

The Scope of Your Real Estate License Broker Guide

Scope of Real Estate License

The practice of real estate is limited to those that have obtained a license through the Virginia Real Estate Board.

Generally, the practice of real estate involves a real estate licensee brokering a real estate transaction on behalf of a third-party seller/landlord and/or buyer/tenant for a fee.

Examples of activities only real estate licensees are permitted to do for third parties for a fee include:

- Showing property;
- Holding an open house; and
- Offering a fee to another real estate licensee in return for the referral of real estate clients.

Real estate licensees have clear parameters concerning what they are permitted to do.

Three common areas where licensees run into trouble include:

1. The unauthorized practice of law;
2. Practicing at more than one firm; and
3. The sale of mobile homes.

Questions and Answers

May real estate licensees write real estate purchase contracts?

Drafting contracts for others is the practice of law in Virginia, and it is therefore generally restricted to licensed attorneys. However, real estate licensees may do it if it's incidental to a real estate transaction in which the licensee is involved, and the licensee does not receive a separate fee for it (See § 54.1-2101.1.)

The Unauthorized Practice of Law - Examples 1

A real estate licensee represents a purchaser in a transaction and has a buyer broker agreement. At the direction of his client, he adds a sale of home contingency to an offer to purchase.

Permitted: This action was incidental to a transaction in which the licensee was involved (brokerage agreement) and he did not charge a separate fee for drafting the language.

Please note that even though this is permitted activity, drafting contract language outside standard forms language increases risk and consideration should be given to shifting that responsibility to an attorney.

Many standard forms libraries offer Standard Clause Booklets that are helpful when adding new language. *Example:* www.varealtor.com/news/2012/02/its-back-vars-standard-clause-booklet

The Unauthorized Practice of Law - Examples 2

A real estate licensee represents a purchaser in a transaction and has a buyer broker agreement. The client asks the licensee to include a complicated contingency. Due to his lack of familiarity with this type of provision, he offers an agent in another firm (Firm C) not involved in the transaction \$500 to draft the provision for him and the agent agrees.

Not Permitted: The licensee in Firm C was practicing law without a license. He drafted contract language for a fee and it was not incidental to a transaction in which he was involved.

Practicing in More Than One Firm

An agent in my office with a salesperson's license would like to work for two different firms. More specifically, he would like to focus on residential sales at my firm and leasing at another licensed firm that specializes in property management. Can he do that?

No, only broker licensees may practice at more than one firm. 18 VAC 135-20-50 outlines the procedures for a broker to gain concurrent licensure, which includes applying to the Real Estate Board for the concurrent license. The regulation also requires the broker applying for the license to verify that she has provided written notice of her concurrent license status to the principal broker of each firm with which she will be associated.

Note: A licensed broker that receives a concurrent license can be an associate broker at one firm and principal broker at another. Also, they can be associated with many firms as long as the Board issues the concurrent license and the broker follows all applicable regulations. However, brokers choosing to be principal brokers at multiple firms must be confident that they can provide adequate supervision.

The Sale of Mobile Homes

What are the main factors in determining if a real estate licensee can sell a mobile home?

If the mobile home is no longer mobile, that is, it's no longer a motor vehicle but is affixed to the real estate and being taxed as real estate (not personal property), you can sell it with your license. However, if it's still a vehicle (not affixed and not taxed as real estate), you must have a license from the Manufactured Housing Board to sell it, whether you're selling the land it sits on or not.