

ARCHIVE

To see the latest version of this document, go here:

<https://www.adambgarrett.com/post/legalty-regarding-buyer-brokerage-form-prior-to-showings-in-va>

Legality Regarding Buyer Brokerage Form Prior to Showings

Adam Garrett

If you are ready to do showings or have questions that I am not legally allowed to answer without a buyer brokerage, I recommend that we sign a **buyer brokerage agreement** (I also provide some optional disclosure forms that are recommended but not required) prior to showings and my responses to certain questions to conform properly with the law as long as your intent is to buy. Please keep in mind that I am not an attorney and that interpretations regarding these issues vary, so it is best in my opinion to see quotes with references on the issues. [Here](#) are the options & other details for the buyer brokerage agreement.

As laid out in VA codes [54.1-2130](#) & [54.1-2137](#), further detailed in [this document](#) from townhall.virginia.gov , "Is the party looking for the licensee to provide **advice** and **counsel** requiring the licensee to exercise his judgment or discretion for the purpose of procuring a seller... ready, able, and willing to sell... **real estate**? If so, **this would require a written brokerage agreement.**"

This law was clarified in [July of 2012](#), so if anyone used a buyer's agent for showings prior to then, it was when the law was more ambiguous.

The document further states, "**showing a house** may be ministerial if the licensee takes the party to see what the typical features are in homes in the market area or to gather information on the market or area. However, **if the party asks the licensee to show him real estate because his intent is to have the licensee procure someone who is ready, able and willing to sell... real estate then a brokerage relationship exists requiring a written brokerage agreement.**"

If you do not intend to buy, I could show you properties as a "ministerial act", but it would **not** be **permitted** for me to share with you any **negatives** about a property, even pointing them out without saying a word (i.e. settlement cracks, a leaky roof, etc.). It's also important to note that more often than not, the negatives that I find with properties are more numerous than positives, but I wouldn't be able to share any negatives as a "ministerial act". The way that I

would conduct a showing should be completely different if under buyer brokerage vs doing it as a ministerial act, which "means those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment." When I perform a showing, I typically point out a dichotomy of positives & negatives as the primary basis for my feedback to you.

Here's the legal issue in brief on buyer brokerage when using a buyer's agent as shared in a [document explaining your Realtor's role](#) published in 2012 by Virginia Association of Realtors:



WHY DO I HAVE TO SIGN A BROKERAGE AGREEMENT?

The short answer is that Virginia law requires it in order to protect you.

The longer answer is that having something in writing — whether it covers a single property or a months-long relationship — ensures that both you and your Realtor® understand exactly what's expected from each other.

Be sure to discuss your options with your Realtor®, and make sure all your questions are answered.

VA code 54.1-2132 section G can confuse some buyers, and isn't the chapter/section that covers the legal requirement for buyer brokerage for buyers using a buyer's agent. See [54.1-2130](#) & [54.1-2137](#) for the requirement.

[Here](#) is an example of a court case where no buyer brokerage agreement was signed and how the real estate agent involved was prosecuted because of it. That document starts out by stating, "This case examines a scenario where the buyer's agent did not engage in obtaining a written Buyer Brokerage Agreement. It is imperative that agents obtain a written brokerage agreement before engaging in any type of real estate representation. It is required under the Virginia Rules and Regulations, and protects your hard work while you work for your clients... The Board determined that Mr. Sheldon failed to disclose his brokerage relationship to the purchaser, in writing, before providing specific real estate assistance and ordered him to pay a fine of \$400 and complete at least six classroom hours of Board-approved Post-License education pertaining to Contract Writing." [Here](#) is another court case prosecuting a real estate agent for having no active buyer brokerage agreement established with a buyer.

Please let me know if you would like to sign a buyer brokerage agreement & recommended [disclosures](#) so that I can put them together for you if I haven't already. For that I will need your legal **name, signature, & initials** that you would like to use.

Disclosures:

While a buyer brokerage agreement needs to be in writing in VA, all of the details of the 2 page form aren't legally required, but the form being used is the most common one in VA when buyer brokerage agreements are signed, produced by the Virginia Association of Realtors. If there is

another standard buyer brokerage agreement in VA that you would like to use, please let me know, though my principal broker, Chuck Dunlap, believes it's important that it's an agreement that has been vetted by real estate attorneys.

Please note that I am not an attorney and that an attorney should be consulted regarding any matters not in quotes above in order to get the best interpretation of law. If you question my opinion here due to your previous interactions with agents/brokers or due to other agent/broker opinion currently, I invite you to explore this document with your attorney to see if they would agree with me after looking at the quotes I provide.

If you'd like to check into this requirement without consulting an attorney, just search Google.com for:

do you need to sign a buyer brokerage agreement with a buyers agent in virginia

See also the [opinion of Davis Law Group on this subject](#).

That said, I think a lot of publications use not enough quotes/sources cited & too general of statements. Here I sought absolute accuracy, though again, a real estate attorney would be a better judge of that than me.

While I may not agree with everything they are saying (& I don't even when lawyers are in the picture as authors), here are some more publications on the subject by other Realtors & relevant quotes on the subject:

1. <https://williamsburgsrealestate.com/2012/06/17/did-your-va-real-estate-agent-ask-you-to-sign-something-before-you-looked-at-a-home/> **"Brokerage agreements must now be in writing. Further, they must be signed as soon as an agent meets and engages in any kind of "licensed activity" i.e. If you want to see a home that's for sale you will have to sign a brokerage agreement or a non client agreement. If you refuse to sign an agreement or a non-client representation agreement, and an agent shows you a house, that agent would be in violation of Virginia State law!"**
2. <https://www.linkedin.com/pulse/20140618165643-28093700-written-brokerage-agreements-in-virginia-the-law-as-of-july-2012>
3. <https://charlottesvillesolutions.com/explaining-virginias-new-buyer-brokerage-agreement-law/> **"If you'd like to make an appointment to go see a house with one of our team of licensed REALTORS®, or any REALTOR® in Virginia for that matter, the state will now require that you first enter into a written brokerage relationship agreement with one of us regardless of whether this is the first time you're contacting us to discuss purchasing a house or if you've been working with one of our Solutions team members for some time."**
4. <https://elitescoop.com/virginia-real-estate-boards-guidance-document-for-brokerage-agreements/> **"It seems that the largest source of contention to the new disclosure law is that the disclosures must be made prior to showing property to Buyers and those seeking to rent properties. Some instructors and brokers were denying that this requirement existed. To provide clarification, DPOR released a Guidance Document to help clear the air about when an agency agreements and disclosures must be signed by the potential clients (usually tenant or buyer). This Guidance Document provides insight into how the VREB will interpret the rule when challenged. The most important part of this document is the clarification that if a consumer wishes to see property with the intent of buying or renting, than an agency**

disclosure and agreement form must be signed before introducing the client to the property. This reinforces what instructors have or should have been teaching all along.”

There are also some articles online that give ambiguous language or even inaccurate information on the subject. It's important to note that not requiring a buyer brokerage agreement can mean not using a buyer's agent, & state laws highly differ on the subject of a written buyer brokerage agreement. [Here's](#) an example of my review of one such article that you would think would be from a notable source and trustworthy. Potentially misleading info on buyer brokerage agreements aren't its only issue, as you can see from the various clearly inaccurate elements of it I share about in my review. Likewise, many buyers look to what non-agents state on the subject based on their own experience working with a buyer's agent without a buyer brokerage agreement, and many agents are also ill informed on the subject. Some agents won't share about the need for a buyer brokerage agreement until you show up for showings & ask you to sign before completing those showings, & others will share about the need for one immediately prior to offer writing. I think it's likely the minority in VA that won't do one at all. Even if there was no legal requirement to execute a buyer brokerage agreement prior to showings (when there is that requirement if your intent is to buy), I for one, if I was a buyer, would want to know what I was getting into up front. For instance, the minimum brokerage fee of some buyer's agents is 4% compensation, double what mine is for properties \$100k+.

In addition to the buyer brokerage form being signed if using a buyer's agent, there are other forms that are required when using a purchase agreement. To state something on an offer that is not true is an example of misrepresentation (if doing so unknowingly) or fraud (if doing so knowingly).

For instance, if using a REIN standard purchase agreement, the most common offer form for offers in Hampton Roads.

- A. Built into the REIN standard purchase agreement is the language in section 16 (page 10) as of 8/22/22 “Buyer and Seller acknowledge receipt of their REIN Consumer 491 Disclosure Information Form and Summary Of Rights And Obligations Of Sellers And Purchasers Under The Virginia 492 Residential Property Disclosure Act Form prior to entering into this Agreement.”
- B. For those buyers who are not being represented by a buyer's agent, when an agent is representing the seller, built into the REIN standard purchase agreement in section 16 (page 11) as of 8/22/22 is the language, “Buyer has signed the 505 Disclosure of Brokerage Relationship to Unrepresented Party form.”
- C. “The Virginia Residential Property Disclosure Act (the “Act”) requires sellers of residential real property to disclose to buyers certain information known to the sellers regarding the condition of the property to be purchased. Seller and Buyer acknowledge that a Residential Property Disclosure Statement, attached hereto, has been provided by Seller to Buyer prior to ratification of this Agreement and if the Property is an exempted property pursuant to § 55.1-702 of the Act then this paragraph does not apply.” (page 11, section 16 C as of 8/22/22)
- D. There are numerous other forms that may be required depending on the circumstances