



# VIRGINIA REAL ESTATE BOARD

## VREB *SPEAKING*

www.dpor.virginia.gov

Summer 2010

### Message from the Chair



**Byrl P. Taylor**

Greetings to all Real Estate Board licensees during the sizzling summer days of 2010! Although the economy continues to sputter, I am confident and hopeful that the Virginia real estate market is on the mend.

The Spring 2010 issue of *VREB Speaking* mentioned that Governor Robert McDonnell appointed Gordon Dixon as DPOR Director. Mr. Dixon introduces himself to the Virginia real estate community in an article on page 3 of this newsletter.

Governor McDonnell recently appointed three new members to the Real Estate Board. They are Joseph Funkhouser, II, of Harrisonburg, Sandra Ferebee

of Norfolk and Jorge Lozano of Annandale. The Board congratulates and welcomes them to our team. An article on page 4 briefly introduces the new Board members.

As we welcome these new members, we also salute the exceptional work of former Board members Florence Daniels, Scott Gaeser and Marjorie Clark. Florence, Scott and Marjorie served a total of 20 years on the Board, and they will be missed. Real estate licensees and the public benefited greatly from their expertise, knowledge and diligence.

Board Member Cliff Wells provides helpful tips about the Board's requirements for supervising brokers in an article on page 4.

The Board recently approved two guidance documents concerning its distance learning course approval process. Effective January 1, 2011, all Board-approved distance learning courses will need ARELLO Distance Education Certification, or an equivalent certification, to meet the Board's standards of quality. The article on page 5 elaborates on these guidance documents.

At its July 8, 2010, meeting, the Board authorized the DPOR Compliance and Investigations Division (CID) to conduct random real estate firm inspections. These inspections should begin in November of 2010, and the article on page 6 provides details.

**("Message" continued on Page 10)**

Virginia Real Estate Board  
Perimeter Center, Suite 400  
9960 Mayland Drive  
Richmond, VA 23233  
804-367-8526

Robert F. McDonnell  
Governor

James S. Cheng  
Secretary, Commerce & Trade

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### 2010 Meeting Dates

**September 9, 2010**  
**November 18, 2010**

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

## **BOARD MEMBERS**

Byrl P. Taylor, 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

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

Sandra Ferebee  
Norfolk  
Licensee Member  
Four-year term ends on 6/30/14

Joseph Funkhouser, II  
Harrisonburg  
Licensee Member  
Four-year term ends on 6/30/14

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

Jorge G. Lozano  
Annandale  
Citizen Member  
Four-year term ends on 6/30/14

Clifford Wells  
Virginia Beach  
Licensee Member  
Four-year term ends on 6/30/13

## **DPOR Staff**

Gordon Dixon, 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  
Licensing Supervisor  
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  
Internet - www.dpor.virginia.gov  
DPOR Main Number - 804-367-8500  
Complaints Section - 804-367-8504  
Common Interest Community Board- 804-367-8510

## Meet DPOR Director Gordon Dixon



Greetings to all Virginia Real Estate Board Licensees! Governor Bob McDonnell appointed me to serve as DPOR Director in May, and I am very pleased to lead the agency that licenses and regulates many of the

professions and occupations in the Commonwealth. On behalf of Governor McDonnell, Secretary of Commerce and Trade Jim Cheng, and myself, thank you for protecting the public and promoting job creation by providing high quality real estate services in Virginia.

DPOR enjoys a strong reputation within and outside state government for balancing a business-friendly environment with adequate public protections, and I look forward to maintaining and improving this balance.

By way of background, I come to DPOR after 15 years of working with regulatory, public policy and community engagement issues affecting various businesses. Most recently, I held a management position in Corporate Affairs at Altria Client Services, where I successfully developed and enhanced community engagement and corporate social responsibility initiatives, as well as assisted in developing measurement benchmarks.

I previously served as state director for the 9,000-member Virginia chapter of the National Federation of Independent Business (NFIB), overseeing public policy and regulatory issues affecting business owners on the state and federal levels to ensure a fair and prosperous

business climate. Other organizations I have worked with include the Home Builders Association of Richmond and the Greater Richmond Chamber of Commerce, where I helped lead government, business, and manufacturing issues. I am confident my experience will prove a valuable fit here at DPOR.

In my first months at DPOR, I have appreciated learning more about the agency, its regulatory boards and all the behind-the-scenes work the staff completes to license and certify over 300,000 professionals and businesses. My short-term objectives include: 1) maintaining a smooth transition; 2) understanding DPOR's work processes and procedures; 3) providing tools to think in a different way; and 4) protecting the public while helping to create jobs.

My leadership philosophy – founded on integrity, trust and respect – focuses on building individual and organizational capabilities while allocating resources carefully. This agency is built on mutual respect, a shared commitment to public service, and productive work relationships. Board members and staff have already consistently impressed me with their knowledge and dedication.

It is an honor to work with Virginia's real estate professionals for a better Commonwealth. I attended the May 20th and July 8th Real Estate Board meetings and was impressed by the Board members' expertise and professionalism.

I look forward to learning more about the real estate profession and hearing your ideas in support of the McDonnell Administration's vision for a *Commonwealth of Opportunity*. Together we can advance economic vitality across Virginia by providing exceptional real estate services and protecting the public.

## Supervising Brokers - Authority and Responsibility

### By Cliff Wells, Board Member



At its July 7, 2010, meeting, the Real Estate Board Regulatory Review Committee discussed regulations governing the duties of supervising brokers. It appears there may be some confusion among brokers concerning the authority and responsibilities of supervising brokers.

18 VAC 135-20-160.D of the Board's Regulations states, in part:

Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. **The supervising broker may designate another broker to assist in administering the provisions of this subsection. The supervising broker does not relinquish overall responsibility for the supervision of the acts of all licensees assigned to the branch office.**

This regulation makes it clear that the supervising broker of a branch office is responsible for all the acts of all the licensees assigned to that branch office. Although some large, full-service branch offices may be organized into various departments such as residential resale, new construction, property management and commercial real estate, the supervising broker retains overall responsibility for the acts of all licensees within the branch office.

The supervising broker may designate other brokers to assist in supervising the day-to-day activities of these various departments within the branch office. However, this designation does not relieve the supervising broker of the responsibility of all the real estate duties outlined in regulation 18 VAC 135-20-160.D, such as reviewing and approving all documents, providing training, and providing written procedures and policies.

The Board invests supervising brokers with much authority in administering a real estate firm's branch office. This authority includes allowing supervising brokers to appoint other brokers to assist them with this work. Along with this authority comes the responsibility to operate the branch office in compliance with the Board's regulations, and that responsibility is placed squarely on the shoulders of the supervising broker.

## Governor McDonnell Appoints Three Board Members

Governor Robert F. McDonnell recently appointed three members to the Real Estate Board (Board). They are Joseph Funkhouser, II, Sandra Ferebee and Jorge Lozano. They will each serve four-year terms.

Mr. Funkhouser of Harrisonburg, a licensee member, is the principal broker of Coldwell Banker Funkhouser Realtors and of Coldwell Banker Commercial Funkhouser Realtors. He has participated in many local, state and national real estate leadership positions, including eight years on the Real Estate Board from 1995 to 2003 and on the National Association of REALTORS® Board of Directors for over 20 years. He was president of the Virginia Association of REALTORS® and was a charter inductee into its Hall of Fame. He was appointed to Governor McDonnell's Commission on Economic Development and Job Creation.

Ms. Ferebee of Norfolk, a licensee member, is the principal broker of GSH Residential Real Estate Cor-

poration and associate broker of Prudential Towne Realty. Ms. Ferebee has served in numerous local, state and national real estate leadership positions, including president of the Virginia Association of REALTORS® and was a charter inductee into its Hall of Fame. She was a member of the National Association of REALTORS® Board of Directors and has served the Hampton Roads community through numerous civic and charitable organizations.

Mr. Lozano of Annandale, a citizen member, is the president of Condortech Services, Inc., a high-tech electronic security company that constructs design-build security systems for both public and private facilities. Mr. Lozano originally came to the United States from Bolivia with limited financial resources but with a desire to excel, succeed and experience the American Dream. He is a leader in the Hispanic community and has been recognized for his business, educational and charitable activities.

## Board Approves Guidance Documents Requiring Distance Education Course Certification

At its May 20, 2010, and July 8, 2010, meetings, the Real Estate Board (Board) approved guidance documents requiring the Association of Real Estate License Law Officials (ARELLO) distance education certification (DEC), or an equivalent distance education certification, as a condition for meeting the Board's standards of quality for approval of distance learning courses.

The *Code of Virginia* defines "distance learning" as: "instruction delivered by an approved provider through a medium other than a classroom setting." Distance learning includes, but is not limited to, correspondence courses, online courses, computer-based courses, webinars and teleconferences. Distance learning generally occurs when the instructor and the student are not at the same location, i.e., in the same classroom.

The Board has the authority to establish procedures to ensure the quality of its approved pre-license, continuing and post license education courses. ARELLO DEC ensures that distance learning courses function properly, have the correct number of credit hours, have appropriate assessment mechanisms, require adequate student interaction, have measurable learning objectives, have qualified instructors and are audited periodically. ARELLO DEC is the leading credential for real estate distance learning courses, and it is required by 22 other states.

At its May 20, 2010, meeting, the Board approved a guidance document requiring ARELLO DEC, or a substantially equivalent certification, as a condition for approving any pre-license, continuing or post license education correspondence course after July 1, 2010. The text of this guidance document reads:

The Board is issuing this guidance document to interpret and implement the requirements of §§ 54.1-2100, 54.1-2105.B.1.b, 54.1-2105.B.2.b, 54.1-2105.D, 54.1-2105.01.A, 54.1-2105.02.A, 54.1-2105.02.B, 54.1-2105.03.A.1, 54.1-2105.03.A.2, and 54.1-2105.03.A.3 of the *Code of Virginia* and 18 VAC 135-20-101 and 18 VAC 135-20-360.E of the *Real Estate Board Regulations* as a means of providing information or guidance of general applicability to the public:

To ensure that salesperson and broker licensees meet the standards of quality deemed by the Board as necessary to protect the public interest, health, safety and welfare pursuant to the above-referenced statutes and regulations, and effective July 1, 2010; for approval of a pre-license, continuing or post license education correspondence course, distance education certification by the Association of Real Estate License Law Officials (ARELLO), or a substantially equivalent distance education certification, is required.

At its July 8, 2010, meeting, the Board approved a guidance document requiring ARELLO DEC, or a substantially equivalent certification, to ensure that any pre-license, continuing or post license education distance learning course approved after January 1, 2011, meets the Board's standards of quality. The text of this guidance document reads:

The Board is issuing this guidance document to interpret and implement the requirements of §§ 54.1-2100, 54.1-2105.D, 54.1-2105.01.A, 54.1-2105.02.A, 54.1-2105.02.B and 54.1-2105.03.A.3 of the *Code of Virginia* as a means of providing information or guidance of general applicability to the public:

To ensure that salesperson and broker courses meet the standards of quality deemed by the Board as necessary to protect the public interest, health, safety and welfare pursuant to the above-referenced statutes, and effective January 1, 2011; for approval of a pre-license, continuing or post license education distance learning course, distance education certification by the Association of Real Estate License Law Officials (ARELLO), or a substantially equivalent distance education certification, shall be considered as meeting the Board's standards of quality.

These Guidance Documents can be viewed on the Virginia Regulatory Town Hall website at: <http://www.townhall.virginia.gov/L/GDocs.cfm?boardid=91>

## Board Authorizes Random Real Estate Firm Inspections

At its July 8, 2010, meeting, the Real Estate Board (Board) authorized the DPOR Compliance and Investigations Division (CID) to conduct random inspections of licensed real estate firms pursuant to §§ 54.1-201.6 and 54.1-306.C of the *Code of Virginia*.

The Board's primary goal in conducting random inspections of real estate firms is to ensure the firms comply with the Board's regulations. A number of complaints involving missing escrow funds have come before the Board during the past several years.

The Board wants to exercise its lawful authority to protect escrow funds which have been entrusted by the public to licensed real estate firms.

The inspections will be as non-invasive as possible, but sufficient in length to allow investigators to ascertain if a firm's escrow accounts have the appropriate funds to cover liabilities. In addition to reviewing the escrow accounts, the inspection will determine if other Board requirements are being met. The inspections will include review of a firm's policy and procedures manual, availability of training and determination of appropriate supervision practices.

If potential violations are discovered during an inspection, they may be handled by allowing the firm to come into compliance with the Board's requirements, or, if compliance is not an option, then the potential violations would be subject to further investigation and possible disciplinary action by the Board.

CID staff is finalizing policies and procedures for conducting the random inspections and investigator training for inspections will begin in September. Actual firm inspections will likely begin in November 2010. CID staff will brief the Board on its progress at the September 9, 2010, Board meeting.

The principal broker of a firm selected for a random



inspection will be initially notified by telephone or in person to schedule the inspection. In addition, written notification of the pending inspection will be sent to the principal broker along with a list of required documents and records necessary to conduct the inspection. The random inspections will focus primarily on the following Board regulations:

- 18 VAC 135-20-160 - Place of Business.**
- 18 VAC 135-20-170 - Maintenance of Licenses.**
- 18 VAC 135-20-180 - Maintenance and Management of Escrow Accounts.**
- 18 VAC 135-20-185 - Maintenance and Management of Financial Records.**

Although this is not a comprehensive list of the Board's regulations within the scope of an inspection, your firm may want to review these particular regulations to ensure compliance and in preparation for the possibility of a random inspection. This is also a good time to conduct a thorough internal review of your firm's supervision practices, firm policy and procedures manual, availability of training, licenses, escrow accounts and record keeping practices.

The following statutes give the Board the authority to conduct the inspections as described:

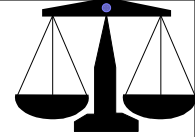
§ 54.1-201.6 of the *Code of Virginia* authorizes the Board to conduct inspections "to ensure that the practitioner is conducting his practice in a competent manner and within the lawful regulations promulgated by the board."

§ 54.1-306.C of the *Code of Virginia* authorizes the Board to "adopt a resolution delegating to the sworn investigators appointed by the Director pursuant to § 54.1-306, the authority to conduct inspections. After conducting an inspection pursuant to the delegation of inspection authority, an investigator may initiate an investigation based on any act, omission, or condition witnessed by the investigator and offer a consent agreement to the regulant to resolve any violation discovered during the inspection, subject to the provisions of subsection B of § [54.1-202](#). If a consent agreement is offered pursuant to the delegation of authority authorized by this subsection, it shall not become effective until approved by the Director."

For questions concerning the random inspection of real estate firms, please contact CID at: [investigations@dpor.virginia.gov](mailto:investigations@dpor.virginia.gov)



## 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.

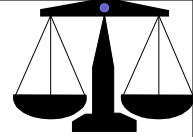
If an IFF is held, a recommendation from the IFF hearing officer consisting of proposed violations and sanctions is submitted to the Board for consideration at its next meeting. The Board can take the following disciplinary actions against a licensee: assess a monetary penalty; suspend or revoke a license; 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 MAY and JULY 2010 MEETINGS CAN BE VIEWED 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." 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 &amp; Sanctions</u>
2009-03171	Kimberley D. Hunt Roanoke, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (3 counts) \$4000 Monetary Penalty, 6 hours Continuing Education, License Probation and Quarterly Reporting for 2 years, License Suspension for 6 Months
2009-04348	Francis H. Payne, Jr. Marshall, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-260 - Unworthiness & Incompetence \$3650 Monetary Penalty, License Revocation
2010-02544	Tonya K. Smith Richmond, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$500 Monetary Penalty, Broker License Revocation with Simultaneous Issuance of Salesperson License, Will not Apply for Broker License for 3 Years, and, if applies for Broker License, will Complete 180 hours of Required Broker Pre-license Education
2010-00126	Ron L. Gregory Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-300 - Misrepresentation/Omission \$1400 Monetary Penalty, \$150 Board Costs, 3 hours Continuing Education
2010-00158	Codjoe E. Lucas Virginia Beach, VA	18 VAC 135-20-185 - Maint./Manage. Financial Records (3 counts) License Revocation
2010-02369	Andrea S. Zember Accomac, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-210 - Failure to Disclose Interest \$500 Monetary Penalty, \$150 Board Costs



## DISCIPLINARY ACTIONS (Cont.)



<u>Case Number</u>	<u>Licensee</u>	<u>Violations &amp; Sanctions</u>
2010-03493	Donald C. Lacey Mechanicsville, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, License Revocation
2010-00525	Tonia M. Carver Virginia Beach, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-260 - Unworthiness & Incompetence \$2150 Monetary Penalty, \$150 Board Costs, 3 Hours Continuing Ed.
2010-02325	Gregory S. Baron Richmond, VA	18 VAC 135-20-220 - Disclosure of Brokerage Relationships \$500 Monetary Penalty, \$150 Board Costs
2010-01543	Kuthilda M. Stallings Richmond, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$250 Monetary Penalty, \$150 Board Costs, 3 Hours Continuing Ed.
2010-00887	Charles A. Burnette Christiansburg, VA	18 VAC 135-20-300 - Misrepresentation/Omission \$550 Monetary Penalty, \$150 Board Costs
2010-02174	Wesley A. Coons Chesapeake, VA	1992 Regulation § 6.6.5 - Unworthiness & Incompetence 1995 Regulation § 6.7.6 - Unworthiness & Incompetence \$600 Monetary Penalty, \$150 Board Costs, 8 Hours Continuing Ed.
2010-00821	Debra E.P. Franklin Victoria, VA	18 VAC 135-20-170 - Maintenance of License 18 VAC 135-20-185 - Maintenance/Management Financial Records 18 VAC 135-20-260 - Unworthiness & Incompetence \$5250 Monetary Penalty, License Revocation
2009-04354	Ramon E. Portillo Ashburn, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (7 counts) \$16000 Monetary Penalty, License Revocation
2010-02166	Debbie S. Maxam Fredericksburg, VA	18 VAC 135-20-310 - Delivery of Instruments \$500 Monetary Penalty, \$150 Board Costs, 8 Hours Continuing Ed.
2010-01047	Reginald C. Henderson Richmond, VA	18 VAC 135-20-300 - Misrepresentation/Omission \$1000 Monetary Penalty, \$150 Board Costs, 3 Hours Continuing Ed.
2010-00986	Judith A. Harris Centreville, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts \$200 Monetary Penalty, \$150 Board Costs, 8 Hours Continuing Ed.
2010-03600	Daniele C. Smith Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$150 Board Costs, License Revocation
2010-02518	Keith L. Hartke Reston, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (3 counts) \$7500 Monetary Penalty, 8 Hours Continuing Education, Broker License Revocation with Simultaneous Issuance of Salesperson License
2010-01717	John R. Barber Staunton, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$1650 Monetary Penalty, \$150 Board Costs, 4 Hours Continuing Ed.
2010-01021	Cherry L. Rose Williamsburg, VA	§54.1-2135.A.2 - Failure to Exercise Ordinary Care in Managing Real Estate \$500 Monetary Penalty, \$150 Board Costs, 4 Hours Continuing Ed., 3 Month License Suspension. \$500 Monetary Penalty and 3 Month License Suspension waived provided Rose agrees to 3 Year License Probation with Quarterly Reporting to the Board





## DISCIPLINARY ACTIONS (Cont.)



<u>Case Number</u>	<u>Licensee</u>	<u>Violations &amp; Sanctions</u>
2010-00206	Yu Fan Potomac, MD	18 VAC 135-20-260 - Unworthiness & Incompetence (5 counts) \$4350 Monetary Penalty, License Revocation
2010-01097	Randall W. Thompson Norfolk, VA	18 VAC 135-20-270 - Conflict of Interest 18 VAC 135-20-280 - Improper Brokerage Commission 18 VAC 135-20-300 - Misrepresentation/Omission \$2900 Monetary Penalty, \$150 Board Costs, 4 Hours Continuing Ed.
2010-02895	Kathryn S. Carraway Suffolk, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$150 Board Costs, License Revocation
2010-01121	Joshua Thomas Burke, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$4500 Monetary Penalty, License Revocation
2010-01965	Jessica L. Zagal Woodbridge, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (6 counts) \$150 Board Costs, 4 Hours Continuing Ed., License Revocation
2010-03378	David C. Snipes Ashland, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, 4 Hours Continuing Education
2010-03381	David C. Snipes Ashland, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, 4 Hours Continuing Education
2010-02881	Swindell Sutton Alexandria, VA	§54.1-2135.A.1- Failure to Perform According to the Property Management Agreement Terms in Managing Real Estate \$150 Board Costs, 4 Hours Continuing Education

## 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 if reasonable cause exists to support a charge of discrimination. In cases where the Board determines reasonable cause and issues a charge of discrimination, the Attorney General's Office brings civil suit in circuit court seeking relief for the complainant. The following cases are the fair housing actions rendered by the Real Estate Board at its May and July 2010 meetings:

<u>Action</u>	<u>Case Number</u>	<u>Case Name</u>
Conciliation Agreement	2010-01029	RRCBSB-AAA v. Thomas S. Underwood
Settlement Agreement	2003-02670	Crystal Walker v. Barry Schmidt

## Short Sales – When Does Ratification Occur?

By Blake Hegeman, Virginia Association of REALTORS®, Associate Counsel

Short sale transactions are unique and often complicated transactions. This is evident by reviewing a Virginia Association of REALTORS® form's definition of a "Short Sale:"

[It is] a transaction that might require lien holder approval because the purchase price sellers expect to receive for their property, net of the costs of sale, is or might be less than the amount of all obligations secured by liens on the property, and sellers do not have liquid assets sufficient to pay any deficiency at settlement.

Although this language appears to be confusing, it is helpful to understand that short sale contracts are typically created in the same way as conventional purchase contracts. In a typical purchase contract, full execution and ratification usually occur upon acceptance of the last offer by the other side, by signing and notifying the other side of acceptance. The same is true of short sales.

Despite this fact, one of the most common questions we receive concerning short sales is, "Is it true that short sale contracts are not ratified until lenders have approved them?" The answer is, "Absolutely not." Short sale contracts are typically ratified but with the seller's obligations contingent on lender approval. This contingency is a title contingency that benefits the seller and no more defeats the existence of a ratified contract than does a buyer financing contingency, which also calls for lender approval.

The short sale contract is considered ratified when fully executed and delivered by and to all parties, just as if it were any other contract. The contingency for removal of the lien does not affect whether it is a ratified contract. However, it is different if the contract provides that ratification or acceptance is subject to lender signature or approval. In that case there is no contract until the lender approves.

Please also remember that when ratification occurs you may have certain obligations with respect to the earnest money deposit. 18 VAC 135-20-180.B.1.a of the *Real Estate Board's Regulations* (Maintenance and Management of Escrow Accounts) states, in part:

Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the parties to the transaction, and shall remain in that account until the transaction has been consummated or terminated.

### ("Message" Continued from Page 1)

Blake Hegeman of the Virginia Association of REALTORS® describes when ratification occurs in a short sale in an article on page 10.

The Board's disciplinary actions and Fair Housing actions from its May and July 2010 meetings are listed on pages 7-9.

The Board's Regulatory Review Committee next meets on Wednesday, September 8, 2010, at 10 a.m. in Richmond, and the meeting topic is "Regulations Dealing with Escrow." If you have ideas on this subject for the Board's consideration, please attend this meeting.

Please feel free to contact the Board or me at 804-367-8526 or REBoard@dpor.virginia.gov with your ideas, suggestions and concerns about real estate in Virginia.

Sincerely,

Byrl P. Taylor, Chair

