



VIRGINIA REAL ESTATE BOARD

VREB *SPEAKING*

www.dpor.virginia.gov

Spring 2010

Message from the Chair



Byrl P. Taylor

It is my privilege to serve as the newly elected Chair of the Virginia Real Estate Board. I look forward to the challenges and opportunities of this position during these difficult economic times.

Carol Clarke provided exceptional leadership as Board Chair during the past two years, and I will work hard to ensure the Board continues its excellent work during my tenure.

I'm excited to work with Governor McDonnell, Secretary Cheng, new DPOR Director Gordon Dixon, and the Board to promote a business-friendly real estate environment, improve professionalism among the Board's licensees and protect the public from individuals and firms who fail to meet the Board's standards of practice.

Please feel free to contact the Board or me at 804-367-8526 or REBoard@dpor.virginia.gov with your ideas and suggestions on how we can best accomplish these objectives or to share any of your thoughts or concerns about real estate in Virginia.

I hope you enjoy and profit from the articles in this issue of *VREB Speaking*. Several new laws affecting real estate in Virginia were passed during the 2010 General Assembly and go into effect on July 1, 2010. You can read about these new laws on page 3.

Board member Florence Daniels addresses a variety of disclosure issues in an article on page 4.

Board regulations governing online advertising and social media in advertising are covered on page 5.

Several real estate public interest issues are addressed by Board citizen member Marjorie Clark in the article on pages 6-7. Board member Nate Brown contributed to this article.

The Board appreciates the great work accomplished by former DPOR Director Jay DeBoer, and we anticipate continued excellence with new DPOR Director Gordon Dixon.

The Board's Regulatory Review Committee next meets on Wednesday, May 19, at 10 a.m. in Richmond, and the meeting topic is "Brokers for Hire." If you have ideas on this subject for the Board's consideration, please attend this meeting.

Sincerely,

Byrl P. Taylor, Chair

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

Robert F. McDonnell
Governor

James S. Cheng
Secretary, Commerce & Trade

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2010 Meeting Dates

May 20, 2010
July 8, 2010
September 9, 2010
November 18, 2010

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

BOARD MEMBERS

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

Scott M. Gaeser, Vice Chair
Manakin-Sabot
Licensee Member
Four-year term ends on 6/30/10

Nathaniel Brown
Charlottesville
Citizen Member
Four-year term ends on 6/30/12

Judith L. Childress
Martinsville
Licensee Member
Four-year term ends on 6/30/12

Marjorie Clark
Richmond
Citizen Member
Four-year term ends on 6/30/10

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

Florence Daniels
Alexandria
Licensee Member
Four-year term ends on 6/30/10

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

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

DPOR Staff

Gordon Dixon, Director
Mark Courtney, Deputy Director
Licensing & Regulation Division
Nick Christner, Deputy Director
Compliance & Investigations Division
Steven Arthur, Deputy Director
Administration & Finance Division
Lizbeth Hayes, Director
Fair Housing Office
Trisha Henshaw, Executive Director
Common Interest Community Board



Real Estate Board Staff

Christine Martine
Executive Director
Kevin Hoeft
Education Administrator
Maryanne Woo
Licensing Supervisor
Emily Trent
Administrative Assistant

Board Contact Information

Executive Director - 804-367-8552
Licensing Section - 804-367-8526
Education Section - 804-367-2406
Fax Number - 804-527-4298
E-mail - REBoard@dpor.virginia.gov
Internet - www.dpor.virginia.gov
DPOR Main Number - 804-367-8500
Complaints Section - 804-367-8504
Common Interest Community Board- 804-367-8510

2010 General Assembly Update

New Laws Affecting the Virginia Real Estate Board

The 2010 General Assembly Session adjourned on March 14th after considering 2,135 bills and passing a balanced biennial budget closing a \$4.2 billion shortfall. Of the nearly 70 proposals tracked by DPOR's legislative team this year, several bills affected the Real Estate Board (the Board) and its licensees.



Below are descriptions of the Board-related bills enacted by the legislature and signed by Governor McDonnell. All go into effect on July 1, 2010. To view the full text of these new laws, visit the Legislative Information System online at <http://leg1.state.va.us> and search by the following bill numbers.

HB 963 and SB 457 are companion bills requested by the Virginia Association of Realtors®. This new law will change the requirements for license reciprocity for brokers and salespersons licensed in other states. Currently, applicants for a real estate license by reciprocity must meet the Board's education and experience requirements, but they do not have to pass the Virginia license examination to receive their license. They must, however, pass the Virginia license examination sometime within their first two-year license period to renew their license for a second two-year term. Under the new law, in addition to meeting the Board's education and experience requirements, out-of-state licensees must also pass the Virginia license examination before the Board will issue them a Virginia license.

In addition, these companion bills establish a voluntary compliance program to provide a level of immunity for brokers if their agents are not in compliance with the law or regulations. Under this new law, the Board must create a program to allow brokers to submit to an audit and, if found out of compliance, to develop a plan to remedy the noncompliance within 90 days. In order for the voluntary compliance plan to shield the broker from disciplinary action by the Board, the noncompliance must be incidental and not intentional or grossly negligent.

HB 667 requires the Board to amend the Residential Property Disclosure Statement to include language regarding wastewater systems and any associated maintenance responsibilities.

HB 792 and SB 474 are companion bills requested by Governor McDonnell as part of his job creation and economic development legislative agenda. Although not specific to the Real Estate Board, this new law grants all DPOR regulatory boards authority to issue temporary licenses and certifications. Eligibility for the non-renewable 45-day temporary license includes the applicant holding a comparable valid credential from another state and submitting a "permanent" application simultaneously.

Disclosure - A Quick Overview

By Florence Daniels, Board Member



The Real Estate Board Regulations impose a variety of mandatory statutory disclosures. Licensees should know how and when to use these disclosures. This brief overview addresses some points on the most widely used disclosures.

the *Residential Property Disclosure Statement* with the offer. This is incorrect. It is the responsibility of the seller to sign and provide this form. Submitting an offer without this document is considered an incomplete offer which could be placed behind a more complete offer.

Megan's Law

This disclosure is included in the *Virginia Residential Property Disclosure Statement*, and it states it is the purchaser's responsibility to determine whether there is pertinent information concerning registered sexual offenders related to the transaction. Use the separate Megan's Law Disclosure when a residential property disclosure statement is not required.

Disclosure of Brokerage Relationship

This disclosure must be given to those who are not represented by another broker. However, I find that some agents have all their clients sign this form and send it with an offer. You need not have your client sign this form if you are representing a buyer, seller, tenant or landlord. If this form is part of your contract packet, you should remove it if it is unnecessary.

Let's review when to use this disclosure. If you approach a FSBO (For Sale By Owner) who is not represented, you need to disclose that you are representing your buyer and not the FSBO. If you have a substantive discussion about a particular property with an unrepresented party, it's important that you disclose whom you represent. If you give a customer a tour of several communities without viewing any houses, you don't need to make this disclosure because you have not discussed a particular property.

Residential Property Disclosure Statement

This disclosure accompanies a listing agreement and is provided to the buyer for review and signature when an offer is tendered. Know when to use this form as not all offers require it. Become familiar with this disclosure's exemptions, which include transfers pursuant to court orders, foreclosure, bankruptcy and transfers between co-owners and spouses. It is important that the seller understand the purpose of this form. Don't forget to provide a copy of *Understanding Your Rights and Responsibilities under the Virginia Residential Disclosure Act*. Often the selling agent will send

HOA/Condominium Documents

You cannot waive your right to receive these documents which spell out the financial status of an association, whether it is a condominium or homeowners association. There may be something in the documents that might cause the purchaser to cancel the contract, such as special assessments, legal action against the association, or some other matter.

The contract dictates the delivery method of the HOA/Condominium documents. If the contract stipulates that the packet is to be delivered to John Doe at 123 Main Street, and the method is via email, those instructions should be carried out. Don't let the community association tell you they can't email the documents or they will charge the seller prior to settlement. Payment for such fees is collected at settlement. Remember what the law says!

CRESPA

The Consumer Real Estate Protection Act (CRESPA) gives the buyer the right to choose the settlement company. The seller or lender can't force the buyer to use their settlement company. Often we see in the remarks of a listing: "Seller designates XYZ Firm for settlement." The buyer has the authority to choose to use a settlement company other than one selected by the seller or lender. This must be the buyer's choice.

All licensees must know disclosure laws so that we can protect ourselves and our clients.

Real Estate Board Online Advertising Regulations

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

According to the National Association of Realtors®, more than 80 percent of buyers today use the Internet when looking for a home and most begin their home search online. This is why real estate licensee websites have become more detailed and sophisticated and why more licensees are using social media technologies, such as blogs, *Facebook*, and *Twitter* to reach buyers and their agents.

Virginia Real Estate Board (the Board) licensees who engage in online advertising, whether on their own website or a site like *Facebook* or *Craigslist*, must adhere strictly to the Board's online advertising regulations.

Advertising is a broad concept from the Board's perspective, covering everything from newspaper advertisements to, in some cases, emails. Board advertising regulations encompass *all* communication media although they require different disclosures for print and online advertising.

A firm's online ads must include: 1) the firm's name; 2) the city and state of its main office; and, 3) a list of all the jurisdictions where the firm is presently licensed - whether the license is active or inactive. That's it. No phone number, fax number, "Realtor" designation, or street address is necessary under the Board's regulations.

An individual licensee's online ads must include: 1) the licensee's name; 2) the licensee's firm name; 3) the city and state of the licensee's office - not necessarily the firm's main office; and, 4) a list of all the jurisdictions where the individual is licensed, whether the license is active or inactive.

The Board's requirement is simple for all non-online ads: *The firm's name must be clearly and legibly displayed.* No address, states of licensure, phone number or other information is required - just the firm name must be displayed.

A broad definition of advertising, combined with strict online advertising disclosure requirements, can create potential problem areas. For example, a licensee might use one email account primarily for communicating socially, or for general business correspondence, but may occasionally use it to market property or otherwise solicit business.

A licensee must include the required online disclosures when using an email account for marketing purposes - no matter how infrequently the account is used to advertise. In fact, the Virginia Association of Realtors® advises agents to include the required disclosures in a signature file or somewhere visible on the webpage if there is *any* chance that an email account or online technology, such as *Facebook*, *LinkedIn* or *Twitter* might be used to solicit business.

Board regulations also allow for providing this disclosure through a link on the viewable page that is one click away from the required disclosures.

It is important to remember that 18 VAC 135-20-190.C.3 of the Board's regulations requires online ads to be kept current:

Online listing information must be consistent with the property description and actual status of the listing. The licensee shall update in a timely manner material changes to the listing status authorized by the seller or property description when the licensee controls the online site.

The licensee shall make timely written requests for updates reflecting material changes to the listing status or property descriptions when a third party online listing service controls the website displaying the listing information.

All listing information shall indicate in a readily visible manner the date that the listing information shown was last updated.

Principal and supervising brokers are responsible for all firm advertising. They must review and approve the electronic advertising of licensees under their authority who blog or use other online technologies to market properties. Brokers should establish clear and precise policies dealing with online advertising and educate their agents on these policies.

The Board's Regulatory Review Committee is considering new regulations to deal with the challenges associated with advertising and social media, but it is likely that these new changes will not go into effect until sometime in 2011.



DISCIPLINARY ACTIONS



The Real Estate Board (the Board) licenses or certifies real estate salespersons, brokers, firms, proprietary schools and pre-license instructors. If a complaint is filed against a licensee who is subject to the laws and regulations of the Board, the complaint is reviewed by the Compliance and Investigations Division (CID) of DPOR to determine if a violation of these laws or regulations may have occurred. If there is probable cause of a violation, an investigation is initiated. If the investigation reveals that one or more violations may have occurred, the licensee receives notice to appear at an informal fact-finding conference (IFF) to address these alleged violations.

In some cases the licensee may be offered a pre-IFF Consent Order. A Consent Order is an agreement between the licensee and the Board consisting of specific violations and sanctions. Pre-IFF Consent Orders eliminate the time and expense associated with conducting an IFF.

If an IFF is held, a recommendation from the IFF hearing officer consisting of proposed violations and sanctions is submitted to the Board for consideration at its next meeting. The Board can take the following disciplinary actions against a licensee: assess a monetary penalty; suspend or revoke a license; place an individual on probation; require additional education; or deny renewal. A licensee can continue to practice throughout the disciplinary process until the Board either revokes or suspends his license.

THE FOLLOWING DISCIPLINARY ACTIONS RENDERED BY THE BOARD AT ITS March 2010 MEETING CAN BE VIEWED AT: www.dpor.virginia.gov. Click on "License Lookup." Then click on "Search Disciplinary Actions Occurring since April 1, 2002." Then enter the Case Number in the blank "Search" box. Then click on the "Search" button. Then click on the highlighted "File Number." The Order and Report of Findings for that case will appear.

<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2009-02500	Wilburn M. Blount Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$4150, 6 hours Continuing Education
2010-00704	George J. Fleck, Jr. Richmond, VA	18 VAC 135-20-260 - Unworthiness & Incompetence §54.1-2135.A.2 - Failure to Account for in a Timely Manner all Money and Property Received for the Owner in Managing Real Estate Fined \$2000, \$150 Board Costs, License Revocation
2010-00834	Constance R. Walton Bowie, MD	18 VAC 135-20-260 - Unworthiness & Incompetence Three-year License Probation with Quarterly Reporting, 4 hours Continuing Education
2010-01885	Ramsey L. Hamilton Annandale, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, 4 hours Continuing Education
2010-00884	Evody S. Routier Springfield, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$1650, \$150 Board Costs, 8 hours Continuing Education, Quarterly Reporting
2010-00426	Mozellar Hetherington Fairfax Station, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts Fined \$500, \$150 Board Costs, 4 hours Continuing Education
2009-04351	Helennah H. Park Dumfries, VA	18 VAC 135-20-210 - Failure to Disclose Interest 18 VAC 135-20-310 - Delivery of Instruments License Revocation
2010-00643	Mark D. WorriLOW Manassas, VA	18 VAC 135-20-185 - Maintenance/Management Financial Records Fined \$500, \$150 Board Costs, 4 hours Continuing Education

A Citizen's Perspective on Real Estate Board Service By Marjorie Clark with Nate Brown, Board Members

My guess is that Virginia Real Estate Board (the Board) licensees don't watch *House Hunters* on HGTV as much as those of us who are not licensed. The home buyers or renters on *House Hunters* visit three properties, debate the pros and cons of each,



make their choice, and close the deal – all within thirty minutes! The agents listen carefully to what the clients want, weed out possibilities and make it all work with no glitches – a perfect example of the public perception of an “ideal real estate transaction.”

When I attended my first Board meeting in 2002 as a “Citizen Member,” my experience with real estate was limited to one rental and two home purchases that my husband and I had made, managing our first home as a rental property, and looking at a variety of properties with my three adult children. In every case, except for managing our first home as a rental home, we relied on the expertise of the real estate professionals but gave no thought to the foundation of licensing, standards, and regulation that underpin the business.

In fact, I had never even seen a copy of the *Real Estate Board Regulations* or *Code of Virginia* statutes governing real estate licensure and standards of conduct when I showed up for my first meeting as a citizen member of the Board. So, as you can imagine, it was an eye-opening experience to be appointed by the governor to a regulatory board and to have authority, as one member of the Board, to make decisions concerning real estate applications, complaints and public policy. This was completely different from any of my previous experiences with real estate.

At my first meeting I learned this is not a Board where members just show up and discuss the items on the agenda. The Board consists of nine members appointed by the Governor. Seven members are brokers or salespersons who have been licensed for at least five years, and the other two members are

citizen members. Each Board meeting agenda consists of somewhere between 2000 and 5000 pages of documentation, which is placed on a CD and mailed to each Board member two weeks before the meeting date. The Board's primary duties are two-fold: 1) review individual real estate salesperson and broker license applications, and 2) consider complaints that had been filed against Board licensees to determine whether the licensees had violated one or more Board laws or regulations.

Each application and complaint file can include anywhere from 20 to 300 or more pages of technical documents, including contracts, financial records, court records, hearing transcripts, database records, investigative reports, letters and many other types of documents. Board members are required to read each file closely before the meeting so they can make the right decision at the meeting to approve or deny a license application or to determine whether a licensee violated the Board's standards of conduct.

As a citizen member with little or no real estate background, there was a huge learning curve in becoming familiar with the Board's laws and regulations as they apply to each case. A correct decision can hinge on pinpointing just one or two minute details in a contract - missing initials or signatures, crossed out words or numbers, mismatched documents – and these key details are sometimes about as visible as a needle in a haystack among the pages and pages of each case's documents.

My respect for the real estate professionals who serve on the Board has grown tremendously during the past eight years as I have witnessed their hard work and dedication to maintain the integrity of the real estate profession. These members use their significant experience and expertise in leading the Board to determine whether new license applicants meet the Board's standards for licensure and whether current licensees may have violated the Board's standards of conduct.

Although it takes a great deal of time and effort for citizen Board members to understand their responsibilities and the intricacies of the real estate profession, citizen Board members' service is vitally important for the following reasons.

First, citizen members remind real estate professionals of the tremendous role they play in our **(Article continued on page 8)**

A Citizen's Perspective on Real Estate Board Service (Article continued from page 7)

lives and communities. Purchasing a home is a major life decision that usually greatly affects the buyer's quality of life and future in the areas of personal finance, friends and neighbors, economic opportunity, schools, places of worship, libraries and community organizations. Home buyers and sellers need knowledgeable, dependable, competent and caring real estate licensees to guide them through this crucial decision. Many real estate professionals believe they have been called to their vocation, and they are on a mission to benefit their clients, communities and even the world.

Second, citizen members remind the Board of significant matters that especially affect the public. Home buyers are often plagued by anxiety associated with purchasing a new home, such as affordability, job security, and whether they could have made a better deal. Sometimes this natural anxiety is compounded by the improper actions of a careless or dishonest licensee which can jeopardize the buyer, such as mismanagement of escrow funds, failure to disclose dual representation, and poorly written contracts or addenda. These types of violations betray the public trust, and I have worked hard to ensure that appropriate disciplinary action is taken against licensees who engage in such behavior.

Third, it has been a privilege for me to serve on the Board's Fair Housing Committee, and I have studied closely each Fair Housing case that has come before the Board. The health of our Commonwealth and communities is only as strong as the most vulnerable among us. Fair housing laws have established legally protected classes to prevent housing discrimination and to ensure fairness and inclusion for all.

Fourth, citizen Board members bring an "outside the profession" perspective and insight that is helpful when evaluating license applicants with criminal convictions or lacking experience or when considering taking disciplinary action against licensees. I sometimes ask myself while reviewing cases before the Board, "Does this individual have the character, competence and qualifications to show a house, write a contract and finalize a reliable transaction for the first home purchase that one of my children might make?"

In conclusion, citizen Board members -- within the context of the Board's laws and regulations -- ought to represent the best interests of the public in real estate transactions. I still watch *House Hunters*, but now with a greater dose of real world real estate reality. "House hunters" depend on their agents, and it is vital that these agents are qualified, competent and trustworthy. Things can go terribly wrong in any real estate transaction, and the Board exists to protect the public from undue harm. I am impressed by the dedication and quality of Board members and of the majority of Virginia's real estate professionals to ensure that our future has only happy "house hunting."

Fair Housing



The Fair Housing Board administers and enforces the Virginia Fair Housing Law, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees. Each board investigates housing discrimination through the Virginia Fair Housing Office at the Department of Professional and Occupational Regulation. All fair housing cases must attempt conciliation – an alternative dispute resolution approach using informal negotiation. Successful conciliation agreements are public unless both parties request and agree to a confidentiality clause. If conciliation is unsuccessful in resolving the complaint, the Board determines if reasonable cause exists to support a charge of discrimination. In cases where the Board determines reasonable cause and issues a charge of discrimination, the Attorney General's Office brings civil suit in circuit court seeking relief for the complainant. The following case is the fair housing action rendered by the Real Estate Board at its March 2010 meeting:

Action
Settlement Agreement

Case Number
2008-03947

Case Name
Sandra Tabb v. Steven Rowe