U.S. Department of Justice

Antitrust Division

Liberty Place Building
325 Seventh Street, NW, Suite 300
Washington, DC 20530-0001

January 27, 2006

R. Scott Brunner
Chief Executive Officer
Virginia Association of Realtors
10231 Telegraph Road
Glenn Allen, Virginia 23059-4578

Re: House Bill 316--Virginia Agency Services Legislation

Dear Mr. Brunner:

In response to your request, this letter conveys our views on competition issues raised by House Bill 316 ("HB 316"), an amended version of which was submitted to the Virginia legislature on January 25, 2006. A copy of the current version of HB 316 is attached. This letter only conveys our views on the attached version of HB 316 and does not apply to any other version of the bill.

In conversations with members of my staff, you have indicated that HB 316 seeks to address potential consumer confusion that might arise from the diversity of services provided by fee-for-service real estate brokers. HB 316 would address this issue by means of disclosure, distinguishing services required by a "standard agent" from those required of a "limited service agent" or "limited service representative." The bill requires that a limited service representative must disclose in writing services which he or she will and will not provide.

As you know, the U.S. Department of Justice has commented on competition issues raised by legislative and regulatory proposals regarding real estate brokerage services in a number of other states. We typically recommend that the state or commission study carefully the need for any governmental restrictions and, if a need is shown, that any restriction be as narrowly tailored as possible.

The Department has not seen any empirical evidence indicating that fee-for-service brokers have created any significant consumer confusion. Nevertheless, if the Commonwealth of Virginia decides to address this potential concern, HB 316 has been tailored to address this concern while preserving consumer choice and competition. In particular, the bill does not require brokers to provide a minimum level of services. Rather, it requires real estate brokers to disclose the services that they will and will not offer while preserving consumers' ability to purchase a limited set of services.

More generally, HB 316 does not make illegal any type of limited service, flat-fee, or other brokerage models, or otherwise appear likely to displace competition in the real estate market. In addition, HB 316 includes a provision stating that "Nothing in this Article shall be construed to limit, modify, impair, or supersede the applicability of any of the federal or state antitrust laws," an important confirmation that HB 316 does not manifest an intent to eliminate competition in the market for the provision of real estate brokerage services.

Further, we understand that, under HB 316, a "limited service representative" does not become an "agent" as defined under Virginia law unless he or she so specifies in writing. Unless a limited service representative agrees to become an agent, such an individual is an independent contractor and must provide only those services agreed to by the parties to the brokerage agreement.

The Virginia Association of Realtors should be commended for its efforts to preserve consumer choice in real estate brokerage services. Continuing to allow Virginia consumers to choose the specific services that they want to buy can help save consumers thousands of dollars in one of the most important and costly transactions of their lives.

We appreciate this opportunity to present our views and would be pleased to address any other questions or comments regarding competition issues.

Sincerely,

John R. Read
Chief, Litigation III Section
Antitrust Division

Encl.

HOUSE BILL NO. 316

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Albo)

A BILL to amend and reenact §§ 54.1-2105, 54.1-2130 through 54.1-2134, 54.1-2138, and § 54.1-2141 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-2138.1 and 54.1-2145, relating to the Real Estate Board; duties of licensees; limited service representatives.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2105, 54.1-2130 through 54.1-2134, 54.1-2138, and § 54.1-2141 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-2138.1 and 54.1-2145, as follows:

§ 54.1-2105. General powers of Real Estate Board; regulations; educational and experience requirements for licensure; continuing education.

A. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.

B. The Board shall include in its regulations educational requirements as conditions for licensure to ensure the protection of the public interest. The Board is authorized to regulate any school that is established to offer real estate courses except such schools as are regulated by another state agency. Such authority shall include, but not be limited to, qualification of instructors, approval of course curricula and requirement that such schools submit evidence of financial responsibility to ensure that these schools protect the public health, safety and welfare. The Board shall have the discretion to waive any requirement under the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. No regulation imposing

27 educational requirements for initial licensure beyond those specified by law shall apply to any person
28 who was licensed prior to July 1, 1975, and who has been continuously licensed since that time, except
29 that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed
30 as a broker from the educational requirements established for brokers. Regulations promulgated by the
31 Board relating to initial licensure shall include the following requirements:

32 1. a. Every applicant to the Board for an initial license as a real estate salesperson shall have
33 completed a course in the principles of real estate which carried an academic credit of at least three
34 semester hours or six quarter hours (but not less than 45 hours of classroom or correspondence or other
35 distance learning instruction in any case). The course shall be one offered by an accredited university,
36 college, community college, high school offering adult distributive education courses, or other school or
37 educational institution offering an equivalent course.

38 b. However, on and after January 1, 1991, the academic credit required for the initial license as a
39 real estate salesperson shall be at least four semester hours, but not less than 60 hours of classroom,
40 correspondence or other distance learning instruction.

41 2. Every applicant to the Board for an initial license as a real estate broker shall have completed
42 not less than 12 semester hours of classroom or correspondence or other distance learning instruction in
43 real estate courses offered by an accredited university, college, community college, or other school or
44 educational institution offering equivalent courses.

45 C. The Board shall establish criteria to ensure that prelicensure and broker licensure courses
46 meet the standards of quality deemed by the Board to be necessary to protect the public interests. For
47 correspondence and other distance learning instruction offered by an approved provider, such criteria
48 may include appropriate testing procedures. The Board may establish procedures to ensure the quality of
49 the courses.

50 Noncollegiate institutions shall not be authorized to grant collegiate semester hours for academic
51 credit.

52 The specific content of the real estate courses shall be in real estate brokerage, real estate
53 finance, real estate appraisal, real estate law, and such related subjects as are approved by the Board.

54 D. The Board shall establish guidelines for an educational curriculum of at least 30 hours of
55 classroom, or correspondence or other distance learning, instruction, in specified areas, which shall be
56 required of all licensees within the first two years of issuance of a license by the Board. Failure of a new
57 licensee to complete the 30-hour curriculum within two years of obtaining a real estate salesperson's
58 license shall result in nonrenewal by the Board of such license until the curriculum has been completed.

59 To establish the guidelines required by this subsection, the Board shall establish an industry
60 advisory group to focus on the following three practice tracks: (i) residential real estate, (ii) commercial
61 real estate, and (iii) property management. The industry advisory group shall consist of licensed real
62 estate salespersons and real estate brokers, and meet at the direction of the Board, at least annually, to
63 update the guidelines in each of the three educational practice tracks. The Board shall review and may
64 approve educational curriculum developed by an approved school or other provider of real estate
65 education authorized by this chapter. The industry advisory groups shall serve at no cost to the Board.

66 The guidelines in each of the three practice tracks for new licensees shall include topics that new
67 licensees need to know in their respective practices, including, but not limited to, contract writing,
68 handling customer deposits, listing property, leasing property, agency, current industry issues and
69 trends, property owners' and condominium association law, landlord-tenant law, Board regulations, and
70 such other topics as designated by the Board. The continuing education requirements of this subsection
71 for new licensees shall be in lieu of the continuing education requirements otherwise specified in this
72 chapter and Board regulations.

73 E. The Board shall include in its regulations educational requirements as a condition for
74 relicensure of brokers and salespersons to whom active licenses have been issued by the Board beyond
75 those now specified by law as conditions for licensure. Brokers and salespersons to whom active
76 licenses have been issued by the Board shall be required to satisfactorily complete courses of not less
77 than 16 hours of classroom or correspondence or other distance learning instruction during each
78 licensing term. Of the total 16 hours, the curriculum shall include a minimum of eight required hours to
79 include ethics and standards of conduct, fair housing, legal updates and emerging trends, real estate
80 agency, and real estate contracts. Fair housing requirements shall consist of a minimum of two hours

81 including an update on current cases and administrative decisions under fair housing laws. If the licensee
82 submits a notarized affidavit to the Board which certifies that he does not practice residential real estate
83 and shall not do so during the licensing term, training in fair housing shall not be required; instead, such
84 licensee shall receive training in other applicable federal and state discrimination laws and regulations.
85 The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1,
86 2007, every applicant for re-licensure as an active salesperson or broker shall complete at a minimum
87 one two-hour continuing education course on limited service agency prior to renewal or reinstatement of
88 his license. If the licensee submits a notarized affidavit to the Board which certifies that he has taken a
89 two-hour continuing education course on limited service agency between July 1, 2006 and June 30, 2007
90 offered by a school approved by the Board, which, in the determination of the Board, covered
91 substantially the information in a continuing education course approved by the Board subsequent to July
92 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee
93 submits a notarized affidavit to the Board which certifies that he does not practice residential real estate
94 and shall not do so during the licensing term, training in limited service agency shall not be required. A
95 licensee who takes one two-hour continuing education class on limited service agency shall satisfy the
96 requirements for continuing education and may but shall not be required to take any further continuing
97 education on limited service agency.

98 The remaining eight hours shall be elective and shall include real estate-related subjects as are
99 approved by the Board.

100 For correspondence and other distance learning instruction offered by an approved provider, the
101 Board shall establish the appropriate testing procedures to verify completion of the course and require
102 the licensee to file a notarized affidavit certifying compliance with the course requirements. The Board
103 may establish procedures to ensure the quality of the courses. The Board shall not require testing for
104 continuing education courses completed through classroom instruction.

105 For purposes of this chapter, "distance learning" means instruction delivered by an approved
106 provider through a medium other than a classroom setting. Such courses shall be those offered by an

107 accredited university, college, community college, high school offering adult distributive education
108 courses, other school or educational institution, or real estate professional association or related entities.

109 F. The Board shall include in its regulations, a procedure for processing applications of
110 educational institutions, real estate professional associations, or related entities, to provide continuing
111 education courses, which procedure, at a minimum, shall (i) provide for a broad range of subject matters
112 suitable for the continuing education of licensed professionals in a multifamily residential and
113 commercial office, as well as single-family residential, sales, leasing and property management; (ii)
114 acknowledge, in writing, receipt of such applications within 10 calendar days after receipt; and (iii)
115 provide written notification to the applicant, within 75 calendar days of receipt of the application,
116 whether the application has been approved or disapproved, and if disapproved, the reasons therefor. In
117 addition, the Board shall prepare a comprehensive listing of courses, pre-approved by the Board, related
118 to the professional competency requirements for the multifamily residential and commercial office
119 industries.

120 The Board, through regulation, shall develop criteria for evaluating and approving continuing
121 education course credits and for awarding credit hours for such courses. The Board shall approve
122 recommended course titles, content, and hours of continuing education credit developed and published
123 by national professional real estate trade associations, unless the Board determines in writing that such
124 titles, content, or credit hours should not be approved and specifies the reasons therefor.

125 G. ~~As of July 1, 1990, every~~ Every applicant for relicensure as an active salesperson or broker
126 shall complete the continuing education requirements prior to each renewal or reinstatement of his
127 license. The continuing education requirement shall also apply to inactive licensees who make
128 application for an active license. Notwithstanding this requirement, military personnel called to active
129 duty in the Armed Forces of the United States may complete the required continuing education within
130 six months of their release from active duty.

131 H. The Board shall also include in its regulations remedial educational requirements for any
132 salesperson or broker who has been inactive for more than three years. The regulations shall require the

133 applicant to meet the educational requirements for a salesperson or broker in effect at the time either
134 becomes active.

135 I. When the license has been inactive for more than three years, the Board may waive the
136 educational requirements for reactivation of a license under the following conditions: (i) during the time
137 the license has been inactive, the holder of such inactive license has been engaged in an occupation
138 whereby the knowledge of real estate would be retained or (ii) the holder of such license is a member or
139 the spouse of a member of the Armed Forces of the United States who has been permanently assigned
140 outside Virginia for a portion of the time the license has been inactive, and the holder of the inactive
141 license remained current in the field of real estate and demonstrates this fact to the satisfaction of the
142 Board.

143 § 54.1-2130. Definitions.

144 As used in this article:

145 "Agency" means every relationship in which a real estate licensee acts for or represents a person
146 by such person's express authority in a real estate transaction, unless a different legal relationship is
147 intended and is agreed to as part of the brokerage relationship. Agency includes representation of a
148 client as a standard agent or a limited service agent. Nothing in this article shall prohibit a licensee and a
149 client from agreeing in writing to a brokerage relationship under which the licensee acts as an
150 independent contractor or which imposes on a licensee obligations in addition to those provided in this
151 article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the
152 additional obligations agreed to with the client in the brokerage ~~relationship~~agreement. A real estate
153 licensee who enters into a brokerage relationship based upon a written ~~contract which~~ brokerage
154 agreement that specifically states that the real estate licensee is acting as an independent contractor and
155 not as an agent shall have the obligations agreed to by the parties in the ~~contract~~brokerage agreement,
156 and such real estate licensee and its employees shall have no obligations under §§ 54.1-2131 through
157 54.1-2135 of this article.

158 "Brokerage agreement" means the agreement by which a real estate licensee represents a client in
159 a brokerage relationship.

160 "Brokerage relationship" means the contractual relationship between a client and a real estate
161 licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant,
162 or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.
163 "Client" means a person who has entered into a brokerage relationship with a licensee.
164 "Common source information company" means any person, firm, or corporation that is a source,
165 compiler, or supplier of information regarding real estate for sale or lease and other data and includes,
166 but is not limited to, multiple listing services.
167 "Customer" means a person who has not entered into a brokerage relationship with a licensee but
168 for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a
169 brokerage relationship with such person, it shall be presumed that such person is a customer of the
170 licensee rather than a client.
171 "Designated agent" or "designated representative" means a licensee who has been assigned by a
172 principal or supervising broker to represent a client when a different client is also represented by such
173 principal or broker in the same transaction.
174 "Dual agent" or "dual representative" means a licensee who has a brokerage relationship with
175 both seller and buyer, or both landlord and tenant, in the same real estate transaction.
176 "Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et
177 seq.) of Chapter 21 of this title.
178 "Limited service representative" means a licensee who acts for or represents a client with respect
179 to real property containing from one to four residential units, pursuant to a brokerage agreement that
180 provides that the limited service representative will not provide one or more of the duties set forth in
181 subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service
182 representative shall have the obligations set out in the brokerage agreement, except that a limited service
183 representative shall provide the client, at the time of entering the brokerage agreement, copies of any and
184 all disclosures required by federal or state law, or local disclosures expressly authorized by state law,
185 and shall disclose to the client the following in writing: (i) the rights and obligations of the client under
186 the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a

187 condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as
188 purchaser, the condominium resale certificate required by §55-79.97; and (iii) if the client is selling a
189 property subject to the Property Owners' Association Act (§55-508 et seq.), the rights and obligations of
190 the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet
191 required by § 55-512. A limited service representative may act as the agent or representative of the client
192 only by so providing in writing in the brokerage agreement. If the brokerage agreement does not so
193 state, the limited service representative shall be deemed as acting as an independent contractor of the
194 client.

195 "Ministerial acts" means those routine acts which a licensee can perform for a person which do
196 not involve discretion or the exercise of the licensee's own judgment.

197 "Standard agent" means a licensee who acts for or represents a client in an agency relationship. A
198 standard agent shall have the obligations as provided in this article and any additional obligations agreed
199 to by the parties in the brokerage agreement.

200 § 54.1-2131. Licensees engaged by sellers.

201 A. A licensee engaged by a seller shall:

202 1. Perform in accordance with the terms of the brokerage relationship;

203 2. Promote the interests of the seller by:

204 a. ~~Seeking~~Conducting marketing activities on behalf of the seller in accordance with the
205 brokerage agreement. In so doing, the licensee shall seek a sale at the price and terms agreed upon in the
206 brokerage relationship or at a price and terms acceptable to the seller; however, the licensee shall not be
207 obligated to seek additional offers to purchase the property while the property is subject to a contract of
208 sale, unless agreed to as part of the brokerage relationship or as the contract of sale so provides;

209 b. ~~Presenting in a timely manner all written offers or counteroffers to and from the seller,~~
210 Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the
211 real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the seller's
212 objectives;

213 c. Receiving and presenting in a timely manner written offers and counteroffers to and from the
214 seller and purchasers, even when the property is already subject to a contract of sale; and
215 ~~c. Disclosing to the seller material facts related to the property or concerning the transaction of~~
216 ~~which the licensee has actual knowledge; and~~
217 ~~d. Accounting for in a timely manner all money and property received in which the seller has or~~
218 ~~may have an interest;~~
219 d. Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to
220 facilitate settlement of the purchase contract.
221 3. Maintain confidentiality of all personal and financial information received from the client
222 during the brokerage relationship and any other information that the client requests during the brokerage
223 relationship be maintained confidential, unless otherwise provided by law or the seller consents in
224 writing to the release of such information;
225 4. Exercise ordinary care; ~~and~~
226 5. Account in a timely manner for all money and property received by the licensee in which the
227 seller has or may have an interest;
228 6. Disclose to the seller material facts related to the property or concerning the transaction of
229 which the licensee has actual knowledge; and
230 7. Comply with all requirements of this article, all applicable fair housing statutes and
231 regulations, and all other applicable statutes and regulations which are not in conflict with this article.
232 B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false
233 information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts
234 pertaining to the physical condition of the property which are actually known by the licensee. As used in
235 this section, the term "physical condition of the property" shall refer to the physical condition of the land
236 and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or
237 relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land
238 use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be
239 conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate

240 box. A licensee shall not be liable to a buyer for providing false information to the buyer if the false
241 information was provided to the licensee by the seller or was obtained from a governmental entity or
242 from a person licensed, certified, or registered to provide professional services in the Commonwealth,
243 upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information
244 was false or (ii) act in reckless disregard of the truth. No cause of action shall arise against any licensee
245 for revealing information as required by this article or applicable law. Nothing in this article shall limit
246 in any way the provisions of the Virginia Residential Property Disclosure Act (§ 55-517 et seq.).

247 C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the
248 brokerage relationship, provide assistance to a buyer or potential buyer by performing ministerial acts.
249 Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to
250 violate the licensee's brokerage relationship with the seller unless expressly prohibited by the terms of
251 the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage
252 or agency relationship with such buyer or potential buyer.

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

256 E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

257 § 54.1-2132. Licensees engaged by buyers.

258 A. A licensee engaged by a buyer shall:

259 1. Perform in accordance with the terms of the brokerage relationship;

260 2. Promote the interests of the buyer by:

261 a. Seeking a property of a type acceptable to the buyer and at a price and ~~with~~on terms
262 acceptable to the buyer; however, the licensee shall not be obligated to seek other properties for the
263 buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the
264 brokerage relationship;

265 b. ~~Presenting~~ Assisting in the drafting and negotiating of offers and counteroffers, amendments,
266 and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for
267 accomplishing the buyer's objectives;

268 c. Receiving and presenting in a timely manner all written offers or counteroffers to and from the
269 buyer and seller, even when the buyer is already a party to a contract to purchase property; and

270 ~~c. Disclosing to the buyer material facts related to the property or concerning the transaction of~~
271 ~~which the licensee has actual knowledge; and~~

272 ~~d. Accounting for in a timely manner all money and property received in which the buyer has or~~
273 ~~may have an interest;~~

274 d. Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to
275 facilitate settlement of the purchase contract.

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

280 4. Exercise ordinary care; ~~and~~

281 5. Account in a timely manner for all money and property received by the licensee in which the
282 buyer has or may have an interest;

283 6. Disclose to the buyer material facts related to the property or concerning the transaction of
284 which the licensee has actual knowledge; and

285 7. Comply with all requirements of this article, all applicable fair housing statutes and
286 regulations, and all other applicable statutes and regulations which are not in conflict with this article.

287 B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false
288 information. No cause of action shall arise against any licensee for revealing information as required by
289 this article or applicable law. In the case of a residential transaction, a licensee engaged by a buyer shall
290 disclose to a seller whether or not the ~~buyer's intent~~ buyer intends to occupy the property as a principal
291 residence. The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and

292 no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure,
293 or the nondisclosure of the buyer in this regard.

294 C. A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the
295 brokerage relationship, provide assistance to the seller, or prospective seller, by performing ministerial
296 acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed
297 to violate the licensee's brokerage relationship with the buyer unless expressly prohibited by the terms of
298 the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage
299 relationship with such seller.

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

304 E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

305 § 54.1-2133. Licensees engaged by landlords to lease property.

306 A. A licensee engaged by a landlord shall:

307 1. Perform in accordance with the terms of the brokerage relationship;

308 2. Promote the interests of the landlord by:

309 a. ~~Seeking~~Conducting marketing activities on behalf of the landlord pursuant to the brokerage
310 agreement with the landlord. In so doing, the licensee shall seek a tenant at the ~~price~~ rent and terms
311 agreed in the brokerage relationship or at a ~~price~~rent and terms acceptable to the landlord; however, the
312 licensee shall not be obligated to seek additional offers to lease the property while the property is subject
313 to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed
314 as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

315 b. ~~Presenting~~Assisting the landlord in drafting and negotiating leases and letters of intent to
316 lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the
317 landlord and tenant pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a
318 letter of intent to lease; and

319 c. ~~Disclosing to the landlord material facts related to the property or concerning the transaction~~
320 ~~of which the licensee has actual knowledge; and~~
321 ~~d. Accounting for in a timely manner all money and property received in which the landlord has~~
322 ~~or may have an interest;~~Providing reasonable assistance to the landlord to finalize the lease agreement.
323 3. Maintain confidentiality of all personal and financial information received from the client
324 during the brokerage relationship and any other information that the client requests during the brokerage
325 relationship be maintained confidential, unless otherwise provided by law or the landlord consents in
326 writing to the release of such information;
327 4. Exercise ordinary care; ~~and~~
328 5. Account in a timely manner for all money and property received by the licensee in which the
329 landlord has or may have an interest;
330 6. Disclose to the landlord material facts related to the property or concerning the transaction of
331 which the licensee has actual knowledge; and
332 7. Comply with all requirements of this article, fair housing statutes and regulations, and all other
333 applicable statutes and regulations which are not in conflict with this article.
334 B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false
335 information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse
336 facts pertaining to the physical condition of the property which are actually known by the licensee. As
337 used in this section, the term "physical condition of the property" shall refer to the physical condition of
338 the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the
339 land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental
340 land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be
341 conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate
342 box. A licensee shall not be liable to a tenant for providing false information to the tenant if the false
343 information was provided to the licensee by the landlord or was obtained from a governmental entity or
344 from a person licensed, certified, or registered to provide professional services in the Commonwealth,
345 upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information

346 was false or (ii) act in reckless disregard of the truth. No cause of action shall arise against any licensee
347 for revealing information as required by this article or applicable law. Nothing in this subsection shall
348 limit the right of a prospective tenant to inspect the physical condition of the property.

349 C. A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or
350 the brokerage relationship, provide assistance to a tenant, or potential tenant, by performing ministerial
351 acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed
352 to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms
353 of the brokerage relationship, nor shall performing such ministerial acts be construed to form a
354 brokerage relationship with such tenant or potential tenant.

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

358 E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

359 § 54.1-2134. Licensees engaged by tenants.

360 A. A licensee engaged by a tenant shall:

361 1. Perform in accordance with the terms of the brokerage relationship;

362 2. Promote the interests of the tenant by:

363 a. Seeking a lease at a ~~price~~rent and with terms acceptable to the tenant; however, the licensee
364 shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a
365 letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as
366 part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

367 b. ~~Presenting~~ Assisting in the drafting and negotiating of leases, letters of intent to lease, and
368 rental applications, and presenting, in a timely fashion, all written offers or counteroffers to and from the
369 tenant and landlord pursuant to § 54.1-2101.1, even when the tenant is already a party to a lease or a
370 letter of intent to lease;

371 c. ~~Disclosing to the tenant material facts related to the property or concerning the transaction of~~
372 ~~which the licensee has actual knowledge; and~~

373 ~~d. Accounting for in a timely manner all money and property received in which the tenant has or~~
374 ~~may have an interest;~~ Providing reasonable assistance to the tenant to finalize the lease agreement.
375 3. Maintain confidentiality of all personal and financial information received from the client
376 during the brokerage relationship and any other information that the client requests during the brokerage
377 relationship be maintained confidential unless otherwise provided by law or the tenant consents in
378 writing to the release of such information;
379 4. Exercise ordinary care; ~~and~~
380 5. Account in a timely manner for all money and property received by the licensee in which the
381 tenant has or may have an interest;
382 6. Disclose to the tenant material facts related to the property or concerning the transaction of
383 which the licensee has actual knowledge; and
384 7. Comply with all requirements of this article, fair housing statutes and regulations, and all other
385 applicable statutes and regulations which are not in conflict with this article.
386 B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them
387 false information. No cause of action shall arise against any licensee for revealing information as
388 required by this article or applicable law.
389 C. A licensee engaged by a tenant in a real estate transaction may provide assistance to the
390 landlord or prospective landlord by performing ministerial acts. Performing such ministerial acts that are
391 not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship
392 with the tenant unless expressly prohibited by the terms of the brokerage relationship, nor shall
393 performing such ministerial acts be construed to form a brokerage relationship with the landlord or
394 prospective landlord.
395 D. A licensee engaged by a tenant does not breach any duty or obligation to the tenant by
396 showing properties in which the tenant is interested to other prospective tenants, whether as clients or
397 customers, by representing other tenants looking for the same or other properties to lease, or by
398 representing landlords relative to other properties.
399 E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

400 § 54.1-2138. Disclosure of brokerage relationship.

401 A. Upon having a substantive discussion about a specific property or properties with an actual or
402 prospective buyer or seller who is not the client of the licensee and who is not represented by another
403 licensee, a licensee shall disclose any broker relationship the licensee has with another party to the
404 transaction. Further, except as provided in § 54.1-2139, such disclosure shall be made in writing at the
405 earliest practical time, but in no event later than the time when specific real estate assistance is first
406 provided. Such disclosure may be given in combination with other disclosures or provided with other
407 information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals,
408 underlined, or within a separate box. Any disclosure which complies substantially in effect with the
409 following shall be deemed in compliance with this disclosure requirement:
410
411 DISCLOSURE OF BROKERAGE RELATIONSHIP
412 The undersigned do hereby acknowledge disclosure that:
413 The licensee .....
414 Name of Firm
415 represents the following party in a real estate transaction:
416 ..... Seller(s) or ..... Buyer(s)
417 ..... Landlord(s) or ..... Tenant(s)
418 ....
419 Date Name
420 ....
421 Date Name

422 B. A licensee shall disclose to an actual or prospective landlord or tenant, who is not the client of
423 the licensee and who is not represented by another licensee, that the licensee has a brokerage
424 relationship with another party or parties to the transaction. Such disclosure shall be in writing and
425 included in all applications for lease or in the lease itself, whichever occurs first. If the terms of the lease
426 do not provide for such disclosure, disclosure shall be made in writing no later than the signing of the
427 lease. Such disclosure requirement shall not apply to lessors or lessees in single or multifamily
428 residential units for lease terms of less than two months.

429 C. If a licensee's relationship to a client or customer changes, the licensee shall disclose that fact
430 in writing to all clients and customers already involved in the specific contemplated transaction.

431 D. Copies of any disclosures relative to fully executed purchase contracts shall be kept by the
432 licensee for a period of three years as proof of having made such disclosure, whether or not such
433 disclosure is acknowledged in writing by the party to whom such disclosure was shown or given.

434 E. A limited service representative shall also make the disclosure required by § 54.1-2138.1.

435 § 54.1-2138.1. Limited service representative, contract disclosure required.

436 A. A licensee may act as a limited service representative only pursuant to a written brokerage
437 agreement in which the limited service representative (i) discloses that the licensee is acting as a limited
438 service representative; (ii) provides a list of the specific services that the licensee will provide to the
439 client; and (iii) provides a list of the specific duties of a standard agent set out in subdivision A 2 of §
440 54.1-2131, subdivision A 2 of § 54.1-2132, subdivision A 2 of § 54.1-2133, or subsection A 2 of § 54.1-
441 2134, as applicable, that the limited service representative will not provide to the client. Such disclosure
442 shall be conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a
443 separate box. In addition, a disclosure that contains language that complies substantially in effect with
444 the following shall be deemed in compliance with this disclosure requirement:

445 "By entering into this brokerage agreement, the undersigned do hereby acknowledge their
446 informed consent to the limited service representation by the licensee and do further acknowledge that
447 neither the other party to the transaction nor any real estate licensee representing the other party is under
448 any legal obligation to assist the undersigned with the performance of any duties and responsibilities of
449 the undersigned not performed by the limited service representative."

450 B. A licensee engaged by one client to a transaction and dealing with an unrepresented party or
451 with a party represented by a limited service representative and who, without additional compensation,
452 provides such other party information relative to the transaction or undertakes to assist such other party
453 in securing a contract or with such party's obligations thereunder, shall not incur liability for such
454 actions except in the case of gross negligence or willful misconduct. A licensee does not create a
455 brokerage relationship by providing such assistance or information to the other party to the transaction.
456 A licensee dealing with a client of a limited service representative may enter into an agreement with that
457 party for payment of a fee for services performed or information provided by that licensee. Such

458 payment shall not create a brokerage relationship; however, the licensee providing such services or
459 information for a fee shall be held to the standard ordinary of care in the provision of such services or
460 information.

461 § 54.1-2141. Brokerage relationship not created by using common source information company.

462 No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with
463 a seller, landlord or other licensee solely by reason of using a common source information company.
464 However, nothing contained in this article shall be construed to prevent a common source information
465 company from requiring, as a condition of participation in or use of such common source information,
466 that licensees providing information through such company disclose the nature of the brokerage
467 relationship with the client, including, but not limited to, whether the licensee is acting as (i) an
468 independent contractor, (ii) a limited service representative, or (iii) a transaction broker, facilitator or in
469 some other capacity as provided in the brokerage agreement. A common source information company
470 may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt
471 rules providing that absent any disclosure, a licensee providing information through such company may
472 be assumed to be acting as a standard agent. A common source information company shall have the
473 right, but not the obligation, to make information about the nature of brokerage relationships available to
474 its participants and to settlement service it provides including, without limitation, title insurance
475 companies, lenders, and settlement agents.

476 § 54.1-2145. Article does not limit antitrust laws.

477 Nothing in this article shall be construed to limit, modify, impair, or supercede the applicability
478 of any federal or state antitrust laws.

479 **2. That the provisions of this act shall become effective on July 1, 2007.**

480 #