

Alexandria
Old Town
703-739-0100

Arlington
703-237-1100

Burke
703-913-8080

Fair Oaks
703-279-1500

Fredericksburg
540-373-1300

Front Royal
540-878-4210

Gainesville
703-468-2020

Kingstowne
703-417-5000

Lake Ridge
703-492-7900

Leesburg
703-840-2000

Manassas
703-393-0333

McLean
703-734-8900

Reston
703-318-9333

Stafford
540-658-0992

Vienna
703-242-2860

Warrenton
540-349-7990



www.mbh.com

2016 Virginia General Assembly Updates

During the 2016 General Assembly session, two bills of note for the real estate industry were passed. Both of these bills became law on July 1, 2016.

The Virginia Condominium and Property Owners' Association Acts was introduced by Delegate Chris Peace (R-Mechanicsville) as House Bill 684 (HB684). In it, changes were made to the existing Condominium Act and Property Owners' Association Act as they relate to rental units and disclosure packets.

Unit Owners' Association Prohibitions

HB684 details several changes to 55-79.87:1 of the law. It prohibits a unit owners' association ("the association") from placing a condition on or prohibiting the rental of a unit. The association may not charge an annual or monthly fee on a rental unit unless expressly provided for by law, nor may they charge an application, processing, or any other fee in excess of \$50. Charging a deposit from a unit owner or a tenant is also prohibited.

The new law states that an association has no lawful authority to evict a tenant. An owner may not execute a power of attorney authorizing an association to evict a tenant, nor can an association require a power of attorney from owners represented by an agent with a property management agreement. It is the owner's prerogative to designate someone licensed by the Real Estate Board as a representative on lease issues without the need for a Power of Attorney. This licensed broker can be the owner's authorized representative in regards to a lease.

An association is not legally able to require use by the owners of a lease or addendum to the lease prepared by the association. Associations are also no longer able to require a copy of a lease for a rented unit. However, an association is able to require the names, contact information and vehicle information for tenants and authorized occupants, and the names and contact information of authorized agents.

Disclosure Packets

Disclosure packets may be delivered to the purchaser from the seller via hand delivery, the United States Postal Service, or by an overnight commercial delivery service if a hard copy of the document is requested or by electronic means, if designated. A purchaser has the right to cancel the contract within three days of the associations' disclosure packet being received or if notification is made that the associations' disclosure packet will not be available, as written in 55-79.97(C). There is a stipulation that the three day right to rescission does not begin until the last packet or resale certificate has been received, if a unit is governed by more than one association. As written in the law, "The purchaser may also cancel the contract at any time prior to settlement if the purchaser has not been notified that the associations' disclosure packet will not be available and the associations' disclosure packet is not delivered to the purchaser."

ASSOCIATIONS ARE NO LONGER
ABLE TO REQUIRE A COPY
OF A LEASE FOR A RENTED UNIT.

House Bill 567 pertaining to the Real Estate Board, duties of Real Estate licensees, and deferred judgments was introduced by Delegate Jackson Miller (R-Manassas).

Virginia Real Estate Board Waivers and Deferments

Upon this bill taking effect, the VA Real Estate Board (VREB) will be allowed to grant waivers or exemptions for those agents who do not fulfill their continuing education and re-licensure obligations. The exemption will be based on the licensee's ability to demonstrate to the VREB a certified illness or undue hardship. What constitutes a hardship is not spelled out in the law and will therefore be left to subjective ruling by the VREB.

Additionally, "The Board may take a disciplinary case against a licensee under advisement, defer a finding in such case, and dismiss such action upon terms and conditions set by the Board." This will allow the VREB to keep violations from going on a licensee's permanent record.

Disclosures

The need for a Disclosure of Brokerage Relationship form and written brokerage agreement was eliminated for commercial transactions by the inclusion of the verbiage, "in a residential real estate transaction," as found in 54.1-2138. This document is needed when having a "substantive discussion" about a residential property with a prospective buyer or seller not represented by the licensee or who is not represented by another licensee. The licensee must disclose any broker relationships with a party to the transaction.

"If a licensee has actual knowledge of the existence of defective drywall in a residential property, the licensee shall disclose same to the prospective buyer/tenant/seller." This bill eliminated commercial transactions from the disclosure of defective drywall by the inclusion of the wording "residential property." Defective drywall is defined in 35.156.1.

Written Brokerage Agreement

This bill states that there is nothing that "shall be construed to require that a written agreement between a licensee and a prospective buyer/tenant be executed prior to the licensee showing properties to the prospective buyer/tenant." Of note: the Northern Virginia Association of Realtors supports licensees have a written brokerage agreement before showing a house for risk management purposes.

Looking Ahead

Effective January 1, 2017, the law will require a supervising broker of a branch office to disclose to the VREB his or her name and license number. The same will be required of licensees as they renew their license or when a new licensee transfers in to the office.

See you at the settlement table!