

Analysis of 2024 Amendments to USVI Real Estate Professional Licensing Laws

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SUMMARY: The 2024 amendments to the real estate professional licensing laws in the U.S. Virgin Islands, enacted through **Act No. 8842** (passed July 10th, 2024) and **Act No. 8937** (passed October 31, 2024), represent a landmark reform aimed at modernizing the regulatory framework for the real estate industry. These changes focus on enhancing professional standards, defining and reinforcing fiduciary duties, expanding educational requirements, and introducing stricter enforcement measures. Central to these revisions are the increased obligations placed on licensees to prioritize client interests and maintain transparency throughout the transaction process. By establishing updated qualifications, mandatory disclosures, and enhanced oversight by the Real Estate Commission, these laws set a higher standard of professionalism and accountability for brokers, agents, and brokerages. The analysis below outlines the key provisions, emphasizing the expanded fiduciary responsibilities and other significant updates aimed at creating a more client-focused and ethical real estate environment.

1. “REAL ESTATE BROKER” REDEFINED AS LICENSE TO ACT AS AGENT OF CLIENT EVIDENCED BY WRITTEN AGREEMENT

Under the revised Section 421 of Title 27, the term “real estate broker” has been redefined as a person licensed to **act as an agent for a buyer¹ or a seller²** (or both in a dual agency situation) in a fiduciary capacity. Broker representation must be evidenced by a **written agreement**. Section 421 of Title 27 now defines “Real estate broker” as

any person who, for another, and for compensation ..., acts as **agent³** (*emphasis mine*) for any **client⁴** (*emphasis mine*) involved in the showing, sale, purchase, lease, rental or management of real property, or who solicits listings of real estate for the same purpose, or who advertises or holds one’s self out as engaged in any of the foregoing activities.⁵

¹ “**Buyer**” means “the transferee in a real estate transaction and includes a person who executes an offer to purchase or lease real estate from a seller, whether alone or through an agent, and whether or not a transfer results, or who seeks the services of an agent with the object of entering into a real estate transaction in more than a casual, transitory, or preliminary manner. ‘Buyer’ includes a lessee.” 27 V.I.C. § 421.

² “**Seller**” means “the transferor in a real estate transaction and includes an owner who lists real estate with an agent, whether or not a transfer results, or who receives an offer to purchase or lease real estate property of which they are the owner from an agent on behalf of another. ‘Seller’ includes a lessor.” *Id.* § 421.

³ “**Agent**” means “one authorized and empowered by a written agency agreement to perform actions for a client.” *Id.*

⁴ “**Client**” means “a buyer or seller, or prospective buyer or seller, or both, or lessor or lessee, or prospective lessor or lessee, or both, who has entered a written agency agreement with a real estate broker in a real estate transaction.” *Id.*

⁵ “**Real estate broker**” is “any person who, for another, and for compensation or valuable consideration directly or indirectly paid or promised, expressly or impliedly, or with an intent to collect or receive compensation or valuable consideration therefor, acts as agent for any client involved in the showing, sale, purchase, lease, rental or management of real property, or who solicits listings of real estate for the same purpose, or who advertises or holds one’s self out as engaged in any of the foregoing activities. The term includes any person who engages in the business of charging an advance fee, or collecting escrow deposits, or contracting for the collection of a fee in connection with any contract whereby the person undertakes primarily to promote the sale or leasing of real estate through its listing in a publication, either in print or by electronic means issued primarily for that purpose, or referral of information concerning the real estate to brokers, or both.” *Id.*

The type of relationship that is established between a broker and the broker's client is an “**agency relationship**,” defined in 27 V.I.C. § 421 to mean “a fiduciary relationship created solely by an express **written agency agreement** (*emphasis mine*) between a person and a real estate broker, authorizing the real estate broker to act as an agent for the person according to the scope of authority granted in the written agency agreement for a real estate transaction.”

Key Points:

1. **No “Transactional Brokerage” Allowed:** The revised laws do not permit real estate brokers to act as neutral facilitators. A real estate broker is licensed to act as an agent on behalf of a client, defined as either the buyer, the seller, or both (in a dual agency scenario), in a real estate transaction.
2. **Written Agreements Are Mandatory:** Agency relationships **must** be formalized through written agreements that clearly establish the broker's role as an agent of the client. The timing of these agreements is as follows: (a) before or at the time of entering into a listing agreement or representation agreement, or (b) before showing a property, whichever occurs first.
3. **Enforcement of Fiduciary Responsibilities:** Once the written agreement is in place, real estate brokers are required to act as fiduciaries, placing the interests of their client (buyer or seller or both) above all else.
4. **Prohibition on Brokering Non-Real Estate Transactions:** A real estate broker's license is limited to facilitating the sale, purchase, lease, or management of real property, as defined under the revised law. This means that brokers cannot list businesses for sale (unless the transaction is limited to the sale of real property owned by the business). The license does not permit brokers to act as intermediaries in the sale of businesses, non-real property assets, or any other non-real estate-related transactions.
5. **Non-compliance:** The Real Estate Commission now holds expanded enforcement powers under 27 V.I.C. §422, granting it the authority to impose fines of up to **\$10,000 per infraction** for violations of the revised licensing laws.

2. MANDATORY AGENCY DISCLOSURE IN REAL ESTATE TRANSACTIONS

The amendment to 27 V.I.C. § 429b (as paragraph (10)) introduces a critical requirement for real estate professionals to provide written agency disclosure to buyers or sellers—or both in dual agency situations—at key points in a transaction. The written agency agreement must exist:

- Before or at the time of entering into a listing agreement or representation agreement, or
- Before showing a property, whichever occurs first.

Regulatory Compliance: Failure to comply with this requirement could result in disciplinary action, including suspension or revocation of a real estate license under the enforcement provisions of 27 V.I.C. § 429.

Notification Requirements: 27 V.I.C. § 429a: Brokers must notify the Commission within 24 hours of terminating a Sales Associate for violations of the law.

3. EXPANDED DUTIES TO CLIENTS AND FIDUCIARY RESPONSIBILITIES

Recent updates to 27 V.I.C. § 427c provide a comprehensive framework outlining the fiduciary duties of licensees in agency relationships. These changes emphasize heightened obligations to clients, ensuring their interests are prioritized and safeguarded.

Fiduciary Duties Defined:

- **Common Law Foundation:** Subsection (a) states, *"The common law of agency as supplemented by this section applies to the relationship between a licensee and the licensee's client."* This establishes the legal baseline for all interactions between a real estate licensee and their client.
- **Absolute Fidelity:** Under subsection (b), licensees must pledge *"absolute fidelity to protect and promote the interests of the client or clients."* This clause emphasizes the prioritization of client interests over any personal or third-party considerations.
- **Client Interests Paramount:** A fiduciary is required to put the client's interests ahead of their own and any third parties, under subsection (c).

Core Fiduciary Duties: The following fiduciary duties are explicitly outlined in 27 V.I.C. § 427c:

1. Loyalty: Licensees must act solely in the client's best interest in all matters related to the transaction. Conflicts of interest are prohibited unless fully disclosed and consented to by the client.
2. Confidentiality: Any information shared by the client must remain confidential, including financial details, motivations, and negotiation strategies. Confidentiality obligations extend beyond the termination of the agency relationship unless required by law, authorized by the client in writing, or the information becomes public knowledge.
3. Disclosure: Material facts that could influence the client's decisions must be disclosed, such as:
 - Structural or legal issues with the property.
 - Environmental hazards.
 - Zoning restrictions.
 - Disclosure must not violate confidentiality obligations to other parties.
4. Obedience: Licensees are required to follow all lawful instructions provided by the client, even if those instructions differ from the licensee's personal preferences. Instructions that violate the law or ethical standards must not be followed.
5. Reasonable Skill and Care: Licensees must perform their duties with competence and diligence, including negotiating, drafting contracts, and addressing transactional issues. Clients must be advised to seek expert advice (e.g., legal or financial) on matters outside the licensee's expertise.
6. Accounting: Licensees must accurately manage and safeguard all funds and property entrusted to them by clients. Prompt and transparent accounting is mandatory.

4. DUAL AGENCY RELATIONSHIPS

The amended 27 V.I.C. § 427b defines “Dual agency relationships” as representing both buyer and seller (or lessor and lessee); dual agency relationships are permitted under strict conditions:

1. Written Disclosure and Consent: All parties must be informed of the dual agency in writing and provide informed consent. Brokerage firms must establish safeguards to prevent the sharing of confidential information between agents involved in dual representation.
2. General Duties to All Parties: Even when fiduciary duties apply to the client, licensees owe obligations to all parties in a transaction:
 - Honesty and Integrity: Licensees must deal fairly and avoid misleading practices.
 - Non-Discrimination: Discrimination based on race, religion, gender, disability, or national origin is prohibited.

5. EDUCATION AND EXAMINATION STANDARDS

Pre-Licensure Education: 27 V.I.C. § 425(a-b): Minimum education requirements for Sales Associates and Brokers will be established in collaboration with the Virgin Islands Department of Education (*regulations have not yet been issued but are expected to be developed within 90 days of October 31, 2024 (January 29, 2025)*).

Continuing Education: 27 V.I.C. § 427(a): Proof of continuing education is now required for license renewal. The Commission will set these standards through regulations (*regulations have not yet been issued but are expected to be developed within 90 days of October 31, 2024 (January 29, 2025)*).

Examinations: Broker examinations will be more stringent than those for Sales Associates to reflect the increased responsibilities of brokers.

6. LICENSING REQUIREMENTS: CATEGORIES AND STANDARDS

Regulation of Temporary Sales Apprentice Permit: 27 V.I.C. § 426a: This allows individuals to begin working under direct supervision while pursuing a Sales Associate License.

Permit Details:

- Valid for six months and renewable once.
- The apprentice may not sign contracts independently.
- Permit expires when the individual acquires a full Sales Associate License or the permit term ends.

Qualifications for Licensure: 27 V.I.C. § 424a: New standards have been introduced for both Sales Associates and Brokers.

Sales Associates:

- Minimum age: 18 years (*lowered from age 21*)
- Residency in the Virgin Islands for 90 consecutive days prior to application (*lowered from 1 year*)
- High school diploma or equivalent (*new requirement*)
- Successful completion of an examination approved by the Commission

Brokers:

- Minimum age: 21 years.
- At least two years of experience as a Sales Associate in the Virgin Islands or equivalent experience as a broker elsewhere. Proof of experience required through an affidavit or other supporting documentation.

Inactive Licenses: 27 V.I.C. § 427a: Licenses can now be placed into inactive status upon request. Reactivation requires payment of fees and compliance with regulations established by the Commission (*regulations have not yet been issued but are expected to be developed within 90 days of October 31, 2024 (January 29, 2025)*).

7. CHANGES TO THE USVI REAL ESTATE COMMISSION

Composition and Roles: 27 V.I.C. § 421a: The Real Estate Commission still comprises **seven** members appointed by the Governor with the advice and consent of the Legislature, but the qualifications of those members have changed. Members now must include:

- Three Licensed Brokers with at least five years of experience in the Virgin Islands (*same as before*)
- One Licensed Attorney (*same as before*)
- One Licensed Property Manager (*new requirement*)
- Two Non-Professionals who have never held a real estate license in any jurisdiction (*new requirement*)

Residency Requirements:

- Three members must reside on St. Croix (*new requirement*)
- Three members must reside on St. Thomas (*new requirement*)
- One member must reside on St. John (*new requirement*)

Compensation and Terminology Updates: Members will no longer serve without compensation. Instead, they are entitled to per diem and travel expenses for attending meetings, as prescribed in 3 V.I.C. §65. The terminology has been updated for inclusivity, with “Chairman” replaced by “Chairperson” throughout.

8. COMMISSION AUTHORITY AND ENFORCEMENT

The Commission’s authority has been broadened under 27 V.I.C. §422 to include:

- Issuing subpoenas for documents and testimony.
- Investigating complaints and conducting hearings.
- Imposing penalties of up to \$10,000 per offense for violations.

The Commission will now maintain and publish a publicly accessible list of all licensed brokers and associates.

9. FINANCIAL ADJUSTMENTS

Fees for licensing and renewals have been updated under 27 V.I.C. § 430:

- Sales Associate License: \$285.
- Temporary Sales Apprentice Permit: \$130.
- Background Check: \$200.
- Brokerage Office Registration: \$450 annually.

Enhanced Penalties:

- Fines for violations now reach \$10,000 per offense.
- Unauthorized practice or fraud may result in license suspension, revocation, or additional fines.

10. COMPLIANCE AND IMPLEMENTATION

Transitional Compliance: Section 2 of Act No. 8937: Existing licensees must comply with the updated regulations at their next renewal.

Regulatory Development: Section 3 of Act No. 8937: The Commission must promulgate new regulations within 90 days of the Act's enactment.

CONCLUSION

The updates introduced by **Act No. 8842** and **Act No. 8937** mark a pivotal step forward for regulation of real estate professionals in the U.S. Virgin Islands. By prioritizing professionalism, accountability, and client protection, these reforms establish a modern framework that aligns with industry best practices. Enhanced fiduciary duties, stricter licensing standards, and robust enforcement mechanisms ensure a more ethical and transparent marketplace. For real estate professionals, these changes provide an opportunity to elevate their practices while fostering trust and confidence among clients. By embracing these reforms, the real estate industry in the U.S. Virgin Islands is better positioned for sustainable growth, fairness, and integrity.