

Agency Law

Virginia Salesperson PLE Series

MODULE 1

Creation of Agency Relationships

Learning Objective:

- Understand VA agency law and how agency relationships are formed.

BACKGROUND

An agency relationship is a contract and must contain the same essential elements as any other valid contract. An agency relationship is created when one person (the principal or client) delegates to another (the agent) the right to act on his behalf in a transaction. This usually occurs in a listing agreement.

In the real estate context, an agency relationship is referred to as a brokerage relationship. This is true because the parties to a listing agreement (or other form of representation) are the broker and the client—not the salesperson. However, the broker may and often does delegate her agency authority to a salesperson. The salesperson then becomes a subagent.

FORMATION

Most agency relationships in the context of real estate are created by:

- express agreement
- implied agreement
- ratification
- estoppel
- custom

Express Agreement

An agency relationship may be created by express agreement. Parties may expressly agree to an agency relationship by clearly stating so orally, or in a contract or other writing. Although listing agreements, which create an agency relationship by express agreement, may be oral, a written listing signed by both parties is preferable.

Implied Agreement (Ostensible)

Agency relationships may also be created by actions or statements of the parties, short of an express agreement. If two people act as if an agency relationship exists, then the chances are that a court will rule the relationship does exist if called upon to do so, even without a formal written agreement.

***For Example:** Lindsey the Broker meets Sal the Buyer at an open house. As Sal is leaving, apparently uninterested in the property, Lindsey tells Sal: “There is a place for sale down the street that is exactly what you are looking for. Meet me there at 3:00 and I will give you a tour.” If Lindsey is the listing agent for both properties, she risks creating an undisclosed dual agency with Sal by implying that she will represent his interests.*

Ratification

Agency relationships may arise by ratification. To ratify means to approve, sanction, or validate. By ratification, a principal may create an agency relationship where an agent performs for the principal without the principal's consent, but the principal subsequently approves or ratifies the agent's conduct.

For Example: A broker performs a service for a buyer. It is an unauthorized service, but the buyer does not discourage the broker and later shows approval. This buyer may owe the broker a commission, as a court could decide that an agency relationship was established by ratification.

Estoppel

Agency relationships may also be established by estoppel. Judges apply estoppel on a case by case basis, which makes it difficult to predict. Once applied, however, estoppel prevents (or stops) one from asserting there was no agency relationship. Estoppel often involves misleading conduct, or conduct that would otherwise lead one to reasonably rely on a given set of assumptions.

For Example: A does something (or says something) that leads B to believe that C is A's agent, working on A's behalf. If B relies on this information, then A creates an ostensible agency (one that appears to exist), and may become liable for the acts of his agent, C. That is, A may be estopped (prevented) from later trying to deny the agency relationship he created by virtue of his actions.

Custom

Unless there is an express agreement that an agent works for a buyer, it is assumed that the agent works for the seller.

PROGRESS CHECK 1

1. In the real estate context, an agency relationship is referred to as a brokerage relationship because:
 - A. "Agency agreement" is too broad, there are too many businesses referred to as "agency"
 - B. The broker's name has to be on all advertising
 - C. A brokerage firm is providing the services
 - D. The parties to a listing/representation agreement are the broker and client

2. _____ is imposed by a judge and prevents a person from asserting that an agency relationship does/did not exist.
 - A. Expression
 - B. Estoppel
 - C. Ratification
 - D. Ostensible judgment

3. When a broker delegates real estate duties to a salesperson the salesperson becomes:
 - A. An independent contractor
 - B. A universal agent
 - C. A subagent
 - D. A dual agent

4. Typically, an agency relationship is created when:
 - A. The first time a licensee and interested party discuss real estate
 - B. A listing agreement is signed
 - C. A broker assigns a client to a salesperson
 - D. An agent verbally agrees to help a seller sell or help a buyer buy

MODULE 2

Scope of Agency Representation

Learning Objective:

- Know the different types of real estate agency relationships

BACKGROUND

Agency relationships can involve more than one client and more than one agent. These variations are discussed up next.

Single Agency

In a single agency, the licensee represents only one party in a transaction—either the buyer or the seller, but not both. The party that the agent represents is called the client and the other party to the transaction is called the customer.

Dual Agency

A real estate broker who represents both the buyer and the seller in the same real estate transaction is a dual agent. As a dual agent, the broker and agent owe agency duties to both parties. It is difficult to carry out these duties because the buyer and seller have opposing interests and are in competition with one another. Most states require a written and informed consent from both parties before one may engage in a dual agency relationship. Even after disclosure, the agent must not favor either party over the other. Escrow agents are examples of dual agents, as they hold money for the benefit of multiple parties.

Dual Agency - Problems

Problems arise when a broker unintentionally creates an implied dual agency by careless words or actions and without the proper disclosures. If a broker acts as a dual agent in fact, but fails to formally disclose that he is a dual agent to all parties, he risks losing his commission and/or jeopardizing the entire transaction (not to mention his license). If either the buyer or the seller can prove that a broker acted improperly as an undisclosed dual agent, they may rescind the contract.

Problems may arise more easily than you realize. A buyer can easily assume that a seller's agent, so focused on their needs, is working for him. However, the seller's agent actually works for the seller, trying to secure the highest possible price from the buyer. The seller's agent who does not inform the buyer in writing that he works for the seller, risks creating an unintended dual agency.

Conversely, if a broker wants to represent the buyer, he must inform the seller and the seller's broker that he is not a cooperating broker and is working instead for the best interests of the buyer.

Designated Agency

In a designated agency relationship, the broker represents both parties in a real estate transaction. However, the broker appoints one salesperson to represent Client A and another salesperson to represent Client B. Each designated agent acts as a single agent of the assigned client, while both agents work for the same broker who is acting as a dual agent. In this way, designated agency is closely associated with dual agency. Like dual agency, designated agency relationships must be properly disclosed to all parties.

PROGRESS CHECK 2

1. How many real estate licensees are involved in a designated agency situation?
 - A. One
 - B. Two
 - C. Three
 - D. Four

2. Broker Heidi owns Top Shelf Realty and Salesperson Kwang works for Heidi. Salesperson Kwang signed a listing agreement with Ward two weeks ago. Ward just signed and accepted an offer from Mercedes. Ned called into Top Shelf Realty to ask if they had an agent who specialized in commercial real estate. Who is the customer?
 - A. Mercedes
 - B. Ward
 - C. Kwang
 - D. Ned

3. If a broker does not properly disclose a dual agency or potential dual agency they risk:
 - A. Their commission
 - B. Their license
 - C. The entire sale
 - D. All of the above

4. Which is an example of a dual agent?
- A. A broker who has a primary office and a branch office
 - B. A salesperson who holds a license in VA and another state
 - C. An escrow agent
 - D. None of the above

MODULE 3

Scope of Agency Authority

Learning Objective:

- Explain the differences between the various types of real estate agents.

BACKGROUND

The prior discussion focused on whether an agency relationship involves multiple clients or agents. Now, we will examine the extent of an agent's authority, regardless of the agency relationship involved. The client may authorize the agent to have broad or limited authority to act on her behalf. The range of this authority is defined by the parties and includes four major types of agents:

- special agents
- general agents
- universal agents
- subagents

Special Agent

A special agent is only authorized to perform a particular act or transaction. In most brokerage transactions, the broker is a special agent. This limits the broker to certain activities specified in the listing agreement. For example, if the seller is the client, the broker can only offer the property for sale, but cannot actually sell it. A special agent does not have any general area of authority, but only authority to carry out one specific act.

General Agent

Unlike a special agent, a general agent is authorized to perform any and all acts associated with a specific service. For example, a property manager authorized by an owner to manage a real estate project on a continuing basis is the general agent of the owner. As such, he is authorized to perform many different types of acts on behalf of the owner in order to carry out his management function. Likewise, a licensed salesperson is the general agent of his employing broker, which authorizes him to perform many different acts necessary to effectuate the sale of real estate.

Universal Agent

A universal agent is authorized to perform a variety of acts necessary to effectuate a variety of transactions. This is a much broader grant of authority than both the special (authorized to complete a specific act) and general agent (authorized to complete any and all acts necessary for a specific transaction). An unlimited power of attorney is an example of this type of agency. Courts do not view these arrangements favorably because they are so broad in scope.

Subagent

A subagent is the agent of an agent. Agents may appoint subagents where the client expressly authorizes or where the law otherwise permits. The subagent may then perform tasks for the primary agent's clients. A subagent, lawfully appointed by a listing broker, must represent the client (the seller) in the same manner as the primary agent (in this case, the listing broker). Because an agency relationship exists between the broker (agent) and the seller (client), both parties have duties to one another.

PROGRESS CHECK 3

1. In most real estate transactions the broker acts as a:
 - A. General agent
 - B. Special agent
 - C. Dual agent
 - D. Universal agent

2. An unlimited power of attorney is an example of a _____ agency.
 - A. General
 - B. Special
 - C. Designated
 - D. Universal

3. An example of a general agent is:
 - A. A property manager
 - B. An escrow agent
 - C. A trustee
 - D. A settlement agent

4. All of the below are types of real estate agents, EXCEPT:
 - A. Subagent
 - B. Dual agent
 - C. Special agent
 - D. General agent

MODULE 4

Terminating Agency Relationships

Learning Objective:

- Identify how VA brokerage relationships begin and are terminated.

BACKGROUND

Because agency representation is a personal service employment contract it may be terminated by either party at any time (courts will not enslave someone to perform). However, if the agency is terminated without agreement, and before the stated expiration date, one party may be in breach of the agency contract. The following acts of the parties and operations of law can terminate an agency agreement, which may or may not result in a breach.

TERMINATION

Act of Parties

- Mutual consent: results in no breach;
- Completion of the objective of employment: results in no breach;
- Renunciation or abandonment by the agent: may result in a breach; or
- Revocation by the client: may result in a breach

Operation of Law

- Mental incompetence of either party: results in no breach;
- Death of either party: results in no breach. However, the death of the salesperson will not terminate the agency agreement because it is with her broker;
- Destruction or disposition of the subject of employment: results in no breach;
- Bankruptcy of either party: may result in a breach; or
- Expiration of time: results in no breach.

PROGRESS CHECK 4

1. Because real estate agency representation is a personal service agreement:
 - A. It survives the death of either party
 - B. Is is enforceable in a court of law
 - C. Either party is allowed to terminate the agreement at any time
 - D. Both A and C
2. All of the following are agency termination reasons due to operation of law, EXCEPT:
 - A. Death of either party
 - B. Bankruptcy of either party
 - C. Expiration of time
 - D. Completion of objective

3. Which of the following reasons for termination of agency would result in a breach of contract?
- A. Mental incompetence
 - B. Mutual consent
 - C. Revocation by the client
 - D. Destruction of the subject property
4. Which of the following will not terminate an agency relationship?
- A. Mental incompetence
 - B. Abandonment by the broker
 - C. Expiration of time
 - D. The death of the salesperson

MODULE 5

Listing Agreements

Learning Objective:

- Differentiate between the multiple types of listing agreements

BACKGROUND

Listing Agreements embody the agreement between the seller and the broker, and establish who may be compensated for arranging the sale of property. The primary listing agreements are presented below:

- Open Listing Contract
- Exclusive Listing Contract
- Exclusive Right to Sell Listing
- Net Listing Contract

OPEN LISTING CONTRACT

An open listing contract is a listing agreement between the seller and any number of brokers. Under an open listing contract, the owner is only obligated to pay a commission to a broker if she successfully sells the property, or if she is the procuring cause of the sale. Alternatively, the owner may sell the property herself and owe no commission to any broker.

The open listing contract may be oral or written, but it is unilateral (obligating only one party—the broker—to act), executory (will not arise unless or until a particular broker produces a buyer), and may have an indefinite expiration date. However, many state laws will impose an expiration date if one is not explicitly stated.

EXCLUSIVE LISTING CONTRACT

An exclusive listing contract (also known as exclusive agency) is a written listing agreement with a single broker (the exclusive agent). Under an exclusive listing contract, the seller agrees to pay the exclusive agent a commission if he or she sells the property. However, similar to the open listing contract, the owner may sell the property himself and not be obligated to pay a commission to the broker.

Unlike open listing contracts, exclusive listing contracts must be written, are bilateral (obligating both parties), for a personal service (it cannot be assigned), and must have a definite expiration date. Exclusive listing contracts are also executory (will not arise unless or until a particular broker produces a buyer).

EXCLUSIVE RIGHT TO SELL CONTRACT

An exclusive right-to-sell contract extends the greatest benefit to the broker. This is so because the seller/ client agrees to list the property with a single broker (exclusive agent), and also agrees to pay that broker his commission regardless of who sells the property (another broker or even the seller him or herself). Exclusive right-to-sell contracts must be written, are bilateral, executory, for a personal service, and must have a definite expiration date.

NET LISTING CONTRACT

A net listing contract is a listing agreement whereby the seller/client agrees to receive a set amount of money for the sale of his house. The broker is free to sell the house for as much as he can get and keep all monies above the owner's set amount. Net listing contracts are illegal in most states, including Virginia. Net listings include net sales agreements as well as net lease agreements.

For Example: An owner tells his real estate agent that he wants \$600 a month for the rental of an apartment he owns. He agrees to let the licensee rent it for whatever he can get, with the licensee taking everything over \$600 as his commission.

TERMINATION OF LISTING AGREEMENTS

In addition to full performance, there are a variety of reasons to terminate a listing agreement, including:

Abandonment by the Broker

The seller may terminate the listing agreement where the broker has failed to take any steps to market the property;

Breach by One Party

A breach by one party gives the other party the right to terminate;

Lapse of Time

The listing agreement terminates automatically where the time specified in the listing agreement has lapsed;

Mutual Agreement

The parties are always free to modify a contract, including its termination, where they both agree;

Revocation

Either the broker or the client can revoke the contract. However, either party may be liable to the other for damages, if any;

Death, Insanity, or Bankruptcy

If either the client or the agent suffers from insanity, dies, or enters bankruptcy, the contract may be terminated;

Change of Ownership

Ownership may change through foreclosure or the exercise of eminent domain. Where this happens, the broker may terminate the listing agreement;

Destruction of the Subject of the Agreement

The listing agreement terminates where the subject of the agency agreement is destroyed because it becomes impossible to perform.

PROGRESS CHECK 5

1. Which of the following is NOT true regarding exclusive right-to-sell listing agreements?
 - A. They are bilateral
 - B. They may be oral or written
 - C. They must have a definite expiration date
 - D. They are a personal service agreement

2. Net listings are _____ in Virginia.
- A. Uncommon
 - B. Legal
 - C. Prominent
 - D. Illegal
3. Which of the following is true about open listing agreements?
- A. They are bilateral
 - B. They must be written
 - C. They can be for an indefinite time period
 - D. They are between the client and one broker
4. Which listing agreement offers the least benefit to a broker?
- A. Net
 - B. Exclusive agency
 - C. Open
 - D. Exclusive right-to-sell

MODULE 6

Virginia Agents

Learning Objective:

- Identify specific VA agency disclosures that must be made to various parties

BACKGROUND

Virginia replaced the common law of agency with legislation that governs agency relationships in Virginia. The principal broker is responsible for ensuring compliance with Virginia agency obligations, which includes keeping records of specified agency disclosures and following various duties owed to clients and customers. However, both the principal broker and any salesperson or associate broker may be disciplined for violating Virginia Agency Law.

A Virginia agency relationship begins when a client “engages” a licensee. An agency terminates when the parties complete the objectives of the representation, or mutually agree to terminate the relationship. The relationship may also terminate where a party defaults or the client refuses to consent to a disclosed dual representation. Virginia licensees may provide brokerage services as a Standard Agent, an Independent Contractor, or a Limited Service Agent.

WHO IS A STANDARD AGENT IN VIRGINIA?

According to Virginia Law, a Standard Agent is a licensee who acts for or represents a client in an agency relationship. A standard agent is subject to all the agency duties and disclosures imposed by the Virginia License Law and regulations, as well as any additional duties that the licensee and client agree to in the brokerage agreement.

WHO IS AN INDEPENDENT CONTRACTOR IN VIRGINIA?

According to Virginia Law, licensees may act as independent contractors (non-agent) if so stated in the brokerage agreement. A licensee acting as an independent contractor is not subject to the fiduciary duties identified in the License Law, but is subject to other agency and non-agency disclosures and limitations on the brokerage relationship. Like the standard agent, an independent contractor is also subject to any additional duties the licensee and client agree to in the brokerage agreement.

WHO IS A LIMITED SERVICE AGENT IN VIRGINIA?

According to Virginia Law, a limited service agent is a licensee who acts for or represents a client with respect to real property containing from one to four residential units, pursuant to a brokerage agreement that provides that the limited service agent will not provide one or more of the duties required of standard agents.

A limited service agent is limited to the obligations identified in the brokerage agreement and must provide the client, at the time of

entering the brokerage agreement, copies of any and all disclosures required by federal, state, or local law.

Limited Service Agency - Establishing Minimum Level of Service

Brokers may only establish a limited service agency with clients by so stating in the brokerage agreement, and obtaining the client's written consent. The limited service agent must disclose the following in the brokerage agreement:

- That the licensee is acting as a limited service agent
- A list of the specific services that the licensee will provide to the client
- A list of the specific duties required of a standard agent that the limited service agent will NOT provide to the client.

These initial disclosures must be conspicuous and printed either in bold lettering or all capitals, and must be underlined or in a separate box. The Virginia Legislature suggests the following language to include with these initial disclosures:

"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."

PROGRESS CHECK 6

1. A Virginia agency relationship begins when:
 - A. When the client and agent sign a listing or brokerage agreement
 - B. When property is listed or shown
 - C. When the agent provides real estate advice for the first time
 - D. When a client “engages” a licensee

2. A limited service agent must disclose which of the following in the brokerage agreement?
 - A. Duties they will and will not perform
 - B. Their license number and how long they have been licensed
 - C. Whether they work as an independent contractor or an employee
 - D. Whether they will work in a dual agency relationship or not

3. Which of the following is not subject to the fiduciary duties identified within License Law?
 - A. A licensee working in employee status
 - B. A licensee working as a Subagent
 - C. A licensee working as an independent contractor
 - D. A licensee working as a universal agent

4. A licensee must provide a disclosure to their client within the brokerage agreement when the licensee is acting as a(n)?
 - A. Independent contractor
 - B. Subagent
 - C. Limited agent
 - D. Universal agent

MODULE 7

Mandated Disclosures

BACKGROUND

Virginia Law requires that limited service agents, along with standard agents and independent contractors, make certain disclosures to clients and customers regarding the relationship with clients and customers, and other matters. These disclosures include:

- The client with whom the licensee has a brokerage relationship.
- That a licensee desires a dual or designated agency relationship.
- That a licensee has an interest in the transaction
- The rights and obligations of the client under the Virginia Residential Property Disclosure Act
- If the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the condominium resale certificate; and
- If the client is selling a property subject to the Property Owners' Association Act, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet.

DISCLOSURE OF BROKERAGE RELATIONSHIP

Licensees must disclose who they represent to specified parties. Brokerage relationship disclosures may be given in combination with other disclosures or provided with other information, such as in a lease. If provided with other information, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. The timing, substance, and triggers of brokerage relationship disclosures are presented below.

Before creating an agency relationship, licensees must disclose the type of agency proposed, the method of compensation, and whether a broker will share compensation with another broker who represents another party in the same transaction.

A licensee must also disclose any brokerage relationship that the licensee has with another party to the transaction to a prospective customer (buyer, seller, landlord, or tenant). Only discussions that are “substantive conversations about a specific property” trigger disclosure to the non-client/customer. Furthermore, only non-clients (buyers, sellers, landlords, tenants) that are not represented by another licensee trigger the disclosure.

Disclosures may be oral when triggered (qualified discussion with a non-client), and must be written before “specific real estate assistance” (if any) is provided. If specific real estate assistance is provided, then the disclosure may be made in a standard format described in VA law or along with other disclosures, as long as it is conspicuous (bold font, all capitals, underlined, or in a box). However, this disclosure does not apply to lessors or lessees in single or multi-family residential units for terms of less than two (2) months.

If a licensee's relationship with a client or customer changes after the initial written disclosures described above, the licensee must disclose such material changes in writing to all clients and customers already involved in the transaction.

DISCLOSURE OF DUAL AGENCY/DUAL REPRESENTATION

Dual agency and dual representation are legal in Virginia, so long as it is properly disclosed to all parties in writing. Dual agency describes the situation where the same licensee has an agency relationship with both the buyer and the seller in a single transaction. Dual representation describes the situation where the same licensee is acting as an independent contractor for both the buyer and the seller in a single transaction. However, licensees must be careful that their words and actions do not mislead a customer into believing he is being represented by the licensee. Otherwise, a licensee could inadvertently create a dual agency without proper disclosure.

Disclosure must indicate that unless otherwise required by law, the licensee cannot reveal any personal or financial information received from one party during the brokerage relationship to the other party (client need not request secrecy), and that the licensee cannot reveal any other information that a party requests to remain confidential during the brokerage relationship (client must request secrecy). Disclosure must be written and may be presented in a standard format described by VA Law, but may not be included in a purchase agreement, lease, or any other document related to the transaction. Written consent and disclosure may also count as a disclosure of brokerage relationship.

Clients must consent to dual agency/representation and acknowledge disclosure by their signatures. Licensees may terminate an existing agency or non-agency relationship (without liability) if the client refuses to consent to dual agency/representation. A licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual agency/ representation. The licensee's withdrawal would terminate the brokerage relationship with the client, but would not prevent the licensee from continuing to represent the other client in the transaction, or limit the licensee from representing the client in other transactions.

Two Virginia licensees working for the same principal or broker may represent different clients in the same transaction. This arrangement is referred to as designated agency/representation. Similar to dual agency/representation, a designated agent is acting under an agency relationship, while a designated representative may only act as an independent contractor. Such arrangements require a written disclosure to the parties.

The disclosure must indicate that a designated agent/representative may not represent more than one client in a particular real estate transaction. Further, a designated agent/ representative may not disclose personal, financial, or confidential information received from the client during the brokerage relationship to anyone other than his supervising broker, unless otherwise provided for by law or the client consents in writing.

The broker who is supervising licensees in designated representation is also a dual agent or representative. Dual agents/representatives

must remain neutral, and must maintain the confidences of all clients to the transaction.

Licensees may make designated agency/representation disclosures in combination with other disclosures or provided with other information. If the designated agency/representation disclosure is provided with other information, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box.

Licensees may terminate an existing agency or non-agency relationship (without liability) if the client refuses to consent to a disclosed designated agency/representation. The licensee's withdrawal would terminate the brokerage relationship with the client, but would not prevent the licensee from representing the other client in the transaction, or limit the licensee from representing the client in other transactions.

DISCLOSURE OF LICENSEE'S INTEREST

Even if there is no advertisement, licensees who are interested parties to a real estate transaction must disclose (in writing) the fact that they are licensed real estate professionals to the other party to the transaction. Virginia imposes this requirement to prevent licensees from unfairly taking advantage of a less sophisticated buyer, seller, or lessor. Situations where a licensee is an interested party include, but are not limited to the following.

Same Transaction

A licensee is an interested party that must make disclosure where the licensee is a party to a real estate transaction.

Attempting to Acquire Property

A licensee is an interested party that must make disclosure when the licensee is acquiring or attempting to acquire property by lease or purchase

Assisting Family

A licensee is an interested party that must make disclosure where the licensee is assisting any family member to purchase or lease property.

Business Interest

A licensee is an interested party that must make disclosure where the licensee's firm or business is attempting to purchase or lease property.

MLS AGENCY DISCLOSURE

MLS providers may require disclosure of the nature of the agency representation as follows:

No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord or other licensee solely by reason of using a common source information company.

However, nothing contained in this article shall be construed to prevent a common source information company from requiring, as a condition of participation in or use of such common source information, that licensees providing information through such company disclose the nature of the brokerage relationship with the client, including, but not limited to, whether the licensee is acting as (i) an independent contractor, (ii) a limited service agent, or (iii) a standard agent as provided in the brokerage agreement.

A common source information company may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt rules providing that absent any disclosure, a licensee providing information through such company may be assumed to be acting as a standard agent.

A common source information company shall have the right, but not the obligation, to make information about the nature of brokerage relationships available to its participants and to settlement service it provides including, without limitation, title insurance companies, lenders, and settlement agents.

PROGRESS CHECK 7

1. Before creating an agency relationship, licensees must disclose all of the following, EXCEPT:
 - A. The standards and rules they have to abide by as a licensee
 - B. Whether the broker will share any compensation
 - C. Method of compensation
 - D. Type of agency proposed
2. Only conversations that include substantive discussion about a specific property require disclosures to:
 - A. Buyer clients
 - B. Customers
 - C. Seller clients
 - D. No one, these conversations aren't triggers for disclosures

3. Which of the following is NOT true about designated agency?
- A. Designated agents must be independent contractors
 - B. Two agents within one brokerage represent the buyer and seller in one real estate transaction
 - C. Brokers do not need to obtain consent in order to appoint designated agents
 - D. The broker supervising the designated agents is a dual agent
4. When licensees have a personal interest in real estate or a real estate transaction they must:
- A. Lower their commission rate
 - B. Get the broker's approval to proceed with the transaction
 - C. Keep records of the transaction for at least 10 years
 - D. Disclose their license status to all parties involved

MODULE 8

Standard Agent's Duties to Clients and Customers

Learning Objectives:

- Understand the licensee's VA agency duties to customers and clients
- Be familiar with a licensee's VA agency duties to tenants

BACKGROUND

Virginia Law imposes specific obligations and duties on all standard agents with regard to: sellers, landlords, and tenants that standard agents represent in the sale or rental of property (seller clients and landlord/ tenant clients); prospective buyers of property listed with a standard agent that the standard agent does not represent (buyer customer); and buyers that standard agents do represent in the location and purchase of property (buyer clients).

STANDARD AGENT'S DUTIES TO SELLER CLIENTS

Virginia Law imposes specific obligations and duties on all standard agents who represent seller clients. These more specific tasks are not required of Limited Service Agents or Independent Contractors, unless the parties agree otherwise in the listing agreement.

A. Perform in accordance with the terms of the brokerage agreement

B. Promote the interests of the seller by:

1. Conducting marketing activities on behalf of the seller in accordance with the brokerage agreement. In so doing, the licensee shall seek a sale at the price and terms agreed upon in the brokerage agreement or at a price and terms acceptable to the seller; however, the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless agreed to as part of the brokerage agreement or as the contract of sale so provides;
2. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract and in establishing strategies for accomplishing the seller's objectives;
3. Receiving and presenting, in a timely manner, written offers and counteroffers to and from the seller and purchasers, even when the property is already subject to a contract of sale; and
4. Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to facilitate settlement of the purchase contract.

C. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the seller consents in writing to the release of such information;

- D. Exercise ordinary care;
- E. Account in a timely manner for all money and property received by the licensee in which the seller has or may have an interest;
- F. Disclose to the seller material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
- G. 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.

A licensee does not breach any duty or obligation owed to the seller by showing alternative properties to prospective buyers, whether as clients or customers, or by representing other sellers who have other properties for sale.

DUTIES TO PROSPECTIVE BUYER CUSTOMERS (NON-CLIENTS)

Virginia Law imposes specific obligations and duties on all standard agents who represent buyer clients. These more specific tasks are not required of Limited Service Agents or Independent Contractors, unless the parties agree otherwise in the brokerage agreement. Standard agents representing buyer/clients must:

- A. Perform in accordance with the terms of the brokerage agreement;

B. Promote the interests of the buyer by:

1. Seeking a property of a type acceptable to the buyer and at a price and on terms acceptable to the buyer; however, the licensee shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the brokerage relationship;
2. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract and in establishing strategies for accomplishing the buyer's objectives;
3. Receiving and presenting in a timely manner all written offers or counteroffers to and from the buyer and seller, even when the buyer is already a party to a contract to purchase property; and
4. Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate settlement of the purchase contract.

C. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the buyer consents in writing to the release of such information

D. Exercise ordinary care;

- E. Account in a timely manner for all money and property received by the licensee in which the buyer has or may have an interest;
- F. Disclose to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
- G. 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.

A licensee does not breach any duty or obligation to the buyer by showing properties in which the buyer is interested to other prospective buyers, whether as clients or customers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.

DUTIES TO PROSPECTIVE SELLER CUSTOMERS (NON-CLIENTS)

Virginia Law imposes specific obligations and duties on all standard agents. Standard agents owe seller customers (non-clients) the following duties:

- A. Treat all prospective sellers honestly and shall not knowingly give them false information.

- B. In the case of a residential transaction, a licensee engaged by a buyer shall disclose to a seller whether or not the buyer intends to occupy the property as a principal residence. The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.
- C. Unless prohibited by law or the brokerage agreement, the licensee may provide assistance to the seller, or prospective seller, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with the licensee's fiduciary duties shall not be construed to violate the licensee's brokerage agreement with the buyer unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such seller.
- D. Disclose brokerage relationships pursuant to the provisions of License Law.

STANDARD AGENT'S DUTIES TO LANDLORD CLIENTS

Virginia Law imposes specific obligations and duties on all standard agents who represent landlord clients. These more specific tasks are not required of Limited Service Agents or Independent Contractors, unless the parties agree otherwise in the listing agreement. Standard agents representing landlords/clients owe the duties detailed in the following slides.

- A. Perform in accordance with the terms of the brokerage agreement;
- B. Promote the interests of the landlord by:
 - 1. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement with the landlord. In so doing, the licensee shall seek a tenant at the price rent and terms agreed in the brokerage agreement or at a price rent and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage agreement, or unless the lease or the letter of intent to lease so provides;
 - 2. Assisting the landlord in drafting and negotiating leases and letters of intent to lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord and tenant, even when the property is already subject to a lease or a letter of intent to lease; and
 - 3. Providing reasonable assistance to the landlord to finalize the lease agreement.
- C. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the landlord consents in writing to the release of such information;

- D. Exercise ordinary care;
- E. Account in a timely manner for all money and property received by the licensee in which the landlord has or may have an interest;
- F. Disclose to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
- G. Comply with all requirements of this article, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.

A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.

STANDARD AGENT'S DUTIES TO TENANTS CUSTOMERS (NON-CLIENT)

Virginia Law imposes specific obligations and duties on all standard agents. Standard agents owe duties to any tenant customers (non-clients) as follows:

- A. Treat all prospective tenants honestly and shall not knowingly give them false information.

- B. Disclose in writing to prospective tenants all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. Nothing in this section shall limit the right of a prospective tenant to inspect the physical condition of the property
- C. As used in this section, the term “physical condition of the property” shall refer to the physical condition of the land and any improvements thereon, and shall not refer to:
1. matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto
 2. matters relating to governmental land use regulations
 3. matters relating to highways or public streets.
 4. Unless prohibited by law or the brokerage agreement, the licensee may provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with the licensee’s fiduciary duties shall not be construed to violate the licensee’s brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.
 5. Disclose brokerage relationships pursuant to the provisions of License Law

STANDARD AGENT'S DUTIES TO TENANT CLIENTS

Virginia Law imposes specific obligations and duties on all standard agents who represent tenant clients. These more specific tasks are not required of Limited Service Agents or Independent Contractors, unless the parties agree otherwise in the brokerage agreement. Standard agents representing tenant/clients must:

- A. Perform in accordance with the terms of the brokerage agreement;
- B. Promote the interests of the tenant by:
 - 1. Seeking a lease at a price rent and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;
 - 2. Assisting in the drafting and negotiating of leases, letters of intent to lease, and rental applications, and presenting, in a timely fashion, all written offers or counteroffers to and from the tenant and landlord, even when the tenant is already a party to a lease or a letter of intent to lease; and
 - 3. Providing reasonable assistance to the tenant to finalize the lease agreement.
- C. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any

other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the tenant consents in writing to the release of such information;

- D. Exercise ordinary care;
- E. Account in a timely manner for all money and property received by the licensee in which the tenant has or may have an interest;
- F. Disclose to the tenant material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
- G. Comply with all requirements of this article, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.

A licensee engaged by a tenant does not breach any duty or obligation to the tenant by showing properties in which the tenant is interested to other prospective tenants, whether as clients or customers, by representing other tenants looking for the same or other properties to lease, or by representing landlords relative to other properties.

STANDARD AGENT'S DUTIES TO LANDLORD CUSTOMERS (NON-CLIENTS).

Virginia Law imposes specific obligations and duties on all standard agents. Standard agents owe landlord/ customers (non-clients) the following duties:

- A. Treat all prospective landlords honestly and shall not knowingly give them false information.
- B. A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord or prospective landlord by performing ministerial acts. Performing such ministerial acts that are not inconsistent with the licensee's fiduciary duties shall not be construed to violate the licensee's brokerage relationship with the tenant unless expressly prohibited by the terms of the brokerage agreement, nor shall performing such ministerial acts be construed to form a brokerage relationship with the landlord or prospective landlord.
- C. Disclose brokerage relationships pursuant to the provisions of License Law.

PROGRESS CHECK 8

1. Which of the following would be considered a breach of duty or inappropriate act by a licensee?
 - A. Showing a property a buyer is interested in to other clients
 - B. Assisting the seller with real estate contract documents
 - C. Presenting multiple offers all at one time to the seller
 - D. None of the above

2. Which of the following is NOT a duty of a licensee acting as a standard agent to a tenant client?
- A. Exercise ordinary care
 - B. Disclose material facts related to the property
 - C. Account for all money and property received
 - D. Maintain confidentiality
3. Which of the following is a duty a standard agent must provide to a prospective seller customer?
- A. Honest and fair treatment
 - B. Disclose material facts related to the property
 - C. Account for all money and property received
 - D. Maintain confidentiality
4. Virginia Law imposes specific obligations and duties on all _____ who represent seller clients.
- A. Independent contractors
 - B. Agents
 - C. Standard agents
 - D. Limited service agents

MODULE 9

Limits of VA Agency Liability

Learning Objective:

- Delineate between client liability and licensee liability within real estate transactions

BACKGROUND

Virginia agency law limits the liability of licensees and clients under certain circumstances. Many of these limitations on liability are a departure from the common law. Generally, licensees and their clients are presumed to possess actual knowledge of information only. That is, there is no presumption that a client is aware of a fact merely because the licensee is aware of the same fact.

For example, both clients and licensees are presumed to possess actual knowledge and information only—knowledge or information among or between clients and licensees is not imputed to one or the other party. Other more specific limitations on liability are presented below.

CLIENT LIABILITY

Under Virginia agency law, clients are presumably unaware and therefore not liable for the following:

- Virginia clients are presumptively unaware of any misrepresentation made by their real estate agent in connection

with a brokerage relationship, unless the client knew or should have known of the misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner.

- Virginia clients are presumptively unaware of the negligence, gross negligence or intentional acts of any broker or broker's licensee.

LICENSEE LIABILITY

Under Virginia Agency Law, licensees have limited liability as follows:

Virginia licensees are not liable for providing false information if the information was:

- A. provided to the licensee by his client;
- B. obtained from a governmental entity (either by a primary or secondary source); or
- C. obtained from a person licensed, certified, or registered to provide professional services in the Commonwealth, and the licensee did not have actual knowledge of the falsity or act in reckless disregard for the truth.

Virginia licensees are also not liable for revealing information as required by law, even if doing so would otherwise violate a fiduciary duty.

If a party to a real estate transaction requests that a contract or other real estate document be translated into another language, the licensee may help them to find a translator or may refer them to an electronic translation service (but cannot charge a fee for such assistance). In

such case, the licensee will not otherwise become liable for any inaccuracies in the translation.

BROKER TO BROKER LIABILITY

In some cases, a broker may hire another broker to assist the first broker's client. Virginia law also limits the first broker's liability for misdeeds of the second broker for the following acts: The first broker is not liable for a misrepresentation made by the second broker, unless the first broker knew or should have known of the second broker's misrepresentation and failed to take reasonable steps to correct it in a timely manner; and the first broker is not liable for the negligence, gross negligence or intentional acts of the assisting broker or assisting broker's licensee.

LIMITED SERVICE AGENCY LIABILITY

Under Virginia Agency Law, limited service agents have limited liability to customers as follows:

A licensee engaged by one client to a transaction and dealing with an unrepresented party or with a party represented by a limited service agent and who, without additional compensation, provides such other party information relative to the transaction or undertakes to assist such other party in securing a contract or with such party's obligations thereunder, shall not incur liability for such actions except in the case of gross negligence or willful misconduct.

A licensee does not create a brokerage relationship by providing such assistance or information to the other party to the transaction. A

licensee dealing with a client of a limited service agent may enter into an agreement with that party for payment of a fee for services performed or information provided by that licensee. Such payment shall not create a brokerage relationship; however, the licensee providing such services or information for a fee shall be held to the ordinary standard of care in the provision of such services or information.

LIMITATIONS ON LIABILITY

No cause of action shall arise against any licensee for revealing information as required by Virginia License Law or other applicable laws. If a party to a real estate transaction requests that a contract or other real estate document be translated into another language, the licensee may help them to find a translator or may refer them to an electronic translation service (but cannot charge a fee for such assistance). In such case, the licensee will not otherwise become liable for any inaccuracies in the translation.

In addition, a licensee shall not be liable to a buyer, seller, landlord, or tenant for providing false information if that false information was:

- A. provided to the licensee by the licensee's client;
- B. obtained from a governmental entity (either by a primary or secondary source); or
- C. obtained from a person licensed, certified, or registered to provide professional services in the Commonwealth, and the licensee did not:
 - 1. Have actual knowledge that the information was false or
 - 2. Act in reckless disregard of the truth.

EXCEPTIONS

Virginia agency law does not limit the liability between or among clients and licensees in all matters involving unlawful discriminatory housing practices. Also, it does not affect a person's right to rescind a real estate transaction or limit client misconduct as follows:

Virginia real estate agency law does not limit the liability of a client for misrepresentation, negligence, gross negligence, or intentional wrongful acts in connection with a real estate transaction.

Virginia real estate agency law also does not limit the liability of a licensee for misrepresentation, negligence, gross negligence or intentional acts in connection with a real estate transaction.

PROGRESS CHECK 9

1. Under Virginia agency law, clients are _____ and therefore not liable for agent misrepresentation, negligence or intentional acts of a broker.
 - A. Innocent parties
 - B. Presumably unaware
 - C. Under immunity
 - D. "no fault" participants

2. Virginia real estate agency does not limit the liability of a licensee for:
- A. Negligence
 - B. Misrepresentation
 - C. Gross negligence
 - D. Any of the above
3. Which of the following statements is NOT true:
- A. If an agent knows something, it is not presumed the client knows the same
 - B. Licensees are allowed to charge clients fees for outside services such as translation of contract
 - C. Limited service agents have limited liability to customers
 - D. A brokerage relationship is not created if a licensee provides assistance to the other party to the transaction
4. Virginia agency law does NOT affect a person's right to:
- A. Disclosure of the type of agent representing them
 - B. Disclosure of a licensee's personal interest in a real estate transaction
 - C. Consent to a dual agency relationship
 - D. Rescind a real estate transaction