

# CONTINUING EDUCATION

## Virginia Laws, Agency, and Contracts

PDH Academy Course Approval #0214021398 | 3 CE HOURS

### PDH Real Estate

#### ORIENTATION

In this course, we will cover recent legislative updates and regulation changes that affect real estate agents. This course also includes an overview of the National Flood Insurance Program. We will then review the duties that agents owe to buyers and sellers. Finally, we will discuss the different parts of real estate contracts and common contract issues that come up during a transaction. Throughout the course, we will provide real life examples of agents who have been found in violation by the Virginia Real Estate Board. This is a 3 hour course that consists of the following one hour sections:

- One hour in Legal Updates
- One hour in Real Estate Agency; and
- One hour in Real Estate Contracts.

The six learning objectives of this course are as follows:

1. Summarize major real estate related bills signed into law in the 2015
2. Describe situations where real estate agents did not follow real estate agency laws
3. Give an example of the standard duties of real estate agents
4. Compare different types of real estate agency
5. Describe the elements of a contract
6. Determine when disclosures are necessary

To enhance comprehension, review questions will be asked throughout the course.

A final exam will be administered after the course is completed to check for mastery of the material. If you do not pass the final exam, you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at [pdhacademy@gmail.com](mailto:pdhacademy@gmail.com).

After completing the course and final exam, we ask that you take our course survey to help us continue to provide high-quality continuing education.

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the new telephone requirement. Individual licensees can continue to have their phone number on the sign as well, as long as the firm's primary or branch office telephone number is also displayed.

### Business Cards

Regulations require that business cards at least include the following:

- Firm Name (e.g., ABC Realty)
- Licensee's Name (e.g., John Smith)
- Contact Information –
  - Telephone Number or Web Address (e.g. 703-888-1234 or www.JohnSmith.com)

### Other Print Advertising

Firm advertisements require only the firm name. Licensee advertisements require both the firm name and the licensee's name

### Electronic Advertising

The requirement to advertise the jurisdiction of licensure has been removed. The following requirements still remain in place:

#### I. For firm advertising:

- Firm's Licensed Name (e.g., ABC Realty)
- The city and state of the firm's main office or branch (e.g., Falls Church, VA)

#### II. For licensee advertising:

- Licensee Name (e.g., John Smith)
- Firm Name (e.g., ABC Realty)
- The city and state in which the licensee's place of business is located. (e.g., Fairfax, VA) *Note this may be different than the firm's main office or branch.*

### Agent/Owner Advertising

New regulations state that agents must include in all advertising that the owner is a real estate licensee if the licensee has any ownership interest in the property being advertised. This also applies to for sale and for rent signs. For example, Sally Smith is a real estate agent that has decided to sell her own home. When she puts her real estate for sale sign in the yard, she must now also attach a rider that says "Owner / Agent".

## SECTION ONE LEGAL UPDATES

In this section, we will discuss the following topics:

- Advertising
- Licensed Versus Unlicensed Activities
- Case Studies
- Flood Insurance

On August 3, 2015, the Governor signed in new Virginia Real Estate Board Regulations that went into effect on November 1, 2015. Below you will find a summary of these new regulations along with the referenced changes to the regulation. The latest regulations can also be found at: [http://www.dpor.virginia.gov/uploadedfiles/mainsite/content/boards/real\\_estate/a490-02regs.pdf](http://www.dpor.virginia.gov/uploadedfiles/mainsite/content/boards/real_estate/a490-02regs.pdf)

## ADVERTISING

This section summarizes the changes to 18VAC135-20-190. Advertising by licensees.

### For Sale and For Lease Sign

The firm's name and the firm's primary or branch office telephone number need to be placed on for sale and for lease signs. Individual licensees should also include their name on the sign. This means that some agents may have to change their signs in order to include

## review questions...

The following 5 questions will be a review of the content from this section. These questions will NOT be graded.

- 1. What minimum information must be present on a for sale sign?**
  - a. The Agent's Phone Number
  - b. The Firm's Name
  - c. The Firm's Office Number
  - d. All of the above
- 2. John Smith's business card includes the following information:**

**John Smith**  
**703-222-1234**  
**Fast Reliable Service!**

**What information is missing from his business card?**
  - a. No information is missing
  - b. The Firm Name
  - c. John's Email Address
  - d. The Firm's Phone Number
- 3. True or false? Virginia no longer requires agents to indicate the jurisdiction of their licensure in electronic advertising.**
  - a. True
  - b. False
- 4. Jane is selling a townhouse that she owns. Which of the following must she include on her for sale sign?**
  - a. Owner / Agent
  - b. Firm Name
  - c. Firm Primary or Branch Office Telephone Number
  - d. All of the above
- 5. Buyer John sees an ad online that says "3 bed/2 bath home for sale. Main Street Realty. Contact Agent Susan at 7039991234." Buy John calls Agent Susan and she says "Oh yes, that house is a rental property that I own and I am now selling it." Which of the following best describes the situation?**
  - a. Agent Susan does not have to disclose she owns the property because it is a rental property.
  - b. Agent Susan is in violation because she did not indicate she had an ownership interest in the property in the online ad.
  - c. Buyer John must have a buyer agent to represent him if he wants to buy the property.
  - d. Buyer John must use Agent Susan to purchase the property

Review Question Answers:  
1. d 2. b 3. a 4. d 5. b

## LICENSED VERSUS UNLICENSED ACTIVITY

The updated regulations clarified what licensed versus unlicensed activities are. These updates are found in 18VAC135-20-165. Duties of supervising broker. It is the responsibility of the supervising broker to ensure that unlicensed assistants are not performing activities that only licensed agents can perform.

### Activities Requiring A License.

The supervising broker must make sure only licensed agents are performing the following activities:

- Show property;
- Hold an open house;
- Answer questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents;
- Discuss, explain, interpret, or negotiate a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and
- Negotiate or agree to any commission, commission split, management fee, or referral fee.

### Activities Permitted By Unlicensed Assistants

The supervising broker must ensure that unlicensed assistants are only performing the following permitted activities:

- Perform general clerical duties, including answering the phones, responding by electronic media, and providing information shown on the listing;
- Submit listings and changes to MLS;
- Follow up on loan commitments after contracts have been ratified;
- Have keys made for listings;
- Compute commission checks;
- Place signs on properties;
- Act as a courier service;
- Schedule appointments;
- Record and deposit earnest money deposits, security deposits, and advance rents;
- Prepare contract forms for approval of the licensee and supervising broker;
- Prepare promotional materials and advertisements for approval of the licensee and supervising broker;
- Assemble closing documents;

- Obtain required public information from governmental entities;
- Monitor license and personnel files;
- Order routine repairs as directed by licensee;
- Are compensated for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and
- Perform any other activities undertaken in the regular course of business for which a license is not required.

## review questions...

The following 3 questions will be a review of the content from this section. These questions will NOT be graded.

- Whose responsibility is it to ensure that unlicensed assistants are not performing activities that only licensed agents can perform?**
  - The unlicensed assistant
  - The licensed agent
  - The supervising broker
  - The seller or buyer that is being represented
- Which of the following is an example of a licensed activity?**
  - Negotiate a contract for the seller
  - Answering incoming phone calls about a property
  - Place sign on a property
  - Prepare a marketing flyer for a property
- Tina is an unlicensed assistant for Agent Bob. Which of the following best describes the types of activities that Bob and Tina can do:**
  - Tina can set up appointments and show homes for Bob. Bob then negotiates the contracts.
  - Tina can set up appointments. Bob then shows homes and negotiates contracts.
  - Tina can set up appointments, show homes, and negotiate contracts.
  - Bob can set up appointments and show homes. Tina can negotiate contracts.

Review Question Answers:  
1. c    2. a    3. b

## OTHER LEGAL UPDATES & CASE STUDIES

### Carryover of Continuing Education Credit

18 VAC 135-20-101. Qualification for renewal; continuing education requirements. Any continuing education credits completed by the licensee in excess of that required in the current license term that are obtained in the six months immediately prior to the license expiration date shall carry over into the next two-year renewal period.

Note that carrying over CE credit applies to all categories of continuing education.

### Home Offices

18 VAC 135-20-160. Place of business. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence with its own entrance and is accessible by the public.

The Virginia Association of Realtors also notes that coming through a garage door does not constitute a separate entrance that is accessible by the public. In addition, since the office must be separate and distinct, if you have clients come in through your front door, this does not count as a home office. Note there is no requirement to have a home office if you have a separate (commercial) place of business where you can meet clients.

### Escrow

18 VAC 135-20-180. Maintenance and management of escrow accounts. In the event the transaction is not consummated (nonconsummation), the principal broker or supervising broker shall hold such funds in escrow until all principals to the transaction have agreed in writing as to their disposition, and the funds shall be returned to the agreed upon principal within 20 days of the agreement...

If a transaction is not completed and there is a written agreement on how the money is released, the escrow money must be returned by the escrow agent within 20 days of the agreement. Previously this was 30 days.

### For additional information see:

<http://townhall.virginia.gov/L/ViewXML.cfm?textid=9802>

<http://www.varealtor.com/sites/varealtor2.com/files/Real%20Estate%20Regulation%20Update%20-%20Comprehensive.pdf#overlay-context=node/142156>

## CASE STUDIES

The purpose of this section is to provide several case studies regarding disciplinary actions that were investigated by the Department of Professional and Occupational Regulations. Disciplinary actions can be found for any licensee using the DPOR License Lookup. The names of the licensees have been changed, but the substance of the violations is the same.

### [Case Study 1: Failure to Deposit Earnest Money within 5 Days of Contract Ratification](#)

**Background:** On December 28, 2013, Robert Jones, as Seller, and Andrew Smith, as Purchasers, entered into a Sales Contract for Land for the purchase of 555 Claremont Place in Sterling, VA. Jane Bywater represented the purchasers and worked for ABC Realty.

Paragraph 6 of the contract states, “DEPOSIT. Purchaser has delivered a deposit to ABC Realty of \$5,000 by check. Deposit will be placed in an escrow account of Escrow Agent after Date of Ratification in conformance with the laws and regulations of the appropriate jurisdiction...”

On December 28, 2013, Bywater received the deposit (“EMD”) of \$5,000 from the Purchaser.

On January 3, 2014, the contract was ratified.

On January 13, 2014 Bywater turned in the EMD to ABC Realty.

On January 13, 2014, the EMD was deposited into ABC Realty’s escrow account.

**Violation:** Bywater was found in violation of 18 VAC 135-20-180 Maintenance and management of escrow accounts because she failed to turn in the EMD in a timely manner so it could be deposited into escrow within 5 business banking days of contract ratification.

**Penalty:** Bywater was fined \$500 monetary penalty, \$150 in Board Costs, and must complete 3 classroom hours of Board-approved continuing education pertaining to Escrow Management.

### [Case Study 2: Forging Experience Verification Forms for Broker’s License](#)

**Background:** On January 7, 2015, the Board received an application from Donna Ward to upgrade her salesperson license to a broker license. On the application, Ward certified that she was actively engaged as a salesperson for at least 40 hours per week during 36 of the 48 months immediately preceding the date of the application.

On January 20, 2015 the board received four In-State Experience Verification Forms (“EVF”) from Ward. One of Ward’s EVFs indicated she was actively engaged for an average of at least 40 hours per week with John Smith at Smith Realty for twenty-two months from October 27, 2011 to September 13, 2013.

On January 27, 2015 in an interview with the Board’s agent, John Smith indicated that he is familiar with Ward but she only worked for him as a part time employee. Smith said that he never signed the EVF form and if Ward submitted one, it was a forgery.

On January 27, 2015, Ward was notified that the signature of the EVF she provided did not match what the board had on file for Smith. Ward indicated that she was having trouble contacting Smith to sign the form. Ward explained that she was currently working for the father’s firm, A-1 Realty, and they desperately needed a principal broker. After passing her broker’s exam, she felt qualified for the role.

Being desperate to obtain her license and unable to get in touch with Smith, she completed an EVF and forged Smith’s signature.

**Violation:** Through her actions, Ward demonstrated her willingness to put her personal gain over her regulatory obligations as a licensee. It is the responsibility of the board to protect the public and ensure that only those individuals of sufficient character and integrity possess professional licenses. Ward’s behavior clearly demonstrates she lacks the character and integrity to possess a license. Ward’s actions constitute a violation of Board Regulation 18 VAC 135-20-260-11.

**Penalty:** Ward was fined \$1000 monetary penalty and her license was revoked

### [Case Study 3: Failure to Promote the Interests of the Buyer](#)

**Background:** Stacey Mayer represented Emily Jones in the purchase of a home in Burke, VA. On October 4, 2012, Mayer showed Jones a home that she fell in love with and wanted to buy. Because the real estate market was competitive, Mayer wanted to secure a contract before the open house on October 7, 2012. Therefore, she submitted a very competitive offer on October 5, 2012. On October 6, the listing agent emailed a counter offer which contained several changes. On the morning of October 7, 2012, Mayer emailed the listing agent with the seller’s counter offer with the subject line “Ratified - CONGRATS!”. Mayer explained that she had conversation with the listing agent that morning, and based on the conversation, Mayer put in the ratification date, believing that the deal was done. However, there were two items on the contract that weren’t complete. The buyers did not initial off on one of the seller’s changes and the buyer’s also crossed out part of the contract, which required the seller’s initials. At this point, however, the parties may have verbally agreed, but it was not in writing.

Since the listing agent did not receive the complete ratified contract, she continued to hold the open house and subsequently, left a voicemail with Mayer telling her that the Sellers were rejecting the Purchaser’s counteroffer.

## review questions...

The following 4 questions will be a review of the content from this section. These questions will NOT be graded.

- 1. What is the best definition of a home office?**
  - a. A place of business that is separate and distinct from the living quarters of the residence with its own entrance and is accessible by the public.
  - b. A separate room in an agent's home that is only dedicated to the agent's real estate business.
  - c. A separate room that is accessible from the agent's garage door only
  - d. The location where the agent spends at least 30 hours per week on real estate activities.
- 2. On August 15th, Broker Mary receives a release of escrow that is only signed by the buyer. When is the latest date that Broker Mary needs to return the escrow funds?**
  - a. August 20
  - b. August 31
  - c. September 5
  - d. There is no set date since there is no written agreement by all parties regarding the release of the escrow deposit.
- 3. How many business banking days does an agent have to turn in the Earnest Money Deposit after contract ratification?**
  - a. 3
  - b. 5
  - c. 20
  - d. 30
- 4. How many days does a broker have to return any Earnest Money Deposit after receiving a written agreement regarding the disbursement of funds?**
  - a. 3
  - b. 5
  - c. 20
  - d. 30

**Violation:** Mayer failed to provide the Purchaser's with the written counteroffer for the property in a timely manner. Mayer's action is in violation of Section 54.1-2132(A)(2)(c) of the Code of Virginia.

**Penalty:** Mayer was placed on probation and required to complete 6 classroom hours of Board-approved continuing education.

### Case Study 4: Advertising by Licensees

**Background:** Susan Kiser entered into a listing agreement on September 30, 2012 with Rosalynn Jones. The home was owned by Rosalynn and her husband Henry. Their daughter, Mary, had power of attorney rights, including the right to sell property, for Henry. Kiser was informed that Mary was supportive of the sale. However, Mary was not present at the September 30 meeting and only Rosalynn signed the listing agreement.

On September 30, 2013, Mary wrote an email to Kiser indicating that there were other issues that needed to be resolved before putting the house on the market and it was best to wait before putting it on the market.

On October 3, 2013, Kiser listed the home on the MLS. Kiser indicated that the house could be marketed with one owner's signature and that she was told by Rosalynn to ignore any rhetoric because there was a family feud going on regarding Henry's assets.

**Violation:** Although Kiser knew she could market the home with only owner's signature, the signatures of both Rosalynn and Mary would be required to ratify a contract. Kiser failed to obtain the written consent of both sellers, or of their representatives, prior to advertising the property for sale.

**Penalty:** \$500 Monetary Penalty, \$150 Board Costs, and Kiser must complete 3 classroom hours of Board-approved continuing education pertaining to Real Estate Contracts.

Review Question Answers:  
1. a    2. d    3. b    4. c

## FLOOD INSURANCE PROGRAM

In this section, we will discuss the basics of flood hazard areas, the National Flood Insurance Program (NFIP), and the effect on buyers and sellers.

### Why is Flood Insurance Important?

According to the NFIP, just a few inches of water from a flood can cause thousands of dollars in damage to a home. From 2010 to 2014, the average residential flood claim amounted to more than \$39,000. The average flood insurance policy premium in 2014 was only \$700. Therefore, if a property is in a flood hazard zone, it makes financial sense for homeowners to protect themselves with flood insurance.

### What is the National Flood Insurance Program?

Since standard homeowner's insurance does not cover flooding, Congress created the National Flood Insurance Program (NFIP) in 1968 in order to help property owners protect themselves financially from flood hazards. The NFIP offers flood insurance to homeowners, renters, and business owners if their community participates in the NFIP. FEMA (Federal Emergency Management Agency) is in charge of administering the NFIP. FEMA works with over 80 private insurance companies to offer flood insurance to homeowners, renters, and business owners. In order to qualify, the community that the home or business is located in must agree to enforce the floodplain management standard.

For additional information see: <https://www.floodsmart.gov/floodsmart/>

### How does FEMA determine a home's flood risk?

FEMA conducts a Flood Insurance Study that includes statistical data on various river flow, rainfall, and topographic surveys. It uses this data to create flood hazard maps that outline a community's different flood risk areas. A buyer can look up their risk using FEMA's Flood Map Service Center: <https://msc.fema.gov/portal>

High risk areas, also called special flood hazard areas (SFHA), are defined as areas that have at least a 1 in 4 chance of flooding during a 30-year mortgage. These are labeled as Zone A or V.

Moderate-to-low risk areas have a reduced risk of flooding, but it can still happen. Over 20% of the flood claims made to NFIP and one third of disaster assistance goes to these areas. They are indicated on the flood maps as Zone B, C or X.

If an area does not have a flood-hazard analysis, it is labeled with the letter D on the flood maps.

### What does flood insurance cover?

If it is in a moderate-to-low risk area, then homeowners are eligible for coverage at a preferred rate, which is the lowest premiums available. If the property is in a high-risk area, then the standard rated policy is available.

The NFIP's Standard Flooding Insurance Policy Dwelling Form offers coverage for: 1) Building Property, up to \$250,000, and 2) Personal Property (Contents), up to \$100,000. Building property and personal property coverage are purchased separately.

Building Property covers the insured building and its foundation, electrical, plumbing, HVAC systems, appliances, permanently installed carpets and fixtures, window blinds, detached garages, and debris removal

Personal Contents Property covers items such as personal belongings, electronic equipment, furniture, washer/dryers, curtains, certain valuables up to \$2,500.

NFIP does not cover the following: Damage caused by moisture, mildew or mold that could have been avoided by the property owner, currency or valuable papers, living expenses such as temporary housing, and financial losses caused by business interruption or loss of use of insured property, or cars.

For more information see: [https://www.floodsmart.gov/floodsmart/pdfs/Summary\\_of\\_Coverage\\_English.pdf](https://www.floodsmart.gov/floodsmart/pdfs/Summary_of_Coverage_English.pdf)

### How are flood insurance premiums calculated?

According to the NFIP, flood insurance premiums are calculated based on factors such as:

- Year of building construction
- Building occupancy
- Number of floors
- The location of its contents
- Its flood risk (i.e. its flood zone)
- The location of the lowest floor in relation to the elevation requirement on the flood map (in newer buildings only)
- The deductible the homeowner chooses and the amount of building and contents coverage

### What responsibilities do sellers have regarding flood insurance?

According to the Virginia Property Disclosure Act (Title 55, Chapter 27, Virginia Residential Property Disclosure Act), the seller has no disclosure requirements regarding flood zones. Here is the applicable legislation:

The owner makes no representations with respect to whether the property is located in one or more special flood hazard areas and purchasers are advised to exercise whatever due diligence they deem necessary. This may include: (i) obtaining a flood certification

or mortgage lender determination of whether the property is located in one or more special flood hazard areas, (ii) review of any map depicting special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract.

For more information see: <http://law.lis.virginia.gov/vacode/title55/chapter27/>

### What responsibilities do buyers have regarding flood insurance?

Buyers looking to buy a house in Virginia should check to see if their home is located in a special flood hazard zone. If a buyer is getting a mortgage, flood certification is a routine part of the mortgage process since the lender will determine whether the property is part of a flood zone. If the property is part of a flood zone, it will require the buyer to obtain flood insurance. FEMA requires all lenders to require flood insurance if the property is located within a FEMA designated special flood hazard zone.

If a buyer is not getting a loan, it is advisable to check whether flood insurance is necessary for the property. A buyer can look up their property using FEMA's Flood Map Service Center: <https://msc.fema.gov/portal>

Buyers may hire a flood certification professional to determine if the insurance is necessary. Note that there is a 30 day waiting period for flood insurance if it is not purchased in connection with a mortgage loan.

### review questions...

The following 7 questions will be a review of the content from this section. These questions will NOT be graded.

- 1. Why did Congress create the National Flood Insurance Program?**
  - a. To help property owners protect themselves financially from flood hazards
  - b. As a way to get more income from taxpayers
  - c. To help insurance companies sell more products
  - d. To protect flood zones from overdevelopment
- 2. How does FEMA determine a home's flood risk?**
  - a. Based on an annual survey taken by homeowners
  - b. Based on statistical data on river flow, rainfall, and topographical surveys
  - c. Based on Congressional approvals of flood hazard areas
  - d. Based on the average sales price of the county where the home is located

- 3. Jane Smith finds out his properties is labeled Zone A in FEMA's flood map. His neighbor across the street, Jill Jones, has a property labeled Zone X. Which of the following statements is correct:**

- a. Jane and Jill's properties are both in high risk areas
- b. Jane's property is in a high risk area, but Jill's is not
- c. Jill's property is located in a high risk area, but Jane's is not
- d. Neither Jane or Jill's properties are located in high risk areas

- 4. What does NFIP's Standard Flood Insurance Policy cover?**

- a. Building property up to \$100,000
- b. Building property up to \$250,000
- c. Personal property up to \$100,000
- d. Both B and C

- 5. What types of building property is covered under NFIP's Standard Flood Insurance Policy?**

- a. Electrical
- b. Mold Remediation
- c. Cars
- d. None of the Above

- 6. NFIP's flood premiums are calculated based on which of the following:**

- a. Year of building construction, number of floors, flood risk
- b. Flood risk only
- c. Flood risk and sales price of the property
- d. Location of highest floor in relation to elevation requirement on the flood map

- 7. According to the Virginia Property Disclosure Act, does the seller have to disclosure if a property is in a flood zone?**

- a. Yes, they must always disclose it is in a flood zone
- b. Maybe, they do not have to disclose if the house never flooded
- c. Maybe, they must disclose if they purchased flood insurance
- d. No, there is no requirement to disclose it is in a flood zone

Review Question Answers:  
1. a 2. b 3. b 4. d 5. a 6. a 7. d

## SECTION TWO REAL ESTATE AGENCY

In this section, we will discuss the following topics:

- Definitions for Virginia Real Estate Agency
- Types of agency agreements are allowed in Virginia
- Dual Agency and Designated Agency
- Starting and Terminating Agency Agreements
- Case Studies

## VIRGINIA REAL ESTATE AGENCY DEFINITIONS

Section 54.1-2130 outlines several important definitions regarding real estate agency:

**Agency** - “Agency” means every relationship in which a real estate licensee acts for or represents a person by such person’s express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage agreement.

**Brokerage Agreement** - “Brokerage agreement” means the written agreement 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** - “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.

**Customer** - “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.

**Client** - “Client” means a person who has entered into a brokerage relationship with a licensee.

**Designated Agent** - “Designated agent” or “designated representative” means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction. A designated representative shall only act as an independent contractor.

**Dual Agent** - “Dual agent” or “dual representative” means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction. A dual agent has an agency relationship under brokerage agreements with the clients. A dual representative has an independent contractor relationship under brokerage agreements with the clients. A dual representative shall only act as an independent contractor.

**Ministerial Acts** - “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.

## review questions...

The following 2 questions will be a review of the content from this section. These questions will NOT be graded.

1. **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 is best described as a:**
  - a. Client
  - b. Designated Agent
  - c. Customer
  - d. Patron
2. **What is the definition of Agency?**
  - a. A relationship where a real estate licensee represents a person by such person’s express authority in a real estate transaction
  - b. A relationship where a real estate licensee guides a customer through a transaction
  - c. A relationship between a buyer and seller
  - d. A relationship between a seller and the principal broker

1. c  
2. a  
Review Question Answers:

# TYPES OF REAL ESTATE AGENCY

There are three types of real estate agency allowed in the state of Virginia:

1. Standard Agent
2. Limited Service Agent
3. Independent Contractor

## Standard Agent Duties to Their Clients

It's important to note that agency agreements can be for both sellers and buyers. Regardless of if your client is a buyer or a seller, licensees have the following duties to all clients:

- Perform in accordance with the terms of the brokerage agreement;
- Maintain confidentiality of all personal and financial information received;
- Exercise ordinary care;
- Account in a timely manner for all money and property received by the licensee in which the client (buyer or seller, depending on who you are representing) has or may have an interest;
- Disclose to the client (buyer or seller, depending on who you are representing) material facts related to the property or concerning the transaction of which the licensee has actual knowledge;
- Comply with all requirements of this article, all applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
- Licensees need to treat the other side honestly and shall not knowingly give them false information.
- Unless prohibited by law or the brokerage agreement, the licensee can provide assistance to the other side by performing ministerial acts. This does not form a brokerage relationship with the other side and is not a violation of the brokerage agreement with a licensee's client.
- A licensee does not breach any duty of obligation by representing other clients in the same capacity (e.g., you can have multiple buyer and seller clients at the same time);
- Licensees shall disclose brokerage agreements in accordance with Virginia law.

## Specific Duties to Sellers

Virginia law outlines the specific duties that licensees have to sellers:

- Promote the interest of the seller by:
  - Conducting marketing activities

- Assisting in drafting and negotiating offers and counteroffers
- Receiving and presenting in a timely manner written offers and counteroffers
- Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to facilitate the settlement of the contract

## Specific Duties to Buyers

- Promote the interest of the buyer by:
  - Seeking properties acceptable to the buyer at a price and on terms acceptable to the buyer;
  - Assisting in drafting and negotiating offers and counteroffers
  - Receiving and presenting in a timely manner written offers and counteroffers
  - Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate the settlement of the contract

In 2012, Virginia began to require buyer agency agreements due to the increased use of buyer agents on real estate transactions. The purpose of the buyer agency is to allow buyers to understand the types of agency relationships available to them. The length of time of buyer agency agreements can vary from several months, a few days, or for a single property. All buyer agency agreements, however, must have a definitive start and end date.

## Limited Service Agents

Limited Service Agents have the same duties as standard agents, but the brokerage agreement eliminates some of the standard agent's duties. A common example of this is Flat Fee MLS services, in which a limited service agent will market the property on the MLS only, but will not perform the other duties that standard agents will, such as drafting and presenting written offers.

Virginia law requires that limited service agent disclose the following information before entering into a brokerage agreement with a client:

- Disclosure that the licensee is acting as a limited service agent;
- Provide a list of services that the limited service agent will provide;
- Provide a list of the specific duties that a standard agent would provide;
- Copies of any and all disclosures required by federal or state law, including:
  - Virginia Residential Property Disclosure
  - Condo disclosure requirements (if applicable)

- o Property Owners' Association disclosure requirements (if applicable)

To make absolutely clear that the client is entering into a limited service agreement, Virginia requires that the disclosure contains language, in bold or capital letters, which is similar to the following suggested language:

*“By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service agent 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 agent.”*

## Independent Contractors

An independent contractor does not have the mandatory duties that require the licensee to promote the interests of their client. They still must, however, do the following for buyers and sellers:

- Maintain confidentiality of all personal and financial information received;
- Exercise ordinary care;
- Account in a timely manner for all money and property received by the licensee in which the client (buyer or seller, depending on who you are representing) has or may have an interest;
- Disclose to the client (buyer or seller, depending on who you are representing) material facts related to the property or concerning the transaction of which the licensee has actual knowledge;
- Comply with all requirements of this article, all applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
- Licensees need to treat the other side honestly and shall not knowingly give them false information.
- Unless prohibited by law or the brokerage agreement, the licensee can provide assistance to the other side by performing ministerial acts. This does not form a brokerage relationship with the other side and is not a violation of the brokerage agreement with a licensee's client.
- A licensee does not breach any duty of obligation by representing other clients in the same capacity (e.g., you can have multiple buyer and seller clients at the same time);
- Licensees shall disclose brokerage agreements in accordance with Virginia law.

## review questions...

The following 8 questions will be a review of the content from this section. These questions will NOT be graded.

- 1. Which of the following is NOT a standard agent duty:**
  - a. Maintain confidentiality of all personal and financial information received
  - b. Comply with fair housing
  - c. Carrying out all requests made by the client
  - d. Disclose material facts relating to the property
- 2. Agent Carrie enters into a brokerage agreement with Richard Perez to sell his condo. Shortly after signing the listing agreement, Agent Carrie goes on vacation and forgets to input the property into the MLS or advertise it for sale. Which of the following best describes the situation?**
  - a. Agent Carrie should input the property into the MLS as soon as possible
  - b. Agent Carrie is in breach of her listing agreement for failure to conduct marketing activities
  - c. Richard Perez should wait for Agent Carrie to input the property into the MLS
  - d. Richard Perez should immediately fire Agent Carrie and hire another agent
- 3. Agent Michelle represents the seller on a transaction. What activities is Agent Michelle allowed to do for the buyer, who is not represented by any agent:**
  - a. Let the buyer into the property in order to conduct a home inspection
  - b. Give the buyer advice on the purchase price of the property
  - c. Tell the buyer the lowest price the seller is willing to accept
  - d. None of the above
- 4. Agent Ronald represents the buyer on a transaction. What activities is he allowed to perform for the buyer:**
  - a. Find properties that meet the buyer's requirements and price range
  - b. Negotiate offers and counter offers
  - c. Presenting offers as soon as possible
  - d. All of the above
- 5. Which of the following is true about buyer agreements:**
  - a. Buyer agency agreements must be in writing
  - b. All buyer agreements are in effect until the buyer purchases a property
  - c. Buyers are required to be represented by agents
  - d. Buyer agency agreements must be for at least 30 days or longer

Questions continued on the next page

**6. All of the following are standard buyer agent duties EXCEPT:**

- a. Preparing an offer for the buyer to sign
- b. Recommending a negotiation strategy to purchase the property
- c. Showing properties that are just above the buyer's price range
- d. Discussing a counter offer as soon as it is received

**7. Which of the following disclosure is NOT required before entering into a limited service brokerage agreement?**

- a. Disclosure that the licensee is acting as a limited service agent
- b. List of duties that a limited service agent and a standard agent would provide
- c. Copies of all disclosures required by law
- d. A list of properties that the limited service agent is allowed access

**8. What is the difference between an independent contractor and a limited service agent?**

- a. An independent contractor has fewer duties than a limited service agent
- b. An independent contractor does not have mandatory duties that require the licensee to promote the interests of their client
- c. A limited service agent does not need to be licensed
- d. An independent contractor does not have to maintain confidentiality

## DUAL AGENCY

Dual agency is allowed in Virginia, but all parties must agree to it in writing. A dual agency situation arises when the same licensee is representing both the seller and the buyer.

Section 54.1-2139 (Disclosed dual agency and dual representation authorized in a residential real estate transaction) discusses the requirements regarding dual agency:

- Agents must obtain written consent from all parties to a transaction before acting as a dual agent.
- Disclosures must be in writing and must be given BEFORE an offer is presented. Section 54.1-2139-D indicates that disclosures shall not be deemed to comply with the requirements in this section if (i) not signed by the client or (ii) given in a purchase agreement, lease, or any other document related to a transaction.
- An agent does not terminate an existing brokerage relationship by providing a client with the required disclosures.
- An agent may withdraw from representing a client if that client refuses to consent to dual agency. They can still represent the other client in the transaction or represent the client that refused the dual agency in another transaction.

The following disclosure (or substantially the same language) must be given to the client:

### DISCLOSURE OF DUAL AGENCY OR DUAL REPRESENTATION

#### IN A RESIDENTIAL REAL ESTATE TRANSACTION

*The undersigned do hereby acknowledge disclosure that: The licensee ..... (name of broker or salesperson) associated with ..... (Brokerage Firm) represents more than one party in this residential real estate transaction as follows:*

A. *Brokerage Firm represents the following party (select one):*

Seller(s)  Buyer(s)  Landlord(s)  Tenant(s)

*As a (select one):*

standard agent  limited service agent

independent contractor

*Brokerage Firm represents another party (select one):*

Seller(s)  Buyer(s)  Landlord(s)  Tenant(s)

*As a (select one):*

standard agent  limited service agent

independent contractor

1. c 2. b 3. a 4. d 5. a 6. c 7. d 8. b  
Review Question Answers:

B. Brokerage Firm disclosure and client acknowledgement of the following (select one):

[ ] Brokerage Firm represents two existing clients in the transaction and the undersigned acknowledge the following:

The undersigned understand that the foregoing dual agent or dual representative may not disclose to either client any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

[ ] Brokerage Firm represents one existing client and one new client in the transaction and the undersigned acknowledge the following:

The undersigned understand:

1. That following the commencement of dual agency or representation, the licensee cannot advise either party as to the terms to offer or accept in any offer or counteroffer; however, the licensee may have advised one party as to such terms prior to the commencement of dual agency or representation;
2. That the licensee cannot advise the buyer client as to the suitability of the property, its condition (other than to make any disclosures as required by law of any licensee representing a seller), and cannot advise either party as to what repairs of the property to make or request;
3. That the licensee cannot advise either party in any dispute that arises relating to the transaction;
4. That the licensee may be acting without knowledge of the client's needs, client's knowledge of the market, or client's capabilities in dealing with the intricacies of real estate transactions; and
5. That either party may engage another licensee at additional cost to represent their respective interests.

The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

..... Date Name (One Party)  
 ..... Date Name (OneParty)  
 ..... Date Name (Other Party)  
 ..... Date Name (Other Party)

### Designated Agency

Designated agency occurs when the buyer and seller have brokerage agreements with the same brokerage,

but there are two licensees that are representing the buyer and seller separately. For example, John Smith works for ABC Realty and represents Sally Seller. Tina Jones also works for ABC Realty and represents Bob Buyer. In this case, John and Tina both work for the same brokerage, but they each represent their own client. The principal broker for ABC is considered a dual agent, not the designated agents.

Section 54.1-2139.1 (Designated standard agency or designated representation authorized) discusses the requirements regarding designated agency:

- Agents must obtain written consent from all parties to a transaction before acting as a designated agent.
- An agent does not terminate an existing brokerage relationship by providing a client with the required disclosures.
- An agent may withdraw from representing a client if that client refuses to consent to designated agency. They can still represent the other client in the transaction or represent the client that refused the designated agency in another transaction.

### DISCLOSURE OF DESIGNATED AGENTS OR REPRESENTATIVES

The undersigned do hereby acknowledge disclosure that: The licensee .....

(Name of Broker and Firm) represents more than one party in this real estate transaction as indicated below:

..... Seller(s) and Buyer(s)

..... Landlord(s) and Tenant(s).

The undersigned understand that the foregoing dual agent or representative may not disclose to either client or such client's designated agent or representative any information that has been given to the dual agent or representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed.

The principal or supervising broker has assigned ..... to act as Designated Agent or Representative (broker or salesperson) for the one party as indicated below:

[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one):

[ ] standard agent [ ] limited service agent [ ] independent contractor

..... to act as Designated Agent or Representative (broker or salesperson) for the other party as indicated below:

[ ] Seller(s) [ ] Buyer(s) [ ] Landlord(s) [ ] Tenant(s)

As a (select one): [ ] standard agent [ ] limited service agent  
[ ] independent contractor

The undersigned by signing this notice do hereby  
acknowledge their consent to the disclosed dual  
representation by the licensee.

..... Date Name (One Party)

..... Date Name (One Party)

..... Date Name (Other Party)

..... Date Name (Other Party)

## review questions...

The following 4 questions will be a review of the content from this section. These questions will NOT be graded.

- Charles and Jessica are both part of Green Acres Realty. On a recent transaction, Charles represents the seller and Jessica represents the buyer. Which of the following best describes this relationship?**
  - Dual Agency
  - Designated Agency
  - Limited Service Agency
  - Express Agency
- Which of the following is true about dual agency?**
  - It is illegal in Virginia
  - It is allowed, but requires all parties to consent
  - It is allowed, but requires the seller only to consent
  - It is allowed, but requires the buyer only to consent
- Agent Nick and Agent Eric both work for Principal Broker Sharon. Nick and Eric enter into a designated agency relationship on a transaction. What is Sharon's role in the transaction?**
  - She is a dual agent
  - She is a designated agent
  - She is a limited service agent
  - She is an independent agent
- Which of the following relationships require disclosure to both the seller and buyer?**
  - Dual Agency only
  - Designated Agency only
  - Both Dual Agency and Designated Agency
  - Neither Dual Agency no Designated Agency

4. c

3. a

2. b

1. b

Review Question Answers:

## STARTING BROKERAGE RELATIONSHIPS

According to Virginia law (Section 54.1 - 2137), a brokerage relationship commences at the time that a client engages a licensee. According to the Virginia Association of Realtors guidance document, a customer becomes a client based upon the party's intent. It is up to the licensee to determine if the customer (not client yet) intends to enter into a brokerage relationship with the licensee.

For example, showing a house may be ministerial if the purpose of showing the house is to see typical styles and features in an area or if the licensee knows that the buyer does not want representation. However, if the potential buyer intends for the licensee to help them buy a property, then a brokerage relationship would exist and require a written brokerage agreement.

Brokerage agreements must be in writing and must have the following:

- A definite termination date. If no date is specified, then the default is 90 days;
- Amount of the brokerage fees and how and when such fees are to be paid;
- Services to be rendered by the licensee;
- Other terms as necessary

### Terminating Brokerage Relationships

- The brokerage relationship ends in the following ways:
- Completion of performance in accordance with the brokerage agreement or
- The earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage agreement or any mutually agreed upon termination of the brokerage agreement,
- A default by any party under the terms of the brokerage agreement, or
- A termination as a result of dual agency disclosures;

Even after the brokerage agreement ends, a licensee still must:

- Account for all moneys and property relating to the brokerage relationship
- Keep confidential all personal and financial information

## CASE STUDIES

The purpose of this section is to provide several case studies regarding disciplinary actions that were investigated by the Department of Professional and Occupational Regulations. Disciplinary actions can be found for any licensee using the DPOR License Lookup. The names of the licensees have been changed, but the substance of the violations is the same.

### Case Study 1: Failure to Disclose Dual Agency

**Background:** In January 2006, Cynthia Smith (“Seller”) and Joseph Nable (“Buyer”) entered into a contract for a home located at 37 Meadowlark Lane in Richmond, VA. According to the contract, both the Seller and the Buyer were represented by Premier Realty and Property Management LLC (“Premier”), however there was no dual agency disclosure obtained. The principal broker, Diane Tamaren, did not believe a disclosure was necessary since the buyer and seller were represented by different agents in the transaction.

**Violation:** Tamaren was found in violation of 54.1-2139 because of failure to disclose designated agency. Since she was the principal broker of the firm, she would be a dual agent in the transaction and therefore must disclose to the Seller and Buyer.

**Penalty:** Tamaren was fined \$750 monetary penalty

### Case Study 2: Failure to Disclose Dual Agency

**Background:** On August 10, 2010, Jennifer Stuart (“Seller”) entered into an exclusive right to sell agreement with James Marsden (“Agent”).

On August 12, 2010, Marsden prepared a contract for David Ellis to purchase the property. The contract stated that Marsden represented both the seller and buyer. The Ellis contract was released on August 20, 2010.

On August 21, 2010, Marsden prepared a contract for Denise Pierce to purchase the property. The contract stated that Marsden represented both the seller and buyer. The Pierce contract was released on September 5, 2010.

**Violation:** Marsden was found in violation of 18 VAC 135-20-220 for failure to disclose dual agency in both contracts.

**Penalty:** Marsden was fined a penalty of \$500 / violation, for a total of \$1000. His license was also put on probation and required to attend 3 hours of continuing education regarding real estate agency.

## review questions...

The following 7 questions will be a review of the content from this section.

These questions will NOT be graded.

- 1. Which of the following is required for brokerage agreements?**
  - a. A definite termination date
  - b. The amount of the brokerage fees
  - c. Services to be rendered by the licensee
  - d. All of the above
- 2. A buyer calls Agent Mary and tells her that she is new in town and would like someone to show her what features are representative of homes in the area. If Mary shows the buyers homes, should she enter into a brokerage agreement?**
  - a. Yes, she should because the buyer could end up buying a property
  - b. No, she doesn't since the buyer did not mention wanting to buy a property
  - c. Yes, she should because she should get a buyer agreement with every person she shows a house
  - d. No, she doesn't since this is the first time they are meeting
- 3. When does a brokerage agreement terminate?**
  - a. Upon completion of performance of the brokerage agreement
  - b. By default of any party under the performance of the brokerage agreement
  - c. By termination as a result of dual agency disclosures
  - d. All of the above
- 4. After a brokerage agreement ends, what duties does the licensee still owe to the client?**
  - a. Account for all money related to the brokerage relationship
  - b. Keep all personal information confidential
  - c. All of the above
  - d. None of the above

Questions continued on the next page

5. Agent Jessica represented both the buyer and seller on the sale of a home in Alexandria, VA. Jessica sent the required disclosures to the buyer and seller, but only received one back from the buyer. Which of the following best describes the situation?

- Jessica is not in violation because she sent the disclosure to her clients
- Jessica is not in violation because she received the signed disclosure from at least one party
- Jessica is in violation because both parties did not consent
- Jessica is in violation because she should have sent the disclosure to her broker, not her clients

6. Agent Donald and Agent Ryan both work for Sunshine Realty. Agent Donald represents the seller for a property that Agent Ryan has submitted an offer. What type of disclosure must be made and to whom?

- A dual agency disclosure must be made to the seller
- A designated agency disclosure must be made to both the buyer and seller
- A designated agency disclosure must be made to the seller only
- No disclosures must be made

7. Agent Amanda gets a call from a buyer who says she wants to see a condo and put an offer on it. If Agent Amanda does not represent the seller, what type of agreement should she have the buyer sign?

- Buyer Agency Agreement
- Dual Agency Disclosure
- Designated Agency Disclosure
- Listing Agreement

Review Question Answers:

1. d 2. b 3. d 4. c 5. c 6. b 7. a

## SECTION THREE REAL ESTATE CONTRACTS

In this section, we will discuss the following topics:

- Elements of a Valid Contract
- Common Parts of a Real Estate Contract
- Common Contract Situations
- Types of Listing and Buyer Agency Agreements

### ELEMENTS OF A VALID CONTRACT

There are three main elements to a valid contract:

- Offer and Acceptance
- Consideration
- Lack of Defenses

In addition, in Virginia, all contracts must be written to be enforceable.

#### Offer and Acceptance

Typically, there are two parties involved in making a contract. First, there is the person making the offer (“Offerer”). Second, there is the person receiving the offer (“Offeree”).

When the Offerer makes an offer, it means they are willing to enter into a contract with the Offeree at the terms that he or she is making the offer. If the Offeree accepts the offer as-is, then a contract is formed. If the other party, however, does not accept the terms, then there is no contract. A valid contract must have both an offer and acceptance.

If the Offeree decided to make a counter-offer, then that person is now considered the Offeror and the original Offerer is now considered the Offeree. Basically, their roles are now switched. It is also important to note that when a counteroffer is made, the original offer is terminated (i.e., those terms are now off the table).

*Example: Bob makes an offer to Tom for the purchase of his house for \$325,000. Bob is the Offeror and Tom is to Offeree. Tom decides to counter Bob's offer at \$350,000. Now, Tom is the Offeror and Bob is the Offeree. Bob decides to accept Tom's offer. A contract is formed since there was an offer and acceptance.*

#### Consideration

Consideration is a legal term that indicates what valuables are being exchanged in the contract. In real estate, a property is typically exchanged for money.

## Lack of Defenses

The third and final element of a valid contract is the lack of defenses. Defenses are ways in which a party can argue that the contract was never formed properly (i.e., void) or that the contract was formed properly, but it should not be allowed to proceed (i.e., voidable). Some common defenses include:

- **Incompetency** - A person must be legally competent in order to enter into a contract. For example, if someone was legally insane and entered into a contract, it would be considered void. Another example includes minors (those under the age of 18). Minors are considered to have a limited capacity to enter into a contract. If they enter into a contract, the contract is considered voidable, meaning that the minor can cancel the contract without any liability. However, it is a valid contract, so the minor may continue with the contract if he chooses.
- **Fraud** - Fraud includes intentionally deceiving a party in the transaction. For example, a seller may know that the foundation of the house is structurally unsound, but does not reveal this fact to the buyer. Another real life example includes a real estate agent forging the seller's signature on a document without the permission of the seller. In this case, the contract was void.
- **Duress** - A person must willingly enter into a contract. If they are pressured into signing an agreement, then the contract is considered void.

## review questions...

The following 4 questions will be a review of the content from this section. These questions will NOT be graded.

1. **Joe makes an offer for \$100,000 for a townhouse. The seller countered his offer at \$125,000. What happens to Joe's original offer?**
  - a. It is still considered a valid offer
  - b. It was terminated when the seller countered
  - c. It is considered a backup offer
  - d. It is considered a temporary offer
2. **A sixteen year old boy enters into a real estate contract with a forty year old woman. Which of the following is true?**
  - a. Only the woman can void the contract
  - b. Only the boy can void the contract
  - c. Neither can void the contract
  - d. Both can void the contract
3. **Buyer Emma enters into a contract with Seller Joe. During the course of the transaction, Emma finds out that Joe does not own the property and is not authorized to sell it. Which of the following defenses can Emma claim to void the contract?**
  - a. Incompetency
  - b. Duress
  - c. Fraud
  - d. Misinformation
4. **What is consideration?**
  - a. A legal term that indicates what valuables are being exchanged in the contract
  - b. A requirement that buyers and sellers must respect each other during the transaction
  - c. A 24 hour time period for the seller to consider all offers
  - d. None of the above

Review Question Answers:  
1. b    2. b    3. c    4. a

## COMMON PARTS OF A REAL ESTATE CONTRACT

Many local real estate associations (including Virginia Association of Realtors and the Northern Virginia Association of Realtors) have template real estate contracts. Licensees should make sure they understand all parts of the contract in order to explain each section to their clients. Below are common parts to a real estate contract.

**Name of Parties and Agents** - The contract should indicate who the seller is and who the buyer is and who the agents are that represent them. It is important that the seller's name matches the legal owner of the property and that the buyer's name is exactly how it title will be conveyed.

**Legal Description of the Property** - Since every parcel of land is unique, it is important to make sure the correct address and description of the property is conveyed. Typically, the legal description is more than just the address of the property.

**Price and Financing Terms** - The purchase price for the property is the consideration for making a valid contract, therefore, there must be a purchase price. Buyers who are getting loans will also indicate what type of financing they will be using. Sellers will typically look at the financing terms to determine the strength of the buyer (e.g., a buyer putting 20% down conventional financing is typically considered a stronger buyer than one that is only putting down 5%).

**Earnest Money Deposit** - Although not absolutely required for a valid contract, a buyer may offer an earnest money deposit as a "show of good faith" that they buyer is serious about buying the property. Since the buyer is at risk for losing the deposit if he or she defaults, a larger earnest money deposit usually means a more serious buyer. Note that Virginia law requires that earnest money be deposited within 5 days of contract ratification. Licensees risk being in violation and monetary penalties is the earnest money is not deposited on time.

**Settlement Date** - The closing date for the transaction must be specified as that is the date in which the ownership legally conveys to the buyer. It is also the date which any pro-rations are calculated. If a buyer is getting a loan, it is important the lender is able to provide financing by the closing date otherwise the buyer could be at risk for default.

**Contingencies** - There may be additional contingencies such as home inspection, financing, and appraisal contingencies that the buyer may place on the offer. These contingencies allow the buyer to void the contract without being in default.

**Delivery of Property** - Unless otherwise specified, the property should be delivered free and clear of trash and in the same condition as on a specified date (e.g., the date of contract ratification or date of the home inspection).

**Title** - Often times, the contract will state that the seller must deliver a general warranty deed and marketable title. It also puts the responsibility on the Seller to cure any title issues prior to settlement.

### Virginia Residential Property Disclosure

All Virginia sellers are required to provide the buyer with a disclosure statement. Virginia requires the following disclosure to be signed by the seller:

1. The owner makes no representations with respect to the matters set forth and described at a website maintained by the Real Estate Board and that the purchaser is advised to consult this website for important information about the real property; and
2. The owner represents that there are no pending enforcement actions pursuant to the Uniform Statewide Building Code (§ 36-97 et seq.) that affect the safe, decent, sanitary living conditions of the property of which the owner has been notified in writing by the locality, except as disclosed on the disclosure statement, nor any pending violation of the local zoning ordinance that the violator has not abated or remedied under the zoning ordinance, within a time period set out in the written notice of violation from the locality or established by a court of competent jurisdiction, except as disclosed on the disclosure statement.

The seller should always sign the property disclosure statement first before the buyer signs. If the buyer signs the property disclosure statement first, it is not a valid disclosure since the seller must disclose first.

### Lead Based Paint Disclosure

For properties constructed before 1978, the seller must provide a lead based paint disclosure indicating any knowledge of lead based paint in the home. This is a national requirement under the Residential Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d). Sellers must provide the buyer with an EPA-approved lead hazard information pamphlet.

One such pamphlet can be found online at: <http://www.epa.gov/lead/protect-your-family-lead-your-home>

Every disclosure must have the following statement:

*Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient,*

*behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.*

The seller must also give the buyer the right to conduct an inspection for the presence of lead-based paint or paint hazards.

### Choice of Settlement Agent

It is important to note that Virginia law mandates that the buyer have the right to select the settlement agent. It is increasingly common to see split settlements, where the seller chooses their own settlement agent to conduct their closing, that is separate from the buyer. Then the seller's and buyer's settlement agents coordinate to close the transaction. This allows the seller to control who conducts their settlement. All contracts must have the following language in bold face and in at least 10-point type:

“Choice of Settlement Agent: Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia provides that the purchaser or borrower has the right to select the settlement agent to handle the closing of this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party.

“Variation by agreement: The provisions of Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia may not be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not require the use of a particular settlement agent as a condition of the sale of the property.

“Escrow, closing, and settlement service guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing escrow, settlement or closing services. As a party to a real estate transaction, the purchaser or borrower is entitled to receive a copy of these guidelines from his settlement agent, upon request, in accordance with the provisions of Chapter 27.3 (§ 55-525.16 et seq.) of Title 55 of the Code of Virginia.”

## review questions...

The following 7 questions will be a review of the content from this section. These questions will NOT be graded.

- 1. Ann's house was built in 1975. Bruce's house was built in 1995. Which of the following is FALSE?**
  - Ann does not need to provide a lead based paint disclosure.
  - Bruce does not need to provide a lead based paint disclosure.
  - Ann and Bruce must provide a property disclosure
  - Bruce must provide a property disclosure.
- 2. Agent Bryan signs a listing agreement with Seller Sara. Sara indicates that her brother owns ABC Title so she must close there. What are the settlement options for closing?**
  - The buyer must close at ABC Title
  - The buyer can choose to close wherever she likes
  - The seller must close at the buyer's settlement company
  - None of the above
- 3. To whom can the settlement agent provide legal advice**
  - The buyer only
  - The seller only
  - To neither the buyer or seller, unless engaged by one of the parties
  - The both the buyer and seller
- 4. Which of the follow services is NOT performed by the settlement agent?**
  - Approval of the buyer's loan
  - Administrative and clerical functions such as collecting documents
  - Disbursing commission fees
  - Recording loan documents
- 5. What is a contingency?**
  - A back up offer for another property
  - A way for the buyer to void the contract without being in default
  - The amount of earnest money
  - The legal description of the property
- 6. Why is it important to show the financing terms in an offer?**
  - Because it is a mandatory requirement for a valid contract
  - Because the seller may want to make a decision based on the financing terms
  - Because the lender will require it to be on the contract
  - It is not important to show the financing terms

Questions continued on the next page

**7. Properties constructed before must have a lead based paint disclosure.**

- a. 1973
- b. 1975
- c. 1978
- d. 1980

Review Question Answers: 1. a 2. b 3. c 4. a 5. b 6. b 7. c

## COMMON CONTRACT SITUATIONS

Here are some common real estate contract situations that arise during real estate transactions.

### Failure to Deliver Required Documents

A buyer agrees to have a 10-day home inspection contingency. According to the contract, if the buyer wants to void the contract, the buyer must deliver an entire copy of the home inspection report and Notice to Void prior to the contingency deadline. If the buyer fails to obtain an inspection, or deliver the report, or Notice to Void, the contract continues with no home inspection contingency.

Many times, a buyer agent will deliver the Notice to Void, but forgets to deliver the home inspection report. If the home inspection report is not delivered by the contingency deadline, then the buyer is not able to void the contract.

### Missing Deadlines

In Virginia, if a property is part of a Property Owner's Association, the following contract language is required:

Subject to the provisions of subsection A of § 55-509.10, a person selling a lot shall disclose in the contract that (i) the lot is located within a development that is subject to the Virginia Property Owners' Association Act (§ 55-508 et seq.); (ii) the Act requires the seller to obtain from the property owners' association an association disclosure packet and provide it to the purchaser; (iii) the purchaser may cancel the contract within three days after receiving the association disclosure packet or being notified that the association disclosure packet will not be available; (iv) if the purchaser has received the association disclosure packet, the purchaser has a right to request an update of such disclosure packet in accordance with subsection H of § 55-509.6 or subsection C of § 55-509.7, as appropriate; and (v) the right to receive the association disclosure packet and the right to cancel the contract are waived conclusively if not exercised before settlement.

In this situation, if a buyer receives the disclosure packet on a Friday, the buyer has 3 days from delivery (Saturday, Sunday, Monday) to void the contract. The buyer must void by Monday, otherwise he must continue with the contract. Often times, there may be arguments over the official delivery date or when the actual contingency deadlines are. If your client is considering voiding a contract with a contingency, you must make absolutely clear what the deadline for voiding the contract is.

### Ratification Date

Since many contingency periods rely on the ratification date, (e.g., the buyer has a 21-day financing contingency starting from the date of ratification), it is important that all parties agree on the date of ratification and that it is clearly indicated in the contract.

For example, a listing agent receives a contract via at 11:45PM on Friday night. The contract indicates that delivery via email occurs on the day of Delivery and that the Date of Ratification is based on the day of Delivery. Therefore, the Date of Ratification is Friday night even though the contract a received very late on Friday night.

### Electronic Signatures

Many real estate transactions today are done with electronic signatures and it is an acceptable way to enter into contracts. The UETA (Uniform Electronic Transactions Act) indicates that electronic signature can be used if both parties agree to it. On a standard form, it must be specifically and conspicuously agreed to by both parties. However, the courts will look at the circumstances surrounding the use of electronic signature to determine if the parties have agreed to use it. For example, if the buyer sends over an offer via electronic signature and the seller accepts via electronic signature, which indicates that both parties accept the use of electronic signature, even if they forgot to initial off on the paragraph in the contract that consents to electronic signatures. Some local contracts, such as the NVAR (Northern Virginia Association of Realtors) contract has done away with the electronic signature clause since the use and acceptance of electronic signatures indicates that the parties agree to its use.

### Full Price Offers

The seller is not obligated to accept a full price offer. There are many aspects to a contract such as the terms (e.g., closing date, financing terms, and contingencies) in which the seller and the buyer must agree to as well. By listing it on the MLS or offering the property for sale, the seller is merely indicating a willingness to sell and a suggested offer price. It does not obligate the seller to sell at the list price or accept any offers at full price.

## review questions...

The following 5 questions will be a review of the content from this section. These questions will NOT be graded.

Agent Gary works for Universal Realty and represents Buyer Billy. Agent Vincent also works for Universal Realty and represents Seller Judy. The buyer and seller ratify a contract on September 15, 2015. The property was built in 1750 and is part of an HOA.

According to the contract, the buyer has a 10 day home inspection contingency. If the buyer wants to void the contract, the buyer must deliver an entire copy of the home inspection report and Notice to Void prior to the contingency deadline. If the buyer fails to obtain an inspection, or deliver the report, or Notice to Void, the contract continues with no home inspection contingency.

1. **What is the last day that the buyer can void the contract using the home inspection contingency?**
  - a. September 15, 2015
  - b. September 24, 2015
  - c. September 25, 2015
  - d. September 30, 2015
2. **Agent Gary delivers a notice to void as a result of the home inspection, but fails to deliver the full home inspection report. The home inspection contingency deadline passes. Which of the following best describes the situation?**
  - a. The contract is void
  - b. The home inspection contingency is extended for 3 days
  - c. The home inspection contingency is removed
  - d. The contract is released
3. **What disclosures must the seller provide to the buyer?**
  - a. Property disclosure only
  - b. Lead based paint disclosure only
  - c. Designated agency disclosure only
  - d. Property, lead based paint, and designated agency disclosures
4. **In this transaction, what type of agent is the Principal Broker for Universal Realty?**
  - a. Designated Agent
  - b. Dual Agent
  - c. Limited Service Agent
  - d. Independent Agent

5. **The buyer receives the HOA disclosure packet on October 1, 2015. What is the deadline for the buyer to void the contract?**
  - a. October 4, 2015
  - b. October 5, 2015
  - c. October 10, 2015
  - d. October 15, 2015

Review Question Answers:  
1. c 2. c 3. d 4. b 5. a

## TYPES OF LISTING AGREEMENTS

There are 4 main types of listing agreements:

1. **Exclusive Right to Sell** - In this type of listing agreement, the seller must compensate the agent whether or not the agent was the one that procured the sale.
2. **Exclusive Agency** - In an exclusive agency agreement, the seller must compensate the agent if the agent procures the sale. However, if the seller finds his own buyer, he does not have to pay the agent.
3. **Open Listing** - In this type of listing agreement, the seller agrees to compensate any broker that procures the sale. The seller may also find his own buyer and he does not have to pay the agent. Open listings are different from Exclusive Agency agreements because open listings do not require the seller to enter into an exclusive agreement with one broker. Instead, the agreement is unilateral since the seller is agreeing upfront to pay any broker who procures the sale.
4. **Net Listings** - In this type of listing agreement, the agent keeps any additional amount of money from the sale that is above an agreed amount with the seller. For example, Kevin Seller tells Agent Amy that he wants \$500,000 from the sale of the property and she can keep whatever else she can get. If the property sells for \$550,000, Amy's commission is \$50,000. Net listings are illegal in Virginia.

### Types of Buyer Agency Agreements

There are 3 main types of buyer agency agreements:

1. **Exclusive Right to Purchase** - In this type of listing agreement, the buyer must compensate the agent whether or not the agent was the one that procured the sale.
2. **Exclusive Agency Right to Purchase** - In an exclusive agency right to purchase agreement, the buyer must compensate the agent if the agent procures the sale. However, if the buyer finds his own house, he does not have to pay the agent.

3. **Open Buyer Agreement** - In this type of agreement, the buyer agrees to compensate any broker that procures the sale. The buyer may also find his own property and he does not have to pay the agent. Open buyer agreements are different from Exclusive Agency agreements because open buyer agreements do not require the buyer to enter into an exclusive agreement with one broker. Instead, the agreement is unilateral since the buyer is agreeing upfront to pay any broker who procures the sale.

## review questions...

The following 5 questions will be a review of the content from this section.

These questions will NOT be graded.

- 1. Which of the following listing agreements is not allowed in Virginia?**
  - Exclusive Right to Sell
  - Exclusive Agency
  - Open Listing
  - Net Listing
- 2. Agent George enters into a listing agreement where the seller agrees to pay George a commission regardless of who procures the buyer. What type of listing agreement did the seller sign?**
  - Net Listing
  - Open Listing
  - Exclusive Right To Sell
  - None of the Above
- 3. Buyer Bob enters into a buyer agreement with Agent Angela that says he will pay Angela only if she finds a property. If he finds the property himself, he does not have to pay her. What type of buyer agency agreement is this?**
  - Exclusive Right to Purchase
  - Exclusive Agency Right to Purchase
  - Open Buyer Agreement
  - Net Buyer Agreement
- 4. Seller Tina tells Agent Olivia that as long as she gets \$565,000 for her house, Olivia can keep the rest of the proceeds from the sale of the house. What type of listing agreement is this?**
  - Exclusive Right to Sell
  - Exclusive Agency
  - Open Listing
  - Net Listing

5. **Buyer Bill enters into an Exclusive Right to Purchase Agreement with Agent Michael. Bill is driving around town and finds a For Sale By Owner property that he ends up buying. What happens to Agent Michael's commission?**

- No commission is due because Bill found the property himself
- No commission is due because there is no listing agent
- Bill must pay Michael a commission even if Bill found the property himself
- Bill must pay a commission to Michael because he procured the sale

Review Question Answers:  
1. d  
2. c  
3. b  
4. d  
5. c

## VIRGINIA LAWS, AGENCY, AND CONTRACTS

### Summary

The course provided a review of recent legal updates and legislative changes that affect real estate agents. In particular, we discuss changes in real estate advertising requirements and the activities that licensed and unlicensed assistants can perform. This course also provided an overview of the National Flood Insurance Program. We then discuss the duties of standard agents and the disclosure requirements for dual and designated agents. Finally, this course reviewed the basic elements of a real estate contract and typical issues that arise regarding contracts in a real estate transaction. We also discussed the different types of listing and buyer agency agreements that agents can enter into with clients.

# Virginia Law, Agency, and Contracts

## Final Exam

- 1. What minimum information is required on an agent's business card?**
  - a. Firm Name and Firm's Primary Office Telephone Number
  - b. Licensee Name and Licensee Phone Number
  - c. Firm Name, Licensee Name, and Contact Information
  - d. Licensee Name and Firm Name
- 2. Which of the following is required for a licensee to advertise electronically?**
  - a. Licensee Name, Firm Name, and City and State of the licensee's place of business
  - b. Licensee Name, Firm Name, and Jurisdiction of Licensure
  - c. Licensee Name, Firm Name, and Firm Telephone Number
  - d. Licensee Name, Firm Name, and Licensee Telephone Number
- 3. Agent Hannah works for Petersen Realty. She puts out two ads in the local newspaper – one on behalf of the entire firm and the other for one of her specific listings. Which of the following disclosure requirements is correct?**
  - a. The firm's ad must have the firm name. The ad for Hannah's listing needs to have the firm name and licensee's name.
  - b. Both ads must have the firm name, licensee name, and licensee phone number.
  - c. Both ads must have the firm name and firm phone number
  - d. The firm's ad must have the firm name and phone number. The ad for Hannah's listing needs to have the firm name, licensee name, and licensee phone number.
- 4. Which of the following is NOT a licensed activity?**
  - a. Show Property
  - b. Submit Changes to MLS
  - c. Hold an Open House
  - d. Negotiate Commission
- 5. Sally is looking for an assistant to help show her buyer client's properties and act as a courier service for her listings. Which of the following statement best summarizes the type of assistant Sally should hire?**
  - a. Sally should hire a licensed assistant because it will involve showing properties and acting as a courier service, which are licensed activities.
  - b. Sally should hire an unlicensed assistant because she will be doing all of the work with a buyer after they find a property that they like.
  - c. Sally should hire an unlicensed assistant because acting as a courier service and showing properties are unlicensed activities.
  - d. Sally should hire a licensed assistant because showing properties is a licensed activity, even though acting as a courier service is not a licensed activity.
- 6. Agent Jane completed an excess of 6 continuing education credit hours. One was a 2 hour continuing education class that she took 1 year before the license expiration date. The other was a 4 hour continuing education class that she took for 2 months before her licensed expiration date. How many credits can Agent Jane carry over?**
  - a. 0
  - b. 2
  - c. 4
  - d. 6
- 7. On July 1st, Broker John receives a notice to void and a release of escrow deposit that is signed by all parties. When is the latest date that Broker John needs to return the escrow funds?**
  - a. July 5
  - b. July 15
  - c. July 20
  - d. July 31

Questions continued on the next page

8. On January 1, a contract was ratified between Buyer Bob and Seller Susan. Agent Amy received buyer Bob's escrow deposit on January 1. On January 10, she delivered the ratified contract and escrow deposit to her broker. Which of the following best describes Agent Amy's situation?
- Agent Amy has not violated any laws because the EMD was turned in within 20 days of contract ratification.
  - Agent Amy has not violated any laws because Buyer Bob gave Amy the EMD on the same day as contract ratification.
  - Agent Amy is in violation of the law because she did not turn in the EMD within 5 business banking days.
  - Agent Amy is in violation of the law because she should have deposited the money immediately into her own bank account.
9. Who administers the National Flood Insurance Program?
- The National Association of Realtors
  - The Federal Deposit Insurance Corporation
  - FEMA
  - The National Hazard Agency
10. Who can look up flood hazard maps?
- The title company only
  - The insurance company only
  - The real estate agent only
  - All of the above – the maps are available to the public
11. Homeowner Lauren submits the following insurance claim to NFIP:  
 Electrical Repair \$5,000  
 HVAC System Repair \$3,000  
 Loss of Home Business Workspace \$2,000  
 Temporary Housing for 2 days \$500
- How much of the claim would NOT be covered by NFIP?
- \$500
  - \$2,000
  - \$2,500
  - \$8,000
12. Which of the following is the best definition of a client?
- A buyer or seller
  - The principal broker of a firm
  - A person who has entered into a brokerage relationship with a licensee
  - An internet lead looking to purchase a home
13. Which of the following is NOT a type of real estate agency allowed in Virginia
- Standard Agent
  - Limited Service Agent
  - Express Agent
  - Independent Contractor
14. Seller Sally tells her agent that she has mold in her basement and does not want to fix it. Her agent decides not to disclose this fact to the buyer because she knows the buyer is planning to renovate the basement in the future. Which of the following is true:
- The agent does not have to disclose the mold issue to the buyer since the buyer will remodel anyways
  - The agent should have disclosed the mold issue because it is a material fact about the property
  - The agent is allowed to disclose the mold issue to the buyer after they close on the property
  - The agent must pay for the buyers cost to test the mold
15. What is a limited service agent?
- An unlicensed assistant that helps a full service agent
  - All standard agents become a limited service agent after a transaction closes
  - An agent that has the same duties as standard agents, but the brokerage agreement eliminates some of the standard agent's duties
  - A standard agent that is only used for a single property
16. Agent Gary represents the seller. After an open house, a buyer calls him and says they want to put an offer in on the house and they want him to represent them. Which of the following best describes this relationship?
- Dual Agency
  - Designated Agency
  - Limited Service Agency
  - Express Agency
17. What information must be disclosed about dual agency?
- That the licensee cannot advise either party in any dispute that arises relating to the transaction
  - That the licensee can advise the buyer about the suitability of the property
  - That the licensee can advise the seller about what repairs to make
  - That the licensee can disclose information to both parties in order to facilitate the transaction
18. Seller Mark refuses to sign a dual agency agreement. Which of the following is Agent Karen allowed to do?
- Represent the buyer anyways on the transaction because dual agency does not require seller consent
  - Represent the buyer on the purchase of another house
  - Continue to represent the seller but refuse to present any offers besides the one for the buyer
  - None of the above

19. On July 1, 2015 Buyer Saul enters into a brokerage relationship with Agent Michael. The written brokerage agreement does not indicate a termination date. What is the default termination date of the agreement?
- July 15, 2015
  - September 29, 2015
  - December 31, 2015
  - July 1, 2016
20. Seller Bob wants to sell his house For Sale By Owner (FSBO). He does, however, want to hire an agent to enter a listing into the MLS only. Which of the following agent should he hire?
- Standard Agent
  - Limited Service Agent
  - Dual Agent
  - Designated Agent
21. Which of the following is NOT an element of a valid contract:
- Offer
  - Acceptance
  - Consideration
  - Earnest Money
22. Which of the following are defenses that could make a contract void or voidable?
- Incompetency
  - Fraud
  - Duress
  - All of the above
23. John signs a contract to sell his farm. He later claims the contract is void because he was someone forced him to enter into the contract. Which of the following defenses is he claiming?
- Incompetency
  - Fraud
  - Duress
  - Limited Mental Capacity
24. What are some common contingencies in a real estate contract?
- Home Inspection
  - Financing
  - Appraisal
  - All of the above
25. In a typical contract, what type of warranty deed must the seller deliver?
- Special Warranty Deed
  - General Warranty Deed
  - Specific Warranty Deed
  - Property Warranty Deed
26. Whose responsibility is it to cure title issues before settlement?
- The Seller
  - The Buyer
  - The Listing Agent
  - The Buyer Agent
- Please read the following case study and answer the following questions:
- Agent Sara hold and open house for her newest listing. The property is a luxury home built in 2010 with granite countertops and stainless steel appliances. During the open house, a Buyer Andrew looks at the property and says to Sara, "I want to put an offer on this property and I want you to represent me!" A few days later, a contract is ratified.
27. What should Agent Sara do immediately after the buyer indicates he wants her to represent him?
- Have the buyer and seller sign a dual agency disclosure
  - Have the buyer and seller sign a designated agency disclosure
  - Have the seller sign a dual agency disclosure
  - Write up the buyer's offer and present it to the seller immediately
28. What disclosures must be made to the buyer?
- Property disclosure only
  - Lead based paint disclosure only
  - Dual agency disclosure only
  - Property and dual agency disclosures
29. Buyer Andrew is worried about lead based paint in the home. What should Agent Sara do?
- Advise the buyer that lead based paint was banned in properties after 1978 but it is his choice to conduct a lead based paint test
  - Advise the buyer that it is very likely that there is lead based paint in the house and suggest he put an offer on another property
  - Advise the buyer that there is no reason to worry about lead based paint
  - Advise the buyer to contact the EPA to see if the house has lead based paint
30. Seller Allison enters into an Exclusive Agency Agreement with Agent Silvia to sell her home. Allison's nephew ends up buying the home directly from Allison. What happens to Agent Silvia's commission?
- No commission is due because Allison found the buyer herself
  - No commission is due because the buyer is the seller's relative
  - Allison must pay a commission to Silvia even if Allison found the buyer herself
  - Allison must pay a commission to Silvia because she procured the sale