

VIRGINIA DISCLOSURE OF BROKERAGE RELATIONSHIP EXPLANATION TO CONSUMERS

Upon having a substantive discussion about a specific property or properties with an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction. Further, except as provided in Virginia Code § 54.1-2139, 54.1-2139.1, 54.1-2139.2, or 54.1-2139.3, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Real estate licensees in Virginia are required by law to make prompt written disclosure of any brokerage relationship to members of the public who are unrepresented. Licensees must also make written disclosures and obtain timely written consents from their clients before entering into other brokerage relationships. If a licensee's relationship to a client or customer changes, the licensee shall disclose that fact in writing to all clients and customers already involved in the specific contemplated transaction. Copies of any disclosures relative to fully executed purchase contracts shall be kept by the licensee for a period of three years as proof of having made such disclosure, whether or not such disclosure is acknowledged in writing by the party to whom such disclosure was shown or given.

DEFINITIONS:

1. "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.
2. "Client" means a person who has entered into a brokerage relationship with a licensee.
3. "Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee rather than a client.
4. "Ministerial acts" means those routine acts, which a licensee can perform for a person, which do not involve discretion or the exercise of the licensee's own judgment.

FORMS OF CLIENT REPRESENTATION:

- "Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have certain obligations to his client and any additional obligations agreed to by the parties in the brokerage agreement. A standard agent must disclose his client relationship whenever dealing with an unrepresented party. A standard agent is also allowed to assist an unrepresented party with ministerial duties.
- "Limited-service agent" performs limited services, which include only those services requested by the client. In effect, it's taking the list of everything a Standard agent does and subtracting duties that the client isn't interested in. It requires a written brokerage agreement that meets the following criteria:
 - (1) It discloses that the licensee is acting as a limited services representative.
 - (2) It provides a list of the specific services that the licensee will provide to the client.
 - (3) It provides a list of the specific statutory duties of a standard agent that the limited-services

representative will not provide the client.

(4) It includes this language (or its equivalent): By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service representation by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service representative.

- “Independent contractor” (also known as non-agent) is created by a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent. The agreement must also state the obligations an independent contractor has, and which have been agreed to by the parties. An independent contractor relationship is entered into when a licensee is acting as either a designated agent or a dual agent. A “designated agency” is when a principal or supervising broker assigns different licensees within the firm to represent exclusively the seller and buyer. A “dual agent” is a licensee who has a brokerage relationship with both seller and buyer in the same real estate transaction. Dual agency comes with significant limitations to the services a licensee is legally allowed to provide either client. Licensees must provide clients with new, specific language that clearly explains these limitations. These limitations are called “enhanced disclosures.” For example, dual agents are prohibited from advising either party as to the merits of specific terms, offers, or counteroffers; dual agents can’t advise a buyer client about the suitability of the property or its condition (except the disclosures required by law for seller representatives); and dual agents can’t advise either party in any dispute that might later arise relating to the transaction. In dual agency both clients receive a reduced service level.