

Real Estate Laws & Regulations

Virginia Salesperson PLE Series

MODULE 1

VA Real Estate Board (VREB)

Learning Objective:

- Understand the authority of the VREB and its disciplinary procedures

BACKGROUND

There are many real estate laws and regulations. Keeping up with them can be difficult. In this course, we discuss some of the principal Virginia real estate laws that Virginia licensees must understand to competently represent clients.

Virginia replaced the common law of agency with legislation that governs agency relationships in Virginia. The principal broker is responsible to ensure compliance with Virginia agency obligations, including 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. Each licensed real estate broker and salesperson (licensees) must follow the standards of conduct developed by the Virginia Real Estate Board (Board). These standards apply to all licensees, whether inactive or active. Committing any of the acts or violations discussed in this section is grounds for disciplinary action.

AUTHORITY

The Board may only regulate the real estate profession as authorized by the Virginia legislature.

Licensing Oversight

The Board regulates real estate licenses through the following powers.

1. **Rulemaking:** The Board may create and enforce its own administrative rules.
2. **Licensing:** The Board may issue and renew real estate licenses.
3. **Enforcement:** The Board may enforce the license law (in addition to its own regulations). Enforcement authority includes the power to withdraw a license temporarily (suspension) or permanently (deny renewal, revocation), and to impose monetary penalties (fines) for violating the law and regulations (no criminal authority).
4. **Education:** Consistent with the law, the Board regulates educational requirements for all license candidates (pre-licensing education), and existing licensees (post licensing

education—CE and PLE); the Board also regulates real estate education providers (schools).

Authority Under Other Real Estate Laws

The Board may enforce the Virginia Fair Housing Act in cases involving real estate licensees and their employees. The Board also may promulgate real estate forms if specifically directed to by the state legislature, as in the case of the Property Disclosure forms under the Virginia Residential Property Disclosure Act. The Board also has authority to administer the Virginia Real Estate Transaction Recovery Fund.

Lack of Authority

The Board may not arbitrate disputes between salespersons and brokers or between brokers, and the Board may not establish commission rates, or standardized agreements (such as sales contracts).

Compared to Trade Organizations

Trade organization membership and standards (such as NVAR) are voluntary and do not affect licensure; VREB rules and orders are mandatory.

PROGRESS CHECK 1

1. The authority of the real estate board includes all of the following, EXCEPT:
 - A. Rule Making
 - B. Licensing
 - C. Trial proceedings
 - D. Education

2. Which of the following may be disciplined for violating license law
 - A. Salesperson Huey, active license
 - B. Broker James, active license
 - C. Broker Hans, inactive license
 - D. All of the above

3. The Board has the authority to:
 - A. Set commission rates
 - B. Standardize sales contracts
 - C. Discipline for discrimination
 - D. Resolve broker disputes

4. Regarding education, the Board has the authority to regulate:
 - A. PLE for Salespersons
 - B. CE for Brokers
 - C. Moseley Real Estate School courses
 - D. All of the above

MODULE 2

VA Licensee Conduct

Learning Objective:

- Identify conduct that is considered prohibited within the real estate field

STANDARDS OF CONDUCT

The Board may discipline (fine, suspend, revoke) any licensee (active or inactive) for not abiding by the following conduct.

Firm Conduct

Firms must properly seek and maintain firm and individual licenses (salespersons, brokers).

Disclosures

All licensees (salesperson or broker) must make disclosures as follows:

1. **Disclosure of Interest:** All active licensees (salesperson or broker) must make written disclosure (to the parties) if they have an interest in a real estate transaction. Licensees are interested if they, a family member, or their firm owns or has an interest in the subject property.
2. **Disclosure of Brokerage Relationship:** All active licensees (salesperson or broker) must make written (before service

provided) disclosure (whom licensee represents). This disclosure must be provided upon having a substantive conversation about a specific property with unrepresented non-clients (disclosure may be oral upon trigger but must be written by date of service).

3. **Agency:** Dual and designated agency/ representative disclosures must be properly written and conspicuous (or on standardized forms). This written disclosure must be timely obtained from both buyers (before receiving an offer) and sellers (before presenting an offer).

Board Inquiries

All licensees (salesperson or broker, active or inactive) must respond to Board inquiries (a question or records request) for any information within twenty-one (21) days (unless it is a request for financial records, which is due within 10 days).

Prohibited Acts

All licensees (salesperson or broker, active or inactive) must be worthy and competent to perform real estate services for the public.

Prohibited acts under the license law include, but are not limited to: providing substantially inaccurate or incomplete information to the Board; holding multiple licenses; retaking the exam without cause; signing without knowledge of the applicant's activity or unreasonably refusing to sign an experience verification form; felony convictions; misdemeanor convictions (moral turpitude, sex offense, or drug distribution only); failing to report criminal convictions (within 30 days of plea or conviction); violating fair housing laws; violating and/or failing to report violations of other states' license laws; failing to safeguard the public interest; and improper, fraudulent, or dishonest conduct.

Conflicts of Interest

All licensees (salesperson or broker, active or inactive) must avoid conflicts of interest. Conflicts of interest include undisclosed dual or designated agency, working for another firm without written permission, and performing real estate services outside of the brokerage firm.

Improper Commissions

All active licensees (salesperson or broker) may only receive compensation from the principal broker and must not compensate an unlicensed person for acts of real estate brokerage.

PROGRESS CHECK 2

1. Conflicts of interest should be avoided, which of the following is NOT considered a conflict of interest?
 - A. Broker Jill appoints Salespersons Henry and Hoda as designated agents without client consent
 - B. Seller Phil declines consent of a dual agency but listing agent Sam agrees to represent the buyer
 - C. Salesperson Stew spends most of his time working under Broker Sue but unbeknownst to Sue he sneaks in a few hours with Broker Clyde
 - D. Independent contractor Ferrell represents Buyer Liam but also provides minor assistance to FSBO Seller Mike

2. Which of the following would NOT require a personal interest disclosure?
- A. Broker Kathy is helping her sister buy a home and they arrive at an open house
 - B. Salesperson Julia's elementary school classmate owns The Brindle Ranch which Julia's clients is interested in
 - C. Broker Helen's Dad is selling his home and Helen just received a call from a potential buyer who saw the listing
 - D. Salesperson Maggie is selling her condo and has a potential buyer coming for a showing
3. Which of the following is true?
- A. Broker Betty is allowed to pay her agent salesperson Brady commission from a property sale
 - B. Salesperson Savannah can accept a check from her client Matthew as a tip for great service
 - C. Broker Stacy is allowed to compensate salesperson Kendra from a fellow broker's firm for help with a property sale
 - D. Salesperson Jadyn is allowed to pay the Firms receptionist a percentage of her commission as a thanks for her taking so many client calls
4. Which of the following acts is not prohibited by license law?
- A. Holding multiple real estate licenses
 - B. Reporting a DUI to the Board 18 days after the conviction date
 - C. Posting a real estate listing that specifies only Christian buyers
 - D. All of these acts are violations of license law

MODULE 3

Disciplinary Procedures

Learning Objective:

- Understand the Board's process pertaining to licensee Disciplinary Procedures

BACKGROUND

All licensees (salesperson or broker, active or inactive) who violate the standards of conduct are subject to discipline (fines, suspension, or revocation) according to the following procedures:

Complaints

The Board may investigate misconduct based on a written complaint by any person (client, customer, other licensee) or by exercise of its own discretion.

Investigation

If the Board decides to investigate an alleged violation, it must notify the accused licensee and her principal broker. A Committee then interviews witnesses, examines evidence, and reports to the Board. The Board then decides whether to dismiss or prosecute the case.

Prosecution

The accused may either admit guilt and voluntarily agree to the proposed punishment, or dispute the allegations through an informal trial (known as an informal fact-finding conference). Regardless, the Board may impose fines up to \$2,500 per violation and/or suspend or revoke the licensee's license. The Board must prosecute violations within one year of discovery, but cannot prosecute beyond five years of occurrence (statute of limitations).

Appeal

All disciplinary rulings may be appealed to the Virginia Court of Appeals and higher. However, there is no appeal for suspensions from failing to pay transaction recovery fund assessments or for revocations due to transaction recovery fund payments.

PROGRESS CHECK 3

1. Which of the following disciplinary actions may NOT be appealed?
 - A. Suspension for conversion
 - B. Fine for discrimination
 - C. Suspension for failing to pay recovery fund assessments
 - D. Fine for fraud
2. The Board will review all of the following complaints, except:
 - A. A written complaint signed and sent into the Board
 - B. An investigation based on the Board's own discretion
 - C. A verbal complaint called into the Board
 - D. The Board will investigate any complaint received or base on its own discretion

3. If the Board decides to investigate an alleged violation, it must notify the:
- A. The State Attorney General's office
 - B. The accused licensee
 - C. No one
 - D. The accused licensee and her principal broker
4. The Board must prosecute violations within _____ of discovery.
- A. 1 year
 - B. 2 years
 - C. 3 years
 - D. 4 years

MODULE 4

VA Residential Property Disclosure Act & Megan's Law

Learning Objective:

- Know the purpose and the parameters of the Virginia Residential Property Disclosure Act
- Know the purpose and the parameters of Megan's Law

VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT

Background

Under the Virginia Residential Property Disclosure Act (Disclosure Act), residential property sellers must either:

- Disclose material information about property they are selling; or
- Sign a disclaimer stating that the property will be transferred “as is.”

This law applies to sales, options, installment sales, or leases with an option-to-buy of residential property consisting of one to four units. The Disclosure Act applies regardless of whether a real estate licensee is involved in the transaction.

Basic Requirement for Licensees

A real estate licensee representing an owner of residential real property as the listing broker has a duty to inform each such owner represented by that licensee of the owner's rights and obligations.

A real estate licensee representing a purchaser of residential real property or, if the purchaser is not represented by a licensee, the real estate licensee representing an owner of residential real estate and dealing with the purchaser has a duty to inform each such purchaser of the purchaser's rights and obligations.

Provided a real estate licensee performs those duties, the licensee shall have no further duties to the parties to a residential real estate transaction, and shall not be liable to any party to a residential real estate transaction for a violation or for any failure to disclose any information regarding any real property.

Basic Requirement for Sellers

Sellers must either disclose material information about the property being sold or sign a disclaimer statement. Sellers may include the disclosure or disclaimer in the contract itself, in an addendum to the contract, or in a separate document. The Board provides standard disclosure and disclaimer forms for sellers, as presented at the end of this course

Disclosures

Should a seller choose to disclose material information, they may use a standard disclosure form provided by the Board. Such disclosure form may include defects of which the owner has actual knowledge regarding:

1. the water and sewer systems, including the source of household water, water treatment system, and sprinkler system;
2. insulation;
3. structural systems, including roof, walls, floors, foundation and any basement;
4. plumbing, electrical, heating and air conditioning system;
5. wood-destroying insect infestation;
6. land use matters;
7. hazardous or regulated materials, including asbestos, lead-based paint, radon and underground storage tanks; and
8. other material defects known to the owner.

The disclosure form shall contain a notice to prospective purchasers and owners that:

- the prospective purchaser and the owner may wish to obtain professional advice or inspections of the property; and
- that information is available at the Department of Environmental Quality which identifies confirmed releases or discharges of oil which may affect the property.

The disclosure form shall also contain a notice to purchasers that the information contained in the disclosure is the representation of the owner, not the broker or salesperson. The owner shall not be required to undertake or provide any independent investigation or inspection of the property in order to make the required disclosures. Sellers must answer questions honestly or if true, indicate that they have no knowledge.

Disclosure Exemptions

Sellers need not disclose whether:

- A. The property was the site of an act or occurrence which had no effect on the physical structure, the environment, or the improvements to the property; and
- B. The property was the site of a homicide, felony, or suicide

Real estate transactions that are entirely excluded from the disclosure requirements include the following:

- A. Specified court ordered transfers such as:
 - 1. To settle an estate;
 - 2. Pursuant to a writ of execution;
 - 3. Foreclosures;
 - 4. By a trustee in bankruptcy;
 - 5. Eminent domain; and
 - 6. Specific performance
- B. Certain voluntary transfers such as:
 - 1. Between co-owners of the property
 - 2. Between relatives
 - 3. As the result of a divorce settlement
 - 4. First sale of a property (new homes).

Limits on Owner Liability

Owners are not liable for error, inaccuracy or omission of information provided by a reliable third party such as a:

- Surveyor;

- Engineer;
- Appraiser;
- Home Inspector; or
- Public authority.

Also, the owner is not liable if he reasonably believed the information he disclosed was correct and there was no gross negligence in obtaining or transmitting the information.

Changes to Disclosures

If the owner subsequently learns that information provided in the original disclosure is no longer accurate, she must advise the purchaser prior to closing.

Instead of making the specific disclosures above, the seller may sign a disclaimer statement, which generally provides that the purchaser will be receiving the property “as is” with all defects which may or may not exist, except as otherwise provided in the real estate purchase contract.

Timing

Either the disclosure or the disclaimer must be made prior to ratification of a real estate purchase contract. If the disclosure/disclaimer is received after ratification, the purchaser may terminate the contract by giving written notice to the seller.

Notice of termination must be provided to the seller by whichever of the following is the earliest date after receipt of the disclosure/disclaimer:

- Within 3 days if notice is delivered in person or by electronic delivery;
- Within 5 days of postmark, if notice was mailed;
- Prior to settlement; or
- Prior to occupancy.

Should the purchaser choose to terminate the contract as outlined above, there will be no penalty and any monies advanced must be promptly returned to the purchaser. Alternatively, the contract will remain valid if the purchaser:

- Provides a notice of waiver of rights to terminate the contract; or
- Remains silent and does nothing.

MEGAN'S LAW

Background

Megan's Law requires law enforcement to make information available to the public regarding registered sex offenders. These statutes require convicted sex offenders to register with local police and to notify law enforcement whenever they move to a new location. Individual states have discretion to establish disclosure criteria, but they must make the information available to the public.

The Virginia Residential Disclosure Act was amended to include a statement, letting purchasers know that it is their right to exercise whatever due diligence they deem necessary in respect to information on sexual offenders. Real estate licensees should ensure that purchasers are given the Residential Disclosure Forms to ensure they have met their legal obligations.

PROGRESS CHECK 4

1. Real estate transactions entirely excluded from the VA Residential Property Disclosure Act requirements include;
 - A. When the subject property sale price is under \$150,000
 - B. Real estate foreclosures
 - C. For sale by owner transactions
 - D. All cash sales

2. The VA Residential Property Disclosure Act requires residential property sellers to disclose material facts about the property they are selling, or:
 - A. Pay to have a professional inspection completed on the property
 - B. Request a material facts disclosure waiver from the Board
 - C. Sell the property "as is"
 - D. Reduce the sale price by \$10,000 to offset the cost of any needed repairs

3. If the disclosure or disclaimer is not provided to the buyer prior to the time the sales contract is ratified, what option does the buyer have?
 - A. Terminate the sales contract by written notice to the seller
 - B. Terminate the sales contract by abandonment
 - C. Terminate the sales contract by verbal notification to the seller
 - D. Any of the above

4. Megan's Law requires:
 - A. Sellers disclose if registered sex offenders live within 50 miles of the subject property
 - B. Licensed real estate agents conduct a search for registered sex offenders prior to listing a property for sale
 - C. Law enforcement to publicize information regarding registered sex offenders
 - D. Convicted sex offenders to disclose this conviction when they purchase residential property

MODULE 5

Standard Property Disclosure Statement Form

Learning Objective:

- Know the circumstances that require a Standard Property Disclosure Statement Form

BACKGROUND

Selling Homeowners must provide a standard property disclosure statement. At the end of this course is the required Form drafted by the Board, and it can also be found on the Department of Professional Occupation & Regulation website.

AIRCRAFT NOISE/CRASH DISCLOSURE

Under Virginia law, the owner of residential real property located in any locality where a military air installation is located must disclose to the purchaser (on a form provided by the VREB) whether the subject parcel is located in a noise zone and/or accident potential zone if so designated on the official zoning map of the locality in which the property is located. Such disclosure must state the specific noise zone and/ or accident potential zone in which the property is located according to the official zoning map.

SEPTIC DISCLOSURE

Virginia law provides that whenever any on-site sewage system serving real property is failing and the Board of Health's regulations for repairing such failing system impose:

- a requirement for treatment beyond the level of treatment provided by the existing onsite sewage system when operating properly; or
- a new requirement for pressure dosing, the owner may request a waiver from such requirements. Any such waivers shall be recorded in the land records. Waivers are not transferable and are null and void upon transfer or sale of the property. Additional treatment or pressure dosing requirements will be imposed in such instances when the property is transferred or sold.

DEFECTIVE DRYWALL DISCLOSURE

Under Virginia Law, sellers with actual knowledge that the property contains defective drywall must provide a written disclosure of that fact to the prospective purchaser.

“Defective drywall” means either: drywall designated by the US Consumer Product Safety Commission to be a substantial product hazard, OR drywall that contains elemental sulfur exceeding 10 parts per million as has been found in some drywall manufactured in China and imported into the United States between 2004 and 2007.

When exposed to heat, humidity, or both, this drywall releases elevated levels of hydrogen sulfide gas into the air.

BUILDING OR ZONING VIOLATION DISCLOSURE

Under Virginia Law, sellers must affirmatively disclose (on a form provided by the VREB) any pending enforcement actions for violations of the Uniform Statewide Building Code that affect the safe, decent, sanitary living conditions of the property, and any pending violation of the local zoning ordinance which has not been remedied in a timely manner.

TOURISM ACTIVITY DISCLOSURE

Under Virginia Law, the owner of residential property located partially or wholly within a designated tourism zone must disclose in writing to the purchaser that the subject parcel is located within a tourism activity zone. This disclosure must include a description of potential impacts associated with the location, such as: special events, parades, temporary street closures, and indoor/outdoor entertainment activities.

MANUFACTURE OF METHAMPHETAMINE

Under Virginia Law, if an owner of residential property has actual knowledge that it was previously used to manufacture methamphetamine and that the dwelling was never cleaned according to Department of Health guidelines, the owner shall make written disclosure to the purchaser of such fact (on a form provided by the VREB).

PROGRESS CHECK 5

1. Regarding real estate sales transactions, which of the following is NOT a required disclosure under Virginia law?
 - A. Manufacturing of Methamphetamine
 - B. Defective drywall
 - C. Building code violations
 - D. Registered sex offenders in the area
2. Sellers make required disclosures by:
 - A. Drafting a list of material facts/defects and providing it to the buyer
 - B. Hiring a home inspector and sending the inspection report to the buyer
 - C. Using a standard property disclosure statement
 - D. Adding a disclosure addendum to the sales contract
3. “Defective drywall” means either: drywall designated by the US Consumer Product Safety Commission to be a hazard or drywall that contains _____ exceeding 10 parts per million.
 - A. Elemental sulfur
 - B. Asbestos
 - C. Formaldehyde
 - D. Polychlorinated biphenyls (PCB)

4. Which of the following must be disclosed by the seller?
- A. If the property is located in a high wind area
 - B. If someone died on the property
 - C. If parades occur in close proximity of the property
 - D. If the property's soil contains high levels of nitrates

MODULE 6

Advertising Disclosures

Learning Objectives:

- Identify when an advertising disclosure is required
- Understand different types of media
- Identify prohibited conduct related advertising in real estate

BACKGROUND

Advertising includes any purpose related to licensed activity in any medium (Internet, telephone, business cards, signs, television, etc). All firm advertising must be supervised by the principal or supervising broker and include the firm's name.

"Disclosure" in the context of electronic media advertising means:

- advertising by the firm that contains the firm's licensed name and the city and state in which the firm's main office or branch office is located or
- advertising by an affiliated licensee that contains the licensee's name, the name of the firm with which the licensee is active, and the city and state in which the licensee's place of business is located, and this disclosure shall be viewable on the main page or no more than one click away from the main page.

"Disclosure" in the context of all other advertising means

- advertising by the firm that contains the firm's licensed name or
- advertising by an affiliated licensee that contains the licensee's name and the name of the firm with which the licensee is active.

TYPES OF MEDIA

Conventional Media

Includes newspapers, magazines, and flyers (not Internet). Both individual and firm ads must always include the firm name and address. Individual ads must also include the licensee's name. Business cards must include the firm name, licensee's name, and contact information. For sale and for lease signs must include the firm name and telephone number.

Electronic Media

Both individual and firm ads must always include the firm name, city, and the state (Virginia) of the firm. Individual ads must also include the licensee's name. All disclosures must be viewable on the main page or no more than one click away from the main page.

PERSONAL INTEREST DISCLOSURES

Ads must also specify that the owner is a licensed real estate agent (active or inactive) if the licensee owns or has an ownership interest in offered property.

Nature of Licensee Interest

A licensee has an ownership interest if he owns all or part of the offered property, or if his firm or business owns all or part of the offered property.

Additional Disclosure in Contracts

In addition to advertising, a licensee (active or inactive) must disclose his interest (includes assisting family) in writing.

PROHIBITED ADVERTISING CONDUCT

Regardless of whether ads are in conventional media or electronic media, licensees are in violation of advertising regulations for the following:

1. Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person
2. Failing to include a notice in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised
3. Failing to include the firm's licensed name on any sign displayed outside each place of business
4. Failing to obtain the written consent of the seller, landlord, option or licensor prior to advertising a specific identifiable property
5. Failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement

PROGRESS CHECK 6

1. _____ must include the firm name, licensee's name, and contact information.
 - A. Individual ads
 - B. Business cards
 - C. Firm ads
 - D. For sale signs

2. All firm advertising must:
 - A. Be in bold print
 - B. Include the firm license number
 - C. Be approved by the Board
 - D. Be supervised by the principal broker

3. Conventional media includes all of the following, except:
 - A. Newspapers
 - B. Internet sites
 - C. Flyers
 - D. Magazines

4. Which of the following is considered an advertising violation?
 - A. An internet ad that has a link to the disclosure information
 - B. Not including the firm's address on a for sale sign
 - C. A firm ad including only the firm's name and address
 - D. Calling a client to inform them a for sale sign will be placed on the property

MODULE 7

The Virginia Real Estate Transaction Recovery Fund

Learning Objectives:

- Explain the purpose and requirements of The Virginia Real Estate Transaction Recovery Fund
- Identify the minimum balance, maximum payouts and proper claimants pertaining to the recovery fund

BACKGROUND

The Virginia Real Estate Transaction Recovery Fund (Transaction Recovery Fund, or Fund) was established to reimburse people for monetary losses caused by the misconduct of a licensee. Covered licensee misconduct includes: fraud, misrepresentation, deceit, embezzlement, false pretenses, forgery, failure to account for or conversion of trust funds, violations of license law or other like offenses.

Improper or dishonest conduct includes only the wrongful and fraudulent taking or conversion of money, property or other things of value, material misrepresentation, or deceit.

ADMINISTERING THE FUND

The DPOR administers the Transaction Recovery Fund. The law requires the DPOR to hold the fund in one or more federally insured accounts located in the Commonwealth of Virginia. The DPOR may invest the money in the Transaction Recovery Fund in certain securities as outlined in the Code of Virginia.

The cost of administering the Fund is paid by earned interest. The Fund's minimum balance must be at least \$400,000. At the close of each fiscal year, balances in excess of \$2,000,000 must be transferred to the Virginia Housing Trust Fund.

Assessments

Each new licensee must pay \$20 into the Fund. If the Transaction Recovery Fund actually falls or is expected to fall below \$400,000, the Board may assess each active and inactive licensee an additional fee sufficient to bring the balance to the minimum amount.

However, no licensee may be assessed more than \$20 during each biennial (2 year) period ending on June 30 of even-numbered years. If the Board determines this additional assessment is necessary, it must send notice via first-class mail to each licensee demanding payment by first-class mail within 45 days.

Licensees who do not pay assessments within 45 days are mailed a second notice by first-class mail to their latest address of record filed with the Board. Failure to pay the assessment within 30 days of the second notice results in automatic suspension of the licensee's license.

The license will be suspended until the DPOR has received the amount due. Also, if a payment is made from the Transaction Recovery Fund, the license of the respondent will be automatically revoked.

Interest

Interest earned on Transaction Recovery Fund deposits must be used for the cost of administering the Fund. Any remaining interest, at the discretion of the Board, may:

- Accrue to the fund;
- Be used for research and education to benefit real estate regulants;
or
- Be used to supplement the balance of the Transaction Recovery Fund if it falls below the minimum amount required.

Claims

A person filing a claim for payment from the Transaction Recovery Fund must take the following actions:

1. Obtain a final judgment in any Virginia court of competent jurisdiction against a licensee for improper or dishonest conduct;
2. Seek damages from the licensee before requesting compensation from the Fund. Only if the licensee's assets are insufficient to satisfy the judgment can the claimant file a claim requesting payment from the Fund.
3. Determine all assets, both real and personal property, and force their sale to satisfy all or part of the claim;
4. Investigate any listings held by the licensee and determine any commissions that may be due from these listings;

5. File a claim in bankruptcy court, if the licensee has filed for bankruptcy; or
6. Require the licensee to submit to debtor interrogatories, if necessary;
7. File the claim with the Board within 12 months of the date of the final judgment; and,
8. Accompany the claim with an affidavit stating the actions of the licensee that constituted the improper or illegal conduct, and proof of the legal action taken by the claimant.

Upon receipt of a claim, the Board must promptly consider the request and notify the claimant, in writing, of its findings. These findings are considered a “case decision” and judicial review and investigation may follow in accordance with the Administrative Procedures Act.

Limitations on Recovery

No payment will be made to any of the following persons:

1. Any licensee;
2. The spouse or child of any licensee against whom the judgment was awarded, nor any personal representative of such spouse or child;
3. Any financial or lending institution; or
4. Any person whose business involves the construction or development of real property.

Limits on Damages

The amount of money available to a claimant under the Transaction Recovery Fund is limited to the difference between the original claim and any amount previously recovered from the licensee.

If accumulating claims threaten to deplete the Fund below the statutory minimum \$400,000, the Board may suspend all pending claims until the Board replenishes the Fund as described above. As funds become available to satisfy pending claims, each are paid in the order in which they were originally received.

Also, compensation is limited to actual monetary damages suffered in the transaction, court costs and attorney fees. The claim cannot include interest, punitive or exemplary damages, even though these amounts may have been included in a prior judgment.

Monetary Limits on Claims

Regardless of the amount of monetary damage one suffers, they may receive only a limited amount from the Fund. This amount depends upon whether there was a single transaction or multiple transactions.

Single Transactions

- Maximum payment to any one claimant is \$20,000 (per licensee).
- Maximum payment to all claimants is \$50,000 (per licensee)

Multiple Transactions Involving One Licensee (over a 2 year period)

- Maximum payment to any one claimant is \$20,000 (per licensee)
- Maximum payment to all claimants \$100,000

In all cases, the Board may withhold payment of any claim for 12 months if it has reason to believe that additional claims may be filed. In the event there are multiple claims against a licensee that exceed the maximum allowable payment from the Fund, each claimant will receive a proportionate share of the total payment.

Penalties

If the Board makes a payment to a claimant from the Transaction Recovery Fund, the respondent's license will be immediately revoked. The respondent may also be subject to other disciplinary action by the Board or the Attorney General. The licensee will not be eligible to apply for a new license until the Transaction Recovery Fund has been repaid with interest. The Board can also suspend licensees without a hearing for failing to pay an assessment to the Fund.

PROGRESS CHECK 7

1. Broker Barb has been found guilty of fraud which resulted in a failed real estate transaction between Buyer Barb and Seller Sue. Buyer Barb has filed a claim against the recovery fund for \$35,000 and Seller Sue has filed a claim for \$28,000. How much in total will be paid from the recovery fund?
 - A. \$20,000 to the Seller, the only one eligible for payment in this scenario
 - B. \$63,000 total to Barb and Sue
 - C. \$50,000 total to Barb and Sue
 - D. \$30,000 to Barb and \$20,000 to Sue
2. The _____ administers the Transaction Recovery Fund.
 - A. DPOR
 - B. State Treasurer
 - C. VREB
 - D. Attorney General

3. A person filing a claim for payment from the recovery fund must _____ the licensee who is the subject of the claim.
- A. Send written notice to
 - B. Seek damages from
 - C. Notify the employing broker of
 - D. Obtain a statement of the facts of the case from
4. After paying out two large sum claims, the balance of the recovery fund is extremely low. The Board determines that a \$35 assessment will be needed from all licensees in order to reestablish a proper fund balance. If notice of this assessment is sent out to licensees on April 15th when are payments due?
- A. April 30th
 - B. May 15th
 - C. May 30th
 - D. June 15th

MODULE 8

VA Common Interest Community Act

Learning Objective:

- Be familiar with the purpose and VA Common Interest Community Act

BACKGROUND

The Common Interest Community Act (the “Act”), was passed in 2008 and made effective July 1, 2008. It made sweeping changes to existing Virginia laws governing condominiums, planned communities, time-shares, and cooperatives. To accomplish these changes, the Act creates a new, statewide Common Interest Community Board (“CIC Board”) of eleven (11) members appointed by the Governor to carry out the Act’s new regulations.

The Act moves oversight of community associations from the Real Estate Board to the newly created CIC Board. In addition, a new Office of Common Interest Community Ombudsman is also created to provide assistance to both community associations and consumers.

The Common Interest Community Board regulates Common Interest Community Managers and their supervisory and managerial employees. Also included under the Common Interest Community Board are the Condominium Act, the Real Estate Time-Share Act, the Real Estate Cooperative Act, and the Property Owners' Association Act.

The Common Interest Community Board regulates the sale of new condominiums and time-shares. The Condominium Act and the Real Estate Time-Share Act cover transactions occurring within the Commonwealth, even if the property involved is located outside the Commonwealth.

Additionally, property owner, condominium, and co-operative associations are required to file annual reports with the Common Interest Community Board. The fees from the annual reports go to fund the Common Interest Community Management Information Fund, which in turn helps to fund the Common Interest Community Management Recovery Fund.

The Office of the Common Interest Community Ombudsman was established by the 2008 General Assembly and was created to:

- Assist members in understanding and exercising their rights in resolving issues with their Associations (condominiums, property owners' association, time-shares, and cooperatives).
- Issue non-binding explanations of laws and regulations governing Associations.
- Offer referrals to alternative dispute resolution services.
- Assist members in using the procedures and processes available to them in their association, including non-binding explanations of laws or regulations governing common interest communities or interpretations thereof by the Board.
- Once regulations are in effect, the Ombudsman will receive complaints from constituents who allege an Association governing body violated legal requirements (statutes, regulations, or Association governing documents).

- Such complaint notices must be filed within 30 days of an Association's final adverse decision, must be submitted in writing on Board forms (to be developed through the regulatory process), and must include a \$25 filing fee (statutory requirement).

PROGRESS CHECK 8

1. Which is NOT true about complaints that are filed against an association for violating their legal requirements?
 - A. They must be submitted in writing
 - B. A \$25 fee must be sent in with the claim
 - C. They must be submitted on standard board forms
 - D. They must be filed within 14 days of an Association's final adverse decision
2. Which of the following does NOT fall under the Common Interest Community Board?
 - A. The Property Owner's Association Act
 - B. The Home Inspection Protection Act
 - C. The Real Estate Cooperative Act
 - D. The Condominium Act
3. The CIC Board has _____ members appointed by the governor.
 - A. 5
 - B. 7
 - C. 9
 - D. 11

4. Prior to establishment of the CIC Board, which entity provided oversight of community associations?
- A. The local government
 - B. The Real Estate Board
 - C. The State government
 - D. No one

MODULE 9

Property Owners Association Act

Learning Objective:

- Understand the purpose and parameters of the Property Owners Association Act

PROPERTY OWNERS ASSOCIATION ACT

Requirements

The Virginia Property Owners' Association Act requires sellers to disclose if the property is located within a development that is subject to the Virginia Property Owners' Association (POA) Act. This Act requires a seller to provide an Association Disclosure packet from the POA to the buyer. The packet must be current and include the last date of printing.

Request for Packet

The association must deliver an association disclosure packet within 14 days after receipt of a written request and instructions by the seller or an authorized agent.

An association or its common interest community manager may charge a fee for the inspection of the property, the preparation and delivery of the disclosure packet, and for any other services provided. The association disclosure packet must contain certain required items, including:

1. The name of the association and, if incorporated, the state of incorporation and the name of its registered agent in Virginia
2. A statement of any assessments, fees, or other charges associated with the purchase, disposition, and maintenance of the property;
3. A statement of whether there is any other entity or facility to which the lot owner may be liable for fees or other charges
4. A copy or summary of the association's current budget, its statement of income and expenses, or a statement of its financial position (balance sheet) for the last fiscal year for which such statement is available, including a statement of the balance due of any outstanding loans of the association
5. A statement that any improvement or alteration made to the lot, or uses made of the lot or common area assigned there to are or are not in violation of the declaration, bylaws, rules and regulations, architectural guidelines and articles of incorporation, if any, of the association
6. A statement setting forth any restriction, limitation, or prohibition on the right of a lot owner to display any flag on the owner's lot, including but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag and the installation of any flagpole or similar structure necessary to display such flag

7. A copy of the current declaration, the association's articles of incorporation and bylaws, and any rules and regulations or architectural guidelines adopted by the association

Compliance

Failure to receive a copy of the association packet does not excuse any failure to comply with the provisions of the declaration, by-laws, or rules and regulations. Any lack of compliance shall be grounds for an action or suit to recover sums due for damages or for any other remedy available at law. The prevailing party shall be entitled to recover reasonable attorney fees, costs expended in the matter, and interest on the judgment.

Exceptions

The contact disclosures and association disclosure packet shall not be provided in the case of:

1. A disposition of lot by gift
2. A disposition of lot pursuant to court order, if the court so directs
3. A disposition of a lot by foreclosure or deed in lieu of foreclosure
4. A disposition of lot by sale at an auction, where the packet was made available in auction package
5. A disposition of a lot to a person who is not acquiring the lot for his own residence.

PROGRESS CHECK 9

1. The Virginia Property Owners' Association Act requires sellers to disclose:
 - A. All previous owners of the property
 - B. The age of the systems and appliances within the property
 - C. All latent defects impacting the property
 - D. Whether the property is subject to the Virginia Property Owner's Association Act
2. A party who files a legal action or suit for lack of compliance with the Property Owner's Association Act could recover all of the following, EXCEPT:
 - A. Interest on the judgment
 - B. Reasonable attorney fees
 - C. Compensation for pain and suffering
 - D. Costs associated with the action/suit
3. The association disclosure packet must contain certain required items, one being:
 - A. The association's budget
 - B. A map of the area within the state that is subject to the act
 - C. The names of all board members
 - D. The registration or license number of the entity
4. In which of these must a disclosure packet be provided?
 - A. Sarah is awarded property in a divorce settlement but lives out of state and plans to have a neighbor care for the property
 - B. The owner of the lot defaults on the property loan and the property goes into foreclosure
 - C. Uncle Terry sells property to his niece for under \$500,000
 - D. Aunt Sally provides a plot of land to her Nephew as a gift

MODULE 10

Servicemembers Civil Relief Act

Learning Objective:

- Explain the purpose and benefits pertaining to the Servicemembers Civil Relief Act

BACKGROUND

The Servicemembers Civil Relief Act serves to provide temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers (a member of the uniformed services of the United States) during their military service.

Applicability

This Act applies to every state and territory subject to jurisdiction of the United States, and is intended to postpone certain civil obligations to enable servicemembers to devote full attention to duty and relieve stress on the family members.

Eligibility

The SCRA covers all Active Duty servicemembers, Reservists, and National Guard members while on active duty. Protection begins on the date of entering active duty and generally terminates within 30-90 days after the date of discharge.

Protections

The SCRA provides a wide range of protections for individuals entering, called to active duty in the military, or deployed service members. The following are a few examples of these protections:

- Mortgage payments
- Outstanding credit card debt
- Pending trials
- Taxes

The SCRA works to protect servicemembers and their families from eviction from housing while on active duty due to nonpayment of rent (\$3,716.73 per month or less). It also provides a servicemember who receives permanent change of station orders or who is deployed to a new location for 90 days or more the right to terminate a housing lease.

Exceptions

This Act does not apply to criminal proceedings.

PROGRESS CHECK 10

1. SCRA protection begins on the date of entering active duty and terminates:
 - A. Within 30-90 days prior to the date of discharge
 - B. Within 15-30 days after the date of discharge
 - C. Within 30-90 days after the date of discharge
 - D. Within 15-30 days prior to the date of discharge

2. The SCRA protects individuals from all of the following, EXCEPT:
 - A. Taxes
 - B. Criminal proceedings
 - C. Eviction
 - D. Credit card debt

3. The Servicemembers Civil Relief Act serves to provide _____ suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers.
 - A. Permanent
 - B. Temporary
 - C. Indefinite
 - D. Partial

4. This act applies to:
 - A. All of the United States and its territories
 - B. US States housing military bases
 - C. All countries housing military bases
 - D. Those states that opt to provide this coverage to their resident military members

MODULE 11

VA Residential Landlord and Tenant Act

Learning Objective:

- Explain the Virginia Residential Landlord and Tenant Act rules and requirements

BACKGROUND

The Virginia Residential Landlord and Tenant Act (Landlord/Tenant Act) is intended to protect the rights of landlords and tenants in Virginia. The Landlord/ Tenant Act accomplishes this by establishing rules and procedures governing leases, application fees, security deposits, and collection of past due rent.

APPLICATION FEES

Landlords may charge a refundable application deposit and up to a \$50 non-refundable application fee (\$32 for HUD housing) to prospective tenants when they apply to lease a dwelling. The landlord must refund any deposit if no rental agreement is reached within 20 days (10 days if rejected by the landlord and deposit was originally paid by cash, certified check, cashier's check, or money order). However, the landlord may withhold actual expenses and damages if itemized.

UNSIGNED/UNDELIVERED LEASES

If either the lessor or the lessee does not sign a written lease, but the agreed rent is paid and accepted, the rental agreement is binding on both parties. The same is true of signed but undelivered leases.

SECURITY DEPOSITS

The landlord may require the tenant to provide a security deposit at the time the property is leased. The security deposit protects the landlord against unpaid rents or damage (other than normal wear and tear) caused by the tenant during the lease period. Security deposits must be placed in escrow.

Amount and Return

The security deposit cannot exceed an amount equal to two months rent and must be returned, in whole or in part, to the tenant within 45 days after the tenant vacates the property. If the landlord intends to withhold a portion of the security deposit to cover damages or losses, he must provide the tenant with a written disposition statement (which will include an itemized list of damages).

FINAL INSPECTION

The landlord must make a final inspection of the dwelling within 72 hours after the lease terminates. The landlord must notify the tenant of the date and time of the inspection, and the final inspection must occur at a reasonable time. The tenant has the right to be present during the landlord's inspection but must advise the landlord in writing of her intent to be present.

VIOLATION OF RENTAL AGREEMENTS

Landlord Violation

If a landlord is in violation of the terms of a lease or is in violation of the law, the tenant must notify the landlord in writing and allow 30 days for correction. Emergency situations may require quicker action by the landlord.

If a tenant chooses to remain in possession even though the violation has not been corrected, he or she should continue to make rental payments within five days of the rental due date, but these payments should be deposited in escrow with the district court. To terminate a lease, a tenant must file a claim with the district court.

Tenant Violations

If a tenant is in violation of the terms of a lease or is in violation of the law, the landlord must notify the tenant in writing and allow at least 21 days for the tenant to correct it if it is a fixable offense. If the tenant does not correct the violation, the lease will terminate at the end of 30 days.

If repairs, replacement or cleaning will correct the violation, the landlord may enter the property, correct the problem, and charge the tenant the costs incurred. The landlord may do this as promptly as may be required in an emergency, or within 14 days of written notification absent an emergency.

Non-payment of Rents

If rental payments are late, the landlord may take the following actions:

- **Five-day Pay-or-Quit Notice.** The landlord may issue a written notice giving the tenant 5 days to pay the rent or to vacate the property.
- **Unlawful Detainer Warrant.** The landlord may obtain an Unlawful Detainer Warrant. The Unlawful Detainer Warrant allows the landlord to begin eviction proceedings. The tenant remains obligated to pay rent throughout the process.
- **Eviction.** If full payment of rent is not received within 5 days, the landlord may file suit to have the tenant evicted. The landlord may not remove or exclude the tenant from the property or deny essential services unless a court orders eviction.

Insufficient Funds

If the tenant issues a check with insufficient funds, the landlord may give notice requiring payment by cash, cashiers check, or certified check within 5 days. If the landlord does not receive payment she may proceed with one of the three options above.

SPECIAL ISSUES

House Rule Changes

During the period of occupancy, the landlord may adopt additional minor changes to the rules and regulations for tenants provided that such changes do not alter the terms and conditions of the lease.

These minor changes include items such as guest fees at the swimming pool or guest registration at the rental office. The landlord must give reasonable written notice of minor rule changes, but the tenant need not agree for the changes to be binding.

Conversely, rule changes that substantially alter the rental agreement are only valid if the tenant agrees in writing. The tenant may refuse to accept the changes and be bound only by those conditions of the original lease. However, at the expiration of the rental agreement, the tenant must either accept the changes or vacate the property.

Confidentiality

A landlord cannot release the tenant's financial information to a third party (except for the rental amount and payment records) without the tenant's written consent. However, a prospective buyer of rental property may access all tenant information without the consent of the tenant. The Act only provides a few other limited exceptions (for example, in case of emergency or when requested by law enforcement).

Security Devices

A tenant may, at his own expense, install security equipment. The property must be restored to its original condition upon termination

of the lease if the landlord so requests. Otherwise, the tenant must provide the landlord complete operating instructions and keys for any equipment installed.

Smoke Detectors

The landlord must provide a certificate to the tenant that all smoke alarms are present, have been inspected, and are in good working order (no more than once every 12 months). The landlord, his employee, or an independent contractor may perform an inspection to determine such fact. The tenant may not remove or tamper with a properly functioning smoke alarm.

Carbon Monoxide Alarms

The tenant may request to have a carbon monoxide alarm in the unit. The landlord shall install an alarm within 90 days of receiving a written request, but he can charge a reasonable fee for its cost and installation. Once installed, the tenant may not remove or tamper with a properly functioning carbon monoxide alarm.

Landlord Right of Access

The landlord must give the tenant reasonable notice of his intent to access the property, except in the case of an emergency. The tenant cannot deny a reasonable request so long as the landlord does not abuse the right. The tenant may seek an injunction from a circuit court barring the landlord's access where the landlord abuses his right.

If a tenant plans to be absent from the property for greater than seven days, the landlord may enter as necessary to protect the property. If the lease requires the tenant to notify the landlord of absences and the

tenant fails to do so, the tenant may be responsible for any damage that occurs during his absence.

Early Termination by Military Personnel

Military personnel subject to transfer may terminate a valid lease by serving the landlord a written notice at least 30 days prior to when the next rental payment is due, to be effective on a date after this notice period ends. The termination shall not be more than 60 days prior to the date of military departure. The tenant shall furnish the landlord a copy of the notice of orders. No charges may be imposed by the landlord for damages.

Automatic Renewal Clauses

Many leases contain automatic renewal clauses that specify that the lease will automatically renew under the same terms and conditions unless either party provides written notice within a specific number of days prior to termination. These clauses are valid.

However, changes such as rent increase must be agreed to by the tenant in writing. If the tenant fails to agree to changes then she must vacate the property. In the event that all terms and conditions, including rent, remain unchanged, the renewal of a rental agreement is considered to be a new agreement.

Early Termination by Victims of Abuse or Sexual Assault

Victims of family abuse, sexual abuse, or criminal sexual assault may terminate a valid lease by serving the landlord a written notice at least 30 days prior to when the next rental payment is due, to be effective on a date after this notice period ends. The tenant shall furnish the landlord a copy of the protection/conviction orders. No charges may be imposed by the landlord for damages.

Early Termination Upon Foreclosure

The landlord must notify the tenant within 5 days after receiving a notice of mortgage default, acceleration, or foreclosure sale from the lender. If the landlord fails to notify the tenant, they can terminate the lease by providing a 5 day written notice to the landlord.

If a tenant remains and the dwelling is sold in foreclosure, that foreclosure shall act as a termination of the rental agreement with the previous owner. In such case, the tenant can remain in possession on a month-to-month basis and with the same rental terms. This shall continue until the new owner decides to terminate or enter into a new rental agreement with the tenant.

Subleases

If the lease allows a tenant to sublease, the landlord must approve or disapprove the sublessee within 10 days of written notification. Failure to respond within this time is equivalent to an automatic approval of the sublessee.

Disposal of Abandoned Property

Personal property left on the landlord's premises may become abandoned. The landlord may dispose of such property provided he has given the tenant:

- (i) a termination notice, which states that any property left on the premises will be disposed of within 1 day after the lease ends;
- (ii) written notice that any property left on the premises will be disposed of within 1 day after expiration of the required seven-day lease abandonment notice period; or

(iii) a separate 10-day written notice that any property left on the premises will be disposed of within 1 day after expiration of said notice period. Any funds received from the sale of the abandoned property may be used to offset any debts owed by the tenant including selling expenses or storage costs. Any excess funds must be treated as a security deposit.

EXEMPTIONS

The Landlord and Tenant Act does not apply to the following:

- Non-residential rentals, non-paying tenants, and campgrounds;
- Public and private institutions (prisons, religious, educational, etc.);
- Social organizations (fraternity houses);
- Transient housing (hotels, motels, boarders), provided it hasn't been a person's primary residence for 90 consecutive days or a lease has not been signed;
- Landlord employees (maintenance persons living on-site)
- Single-family houses, when the owner rents fewer than two single-family houses and has chosen to include an opt-out statement in the lease agreement. This exemption only applies to owners who are natural persons, and not artificial persons (corporations).

Note that all apartment buildings, regardless of the number owned and rented, are subject to the Landlord Tenant Act. The Act does apply to public housing (HUD regulated). However, if any provisions are inconsistent with HUD regulations, those regulations will control.

PROGRESS CHECK 11

1. Regarding the early termination of military personnel, which of the following is true:
 - A. Written notice must be provided to the landlord at least 60 days prior to the next rent due date
 - B. Termination cannot occur more than 30 days prior to military departure
 - C. The landlord is prohibited from imposing charges for damages
 - D. The tenant must provide a copy of orders to the landlord
2. Landlords may charge a refundable application deposit and up to a _____ non-refundable application fee to prospective tenants when they apply to lease a dwelling
 - A. \$25
 - B. \$50
 - C. \$100
 - D. \$150
3. If the lease allows a tenant to sublease, the landlord must approve or disapprove the sublessee within _____ days of written notification.
 - A. 3
 - B. 5
 - C. 7
 - D. 10
4. Security deposits must be:
 - A. Less than one month rent amount
 - B. Requested at least 10 days prior to the lease signing
 - C. Placed in escrow
 - D. Returned to the tenant immediately upon lease termination

MODULE 12

VA Condominium Act

Learning Objective:

- Be familiar with the parameters of the Virginia Condominium Act

BACKGROUND

The Virginia Condominium Act governs the creation and transfer of Condominium developments in Virginia. Condominiums are a popular form of property ownership. Frequently, condominiums are multi-unit dwellings that contain areas or structures under common ownership, called common areas. However, a condominium may be a stand alone, or even a single family, unit. Whether a property is properly classified as a condominium turns on the intent and legal actions undertaken by its owner(s).

DEFINITIONS

Condominium

The statute defines a condominium as “real property and any incidents there to or interest therein [with recorded] condominium instruments. No project shall be deemed a condominium unless the undivided interests in the common elements are vested in the unit owners.”

Declarant

An owner that establishes or converts property to condominium ownership. The owner is referred to as the declarant because she must declare the intent to have the property considered a condominium.

Declaration Instruments

In order to create a condominium development, the declarant must provide a declaration to the Common Interest Community Board with the following mandatory items:

1. The name of the condominium. The name must include the word “condominium;”
2. The legal description of the property;
3. Plats and/or plans that identify each unit within the boundaries of the property;
4. An exact description of the boundaries of each individual unit, both horizontal and vertical;
5. The designation and description of common elements and limited common elements;
6. The exact allocation of the undivided ownership interest in the common elements;
7. If the property being converted is currently leased, the names of each lessee and the date their lease expires;
8. Any easements that exist or will be created, either to the common elements or any individual unit;
9. An exact description of any proposed alterations to be made to any existing units or common elements; and
10. If initial construction or additions are not complete, the plats must indicate “NOT YET COMPLETED,” and the projected date of completion must be specified.

By-Laws

Bylaws are the rules and regulations that govern the operation of the condominium. These rules are self imposed, in that all unit owners must agree to them in order to reside in the condominium development. In order to create a condominium development, the declarant must submit a copy of the by-laws to the Board. The by-laws must address the following matters:

1. The form of self-governance for the unit owners;
2. If there will be an executive body (trustee, board of directors, officers);
3. How any executive body will be elected or appointed;
4. The exact duties and responsibilities of this body;
5. The extent to which the executive body may delegate responsibilities to a management agent;
6. The accounting and management records that must be maintained;
7. Scheduled meetings of all owners (at least annually) and of the executive body;
8. Statutory requirements for meeting notices (21 days for annual meetings, 7 days for all others); and
9. The covenants, conditions and restrictions (CCRs) that apply to all unit owners.

The by-laws of the condominium may be changed by a simple majority vote of the condominium members. The statute specifies that by default, at least 33- 1/3 % of the voting interest must be present at the meeting before a vote can begin. By-laws may impose a higher or lower percentage, but no less than 10% of the voting interest must be present to amend the condominium by-laws.

Public Offering Statement (POS)

The declarant must also develop a public offering statement (POS) along with the declaration and by-laws. The POS must provide the following:

1. The name of the declarant;
2. A narrative description of the condominium including the number of units and any future planned units;
3. Copies of management contracts and a statement of the relationship between the declarant and any contractor;
4. General status of construction or improvements;
5. Encumbrances, liens and easements affecting title;
6. Financing terms, if offered by the declarant; and
7. Proposed first year budget and unit assessments.

The POS must be provided to the first buyer of any condominium unit only. The initial purchaser of the condominium has a 5-day right to rescind the contract, without penalty. The 5 day period begins on the date of contract ratification or upon receipt of the POS, (and any amendments), whichever is later. The right to rescind the contract may be exercised for any reason.

Transfer of Ownership

At closing, the buyer acquires a fee simple ownership interest in his or her individual unit and an undivided percentage interest in the common elements of the condominium.

Declarant's Responsibilities

The declarant is responsible for all units in the development until any unit is sold. Upon sale, the buyer is responsible for his or her individual unit. The declarant remains responsible for the

management and maintenance of the entire project until 75% of the units are sold. At this time the responsibilities shift to the association of unit owners. The declarant remains a member of the owner's association by virtue of the fact that he is the owner of the unsold units.

Resale of Condominium Unit

In the event of any resale of a unit by an owner, other than the declarant, the seller must provide the following documents to the buyer prior to the contract date:

1. A copy of the most current annual financial reports of the association;
2. Any capital expenditures anticipated during the current or succeeding fiscal year;
3. Current assessments or other fees levied on the unit owners;
4. The amount of reserves established for specific projects, replacement, or repairs to the condominium;
5. Any pending suits or judgments to which the association is a party;
6. Specific details related to insurance coverage;
7. A current copy of the condominium declaration and amendments;
8. A copy of the current by-laws and CCR's;
9. A statement that any changes made to either the unit or the common elements are not in violation of zoning ordinances or the condominium declaration; and
10. A statement of the right to install or use solar panels.

While the seller must provide these documents, the association may charge a fee for preparing the documents (\$150 for 2 hard copies, total of \$125 for up to 5 electronic copies). If the buyer fails to receive the

required documentation before contract ratification, the association loses all right to claim previously unpaid assessments, and may be liable to the seller for actual damages (not to exceed \$1,000). This does not excuse a buyer's non-compliance with the condominium rules and regulations.

Voting Rights

Each unit owner has an ownership interest and voting rights in the governing body (association) of the condominium. The interest is generally in proportion to the unit size and amenities.

EXAMPLE: A three-bedroom unit may have a larger interest than a two-bedroom unit. The exact proportion of ownership assigned to each unit is detailed in the declaration documents.

Right of Attachment

The unit owner's association, by statute, has a lien on every condominium unit for unpaid assessments levied against it. The lien is junior to real estate tax liens or other liens recorded prior to the filing of the original declaration.

Termination

The decision to dissolve, abandon, or terminate the condominium form of ownership requires the approval of 80% of the voting interest of the unit owner's association.

PROGRESS CHECK 12

1. Tenants must be provided notice of monthly meetings of the condominium association within _____ days of the meeting.
 - A. 3
 - B. 7
 - C. 14
 - D. 30
2. The voting rights of each condominium member are based on:
 - A. Whether the individual is on the board or not
 - B. Purchase price of the individual unit owned
 - C. Whether they pay dues or not
 - D. Unit size and amenities
3. Unit owners must take responsibility for the management and maintenance of the condominium association when _____ of the units are sold.
 - A. 1/4
 - B. 1/2
 - C. 3/4
 - D. All
4. _____ owners within the condominium must agree on the rules and regulations that govern the condominium.
 - A. All
 - B. A majority of
 - C. Dues paying
 - D. Board member

MODULE 13

VA Time-Share Act

Learning Objective:

- Be aware of the rules and regulations that pertain to the Virginia Time-Share Act

BACKGROUND

The Virginia Time-Share Act (Time-Share Act) governs the creation and transfer of time-share properties in Virginia. The Time-Share Act defines a time-share as, “a right to occupy a unit or any of several units during 5 or more separated time periods over a period of at least 5 years, including renewal options, coupled with a freehold estate or an estate for years in a time-share project or specific portion.”

CREATION OF TIME-SHARE PROJECTS

In order to create a time-share, the declarant (developer) must file and record a time-share project instrument that defines the project being created. A time-share association must be established in accordance with the Virginia Non-Stock Corporations Act before any time-share estates are conveyed.

The project instrument must include:

1. A proposed budget;
2. Management and maintenance agreements;
3. Rules, covenants, and restrictions on owners; and
4. Insurance coverage provided, and other information relative to the project being created.

The developer must remain in control of the project during the developer control period and is responsible for management and maintenance during this period.

Public Offering Statement (POS)

The developer must also prepare a public offering statement (POS) to fully disclose the characteristics of the project. The time-share POS is very similar to the POS filed for a condominium.

If the time-share project is being converted from another type of ownership, certain information is required. This information includes: capital improvements and repairs made during the past three years; reserves established; and the present condition of structural components.

The current tenants of the property being converted must be given at least a 90 day notice of the intent to convert. These tenants have 60 days to contract with the developer to purchase the unit currently occupied if that unit is to be part of the time-share project, without substantial alteration. Tenants on month-to-month leases must have at least a 120 day notice to vacate.

Right of Rescission

The initial purchaser has a seven (7) day right to rescind the contract without penalty. The seven days run from the date of contract ratification or receipt of the POS, whichever is later. This right of rescission is statutory and cannot be waived.

Deposits

Any earnest money deposits or down payments to purchase a time-share interest must be placed in a separate escrow account established by the developer, or in the regular escrow account of a real estate broker or attorney.

However, if the project consists of more than 25 units, the developer can instead obtain a surety bond or letter of credit with the Common Interest Community (and the amount will depend on the total amount of deposits). If a purchaser exercises his or her right of rescission, the developer must refund monies advanced by the buyer within 45 days without penalty.

Advertisements

Any advertisements used in marketing a time-share interest, which includes free gifts or prizes, must clearly disclose the retail value of the gift, the conditions under which the gift is offered, the odds of winning a prize if one is offered, the expiration date of the offer, and a statement that the offer is made for the purpose of soliciting the purchase of time-share estates.

Transfer of Control

Fee simple title to the project must be transferred to the time-share owner's association, free of charge, when:

1. 90% of all units are sold;
2. for at least 20% of all units, the developer is no longer the beneficiary on the deed of trust; or
3. all of the common elements and facilities are completed (whichever occurs later).

The time-share owners association assumes control and responsibility for the management and maintenance of the project upon the transfer of control. The association must file an annual report to all owners starting on the second year of the time-share registration and every year thereafter. The report must include the usual financial statements, a list of all directors, and a statement of projected assessments for the current year.

RESALE OF TIME-SHARE ESTATE

A resale is the sale of a time-share interest made by any person other than the declarant (the initial sale). The seller in a resale must obtain a Certificate of Resale from the association and provide it to the buyer.

This certificate must contain a copy of the time-share instruments, current financial statements of the association, current by-laws, rules and restrictions of the project, current fees and assessments, and other pertinent financial information.

The association must provide the buyer a release of liens that may be pending on the unit. The association may charge the seller up to \$50 for providing the Certificate of Resale.

Right of Rescission

Any buyer, in a resale contract, has the right to rescind any purchase contract for up to 5 days following contract ratification OR receipt of the certificate of resale, whichever is later. However, once the contract goes to closing and title transfers, the buyer waives the right of rescission.

Statute of Limitations

The statute of limitations requires that any action be brought within 2 years from the date of the contract if there is any information contained in the project instrument, the POS, or any contract which is inaccurate.

Actions Against Associations

Time-share owners may file suit against their association, for actions such as changing the by-laws or CCR's, or to terminate the time-share ownership. Such actions require a simple majority (at least 51%) of the voting interest of the unit owners.

PROGRESS CHECK 13

1. When there is a resale of a time share the seller must obtain a _____ and provide it to the buyer.
 - A. Property inspection report
 - B. Maintenance warranty contract
 - C. Certified legal review of the sales contract from a licensed attorney
 - D. A Certificate of Resale from the association

2. To create a time share, the declarant (developer) must record a time-share project instrument that defines the project, which must include all of the following, EXCEPT:
 - A. Insurance coverage provided
 - B. The escape clause/default procedures
 - C. A proposed budget for the project
 - D. The maintenance agreement

3. If a time share is being converted from another type of ownership the POS must state repairs that were made to the property within _____.
 - A. The last 6 months
 - B. The past year
 - C. The previous 2 years
 - D. The last three years

4. Stewart just recently signed a time share purchase contract and the transaction closed this morning. He has been reading all of the closing documents and realizes there are some stipulations in the contract he wasn't fully aware of and disagrees with. What are Stewart's rescission rights?
 - A. He can rescind the contract within 3 business days of closing
 - B. He can rescind the contract within 5 business days of closing
 - C. He can rescind the contract within 7 business days of closing
 - D. He no longer has rescission rights

MODULE 14

Lead Disclosure Rule

Learning Objective:

- Explain the timing and requirements of the Lead Disclosure Rule

BACKGROUND

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, to protect families from exposure to lead from paint, dust, and soil. Section 1018 of this law directed HUD and EPA to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978.

WHAT IS REQUIRED?

Before ratification of a contract for housing sale or lease, sellers and landlords must:

1. Give an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards (“Protect Your Family From Lead In Your Home” pamphlet).
2. Disclose any known information concerning lead-based paint or lead-based paint hazards. The seller or landlord must also disclose information such as the location of the lead-based paint and/ or lead-based paint hazards, and the condition of the

painted surfaces.

3. Provide any records and reports on lead-based paint and/or lead-based paint hazards which are available to the seller or landlord (for multi-unit buildings, this requirement includes records and reports concerning common areas and other units, when such information was obtained as a result of a building-wide evaluation).
4. Include an attachment to the contract or lease (or language inserted in the lease itself) which includes a Lead Warning Statement and confirms that the seller or landlord has complied with all notification requirements. This attachment is to be provided in the same language used in the rest of the contract. Sellers or landlords, and agents, as well as homebuyers or tenants, must sign and date the attachment.
5. Sellers must provide homebuyers a 10-day period to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity

TYPES OF HOUSING COVERED

Most private housing, public housing, Federally owned housing, and housing receiving Federal assistance are affected by this rule.

EFFECTIVE DATES

The regulations became effective on September 6, 1996 for transactions involving owners of more than 4 residential dwellings and on December 6, 1996 for transactions involving owners of 1 to 4 residential dwellings.

RECORDKEEPING

Sellers and lessors must retain a copy of the disclosures for no less than three years from the date of sale or the date the leasing period begins.

PROGRESS CHECK 14

1. Sellers must provide homebuyers a 10-day period _____ to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards.
 - A. Prior to ratification of the purchase agreement
 - B. Anytime after ratification but before closing
 - C. Prior to the settlement date
 - D. Within 24 hours of ratification of the purchase agreement
2. Lead paint disclosure documents must be kept by sellers or lessors for at least _____ from the date of sale/lease.
 - A. 2 years
 - B. 3 years
 - C. 5 years
 - D. 10 years

3. The lead paint hazard information pamphlet required to be provided to buyers or tenants must be:
 - A. DPOR approved
 - B. VREB approved
 - C. EPA approved
 - D. HUD approved

4. Which of the following would NOT require a lead based paint disclosure pamphlet be provided to a buyer or lessee?
 - A. Leasing of a residential home built in 1985
 - B. Purchase of a farm house built in 1976
 - C. Lease of a duplex built in 1965
 - D. Purchase of a 100 year old home registered with the historical society

MODULE 15

VA Building Codes & Smoke Detectors

Learning Objective:

- Be aware of the purpose for Virginia Building Codes & Smoke Detectors

VIRGINIA BUILDING CODES

Background

The Virginia Uniform Statewide Building Code (USBC) contains the building regulations that must be complied with when constructing a new building, structure, or an addition to an existing building. They must also be used when maintaining or repairing an existing building or renovating the use of a building or structure.

The USBC is comprised of 3 sections:

1. Virginia Construction Code
2. Virginia Rehabilitation Code
3. Virginia Maintenance Code

Virginia Construction Code

Contains regulations specific to the construction of new buildings and structures and alterations, additions and change of occupancy in existing buildings and structures.

Virginia Rehabilitation Code

Contains optional regulations specific to rehabilitation of existing buildings that may be used as an acceptable alternative to the VCC.

Virginia Maintenance Code

Contains regulations for the maintenance of existing structures which is enforced at the option of the local governments.

The code provides a required level of performance to facilitate the prompt acceptance of new building materials and methods of construction. These provisions allow construction to remain consistent with nationally recognized standards for health, safety, welfare, accessibility, and energy and water conservation.

Enforcement is the responsibility of the local government's building inspections department.

SMOKE DETECTORS

Background

Any locality, notwithstanding any contrary provision of law, general or special, may by ordinance require that smoke alarms be installed in the following structures or buildings:

- any building containing one or more dwelling units,

- any hotel or motel regularly used or offered for, or intended to be used to provide overnight sleeping accommodations for one or more persons
- any rooming houses regularly used, offered for, or intended to be used to provide overnight sleeping accommodations

Smoke alarms installed pursuant to this section shall be installed only in conformance with the provisions of the Uniform Statewide Building Code, and they are permitted to be either battery operated or AC powered. Such installation shall not require new or additional wiring.

They must be maintained in accordance with the Statewide Fire Prevention Code and the Uniform Statewide Building Code. However, nothing herein shall require a building to upgrade smoke alarms that were in compliance with all codes during the last renovation.

The ordinance may require an owner to provide his tenant with a certificate that all smoke alarms are present, have been inspected, and are in good working order (no more than once every 12 months).

Except for smoke alarms located in public or common areas of multifamily buildings, the interim testing, repair, and maintenance of smoke alarms in rented or leased dwelling units shall be the responsibility of the tenant in accordance with applicable landlord and tenant law.

Tenants shall not remove or tamper with a properly functioning smoke alarm installed by the landlord, including removing any working batteries, so as to render the alarm inoperative.

The tenant shall maintain the smoke alarm in accordance with the uniform set of standards for maintenance of smoke alarms established in the Statewide Fire Prevention Code and the Uniform Statewide Building Code.

PROGRESS CHECK 15

1. Who is responsible for enforcement of building codes?
 - A. Land Developers overseeing construction projects
 - B. Department of Housing and Urban Development
 - C. The state government
 - D. The local government

2. Who is responsible for the testing and repair of smoke detectors in a rented residential dwelling?
 - A. The Landlord
 - B. The Tenant
 - C. The Fire Marshall
 - D. The Property Manager

3. The Virginia Uniform Statewide Building Code (USBC) contains the building regulations that must be complied with when:
 - A. Maintaining an existing building
 - B. Constructing a new building
 - C. Adding on to an existing building
 - D. Any of the above

4. Which of the following is NOT one of the USBC sections?
- A. Rehabilitation code
 - B. Maintenance code
 - C. Refinance code
 - D. Construction code

MODULE 16

Carbon Monoxide Alarms & Miss Utility

Learning Objective:

- Identify the need for both Carbon Monoxide Alarms & Miss Utility within the real estate field

CARBON MONOXIDE ALARMS

Upon written request of a tenant in a dwelling unit, the landlord shall install a carbon monoxide unit in the dwelling unit within 90 days. The landlord may charge the tenant a reasonable fee to recover the costs of the equipment and labor for such installation. The installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code.

Tenants shall not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including the removal of any working batteries, so as to render the carbon monoxide alarm inoperative.

The tenant shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon

monoxide alarms established in the Statewide Fire Prevention Code and the Uniform Statewide Building Code.

MISS UTILITY

Background

Although it is not a specific real estate act, the following are very important procedures, promoted by the Virginia Real Estate Board, concerning safe digging practices and installation of signs in the ground, including “for sale” signs. Follow the guidelines below to prevent any unnecessary accidents or damage.

Call Miss Utility at 811 Before Installing Real Estate Signs

Adopted in 1979, the Virginia Underground Utility Damage Prevention Act (the Act) was passed by Virginia legislators to address the responsibilities of all stakeholders in preventing damage to underground utility lines. Since then, with the help of all stakeholders, Virginia has made great strides in becoming a model for other states.

Unfortunately, recently the Division of Utility and Railroad Safety (Miss Utility) has seen damage to utility lines caused by the installation of real estate signs. Many real estate signs are placed in front property areas to increase visibility and are often placed on utility easements. Utility companies use these easements to bury their facilities that provide service to Virginia homes and businesses.

Excavating to install real estate signs without following the Act’s requirements may result in damaging an underground utility line.

Such damage can cause far reaching consequences from loss of life or injuries, to economic or environmental damage, liability claims and civil penalties. Real estate licensees are obligated to encourage the company or individual that installs their signs to comply with Virginia law.

"Dig with C.A.R.E - Keep Virginia Safe!"

Is a message established by the Virginia State Corporation Commission (SCC) to assist in educating Virginia citizens about the Act's requirements. In short, the acronym "C.A.R.E" stands for:

- C - Call Miss Utility at 811 before you dig.

Your Miss Utility ticket's life is fifteen (15) working days beginning at 7:00 a.m. the following working day after Miss Utility is notified. A "working day" means every day, except Saturdays, Sundays or legal state and national holidays.

- A - Allow the required time for marking.

The waiting period is 48 hours and begins at 7:00 a.m. the next working day after you contact Miss Utility. This does not include Saturdays, Sundays or legal state and national holidays.

- R - Respect and protect the marks.

Marking underground utility lines is the way utilities show the approximate horizontal location within two feet of either side of their facilities. It is the excavator's responsibility to protect and preserve the markings from the time the excavation begins until markings are

no longer needed for the proper and safe excavation near the utility lines.

- E - Excavate carefully.

Prior to excavating, conduct a site inspection that includes verifying the correct location, verifying locate markings, and, to the best of your ability, checking for clear evidence of unmarked utility lines.

Additionally, when excavating within two feet on either side of a staked or marked location of an underground utility line such steps include, but may not be limited to, exposing the utility to its extremities by hand digging to see where the utility line is located, not using mechanized equipment within two feet of the exposed utility line, and protecting the utility from damage.

PROGRESS CHECK 16

1. Why would a real estate agent be concerned with the location of underground utility lines?
 - A. To inform buyers of their location
 - B. To ensure all proper utilities are available before listing a property
 - C. To place for sale signs without damaging utilities
 - D. In case a property survey is required

2. If a tenant requests a carbon monoxide detector the landlord must have one installed in the tenant's unit within _____ .
- A. 10 days
 - B. 30 days
 - C. 45 days
 - D. 90 days
3. Broker Roger is about to place a for sale sign in Seller Craig's front yard, He called the 811 number to have the ground checked for utilities, how long does the utility company have to come out and mark the ground?
- A. 15 days
 - B. 5 days
 - C. 48 hours
 - D. 24 hours
4. Who is responsible for maintaining the utility company markings until they are no longer needed?
- A. The utility company
 - B. The excavator
 - C. The property owner
 - D. The HOA

MODULE 17

Flood Hazard Areas/ National Flood Insurance Program

Learning Objective:

- Identify what constitutes a Flood Hazard Areas and requirements of the Flood Insurance Program

BACKGROUND

The Federal Emergency Management Administration (FEMA) states that floods are the most common and most costly natural disaster. In many states, being located in a flood zone is a material fact that must be disclosed to the buyer in a transaction.

However, as written in the Virginia Residential Property Disclosure Act, it is now the buyer's specific responsibility to research whether a potential property is located in a special flood hazard area (due diligence).

The seller makes no representation about such status. The licensee is only required to inform clients and customers of their rights and duties under the Act. Nevertheless, the Board would like licensees to understand the basics of flood hazard areas and the National Flood Insurance Program (NFIP) in order to better serve the public.

Established in 1968, the National Flood Insurance Program was established to help reduce the impact of flooding on private and public property owners. Under the administration of FEMA, the National Flood Insurance Program provides flood insurance, improves floodplain management, and develops maps of flood hazard zones.

Please note that every location has the potential to flood, but the risk of impact will depend upon whether the location is classified as a low, moderate, or high risk area. The NFIP offers flood insurance to residential and commercial owners if their community participates in the program. Participating communities are consequently required to establish management regulations to reduce future flood damages.

Areas that are at high risk for floods are designated as "special flood hazard areas" (an area with at least a 1 in 4 chance of flooding during a standard 30 year mortgage term). By law, flood insurance coverage is mandatory when lenders make federally insured or guaranteed mortgages to home buyers in SFHAs.

As a result, a lender will require borrowers in SFHAs to purchase flood insurance in order to obtain the loan. Even when not required to purchase flood insurance, it may still be a good idea to have coverage since a flood can occur anywhere.

Property owners purchase flood insurance through private insurance providers; however, these premiums are regulated nationally. Note that there is a 30-day waiting period for flood insurance to become effective if not purchased in connection with a mortgage loan.

There are two types of residential flood coverage: Building Coverage (up to \$250,000) and Personal Property Coverage (up to \$100,000). Commercial coverage has higher limits (up to \$500,000 for both categories). Building coverage may include items such as: the property, foundation, built-in appliances, utility systems, and other permanently installed fixtures.

Personal property coverage may include items such as: personal belongings, furniture, portable appliances, food, and certain valuables.

These categories will not cover items such as: avoidable water, mold, or mildew damage; outside property and belongings (trees, pools, decks); temporary living expenses; loss of use reimbursements; and most cars. The insurance provider will base reimbursement upon either the Replacement Cost Value or the Actual Cash Value of the item at the time of loss.

PROGRESS CHECK 17

1. The NFIP offers flood _____ to residential and commercial owners if their community participates in the program.
 - A. Awareness classes
 - B. Insurance
 - C. Statistical history for the area
 - D. Area maps
2. Regarding flood insurance coverage, the insurance provider will base reimbursement amounts upon:
 - A. Fair market value
 - B. Depreciated value
 - C. Insurance value
 - D. Actual cash value
3. A lender will require borrowers in _____ to purchase flood insurance in order to obtain the loan.
 - A. Subdivisions
 - B. High altitude areas
 - C. Government/low income housing
 - D. Special flood hazard areas
4. A Special Flood Hazard Area (SFHA) is defined by:
 - A. An area with at least a 1 in 4 chance of flooding during a standard 30 year mortgage term
 - B. An area with at least a 1 in 10 chance of flooding during a standard 30 year mortgage term
 - C. An area with at least a 75% chance of flooding during a standard 30 year mortgage term
 - D. An area designated by FEMA as a high risk of flood area