



VIRGINIA REAL ESTATE BOARD

VREB *SPEAKING*

www.dpor.virginia.gov

Winter 2010

Message from the Chair



Carol F. Clarke

As we put the record winter of 2009-2010 behind us and enter the "spring" real estate market, I hope all Commonwealth real estate licensees will make a conscientious effort to remember their professional obligations and privileges. The Board considers many cases that show laziness, lack of judgment, lack of detail, ignorance of the Board's laws and regulations, and what even appears to be the intentional violation of those rules.

The Board's goal is to ensure its licensees provide the Commonwealth's citizens with professional real estate services. PLEASE carefully consider your actions as a licensee. I think it will be helpful for you to know the Board's Top Ten Disciplinary Violations since July 1, 2007. The number of occurrences of each violation during this time

period is in parenthesis:

1. Unworthiness and Incompetence - Failure to safeguard the interests of the public (92)
2. Unworthiness and Incompetence - Engaging in improper, fraudulent or dishonest conduct (56)
3. Unworthiness & Incompetence - Criminal conviction while licensed(46)
4. Improper delivery of instruments - Failure to provide timely, written notice of any material changes to a transaction (40)
5. Maintenance and management of escrow accounts - Failure to comply when disbursing funds from escrow accounts in purchase transactions (29)
6. Unworthiness and incompetence - Failure to inform the Board within 30 days of a criminal conviction while licensed (27)
7. Failure to exercise ordinary care by a licensee engaged by a landlord to lease property (20)
8. Unworthiness and incompetence - Obtaining a license by false or fraudulent representation (17)
8. Failure to manage real estate in accordance with the property management agreement terms (17)
10. Conflict of interest - Acting as a standard agent or independent contractor for any client outside the licensee's brokerage firm or sole proprietor (16)

Give your clients and the public excellent information, advice and service. A periodic review of the Board's laws and regulations is imperative. This will help you avoid a DPOR investigation. Please download your own copy of the rules from http://www.dpor.virginia.gov/dporweb/reb_reg.pdf

Carol Clarke, Chair

Virginia Real Estate Board
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Richmond, VA 23233
804-367-8526

Robert F. McDonnell
Governor

James S. Cheng
Secretary, Commerce & Trade

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2010 Meeting Dates

March 18, 2010
May 20, 2010
July 8, 2010
September 9, 2010
November 18, 2010

All meetings are held on the Second Floor of the Perimeter Center at the above address.

BOARD MEMBERS

Carol F. Clarke, Chair
Charlottesville
Licensee Member
Four-year term ends on 6/30/12

Byrl P. Taylor, Vice-Chair
White Stone
Licensee Member
Four-year term ends on 6/30/11

Nathaniel Brown
Charlottesville
Citizen Member
Four-year term ends on 6/30/12

Judith L. Childress
Martinsville
Licensee Member
Four-year term ends on 6/30/12

Marjorie Clark
Richmond
Citizen Member
Four-year term ends on 6/30/10

Florence Daniels
Alexandria
Licensee Member
Four-year term ends on 6/30/10

Scott M. Gaeser
Manakin-Sabot
Licensee Member
Four-year term ends on 6/30/10

Sharon Parker Johnson
South Hill
Licensee Member
Four-year term ends on 6/30/12

Clifford Wells
Virginia Beach
Licensee Member
Four-year term ends on 6/30/13

DPOR Staff

Jay DeBoer, Director

Mark Courtney, Deputy Director
Licensing & Regulation Division

Nick Christner, Deputy Director
Compliance & Investigations Division

Steven Arthur, Deputy Director
Administration & Finance Division

Lizbeth Hayes, Director
Fair Housing Office

Trisha Henshaw, Executive Director
Common Interest Community Board

**Real Estate Board Staff**

Christine Martine
Executive Director

Kevin Hoett
Education Administrator

Maryanne Woo
Licensing Supervisor

Emily Trent
Administrative Assistant

Board Contact Information

Executive Director - 804-367-8552

Licensing Section - 804-367-8526

Education Section - 804-367-2406

Fax Number - 804-527-4298

E-mail - REBoard@dpor.virginia.gov

Web - www.dpor.virginia.gov

DPOR Main Number - 804-367-8500

Complaints Section - 804-367-8504

Common Interest Community Board- 804-367-8510

2010 General Assembly Update

Legislative Proposals Affecting the Virginia Real Estate Board

Several legislative proposals possibly affecting the Real Estate Board and Board licensees have been introduced during the 2010 General Assembly session. DPOR's legislative team is tracking these bills as well as many others affecting various Department programs. Brief descriptions of the Real Estate Board-related proposals are provided below.

To view the full text of the bills and their current status, visit the Virginia Legislative Information System at <http://leg1.state.va.us> and search by bill number. The General Assembly Session is scheduled to adjourn on March 13, 2010.



HB 625 would establish an experience waiver for broker licensure by requiring the Real Estate Board to allow certain salespersons to obtain a broker license without completing educational coursework.

HB 667 would require the Real Estate Board to amend the *Residential Property Disclosure Statement* to include disclaimer language regarding wastewater systems and any associated maintenance responsibilities.

HB 963 and **SB 457** are companion bills brought by the Virginia Association of Realtors®. The proposals would curtail reciprocity for brokers and salespersons licensed in other states, and create a voluntary compliance program for brokers who seek a minimum level of immunity if they or their agents are out of compliance.

Real Estate Board Education Committee 2009 Statistics

Application Type	# Reviewed	# Approved	# Denied
Proprietary Schools	12	12	0
Previously Approved CE Courses	94	94	0
Original CE Courses	588	584	4
Previously Approved PLE Courses	87	87	0
Original PLE Courses	499	497	2
Pre-license Salesperson Courses	2	2	0
Pre-license Broker Courses	6	6	0
Pre-license Course Instructors	81	76	5
Previously approved CE/PLE Instructors	115	111	4
Totals	1484	1469	15

Other Business

Guidance Documents reviewed by the Committee and approved by the Board: 1) Guidance Document requiring licensees who complete a Board-approved distance education course to file a notarized affidavit certifying course compliance; and 2) Guidance document requiring Board-approved education providers to ensure licensees are actively engaged online in learning the content of Board-approved online courses for at least 50 clock minutes to receive one hour of education credit.

Policy matters addressed by the Committee: 1) Performed regulatory review for all education-related items in the Board's Regulations, including recommending significant revisions to the Pre-license Education Instructor Certification requirements.

New Requirements for Common Interest Community Manager Training Programs

The Common Interest Community Board (CIC Board) was created by legislation passed by the 2008 General Assembly. As a result, effective July 1, 2008, the regulation of associations, time-share programs, and condominium projects was transferred from the Real Estate Board to the CIC Board.

This legislation also created a new licensure program for Common Interest Community Managers (CIC Managers). This license is issued to firms (including sole proprietors) that provide management services. In order to establish the requirements for CIC Manager licensure in accordance with this new law, the CIC Board adopted emergency regulations that became effective on November 13, 2008. Since then, the CIC Board has been working to develop permanent regulations to establish the qualifications for licensure, requirements for maintaining a license, and standards of conduct and practice. The permanent regulations for CIC Managers will become effective on April 1, 2010. One significant change from the current emergency regulations to the new permanent regulations is the addition of requirements for CIC Manager training programs to be approved by the CIC Board.

Beginning April 1, 2010, each CIC Manager must have at least one qualifying supervisory employee or officer with five years of experience in providing management services who will need to complete a comprehensive 80-hour CIC Manager training program approved by the CIC Board. In addition, 50% of persons who have principal responsibility for management services will have to meet specific experience requirements related to common interest community management, and hold a specified designation by the Community Association Institute (CAI) or the National Board of Certification for Community Association Managers, or, in lieu of such designation, must complete an introductory 16-hour CIC Manager training program that is approved by the CIC Board.

In order to have a comprehensive or introductory CIC Manager training program approved by the CIC Board, an interested training provider must submit an application to the CIC Board along with all required documentation and the applicable fee as outlined in the regulations. In addition to meeting other requirements, the training program must meet specific subject area requirements including: governance, legal matters, financial matters, contracting risk management, management ethics for common interest community managers and human resources. Please see the CIC Board regulations for a complete list of the subject areas. Training programs are required to have a final written examination, and approved training programs may be offered as distance, online or classroom education.



Providers interested in applying for CIC Manager training program approval may review the regulations and obtain an application *beginning on April 1, 2010*, from the Department's website at: www.dpor.virginia.gov.

This information is intended to provide a summary of the CIC Board's requirements for CIC Manager training programs; however, it should not be relied on exclusively to determine the CIC Board's minimum requirements. Please refer to the CIC Board's regulations and/or contact the CIC Board office at (804) 367-8510 for more information.

Online Course Time Requirement Guidance Document

At its November 19, 2009, meeting, the Real Estate Board (the Board) approved a guidance document requiring Board-approved education providers to ensure that salespersons and brokers are actively engaged online in learning Board-approved course content for at least 50 clock minutes to receive one hour of Board-approved education credit.

The exact guidance document language is:

The Board is issuing this guidance document to interpret and implement the requirements of §§ 54.1-2100, 54.1-2105.D, 54.1-2105.01.A, 54.1-2105.02.B and 54.1-2105.03.A of the *Code of Virginia* and 18 VAC 135-20-101, 18 VAC 135-20-101.5, 18 VAC 135-20-350, 18 VAC 135-20-400 and 18 VAC 135-20-410 of the *Real Estate Board Regulations* as a means of providing information or guidance of general applicability to the public:

To ensure that salesperson and broker licensees meet the standards of quality deemed by the Board as necessary to protect the public interest, health, safety and welfare pursuant to the above-referenced statutes and regulations, Board-approved education providers must require licensees to be actively engaged online in learning the content of Board-approved online courses for at least 50 clock minutes to receive one hour of pre-license, continuing or post license education credit.

This matter arose when some Board-approved education providers expressed uncertainty as to whether the Board's laws and regulations require licensees to spend 50 minutes engaged online in a Board-approved Continuing Education (CE) or Post License Education (PLE) course to receive one hour of CE or PLE credit.

For example, a licensee may be able to finish all the requirements of a Board-approved online one-hour course in 45 minutes. Do the Board's rules allow the education provider to give the licensee one hour of education credit in this case? Or must the education provider require the licensee to stay engaged online in the course

for at least five more minutes for a total of 50 minutes to receive one credit hour?

§ 54.1-2105.02.B of the *Code of Virginia* states in part: "Board regulations shall include criteria for evaluating and providing continuing education course credits and for awarding credit hours for such courses, as well as procedures for ensuring the quality of real estate courses."

18 VAC 135-20-101 of the Board's Regulations states in effect: all active salespersons must complete 16 instruction hours and all active brokers must complete 24 instruction hours during each licensing term to renew these licenses.

18 VAC 135-20-101.5 of the Board's Regulations states: "Credit for continuing education course completion is given for each class hour/clock hour, as defined in 18 VAC 135-20-350."

18 VAC 135-20-350 of the Board's Regulations includes "Definitions," and one of the definitions is: "Class hour/clock hour' means 50 minutes."

18 VAC 135-20-360.G of the Board's Regulations states: "All schools must establish and maintain a record for each student. The record shall include: the student's name and address; the course name and clock hours attended..."

Education providers seeking Board approval of new CE/PLE courses are required to provide the Board with a "Timed Course Outline" demonstrating the proposed course meets the 50 minutes class hour/clock hour requirement to be approved for one hour of CE/PLE credit.

The Board determined its laws and regulations require its approved education providers to verify the licensee has spent at least 50 minutes engaged in the educational process to receive one hour of CE/PLE credit. Board-approved classroom education providers verify this through a class roster or roll sheet & on-site verification.

Board-approved online education providers have the capability to set "timers" on their online courses to ensure that students are engaged online in the course for at least 50 minutes to receive one hour of CE/PLE credit. Through this guidance document, the Board has directed its approved online course providers to turn on their course timers to ensure that licensees who complete approved online courses meet the Board's standard to receive education credit.



DISCIPLINARY ACTIONS



The Real Estate Board (the Board) licenses or certifies real estate salespersons, brokers, firms, proprietary schools and pre-license instructors. If a complaint is filed against a licensee who is subject to the laws and regulations of the Board, the complaint is reviewed by the Compliance and Investigations Division (CID) of DPOR to determine if a violation of these laws or regulations may have occurred. If there is probable cause of a violation, an investigation is initiated. If the investigation reveals that one or more violations may have occurred, the licensee receives notice to appear at an informal fact-finding conference (IFF) to address these alleged violations.

In some cases the licensee may be offered a pre-IFF Consent Order. A Consent Order is an agreement between the licensee and the Board consisting of specific violations and sanctions. Pre-IFF Consent Orders eliminate the time and expense associated with conducting an IFF.

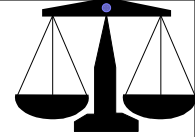
If an IFF is held, a recommendation from the IFF hearing officer consisting of proposed violations and sanctions is submitted to the Board for consideration at its next meeting. The Board can take the following disciplinary actions against a licensee: assess a monetary penalty; suspend or revoke a license; place an individual on probation; require additional education; or deny renewal. A licensee can continue to practice throughout the disciplinary process until the Board either revokes or suspends his license.

THE FOLLOWING DISCIPLINARY ACTIONS RENDERED BY THE BOARD AT ITS January 2010 MEETING CAN BE VIEWED AT: www.dpor.virginia.gov. Click on "License Lookup." Then click on "Search Disciplinary Actions Occurring since April 1, 2002." Then enter the Case Number in the blank "Search" box. Then click on the "Search" button. Then click on the highlighted "File Number." The Order and Report of Findings for that case will appear.

<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2009-02939	Laura J. Sampson Exmore, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$3300, 4 hours Continuing Education, License Revocation
2009-04567	Cynthia C. Houser Chesapeake, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$500, \$150 Board Costs, 3 hours Continuing Education
2009-04503	Charlene D. Sensabaugh Lexington, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, License Revocation
2009-04458	Patricia B. Amos Gloucester, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, Broker License Revocation with Simultaneous Issuance of Salesperson License
2009-01776	Adam C. Hopkins Lynchburg, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$1000, 16 hours Continuing Education
2009-04151	John A. Sears Reston, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (4 counts) 18 VAC 135-20-185 - Mainten./Manage. Financial Records (2 counts) License Revocation
2009-04165	James R. Bailey, Jr. Montpelier, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$1200, \$150 Board Costs, 6 hours Continuing Education
2009-04350	Raja G. Ihsan Woodbridge, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$3150, \$150 Board Costs, 14 hours Continuing Education



DISCIPLINARY ACTIONS (Cont.)



Case No.	Licensee	Violations & Sanctions
2010-01110	Carl A. Wiberg, Sr. Fredericksburg, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts \$150 Board Costs, 4 hours Continuing Education
2010-00416	Nora Kiger-MacKenzie Chesterfield, VA	§54.1-2135.A.2- Failure to Exercise Ordinary Care in Managing Real Estate Fined \$750, 4 hours of Continuing Education
2010-00176	Christopher W. Chow, Sr. Centreville, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts Fined \$250, \$150 Board Costs, 4 hours Continuing Education
2009-03797	Amy M. Dolan-Gianniny Natural Bridge, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-260 - Unworthiness & Incompetence 16 hours Continuing Education, License Revocation (This License Revocation shall be Suspended during which time Dolan-Gianniny must submit to the Board: 1) A quarterly CPA reconciliation and an annual CPA audit of the financial records and escrow accounts of her two real estate companies until January 31, 2014; 2) Written evidence of continued restitution to all involved parties; 3) Copies of all payment agreements of all involved parties; 4) Quarterly reports to the Board. Dolan-Gianniny shall appear before the Board at its first 2014 meeting to provide evidence of compliance with all Order terms by December 31, 2013.)
2010-00078	Eugene J. Fisher, Sr. Culpeper, VA	18 VAC 135-20-210 - Failure to Disclose Interest Fined \$400, \$150 Board Costs, 4 hours Continuing Education
2010-00954	Mary J. Lewis Haymarket, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts Fined \$500, \$150 Board Costs, 4 hours Continuing Education
2010-00932	John Chung-Kang Hwang Fairfax, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts Fined \$500, \$150 Board Costs, 4 hours Continuing Education
2009-04574	William T. Miller Pearisburg, VA	§54.1-2138.1.A - Failure to Act as a Limited Service Representative according to Law §54.1-2139.A - Failure to Act as a Dual Representative only with the Written Consent of all Clients to the Transaction Fined \$800, \$150 Board Costs, 4 hours Continuing Education
2010-00429	Becky McIntyre, t/a Shenandoah Home Solutions, LLC Bridgewater, VA	Cease and Desist from Acting as an Unlicensed Real Estate Broker or Salesperson in Virginia

Fair Housing

The Fair Housing Board administers and enforces the Virginia Fair Housing Law, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees. Each board investigates housing discrimination through the Virginia Fair Housing Office at the Department of Professional and Occupational Regulation. All fair housing cases must attempt conciliation – an alternative dispute resolution approach using informal negotiation. Successful conciliation agreements are public unless both parties request and agree to a confidentiality clause. If conciliation is unsuccessful in resolving the complaint, the Board determines whether reasonable cause exists to support a charge of discrimination. In cases where the Board determines reasonable cause and issues a charge of discrimination, the Office of the Attorney General brings civil suit in circuit court seeking relief for the complainant. The following cases represent fair housing actions rendered by the Real Estate Board at its January 2010 meeting:

Action	Case Number	Case Name
Conciliation Agreement	2009-00405	Larissa Ann Davis (formerly Wells) and Jamie Davis v. Debra M. Gantt

Board Acts on Advisory Council Recommendation to Amend Post License Education Program for New Salespersons

A Fall 2009 *VREB Speaking* article summarized the Real Estate Board Advisory Council's November 5, 2009, meeting and report to the Board. You can read this article at: <http://www.dpor.virginia.gov/dporweb/VREB%20Speaking%20Fall%202009%20-%20Final.pdf>

The Advisory Council recommended the Board change the 30-hour Post License Education (PLE) program to require 10 Mandatory Topic hours for each Practice Track consisting of the topics outlined in §54.1-2105.01.C of the *Code of Virginia* and that the number of hours specified for each Practice Track's Elective Topics be removed so that any Elective Topic(s) course for each Practice Track could be approved by the Board for one to 20 hours.

Currently, the Residential Track requires 15 Mandatory Topic hours, the Commercial Track requires 9 Mandatory Topic hours, and the Property Management Track requires 20 Mandatory Topic hours. Also, Elective Topic courses for all three Practice Tracks can now only be approved for one to four hours.

At its November 19, 2009, meeting, the Board directed its Education Committee to examine the Advisory Council's recommendation to change the PLE program at the Committee's next meeting on January 27, 2010, and then report their findings to the Board at its meeting on January 28, 2010.

At its January 27, 2010, meeting, the Education Committee considered the Advisory Council recommendation, and on January 28, 2010, advised the Board to retain the current number of mandatory hours for each Practice Track and to allow approved education providers to apply for one to 21 hours of PLE credit per course application. The Board approved the Education Committee recommendation.