

COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION
DIVISION OF UTILITY AND RAILROAD SAFETY

November 13, 2009

Mr. John Broadway
Vice President/Law and Policy
Virginia Association of Realtors
10231 Telegraph Rd.
Glen Allen, Virginia 23059-4578

Dear Mr. Broadway:

In response to your request, I am writing to explain the Division of Utility and Railroad Safety's ("Division") policy with respect to the installation of certain real estate signs. Specifically, you asked me to clarify how the Division applies the definition of "excavation" found in section 56-265.15A of the Underground Utility Damage Prevention Act ("Act") to the installation of metal frame sign holders that are often used by real estate agents and sign installers.

Section 56-265.15 A of the Act defines "excavation" as follows:

"Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced *by means of any tools, equipment, or explosives* and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material. (Italics added.)

As interpreted and applied by the Division, the installation of a metal frame sign that is done by hand and does not involve movement or displacement of earth or other material "by means of any tools, equipment..." is not considered a form of excavation that would require a person to contact the Miss Utility notification center. However, if the installation requires use of a hammer, shovel or other tools, rather than by simply pushing the sign into the ground, then the Act requires the installer to contact Miss Utility. This represents the Division's interpretation and intended application of the Act rather than a judicial finding or determination by the State Corporation Commission. This policy does not, of course, bind the Commission in the event it is called upon to determine this or related issues and apply it to the facts in a particular case.

Further, we are encouraging agents and sign installers who are not required to call Miss Utility before installing their signs to look for evidence of underground utility lines (such as gas valve box covers, electric transformers, phone pedestals etc.) in close proximity to where they plan to install their signs. If such evidence exists, the installer should install the sign at a different location or call Miss Utility so that underground utility lines can be marked and the sign installed safely.

Thank you for continuing to work with us in order that we all do what we can to protect Virginia's underground utility infrastructure and our citizens. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Massoud Tahamtani