



# COMMONWEALTH of VIRGINIA

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January 17, 2013

The Honorable Randy C. Krantz  
Commonwealth's Attorney, Bedford County  
Post Office Box 1071  
Bedford, Virginia 24523

Dear Mr. Krantz:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

You inquire whether the owner of a company that manages short-term transient occupancy rentals of fewer than thirty days for a condominium complex is required to obtain a real estate broker's license before managing rentals of the condominium units.

## Response

It is my opinion that a management company that manages short-term transient occupancy rentals of fewer than thirty days for a portion of the condominium units in a condominium must be licensed with the Virginia Real Estate Board and must employ a licensed real estate broker before renting or offering to rent those condominium units on behalf of the units' owners.

## Background

You describe a condominium where the units are individually owned, often by absentee owners for rental and investment purposes, and rented to guests on a short-term basis of fewer than thirty days per guest. You note that a management company has entered into a separate transient occupancy management agreement with each condominium unit owner desiring its services to solicit and book short-term occupancies, maintain a reservation system, and accept occupancy payments on behalf of the unit owner. The management company provides its services from the condominium's lobby, which itself is a unit within the condominium, and the management company leases the lobby from the owner of the lobby unit. The company does not otherwise lease any of the units from their owners. You relate that the management company has obtained a license from the Virginia Department of Health to operate a hotel on the premises. You indicate that Bedford County considers the condominium facility to resemble a hotel and requires the management company to collect transient occupancy taxes for each short-term rental.

### Applicable Law and Discussion

Under Virginia law, a real estate broker is “any person or business entity . . . who, for compensation or valuable consideration (i) sells or offers for sale . . . or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others.”<sup>1</sup> Notably, the *Code of Virginia* does not create a distinction between “renting” generally and “short-term” or “transient” rentals for the purposes of real estate broker licenses. Further, “[o]ne act for compensation or valuable consideration of . . . renting, or offering to rent real estate, except as specifically excepted in § 54.1-2103, shall constitute the person . . . a real estate broker or real estate salesperson.”<sup>2</sup> “[T]o protect the public from the fraud, misrepresentation and imposition of dishonest and incompetent persons,”<sup>3</sup> no individual or corporation may perform such services without being licensed as required by the Virginia Real Estate Board.<sup>4</sup>

There are several exemptions to the licensing requirement.<sup>5</sup> Pertinent to your inquiry, a hotel may avail itself of the exemption provided for those “who as owner or lessor perform any [brokerage service] with reference to property owned or leased by them, where the acts are performed in the regular course of or incident to the management of the property and the investment therein[.]”<sup>6</sup> Hotels in the Commonwealth are licensed separately by the State Board of Health,<sup>7</sup> which defines as a “hotel” those establishments that offer transient lodging consisting of two or more lodging units.<sup>8</sup> Critically, because a hotel license must be issued to the owner or lessee of the hotel, only the common owner or common lessee of multiple lodging units may be issued a license to operate a hotel.<sup>9</sup> Thus, typically the owner of a hotel and its employees are exempt from having a real estate broker’s license before renting lodging units in the hotel.

In contrast, in the scenario you describe, the condominium units are individually owned and not owned or leased collectively by the management company. Because no combination of multiple units will have a common owner, there will be no ability to obtain a hotel license. Based on the facts presented, the management company and its employees would not qualify for any of the enumerated exemptions from licensure set forth in § 54.1-2103. The management company and its employees, if not employees of

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<sup>1</sup> VA. CODE ANN. § 54.1-2100 (2009).

<sup>2</sup> Section 54.1-2107 (2009).

<sup>3</sup> See *Massie v. Dudley*, 173 Va. 42, 55, 3 S.E.2d 176, 181 (1939) (disallowing a claim for a commission on the sale of real property because the claimant did not have a real estate broker’s license at the time he assisted a property owner with negotiating the sale of his farm to the United States government).

<sup>4</sup> Section 54.1-2106.1 (Supp. 2012). To engage in these services willfully without a proper license constitutes a Class 1 misdemeanor. Section 54.1-111(A) (2009).

<sup>5</sup> Section 54.1-2013.

<sup>6</sup> See § 54.1-2103(A)(1) (2009).

<sup>7</sup> See § 35.1-18 (2011) (“No person shall own, establish, conduct, maintain, manage, or operate any hotel . . . in this Commonwealth unless the hotel . . . is licensed as provided in this chapter. The license shall be in the name of the owner or lessee. No license issued hereunder shall be assignable or transferable.”)

<sup>8</sup> See 12 VA. ADMIN. CODE § 5-431-10 (“‘Hotel’ means any establishment offering to the public for compensation transitory lodging or sleeping accommodations, overnight or otherwise, including but not limited to facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, or hostels and similar facilities by whatever name called that consist of two or more lodging units.”)

<sup>9</sup> See § 35.1-18.

the individual unit owners,<sup>10</sup> therefore will not be exempt from the Virginia Real Estate Board's licensing requirements.<sup>11</sup>

### Conclusion

Accordingly, it is my opinion that a management company that manages short-term transient occupancy rentals of fewer than thirty days for a portion of the condominium units in a condominium must be licensed with the Virginia Real Estate Board and must employ a licensed real estate broker before renting or offering to rent those condominium units on behalf of the units' owners.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with the first name "Ken" and the last name "C" being prominent, followed by "II".

Kenneth T. Cuccinelli, II  
Attorney General

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<sup>10</sup> I note that under certain circumstances, should the management company acquire the proper license, its employees may be able to be exempted under § 54.1-213(C), provided its requirements are satisfied.

<sup>11</sup> Prior opinions of this Office have concluded that the requirement to be licensed as a real estate broker or real estate salesperson applies in a variety of contexts. *See* 1989 Op. Va. Att'y Gen. 287, 288 (a home builder's referral incentive program giving a home purchaser a monetary credit toward settlement or a dinner or ski weekend in return for the buyer referring another person to purchase from the home builder would constitute activity that would require the referring party to be licensed); 1973-74 Op. Va. Att'y Gen. 287, 288 (a "home-finding" business serving as a liaison between a prospective lessee or buyer and the lessor or seller of a home must be licensed even if the business operates through brokers or other sales agents).