for supervisory employees of licensees; and voluntary certification as an option for non-supervisory employees. The CIC Board may impose a monetary penalty of up to \$1,000 per violation of its statutes or regulations. In addition, the law establishes the CIC Management Recovery Fund to pay court-appointed receivers and to restore association monies in the event a licensee fails to discharge its fiduciary responsibilities.

Under the new statute, the CIC Liaison position is replaced by the Ombudsman – an attorney who assists individuals in understanding and exercising their rights in resolving issues with their associations. The Ombudsman will also receive complaints about associations; maintain data on inquiries and dispute resolution; and issue non-binding explanations of CIC laws and regulations.

DPOR will update its website ([www.dpor.virginia.gov](http://www.dpor.virginia.gov)) with progress updates on the new CIC Board and Ombudsman, including anticipated timeframes for emergency regulations, provisional licenses, and complaint processing.

### DID YOU KNOW?

#### Board Regulations Accessible via Web

You can print a PDF-copy of the *Real Estate Board's Regulations* from the Board's website at: [http://www.dpor.virginia.gov/dporweb/reb\\_main.cfm](http://www.dpor.virginia.gov/dporweb/reb_main.cfm).

If you do not have access to the Internet, please contact the Board's office for a copy of the Regulations.

## EDUCATION CORNER

### New Salespersons Must Complete Post License Education within One Year

Section 54.1-2105.01 of the *Code of Virginia* requires that all new real estate salespersons licensed on or after July 1, 2008, must complete 30 hours of post license education within one year of obtaining this license. Failure to do this will result in the salesperson's license being placed on inactive status by the Board until the 30-hour post license education curriculum is completed. A licensee cannot practice real estate in Virginia with an inactive license. This change in law resulted from the passage of HB 2064 by the 2007 General Assembly.

### ARELLO Distance Education Course Certification Suggested - but not Required

On May 8, 2008, the Board suggested that approved education providers seek the Association of Real Estate License Law Officials Distance Education Certification (ARELLO DEC) for distance education courses. However, the Board will not require ARELLO DEC as a condition to approve distance education courses. ARELLO DEC standards include course design, course completion time, student interactivity and instructor credentials and are used to evaluate distance education courses.

### Electronic Course Applications Accepted

The Board is now accepting electronic "Continuing Education & Post License Education Course Approval Applications" from its approved education providers. This initiative has met with universal support among education providers, and it will significantly reduce paper and postage costs incurred by both the Board and education providers. Approximately 75% of the course applications for the Board's July 10, 2008, meeting were received electronically. Education providers may continue to submit paper course applications through 2008. Beginning in 2009, however, all course applications must be submitted electronically to the Board.



## DISCIPLINARY ACTIONS (Cont.)

<u>Case No.</u>	<u>Licensee</u>	<u>Violations &amp; Sanctions</u>
2008-03488	Deborah Yvonne Taylor Midlothian, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$150 Board Costs, License Revocation
2007-03517	Edward Andrew Williams Richmond, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-300 - Misrepresentation/Omission 18 VAC 135-20-310 - Delivery of Instruments (2 counts) §54.1-2138 - Disclosure of Brokerage Relationship (2 counts) Fined \$9000, License Probation until complete 8 hours Continuing Education, License Revocation
2008-01837	Steven B. Nichols Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$2500, \$150 Board Costs, 3-year License Probation
2007-05106	Maria Rosario Baggett Newport News, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-220 - Disclosure of Brokerage Relationship 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-310 - Delivery of Instruments Fined \$1700, License Probation until complete 8 hours Cont. Ed.
2007-05169	Mary L. McCarron Nokesville, VA	§54.1-2132.A.4 - Failure to Exercise Ordinary Care Fined \$500, \$150 Board Costs
2008-00351	Henry C. Osborne, Jr. Woodbridge, VA	18 VAC 135-20-210 - Disclosure of Interest Fined \$400, \$150 Board Costs



**COMMONWEALTH OF VIRGINIA**  
**Department of Professional and**  
**Occupational Regulation**  
**9960 Mayland Drive, Suite 400**  
**Richmond, Virginia 23233**

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