



## Final Regulation Agency Background Document

<b>Agency name</b>	Real Estate Appraiser Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 130-20
<b>Regulation title</b>	Real Estate Appraiser Board Regulations
<b>Action title</b>	General Review 2012
<b>Date this document prepared</b>	April 10, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The proposed regulations are the result of a periodic review of the regulations conducted by the Real Estate Appraiser Board (Board). The last general review of the Board's regulations was completed with regulations effective September 1, 2008.

The proposed changes in the regulations will make clarifying changes, ensure consistency with state and federal law, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

On February 25, 2014, the Real Estate Appraiser Board reviewed and adopted the "Real Estate Appraiser Board" final regulations.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

The United States Congress passed the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) in 1989 as a result of the savings and loan crisis. The purpose of Title 11 of FIRREA is to:

provide that federal financial and public policy interests in real estate transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Title 11 accomplished this by establishing the Appraisal Subcommittee (ASC) which monitors the appraisal licensing and regulatory requirements established by states and their state appraiser boards. The ASC also monitors the practices, procedures, and activities of The Appraisal Foundation (TAF). TAF consists of the Appraiser Qualifications Board (AQB), the Appraisal Standards Board (ASB), and the Appraisal Practices Board (APB).

The AQB sets minimum qualifications all states must meet in licensing appraisers. The ASB promulgates the Uniform Standards of Professional Appraisal Practice (USPAP) which are incorporated into the Board's regulations and must be followed by all Virginia licensed appraisers. The APB identifies and issues opinions on recognized valuation methods and techniques within the appraisal profession.

§ 54.1-201.A.5 of the *Code of Virginia* states that the Board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

§ 54.1-2013 of the *Code of Virginia* states, "The Board shall have all of the powers of a regulatory board under Chapter 2 (§ 54.1-200 et seq.) of this title. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and all things required or expected of a state appraiser certifying and licensing agency under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3331 et seq.). The Board shall promulgate necessary regulations."

Executive Order 14 (2010), *Development and Review of Regulations Proposed by State Agencies*, states, in part, "Each existing regulation in the state shall be reviewed at least once every four years by the promulgating agency unless specifically exempted from periodic review by the Governor."

The Real Estate Appraiser Board is the promulgating entity.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The regulations need to be amended to make clarifying changes, and to ensure the regulations conform to the current statutes, standards of practice in the industry, and changes in the work environment to protect the public health, safety and welfare.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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The proposed changes in the regulations will make clarifying changes, ensure consistency with state and federal law, ensure compliance with current industry standards, and make other necessary changes to better protect the public health, safety and welfare.

18 VAC 130-20-10 - Definitions - Amend the definitions of "Certified Residential Appraiser" and "Licensed Residential Appraiser" to amplify the definition of "transaction value" to include "market value." This should help prevent licensees from appraising property outside the limit of their license class. Amend the definition of the "Uniform Standards of Professional Appraisal Practice" (USPAP) to include the current biennial edition of USPAP.

18 VAC 130-20-20 - Requirement for Registration of Business Entity Providing Appraisal Services - Amend this section to ensure all business entities providing appraisal services in Virginia are registered with the Board and to require a Board licensee to serve as the contact person for a registered business entity providing appraisal services.

18 VAC 130-20-30 – General Qualification for Licensure – Amend this section to ensure Certified General Appraiser applicants demonstrate adequate experience in the use of the income approach and to ensure appraiser license applicants have recent experience in performing appraisal reports.

18 VAC 130-20-60 - Qualifications for Licensure as an Appraiser Trainee - Amend this section to include provisions that the applicant must be 18 years old and to allow for a licensing hearing before the Board and to remove the term "state-certified."

18 VAC 130-20-120 – Procedures for Renewal – Amend this section to extend the license reinstatement period from three months to one year after license expiration date to align the license reinstatement period with almost all other professions and occupations regulated by DPOR.

18 VAC 130-20-160 – Grounds for Disciplinary Action – Amend this section by updating the reference to the Administrative Process Act in the Code of Virginia.

18 VAC 130-20-180 – Standards of Professional Practice - Amend this section by changing the term "evaluation" to "valuation," by adding a Standard for four of the USPAP Rules, by replacing the term "Unworthiness" with "Prohibited Acts," and by changing eight references to USPAP to refer to the current edition of USPAP or to the prior edition of USPAP that was in effect when an appraisal report was prepared.

18 VAC 130-20-190 – Standards of Conduct for Certified Appraiser Education Instructors - Amend this section to more efficiently take disciplinary action against a Certified Appraisal Instructor who also holds an appraiser license which has been the subject of disciplinary action.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
 3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

The *Code of Virginia* establishes the Board as the state agency that oversees the licensure and regulation of appraisers providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. The proposed changes provide clarification and guidance to licensees so they can better serve the public and comply with industry standards and changes in the work environment.

The proposed changes pose no disadvantages to the public or the Commonwealth.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
18 VAC 130-20-10	N/A	Included the current biennial edition (2014-2015 Edition) of the “Uniform Standards of Professional Appraisal Practice” (USPAP) in the definition of USPAP.  “Licensed residential real estate appraiser” has already been removed from the definition of “Supervising Appraiser.”	The regulations need to specify the current edition of USPAP in use.  This change was made in the “Federally Mandated Changes – Trainee and Supervisory” exempt regulatory action that went into effect on July 1, 2013.
18 VAC 130-20-120	N/A	*Extended the license reinstatement period from three months to one year after license expiration date.	This aligns the license reinstatement period with almost all other professions and occupations regulated by DPOR.
18 VAC 130-20-	N/A	Amended eight references to the “Uniform Standards of Professional	The regulations need to specify the current edition

180		Appraisal Practice” (USPAP) to refer to the current edition of USPAP or to the prior edition of USPAP that was in effect when an appraisal report was prepared.	of USPAP that was in use when an appraisal report was prepared.
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**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Thomas “Mack” Strickland	Amend the regulation to change the license reinstatement deadline from three months to one year to bring the license reinstatement period in line with the Virginia Real Estate Board Regulations.	While the board did not propose any changes to this section, it agrees with this comment.
Thomas “Mack” Strickland	Amend the regulation to require at least a certified residential real estate appraiser license to instruct appraisal continuing education courses.	The board did not propose any changes to this section. The Board has set standards only for those instructors who teach the USPAP continuing education course. The Board has established an Education Committee that may propose changes to this regulation in the future.
Alex Uminski	Amend the proposed language to define “complex” as it is used in the definition of “Licensed Residential Real Estate Appraiser.”	The board does not believe it needs to amend the regulation as it follows the AQB standards. The federal financial regulatory agencies have already defined “Complex 1--to--4 family residential property appraisal” as “one in which the property to be appraised, the form of ownership, or market conditions are atypical.” <a href="http://www.fdic.gov/regulations/laws/rules/2000-4300.html">http://www.fdic.gov/regulations/laws/rules/2000-4300.html</a>
Alex Uminski	Amend the proposed language to limit the ability of “Licensed Residential Real Estate Appraisers” to appraise noncomplex, nonresidential properties.	The board’s proposed regulations already accomplish this.
Gilbert F. Rogers	Amend the regulation to change the license reinstatement deadline from three months to one year to bring the license reinstatement period in line with other professions and to allow for emergencies or illnesses.	While the board did not propose any changes to this section, it agrees with this comment.
Cookie Wall	Amend the regulation to change the	The board agrees with changing the

	license reinstatement deadline from three months to one year and apply this change retroactively to any licensee whose license went past reinstatement and appealed to the Board for an exception to this regulation.	reinstatement deadline to one year, but it does not have the authority to apply this change retroactively.
Susan S. Lower	Amend the regulation to change the license reinstatement deadline to keep appraisers in line with other professional organizations and apply this change retroactively to any licensee who presented a case to the Board.	The board agrees with changing the reinstatement deadline to one year, but it does not have the authority to apply this change retroactively.
Vicki L. Metcalf	This change requires all experience for the Licensed, Certified Residential and Certified General applicants to have been acquired within the five-year period immediately preceding the date of application. While State regulations may be more restrictive than that prescribed by the "Real Property Appraiser Qualifications Criteria," the five-year limitation may be burdensome to existing license and certificate holders. These individuals may wish to upgrade from one classification to another, in part, based on experience previously earned and used toward obtaining a lower level credential.	The board thinks five years preceding application is adequate time for an applicant to meet the experience requirement.
Rene Fonseca	There should be a mathematical algorithm, a quantitative model, or a standard format for appraisers, which would not leave room for personal or subjective assessments or bias. The current system leaves too much room for personal opinions, rather than the specific facts relating to the overall market. Too often, the system turns out a misleading or erroneous appraisal, which in turn has a negative impact on the sellers/buyers.	The board's regulations require appraisers to meet the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP and the Board's Standards of Practice and Conduct establish minimum appraisal standards to help prevent misleading or erroneous appraisals.
Rene Fonseca	Appraisers should be assigned who live in, or are familiar with the economic trends of the specific local geographical area in which the appraisal is being made. It is not fair, nor practical, for example, to	The board's regulations require appraisers to meet the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). The Competency Rule of USPAP requires that an appraiser have the knowledge and experience (including geographic

	bring an appraiser from West Virginia to appraise properties in McLean, VA.	knowledge and experience) to complete the appraisal assignment.
Rene Fonseca	During the process of Comparable Market Analysis appraisers go through, houses currently under contract should be included.	The board's regulations require appraisers to meet the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP does not prohibit or require the use of a pending sale as a comparable, so the use of a pending sale as a comparable is acceptable as long as the fact that the sale is pending is disclosed in the appraisal report.
Rene Fonseca	The radius of comparable houses should be the closest comparables to the subject home that are similar in characteristics.	The board's regulations require appraisers to meet the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP Standards Rule 1-4 requires an appraiser to collect, verify, and analyze all information necessary for credible assignment results in developing a real property appraisal. When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
Rene Fonseca	There could be a system of random auditing used. We need a system of checks and balances. Right now, it appears that appraisers who are inexperienced, or using merely personal opinion or subjective criteria, are continuing to operate with no oversight.	The board's regulations require appraisers to meet the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP and the Board's Standards of Practice and Conduct establish minimum appraisal standards to help prevent misleading or erroneous appraisals. Licensed appraiser trainees must be supervised by a certified appraiser in good standing.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18 VAC 130-20-10	N/A	Establishes definitions of terms used throughout the chapter.	Amend the definitions of "Certified Residential Appraiser" and "Licensed Residential Appraiser" to amplify the definition of "transaction value" to include "market value." This should help prevent

			<p>licensees from appraising property outside the limit of their license class.</p> <p>Included the current biennial edition (2014-2015 Edition) of the “Uniform Standards of Professional Appraisal Practice” (USPAP) in the definition of USPAP because the regulations need to specify the current edition of USPAP in use.</p>
18 VAC 130-20-20	N/A	Establishes the process to obtain an appraisal services business registration.	Amend this section to ensure all business entities providing appraisal services in Virginia are registered with the Board and to require a Board individual appraiser licensee to serve as the contact person for a registered appraisal services business.
18 VAC 130-20-30	N/A	Establishes general entry requirements for individual appraiser licensure.	Amend this section to ensure Certified General Appraiser applicants demonstrate adequate experience in the use of the income approach and to ensure appraiser license applicants have recent experience in performing appraisal reports.
18 VAC 130-20-60	N/A	Establishes entry requirements for appraiser trainee licensure.	Amend this section to include provisions that the applicant must be 18 years old, to allow for a licensing hearing before the Board and remove “state certified” to comply with statutory requirements.
18 VAC 130-20-120	N/A	Establishes license renewal/reinstatement procedures.	Amend this section to extend the license reinstatement period from three months to one year after license expiration date to align the license reinstatement period with almost all other professions and occupations regulated by DPOR.
18 VAC 130-20-160	N/A	Describes grounds for disciplinary action.	Amend this section by updating the reference to the Administrative Process Act in the Code of Virginia.
18 VAC 130-20-180	N/A	Describes standards of professional practice.	Amend this section by changing the term “evaluation” to “valuation,” by adding a standard for four USPAP Rules, by replacing the term “Unworthiness” with “Prohibited Acts,” and by changing eight references to the “Uniform Standards of Professional Appraisal Practice” (USPAP) to refer to the current edition of USPAP or to the prior edition of USPAP that was in effect when an appraisal report was prepared.
18 VAC 130-20-190	N/A	Describes standards of conduct for certified appraiser education instructors	Amend this section to more efficiently take disciplinary action against a Certified Appraisal Instructor who also holds an appraiser license which has been the subject of disciplinary action.