

Virginia Addendum To The Real Broker, LLC Independent Contractor Agreement

Real Broker, LLC (Company) makes this addendum a part of the Independent Contractor's Agreement to set forth state specific policies and procedures for an agent affiliating with the Company in the State of Virginia (Agent or Licensee). This addendum supersedes all previous Virginia addenda. The Company reserves the right to modify, suspend, or discontinue any of the terms, policies, procedures and/or benefits described in this addendum with proper notice.

The law that governs your profession is found in the Code of Virginia, 1950, as amended, in Title 54.1, Chapter 21. Please, read and understand the Standards of Practice and Conduct. **Failure to obey these standards could result in separation from the Company and/or monetary penalties by the DPOR/VREB, and/or the loss of your license.**

The Code of Virginia and Administrative Code are provided online by the Virginia General Assembly:

[Title 18. – Professional And Occupational Licensing » Agency 135. Real Estate Board » Chapter 20. Virginia Real Estate Board Licensing Regulations](#)

[Title 36 – Housing; Chapter 5.1 – Virginia Fair Housing Law](#)

[Title 54.1 – Professions and Occupations; Chapter 21 – Real Estate Brokers, Sales Persons and Rental Location Agents](#)

[Title 55.1 – Property and Conveyances](#)

[Title 55.1 – Property and Conveyances; Chapter 12 - Virginia Residential Landlord and Tenant Act](#)

[Title 55.1 – Property and Conveyances; Chapter 18 – Property Owners' Association Act](#)

[Title 55.1 – Property and Conveyances; Chapter 19 – Condominium Act](#)

Advertising by licensees

The regulation says; “*All advertising must be under the direct supervision of the principal broker or supervising broker, in the name of the firm and, when applicable, comply with the disclosure required by § **54.1-2138.1** of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.*”

You are required to seek Broker review and approval for all advertising materials, to include business cards, mailing materials, newspaper and online ads, social media, websites and

everything else that is used to promote your professional services or listings.

Fair Housing

The Fair Housing Act is intended to protect the buyer or renter of a dwelling from seller or landlord discrimination as well as from other housing providers. Its primary prohibition makes it unlawful to refuse to sell, rent to, or negotiate with any person because of that person's inclusion in a protected class, which include race, color, religion, sex, national origin, disability and familial status.

Virginia's Fair Housing Law makes it illegal to discriminate in residential housing on the basis of race, color, religion, national origin, sex, elderliness, familial status, disability, sexual orientation, gender identity, veteran status and source of funds (or income).

On March 27, 2020, Governor Ralph Northam signed House Bill 6 into law adding Source of Funds (SOF) as a protected class under the Virginia Fair Housing Act effective July 1, 2020. On April 3, 2021, the Virginia Fair Housing Board and Real Estate Board released a guidance document which provides technical assistance regarding what actions, behaviors, policies, and procedures likely do and do not violate the Virginia Fair Housing Law's prohibition on discrimination on the basis of one's lawful source of funds. This guidance is effective April 16, 2021 and can be found here: ([CLICK HERE](#))

The law prohibits applying one standard to one class of individuals while applying a different standard to another class of individuals. The Company will not tolerate any violations of Fair Housing laws. Actions by Agent evidencing violations of those laws will be cause for separation from the Company. More information can be found at: ([CLICK HERE](#))

Disclosure of Interest.

“If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property through purchase, sale, or lease and the licensee is a party to the transaction, **the licensee must disclose in writing** that he is a licensee and that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest has or will have an ownership interest to the other parties to the transaction. This disclosure shall be made to the purchaser, seller, lessor, or lessee upon having substantive discussions about specific real property.”

Disclosure of Brokerage Relationship.

“Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property

or properties, the person whom the licensee represents pursuant to a brokerage agreement, as that term is defined in § **54.1-2130** of the Code of Virginia”; and “... **such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided.**”

Clarification of this requirement can be found here: ([CLICK HERE](#))

Agency**

“Any real estate licensee who acts for or represents a client in an agency relationship in a residential real estate transaction shall either represent such client as a **standard agent** or a **limited service agent.**” As per Virginia regulations, agency relationship agreements **must** be in writing.

The Regulation says that ““Agency” means every relationship in which a real estate licensee acts for or represents a person as an agent by such person's express authority in a commercial or residential real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee's obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement.

“Brokerage agreement” means the **written** agreement, as per Subsection B of §**54.1-2137**, creating a brokerage relationship between a client and a licensee. The brokerage agreement shall state whether the real estate licensee will represent the client as an agent or an independent contractor. “Brokerage relationship” means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.”

A licensee may not act as a dual agent or dual representative in a residential real estate transaction unless he or she has first obtained the written consent of all parties to the transaction given after written disclosure of the consequences of such dual agency or dual representation.

A licensee acting as a dual or designated agent or as a dual or designated representative shall obtain the **written** consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of §**54.1-2139**, **54.1-2139.01**, and **54.1-2139.1** of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the

time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.”

Please be advised that neither the Company nor the Broker give Agent authorization to sign binding agreements, to include Agency Agreements.

Conflict of Interest.

“Acting for more than one client in a transaction governed by the provisions of §§ 54.1- 2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia without first obtaining the written consent of all clients; and; Performing regulated activities as a standard agent, limited service agent, or independent contractor for any client outside the licensee's brokerage firm(s) or sole proprietorship(s).”

Escrow Funds**

Virginia has very specific guidelines for handling escrow funds; however, the Company does not hold escrow funds. Agents are **prohibited** from receiving, transporting, delivering, depositing or managing the handling of escrow funds on behalf of any party. Agents are instructed to advise clients that it is the client’s responsibility to ensure delivery of any required escrow funds to the appointed escrow agent as required by the contract. Agents are instructed to recommend that clients seek legal advice to review the contract and forms and assist in deciding the best approach regarding escrow funds/deposit.

Improper Dealing**

In Virginia, the laws says that ”Actions constituting improper dealing include:

1. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative;
2. Placing a sign on any property without the consent of the owner of the property or the owner's authorized representative; and
3. Causing any advertisement for sale, rent, or lease to appear in any format or medium without including in the advertisement the name of the firm or sole proprietorship.”

Statutory Authority; §§ **54.1-201** and **54.1-2105** of the Code of Virginia.

Misrepresentation/Omission**

“Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity or for a specified

time period and the licensee did in fact have at least that quantity for sale or rent at that price or terms at the time of advertising;

2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;
3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;
4. Failure by a licensee acting as an agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;
5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;
6. Failing to include the complete terms and conditions of the real estate transaction, including but not limited to any lease, property management agreement or offer to purchase;
7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;
8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
 - a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;
 - b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;
 - c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8a of this section without the prior written consent of the principals to the transaction;
9. Knowingly making any material misrepresentation; and
10. Making a false promise through agents, salespersons, advertising, or other means.”

Statutory Authority; §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Improper Delivery of Instrument.

“Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each principal to a transaction, complete and legible

- copies of any written disclosures required by § 54.1-2138, 54.1-2139, 54.1- 2139.01, and 54.1-2139.1 of the Code of Virginia, listings, lease, offers to purchase, counteroffers, addenda and ratified agreements, and other documentation required by the agreement;
2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;
 3. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of moneys received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and
 4. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.”

Required Property Disclosures.

Virginia Residential Property Disclosure Act: **Title 55.1, Chapter 7** of the *Code of Virginia* requires certain disclosures to be made in connection with real estate transactions. As of July 1, 2020, Selling Homeowners **must** complete a Residential Property Disclosures Acknowledgement Form. Further, Purchasers **must** receive the Residential Property Disclosure Statement. Selling Homeowners may also need to complete one or more of these forms:

1. Septic Waiver Disclosure Form
2. Military Air Installation Disclosure Form
3. Property Previously Used for Methamphetamine Manufacture Disclosure Form
4. Building Code Enforcement Action/Zoning Ordinance Violation Disclosure Form
5. Disclosure Statement for Certain New Dwellings
6. Privately Owned Stormwater Management Facility Disclosure Form
7. Asbestos and Lead

As a licensed real estate professional, it is your duty to ensure that the client is aware of these mandatory disclosures and that they may apply to their situation.

Information about and a copy of these mandatory disclosures can be found online at:

http://www.dpor.virginia.gov/Consumers/Disclosure_Forms/

Teams.

Va. Code § 54.1-2100 states that a Real estate team is “two or more individuals, one or more of whom is a real estate salesperson or broker who (i) work together as a unit within the same brokerage firm, (ii) represent themselves to the public as working together as one unit, and (iii) designate themselves by a fictitious name. This is a 3-part definition. The two or more individuals must meet all 3 parts of the

definition to be considered a team under the law.

Starting January 1, 2019, all teams must obtain a business entity salesperson license through the Department of Professional and Occupational Regulation (DPOR). The license application is available [here](#). To apply for the BES license, you must first choose and form a legal business entity for your team. This is done through the [Virginia State Corporation Commission](#). Please, note that If the team name you are using in your day-to-day business is the same name as your registered business entity, then there is no need for a fictitious name certificate from the SCC. However, if your team name and registered entity are different, then you will need to take the additional step of getting a fictitious name certificate.

Teams are subject to the same advertising and disclosure regulations as an individual licensee. The Firm name must be clearly and legibly displayed in all advertising. Both the REALTOR® Code of Ethics and the VREB regulations also impose considerations for legal and ethical team advertising. The concern is that the name cannot mislead the public as to whether you are operating as a team, or as an independent brokerage. 18 VAC 35-20-300(9) states that knowingly making any material misrepresentation is grounds for disciplinary action, including fines, suspension, or revocation of license. The Code of Ethics, Standard of Practice 12-10 prohibits REALTORS® from misleading consumers. Firms and licensees should be cautious when choosing a team name and avoid the use of terms that could cause public confusion. Finally, the broker always has the final say as to how a team may advertise, and what is required in every advertisement.

Steps to follow:

1. Choose business type
2. Choose distinguishable business name
3. Register with the State Corporation Commission
4. File Certificate of Fictitious Name
5. Obtain Federal EIN
6. Obtain State Tax ID
7. Obtain Business Entity Salesperson License

Personal Assistants.

Assistants who do not have a real estate license hanging with a supervising broker **cannot** perform “licensed activity.” Virginia requires Supervising brokers to provide adequate supervision over the unlicensed employees or assistants working at the firm. **If someone is licensed, but their license does not hang with our firm, any work they do for you or your team should be treated as though they were an unlicensed assistant.**

Unlicensed assistants must be paid at a predetermined rate that is not contingent upon the occurrence of a real estate transaction. This means that unlicensed assistants must be paid a salary or an hourly rate – not a percentage of the agent’s commission, an amount based on the number of transactions that close or any other structure tied to transactions.

Any agent employing a personal assistant takes on the sole responsibility for supervision of this assistant, and in addition any resulting tax implications such employment may bring. Any agreement of employment, in any capacity, is between the Agent and the personal assistant to the Agent. Company is not a party or liable for any liability of such an agreement or relationship. For information regarding employment laws, please, contact the [Virginia Employment Commission](#).

Duties that do NOT require a license:

- Deliver documents and pick up keys.
- Answer the telephone and forward calls.
- Secure public information from courthouse, utility companies, etc.
- Provide courier services.
- Schedule appointments with other offices, existing clients, or customers.
- Place signs on property.
- Type forms for approval by licensee and Supervising Broker.
- Write ads for approval of licensee and supervising broker, and place classified ads.
- Assemble documents for closing.
- Hand out objective, written information on a listing.
- Transmit listings and changes to a multiple listing service.
- Follow up on loan commitments after a contract has been negotiated.
- Assemble documents for closing.
- Have keys made for company listings.
- Record and deposit earnest money and other trust funds (if allowed).
- Order items of routine repair as directed by licensee and/or supervising broker.

Duties that DO require a license:

- Host open houses, kiosks, home show booths, or fairs.
- Show property.
- Answer questions on listings, title, financing, closings, legal docs etc.
- Discuss or explain a contract, agency agreement, listing, or other real estate document with anyone outside the brokerage company.
- Be paid on the basis of real estate activity, such as a percentage of commission, or any amount based on listings or sales.
- Negotiate or agree to any commission, commission split, or referral fee.
- Solicit by telephone or in person potential sellers, purchasers, tenants, or landlords.
- Give additional information not included in prepared written promotional material that has been distributed to the public.
- Represent him/herself as an agent for a RE broker or the owner/seller of a property.
- Negotiate or discuss the terms of a sale.
- Act as a go-between with a seller and a buyer.

- Answer questions concerning properties listed with the firm, except to confirm that the property is listed and identify the listing broker or salesperson.

For questions or assistance, please contact the Virginia state Principal Broker:

Mirtes Happy

Direct: 202-335-7325

Mobile: 703-568-5939

VABroker@TheRealBrokerage.com