



VIRGINIA REAL ESTATE BOARD

VREB *SPEAKING*

www.dpor.virginia.gov

Spring 2011

Message from the Chair



Byrl P. Taylor

Spring is upon us once again. I hope the return of green grass, flowers and leaves will be followed by a blossoming economy and housing market.

As the demand for property management services increases, the Board has encountered more disciplinary cases dealing with licensees who practice property management. Board member Joe Funkhouser points out some of the Board's property management regulations and violations of these regulations in an article on page 3.

Board member Carol Clarke reminds licensees of the importance of reading and knowing Virginia's real estate laws and regulations in an article on page 4. Claiming ignorance of the Board's requirements is a poor defense.

The July 2010 change in law concerning licensure by reciprocity requires that broker license reciprocal applicants prove they have completed 180 hours of broker pre-license education that is comparable to the Board's broker pre-license education requirement. This has become an issue with many broker license reciprocal applicants. The article on page 4 describes how the Board is handling this matter.

The article on page 7 provides an update on the random inspections of real estate firms authorized by the Board in July of 2010 and conducted by DPOR investigators. The results so far appear to be positive as only one of 23 inspections has required opening a disciplinary investigation against a real estate firm.

The 2010 Education Committee statistics are summarized on page 8. The Education Committee reviewed 1670 applications during its six 2010 meetings. That's an average of almost 280 applications per meeting!

Governor McDonnell signed HB 1907 into law on March 24, 2011. This law goes into effect on July 1, 2011, and makes significant changes to the law governing residential agency. The Summer 2011 issue of *VREB Speaking* will address the changes brought about by HB 1907.

Please note the Board has a new fax number - it is 1-866-350-7849. Feel free to contact the Board or me at REBoard@dpor.virginia.gov or 804-367-8526 with your ideas and concerns about real estate in Virginia.

Sincerely,

Byrl P. Taylor, Chair

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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2011 Meeting Dates

May 12, 2011
July 14, 2011
September 21, 2011
November 17, 2011

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

BOARD MEMBERS

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

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

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

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 - 866-350-7849
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

Property Management Standards and Shortcomings

By Joseph K. Funkhouser, II, Board Member



The national housing market has been challenged with decreased and underwater values, stagnant sales, and millions of foreclosures and delinquent loans. Although Virginia has one of the better housing markets, there are still challenges ahead.

In contrast to the home sales market, the property management market nationally and in Virginia appears to be in pretty good shape. Many Virginians have been adversely affected by the economic downturn, and they have either chosen or been forced to leave the ranks of homeowners. In addition, young adults who have never owned a home are much more cautious of the risk involved in home ownership. Many real estate firms have recognized this changing situation and have adjusted their businesses to meet the increased demand for property management services.

As a result, more disciplinary cases involving property management issues have come before the Board. Licensees who practice property management need to know and understand the Board's laws and regulations as they relate to property management and that there are serious consequences for violations. Several recent disciplinary cases reflect some of the primary dangers encountered by licensees practicing property management outside of the Board's laws and regulations.

First, §§ 54.1-2100, 54.1-2101 and 54.1-2106.1 of the *Code of Virginia* require a real estate broker/salesperson license and a real estate firm license to practice property management when a licensee who, "for compensation or valuable consideration... leases or offers to lease, negotiates leases, or rents or offers for rent, any real estate or the improvements thereon for others." An individual real estate licensee cannot simply establish a business entity and begin practicing property management. This is unlicensed real estate activity and the Board

considers this to be a violation of 18 VAC 135-20-260.10 - "Unworthiness and incompetence by failing to act as a real estate broker or salesperson in such a manner as to safeguard the interest of the public."

Second, 18 VAC 135-20-180 of the Board's Regulations goes into great detail concerning the requirements for maintaining and managing escrow accounts. If money is to be held in escrow by a real estate firm practicing property management, the firm must deposit all rental payments, rental security deposits, etc., into one or more federally insured separate escrow accounts in a federally insured depository in Virginia. "The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm. **The principal broker shall be held responsible for these accounts.**"

Principal brokers cannot simply delegate escrow account responsibility to a salesperson, a bookkeeper or an employee without maintaining strict account oversight. Brokers who have failed to take responsibility for their firm's escrow accounts have allowed for situations that led to the embezzlement of funds. Instead of enjoying a mutually beneficial real estate business relationship, innocent property management clients have had their hard-earned money stolen because their broker was irresponsible.

Third, § 54.1-2135.A.1 of the *Code of Virginia* requires that a real estate licensee engaged to manage real estate shall perform in accordance with the terms of the property management agreement. Licensees must exercise due diligence in complying with all terms of the property management agreement.

A licensee recently violated this regulation for failing "to conduct a whole house and perimeter inspection on an annual basis and an interim six month visual curbside inspection" as was clearly required by the property management agreement. Although this may seem like a "minor" violation, it demonstrates an unacceptable lack of professionalism and concern for the client.

Practicing real estate property management is a high calling and the demand for good property managers is growing. Our clients, from the greatest to the least, depend on us to be competent, knowledgeable, fair, honest and to promote their best interests in all situations. Let's make sure we do our best to meet and exceed their expectations.

Read and Know the Board's Laws and Regulations - It is YOUR Responsibility!

By Carol F. Clarke, Board Member



The requirement to read, understand and comprehend the Virginia Real Estate Board's (Board) laws and regulations is made clear when you complete the Principles and Practices of Real Estate salesperson pre-license education course to prepare for the salesperson licensing exam. In addition, when you signed the application seeking a Virginia salesperson or broker license you affirmed the following statement: "I also certify that I understand and have complied with all the laws of Virginia related to real estate licensure under the provisions of Title 54.1, Chapter 21 of the *Code of Virginia* and the *Virginia Real Estate Board Regulations*."

This requirement DID NOT DISAPPEAR after you received your license. It is imperative that every real estate licensee in the Commonwealth be familiar with the Board's laws and regulations, knows where to find them and keeps current when new laws and regulations go into effect. Ignorance is no excuse!

Board members conducting disciplinary hearings often hear the licensee say, "I didn't know about that Board law or regulation." This concerns Board members greatly and is a sure sign that neither the licensee nor the principal broker is doing a very good job of staying in compliance with Board requirements and minimum standards of professionalism.

Every broker should have readily available in the firm office a copy of the current Board laws and regulations, which are dated April 1, 2008. A copy of this document is on the Board's website at: http://www.dpor.virginia.gov/dporweb/reb_main.cfm. If you have not yet done so, please print this document and inform each licensee under your supervision where it is kept in the office. All licensees are also encouraged to print a copy for themselves to keep handy for reference and guidance.

The Board is in the process of reviewing all real estate regulations for clarification and further definition. If you would like to know more about this process, feel free to call or email the Board at 804-367-8526 or reboard@dpor.virginia.gov.

Pre-license Education Requirements for Broker License Reciprocal Applicants

The 2010 General Assembly amended § 54.1-2105 of the *Code of Virginia* to require every real estate broker reciprocal license applicant to pass the Virginia broker license examination and to complete not less than 12 semester hours (180 classroom hours) in real estate courses that are comparable in content and duration and scope to the broker pre-license education required by the Board. This change went into effect on July 1, 2010.

Previously, the Board required that the broker license reciprocal applicant held a broker license in good standing in another state and provided evidence of having 36 months of active, full-time real estate experience within the past 48 months to be issued a Virginia broker license. There was no requirement to pass the Virginia licensing examination prior to licensure (the licensee, however, was required to pass the Virginia broker examination to renew the license for the first time) or to prove the applicant had completed broker pre-license education that was comparable to what Virginia requires.

The change in § 54.1-2105 now requires that broker license reciprocal applicants provide the Board with evidence of completing broker pre-license education that is comparable to the Board's broker pre-license education

requirement. This has become an issue with broker license reciprocal applicants from several other states who want credit for the broker pre-license education they completed to meet their state's requirement. The Attorney General's Office advised the Board it can accept the broker pre-license education completed in another state as long as that education is comparable to the Board's broker pre-license education. This means that the Board must examine other state's broker pre-license education requirements to determine comparability.

At its January and March 2011 meetings, the Board decided the broker pre-license education completed by reciprocal license applicants from Maryland, North Carolina, Tennessee, West Virginia, Delaware, Oklahoma and the District of Columbia is comparable to the Board's broker education requirement. Since these other states' broker pre-license education requirement is less than the Board's 180-hour requirement, the Board determined that license applicants from these other states must complete Board-approved broker pre-license courses to make up the difference in hours. Please contact the Board's Licensing Section at 804-367-8526 or reboard@dpor.virginia.gov with questions.



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 JANUARY and MARCH 2011 MEETINGS 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>
2011-00938	Cornell L. Urquhart Stony Creek, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$2500 Monetary Penalty, Revocation of Broker License with Simultaneous Issue of Salesperson License, 2-year Probation with Quarterly Reporting
2010-03671	Michael L. Conway Chantilly, VA	18 VAC 135-20-185 - Maintenance/Management Financial Records 18 VAC 135-20-260 - Unworthiness & Incompetence \$3500 Monetary Penalty, License Revocation
2010-00983	Wen Yu Manassas, VA	18 VAC 135-20-170 - Maintenance of License 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-290 - Improper Dealing 18 VAC 135-20-300 - Misrepresentation/Omission \$4200 Monetary Penalty, 8 hours Continuing Education, License Probation, 24-month License Suspension
2010-01554	Karen C. Taylor Harrisonburg, VA	18 VAC 135-20-180 - Maintain/Manage. Escrow Accounts (2 counts) 18 VAC 135-20-185 - Maintain/Manage. Financial Records (2 counts) 18 VAC 135-20-260 - Unworthiness & Incompetence \$6050 Monetary Penalty, 4 hours Continuing Education, License Probation, License Revocation
2010-03767	Joanne McElroy-hall Virginia Beach, VA	18 VAC 135-20-185 - Maintenance/Management Financial Records 18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$500 Monetary Penalty, \$350 Board Costs, License Revocation
2010-03872	Joanne McElroy-hall Virginia Beach, VA	18 VAC 135-20-185 - Maintain/Manage. Financial Records (3 counts) 18 VAC 135-20-260 - Unworthiness & Incompetence \$500 Monetary Penalty, \$350 Board Costs, License Revocation



DISCIPLINARY ACTIONS (Cont.)



<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2011-02055	Carl M. Early Norfolk, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts \$250 Monetary Penalty, \$150 Board Costs
2011-00050	Julie T. Hall Midlothian, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$750 Monetary Penalty, 4 Hours Continuing Education, 6-Month License Probation
2010-05623	Carol R. Quinn Hampton, VA	§54.1-2135.A.1 - Failure to Perform According to the Property Management Agreement Terms as a Licensee Engaged to Manage Real Estate §54.1-2135.A.2 - Failure to Exercise Ordinary Care as a Licensee Engaged to Manage Real Estate 18 VAC 135-20-210 - Disclosure of Interest \$800 Monetary Penalty, \$150 Board Costs, 4 Hours Cont. Education
2010-04507	Harry W.L. Shepherd Gloucester, VA	18 VAC 135-20-185 - Maintenance/Management Financial Records \$1450 Monetary Penalty, \$150 Board Costs, 2 Hours Cont. Education
2011-01123	Athans, Inc., t/a St. John's Realty Richmond, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$1,303.00, License Revocation (Claim amount subject to proration)
2011-00616	Athans, Inc., t/a St. John's Realty Richmond, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$1,678.00, License Revocation (Claim amount subject to proration)
2011-00602	Athans, Inc., t/a St. John's Realty Richmond, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$865.50, License Revocation (Claim amount subject to proration)
2010-06056	Athans, Inc., t/a St. John's Realty Richmond, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$8,209.25, License Revocation (Claim amount subject to proration)
2011-02473	Paul D. Janney Fredericksburg, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts \$150 Board Costs, 4 Hours Continuing Education
2010-03614	Gloria E. Berry Fairfax Station, VA	18 VAC 135-20-170 - Maintenance of License 18 VAC 135-20-240 - Provision of Records to the Board 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-300 - Misrepresentation/Omission \$6300 Monetary Penalty, License Revocation
2010-05933	Steven E. Richter Burke, VA	18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-300 - Misrepresentation/Omission \$4000 Monetary Penalty, License Revocation
2011-02155	Eve M. Thompson Reston, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts \$500 Monetary Penalty, \$150 Board Costs, 4 Hours Cont. Education
2010-05986	Denise A. Whitt Fredericksburg, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts \$750 Monetary Penalty, \$150 Board Costs, 2 Hours Cont. Education
2010-04702	David A. Bradshaw Winchester, VA	18 VAC 135-20-300 - Misrepresentation/Omission 18 VAC 135-20-310 - Delivery of Instruments \$1750 Monetary Penalty, \$150 Board Costs, 7 Hours Cont. Education



DISCIPLINARY ACTIONS (Cont.)



<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2010-05568	Adrienne Szabo Washington, D.C.	18 VAC 135-20-260 - Unworthiness & Incompetence 4 Hours Continuing Education, License Probation and Quarterly Reporting for 3 Years
2010-05640	Ruben Rojas Vienna, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) License Revocation
2010-05471	Lourdes Ortiz-Bonilla Stafford, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$2500 Monetary Penalty, License Revocation
2011-01786	Michael Barrett Sterling, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts \$500 Monetary Penalty, \$150 Board Costs, 4 Hours Cont. Education
2010-05212	Julie H. Hamann Dayton, VA	18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-280 - Improper Brokerage Commission \$3500 Monetary Penalty, \$150 Board Costs, 40 hours Continuing Education, Annual Independent Audit Inspection of Escrow Accounts for 3 Years
2011-00852	Carol Myers Hardy, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$3,864.50, License Revocation
2010-04559	Keith Myers Hardy, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$3,864.50, License Revocation
2011-00723	Athans, Inc., t/a St. John's Realty Richmond, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$2,490.50, License Revocation (Claim amount subject to proration)
2010-01594	S. Charles Volpe Lexington, VA	§ 54.1-2112 et seq - Virginia Real Estate Transaction Recovery Act Claim approved for \$3,481.20, License Revocation

Real Estate Firm Random Inspections Update

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*. For background information, see the article on page 6 of the Summer 2010 *VREB Speaking* at: <http://www.dpor.virginia.gov/dporweb/VREB%20Speaking%20Summer%202010%20-%20Final.pdf>

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.

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 initiated random firm inspections in November 2010. Since that time, 23 inspections have been completed. Seventeen inspections resulted in no action being taken against the firm. In other words, the firm's operations complied with the requirements in the Board's laws and regulations. Five inspections revealed what could have potentially led to a total of 11 violations, but the firms chose to come into compliance with the Board's requirements, so no further action was taken. One inspection resulted in a disciplinary investigation because the firm's broker refused to cooperate and comply with CID's request to inspect the firm. For questions concerning the random inspection of real estate firms, please contact CID at: investigations@dpor.virginia.gov

Real Estate Board Education Committee 2010 Statistics

<u>Application Type</u>	<u># Reviewed</u>	<u># Approved</u>	<u># Denied</u>
Proprietary Schools	23	22	1
Previously Approved CE Courses	110	110	0
Original CE Courses	709	675	34
Previously Approved PLE Courses	149	149	0
Original PLE Courses	508	502	6
Pre-license Salesperson Courses	10	8	2
Pre-license Broker Courses	16	11	5
Pre-license Course Instructors	77	69	8
Previously approved CE/PLE Instructors	68	63	5
Totals	1670	1609	61

Other Business

Guidance Documents reviewed by the Committee and approved by the Board: 1) Guidance Document requiring the Association of Real Estate License Law Officials (ARELLO) Distance Education Certification, or an equivalent Distance Education Certification, as a condition for Board-approval of any correspondence course application, effective July 1, 2010; and 2) Guidance document requiring ARELLO Distance Education Certification, or an equivalent Distance Education Certification, as a condition for Board-approval of any distance education course application, effective January 1, 2011.

Policy matters addressed by the Committee: 1) Continued with regulatory review for education-related items in the Board's Regulations and have forwarded the recommended changes to the Board's Regulatory Review Committee; 2) Recommended the Board allow education providers apply for a maximum of 21 hours of Post License Education credit per Elective Topic course; 3) Recommended the Board amend the length of course approval from five years to three years; 4) Determined a videoconference qualifies as a classroom course if both instructor and students are viewable to each other and can interact through questions and answers.

Fair Housing Cases

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 DPOR. 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 fair housing action was rendered by the Real Estate Board at its January and March 2011 meetings:

Case Number - 2011-02759
Case Name - Melody Moran v. Richard Limroth, Landlord, & Signature Properties, LLC
Action - Conciliation Agreement

Signature Authority

There is a new *Signature Authority Application* on the Real Estate Board's (Board) website that provides Associate Brokers with signature authority to sign all applications for their firm that are processed by the Board.

This application does not need to be filled out for Associate Brokers who are already supervising a branch office, since all supervising brokers of a branch already have signature authority.

The *Signature Authority Application* needs to be filled out and signed by the firm's principal broker and can be accessed on the Board's website at: http://www.dpor.virginia.gov/dporweb/reb_form.cfm The completed form can be mailed or faxed to the Board to 1-866-350-7849.