

NEW LAWS YOU AND YOUR AGENTS NEED TO KNOW ABOUT
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PROPERTY OWNERS' ASSOCIATION (POA) ACT AND CONDOMINIUM ACT (HB 516)

This Act:

- Creates the Virginia Common Interest Community Board to investigate complaints about community association managers
- Requires associations to publish certificate or packet fees in electronic or paper format
- Enables sellers or agents to request electronic delivery, and they may designate two additional recipients to receive the materials in electronic form at no additional charge

By the numbers:

- Prohibits an association from charging anything beyond the fees set out in its declaration of covenants and restrictions or otherwise provided by law, with limits not to exceed:
 - **\$100** for a property inspection
 - **\$150** for two copies of the disclosure packet in hard copy and **\$125** for two copies of the disclosure packet in electronic form; only one fee may be charged
 - **\$50** for an expedite fee
 - **\$25** for an additional hard copy
 - **\$50** for a post-closing fee
 - actual cost of a commercial delivery service for hand delivery

Additionally:

- For no more than **\$50**, an update, delivered within 10 days of a written request, may be requested if a packet or resale certificate was issued within the previous 12 months
- Fees are not paid up front but are deferred to the time of closing
- ***These changes only apply to associations who have hired a management company or who have a full-time staff***

MORE CLEARLY DEFINED AUTOMATED VALUE MODELS (AVM) (SB 158)

An AVM is an electronic method of determining the value of property, based on an online search of local government tax records and sales comparables. VAR's legislation requires lenders to disclose on the settlement statement any fees charged to the borrower:

- for an appraisal
- for a valuation prepared using an automated or other mechanism by a person who is not licensed as an appraiser

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WET SETTLEMENT ACT (HB 1098)

A small change to the Act clarifies that the definition of "settlement" applies only to the Act and not to the use of the term in purchase agreements between buyer and seller.

- For example, on Friday, buyers sign loan documents, lender has deposited good funds into the settlement agent's account, and the deed and other seller documents are in escrow with the settlement agent. Recordation and disbursement are all that remain to be done to complete the transaction. The Wet Settlement Act defines "settlement" as occurring at that time. However, this definition is for purposes of the Act only, which requires (i) that the lender have good funds available to the buyer at "settlement," and (ii) that the settlement agent record and disburse within two business days after "settlement." The definition of "settlement" under the Act was never meant to apply to any other use of the term. The new language in the Act (HB 1098) makes clear that the definition of "settlement" applies only for purposes of the Act, and for all other purposes – such as the use of the term in a purchase agreement – the parties look to their agreement, and not to the definition in the Act.

Therefore, if the buyer is entitled under the contract to possession at settlement, we look to the definition of settlement under the contract – that is, to the agreement between buyer and seller – to determine when that occurs. We do not look to the Act, which imposes duties only on lenders and settlement agents. Similarly, if the contract requires the purchase price to be paid at settlement, the seller may not look to the Act and demand payment on Friday.

Where in the contract will we find the definition of settlement? Well, most contracts do not spell that out specifically and historically have not, but instead rely on the centuries-old common law definition (the common law governs most terms and provisions of our purchase agreement). Under the common law, settlement occurs when all conditions of the contract have been met, escrows have been closed (this is where we get the term "closing"), and both parties are in a position to tender performance. The parties may change this by contract, but remember, if settlement occurs Friday for the buyers, it occurs Friday for the sellers. If it occurs Monday or Tuesday for sellers (the purchase price is released from escrow), that's when it occurs for buyers.

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LISTING AND LEASING AGENTS' DISCLOSURE (HB 1397)

Virginia law requires listing and leasing agents to disclose, in writing, material adverse facts about a property. This legislation eliminates the requirement that these disclosures be in bold lettering or all capital letters and in a separate box.

FIRM OWNERSHIP (HB 1114)

This bill permits salespersons to be members (owners) of Limited Liability Corporations (LLC). However, a licensee who is involved in management of a LLC, and who is actively engaged in brokerage, must be a broker. This conforms LLC ownership provisions to those for ownership of a corporation.

VESTED RIGHTS REFORM (HB 1078)

This Act protects property owners from localities that seek to alter past zoning decisions by enacting new zoning ordinances.

- For example, if a structure was constructed in accordance with a local government building permit, and the locality issued a certificate of occupancy or use permit, a later zoning ordinance may not remove it for nonconformity with the new ordinance. It also applies to structures on which an owner has paid taxes to the locality for more than 15 years.

OVERCROWDING ENFORCEMENT (HB 445)

This Act provides that localities may not continue to impose penalties on landlords who have taken legal action to address overcrowding zoning violations.

LANDLORD TENANT BILL (HB 720)

This Act:

- Streamlines the bad check process: A landlord may treat a tenant's bad check as non-payment and include that language in a five-day notice for nonpayment of rent. If the tenant gives a bad check to the landlord the landlord can also obtain, as part of the same unlawful detainer filed for the rent, a civil penalty of \$250. This addresses the problem of landlords not being able to use the criminal justice system available to any other creditor, and creates a disincentive for the tenant to give the landlord a bad check
- Establishes separate definitions for "application fee" and "application deposit." The law caps the application fee at \$50, an increase from the current \$32 cap. However, the \$32 cap is maintained for low income tenants under federal programs
- Defines "tenant records" to include electronic records. Also clarifies that landlords can provide tenant records to their lenders or attorneys
- Gives landlords the right to include a lease provision requiring notices under the Virginia Residential Landlord Tenant Act (VRLTA) to be given electronically, but also allows any tenant to opt out and continue to use paper notices. However, any electronic notices must be kept to establish proof of delivery
- Establishes a voluntary process for tenants to install carbon monoxide detectors, following the same process as for fire detection devices
- Validates the "acceptance of rent with reservation" provision being in 5-, 21- and 30-day termination notices and clarifies that the provision is effective for all rents paid prior to the final disposition of the case by a court. The legislation also makes clear that in cases of subsidized rentals, giving the acceptance of rent with reservation notice to the tenant is sufficient without having to also give notice to HUD, VHDA, or the local housing authority administering the subsidy
- Updates the interest rate on security deposits for 2008

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MOLD LEGISLATION (HB 580)

This Act:

- Expands the VRLTA for multifamily dwelling units to cover rented dwelling units in single-family detached housing and puts the same process in the Virginia Landlord Tenant Act to cover rented dwelling units in single-family detached housing
- Imposes a duty on tenants to keep dwelling units in good condition to prevent mold and requires landlords to respond promptly to any mold discovered in the units
- Adds a definition, consistent with EPA standards, for "mold remediation in accordance with professional standards"
- Provides for a move-in inspection process whereby the landlord and tenant indicate on the inspection checklist that there is no visible evidence of mold at the time of move in. If there is visible evidence of mold, it must be addressed up front
- If mold is discovered during the tenancy in an amount that falls below EPA standards, the tenant may stay in the dwelling unit and the landlord must remediate the mold. If the mold is greater than 10 square feet, the landlord must move the tenant temporarily, remediate the condition in accordance with EPA standards, and move the tenant back into the unit at the landlord's expense. Appropriate revisions will be made to VAR Form 200 (Residential Lease) and Form 900 (Property Management Agreement), effective July 1, 2008

Additionally, **HB 221 and SB 232:**

- Provide immunity to landlords and managing agents for following the landlord process provisions
- Make a landlord and managing agent with no maintenance responsibilities not liable to a tenant for personal injuries or property damages arising from a mold condition in the dwelling unit. Further, if the tenant is at fault for the mold condition, the landlord and managing agent have immunity from a mold claim
- Clarify that if there is no visible evidence of mold reflected on the move-in inspection report, and the tenant does not object within five days to that status, there is a rebuttable presumption that there was no mold when the tenant moved into the dwelling unit
- Require a landlord and/or managing agent to exercise ordinary care in performance of "mold remediation in accordance with professional standards". Thus, the landlord and managing agent are held to a negligence test, and if they perform mold remediation in accordance with those standards, they are not negligent and have no liability for mold claims

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NEW REAL ESTATE BOARD REGULATIONS

New Real Estate Board Regulations (effective April 1, 2008):

- Limit licensure reporting requirements for applicable misdemeanors to those occurring within the previous five years
- Require applicants for licensure to have a high school diploma or equivalent
- Require a branch-office license and a roster of licensees assigned to that office to be posted in a conspicuous place in the branch office
- Enhance broker supervision obligations to include:
 - Ensuring the availability of the supervising broker to review and approve all documents, including leases, contracts affecting firm clients, and brokerage agreements;
 - Ensuring the availability of a supervising broker to supervise, in a timely manner, the management of brokerage services;
 - Ensuring that brokerage services are carried out competently and in accordance with applicable laws and regulations;
 - Undertaking reasonable steps to ensure compliance with laws and regulations by all assigned licensees;
 - Certifying on a quarterly basis that the broker has complied with supervision requirements if the broker supervises a branch office from a location more than 50 miles from the branch office; and
 - Maintaining required records for three years and providing them to the board upon request.
- Require broker reporting, within three days, of a licensee's failure to comply with the board's escrow requirements
- Require online advertisements to be kept current and consistent by:
 - Assuring listing information is consistent with property description, and assuring the status of listings is kept current, by timely updates of material changes when the licensee controls the online site;
 - Making timely requests for updates to reflect material changes when a third party controls the online site; and
 - Indicating in a readily visible manner the date of the last update of the listing information shown
- Require a licensee who is a party to the transaction and who is selling or leasing property in which he or a member of his family, his firm, or any member of his firm (or an entity in which he has an ownership interest) to disclose this information to the prospective buyer or tenant upon having substantive discussions about the property. The licensee must also include the disclosure in the contract, lease, or application to lease
- Change the agency-disclosure obligations of leasing agents to require disclosure in short-term leases of two months or more
- Require agents to give written notice to, and receive written consent from, the principal broker before using information gained about the firm's clients, properties, or transactions while performing licensed activities or taking employment with a company providing settlement services as defined under RESPA
- Extend the non-renewal, suspension, or revocation of a broker's license to any concurrent license held by the broker