

(P. 10)



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PUBLISHED BY THE VIRGINIA ASSOCIATION OF REALTORS®

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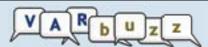
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The mission of The Virginia Association of REALTORS® is to enhance its membership's ability to achieve business success. Commonwealth magazine (ISSN#10888721) is published bi-monthly by the Virginia Association of REALTORS®, 10231 Telegraph Road, Glen Allen, VA 23059-4578; (804) 264-5033. Virginia Association of REALTORS® members pay annual dues with a one-year subscription included within their dues. Periodicals postage paid at the Glen Allen, VA post office and additional mailing offices. USPS Per. # 9604.

Postmaster: Send address changes to: Commonwealth magazine, 10231 Telegraph Rd., Glen Allen, VA 23059-4578.

Custom Publishing Services provided by Network Media Partners, Inc



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firstword

Squeezing out the details

Life is like a tube of toothpaste: When you think you understand something, you can always squeeze a little more information out.

Grade-school kids learn that World War II ended when the atomic bombs scared the Japanese into surrendering. You have to be a history geek before you read about the effect of the Soviets in Manchuria, the attempted coup in Japan, the plot to keep the Emperor's surrender recording from being aired, and on and on. "A-bombs = surrender" is just the tip of the iceberg.

This is what I learned writing our feature story on cell phones and broker liability (page 24).

It started when I heard a news story on the radio: A company was being sued because one of its employees got into an accident while on the phone. 'Could that apply to brokers?' I wondered. Nah... Realtors are independent contractors, right?

Still, maybe a quick post to VARbuzz was in order. But then I started the research. Turns out sometimes Realtors are indy contractors, sometimes not, and that's especially true when they're behind the wheel. Sometimes employers can be sued, sometimes not.* As VAR legal counsel Blake Hegeman diplomatically put it, "A judge doesn't always rule in a way we would expect."

* As my dad says, you can always sue someone. You just can't always win.

It's not simple stuff — it's a multi-variable problem without easy answers. I guarantee when you read it you'll start thinking, "But what if...."

By comparison, writing about preparing for Obamacare (page 30) was a lot easier. Come 2014, business will have to do this, and individuals will have to do that. Here's how to do it, and here's what happens if they don't.

There are plenty of details to squeeze out, of course: how employees are counted, what health insurance must cover, the tax benefits for very small businesses, how much you can expect to pay, and so on. Sadly, there's a ton of misinformation out there — "death panels" is the classic — and even more wild speculation: This will go up, that will go down, good things will happen, bad things will happen, etc., as if anyone can be sure. That makes it tough to tease out the reality.

So, to avoid the hyperbole, the story is simple: Here's what you have to do, and here are your options. For the details... well, that's why you have your tax guy



to explain things and your drinking buddies to argue with.

Andrew Kantor, Editor andrew@VARealtor.com

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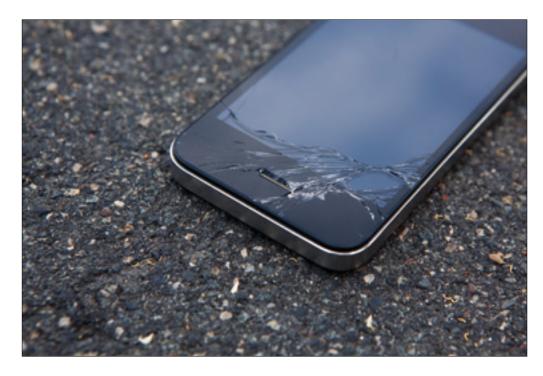
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features

Distracted Realtors, Liable Brokers

When Realtors are in car accidents while on the phone — talking or typing — it's their brokers who could find themselves facing a lawsuit.

Preparing for Obamacare

The biggest parts of the Affordable Care Act — Obamacare to you and me — take effect January 1, 2014, but you can start preparing now. Here's what you need to do.

special report

VAR's 2013 Endorsements

From the three major statewide offices to the entire House of Delegates, here are the candidates offering the best support for real estate in Virginia.

Why EXIT?

We spoke one-on-one with long-time Franchisee, JANICE PETTEWAY, the owner of a powerful trifecta of EXIT offices in the state of Florida, who reflects on joining EXIT and the advantages of owning an EXIT franchise.

What precipitated your purchase of EXIT. I knew I would open under an EXIT Realty franchise?

I was very unhappy with the system I was in and I explored many franchise systems. At that time, I didn't even know about EXIT. Nothing appealed to me and I had made the decision to go independent when I stumbled on

this franchise system within six minutes of the presentation.

What did you see in the opportunity and timing of buying an EXIT Realty franchise?

I saw the potential for the agents, and I knew that with happy agents I would build a company fast. As far as the timing, it really had no bearing - I would have done it any day and year!

Coming from a franchise competitor, how has being with EXIT bettered vour business?

The EXIT Formula of built-in

recruiting and retention gave me time to focus on the agents and their needs. I believe when you can do that, the recruiting and retention really becomes easy.

What would you tell another person interested in purchasing an EXIT franchise?

Not to hesitate. I would tell them to pick up the phone and call some of us. No other franchise system has the genuine support between offices that EXIT does. That in itself is a good reason to join EXIT.

THINK RESIDUALS!



Janice Petteway

EXIT Real Estate Results Longwood, FL

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quicknits

Short sales

Maryland, MARS, and short sales

If you do business in Maryland — or know someone who does — read up. Maryland has a different rule regarding short sales, and it's one you need to know about.

Quick background: Back in 2011, the Federal Trade Commission said that anyone who gave advice on short sales was providing "mortgage assistance relief services" or MARS, and thus had to make certain disclosures. (They're to protect consumers from fraudulent loan-modification companies.)

That seemed to apply to Realtors as well, and it meant extra forms for clients and yet more laws to worry about, which wasn't the FTC's intent. So after some chatting with the folks there, we got a clarification: The FTC wouldn't require Realtors who offered short-sale advice to follow all its MARS rules under most circumstances. Yay.

But Maryland has a different twist.

In July, Maryland's *own* version of the MARS rules went into effect. And the state's Commissioner of Financial Regulations has said that its rules for Realtors are a bit tighter than the FTC's. Real estate agents in Maryland *will* have to comply with the state's MARS Act — which means at least some additional disclosures — if they:

- collect any money beyond the customary commission;
- assist a seller in negotiating with



the lender to obtain approval of a short sale;

- represent to the public that they are "experts" in short sales;
- make representations that they can obtain a short sale;
- provide advice regarding the benefits of a strategic default; or
- make predictions with regard to the likelihood of a deficiency or the payment of relocation costs involved in a short sale.

We bolded two of those bullets for a reason. If you're a typical Virginia Realtor, you probably aren't getting paid as a foreclosure counselor or short-sale negotiator. But what if your website touts your short-sale expertise? What if you say, "I think you can work with your bank and get a short sale"?

In either case — were you in Maryland — you might be subject to its MARS Act. In that case, its Real Estate Commission might be interested in what you're up to.

Our advice: If you're working with a short sale in Maryland, check out the Maryland Department of Labor, Licensing, and Regulation's site at dllr.state. md.us and search for "Guidelines for Licensees in Short-Sale Transactions." Of course, talk to your broker, and — if necessary (and you're a MAR member) — contact the MAR Legal Hotline (start at MDRealtor.org/Legal).

FHA loans

Foreclosed on? FHA will offer a loan sooner than it used to

More than a year ago we started talking about what we called "shadow consumers" (who have since been dubbed "boomerang buyers"): people who lost their homes to foreclosure but who would soon re-enter the housing market.

The soonest most could hope to get a mortgage was three years after foreclosure — that's how long FHA required them to wait. (As far as banks and credit unions go, foreclosures and short sales typically stay on your credit report for seven years; bankruptcies last for 10.)

But FHA has said it will be cutting that 'waiting period' to one year — at least for some borrowers. The

idea is that it realizes that foreclosures during the Great Recession are a different animal. As FHA put it, "[borrowers'] credit histories may not fully reflect their true ability or propensity to repay a mortgage." In other words, it wasn't entirely their fault. Ergo, it's probably safe to give them a (reasonable) mortgage.

That doesn't mean everyone who was foreclosed on can get an FHA loan within a year, of

course — only those whose hardship was related to the recession. Your income has to have fallen by at least 20 percent because of unemployment (or an event beyond your control), you need to have made a year's worth of on-time housing payments, and you have to take a one-hour counseling course.

For those who meet that criteria, the new FHA guidance will be in effect between August 15, 2013 and September 30, 2016.

Mortgage lending

Fannie Mae may back fewer low-down-payment loans

Fannie Mae is considering reducing the number of low-down-payment loans it purchases, making a hard-to-get loan even harder to get.

You might not have known this: Even with higher mortgage standards (by law or by market forces), Fannie Mae still purchases loans where borrowers have only put three percent down. Of course, there weren't many of them around — the catch was that Fannie required mortgage insurance on those loans, which wasn't easy to come by.

But now Fannie is seeing more of those threepercent-down loans, and is considering limiting its purchase of them. (Freddie Mac already requires a five percent down payment to buy or insure a loan.)

What happened? On the one hand, FHA — which only requires 3.5 percent down — raised its insurance premiums for those mortgages. Meanwhile, private mortgage insurers have removed some restrictions and begun offering better rates — and that's made it possible for private lenders to begin offering low-down-payment loans again.

Between the two, there's been enough of an uptick on no- and low-down-payment mortgages that Fannie is considering going to Yellow Alert. This may not be a major issue as private lenders ease back into the secondary mortgage market... but it's worth keeping an eye on.

Lower loan limits from Fannie and Freddie?

Will Fannie and Freddie reduce the size of the loans they're willing to back? The rumblings are there that starting in January 2014, the two government-sponsored enterprises might lower the current \$417,000 conforming loan limit. (It's \$625,500 in some areas.)

Stay tuned to VARbuzz for more about what's sure to be an interesting discussion.



NAR news

Big changes at Realtor.com



Realtor.com will soon be changing to better compete with the likes of Trulia, Zillow, and other real estate listing aggregators. That's the result of a nearly unanimous vote of the NAR board of directors, which has seen Realtor. com's market share erode in the face of third parties.

The "new" Realtor.com will now include

- listings from non-Realtor companies and brokers not just Realtor-owned MLSs;
- information about not-yet-listed properties such as new homes and communities, as well as unlisted properties that are for rent; and
- information about defaults, short sales, foreclosures, distressed-property auctions, and REOs unless the listing broker objects. (Previously permission worked the other way around: The site wouldn't list those properties *without* the listing brokers' consent.)

Why the change? Although Realtor.com is still the big gun of real estate websites ("preferred by consumers in the home sales space two times more than Zillow and 28 times more than Trulia" according to NAR), it's been losing traffic to those sites, "particularly in markets where there are many non-Realtor practitioners."



Realtor.com also wanted to push back against sites like Zillow, according to Curt Beardsley, its vice president of business development. Zillow, he said, puts inaccurate "Zestimates" next to actual list prices, often includes inaccurate or outdated data, and pushes paid listings to the detriment of basic ones. Oh, and it encourages consumers to sell without a Realtor.

And if you're worried about your listings being mixed with those of non-Realtors, fear not. NAR said that Realtor.com "will continue to clearly distinguish Realtor-represented listings and will use language that more prominently emphasizes the difference between Realtors and non-Realtors."

Commercial real estate

Commercial-lending demand up, standards looser, say banks

Just as the Fed asks Realtors about the housing market, it also speaks to lenders to get an idea of that end of things. It uses that information to create the "Senior Loan Officer Opinion Survey on Bank Lending Practices," and the July edition has some good and interesting news on the commercial side.

The survey reads, not surprisingly, like a government report. So here are a few highlights, after which you can check out the detail yourself.

Over the past three months, banks say...

- They have experienced stronger demand for commercial and industrial and commercial real estate loans, particularly to small firms (although demand is up from medium and large firms as well).
- They have eased their lending policies for those loans, to firms of all sizes, mostly because of increased competition.

The only exceptions, according to the Fed, were "a few large banks" that reported lower demand for commercial loans.

Market stats

Virginia's housing market passes a milestone to recovery

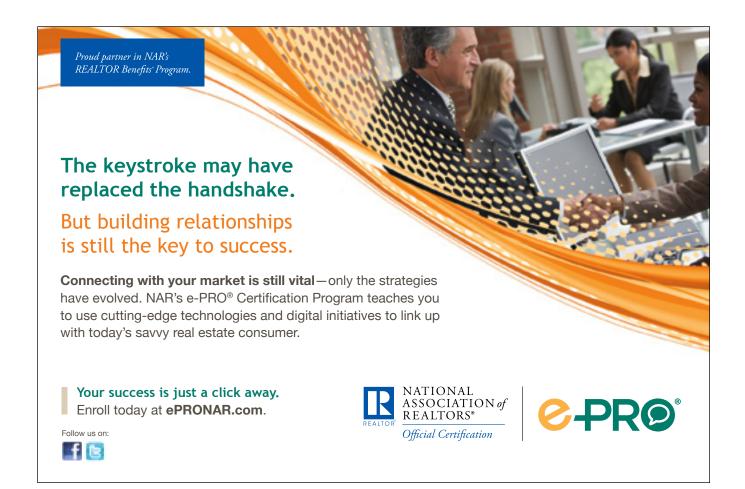
Virginia's residential sales volume (measured by the dollar value of real estate sold) passed an important milestone in the second quarter of 2013: Sales volume surpassed the volume sold in 2010 when sales were boosted by tax credit incentives.

That's an important milestone for two reasons. It means the 2013 Virginia housing market has passed the 2010 peak despite significant economic stressors (think sequester) and without economic incentives

(think tax credits). All in all, the second quarter was strong and continues to exhibit signs of recovery.

You can find the full Q2 2013 Home Sales Report at VARealtor. com/homesales, with analysis and commentary by Ted Koebel, senior research associate, and Mel Jones, research associate, of the Virginia Center for Housing Research at Virginia Tech.





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quickhits

Education

Meet your Residential Standard Agency course requirement online



If you want to renew your license, you need to take the mandatory three hour Residential Standard Agency course. That's the law.

So why not take it from VAR, online, for 19 bucks?

We're the experts in the law, and our online course is led by our legal superstar Blake Hegeman. You're not going to get a better online agency course anywhere.

We've made is easy: You can connect with any device — desktop, laptop, tablet, or phone — anywhere there's an Internet connection. A combination of slides and videos will take you through the new law lickedy-split.

Oh, and this isn't some clunky piece of 1990s software. It's created by ScholarLab, one of the top online learning companies out there.

VAR's material, ScholarLab's technology, and Blake's presentation. You can't beat that...and as a VAR member you can take the course at cost – only \$19. (Non-members pay \$29.)

IMPORTANT NOTE: This course requirement only applies to licensees whose license expires on or before June 30, 2014. If you have already taken the course for credit, you will not receive additional credits, as the requirement is that licensees take the course once prior to renewing their license before June 30, 2014.

Online tools

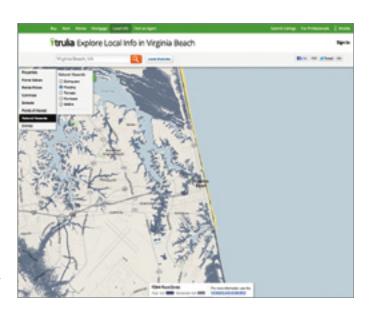
How safe is that neighborhood?

Trulia has a nifty little data visualization tool available that color-codes a map to show how likely certain natural hazards are in a particular location.

For example, if you search on Virginia Beach and choose flooding, you'll see that — not surprisingly – a lot of the area is in danger. Ditto for hurricanes, although earthquakes aren't high on the list of things to worry about there.

You can check out the entire country by town name or ZIP Code, and choose from five natural hazards: the aforementioned floods, hurricanes, and earthquakes, as well as wildfires and tornados. ("Plague of locusts" is not yet on the list.)

Trulia uses Google Maps as a base, then pulls in data from — depending on the hazard in question — the US Geological Survey, the National Weather Service, FEMA and the National Flood Insurance Program, the National Oceanic & Atmospheric Administration, the USDA Fire Service, and more. It rates an area's safety simply by how often and how recently a particular disaster has already struck the region.



It's a cool way to see just how safe an area is... or isn't. An option for the tornado and hurricane data is to show the tracks of recent storms, so you know exactly what was hit.

Check it out at trulia.com/local/#hazards.

VAR staff



Terrie Suit named VAR's new CEO

Terrie Suit has joined VAR as our new chief executive officer after serving as Virginia's Secretary of Veterans Affairs and Homeland Security.

Suit became a Realtor in 1985 before spending two decades working in real estate lending. (She currently holds a Virginia real estate license on inactive status.)

In 1996, she was appointed to the Virginia Real Estate Board by then-Governor George Allen.

In 1999 she was elected to the Virginia House of Delegates (representing Virginia Beach and Chesapeake), where she chaired the Virginia Housing Commission and the House General Laws Committee, and she served on the Commerce and Labor; Counties, Cities, and Towns; Education; Privileges and Elections; and Agriculture committees.

While a delegate, Suit helped create the Virginia Fair Housing Commission and worked to protect private property rights and ensure a healthy housing market.

After almost nine years in the General Assembly she was appointed by Governor Bob McDonnell to chair the Governor's Foreclosure Taskforce; she also served on his Housing Policy Advisory Committee and the Virginia Defective Drywall Taskforce in 2010. In 2011, Gov. McDonnell named her Virginia's first Secretary of Veterans Affairs and Homeland Security.

An active community leader, Terrie has served on the executive committee of the Hampton Roads Chamber of Commerce, the board of the Lead Hampton Roads community leadership organization, the Virginia Beach Contemporary Art Center Board, and the Old Dominion University Alumni Association Board.

Terrie holds an associates degree from Tidewater Community College, a bachelor's degree in political science from Old Dominion University, and is scheduled to receive her MBA from the University of Mary Washington in 2014.

Wish Terrie well — drop her an e-mail at terrie@ varealtor.com.

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VAR's 2013 ENDORSEMENTS

People are often passionate about political candidates, and VAR's endorsements will not agree with every member, every time. People choose to vote for a candidate for a variety of reasons, including many unrelated to the business of real estate. But VAR's support is governed by narrower considerations: Which candidates our 22 RPAC trustees — active Realtors, just like you — believe will best support and defend real estate and the real estate business in the Commonwealth of Virginia.

Those decisions are based on voting records, recommendations from local Realtor associations, detailed candidate questionnaires, and in-person interviews. They are never made lightly, and are deliberated at length.

This year, between questionnaires and interviews, we asked the candidates' opinions on a wide variety of topics: professional taxes, dealing with sequestration, working with the state's congressional delegation, the Dillon rule (which says that localities do not have powers except those specifically granted by the Virginia General Assembly), transportation, the Housing Trust Fund, the mortgage interest deduction, and more.

The end result is our recommendation of a slate of candidates for statewide and regional office we believe represents the best choice for Realtors, real estate, and homeownership in Virginia. We don't expect you to blindly follow these endorsements, but we hope — if your real estate business is important to you — that you'll take these into account when entering the voting booth on November 5.

Politics are complex. Keep up to date with the candidates, legislators, issues, and bills throughout the year. Know what will affect Virginia real estate — and your job.



Visit the all-new RealtorsChoose.com.

Because the best Realtor is an informed Realtor.



FOR GOVERNOR: Terry McAuliffe

We chose to endorse Mr. McAuliffe for his focus and plan for growing Virginia's economy, for his support of business and real estate, and for his accessibility to Realtors.

Mr. McAuliffe's policies on the economy closely jibe with VAR's. He believes in maintaining and expanding Virginia's business- and real estate-friendly climate with "fewer, smarter regulations." He wants to drive long-term economic development so Virginia can better compete with its neighbors to attract modern, high-tech businesses and jobs.

He supports Governor McDonnell's transportation plan — something VAR worked hard to help pass — and he opposes so-called "adequate public facilities" rules that could stifle growth and reduce affordable housing. "If localities are turning away growth because they lack the resources to provide those residents with services," he said, "that's a problem that should be solved by provision of resources, not turning away new citizens."

He is a supporter of the Dillon Rule, but also recognizes the needs of local governments to generate more revenue beyond property taxes and what he called "anti-business taxes" such as the Business Professional Occupational License (BPOL) tax. The taxing of services has become a topic of conversation amongst various stakeholders in discussing Virginia Tax Reform, and Mr. McAuliffe made it clear that he does not support applying sales tax to real estate transactions.

Perhaps most importantly, he understands how important Virginia's housing industry is to growing and strengthening the commonwealth's economy. Besides policies that will make Virginia the best place to live and work, he has committed to being accessible to Realtors, and to ensuring we always have a seat at the table.



FOR LIEUTENANT GOVERNOR: Ralph Northam

We support Dr. Northam for his solid qualifications, especially his pro-business, pro-real estate stance.

He supports the Dillon rule, and made it clear that he believes that — although he opposes giving local governments unfunded mandates — those governments "need the ability to consider other forms of revenue other than the real-estate tax to cover these costs."

Speaking of taxes, Dr. Northam was clear in his opposition to the idea of a tax on services, saying "The less taxes, the better" and pointing out that "the cost of new taxes would be passed onto the consumer or the business. Either way, it is wrong for Virginia's economy."

Dr. Northam joined with VAR in supporting Governor McDonnell's transportation plan, calling it "a step in the right direction" and acknowledging that "our roads and our infrastructure have just been embarrassing," making it more difficult to attract businesses to Virginia.

A small-business owner himself, Dr. Northam, like VAR, believes that, "We must maintain Virginia's pro-business environment, keep taxes low, and prevent the government from over regulating the real estate market."

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SPECIAL REPORT: ELECTION 2013



FOR ATTORNEY GENERAL: Mark Herring

As a member of the Virginia General Assembly, in 2013 Mark Herring was our number-one supporter, voting with Realtors more than any other legislator in the Virginia Senate. We have a positive relationship with Mr. Herring and expect that to continue. His door is open to Realtors, and he has pledged to continue that policy.

We appreciated his long-term view of Virginia's economy; he understands the need for a solid foundation — from better education and transportation to low taxes and smart growth plans — that will support and enhance the state's businesses, and in turn be a boon to real estate.

"The real estate industry cannot prosper if the larger economy is weak; the best thing we can do is to fix our problems and make the economy strong again," he said.

Mr. Herring joins with VAR in opposing new "Adequate Public Facilities" authority for local governments. He is a staunch defender of home ownership in Virginia — like VAR, he supports the mortgage interest deduction, the Virginia Housing Trust Fund, and the idea of first-time home buyers savings accounts. Finally, as Attorney General, Mr. Herring stressed the need for "taking politics out" of the office and making Virginia a friendly place to live for all individuals and families.

HOUSE OF DELEGATES KEY RACES

The entire Virginia House of Delegates is up for election in 2013. While many of VAR's friends appear to be headed for re-election, several races are close enough to be called out for your support.

NORTHERN VIRGINIA (HOUSE DISTRICT 10): Randy Minchew (R)

Delegate Minchew, an attorney in Leesburg, has a strong pro-business platform. He was essential in helping the Virginia Association of Realtors with transportation legislation during the 2013 General Assembly session.

NORTHERN VIRGINIA (HOUSE DISTRICT 37): David Bulova (D)



Delegate Bulova has been a common-sense voice in the

Northern Virginia delegation on land use and other issues of interest to Realtors. He serves on the House General Laws Committee and on the Housing Subcommittee. He is also a member of the Virginia Housing Commission, which serves as the General Assembly's primary policy arm in property matters.

NORTHERN VIRGINIA (HOUSE DISTRICT 86): Tom Rust (R)

Delegate Rust has championed legislation to create new jobs and expand economic opportunity, improve public and higher education, and invest in transportation. He has worked hard to make Virginia a national leader in job creation, and his door is always open to Realtors.

PENINSULA (HOUSE DISTRICT 93): Mike Watson (R)

Delegate Watson has demonstrated a reliable pro-business outlook and approach to governance, and we are proud to give him our support this year. He is a member of the Business Development Caucus and consistently strives to build economic opportunity in Virginia.

PENINSULA (HOUSE DISTRICT 94): David Yancey (R)

Delegate Yancey was the Patron of VAR's Realtor

Liability Legislation during the 2012 and 2013 General Assembly Session. Thanks to Delegate Yancey's support, this legislation became law on July 1.

OTHER RPAC ENDORSED CANDIDATES

DISTRICT Candidate

1 Terry Kilgore (R)

2 Mark Dudenhefer (R)

7 Nick Rush (R)

8 Gregory Habeeb (R)

9 Charles Poindexter (R)

11 Onzlee Ware (D)

12 Joseph Yost (R)

15 Todd Gilbert (R)

16 Don Merricks (R)

17 Chris Head (R)

18 Mike Webert (R)

21 Ron Villanueva (R)

22 Kathy Byron (R)

24 Ben Cline (R)

27 Roxann Robinson (R)

28 Bill Howell (R)

30 Ed Scott (R)

32 Tag Greason (R)

34 Barbara Comstock (R)

35 Mark Keam (D)

36 Ken Plum (D)

38 Kaye Kory (D)

39 Vivian Watts (D)

40 Tim Hugo (R)

41 Eileen Filler-Corn (D)

43 Mark Sickles (D)

44 Scott Surovell (D)

45 Rob Krupricka (D)

46 Charniele Herring (D)

47 Patrick Hope (D)

48 Bob Brink (D)

49 Alfonso Lopez (D)

51 Richard Anderson (R)

52 Luke Torian (D)

53 Marcus Simon (D)

54 Bobby Orrock (R)

55 Buddy Fowler (R)

56 Peter Farrell (R)

57 David Toscano (D)

58 Rob Bell (R)

59 Matthew Farriss (R)

61 Tommy Wright (R)

62 Riley Ingram (R)

63 Rosalyn Dance (D)

64 Rick Morris (R)

65 Lee Ware (R)

66 Kirk Cox (R)

67 James LeMunyon (R)

68 Manoli Loupassi (R)

69 Betsy Carr (D)

70 Delores McQuinn (D)

71 Jennifer McClellan (D)

72 Jimmie Massie (R)

73 John O'Bannon (R)

74 Joe Morrissey (D)

75 Roslyn Tyler (D)

76 Chris Jones (R)

77 Lionell Spruill (D)

78 Jay Leftwich (R)

80 Matthew James (D)

81 Barry Knight (R)

82 Bill DeSteph (R)

83 Chris Stolle (R)

84 Glenn Davis (R)

85 Bill Dale (D)

89 Daun Hester (D)

90 Algie Howell (D)

91 Gordon Helsel (R)

92 Jeion Ward (D)

95 Mamye BaCote (D)

96 Brenda Pogge (R)

97 Chris Peace (R)

98 Keith Hodges (R)

99 Margaret Ransone (R)

100 Lynwood Lewis (D)

DANVILLE (HOUSE DISTRICT 14): Danny Marshall (R)



Delegate Marshall is the Vice-Chair of the Virginia

Housing Commission, which serves as the General Assembly's primary policy arm in property matters. He has been a consistent voice for homeownership in Virginia.

PRINCE WILLIAM; MANASSAS (HOUSE DISTRICT 50):

Jackson Miller (R)



Delegate Miller was the patron of VAR's POA/Condo Act and

Disclosure of Qualification for FHA Financing during the 2013 General Assembly session. Delegate Miller is a Realtor member and the owner of Crossroads Realtors in Manassas.

SPRINGFIELD (HOUSE DISTRICT 42):





Delegate Albo is the Chair of the House Courts of Justice

Committee. As a House conferee, he was a key leader in the compromise and final passage of the transportation bill. He has a special concern for Virginia communities and works hard to make our Commonwealth one of the best places to live and work.



Not sure what General Assembly district you're in?

Fear not — Richmond Sunlight has a simple tool to show you. Just go to richmondsunlight.com/ your-legislators and enter your address. Easy!

VOLUME 20 • ISSUE 5



Sneaky regulations

VAR is working with the Virginia Real Estate Board (VREB) to update the Board's regulations. The process is not complete and when it is VAR will let you know about changes. In reviewing the current regulations, it occurred to me that there are certain requirements that real estate licensees must adhere to that are not discussed a lot. This Legal Lines will try to bring to the surface those sneaky regs!



There are specific requirements regarding a Virginia real estate licensee maintaining an escrow account. What are common mistakes?

A: The maintenance and management of escrow accounts is specifically outlined in the Real Estate Board regulations, and escrow agents should make sure to read the entire escrow section.

Several requirements that are commonly overlooked include:

- The escrow account must be in the firm's licensed name;
- It must be a federally insured separate account in a federally insured depository in Virginia;
- The principal broker, supervising broker, and any other licensee with escrow-account authority are responsible for the escrow account(s); and
- The escrow account, checks, and bank statements must be labeled "escrow" and the account(s) must be designated as "escrow" with the financial institution that established the account.

It is also important to remember that funds belonging in an escrow account are not limited to earnest money deposits and security deposits. Generally, funds held on behalf of others that do not belong to the licensee should go in the escrow account.

May a firm have more than one escrow account?

A: Yes, as long as each account is created and maintained in strict conformance with the Real Estate Board regulations.

■ I am the escrow agent and both the seller and buyer have signed a release directing that the funds be returned to the buyer. How long do I have to disburse?

A: The regulation gives you "a reasonable time" to disburse a properly released earnest money deposit (EMD) to the rightful owner; there is no exact time period for disbursements. In other words, the regulations don't say the escrow agent must disburse EMD funds within X number of days after receiving a valid release or court order.

A best practice is to disburse as quickly as possible after receiving the release. If you receive the mutually signed written release of the EMD and are able to disburse that day you should do it.



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legallines



■ What does the Real Estate Board consider advertising? The Virginia Real Estate Board's definition:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

As you can see, advertising, from VREB's perspective, is a broad concept, covering everything from a page you pay for in a newspaper to potentially the contents of your e-mail. Its regulations encompass all communication media (although they require different disclosures for print and online advertising).

A guideline to determine whether you are engaged in regulated advertising is: Could what I am sending out be perceived as attempting to induce business? If it could be, follow all disclosure requirements.

Also, consider that real estate advertising can be in the eye of the beholder. For example, I post on my Facebook page that I just sold my 25th listing this month. I might just be attempting to garner praise from my friends, but I might also be attempting to tell the world what an incredible agent I am and to work with me — advertising!

VAR Legal Hotline (804) 622-7955





Monday through Friday, 10 a.m. - 4 p.m.

The VAR Legal Hotline is a free, members-only benefit for brokers.

You can receive answers to questions about Virginia real estate law, and timely information on legal and regulatory issues concerning the real estate industry.

The Legal Hotline provides legal information, not legal services. You should consult your attorney if you need representation or advice.

You must register for the Hotline before you can call. Registration is free and quick. Go to www.VARealtor.com/legalhotline; you will need your NRDS ID number.

Who can use the Hotline?

- You must be a principal or supervising broker.*
- You must be a VAR member.
- You must have registered for the Hotline (see above).
- You must have your NRDS ID number available when you call.

(* Each office can have one other person designated by the principal broker for Hotline access.)

E-mailing the Hotline

You can e-mail your questions to

hotline@VARealtor.com.

- Responses will be by phone; we no longer provide written answers to Hotline questions.
- You must include your full name, phone number, and NRDS ID. We cannot respond to messages that do not include all three.
- · We will try to respond within 24 hours, but response time depends on Hotline activity.

Not a broker or member?

If you aren't eligible to use the Hotline, you can browse and search our Hotline archives at www.VARealtor.com/hotlinearchive and find more legal and risk management information in VAR's Legal Resources Center at www.VARealtor.com/legalresources.

You will need your NRDS ID number to log into the site.

Questions?

If you have questions about the Hotline, contact VAR at (800) 755-8271 or (804) 264-5033, or by e-mail at info@VARealtor.com

The VAR Legal Hotline should not replace your own legal counsel. We will not answer questions on matters unrelated to real estate or real estate brokerage, nor can we help with pending arbitrations.



An agent in my office with a salesperson's license would like to work for two different firms. More specifically, he would like to focus on residential sales at my firm and leasing at another licensed firm that specializes in property management. Can he do that?

A: No, only broker licensees may practice at more than one firm. The law outlines the procedures for a broker to gain concurrent licensure, which includes applying to the Real Estate Board for the concurrent license. The regulation also requires the broker applying for the license to verify that she has provided written notice of her concurrent license status to the principal broker of each firm with which she will be associated.

Please note that a licensed broker that receives a concurrent license can be an associate broker at one firm and principal broker at another. Also, she can be associated with many firms as long as the Board issues the concurrent license and the broker follows all applicable regulations. However, brokers choosing to be principal brokers at multiple firms must be confident that they can provide adequate supervision.

May we pay a nonlicensed company for real estate leads?

A: This is likely a violation of Virginia law, which provides that referral is a licensed activity.

Actions resulting in an improper brokerage commission include:

1. Offering to pay or paying a commission or other valuable consideration to any person for acts or services performed in violation of Chapter 21 (§54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;

Also, Section 8 of RESPA expressly prohibits this, unless the source of the referrals is licensed. That section also provides that it is illegal to pay or to receive anything of value pursuant to an agreement that settlement services will be referred. Real estate brokerage is a settlement service. (This prohibition applies only if there is an institutional mortgage loan in the deal.) RESPA contains an exemption in the case of referrals by real estate licensees to each other. •





Legal Lines is written by VAR legal counsel Blake
Hegeman. Please note that answers to Legal Lines
questions are informational only. Consult your own
legal counsel for legal advice.

You can find more Q&A from the ever-growing archives of our Legal Hotline in our Legal Resources Center at VARealtor.com/legalresources.

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life essons

Pushing it

Licensees who run afoul of Virginia real estate regulations can find themselves in the crosshairs of the Virginia Real Estate Board, facing punishment ranging from a small fine to loss of their license. Here are a few real-world examples taken from the actions of VREB. These narratives are based on the Board's official findings; participants may disagree with VREB's conclusions and version of events. They are provided solely as examples of Board actions. All of the names have been changed.

Staging a Fiasco

David Silverton contracted with Nora Malovich of Meadowfield Realty to act as the listing agent for his (empty) house. As part of the contract, Malovich agreed to hold four open houses. Silverton volunteered to help with those, but Malovich said he could not be present.

A few weeks after signing the contract, Silverton drove by his property and found some estate sale signs outside. To his surprise, Silverton discovered that Malovich had hired a staging company to conduct an estate sale at his property. Silverton filed a complaint with the Board. Not only was he upset that Malovich never informed him about the estate sale, he also thought that holding a fake estate sale was a "deceitful marketing tactic" that he would have never agreed upon.

During the Board's investigation, Malovich's explained that she held the estate sale thinking it would create more foot traffic than an ordinary open house. She claimed to have shown people around during the estate sale, yet couldn't provide names or contact information of anyone who attended.

It was also unclear if the staging company — whose name Malovich could not recall (she met the owner at another open house) — was a staging company or an estate sale company. Throughout the investigation, she used the terms "open house," "staging," and "estate sale" interchangeably.

Malovich also admitted that she only had a verbal agreement with the staging (estate sale?) company to use Silverton's property to hold four sales. That verbal agreement gave the staging company access to Silverton's property to furnish it with antiques for sale, and in exchange the company paid for advertising the event and cleaning the home.



Although Malovich seemed to believe that she used a staging company (albeit one with unusual tactics), she had allowed an estate sale to be held in her client's home without informing him of the deal — she had allowed a company that was not party to the listing agreement to conduct its business at her client's property without obtaining a written contract or even their contact information.

If damage had occurred to the house or if someone was injured, there was no contract in place to protect her client. Malovich wasn't even able to provide evidence that the company was respectable and responsible, such as a certificate of liability insurance or a business license.

Even if Malovich was genuinely attempting to generate more foot traffic by holding an estate sale, it made little difference if the people who came to the sale weren't interested in buying the house — worse, she hadn't even bothered to collect their contact information.

Finally, Malovich had failed to inform her broker about her creative marketing program. Had she not kept her broker in the dark, the entire situation could have been avoided.

Malovich was fined \$2,500 and was required to complete eight hours of continuing education courses.

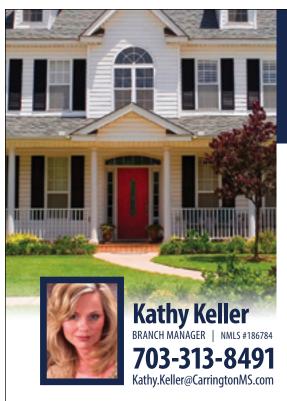
The Overburdened Caregiver

Allison Morris of Belmont Realty represented her clients, the Robinsons, who entered into a contract to buy a home. It required a \$20,000 EMD, which the Robinsons gave Morris on July 9. The next day, the contract was ratified, but Morris didn't deposit the EMD into Belmont's escrow account until July 19.

On August 2, the Board received a complaint from Morris's principal broker. During the inquiry, Morris explained that she doesn't like to turn in paperwork and checks on the weekend because she had had problems with them going missing from the front desk.

She also said that the hired caregiver for her 92-year-old mother became ill and she, Morris, had to take on full-time responsibility for caring for her mother — that caused her to delay the check deposit. She expressed regret that she was not as focused as she would have liked to be, but the "circumstances were very difficult."

Morris was fined \$650 and required to complete three hours of continuing education. ●



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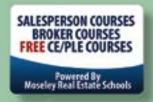
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Kazo Properties

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Wainwright & Co - Roanoke

Wainwright Real Estate Zip Realty - Richmond

Disclaimer: The firms listed on this ad are participating firms as of 8/29/13. Free online CE/PLE is only guaranteed to those firms with an accessible badge.



Managing properties

VAR has an extensive property management forms library that is evaluated and updated every year to ensure compliance with current law. These forms set clear expectations for the parties to a rental transaction and serve as risk management tools.

VAR Property Management and Exclusive Rental Agreement (Form 900, Paragraph 50)

Starting July 1, 2014, landlords must disclose to potential tenants if a property was once used to create meth if the landlord has actual knowledge, unless the home has been cleaned to Virginia Department of Health quidelines.

Property managers often take on the responsibility of making or contracting to make repairs on behalf of landlords. Due to the expertise and high risk associated with remediating a meth lab, VAR's Property Management Agreement has been



amended to remove the property manager from the cleanup process.

Agent shall have no obligation for remediation with respect to the Dwelling Unit or the Premises relating to the cleanup of a methamphetamine laboratory. If it is discovered that the Dwelling Unit or the Premises was or is being used as a methamphetamine laboratory, Landlord is solely responsible to engage a qualified contractor for remediation and cleanup of any contamination. Agent shall have no obligation to lease the Dwelling Unit until proof from a qualified contractor is delivered to Agent that certifies the Dwelling Unit has been cleaned up as required by law. Owner agrees to indemnify and hold Agent harmless from and against any and all loss, cost, expense, claim, suit, and liability whatsoever by reason of Owner's failure to perform the requirements set forth in this section.

An awesome form you should be using

One form for property managers deserves to be called out because it can do so much to protect you — and it's a very simple thing.



It's the Damage Addendum, aka form 210. Every property manager should use it.

The Damage Addendum specifies up front what the costs of repair will be for routine maintenance items, and therefore what (if any) deductions will be made from the security deposit. It covers everything from dirty appliances to nail holes, to damaged floors and lost curtain rods.

It also gives the tenant advance notice of what items the landlord will be checking, and therefore helps to avoid possible misunderstandings or conflicts between landlord and tenant during the move-out process. (You might even suggest to tenants that they use the form as a move-out checklist.)

Forms — they're the bread and butter of a deal. They're full of fine print and legalese, and not everyone "gets" the details. And that often ends up as a call to our Legal Hotline. (Shameless plug: (804) 622-7955.) So we asked our intrepid legal counsel (read: lawyer), Blake Hegeman, to take one of the forms the Hotline gets the most questions about and illuminate it for us. They're all available, free for download, at: www.VARealtor.com/standardforms.



Looking for a way to help new clients take that first step with confidence? Tell them about VHDA's free **First-Time Homebuyer Class**. It's a great way to learn the entire homebuying process from start to finish, and how to stay on track as a responsible homeowner. The class is offered in English or Spanish, in person or online. And it's free, with no obligation. For information, visit **vhda.com** or call 877-VHDA-123.





LIABLE BROKERS

ANDREW KANTOR

Realtors[®] involved in car accidents while using their phones might be surprised to learn this: Not only might *they* be facing lawsuits, but their brokers could be as well.

You read that right: Brokerages could be held liable when an agent is in an accident while using a phone for talking or texting... or even just reaching for it.

As distracted driving slowly makes its way into the national consciousness, lawyers are driving the bandwagon. They're not only suing drivers who were on their phones, they're looking for opportunities to go after their employers as well. After all, they know who has the deep pockets.

It's about responsibility

In 2013, we're well past the point where anyone can claim it's safe to drive while using a phone. It isn't. (Even hands-free can be dangerous; it's not about having your hands off the wheel, it's about having your mind off the road.)

That widespread knowledge makes things easy for lawyers, because they can paint it as "irresponsible behavior." The argument they make is simple: If you have an accident while talking or texting, you weren't taking reasonable steps to ensure the safety of the public. You should have known better.

Or, as a lawyer will hear it, "Ka-ching!"

And it's a good argument. Enough people have been killed or injured by distracted drivers that — unless you're a doctor rushing to the ER — judges and juries aren't likely to be terribly sympathetic. Attorneys and insurers know this, and most cases are settled out of court.

The question is, how big a settlement can your business afford to handle... and is it worth it?

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Objection! Why am I responsible for what my employees do outside the office?

It's called "vicarious responsibility," and it's old hat. Employers may be held legally accountable for the negligent acts of employees if those acts were committed in the course of employment. Simple and straightforward.

The idea is that employers have a duty to exercise reasonable care to be sure their employees take public safety into account whenever they're working. Cell phones simply take the geography out of the picture — you can always be "at work" even if you're aren't in the office.

Objection! My agents aren't employees, they're independent contractors.

Funny thing about the term "independent contractor." It doesn't always mean what many folks may think it means. And it turns out not to apply in every situation.

As Susan Childers North, an attorney and shareholder in the Williamsburg office of LeClairRyan explained, "It is not a fool-proof defense for the broker that they cannot be sued because the agent is not an employee."

The difference between "employee" and "independent contractor" is mainly for tax purposes (and workers' compensation). For all other intents and purposes, Realtors are employees of the brokerages they work for.

Here's how to picture it: A Realtor and a lawn service are both technically independent contractors. But if your lawn guy accidentally mows the neighbors prize petunias, you probably wouldn't be on the hook. However, if a real estate agent misrepresents a deal (or steals client funds), the brokerage *is* responsible.

Besides, as Thomas Simeone, a personal-injury attorney and partner with Simeone & Miller in Washington, D.C., explained, it doesn't matter what you call yourself. "A court is not bound by the label or designation given by the parties," he said. "Instead, it will analyze the relationship according to the law of agency."

Sure, there have been cases where someone sued a brokerage for what an agent did, and the agent was found to be an independent contractor. But as VAR legal counsel Blake Hegeman explained, it's usually because whatever happened wasn't within the scope of a real estate transaction. But talking to a client while driving? That's work related. And that can be a broker's problem.

► Objection! It's legal in Virginia to talk on the phone while driving.

As Tom Simeone put it, "The fact that it is legal to talk on a cell phone while driving in Virginia is not relevant."

He explained: "The key question is whether the agent was *negligent*, which means did he/she fail to exercise reasonable care. For example, if someone gets into an accident because they were talking on the phone (or eating or drinking), they may be found negligent because a reasonable person would put down the phone (or food) if they were too distracted to drive safely."

In other words, just because there isn't a crime doesn't mean there wasn't negligence. It's perfectly legal to wave your arms around, but that doesn't mean you can smack someone in the nose while doing it.

IT'S PERFECTLY
LEGAL TO WAVE
YOUR ARMS
AROUND, BUT
THAT DOESN'T
MEAN YOU CAN
SMACK SOMEONE IN THE NOSE
WHILE DOING IT.

Of course, having an accident while doing something *illegal*, such as texting while driving, will make the situation worse.

Objection! The agent wasn't in a company car or using a company phone.

As Susan North explained, "Whether it is a company phone or car is just a small factor." It might affect the amount of damages or the settlement, "but it is not the primary issue. The primary issue is whether company business is being conducted."

So if any of the following are true, there's a risk to the company:

- The person was using a company car (no matter where he was going or whose phone he was using)
- The person was using a company phone (no matter who he was talking to)
- The person was driving on company business (no matter who owns the car)
- The person was talking, texting, or e-mailing about company business while driving (no matter whose phone or car it was)

WHAT'S AN AGENT TO DO?

Sure, it's easy to say "stop using your phone in your car," but for many people that seems unrealistic, what with client expectations in the 21st century.

As Realtor Nancy Prince Jackson of Michael Marketing Real Estate in Saluda put it, "This is still a 24/7 world with clients expecting replies immediately or they move on." So how do you balance that 24/7 world with the fact that it's also a litigious one?

It may not be an easy transition, but make no mistake, that's where we're headed. Even if laws don't change, high-profile, high-payout lawsuits are scaring a lot of businesses.

Managing client expectations is a good place to start. Let them know from the get-go that you may take a little bit to return their calls. You probably already tell them that, when you're with another client, you might not answer — so expand that idea to "...or if I'm driving."

"I think that clients, like most everyone else, understand the sentiment, 'I can't talk right now because I'm driving, but I'll get back to you'," said Realtor Joe Hakes of Linton Hall, Realtors in Bristow.

Hakes uses a hands-free connection when he talks on the road, but, he said, "If I need to take a call 'manually' I pull over into a parking lot or just by the side of the road to make sure that I won't cause any problems."

(Keep in mind, by the way, that hands-free devices only *feel* safer. The studies say they don't help much,

because your attention is still divided between the road and the call.)

Sue Kester Puleo, branch manager of Prudential PenFed Realty's Hamilton and Leesburg offices, is on the same page as Hakes. "I have spoken at staff meetings about the dangers of distracted agents who are constantly available to their clients," she said. "The answer is just pull over before you answer or reply if it's going to take your attention off the road."

Get your technology to help. Many phones support multiple outgoing voice mail messages. If you're going to be on the road a while, change your message to explain that you're driving and will return the call soon.

And if you have clients who text, there are free apps that will reply automatically for you. "[Mine] sets up an auto text-message response that says, 'I can't respond right away because I'm driving'," explained Puleo.

Jackson does as well — and it's helped with her client communications. "If I am unable to answer a call or text then I use the option on my phone to reply automatically: 'I will call you ASAP, with a client now'," she said. "My clients appreciate that I respond to them any time of the day."

Hakes summed up the situation well: "In the new technology that we all enjoy, the expectation of 'everything in an instant' needs to be tempered by common sense and safety."

Case in point: In 2004, Cooley Godward, a Loudoun County law firm, paid out an undisclosed settlement after one of its attorneys struck and killed a 15-year-old girl with her car while on the phone. Even though it was after 10:00 PM, and the lawyer was in her own car on her own phone, she was doing firm business. The attorney herself had to pay \$2 million, so you can imagine what the firm shelled out.

YOUR INSURANCE

Now is the time to make sure you have liability insurance to cover these kinds of lawsuits.

BROKERS: If you haven't already, have a talk with your insurance agent about this issue: Are you covered if a Realtor has an accident? Is it enough?

REALTORS: Your homeowner's or umbrella policy is typically where your liability insurance lives. Talk to your insurer to be sure you're covered — and covered *enough*, especially if you don't have an umbrella policy. (Hint: \$100,000/\$300,000 may not do it.)

If you do have an umbrella policy, make sure it extends to these types of situations. The last thing you want to hear from your carrier is, "I'm sorry, but that's not covered under your policy."

▶ Objection! Doing X, Y, or Z is also distracting. Why are we only talking about phones?

Because a phone can connect a Realtor back to the brokerage, while, say, eating a Big Mac is a more difficult case to make.

Think about it. Eating lunch in your car usually has nothing to do with your job. If you have an accident while reaching for your fries, there's no connection to your employer (unless you were in a company car or travelling on company business). On the other hand, being on the phone with a client *can*.

Had that Cooley Godward attorney (see above) been eating instead of talking during her accident, her firm probably wouldn't have been involved; it was the phone call that made the connection to those deeper corporate pockets.

"Cell-phones have expanded that area of liability by allowing any employee anywhere to be 'in the course of employment' simply by using his cell phone to make a business call," according to attorney Ken LaMance, managing editor of the LegalMatch Law Library.

Or, as Simeone explained, "There are many ways to be distracted, but phone use is more and more common — and also more distracting. There

are studies that show that people can quickly put down a cup or even ignore it while holding it, but when they are on a call there is a delay or inability to completely ignore the call. That leads to more accidents."

Then there's all the press. In 2013 no one can say, "I didn't realize using my phone was dangerous."

And finally, it's provable. You can deny you were shaving or putting on makeup, but you can't argue with phone records. After off-duty Prince George's County (Maryland) police officer Mario Chavez struck and killed a college student with his cruiser in 2007, there was no question he was on his phone; an AT&T representative testified that Chavez had either received or sent a text message moments before the collision. The county was ordered to pay the student's mother \$4 million.

So what's a broker to do?

There are no guarantees in the world of lawsuits — you can't protect yourself 100 percent. But there are some things you can do to lower your risk.

The general guideline: You want to be able to show you did everything (reasonable) to encourage agents not to use their phones while on the road.

In fact, the Occupational Safety and Health Administration (OSHA) not only recommends that offices have a 'no phone use while driving' policy, but also that it will begin to investigate employers — and may issue citations and fines — if an employee has an accident involving phone use while driving. It considers that akin to a hazardous work environment.

But you can't be in all the cars of all your employees all the time. So what's a reasonable middle ground?

As employers begin to recognize their liability, some best practices have begun to emerge. They're all pretty much common sense.

Craft a clear, unambiguous policy
— the stronger the better. Coca-Cola, for example, had a hands-free-only rule. Then, in 2010, an employee using just such a device injured another driver. A jury awarded him \$21 million. Requiring hands-free, Coke learned, isn't enough.

Put it in writing — not just in your office manual, but individually to employees and agents. Have them sign it. Have refreshers, like a reminder at each sales meeting. Being able to say, "We have a no-phones policy, our agents signed it, and we remind everyone of it every week," is a pretty strong defense to be able to mount.

Enforce it clearly and strictly. "If an employer knows that employees are talking on the phone despite the policy," said Simeone, "then such a policy would not be a strong defense." In order to be useful, he explained, "the company needs to enforce it."

Without enforcement, it only takes one subpoenaed staff member to say, "Sure, we all used our phones all the time" to put a big hole in that defense.

"If the CEO or the brokerage firm's other employees routinely violate the policy," Simeone said, "it will be found to be a policy in name only."

There's no guarantee that any of this will completely shield you — if the case goes to court it's up to the whim of the judge or jury. But if agent Mary Jones is in an accident, being able to point to a well-known, well-enforced office policy will go a lot farther than only being able to say, "We had a policy and it's somewhere in our office manual. We told Mary to read that

when she started a few years ago."

As attorney Ira Leesfield wrote in the Miami *Herald*: "In addition to policies and procedures, employers will be well served by demonstrating that they have created an office culture that condemns this kind of reckless behavior."

Creating and enforcing a companywide ban on cell phones while driving might seem like a tough choice to make, but the reality of the courtroom is clear: You and your employees are expected to take responsibility when in the car... or be prepared to pay. •



Cell phones, Realtors, brokers, and liability — what do you think? Join the discussion on VARbuzz: VARbuzz.com/go/cellphones.



PAINFUL LESSONS

In 2001, Dyke Industries, a lumber wholesaler, settled for \$16.1 million after one of its truck drivers rear-ended another car while using his cell phone.

In 2008, Holmes Transport, a trucking company, was hit with a \$24.7 million verdict when one of its drivers caused a major accident while reaching for his cell phone.

A-ha! you say — those people were driving company cars at the time. Well read on.

In 1995, brokerage SalomonSmithBarney settled for \$500,000 when one of its employees killed a motorcyclist while using his (personal) phone to make business calls.

In 2004, BeersSkanska settled for \$4.75 million after one of its employees — on his own time and in his own car — got into an accident while using his company-provided cell phone.

In 1996, the State of Hawai'i paid \$1.5 million in damages when a public school teacher on her way to work injured a pedestrian.

Ditto the City of Palo Alto, Calif. In 2006 — in that case, the city worker rear-ended another car at a red light.

In 2004, Loudoun County law firm Cooley Godward settled out of court for an undisclosed amount after one of its attorneys struck and killed a 15-year-old girl with her car. The lawyer herself was ordered to pay \$2 million.

Keep in mind, these are only in the news because of the size of the verdict or the circumstances. You can bet there are hundreds of smaller settlements that don't make the paper. So while it may not be newsworthy, would shelling out \$25,000, \$50,000, or \$100,000 make a dent in your bottom line?



ANDREW KANTOR

The major provisions of the Patient Protection and Affordable Care Act — we'll call it Obamacare like everyone else — take effect on January 1, 2014.

Because most Realtors are independent contractors, and 28 percent are uninsured (according to NAR), the law has some significant effects for the profession.

Depending on your situation — whether you have or how you get health insurance — you may need to make some changes. If you own a small business, you might also have some decisions to make.

So here's what you need to know to be ready for 2014.

Obamacare does several things:

- 1. It requires that [almost] everyone carry health coverage — that's so (a) the rest of us don't foot the bill for an uninsured person, and (b) people don't wait until they're sick to enroll.
- 2. It ensures that the coverage available is comprehensive and affordable: Costs are capped, you can't be denied coverage, rates can't be affected by your medical history, insurer profits are limited, there are no coverage caps, and so on.
- 3. It defines minimum acceptable health coverage for a plan to qualify under Obamacare: It must cover "essential health benefits": emergency services, hospitalization, prescription drugs, maternity and newborn care, mental health services, rehab, laboratory services, and more.

Plans must also cover at least 60 percent of the average person's medical costs; those are "bronze" plans. "Silver" plans cover 70 percent, "gold" plans cover 80 percent, and "platinum" plans cover 90 percent. The only difference between those plans is the dollar amount they cover — not the quality of care.

For individuals

If you have coverage

If you're covered through a spouse, employer, veterans or retiree benefits, or Medicare, for example, nothing should change; you don't have to do anything. Feel free to go read another article.

If you don't have coverage You have several options:

- If you're 26 or younger, go on your parents plan (no, you don't have to live with them)
- Shop for health insurance the way you would shop for any other coverage - online, through an agent, or however you like.
- Shop on the federally-administered health-insurance exchange for Virginia at healthcare.gov and choose your insurer and plan from the usual suspects: Aetna, Anthem, Blue Cross/Blue Shield, Kaiser, etc.**

If you're under 30 and don't

THE PHARMACISTS **ARE IN**

Looking for more information? Both CVS and Walgreens will be launching programs to help consumers navigate the requirements of Obamacare — everything from brochures to websites to in-store "navigators." They'll explain how the insurance exchanges work and help people use them to choose coverage.

The National Alliance of Community Pharmacists, which represents independent drug stores, is starting down a similar path by creating informational cards its members can give customers.

^{*} Governor McDonnell has opted to have the federal government run the state's marketplace.

^{**} These are examples. The state is in the process of approving specific insurers and plans.

WHERE TO LEARN MORE

The mother ship for Obamacare information is the government's own site: healthcare.gov.

One of the best places for individuals to get information about plans and costs under Obamacare is the Kaiser Family Foundation: kff.org/health-reform.

For a lot of good, clear articles, plus various calculators and state-specific information, check out Healthinsurance.org.



want a full-featured healthcare plan, you can opt for a lower-cost "catastrophic" plan. These typically have a deductible of several thousand dollars, and are designed to protect you from being bankrupted by a major illness or injury.

• Pay the penalty for not having insurance; for 2014 that's \$95 per household adult and \$47.50 per child without insurance or 1.0 percent of your household taxable income, whichever is more. (E.g., it's \$360 for an individual earning \$36,000 per year.) It doubles for 2015, then doubles again in 2016. Also, don't get sick or injured.

Limits to the cost of the plans (premiums)

If your income is less than 400 percent of the federal poverty level — that's about \$44,000 (\$90,000 for a family of four) — your premium cost will be capped at between 2.0 and 9.5 percent of your income. The government will defray the rest through tax credits.

And whichever company you choose to buy your insurance from, there are only a few things that can affect the cost of your policy:

- The type of policy, e.g., individual, couple, family, parent/child
- Where you live
- Your age
- Whether you use tobacco
- What kinds of "cost-sharing" features you choose (e.g., higher or lower deductible; bronze, silver, gold, or platinum plan)

Limits to the cost of medical care

No matter what plan you choose, the absolute maximum you will have to pay in medical expenses is

approximately \$6,350 per year for an individual or \$12,700 for families. That includes deductibles, coinsurance/ copays, and prescription drugs; down the road it will increase with inflation.

Those limits will be even lower for people who earn less than 400 percent of the poverty level.

For small businesses

Depending on the size of your business, you may have to or be able to offer your employees health coverage.

First of all, in terms of Obamacare, "employee" does not refer to independent contractors. Further, the number of employees you have, for purposes of the law, is based on "full-time equivalents" — so two half-time employees count as one full-timer.

If you have 25 or fewer employees

You do not have to offer coverage for employees. If you do, however, you could be eligible for some tax savings, and you could use health coverage as a way to lure the best talent.

Businesses with 25 or fewer employees that do offer coverage (i.e., pay at least half of the cost) and purchase their coverage through the federallyadministered small business exchange may be eligible for a 2014 tax credit of up to half of the premiums.

So, in 2014 if you want to offer insurance as an incentive, you would sign up on the federally administered Small Business Health Options Program (SHOP) exchange for Virginia as a business (at healthcare.gov), then choose a plan to cover your workers. You pay the premiums to the exchange, which handles paying each insurer.

Beginning in 2015, a small employer buying coverage via SHOP will even be able to allow each employee to choose his or her own plan and carrier. Again, the business pays the premiums to the exchange, which pays each insurer.

If you have 26 to 49 employees

You are eligible to purchase coverage for employees through the federally-administered SHOP exchange. There are no tax incentives for offering this coverage (other than the traditional ability to deduct the expense), nor are there penalties for *not* offering it.

If you have 50 or more employees

Let's be straight here: If you fall into this category you should consult your tax advisor about your options and their implications.

That said, businesses of this size will be required to provide affordable health coverage to full-time employees, or pay a penalty of \$2,000 a year per worker — but not counting the first 30.

- What's "full-time"? It's defined as someone who works 30 or more hours per week.
- What's "affordable"? You must pay at least 60 percent of the premium, and the cost to an employee can't exceed 9.5 percent of his or her family income.

If you offer coverage but it's not affordable, that \$2,000 penalty jumps to \$3,000 for each employee who turns to the individual insurance exchange and receives a premium tax credit. (If you offer affordable coverage and your employees decide not to take it, no harm, no foul; you aren't penalized.)

You also may have heard that this part of the law has been postponed for a year. That's true... sort of. The law

REAL PLANS, ACTUAL PRICES FOR VIRGINIA

To see what private health insurance will cost once Obamacare takes effect, the Kaiser Family Foundation researched the premiums based on insurers' filings with the states.

At press time, nine insurers had submitted plans to cover Virginians. More will likely be available by the time you read this.

These are actual prices, but because they're for specific ages (25, 40, 60) in a specific location (Kaiser chose Richmond as an example), consider them ballpark figures. But *solid* ballpark figures.

Unsubsidized monthly cost for two of the lowest-priced silver plans

. <u></u>	Age 25	Age 40	Age 60
Anthem Healthkeepers	\$199	\$253	\$537
Coventry Health Care (Bon Secours)	\$181	\$230	\$488

But when tax credits are taken into account, the price drops:

- A single 25 year old earning \$25,000 would pay \$144 per month for the Anthem silver plan (thanks to a \$55/month tax credit).
- Two 40 year olds earning \$60,000 with two children would pay \$409 per month for the Anthem silver plan (thanks to a \$348/month tax credit).
- A single 25 year old earning \$25,000 would pay \$79 per month for the current lowest-cost bronze plan offered in Virginia (after \$55 tax credit).

These are premiums only. However, maximum out-of-pocket medical expenses (premiums, deductibles, copays, etc.) are capped at approximately \$6,350/year for an individual or \$12,700 for families. See the main story.

is still on the books, but it won't be *enforced* until 2015. (Strange but true.) So technically firms with 50 or more employees are required to provide coverage for full-time workers starting on January 1, 2014.

You might be thinking that having a law without a penalty is like not having a law at all, but it raises questions about civil suits — and thus it's something you should talk to your tax advisor or attorney about.

accessibletech

Evernote: Organize your stuff

Every once in a while there comes a tool that's so useful you wonder why the entire world isn't using it. Evernote is one of those — at least if you've got a lot of information to keep track of.

By "information" I mean everything from the small (a phone number) to the medium (an important e-mail or interesting article) to the large (a 10-page document). Evernote makes it simple to collect all this stuff and have it at your fingertips. If you see something, save something.

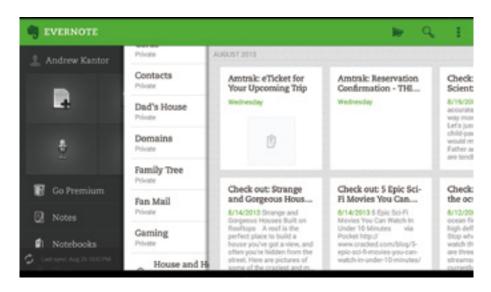
And it's free. As in beer. (There's also a Premium version that includes some nice extras.)

Everything in Evernote is considered a "note" — each has a title, a body containing text or images; you can also attach files just like an e-mail message. Notes can be short or long — they can be quick things you jot down or entire Web pages you want to save.

Notes are organized into notebooks you create: ("Receipts," "Stuff to Read Later," "1734 Main Street," etc. They're stored on the Evernote site (or "in the cloud" if you prefer), so you can get to them from anywhere.

Evernote is compelling for two reasons:

- 1. It's incredibly easy to use. The interface is clean and uncluttered. It's simple to get stuff *into* it and it's simple to find things once they're in.
- 2. You can use it from any kind of device you own: PC and Mac, plus free Evernote apps for Android



Evernote's (free) tablet app makes it easy to flick through your notes and notebooks

(phones and tablets), iPhone, and iPad. And you can always access the Evernote Web site directly.

The basic idea is this: Whenever you get something electronic you want to save, rather than keeping it in your inbox, filed in a mail folder, or saving it on your computer, pop it into Evernote instead — preferably in a notebook that makes sense. Then the information is available whenever and wherever you need it.

You can search your notes for a word in a title or text, or — for Evernote Premium users (see below) — even a word in an attached document.

For example, buried in my "Interesting Info" notebook is a candy recipe of my dad's. Whenever I want it, I just type "recipe" into the search box and have it in seconds. No more flipping through message or files.

Getting stuff in

Evernote makes it crazy simple to get things in.

From the desktop program or Evernote website, just create a new note, then type, paste, or even drag text and images into it. Done.

With Android and iOS devices, the Evernote app has built-in tools to take notes, snap pictures, and even make audio recordings.

If you have an Android phone or tablet, you can upload files, URLs, e-mail, etc. using the main Android "Share" menu; choose "Evernote – Create Note." (iPhone/iPad users can use the e-mail method below.)

There are Evernote extensions for every desktop Web browser, too, that let you instantly save a whole page or a selection of text.

Windows users can specify folders on their computers that will automatically be copied into Evernote. For example, you can tell Evernote to keep an eye on your PC's "Receipts" folder, so anything you put there is added to your "Receipts and Shopping" notebook.

You can create as many of these 'auto-copy' folders as you like for specific properties, for each client, etc. Just dump files there and Evernote does the rest.

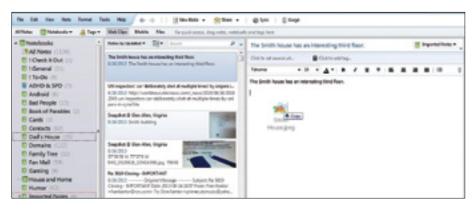
Finally, every Evernote user gets her own secret e-mail address (e.g., janedoe.48c5@evernote.com). Anything mailed there is turned into a note. The e-mail subject becomes the title, and you can add it to a notebook of your choice by using the @ sign in the subject (e.g., New Toshiba HDTV @Receipts).

The point is, no matter what kind of device you have, you can get your stuff into Evernote and get it organized and accessible.

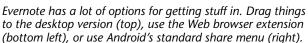
Working with stuff

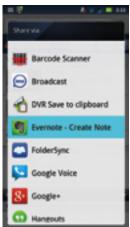
That accessibility is the advantage to Evernote, as opposed to using your hard drive or e-mail program to store things. You end up with a one-stop shop for all your information and files, from phone numbers to contracts. And it's a "shop" that's available everywhere — no more saying, "Drat, that must be on my work computer." And because Evernote's search function is excellent, you no longer have to think, "Was that in an e-mail? Or was it a file?"

You can also use Evernote as a reminder and a to-do list. Just mark any note as a "Reminder"









and set a date, and you'll be, well, reminded of it. Leave off a date and it becomes a simple to-do item. Android users can create a widget that displays these, so you're always reminded.

Oh, and you can share notebooks, too, either privately (the other people need Evernote accounts) or publically via a Web page. Put all a client's documents and notes into a notebook, then share it with them so they can access them easily and privately.

A standard Evernote account gives you 60 MB of uploads per month. (That might not sound like much, but — unless you're planning to store a lot of photos — it's plenty.)

For a whopping \$45 per year (yes, year), you can upgrade to a Premium account. It increases your monthly allowance to 1 GB, and will let you search in attachments including Office files, PDFs, and even pictures of text. It also gives you the ability to let other people add and edit stuff in a notebook a nice feature if you're working on a team.

We're all overwhelmed with information — things we need to know, check out, and remember. Evernote's a great way to keep it all organized and at your fingertips. •

rpacreport

As OF AUGUST 30, 2013, the following Realtors® and local associations have joined RPAC of Virginia as Major Investors. For more information on the value of RPAC and how your investment works to protect your business, contact Heidi Schlicher at heidi@VARealtor.com or (804) 264-5033. Or, if you want to get invested today, please visit www.realtorschoose.com/contribute.



Crystal R Investors (\$2,500)

Golden R Investors (\$5,000)



Charlie Bengel, Jr. RE/MAX Allegiance Leesburg



Charles Burnette
Burnette Real Estate
Sales, Blacksburg



Billy Chorey Chorey & Associates Realty, Suffolk



Dennis Cronk
Poe & Cronk Real
Estate Group, Roanoke



John Dickinson
Hall Associates
Union Hall



Robert Adamson
McEnearney Associates,
Inc., Arlington



Deborah BaisdenPrudential Towne Realty
Virginia Beach



Joe FunkhouserFunkhouser Real Estate
Group, *Harrisonburg*



Dorcas Helfant-Browning Coldwell Banker Professional, Virginia Beach



Steve Hoover MKB, Realtors Roanoke



Tom Jefferson, IIIJoyner Fine Properties *Richmond*



REIN Virginia Beach



Mary Dykstra MKB, Realtors



Cindy Hawks
Keller Williams Realty
Virginia Beach



John McEnearney
McEnearney Associates
Alexandria



Long & Foster Real Estate Colonial Heights



Coldwell Banker Residential, Vienna



Melanie Thompson Century 21 AdVenture Redwood, *Fredericksburg*



Jack Torza Long & Foster, Realtors Mechanicsville



Shane McCullar Keller Williams Realty Alexandria



Roger Nakazawa RE/MAX Allegiance Reston

Golden R Associations (\$5,000)

- Northern VA Association of Realtors, Fairfax
- Charlottesville Area Association of Realtors, Charlottesville
- Richmond Association of Realtors, Richmond
- Roanoke Valley Association of Realtors, Roanoke
- Virginia Association of Realtors
- Williamsburg Area
 Association of Realtors,
 Williamsburg

gtriangle Hall of Famers have contributed a cumulative amount of at least \$25,000 to RPAC.

Crystal R Investors (\$2,500)



Forrest Odend'hal Long & Foster Real Estate, Gainesville



Jason Outten The Buyer Brokerage Ashburn



Karen Smith RE/MAX Commonwealth Richmond



Trish Szego ERA-Elite Group, Realtors. Fairfax



Bill White Joyner Fine Properties Richmond



McEnearney Associates, Mcl ean

Sterling R Investors (\$1,000)

Sterling R — Hall of Fame

Sandee Ferebee Prudential Towne Realty, Virginia Beach



Tom Innes RE/MAX Commonwealth, Richmond *

Wes Atiyeh Joyner Fine Properties, Richmond Betsy Atkinson ERA Atkinson Realty, Virginia Beach Julia Avent Re/Max Allegiance, Arlington Dennis Bane Century 21 Valley Real Estate, Dublin James Barb Jim Barb Realty, Winchester C.C. Bartholomew Long & Foster Real Estate, Manassas Jerry Bartlett Jobin Realty, Springfield Mary Bayat Bayat Realty Inc., Alexandria Mary Ann Bendinelli Weichert Realtors, Manassas Laura Benjamin Roanoke Valley Association of Realtors, Roanoke

Brian Block RE/MAX Allegiance, Alexandria Brad Boland Keller Williams Realty, Reston

Beckwith Bolle Carter Braxton Preferred Properties, Leesburg Candice Bower McEnearney Associates/Leesburg, Purcellville

Suzanne Brady Century 21 Adventure Redwood, Fredericksburg David Bridges ERA Blue Diamond Realty, Woodbridge

James Brooks RE/MAX Commonwealth, Richmond Pat Buck McEnearney Associates, Potomac Falls

Curtis Burchett MKB, Realtors, Roanoke

Robyn Burdett Re/Max Allegiance, Fairfax Bill Burke Long & Foster Real Estate, Dumfries

Peggy Burke Long & Foster Real Estate, Dumfries

Keith Canty Greg Garrett Realty, Newport News

Amy Carder RE/MAX First, Virginia Beach

Joe Carney William E. Wood & Associates, Newport News

Dale Chandler Greg Garrett Realty, Newport News **David Charron** Rockville

Flo Chittenden Long & Foster Real Estate, Manassas Moon Choi Re/Max Presidential, Fairfax

Vic Coffey RE/MAX All Stars Realty, Daleville

Tracy Comstock Comstock Realty & Investment, McLean

Hank Cosby Hank Cosby Real Estate, Powhatan

Hugh Cross Cross Management, Suffolk

Beth Dalton Long & Foster, Blacksburg John Daly Rose & Womble Realty, Virginia Beach

Sheila Dann Abbitt Realty, Newport News

Bill Denny Long & Foster Real Estate, Bristow

Mary Duarte Century 21 Colonial Realty, Colonial Heights

Gary Duda RE/MAX Action Real Estate, Glen Allen

Blake Eudailey Real Living Eudailey Real Estate, Richmond Claire Forcier-Rowe Coldwell Banker Elite, Fredericksburg

Larry Foster Long & Foster Real Estate, Chantilly

Virgil Frizzell Long & Foster Real Estate, Reston Bev Frowen Long & Foster Real Estate, Manassas

Anne Gardner Charlottesville Area Association of Realtors, Charlottesville

Libby Gatewood Napier Realtors ERA, Colonial Heights

Bill Gearhart Coldwell Banker Townside, Roanoke

Philip Gee Virginia Realty & Relocation, Richmond

Tim Gifford Coldwell Banker Professional, Norfolk

Charlee Gowin Prudential Towne Realty, Virginia Beach

Art Grace MBH Settlement Group, Manassas

Suzanne Granoski Keller Williams Realty, Alexandria

Lvnn Grimslev RE/MAX Peninsula. Newport News

George Grundy George Grundy & Assoc Realty, Petersburg

Kit Hale MKB, Realtors, Roanoke

Delk Hamaker K.D. Hamaker Properties, Arlington

Margaret Handley M.C. Handley, McLean

Terrylynn Harrell Exit Choice Realty, Woodbridge Joy Harris-Cob Harris & Associates, Chester

Todd Hetherington Century 21 New Millennium, Lorton

Robert Hill Harrisonburg/Rockingham Association of Realtors, Harrisonburg

Jeanne Hockaday Virginia Country Real Estate, Ordinary

Michael Hogan RE/MAX Commonwealth, Mechanicsville

Amy Hudson RE/MAX 8, Blacksburg

Nathan Hughes Bandazian & Holden, Richmond

Rusty Hulett Keller Williams Realty, Chesapeake

Anne Innes RE/MAX Commonwealth, Richmond

Philip Innes RE/MAX Commonwealth, Richmond

Donn Irby Rose & Womble Realty, Chesapeake

Pat Jensen BHG Real Estate III - North, Charlottesville

Jo Anne Johnson Westgate Realty Group, Falls Church

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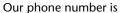
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VOLUME 20 • ISSUE 5

VARworks

The choice is yours

VAR President Mary Dykstra, Roanoke

Endorsements are a tricky business. No matter which candidates the RPAC Trustees pick, there will be a sizable segment of our membership who will oppose it — sometimes loudly.

In these days of sharp political divisions, they make their decisions knowing that there will be pushback and disagreement.

So I can't repeat it enough: Our endorsements are based on a single factor: which candidates we believe will do the best for the real estate business in Virginia. Period.

Of course you make your voting decisions on other factors. We all

do. The message from our endorsements isn't "You should vote for these people," it's "These people are going to help your business." Other organizations make endorsement based on their constituencies — who they think is best for fire fighters or seniors or bus drivers or dog owners.

As an informed citizen, your job is to weigh this information and come to your own conclusions based on what's important to you — the best candidate for dog owners might not be the best for fire fighters. If you fit into both categories, you have to choose

your priorities. And as a Virginia Realtor®, you should know who your association believes to be the best for your profession. (Hint: The answers are on page 10.)



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