

# NEW LAWS

JULY 2018



The 2018 General Assembly started on January 10, 2018 and was slated to end on March 10, 2018; however, the legislative process ran well past that date while the Assembly worked to pass a budget. Over 3,700 bills and resolutions were introduced. Of those that passed, most are effective on July 1, 2018. Any laws discussed below that are not effective on July 1, 2018 will be noted.

Virginia REALTORS® had a successful 2018 General Assembly Session campaign. Our Public Policy Committee (PPC) took active positions on 80 pieces of legislation and actively monitored another 133 for any potential impacts on you or your clients. Of those “action” bills, 33 of the 39 bills we supported passed both chambers. More importantly, all 26 of the bills the PPC opposed were defeated. Another 15 bills were amended to remove concerns or defeated in the legislative process.

All 11 of our Virginia REALTORS® initiatives passed the General Assembly with strong support and were signed by the Governor. You can out more about our Legislative Agenda [here](#).



# JULY 2018

## REAL ESTATE LICENSE LAWS

THE FOLLOWING LEGISLATION IMPACTS ALL REAL ESTATE LICENSEES IN VIRGINIA.

### ★ HB 439 | SB 528

#### Translation of Real Estate Documents

This legislation was introduced to encourage real estate licensees to assist the growing diverse populations in Virginia by allowing them to refer a party to translation services. In making a referral, the licensee will not breach any of his obligation as a real estate licensee or become liable for any inaccuracies in the translation. The bill also states that a licensee cannot charge for this assistance or referral.

Now, when dealing with a client that does not speak English as their first language, you know you are protected when referring that individual to a translation service. You can learn more about this issue in the Virginia REALTORS® Legal Lessons Video: Serving ESL Clients. One database you can provide to your clients is the American Translators Association, which allows you to search by Native Language, Area of Specialization (including Legal Contracts), and the translators location.

### ★ HB 864 | SB 514

#### Escrow

This legislation establishes a statutory right for the real estate broker to give written notice to the parties and disburse an earnest money deposit in accordance with the clear terms of a real estate purchase contract. The legislation also gives a real estate broker an option to give written notice of intended disbursement, with a 15-day “protest period” for one of the parties to object in writing. If a party objects in writing, the likely option at that point would be to go to court.

This law will trump existing regulations. This means that if you have a contract that is explicit that one party is entitled to the Earnest Money Deposit, that money can be returned without waiting for a signed release. For example, if the buyer properly terminates under the Property Owners’ Association Act,

which requires that the EMD be released by to the buyer, the broker holding the EMD can send notice to the seller and return the funds to the buyer without a signed release. A few things to note: First, this law only applies to real estate licensees. This means that if the escrow agent is not a real estate licensee, they cannot use this to release the EMD without a signed release. Second, this law is permissive. If the broker does not believe the contract is clear, or thinks that the termination might not have been sent on time, she does not have to release the funds without a signed release or a court order. Finally, if the broker elects to give the seller a 15-day protest period and the seller does object, the broker will not be able to release the funds without a signed release or a court order.



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## REAL ESTATE LICENSE LAWS

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### ★ HB 864 | SB 514

#### Education

This section of the law will not go into effect until January 1, 2019 to give time for the changes to be made.

This bill, which is the same as the Escrow bill, also addressed education requirements for brokers and post-licensure. The bill requires that brokers complete 2 of their already required 8 hours of education learning about the broker supervision requirements in both the Code and the regulations.

It also requires that one hour of post-licensure education for licensees must be about real estate-related finance and requires the Board to establish guidelines for a post-license educational (PLE) curriculum for real estate salespersons consisting of at least 30 hours of instruction to be completed within one year from the last day of the month in which the initial license was issued. This mirrors the post-license education requirements to the current CE requirements. Previously, agents had 365 days from when they received their license to complete PLE. Under this new law, an agent who receives their license on January 3 will have until January 31 of the following year to complete their PLE.

No hours were added to either broker requirements or PLE, both had some of the existing hours allocated to specific topics.

### ★ HB 864 | SB 514

#### Residential Property Disclosure Act

The bill also made a technical edit to the Residential Property Disclosure Act. The technical changes will not impact the current form or how sellers disclose under the Residential Property Disclosure Act, but simply ensures that the language in the law is clear and conforms to current practice. The Residential Property Disclosure Act form that sellers must provide continues to be a one page form with a link to the DPOR website that contains all of the disclosed items.

## ★ HB 862 | SB 758

This is a law that clarifies and pulls together some of the existing Code provisions regarding teams. There is a delayed enactment date on this law of January 1, 2019 to allow licensees and DPOR to prepare.

Virginia REALTORS® will be providing additional resources, including a webinar on August 22 to help members understand how to comply with this law. Additionally, an episode of Caveat REALTOR® covers Teams.

### *Definitions*

The bill provides for two new definitions in the law: **“Real Estate Team”** means two or more individuals, one or more of whom is a real estate salesperson or broker, who (i) work together as a unit within the same brokerage firm, (ii) represent themselves to the public as working together as one unit, and (iii) designate themselves by a fictitious name.

Note this is a three-part definition. You must work together as a unit within the same firm, represent yourselves to the public (e.g. market) as a unit, AND designate yourselves by a fictitious name (e.g. The Smith Team). Any one of these alone will not make you a team.

**“Supervising Broker”** means a real estate broker who has been designated by a principal broker to supervise the provision of real estate brokerage services by associate brokers and salespersons assigned to a branch office or a real estate team.

This was added to clarify what was already in the regulations, that the principal or supervising broker is responsible for supervising teams in their offices, as well as individual licensees.

### *License Requirements*

The law also now states that no group of individuals consisting of one or more real estate brokers or real estate salespersons, or a combination thereof, shall act as a real estate team without first obtaining a business entity salesperson’s license from the Board. The requirement to obtain a Business Entity License already exists in the Code and DPOR has indicated it believes that a Real Estate Team should already be obtaining a Business Entity Salesperson License. However, there was previously some confusion in the Code where a real estate salesperson was defined as any person or business entity of not more than two persons unless related by blood or marriage . . . Etc. This has now been removed and the definition now states that a real estate salesperson means any individual, or business entity, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, . . . Etc.

This change in the statute clarifies that a real estate team now functions as a real estate salesperson and requires a business entity salesperson license. It also allows consumers and other members of the general public to search on-line at DPOR for a Real Estate Team. The new law also clarifies that a real estate team may hire one or more unlicensed assistants.

Additionally, if any principal broker maintains more than one place of business within the Commonwealth, such principal broker shall be required to obtain a branch office license from the Board for each place of business maintained. A copy of the branch office license shall be kept on the premises of the branch office.

### *Duties of Supervising Broker*

Three things have been added to the duties of a supervising broker Code provision:

1. Undertaking reasonable steps to ensure compliance by all licensees assigned to a branch office with the provisions of this chapter and applicable Board regulations, including ensuring that licensees possess a current license issued by the Board;
2. Ensuring that affiliated real estate teams or business entities are operating in accordance with the provisions of this chapter and applicable Board regulations;
3. Ensuring that brokerage agreements **[buyer and seller]** include the name and contact information of the supervising broker

This third change will require that the supervising broker's name and contact information are included on every brokerage agreement, eliminating any consumer confusion as to who the supervising broker is in all transactions.

Virginia REALTORS® updated the Property Management Agreement (Form 900) on July 1, 2018 to include fields for the supervising broker name and contact information. All additional Virginia REALTORS® brokerage agreements will be updated for the January 1, 2019 release with these fields.





# JULY 2018

## CONDO & PROPERTY OWNERS' ASSOCIATION ACTS

### ★ HB 923

#### Disclosure Packet Coversheet

This bill requires all Common Interest Communities (Condo and POA/HOA) to provide a short summary (e.g. cover sheet) of important information contained in the resale certificate or disclosure packet. This coversheet must be delivered at the same time as the certificate or packet. The coversheet will provide buyers with a summary of the unique characteristics common interest communities in general that may affect a prospective purchaser's decision to purchase including items specific to that community including:

- Annual dues
- Rental limitations
- Parking/vehicle restrictions
- Pet restrictions
- Architectural guidelines
- Limitations on operating a business
- Period/length of declarant control

The form will also be updated to inform the buyer that they should still do their own inspections, the packet should be carefully reviewed, and the packet (not the cover sheet) will control if there are any inconsistencies between the two.

The Common Interest Community Board has released the new forms, which can be found [here](#).

### ★ HB 1031

#### Disclosure Packets & Fees

The law now states that before the association is allowed to charge a fee for a disclosure packet, the association (whether professional managed or not) must meet certain requirements. The association must register with the Common Interest Community Board, file annual reports, and make annual assessment payments. Additionally, a professionally managed property owners' association must provide the disclosure packet electronically if so requested by the requester in order to charge fees.

The bill also allows a property owners' association that is not professionally managed to charge fees at the option of the seller or the seller's agent for (i) expediting the inspection, preparation, and deliv-

ery of the disclosure packet; (ii) providing an additional hard copy of the disclosure packet; and (iii) providing third-party commercial delivery service. A property owners' association that is not professionally managed may also charge and collect fees for inspection of the property, the preparation and issuance of an association disclosure packet, and such other services as provided by professionally managed property owners' associations as long as the association provides the disclosure packet electronically if so requested by the requester and complies with the other requirements for professionally managed associations.



# JULY 2018

## PROPERTY MANAGEMENT

### ★ HB 857

#### VRLTA & Common Law

This bill removed the remaining difference between common law landlord/tenant provisions and the Virginia Residential Landlord and Tenant Act (VRLTA) by conforming provisions in the following areas: (i) termination of a nonresidential tenancy by self-help eviction or by filing an unlawful detainer action (i.e. self-help in commercial); (ii) tenant obligations to maintain a dwelling unit (now same); (iii) notice to the tenant in the event of foreclosure (same – default, acceleration, etc.); (iv) wrongful failure to supply heat, water, hot water, or essential services (default, damages, relocation); (v) prohibited provisions in the rental agreement (same as VRLTA); (vi) early termination of a rental agreement by military personnel; and (vii) remedies for the landlord's failure to deliver possession.

The bill also makes the following changes to landlord and tenant law: (a) clarifies the lease termination process; (b) provides that if a tenant allows his renter's insurance to lapse, the landlord may provide coverage and require the tenant to pay the premium; (c) establishes protection for landlords who provide tenant information to a federal census official; (d) authorizes a landlord or property manager to appear in court to seek final rent and damages related to a dwelling unit; and (e) clarifies remedies for a tenant's failure to prepare the dwelling unit for insecticide or pesticide applications.

### ★ HB 311

#### Unlawful Detainer & Foreclosure

HB311 provides that a former owner who remains in possession of a single-family residential dwelling unit on the date of a foreclosure sale becomes a tenant at sufferance. The new owner may file an unlawful detainer action three days after giving the now tenant written termination notice. The bill also provides that the tenant shall be responsible for payment of fair market rental from the date of the foreclosure until the date the tenant vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs.

### ★ HB 856

#### Unlawful Detainer & Writ of Possession

This bill permits a judge, upon request of the plaintiff, to issue a writ of possession immediately upon entry of judgment in an unlawful detainer case. The bill requires the sheriff to serve notice of the writ, including the date and time of eviction, on the defendant at least 72 hours prior to execution of the writ. The bill further provides that a sheriff shall not evict the defendant from the dwelling unit sooner than the expiration of the defendant's 10-day appeal period.

While none of the time periods are shortened, landlords and property managers will not have to go back to court a second time to get a writ of possession. Remember, you must ask the judge for the writ of possession when you receive a judgment in an unlawful detainer case. Once you have the writ of possession, the sheriff must serve the defendant at least 72 hours before the eviction and that date cannot be before the tenant's 10-day appeal period is over.

### ★ HB 855 | SB 197

#### Rent with Reservation

This bill served to clarify and facilitate the rent with reservation process. The current statute requires a landlord to give a notice of acceptance of rent with reservation each time they accept full or partial rental payments and still move forward with the eviction process. Failure to provide the notice with each payment could waive the landlord's right to proceed with the eviction process. This language has been interpreted different ways by different judges resulting in some uncertainty for landlords and property managers. The new legislation will clarify the existing law by creating a single notice and removing the requirement for a second notice for the time period between the entry of the order of possession and prior to

eviction. The written notice provided to the tenant must state that any payment of rent, damages, money judgment, award of attorney fees, and court costs would be accepted with reservation and not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. If the rental unit is in public housing or otherwise subject to regulation by the Department of Housing and Urban Development, written notice of acceptance of rent with reservation does need not to also go to the public agency paying a portion of the rent under the rental agreement.

### ★ HB 609 | SB 391

#### Smoke & Carbon Monoxide Alarms

This legislation, recommended by the Virginia Housing Commission, creates a statewide standard for the installation and maintenance of smoke and carbon monoxide alarms in rental property. Under this law a landlord is required to install a smoke alarm and certify annually (not every move out) that smoke alarms have been installed and maintained in good working order in a residential dwelling. A landlord must also install and maintain a carbon monoxide detector if the tenant requests it. The tenant is prohibited from tampering with or removing any smoke or carbon monoxide alarms that are present in the unit.

Reasonable accommodations must be made for persons who are hearing-impaired upon request. Previously, it was a criminal to not tell every tenant that hearing-impaired detectors were available. Now, the burden is on the tenant to request a hear-

ing-impaired detector if they need it. This is in line with all other reasonable accommodation requests under the Americans with Disability Act and Fair Housing.

The bill also requires the Department of Housing and Community Development, in consultation with the Department of Fire Programs, to develop a form for landlords for use in certifying inspections that summarizes smoke alarm maintenance requirements for landlords and tenants.

Finally, localities will no longer be allowed to require upgrading the wiring or the alarm itself. Any localities with ordinances that conflict with the new statewide standards have until July 1, 2019 to conform.





# JULY 2018

## SHORT TERM RENTALS

### ★ HB 824

This bill was introduced in response to an ordinance passed by the City of Lexington in 2017. The ordinance attempted to regulate short-term rentals by prohibiting individuals from owning more than one rental property, requiring BPOL taxes, requiring a business license for the operator, and other obligations. This ordinance violated the already existing state law passed in 2017. HB824 was introduced to resolve the conflict. This new law provides that (i) the definition of short-term rentals remains at rentals for a period of fewer than 30 consecutive days; (ii) no business license is required; (iii) no license

taxes are required; (iv) any registry must confirm with the State law; and Lexington has until September 30, 2018 to amend and reenact its ordinance.

The bill had a last-minute amendment to protect the Sandbridge area of Virginia Beach from a potential short-term rental ordinance that could potentially harm the real estate industry by requiring onerous conditional use permits.

# JULY 2018

## MISCELLANEOUS BILLS

### ★ HB 796

#### Zoning Ordinances

This law requires localities to consider the need for reasonable modifications in compliance with the ADA and/or State and Federal fair housing laws when preparing zoning ordinances. The law also alters the standard by which a variance shall be granted by requiring approval if the approval (i) will alleviate a hardship by granting a reasonable modifica-

tion to a property as requested by a person with a disability and (ii) meets several other conditions as required by existing law. Any variance granted to provide a reasonable modification to a property requested by a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property provided by the variance.

If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act, as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals is required in order for such request to be granted.

### ★ HB 594 | SB 451

#### Criminal Blight

These bills were introduced by the Virginia Housing Commission and authorize any locality to enact an ordinance that requires an owner to undertake corrective action or allows the locality to undertake corrective action to address criminal blight conditions on certain real property (i.e. taking down structures, changing policies, etc.). Criminal blight is defined as including conditions on real

property that endanger residents of the community by the regular presence of persons using the property for controlled substance use or sale and other criminal activities, specifically commercial sex trafficking or prostitution or repeated acts of the malicious discharge of a firearm within a building or dwelling. The previous law only referenced illegal drug activity.

### ★ HB 887

#### Septic Systems

This bill provides that the adjustment or replacement of sewer lines, conveyance lines, distribution boxes, or header lines is considered maintenance of an onsite sewage system and thus does not require a permit. Before this the owner of the system needed to get a permit. The governor hasn't signed this bill yet. The governor recommended, which the general assembly adopted, adding

language that states unless otherwise prohibited by local ordinance, a conventional onsite sewage system installer or an alternative onsite sewage system installer may perform maintenance work limited to in-kind replacement of light bulbs, fuses, filters, pumps, sewer lines, conveyance lines, distribution boxes, and header lines.



Questions about any of this legislation, how it will impact your business, or any other legal or regulatory questions should be submitted through the **Virginia REALTORS® Legal Hotline**, open to all members. You must be logged in to access the Legal Hotline. The average response time on the Legal Hotline is approximately 2 business hours.