

New Regulations FAQ

Q: They completely changed all of the regulations. Those redlines are absolutely covered in red ink! How can I ever remember all the changes?

A: First, take a deep breath. Second, you'll be happy to know that most of the updates to the regs were either A) moving things around to make them easier to follow or B) removing sections that were already referenced in the Code. The actual changes are not that numerous. As for what those changes mean, just continue reading!

Advertising

Q: If the "one-click away" rule is gone, how am I supposed to get my disclosures up on all of my ads? Some platforms have a limit to the number of characters you can use.

A: You might have to get creative for ads on platforms with character limits. One option is to use a picture in your posts (either of the property or something like your firm logo) and include the required disclosures on the picture. That ensures that your required disclosures are on the ad itself without having to deal with character limits.

Q: What happens if a social media provider has already sent out an ad that I paid for, then the property goes from For Sale to Under Contract?

A: If you have the ability to edit the ad, you should change it to reflect that the property is now Under Contract. If, however, the social media provider sent out the ad (as could be the case for paid advertisement) and you cannot make edits yourself, you must make a written request that the provider update the ad. As long as you have requested the change in writing, you would not be liable if the provider fails to make the change.

Q: What does "contact information" mean?

A: The new regs require (in 18VAC135-20-190) that your disclosure include the "office contact information." They go on to define that as "phone number, email address, or web address of the firm or branch office, or digital link thereto." What "office contact information" means for your firm must be included in the brokerage's written policies, but it must come from that list provided in the new regs. Think of the regs as a menu at a very fancy restaurant: you can choose what you want from the menu, but there are no substitutions.

Q: If I list a property that I own, am I no longer required to put an “Agent-Owner” disclosure in the advertising?

A: That’s correct. However, keep in mind that the Virginia Code still requires you to make an agent/owner disclosure, in writing, to the other side “upon having substantive discussions about specific real property.” You are allowed to continue using things such as Agent/Owner sign riders, but those are no longer mandatory.

Escrow

Q: Is it true that I no longer have to report my agent if she fails to turn in an EMD on time?

A: Yes, the mandatory reporting requirement for an agent who commits an escrow violation is gone. However, remember that just because the reporting requirement has been removed, the escrow violation itself is still punishable by VREB. If the Board discovers the violation, then the agent could potentially face discipline. And, if there is a pattern in your brokerage, you as the principal or supervising broker could also face discipline.

Licensed Activity

Q: The entire section on what is licensed activity has disappeared from the Duties of a Supervising Broker regulation. What’s going on?

A: Not quite. The list of actions that constitute licensed activity have simply been moved to their own section, 18VAC135-20-335.

Q: Can I sell my own property as an agent without going through my brokerage?

A: Potentially. The regs (18VAC135-20-260) now allow you to perform regulated activities outside of the brokerage firm if the licensee has an ownership interest in the property. However, your broker might have policies in place that require any personal transactions to be routed through the brokerage while you are working there. Make sure you check your broker’s policies before selling your own property.

Payment

Q: So I can now pay my unlicensed assistants on a per-transaction basis? Isn’t that a commission, so they would have to get a license anyway?

A: You are correct that you can now pay unlicensed assistants on a per-transaction basis (so a certain amount per transaction that closes or per lease that is signed, etc.). Previously, you were only able to compensate unlicensed individuals on a salaried or hourly basis. Just because you are paying them per transaction does not mean that they are receiving a commission, though. You only need a license if you are performing licensed activity.

Q: Can I receive money from someone other than my broker for my work on a transaction? For example, if I'm a buyer's agent for a new construction sale, can I accept a bonus directly from the builder?

A: Yes, with one big caveat: your broker must provide prior written consent for you to accept any compensation from someone outside of the brokerage. This is found in 18VAC135-20-280. You also must comply with all provisions of the brokerage agreement you signed with your client.

Verifying Client Identity

Q: I'm concerned about this requirement that I have to verify client identity. Won't this just lead to liability on my end?

A: The purpose of this new requirement is to reduce your liability. 18VAC135-20-280 now states that failing to take "reasonable steps to verify identity" of the person from whom you're taking a listing could be improper dealing. The key phrase here is "reasonable steps". No one expects you to become a detective, but you should be cautious and vigilant to guard against scammers.

Q: What exactly are "reasonable steps"?

A: There's no specific list of things that are reasonable, but there are some general best practices. Always try to get an in-person meeting whenever possible. If the client pushes back on that request without a good reason, that could be a red flag. Ask for multiple forms of identification (driver's license, passport, etc.). Check the tax records yourself to make sure that those records and the info your potential seller is providing match up. Lastly, and perhaps most importantly, if you feel suspicious of a potential seller you always have the ability to turn down the listing and walk away.