Introduction/Index

This manual is designed to provide you with materials for reference during your term as a board member. During the course of your first few months on the board you will be provided with training in the following areas:

- Roles and Responsibilities of Board Members
- Conduct of Board Meetings
- Regulatory Review
- Financial Overview – Cost Allocation System and Setting of Fees
- Education and Examinations Overview
- Compliance and Investigations/Making Case Decisions

The training will be provided at your regularly scheduled Board meetings and will provide the opportunity for new and existing Board members to receive the training as a group and discuss issues of interest and concern for your specific Board.

This manual contains:

1. Introduction/Index
2. General DPOR Information (Biennial Report)
3. Roles and Responsibilities of Board Members
4. Board Meetings
5. Laws and Regulations
   A. Code of Virginia
   B. Legislative Process
   C. Regulatory Review Process
   D. Executive Orders No 36 - Development of and Review of Regulations Proposed by State Agencies
6. Compliance and Investigations
7. Administration and Finance
   A. Financial Overview
   B. Education and Examination Review
8. Media Relations

Virginia DPOR
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Biennial Report 2004-2006

Jay W. DeBoer, Director
David B. Ashe, Chief Deputy

New Regulatory Programs

WATER WELL CONTRACTORS

Increased residential growth in various parts of the Commonwealth can burden existing water supplies, leading localities to require construction of private wells for new housing developments. As a result, in order to protect consumers, the General Assembly directed the Board for Contractors to establish a three-tiered certification program for individuals who construct water wells. [HB 1921 (2005)]

ESTHETICIANS

The skin care industry is increasingly popular, with estheticians at specialty salons and day spas performing a variety of services. Those skin care services, especially when involving chemicals and mechanical devices, pose a risk to the public. The legislature directed the Board for Barbers and Cosmetology to develop a two-tiered licensure program for estheticians who administer cosmetic skin treatments, makeup application, and body hair lightening or removal.
[HB 2510 (2005)]

PHOTOGRAMMETRY

Photogrammetry is the technique of measuring objects from photographs, remote-sensing devices or other electronic imagery. Land surveyors have historically provided such measurement services as a licensed activity, in order to protect the public from relying on inaccurate measurements for construction and planning purposes. The General Assembly granted the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA Board) authority to sub-regulate photogrammetry and other remote-sensing technologies through a limited land surveyor licensing program.
[HB 2863/SB 1306 (2005)]

DEPARTMENT of **PROFESSIONAL** and **OCCUPATIONAL REGULATION**

3600 West Broad Street
Richmond, VA 23230
(804) 367-8500
TDD (804) 367-9753
www.dpor.virginia.gov

LICENSING, REGULATION AND FINANCIAL ADMINISTRATION

Strong Financial Management

As a non-general fund agency, DPOR is financed by assessments on licensed practitioners, not by any tax revenues.

State law requires the agency to adjust fees so that revenues are sufficient to cover expenses, but not excessive.

	Fiscal Year 2005 *(07/01/04 – 06/30/2005)*	Fiscal Year 2006 *(07/01/05 – 06/30/06)*
Revenues	$16,356,153	$17,350,576
Expenditures	$12,373,085	$13,023,464
Cash Balance	$8,952,369	$13,279,481

To learn more about the responsibilities and activities of each board, visit the DPOR website at www.dpor.virginia.gov

Statistics for 2004-2006 Biennium

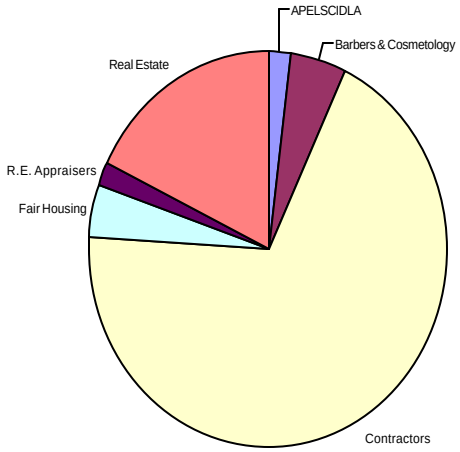
REGULATORY BOARD	REVENUES	EXPENDITURES	APPLICANTS EXAMINED	REGULANT POPULATION *(06/30/06)*	POPULATION % CHANGE *since last biennium*
Architects, Professional Engineers, Land Surveyors, Certified Interior Designers & Landscape Architects	$2,706,307	$2,050,747	5,769	35,497	4.79%
Asbestos, Lead and Home Inspectors	$435,028	$412,645	194	6,303	4.72%
Auctioneers	$131,665	$99,467	142	1,742	2.59%
Barbers and Cosmetology	$4,264,258	$3,625,185	13,639	64,032	4.50%
Boxing and Wrestling Task Force	$305,241	$243,801	n/a	673	- 24.72%
Branch Pilots	$36,638	$5,647	12	47	4.44%
Cemetery	$134,855	$72,332	n/a	1,386	30.63%
Contractors	$12,667,011	$10,534,486	32,946	101,536	11.88%
Fair Housing	$54,935	$54,935	n/a	1,987	N/A: *Certification effective July 2004*
Geology	$70,805	$49,881	169	834	2.84%
Hearing Aid Specialists	$30,630	$56,012	107	537	- 1.65%
Opticians	$153,745	$162,079	163	1,911	2.96%
Polygraph Examiners Advisory Board	$11,755	$40,254	31	261	- 8.42%
Real Estate Appraisers	$542,472	$402,930	2,587	3,984	8.70%
Real Estate	$10,415,206	$5,850,258	44,864	81,744	21.47%
Professional Soil Scientists & Wetland Professionals	$61,180	$26,536	36	185	54.17%
Waste Management Facility Operators	$46,600	$44,734	290	1,194	13.39%
Waterworks and Wastewater Works Operators	$540,550	$454,385	1,786	5,040	- 6.96%
TOTALS	**$32,608,881**	**$24,186,314**	**102,723**	**308,893**	**11.65% increase**

PUBLIC PROTECTION AND CONSUMER EDUCATION

REGULATORY BOARD	COMPLAINTS RECEIVED	PERCENTAGE OF TOTAL
Contractors	7,054	66.86%
Real Estate	1,808	17.14%
Barbers & Cosmetology	500	4.74%
Fair Housing	430	4.08%
APELSCIDLA	209	1.98%
R.E. Appraisers	201	1.91%
Cemetery	110	1.04%
Auctioneers	88	0.83%
Asbestos/Lead/Home Inspectors	73	0.69%
Hearing Aid Specialists	22	0.21%
Opticians	19	0.18%
Waterworks/ Wastewater Works Operators	13	0.12%
Soil Scientists & Wetland Professionals	6	0.06%
Waste Management Facility Operators	6	0.06%
Boxing & Wrestling	4	0.04%
Polygraph Examiners	4	0.04%
Branch Pilots	2	0.02%
Geology	2	0.02%
TOTAL	**10,551**	**100%**

Complaint Volume by Board

(Boards with 2% or more of total complaints)



The **Complaint Analysis & Resolution** Section processes all complaints received by DPOR. The **Field Investigations** Section determines whether evidence supports a probable violation of board regulations or state law. The **Adjudication** Section conducts Informal Fact-Finding (IFF) Conferences in accordance with the Administrative Process Act. Cases resolved through the agency's **Alternative Dispute Resolution (ADR)** Section may avoid formal investigation.

During the biennium, DPOR conducted **767 disciplinary** IFFs, **394 licensing** IFFs and **93 Recovery Fund** IFFs. Boards entered 1,581 final orders. The agency **resolved 256 complaints** through free, voluntary ADR services.

In addition, DPOR worked with local authorities in successfully prosecuting 589 cases of unlicensed activity. DPOR helped consumers receive **$2 million** in court-ordered victim restitution during the biennium.

Outreach & Partnership Initiatives

DPOR's ever increasing efforts to promote public awareness and participation during the biennium included the addition of a full-time **outreach coordinator** position. The outreach coordinator travels throughout the Commonwealth providing consumer education and fair housing training, and reaches more diverse audiences through **bilingual communication**.

DPOR focuses attention on accessible housing issues, particularly the concept of **"visitability"** in single-family housing and housing for persons with special needs. The agency's involvement stems from two mandates: (1) DPOR administers and enforces Virginia's **Fair Housing Law** and (2) DPOR licenses housing and design professionals such as architects, real estate agents, and contractors.

In 2004, DPOR continued its innovative partnership with the **Virginia Society of the American Institute of Architects** (VSAIA). The collaborative effort increased awareness among architects about the value and necessity of designing accessible and adaptable housing. During the biennium, the agency built on the success of the VSAIA partnership to extend the effort to include the **Home Builders Association of Virginia** (HBAV).

The HBAV partnership encourages home builders to help clients understand how universal design alternatives can increase the value of their investment and allow them to "age in place." Both partnerships featured coordinated marketing campaigns, educational seminars, and conference participation. The homebuilders initiative resulted in the Governor issuing certificates of achievement to HBAV, Tidewater Builders Association, and L&M Contractors of Virginia Beach for the **2005 Home-A-Rama Universal Living Home**.

In addition, with financial support from the **Department of Rehabilitative Services** (DRS) and the **Virginia Housing Development Authority** (VHDA), DPOR established a design competition for Virginia architecture students. **"The New American Front Door" competition**, coordinated by APELSCIDLA Board member Kenneth Schwartz, FAIA, challenged architecture and landscape architecture students to re-conceive the role of the front yard, porch, and door and entry sequence. A jury of practicing architects, one of whom uses a wheelchair, judged more than 20 submissions from students attending Virginia's three architecture schools in 2005 and awarded $5,000 in prize monies.

Studies

COMMUNITY ASSOCIATIONS

HJR 686 (2005) requested the **Real Estate Board** study professionally compensated managers of common interest community associations, such as condominiums and property owners' associations. The Board solicited comment at regional public hearings and from individuals living in common interest communities. The Board reviewed management contracts and surveyed management companies regarding the level of training for their employees.

The study, published as **House Document No. 3 (2006)**, found community associations employing reputable management companies generally satisfied with management personnel, who appear to receive adequate training. Community association concerns include training for association board members and the associations' ability to employ management companies offering adequate contracts.

LOCAL PILOT PROGRAM

SB 285 and HB 454 (2004) directed DPOR to establish a pilot program for a local government to assist the **Board for Contractors** with complaint investigation and implementation of final disciplinary orders. The bills provided for progress reports in 2004 and 2005.

Senate Document No. 16 (2004) reported on the agency's progress in signing Memorandums of Agreement for joint cooperation and resource sharing with the Town of Bluefield, Nelson County, and Prince William County. **Senate Document 21 (2005)**, the final report, indicated the pilot program allowed DPOR and participating localities to improve communication of disciplinary information to responsible parties, and to increase direct contact with licensees and consumers.

As a result of the pilot program, the Board for Contractors will continue shared reporting of disciplinary data and liaison services for all localities, extending cooperative agreement provisions to all interested jurisdictions in the Commonwealth.

Governor, General Assembly help licensees, protect public

After a year-long study of its disciplinary process, DPOR sought legislation to increase regulatory boards' ability to promote compliance early in the complaint process. Focused on helping licensees avoid future violations and resolving consumer complaints more quickly, **HB 1932 (2005)** provides boards with more options when imposing sanctions against a licensee. The new law grants DPOR boards the ability to: (1) place licensees on probation, with conditions such as remedial education or examination, and (2) allow staff to enter into consent agreements imposing monetary penalties for violations discovered during inspection or investigation. The expanded sanctions allow boards to determine the most appropriate, least burdensome restriction on licensees while promoting public protection, compliance, and education.

DPOR also requested legislation to clarify that licensure is required for the fitting or selling of hearing aids. **HB 2711 (2005)** closed a legal loophole inadvertently allowing mail-order hearing aid distributors and improperly trained fitters to avoid licensure. The new law protects consumers by specifying the activities of fitting or selling – whether performed separately or jointly – require minimum standards of competency through licensure.

To provide greater protection for consumers victimized by unscrupulous contractors, DPOR supported legislation to increase the cap on single payouts from the Contractor Transaction Recovery Fund. The recovery fund is designed to indemnify consumers who experience monetary loss at the hands of a licensed contractor. The initial $10,000 cap, established in 1980, failed to keep up with industry trends as construction costs increased. **SB 916 (2005)** doubled the cap to $20,000 to increase the number of victimized consumers eligible for complete reimbursement. The recovery fund is supported entirely by assessments on licensed contractors, not by any tax revenues.

DPOR also administers the Real Estate Transaction Recovery Fund, which applies to consumers harmed by improper or dishonest conduct of licensed real estate agents. In order to be eligible to file a claim with either the Contractor or Real Estate Recovery Funds, the statute requires consumers first obtain a court judgment and exhaust all attempts to collect the debt. Because of the lengthy timeframe for processing recovery fund cases, DPOR requested authority to eliminate the informal fact-finding (IFF) conference component, unless the respondent licensee requests the administrative proceeding. **SB 201 (2006)** will allow claimants to avoid the additional burden of an IFF and to receive a decision on their claim request in a more timely fashion.

Roles and Responsibilities

The primary responsibility of a regulatory board is to protect the public by establishing entry requirements to ensure minimum competence and standards of conduct for licensees. These requirements and standards are established in regulation.

The Board exercises its authority by acting as a Board, through the adoption of motions at properly noticed Board meetings. Individual members do not have the authority to take Board action.

As a Board Member you should:

- Attend all meetings, except in the case of emergency. Most boards schedule meetings for a year at a time. Your attendance is critical to ensuring the presence of a quorum for all actions. If you cannot attend, let your Executive Director know in advance. Failure to have a quorum present could result in last minute cancellation of a meeting. The result could be respondents, applicants, fellow board members, and other interested persons traveling a considerable distance and incurring travel costs only to arrive and find out that a meeting cannot be held due to lack of a quorum.

- Read all agenda materials prior to a meeting. You are not eligible to vote on case decisions involving disciplinary action and granting of a license if you have not read the complete record.

- Handle all application and complaint files with confidentiality. Do not discuss Board business with friends and family. Do not discuss board business with fellow Board members outside of a properly noticed meeting, including through the use of e-mail. Do not discuss cases with applicants or respondents outside of the Informal Fact Finding Conference or Board meeting.

- Review all board business to determine whether you have a potential conflict of interest. Personal, business and family relationships may result in a conflict of interest. Some conflicts will require you to disclose your relationship with the licensee or applicant, other conflicts may require you to remove yourself from voting on a case. You are required to complete a conflict of interest statement at every Informal Fact Finding Conference and Board meeting.

- Refer investigative matters to the Compliance and Investigations Division. The *Code of Virginia* gives DPOR investigators the authority to investigate. The role of a Board member is to participate in the case decision making process at Informal Fact Finding Conferences and Board Meetings.

- Submit all travel vouchers promptly. Staff will assist you with the preparation of a travel voucher at each of your meetings. Please bring original receipts with you so that all reimbursements can be processed in a timely manner.

- Contact your Executive Director when you receive a press inquiry. Open investigations should not be discussed with the press. Information regarding press contacts will be shared with the DPOR Communications Director who will coordinate contacts and provide follow-up if appropriate.

- Familiarize your self with relevant provisions of the *Code of Virginia*.
  (Tab 5A)

Board Meetings

The statutes relating to your specific Board set forth quorum requirements. A Board cannot act without a quorum present, therefore, your attendance at meetings is critical. It is also important for you to notify your Executive Director as far in advance as possible if you are unable to attend.

Voting to impose sanctions in a disciplinary case requires a majority vote of those "qualified" to vote. Members who have presided over the Informal Fact Finding Conference or who have a conflict that would prevent them from voting are not "qualified". However, members who are absent from the meeting are "qualified" unless disqualified for another reason. Therefore, instances may occur where a quorum is present to meet but a majority of those qualified is either not present or a split vote presents getting a majority vote of those "qualified". Again, these statutory provisions make your attendance at meetings very important.

Boards operate by motion and vote, typically the chairman votes. None of the DPOR Boards have formally adopted *Robert's Rules of Order*, however, the rules generally serve as a guide in facilitating the conduct of an efficient meeting.

The Agenda

Public Comment Period - The first item on the agenda is a public comment period. During this time, individuals may address the Board on any issue that is not on the agenda. Comment is limited to five minutes. A Board response is not required, however, the Board may request staff to look into issues raised and discuss them at a later time.

Adoption of Minutes - The second agenda item is the adoption of minutes from prior Board meetings and Informal Fact Finding Conferences. Remember, your minutes are a record of what occurred at the meeting. Corrections should be limited to the accuracy of the minutes. If you wish to discuss an item referenced in the minutes, you may request that the chair add the item to the agenda.

Disciplinary and Application Cases - The major portion of most agendas is the handling of disciplinary and application cases. Participants may speak on a case, again their time is limited to five minutes. A participant is anyone who participated in the Informal Fact Finding Conference. The Administrative Process Act (APA) requires that participants be given an opportunity to address the Board, however, the APA does not permit the submission of additional evidence at the Board meeting. The Board's decision is to be based on the record before them from the Informal Fact Finding Conference. Therefore, if you have a question of a participant, your question should be clarifying in nature only, you should not elicit new evidence.

Miscellaneous Agenda Items - The remaining portion of your agenda will include miscellaneous items such as regulatory review or staff briefings on specific issues the Board may wish to address.

Boards should follow the agenda! The result is a more productive and efficient meeting and a more organized flow to the meeting minutes. In addition, members of the public can better follow your actions and plan their attendance to hear items of interest to them.

Freedom of Information Act Requirements

The Freedom of Information Act (FOIA) governs many aspects of your Board meeting. FOIA requires that your meetings be publicly noticed. The notices are published by the Registrar of Regulations in the *Register* and are posted on the Regulatory Town Hall Website and the Commonwealth Calendar. A list of meeting dates is also included on the DPOR website.

FOIA prohibits the discussion of Board business outside of a properly noticed meeting. FOIA also requires that your meetings be held in open session, with few exceptions. You may go into closed session to discuss legal advice with counsel, to discuss examination issues, or for the deliberation of disciplinary cases. DPOR encourages open government and the basic premise of FOIA follows the philosophy of "government in the sunshine", therefore all Boards are encouraged to handle as much business as possible in open session. Should a Board choose to go into closed session, the Board must adopt a motion that states the statutory basis for the closed session and includes a list of non-members who will remain in the room along with the reason. For example, you may wish to have your Executive Director present in a closed session for the purpose of aiding you in your discussion. If you are receiving legal advice, your counsel will be present. When you return to open session you must adopt a certification that states that only matters listed in your motion were discussed in the closed session.

FOIA also requires that minutes be taken of all meetings. Draft minutes are posted on the Regulatory Town Hall website, www.townhall.virginia.gov within 10 days of your meeting. Final minutes are posted within three days of the meeting.

Laws and Regulations

Laws (statutes) are adopted by the General Assembly and contained in the *Code of Virginia*. A listing of statutes relevant to your Boards is contained on the next page. Each of your Board specific statutes set forth provisions relating to the composition of your board; quorum requirements; the necessity for licensure, exemptions from licensure, etc.

Regulations are promulgated by the Board in accordance with the Administrative Process Act. All regulations must be authorized by statute. A review of the regulatory process is provided at Tab 5C.

Code of Virginia

Statutory provisions for all Boards under DPOR fall under Title 54.1 of the *Code of Virginia*. The first three chapters of Title 54.1 apply to all Boards and the Department. The remaining chapters apply to specific Boards.

Chapter 1	General Provisions (54.1-100 thru 54.1-117)
Chapter 2	General Provisions (54.1-200 thru 54.1-204)
Chapter 3	Department of Professional and Occupational Regulation (54.1-300 thru 54.1-311)
Chapter 4	Architects, Professional Engineers, Land Surveyors, Landscape Architects and Interior Designers (54.1-400 thru 54.1-415)
Chapter 5	Asbestos, Lead, and Home Inspection Contractors and Workers (54.1-500 thru 54.1-517.2)
Chapter 6	Auctioneers (54.1-600 thru 54.1-607)
Chapter 7	Barbers and Cosmetologists (54.1-700 thru 54.1-706)
Chapter 8.1	Boxing and Wrestling Events (54.1-828 thru 54.1-835)
Chapter 9	Branch Pilots (54.1-900 thru 54.1-927)
Chapter 11	Contractors (54.1-1100 thru 54.1-1143)
Chapter 14	Geologists (54.1-1400 thru 54.1-1405)
Chapter 15	Hearing Aid Specialists (54.1-1500 thru 54.1-1505)
Chapter 17	Opticians (54.1-1700 thru 54.1-1706)
Chapter 18	Polygraph Examiners (54.1-1800 thru 54.1-1806)
Chapter 20.1	Real Estate Appraisers (54.1-2009 thru 54.1-2019)
Chapter 21	Real Estate Brokers and Salespersons (54.1-2100 thru 54.1-2145)
Chapter 22	Soil Scientists and Wetland Delineators (54.1-2200 thru 54.1-2208)
Chapter 22.1	Waste Management Facility Operators (54.1-2209 thru 54.1-2212)
Chapter 23	Waterworks and Wastewater Works Operators (54.1-2300 thru 54.1-2302)
Chapter 23.1	Cemetery Operators, Perpetual Care Trust Funds and Preneed Burial (54.1-2310 thru 54.1-2342)
Chapter 23.2	Fair Housing (54.1-2343 thru 54.1-2344)
Chapter 23.3	Common Interest Communities (54.1-2345 thru 54.1-2354)

In addition, you are required by statute to become familiar with the State and Local Government Conflict of Interests Act upon your appointment to the Board and to review the Act each year. (Title 2.2, Chapter 31, 2.2-3100 thru 2.2-3131)

The Administrative Process Act governs the way you promulgate regulations and make case decisions. (Title 2.2, Chapter 40, 2.2-4000 thru 2.2-4032). The Freedom of Information Act governs many aspects of your meetings and also governs the Department's release of information policy. (Title 2.2, Chapter 37, 2.2-3700 thru 2.2-3714).

All chapters are included in this manual and are bookmarked for easy navigation.

Some Boards members may need to be familiar with other provisions unique to their Board. Your Executive Director will review these provisions with you.

Code of Virginia

Title 54.1, Chapter 1

General Provisions

§ 54.1-100. Regulations of professions and occupations.

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.
No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:
1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.
No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

(1979, c. 408, § 54-1.17; 1988, c. 765.)

§ 54.1-100.1. Department of Commerce continued as Department of Professional and Occupational Regulation.

The Department of Professional and Occupational Regulation, formerly known as the Department of Commerce, is continued, and wherever "Department of Commerce" is used in this Code, it shall mean the Department of Professional and Occupational Regulation. The Board for Professional and Occupational Regulation, formerly known as the Board of Commerce, is continued, and wherever "Board of Commerce" is used in this Code, it shall mean the Board for Professional and Occupational Regulation.

(1993, c. 499.)

§ 54.1-101. Copies of examinations filed by regulatory boards.

A copy of examinations given by regulatory and advisory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions authorized to conduct examinations of applicants for admission to practice or pursue any profession, vocation, trade, calling, or art shall be kept on file at the office of the secretary of each board. A copy of the examination shall be placed on file within ten days after it is administered, and shall be preserved for at least one year as a public record accessible to any person desiring to examine it during usual business hours. After the expiration of one year from the time the examination is filed, the secretary of the respective board may withdraw and destroy the examination. However, this section shall not be construed or interpreted in a manner to require the filing or release of examinations or other information which would result in compromising the validity or security of future examinations conducted by regulatory or advisory boards of the Department of Professional and Occupational Regulation or the Department of Health Professions. In the event any provision of this section results in a conflict with the provisions of § 54.1-108, the provisions of § 54.1-108 shall prevail.

(Code 1950, § 54-1; 1952, c. 227; 1959, Ex. Sess., c. 94; 1960, c. 10; 1962, c. 13; 1970, c. 623; 1973, c. 284; 1985, c. 448; 1988, c. 765; 1993, c. 499.)

§ 54.1-102. Unlawful procurement of certificate, license or permit; unauthorized possession of examination or answers; penalty.

A. It shall be unlawful:
1. For any person to procure, or assist another to procure, through theft, fraud or other illegal means, a certificate, license or permit, from any state board, or other body charged by law with the responsibility of examining persons desiring to engage in a regulated business or profession, by giving to, or receiving from, any person any information, oral, written or printed, during the administration of the examination, which is intended to, or will, assist any person taking the examination in passing the examination and obtaining the required certificate, license or permit;
2. For any person, other than a member or officer of the board or body, to procure or have in his possession prior to the beginning of an examination, without written authority of a member or officer of the board or body, any question intended to be used by the board or body conducting the examination, or to receive or furnish to any person taking the examination, prior to or during the examination, any written or printed material purporting to be answers to, or aid in answering such questions;
3. For any person to attempt to procure, through theft, fraud or other illegal means, any questions intended to be used by the board or body conducting the examination, or the answers to the questions;
4. To promise or offer any valuable or other consideration to a person having access to the questions or answers as an inducement to procure for delivery to the promisor, or any other person, a copy or copies of any questions or answers.
If an examination is divided into separate parts, each of the parts shall be deemed an examination for the purposes of this section.
B. Any person violating the provisions of subsection A shall be guilty of a Class 2 misdemeanor.

(Code 1950, §§ 54-1.1, 54-1.2; 1988, c. 765.) § 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

(1979, c. 408, § 54-1.28; 1983, c. 569; 1988, c. 765; 1990, c. 194; 1993, c. 499.)

§ 54.1-104. Suspension of license, certificate, registration, or authority for dishonor of fee payment; reinstatement.

The Department of Professional and Occupational Regulation and the Department of Health Professions may suspend the license, certificate, registration or authority it has issued any person who submits a check, money draft or similar instrument for payment of a fee required by statute or regulation which is not honored by the bank or financial institution named. The suspension shall become effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to such person's address. Upon notification of suspension, the person may reinstate the license, certificate, registration or authority upon payment of the fee and penalties required under statute or regulation. Suspension under this provision shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

(1980, c. 433, § 54-1.2:1; 1988, c. 765; 1993, c. 499.) § 54.1-105. Majority of board or panel required to suspend or revoke license, certificate, registration, or multistate licensure privilege; imposition of sanctions.

An affirmative vote of a majority of those serving on a board who are qualified to vote or those serving on a panel of a health regulatory board convened pursuant to § 54.1-2400 shall be required for any action to suspend or revoke a license, certification, registration, or multistate licensure privilege to practice nursing or to impose a sanction on a licensee. However, an affirmative vote of a majority of a quorum of the regulatory board shall be sufficient for summary suspension pursuant to specific statutory authority.

(1988, c. 765; 1992, c. 659; 2004, c. 49.)

§ 54.1-106. Health care professionals rendering services to patients of certain clinics exempt from liability.

A. No person who is licensed or certified by the Boards ofor Audiology and Speech-Language Pathology; Counseling; Dentistry; Medicine; Nursing; Optometry; Opticians; Pharmacy; Hearing Aid Specialists; Psychology; or Social Work or who holds a multistate licensure privilege to practice nursing issued by the Board of Nursing who renders at any site any health care services within the

limits of his license, certification or licensure privilege, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of his gross negligence or willful misconduct.

For purposes of this section, any commissioned or contract medical officers or dentists serving on active duty in the United States armed services and assigned to duty as practicing commissioned or contract medical officers or dentists at any military hospital or medical facility owned and operated by the United States government shall be deemed to be licensed pursuant to this title.

B. For the purposes of Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, any person rendering such health care services who (i) is registered with the Division of Risk Management and (ii) has no legal or financial interest in the clinic from which the patient is referred shall be deemed an agent of the Commonwealth and to be acting in an authorized governmental capacity with respect to delivery of such health care services. The premium for coverage of such person under the Risk Management Plan shall be paid by the Department of Health.

C. For the purposes of this section and Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

(1983, c. 25, § 54-1.2:2; 1988, c. 765; 1989, c. 159; 1992, cc. 414, 706; 1995, cc. 509, 531; 1996, c. 748; 1999, c. 834; 2000, cc. 473, 618, 632; 2004, c. 49.)

§ 54.1-106.1. Notification to licensees of the Board of Medicine about immunity for health care services to patients of free clinics.

The Board of Medicine shall provide to its licensees a full description of the protection from civil liability established pursuant to § 54.1-106. Such description shall explain the coverage available under the Division of Risk Management pursuant to subsection B of § 54.1-106.

(2005, c. 134.) § 54.1-107. Appointments, terms and removal of members of regulatory boards; citizen members.

All members of regulatory boards shall be citizens of the United States and residents of Virginia. Members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.2-108. Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified. Appointment to fill an unexpired term shall not be considered a full term. All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No member shall serve more than two successive full terms on any regulatory board.

A "citizen member" of a regulatory board shall be a person who (i) is not by training or experience a practitioner of the profession or occupation regulated by the board, (ii) is not the spouse, parent, child, or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board.

The provisions of this section shall not apply to the Board for Branch Pilots.

(1981, c. 447, § 54-1.18:1; 1988, cc. 42, 765.) § 54.1-108. Disclosure of official records.

Official records of the Department of Professional and Occupational Regulation or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except for the following:
1. Examination questions, papers, booklets and answer sheets, which may be disclosed at the discretion of the board administering or causing to be administered such examinations.
2. Applications for admission to examinations or for licensure, and the scoring records maintained by any board or by the Departments on individual licensees or applicants. However, this material may be made available during normal working hours for copying by the subject individual at his expense at the office of the Department or board which possesses the material.
3. Records of active investigations being conducted by the Departments or any board.

(1979, c. 408, § 54-1.41; 1982, c. 207; 1988, c. 765; 1993, c. 499.)

§ 54.1-109. Reviews and appeals.

Any person who has been aggrieved by any action of the Department of Professional and Occupational Regulation, Department of Health Professions, Board for Professional and Occupational Regulation, Board of Health Professions, any regulatory board within the Departments or any panel of a health regulatory board convened pursuant to § 54.1-2400 shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

(1979, c. 408, § 54-1.19; 1988, c. 765; 1992, c. 659; 1993, c. 499.)

§ 54.1-110. Presiding officer; participation of board in hearing; disqualification of board member.

A. Every hearing in a contested case shall be conducted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). When a hearing officer presides, the regulatory board shall determine whether the hearing officer is to hear the case alone or with a panel of a health regulatory board convened pursuant to § 54.1-2400 or whether the board is to hear the case with the hearing officer.
B. A board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the board or panel shall determine whether the individual should be disqualified.

(1979, c. 408, § 54-1.37; 1986, c. 615; 1988, c. 765; 1992, c. 659.)

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:
1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.
5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.
6. Materially misrepresenting facts in an application for licensure, certification or registration.
7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.
8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.
9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.
Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivision 1 through 8 of this subsection, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation, may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.
B. In addition to the criminal penalties provided for in subsection A, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section and to recover a civil penalty of at least $200 but not more than $5,000 per violation, with each unlawful act constituting a separate violation; but in no event shall the civil penalties against any one person, partnership, corporation or other entity exceed $25,000 per year. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.
C. This section shall not be construed to prohibit or prevent the owner of patient records from (i) retaining copies of his patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice or (ii) charging a reasonable fee, in accordance with subsections A and B of § 8.01-413 or subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.
D. Nothing in this section, nor §§ 13.1-543, 13.1-1102, 54.1-2902, and 54.1-2929, shall be construed to prohibit or prevent any entity of a type listed in § 13.1-542.1 or 13.1-1101.1, which employs or contracts with an individual licensed by a health regulatory board, from (i) practicing or engaging in the practice of a profession or occupation for which such individual is licensed, (ii) providing or rendering professional services related thereto through the licensed individual, or (iii)

having a legitimate interest in enforcing the terms of employment or its contract with the licensed individual.
E. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege to practice nursing in the Commonwealth of Virginia.

(1979, c. 408, § 54-1.20; 1988, c. 765; 1993, cc. 129, 499; 1998, c. 470; 2001, c. 544; 2003, cc. 753, 762; 2004, c. 49; 2005, cc. 398, 642, 697; 2008, c. 358.)

§ 54.1-112. Copies of records as evidence.

Copies of all records, documents and other papers of the Department of Professional and Occupational Regulation and the Department of Health Professions and their regulatory boards which bear the official seal and which are duly certified and authenticated in writing on the face of such documents to be true copies by the custodian thereof and by the person to whom the custodian reports shall be received as evidence with like effect as the original records, documents or other papers in all courts of the Commonwealth.

(1988, c. 765; 1993, c. 499.)

§ 54.1-113. Regulatory boards to adjust fees; certain transfer of moneys collected on behalf of health regulatory boards prohibited.

A. Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.
B. Nongeneral funds generated by fees collected on behalf of the health regulatory boards and accounted for and deposited into a special fund by the Director of the Department of Health Professions shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Intervention Program, and the Department and Board of Health Professions and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2.

(1981, c. 558, § 54-1.28:1; 1988, c. 765; 1993, c. 499; 2006, c. 631.)

§ 54.1-114. Biennial report.

The Board of Bar Examiners, the Department of Professional and Occupational Regulation and the Department of Health Professions shall submit biennial reports to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the following information for the Board of Bar Examiners and for each board within the two Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints received against licensees and the procedures

used to resolve the complaints, and (v) a description of any action taken by the board designed to increase public awareness of board operations and to facilitate public participation. The Department of Health Professions shall include, in those portions of its report relating to the Board of Medicine, a compilation of the data required by § 54.1-2910.1.

(1985, c. 537, § 54-1.2:3; 1988, c. 765; 1993, c. 499; 1998, c. 744; 2004, c. 650.)

§ 54.1-115.

Expired.

§ 54.1-116. Applicants to include social security numbers, or other identifying number; exemption.

A. Every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to this title, and every applicant for renewal thereof, shall provide on the application either his social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. An initial application or renewal application which does not include either identifying number shall not be considered or acted upon by the issuing entity, and no refund of any fees paid with the application shall be granted.
B. Notwithstanding the provisions of subsection A, a health regulatory board of the Department of Health Professions may issue a temporary license or authorization to practice, effective for not longer than 90 days, to an otherwise qualified applicant for a license, certificate or registration who is a foreign national and cannot provide a social security number or control number at the time of application.

(1997, cc. 794, 898; 2003, c. 803.)

§ 54.1-117. Expiration of documents issued to persons in service in the armed services of the United States.

Notwithstanding any contrary provision of law, any license, permit, certificate, or other document, however styled or denominated, that is related to the practice of any business, profession, or calling and issued under this title to any citizen of the Commonwealth shall be held not to have expired during the period of such person's service outside the United States, in the armed services of the United States or as a member of the diplomatic service of the United States, appointed under the Foreign Service Act of 1946, serving outside the United States and 60 days thereafter. However, no extension granted under this section shall exceed five years from the date of expiration of the document.
For the purposes of this section "service in the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

(2004, c. 975.)

Code of Virginia

Title 54.1, Chapter 2

General Provisions

§ 54.1-200. Composition of regulatory boards.

A regulatory board established to administer a system of certification or licensure as provided in §§ 54.1-310 and 54.1-311, unless otherwise specified by law, shall consist of at least five members. The Board for Professional and Occupational Regulation may recommend to the General Assembly the number of members to be placed on the regulatory board. Two members of each board established hereafter shall be citizen members and the remainder of the members shall be practitioners of the profession or occupation which is being regulated. Citizen members shall participate in all matters except decisions regarding the examination of applicants for licensure or decisions regarding the professional competence of licensees. Terms of the members shall be staggered to ensure a continuing body.

(1979, c. 408, § 54-1.27; 1988, c. 765; 1993, c. 499.)

§ 54.1-201. Powers and duties of regulatory boards.

The powers and duties of regulatory boards shall be as follows:
1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.
2. To examine, or cause to be examined, the qualifications of each applicant for certification or licensure within its particular regulatory system, including when necessary the preparation, administration and grading of examinations.
3. To certify or license qualified applicants as practitioners of the particular profession or occupation regulated by such board.
4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.
5. 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.
6. To ensure that inspections are conducted relating to the practice of each practitioner certified or licensed by the regulatory board to ensure that the practitioner is conducting his practice in a competent manner and within the lawful regulations promulgated by the board.

7. To place a regulant on probation or revoke, suspend or fail to renew a certificate or license for just causes as enumerated in regulations of the board. Conditions of probation may include, but not be limited to the successful completion of remedial education or examination.
8. To receive complaints concerning the conduct of any person whose activities are regulated by the regulatory board and to take appropriate disciplinary action if warranted.
9. To promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

(1979, c. 408, § 54-1.28; 1983, c. 569; 1988, c. 765; 1993, c. 499; 2005, c. 383.)

§ 54.1-202. Monetary penalty; delegation to Director of authority enter consent agreements.

A. Any person licensed or certified by a regulatory board who violates any statute or regulation pertaining to that regulatory board who is not criminally prosecuted shall be subject to the monetary penalty provided in this section. If a regulatory board determines that a respondent is guilty of the violation complained of, the board shall determine the amount of the monetary penalty for the violation, which shall not exceed $2,500 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth.
B. Any regulatory board within the Department of Professional and Occupational Regulation may adopt a resolution delegating to the Director the authority to enter into consent agreements on behalf of the regulatory board with regulants of the board. Such resolution shall specify the types of violations to which the delegation applies and the maximum monetary penalty that may be imposed in a consent agreement for each regulatory violation. No delegation of authority pursuant to this subsection shall provide for a monetary penalty over $2,500 per regulatory violation.

(1979, c. 408, § 54-1.22; 1988, c. 765; 1999, cc. 37, 950; 2001, c. 832; 2005, c. 383.)

§ 54.1-203. Recovery of cost after grant of formal fact-finding.

After a formal fact-finding pursuant to § 2.2-4020 wherein a sanction is imposed to fine, or to suspend, revoke or deny renewal of any license, certificate or registration, the regulatory board or the Department may assess the holder thereof the cost of conducting such fact-finding when the board or Department has final authority to grant such license, certificate or registration, unless the board or Department determines that the offense was inadvertent or done in a good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings.

(1983, c. 401, § 54-1.22:1; 1988, c. 765.)

§ 54.1-204. Prior convictions not to abridge rights.

A. A person shall not be refused a license, certificate or registration to practice, pursue, or engage in any regulated occupation or profession solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license, certificate or registration is sought. However, the regulatory board shall have the authority to refuse a license, certificate or registration if, based upon all the information available, including the applicant's record

of prior convictions, it finds that the applicant is unfit or unsuited to engage in such occupation or profession.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;
2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;
3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;
4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;
5. The extent and nature of the person's past criminal activity;
6. The age of the person at the time of the commission of the crime;
7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;
8. The conduct and work activity of the person prior to and following the criminal activity; and
9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

C. A regulatory board or department may require any applicant for registration, licensure or certification to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. Such applicant shall pay the cost of the fingerprinting or a criminal records check or both.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the regulatory board or department or their designee, who must belong to a governmental entity. If an applicant is denied a registration, license or certificate because of the information appearing in his criminal history record, the regulatory board or department shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The information shall not be disseminated except as provided for in this section.

D. A regulatory board or department shall consider the criminal information as contained in the applicant's state or national criminal history in lieu of the applicant providing certified copies of such court records in determining whether a criminal conviction directly relates to an occupation or profession or if an applicant is unfit or unsuited to engage in an occupation or profession. The regulatory board or department may request additional information from the applicant in making such determination.

(1979, c. 408, § 54-1.21; 1988, c. 765; 2003, c. 582.)

Code of Virginia

Title 54.1, Chapter 3

Department of Professional and Occupational Regulation

§ 54.1-300. (Effective until July 1, 2009) Definitions.

As used in this chapter unless the context requires a different meaning:
"Board" means the Board for Professional and Occupational Regulation.
"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.
"Department" means the Department of Professional and Occupational Regulation.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.
"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.
"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.
"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, and Virginia Board for Asbestos, Lead, and Home Inspectors.

(1979, c. 408, § 54-1.18; 1980, c. 757; 1981, c. 132; 1982, c. 538; 1983, cc. 115, 322; 1984, cc. 82, 203; 1985, c. 448; 1987, c. 686; 1988, cc. 354, 716, 765; 1990, cc. 459, 466; 1991, c. 551; 1993, c. 499; 1998, c. 27; 1999, c. 950; 2000, c. 726; 2001, cc. 723, 832; 2002, c. 784; 2003, c. 575.)

§ 54.1-300. (Effective July 1, 2009) Definitions.

As used in this chapter unless the context requires a different meaning:
"Board" means the Board for Professional and Occupational Regulation.
"Certification" means the process whereby the Department or any regulatory board issues a certificate on behalf of the Commonwealth to a person certifying that he possesses the character and minimum skills to engage properly in his profession or occupation.

"Department" means the Department of Professional and Occupational Regulation.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Inspection" means a method of regulation whereby a state agency periodically examines the activities and premises of practitioners of an occupation or profession to ascertain if the practitioner is carrying out his profession or occupation in a manner consistent with the public health, safety and welfare.
"Licensure" means a method of regulation whereby the Commonwealth, through the issuance of a license, authorizes a person possessing the character and minimum skills to engage in the practice of a profession or occupation that is unlawful to practice without a license.
"Registration" means a method of regulation whereby any practitioner of a profession or occupation may be required to submit information concerning the location, nature and operation of his practice.
"Regulatory board" means the Auctioneers Board, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, Board for Barbers and Cosmetology, Board for Branch Pilots, Board for Contractors, Board for Geology, Board for Hearing Aid Specialists, Board for Opticians, Board for Professional Soil Scientists and Wetland Professionals, Board for Waste Management Facility Operators, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Cemetery Board, Real Estate Appraiser Board, Real Estate Board, Fair Housing Board, and Virginia Board for Asbestos, Lead, and Home Inspectors.

(1979, c. 408, § 54-1.18; 1980, c. 757; 1981, c. 132; 1982, c. 538; 1983, cc. 115, 322; 1984, cc. 82, 203; 1985, c. 448; 1987, c. 686; 1988, cc. 354, 716, 765; 1990, cc. 459, 466; 1991, c. 551; 1993, c. 499; 1998, c. 27; 1999, c. 950; 2000, c. 726; 2001, cc. 723, 832; 2002, c. 784; 2003, c. 575; 2007, cc. 892, 924.)

§ 54.1-301. Department continued; appointment of Director.

The Department of Professional and Occupational Regulation within the executive branch is hereby continued. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with that of the Governor.

(1979, c. 408, § 54-1.30; 1984, c. 720; 1988, c. 765; 1993, c. 499.)

§ 54.1-302. Supervision of Department.

The Director of the Department of Professional and Occupational Regulation shall be responsible for the supervision of the Department under the direction and control of the Governor and shall exercise such other powers and perform such other duties as the Governor requires.

(1979, c. 408, § 54-1.31; 1984, c. 720; 1988, c. 765; 1993, c. 499.)

§ 54.1-303. General powers of Director.

The Director shall have the following general powers:

To employ personnel and assistance necessary for the operation of the Department and the purposes of this chapter.
To make and enter into all contracts and agreements necessary or incidental to the performance of the duties of the Department and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth.
To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.
To do all acts necessary or convenient to carry out the purposes of this subtitle.

(1979, c. 408, § 54-1.32; 1988, c. 765.)

§ 54.1-304. Powers and duties of the Director with respect to regulatory boards.

Each of the regulatory boards within the Department shall be a separate board. All of the administrative functions of the regulatory boards shall be under the direction and supervision of the Director.
In the performance and discharge of his duties with respect to the regulatory boards, the Director shall:
1. Be the secretary of each board;
2. Maintain all records for each board;
3. Collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards and Department shall be paid;
4. Enforce all statutes and regulations the Director is required to administer;
5. Exercise other powers necessary to function as the sole administrative officer of each of such boards; and
6. Perform any additional administrative functions prescribed by the Board.

(1979, c. 408, § 54-1.33; 1984, c. 734; 1988, c. 765.)

§ 54.1-305. Bond of Director.

Before entering upon the discharge of his duties, the Director shall give bond payable to the Commonwealth of Virginia conditioned upon the faithful discharge of his duties in a form approved by the Attorney General, in such penalty as shall be fixed by the Governor, with a surety or guaranty company authorized to do business in this Commonwealth. The premium required for the bond shall be paid out of the administrative fund appropriated to the Department, and the bond shall be filed with and preserved by the Comptroller.

(1979, c. 408, § 54-1.34; 1988, c. 765.)

§ 54.1-306. Enforcement of laws by Director or investigators; authority of investigators appointed by Director.

A. The Director or investigators appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of this title, and any of the programs which may be in another title of this Code for which any regulatory board within Subtitle II has enforcement responsibility. The Director or investigators appointed by him shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce. The Director or investigators appointed by him shall also have the authority to issue summonses for violations of the statutes and regulations governing the unlicensed practice of professions regulated by the Department. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. In addition, sworn criminal investigators of the Department's Criminal Investigations section shall be statewide conservators of the peace while engaged in the performance of their official duties.

B. All investigators appointed by the Director are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this subtitle, or any regulation promulgated pursuant to authority given by this subtitle or in connection with any investigation conducted on behalf of any regulatory board within this subtitle or a program which may be located in another title in this Code. Such investigators are vested with the authority to obtain, serve and execute any warrant, paper or process issued by any court or magistrate or any regulatory board under the authority of the Director and request and receive criminal history information under the provisions of § 19.2-389.

C. Any regulatory board within the Department of Professional and Occupational Regulation may adopt a resolution delegating to the sworn investigators appointed by the Director pursuant to § 54.1-306, the authority to conduct inspections. After conducting an inspection pursuant to the delegation of inspection authority, an investigator may initiate an investigation based on any act, omission, or condition witnessed by the investigator and offer a consent agreement to the regulant to resolve any violation discovered during the inspection, subject to the provisions of subsection B of § 54.1-202. If a consent agreement is offered pursuant to the delegation of authority authorized by this subsection, it shall not become effective until approved by the Director.

(1979, c. 408, § 54-1.39; 1988, c. 765; 1989, c. 16; 1991, c. 130; 2002, c. 605; 2005, c. 383.)

§ 54.1-307. Subpoenas.

In addition to the authority granted in § 2.2-4022 to issue subpoenas and the right to issue subpoenas granted the several regulatory boards within the Department of Professional and Occupational Regulation, the Director or a designated subordinate shall have the right to make an ex parte application to the circuit court for the city or county wherein evidence sought is kept or wherein a licensee does business, for the issuance of a subpoena duces tecum in furtherance of the investigation of a sworn complaint within the jurisdiction of the Department or a regulatory board to request production of any relevant records, documents and physical or other evidence of any person, partnership, association or corporation licensed or regulated by the Department. The court shall be authorized to issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be

destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence.

(1979, c. 408, § 54-1.40; 1988, c. 765; 1993, c. 499.)

§ 54.1-307.1. Time for filing complaints against regulants.

A. Except as otherwise provided in § 36-96.9 and subsections B and C of this section, any complaint against a regulant for any violation of statutes or regulations pertaining to the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of this title or any of the programs which may be in another title of the Code for which any regulatory board within Subtitle II has enforcement responsibility, in order to be investigated by the Department, shall be made in writing, or otherwise made in accordance with Department procedures, and received by the Department within three years of the act, omission or occurrence giving rise to the violation. Public information obtained from any source by the Director or agency staff may serve as the basis for a written complaint against a regulant.

B. However, where a regulant has materially and willfully misrepresented, concealed or omitted any information and the information so misrepresented, concealed or omitted is material to the establishment of the violation, the complaint may be made at any time within two years after discovery of the misrepresentation, concealment or omission.

C. In cases where criminal charges have been filed involving matters that, if found to be true, would also constitute a violation of the regulations or laws of the regulant's profession enforced by the Department, an investigation may be initiated by the Department at any time within two years following the date such criminal charges are filed.

D. Nothing in this section shall be construed to require the filing of a complaint if the alleged violation of the statute or regulation is discovered during the conduct of an inspection authorized by law, and the acts, omissions, or conditions constituting the alleged violations are witnessed by a sworn investigator appointed by the Director.

(1994, c. 581; 2004, c. 297; 2005, c. 383.)

§ 54.1-308. Departmental expenses.

The compensation of the Director and the employees within the Department, including the compensation of the members of each board, shall be paid out of the total funds collected and charged to the accounts of the respective boards. The Director shall maintain a separate account for each board showing the moneys collected on its behalf and the expenses allocated to each board.

(1979, c. 408, § 54-1.42; 1988, c. 765.)

§ 54.1-308.1. Interest on cash bonds held by regulatory boards of Department.

Interest earned on any cash bond held by the Department on behalf of any regulatory board shall be credited to the Department.

(1995, c. 43.)

§ 54.1-309. Board for Professional and Occupational Regulation; members, terms, chairman; meetings.

There shall be a Board for Professional and Occupational Regulation within the Department of Professional and Occupational Regulation. The Board shall consist of nine members appointed by the Governor, subject to confirmation by the General Assembly. Members shall serve for four-year terms and no member shall serve for more than two full successive terms. The chairman of the Board shall be elected annually by the Board.
The Board shall meet at least four times annually, and on the call of the chairman when he deems additional meetings necessary.

(1979, c. 408, §§ 54-1.23, 54-1.24; 1988, c. 765; 1993, c. 499.)

§ 54.1-310. Powers and duties of Board.

A. The Board shall have the following powers and duties:
1. Provide a means of citizen access to the Department.
2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
3. Monitor the policies and activities of the Department and have the right of access to departmental information.
4. Advise the Governor and the Director on matters relating to the regulation of professions and occupations.
5. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to carry out its responsibilities.
6. Evaluate constantly each profession and occupation in the Commonwealth not otherwise regulated for consideration as to whether such profession or occupation should be regulated and, if so, the degree of regulation that should be imposed. Whenever it determines that the public interest requires that a profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly next convened a regulatory system accompanied by comprehensive regulations necessary to conduct the degree of regulation required.
B. Upon the regulation of a profession or occupation as set forth in subsection A, the Board shall have the power and duty to promulgate supplemental regulations necessary to effectuate the purposes and intent of this chapter and to establish regulatory boards to administer the system of regulation and the regulations recommended by the Board and approved by the General Assembly.

(1979, c. 408, § 54-1.25; 1984, cc. 720, 734; 1988, c. 765.)

§ 54.1-311. Degrees of regulation.

A. Whenever the Board determines that a particular profession or occupation should be regulated, or that a different degree of regulation should be imposed on a regulated profession or occupation,

it shall consider the following degrees of regulation in the order provided in subdivisions 1 through 5. The Board shall regulate only to the degree necessary to fulfill the need for regulation and only upon approval by the General Assembly.

1. Private civil actions and criminal prosecutions. - Whenever existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the Board may first consider the recommendation of statutory change to provide more strict causes for civil action and criminal prosecution.

2. Inspection and injunction. - Whenever current inspection and injunction procedures are not sufficient to eradicate existing harm, the Board may promulgate regulations consistent with the intent of this chapter to provide more adequate inspection procedures and to specify procedures whereby the appropriate regulatory board may enjoin an activity which is detrimental to the public well-being. The Board may recommend to the appropriate agency of the Commonwealth that such procedures be strengthened or it may recommend statutory changes in order to grant to the appropriate state agency the power to provide sufficient inspection and injunction procedures.

3. Registration. - Whenever it is necessary to determine the impact of the operation of a profession or occupation on the public, the Board may implement a system of registration.

4. Certification. - When the public requires a substantial basis for relying on the professional services of a practitioner, the Board may implement a system of certification.

5. Licensing. - Whenever adequate regulation cannot be achieved by means other than licensing, the Board may establish licensing procedures for any particular profession or occupation.

B. In determining the proper degree of regulation, if any, the Board shall determine the following:

1. Whether the practitioner, if unregulated, performs a service for individuals involving a hazard to the public health, safety or welfare.

2. The opinion of a substantial portion of the people who do not practice the particular profession, trade or occupation on the need for regulation.

3. The number of states which have regulatory provisions similar to those proposed.

4. Whether there is sufficient demand for the service for which there is no regulated substitute and this service is required by a substantial portion of the population.

5. Whether the profession or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics.

6. Whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications.

7. Whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation.

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.

9. Whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety and welfare.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

(1979, c. 408, § 54-1.26; 1988, c. 765.)

Code of Virginia

Title 54.1, Chapter 4

Architects, Professional Engineers, Land Surveyors, Landscape Architects and Interior Designers

§ 54.1-400. Definitions.

As used in this chapter unless the context requires a different meaning:
"Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture and whose competence has been attested by the Board through licensure as an architect.
The "practice of architecture" means any service wherein the principles and methods of architecture are applied, such as consultation, investigation, evaluation, planning and design, and includes the responsible administration of construction contracts, in connection with any private or public buildings, structures or projects, or the related equipment or accessories.
"Board" means the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects.
"Certified interior designer" means a design professional who meets the criteria of education, experience, and testing in the rendering of interior design services established by the Board through certification as an interior designer.
"Certified landscape architect" means a person who, by reason of his special knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and whose competence has been attested by the Board through certification as a landscape architect.
The "practice of landscape architecture" by a certified landscape architect means any service wherein the principles and methodology of landscape architecture are applied in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to projects principally directed at the functional and aesthetic use of land.
"Improvements to real property" means any valuable addition or amelioration made to land and generally whatever is erected on or affixed to land which is intended to enhance its value, beauty or utility, or adapt it to new or further purposes. Examples of improvements to real property include, but are not limited to, structures, buildings, machinery, equipment, electrical systems, mechanical systems, roads, and water and wastewater treatment and distribution systems.
"Interior design" by a certified interior designer means any service rendered wherein the principles and methodology of interior design are applied in connection with the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment. Such services relative to interior spaces shall include the preparation of documents for nonload-bearing

interior construction, furnishings, fixtures, and equipment in order to enhance and protect the health, safety, and welfare of the public.
"Land surveyor" means a person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, and whose competence has been attested by the Board through licensure as a land surveyor.
The "practice of land surveying" includes surveying of areas for a determination or correction, a description, the establishment or reestablishment of internal and external land boundaries, or the determination of topography, contours or location of physical improvements, and also includes the planning of land and subdivisions thereof. The term "planning of land and subdivisions thereof" shall include, but not be limited to, the preparation of incidental plans and profiles for roads, streets and sidewalks, grading, drainage on the surface, culverts and erosion control measures, with reference to existing state or local standards.
"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer.
The "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The term "practice of engineering" shall not include the service or maintenance of existing electrical or mechanical systems.
"Residential wastewater" means sewage (i) generated by residential or accessory uses, not containing storm water or industrial influent, and having no other toxic, or hazardous constituents not routinely found in residential wastewater flows, or (ii) as certified by a professional engineer.
"Responsible charge" means the direct control and supervision of the practice of architecture, professional engineering, or land surveying.

(1970, c. 671, § 54-17.1; 1974, c. 534; 1980, c. 757; 1982, c. 590; 1984, c. 437; 1988, c. 765; 1990, c. 512; 1992, cc. 780, 783; 1998, c. 27; 2008, c. 68.)

§ 54.1-401. Exemptions.

The following shall be exempted from the provisions of this chapter:
1. Practice of professional engineering and land surveying by a licensed architect when such practice is incidental to what may be properly considered an architectural undertaking.
2. Practice of architecture and land surveying by a licensed professional engineer when such practice is incidental to an engineering project.
3. Practice as a professional engineer, architect or certified landscape architect in this Commonwealth by any person not a resident of and having no established place of business in this Commonwealth, or by any person resident in this Commonwealth whose arrival is recent, provided that such person is otherwise qualified for such professional service in another state or country and qualifies in Virginia and files prior to commencement of such practice an application, with the required fee, for licensure as a professional engineer or architect or certification as a landscape

architect. The exemption shall continue until the Board has had sufficient time to consider the application and grant or deny licensure or certification.
4. Engaging in the practice of professional engineering as an employee under a licensed professional engineer, engaging in the practice of architecture as an employee under a licensed architect, or engaging in the practice of land surveying as an employee under a licensed land surveyor; provided, that such practice shall not include responsible charge of design or supervision.
5. Practice of professional engineering, architecture or land surveying solely as an employee of the United States. However, the employee shall not be exempt from other provisions of this chapter if he furnishes advisory service for compensation to the public in connection with engineering, architectural or land surveying matters.
6. Practice of architecture or professional engineering by an individual, firm or corporation on property owned or leased by such individual, firm or corporation, unless the public health or safety is involved.
7. Practice of engineering solely as an employee of a corporation engaged in interstate commerce, or as an employee of a public service corporation, by rendering such corporation engineering service in connection with its facilities which are subject to regulation by the State Corporation Commission; provided, that corporation employees who furnish advisory service to the public in connection with engineering matters other than in connection with such employment shall not be exempt from the provisions of this chapter.

(Code 1950, § 54-37; 1968, c. 77; 1980, c. 757; 1988, c. 765; 1992, cc. 595, 780, 783.)

§ 54.1-402. Further exemptions from license requirements for architects, professional engineers, and land surveyors.

A. No license as an architect or professional engineer shall be required pursuant to § 54.1-406 for persons who prepare plans, specifications, documents and designs for the following, provided any such plans, specifications, documents or designs bear the name and address of the author and his occupation:
1. Single- and two-family homes, townhouses and multifamily dwellings, excluding electrical and mechanical systems, not exceeding three stories; or
2. All farm structures used primarily in the production, handling or storage of agricultural products or implements, including, but not limited to, structures used for the handling, processing, housing or storage of crops, feeds, supplies, equipment, animals or poultry; or
3. Buildings and structures classified with respect to use as business (Use Group B) and mercantile (Use Group M), as provided in the Uniform Statewide Building Code and churches with an occupant load of 100 or less, excluding electrical and mechanical systems, where such building or structure does not exceed 5,000 square feet in total net floor area, or three stories; or
4. Buildings and structures classified with respect to use as factory and industrial (Use Group F) and storage (Use Group S) as provided in the Uniform Statewide Building Code, excluding electrical and mechanical systems, where such building or structure does not exceed 15,000 square feet in total net floor area, or three stories; or
5. Additions, remodeling or interior design without a change in occupancy or occupancy load and without modification to the structural system or a change in access or exit patterns or increase in fire hazard; or

6. Electric installations which comply with all applicable codes and which do not exceed 600 volts and 800 amps, where work is designed and performed under the direct supervision of a person licensed as a master's level electrician or Class A electrical contractor by written examination, and where such installation is not contained in any structure exceeding three stories or located in any of the following categories:
a. Use Group A-1 theaters which exceed assembly of 100 persons;
b. Use Group A-4 except churches;
c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or
7. Plumbing and mechanical systems using packaged mechanical equipment, such as equipment of catalogued standard design which has been coordinated and tested by the manufacturer, which comply with all applicable codes. These mechanical systems shall not exceed gauge pressures of 125 pounds per square inch, other than refrigeration, or temperatures other than flue gas of 300§ F (150 degrees C) where such work is designed and performed under the direct supervision of a person licensed as a master's level plumber, master's level heating, air conditioning and ventilating worker, or Class A contractor in those specialties by written examination. In addition, such installation may not be contained in any structure exceeding three stories or located in any structure which is defined as to its use in any of the following categories:
a. Use Group A-1 theaters which exceed assembly of 100 persons;
b. Use Group A-4 except churches;
c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or
8. The preparation of shop drawings, field drawings and specifications for components by a contractor who will supervise the installation and where the shop drawings and specifications (i) will be reviewed by the licensed professional engineer or architect responsible for the project or (ii) are otherwise exempted; or
9. Buildings, structures, or electrical and mechanical installations which are not otherwise exempted but which are of standard design, provided they bear the certification of a professional engineer or architect registered or licensed in another state, and provided that the design is adapted for the specific location and for conformity with local codes, ordinances and regulations, and is so certified by a professional engineer or architect licensed in Virginia; or
10. Construction by a state agency or political subdivision not exceeding $75,000 in value keyed to the January 1, 1991, Consumer Price Index (CPI) and not otherwise requiring a licensed architect, engineer, or land surveyor by an adopted code and maintenance by that state agency or political subdivision of water distribution, sewage collection, storm drainage systems, sidewalks, streets, curbs, gutters, culverts, and other facilities normally and customarily constructed and maintained by the public works department of the state agency or political subdivision; or
11. Conventional and alternative onsite sewage systems receiving residential wastewater, under the authority of Chapter 6 of Title 32.1, designed by a licensed onsite soil evaluator, which utilize packaged equipment, such as equipment of catalogued standard design that has been coordinated and tested by the manufacturer, and complies with all applicable codes, provided (i) the flow is less than 1,000 gallons per day; and (ii) if a pump is included, (a) it shall not include multiple downhill runs and must terminate at a positive elevational change; (b) the discharge end is open and not pressurized; (c) the static head does not exceed 50 feet; and (d) the force main length does not exceed 500 feet.

B. No person shall be exempt from licensure as an architect or engineer who engages in the preparation of plans, specifications, documents or designs for:
1. Any unique design of structural elements for floors, walls, roofs or foundations; or
2. Any building or structure classified with respect to its use as high hazard (Use Group H).
C. Persons utilizing photogrammetric methods or similar remote sensing technology shall not be required to be licensed as a land surveyor pursuant to subsection B of § 54.1-404 or 54.1-406 to: (i) determine topography or contours, or to depict physical improvements, provided such maps or other documents shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination, or (ii) graphically show existing property lines and boundaries on maps or other documents provided such depicted property lines and boundaries shall only be used for general information.
Any determination of topography or contours, or depiction of physical improvements, utilizing photogrammetric methods or similar remote sensing technology by persons not licensed as a land surveyor pursuant to § 54.1-406 shall not show any property monumentation or property metes and bounds, nor provide any measurement showing the relationship of any physical improvements to any property line or boundary.
Any person not licensed pursuant to subsection B of § 54.1-404 or 54.1-406 preparing documentation pursuant to subsection C of § 54.1-402 shall note the following on such documentation: "Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination."
D. Terms used in this section, and not otherwise defined in this chapter, shall have the meanings provided in the Uniform Statewide Building Code in effect on July 1, 1982, including any subsequent amendments.

(1982, c. 590, § 54-37.1; 1988, cc. 294, 765; 1992, cc. 780, 783; 2005, cc. 359, 440; 2008, c. 68.)

§ 54.1-402.1. State and local government employees; license exemptions for persons employed prior to March 8, 1992.

Any person engaged in the practice of engineering, architecture, or land surveying as those terms are defined in § 54.1-400 as a regular, full-time, salaried employee of the Commonwealth or any political subdivision of the Commonwealth on March 8, 1992, who remains employed by any state agency or political subdivision shall be exempt until June 30, 2010, from the licensure requirements of § 54.1-406 provided the employee does not furnish advisory service for compensation to the public or as an independent contracting party in this Commonwealth or any political subdivision thereof in connection with engineering, architectural, or land surveying matters. The chief administrative officer of any agency of the Commonwealth or political subdivision thereof employing persons engaged in the practice of engineering, architecture, or land surveying as regular, full-time, salaried employees shall have the authority and responsibility to determine the engineering, architecture, and land surveying positions which have responsible charge of engineering, architectural, or land surveying decisions.

(1992, cc. 780, 783; 1994, c. 379.)

§ 54.1-402.2. Cease and desist orders for unlicensed activity; civil penalty.

A. Notwithstanding § 54.1-111, the Board may issue an order requiring any person to cease and desist from (i) practicing or offering to practice as an architect, professional engineer, or land surveyor when such person is not licensed or registered by the Board in accordance with this chapter or (ii) holding himself out as a landscape architect or certified landscape architect or certified interior designer when such person is not certified or registered by the Board in accordance with this chapter. The order shall be effective upon its entry and shall become final unless such person files an appeal with the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) within 21 days of the date of entry of the order.

B. If the person fails to cease and desist the unlicensed, uncertified, or unregistered activity after entry of an order in accordance with subsection A, the Board may refer the matter for enforcement pursuant to § 54.1-306.

C. Any person engaging in unlicensed, uncertified, or unregistered activity shall be subject to further proceedings before the Board and the Board may impose a civil penalty not to exceed $2,500. Any penalties collected under this section shall be paid to the Literary Fund after deduction of the administrative costs of the Board in furtherance of this section.

D. Nothing contained in this section shall apply to any person engaged in activity exempted from the provisions of this chapter.

(2007, c. 618.)

§ 54.1-403. Board members and officers; quorum.

A. The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects shall be composed of thirteen members as follows: three architects, three professional engineers, three land surveyors, two certified landscape architects and two certified interior designers. However, the two certified interior designer members initially appointed to the Board shall be qualified for certification pursuant to this chapter. Each interior designer appointment to the Board may be made from nominations submitted by the Council of Certified Virginia Interior Designers, who shall nominate three persons for each interior designer vacancy. In no case shall the Governor be bound to make any appointment from the nominees.

Board members shall have actively practiced or taught their professions for at least ten years prior to their appointments. The terms of Board members shall be four years unless otherwise provided in subsection B.

The Board shall elect a president and vice-president from its membership.

Eight Board members, consisting of two engineers, two architects, two land surveyors, one certified landscape architect and one interior designer, shall constitute a quorum.

B. 1. Of the 1998 appointments, the terms shall be as follows: the landscape architect shall serve a one-year term, one interior designer shall serve a two-year term and one interior designer shall serve a four-year term. Of the 2000 appointments, the terms shall be as follows: one architect shall serve a three-year term, one architect shall serve a four-year term, one professional engineer shall serve a two-year term, one professional engineer shall serve a four-year term, one land surveyor shall serve a two-year term, and one land surveyor shall serve a three-year term. Of the 2001 appointments, the terms shall be as follows: the architect shall serve a four-year term, the

professional engineer shall serve a four-year term, the land surveyor shall serve a three-year term, and the landscape architect shall serve a four-year term.
2. Any appointments to a term of less than four years as specified in subdivision 1 shall not be considered a full term pursuant to § 54.1-107.

(Code 1950, §§ 54-19, 54-22, 54-23; 1980, c. 757, § 54-18.1; 1981, c. 447; 1988, cc. 42, 765; 1990, c. 512; 1991, c. 291; 1998, c. 27.)

§ 54.1-404. Regulations; code of professional practice and conduct.

A. The Board shall promulgate regulations not inconsistent with this chapter governing its own organization, the professional qualifications of applicants, the requirements necessary for passing examinations in whole or in part, the proper conduct of its examinations, the implementation of exemptions from license requirements, and the proper discharge of its duties.
B. The Board may impose different licensure requirements for a limited area of the practice of land surveying for persons who determine topography, contours, or depiction of physical improvements utilizing photogrammetric methods or similar remote sensing technology who are not otherwise exempt pursuant to subsection C of § 54.1-402. Any such requirements shall include reasonable provisions for licensure without examination of persons deemed by the Board to be qualified to provide photogrammetric and remote sensing surveying services.
Any license issued pursuant to this subsection shall be distinctive, reflecting the limited area of the practice of land surveying so authorized, and considered as a land surveyor and the practice of land surveying for the purposes of §§ 13.1-549, 13.1-1111, 54.1-402, 54.1-405, 54.1-406 and 54.1-411. Nothing herein shall be construed to authorize a person issued a limited license pursuant to this subsection to practice beyond such limited area of practice. The establishment of any such limited license shall not prohibit any duly qualified land surveyor licensed pursuant to § 54.1-400 from engaging in any such limited area of practice.
C. The regulations may include a code of professional practice and conduct, the provisions of which shall serve any or all of the following purposes:
1. The protection of the public health, safety and welfare;
2. The maintenance of standards of objectivity, truthfulness and reliability in public statements by professionals;
3. The avoidance by professionals of conflicts of interests;
4. The prohibition of solicitation or acceptance of work by professionals on any basis other than their qualifications for the work offered;
5. The restriction by the professional in the conduct of his professional activity from association with any person engaging in illegal or dishonest activities; or
6. The limitation of professional service to the area of competence of each professional.
(Code 1950, § 54-25; 1974, c. 459; 1982, c. 590; 1988, c. 765; 2005, cc. 359, 440.) § 54.1-404.1. Education and experience requirements continued.
All applicants for licensure as an architect shall be governed by the Board's rules and regulations effective February 1, 1992, except § 3.3 B of VR 130-01-2, until December 31, 1997.
(1994, c. 334.) § 54.1-404.2. Continuing education.
A. The Board shall promulgate regulations governing continuing education requirements for architects, professional engineers, and land surveyors licensed by the Board. Such regulations shall require the completion of the equivalent of 16 hours per biennium of Board-approved

continuing education activities as a prerequisite to the renewal or reinstatement of a license issued to an architect, professional engineer, or land surveyor. The Board shall establish criteria for continuing education activities including, but not limited to (i) content and subject matter; (ii) curriculum; (iii) standards and procedures for the approval of activities, courses, sponsors, and instructors; (iv) methods of instruction for continuing education courses; and (v) the computation of course credit.

B. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship.

(2006, c. 683.) § 54.1-405. Examinations and issuance of licenses and certificates.

The Board shall hold at least one examination each year at times and locations designated by the Board. A license to practice as a professional engineer, an architect, or a land surveyor, or a certificate to practice as a landscape architect shall be issued to every applicant who complies with the requirements of this chapter and the regulations of the Board. A license shall be valid during the life of the holder unless revoked or suspended by the Board. A license holder must register with the Board to practice in the Commonwealth. The licenses or certificates shall be signed by at least four members of the Board.

(Code 1950, § 54-26; 1974, c. 534; 1980, c. 757; 1988, c. 765; 1992, c. 613; 1994, c. 29.)

§ 54.1-406. License required.

A. Unless exempted by § 54.1-401, 54.1-402, or 54.1-402.1, a person shall hold a valid license prior to engaging in the practice of architecture or engineering which includes design, consultation, evaluation or analysis and involves proposed or existing improvements to real property.

Unless exempted by § 54.1-401, 54.1-402, or 54.1-402.1, a person shall hold a valid license prior to engaging in the practice of land surveying.

B. Unless exempted by § 54.1-402, any person, partnership, corporation or other entity offering to practice architecture, engineering, or land surveying without being registered or licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111 of this title.

C. Any person, partnership, corporation or other entity which is not licensed or registered to practice in accordance with this chapter and which advertises or promotes through the use of the words "architecture," "engineering" or "land surveying" or any modification or derivative thereof in its name or description of its business activity in a manner that indicates or implies that it practices or offers to practice architecture, engineering or land surveying as defined in this chapter shall be subject to the provisions of § 54.1-111.

D. Notwithstanding these provisions, any state agency or political subdivision of the Commonwealth unable to employ a qualified licensed engineer, architect, or land surveyor to fill a responsible charge position, after reasonable and unsuccessful search, may fill the position with an unlicensed person upon the determination by the chief administrative officer of the agency or political subdivision that the person, by virtue of education, experience, and expertise, can perform the work required of the position.

E. Through June 30, 2002, any full-time, salaried employee of the Commonwealth or any political subdivision of the Commonwealth on June 30, 1992, who has graduated from an engineering, engineering technology, or related science curriculum of four years or more, and who has acquired a specific record of thirty years or more of approved progressive professional experience on

engineering projects of a grade and character which the Board judges to be pertinent to acquiring professional skills, demonstrating that the individual is eminently qualified to practice engineering, shall qualify for an oral examination for licensure in accordance with the rules and regulations of the Board as adopted May 17, 1990.

F. Notwithstanding the provisions of this section, a contractor who is licensed pursuant to the provisions of Chapter 11 (§ 54.1-1100 et seq.) of this title shall not be required to be licensed or registered to practice in accordance with this chapter when bidding upon or negotiating design-build contracts or performing services other than architectural, engineering or land surveying services under a design-build contract. The architectural, engineering or land surveying services offered or rendered in connection with such contracts shall only be rendered by an architect, professional engineer or land surveyor licensed in accordance with this chapter.

(1979, c. 408, § 54-26.1; 1982, c. 590; 1984, c. 470; 1988, c. 765; 1992, cc. 780, 783; 1994, c. 784; 1996, c. 329; 2004, c. 191; 2005, cc. 359, 440.)

§ 54.1-407. Land surveying.

Notwithstanding the provisions of any regulation promulgated by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, a land surveyor shall not be required by Board regulations to set corner monumentation or perform a boundary survey on any property when (i) corner monumentation has been set or is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.2-2240 or subdivision 7 of § 15.2-2241, or where the placing of such monumentation is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty, or (ii) the purpose of the survey is to determine the location of the physical improvements on the said property only, if the prospective mortgagor or legal agent ordering the survey agrees in writing that such corner monumentation shall not be provided in connection with any such physical improvements survey. The provisions of this section shall apply only to property located within the Counties of Arlington, Fairfax, King George, Loudoun, Prince William, Spotsylvania and Stafford; and the Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park.

(1986, c. 531, § 54-25.1; 1988, cc. 271, 765; 1998, c. 27.)

§ 54.1-408. Practice of land surveying; subdivisions.

In addition to the work defined in § 54.1-400, a land surveyor may, for subdivisions, site plans and plans of development only, prepare plats, plans and profiles for roads, storm drainage systems, sanitary sewer extensions, and water line extensions, and may perform other engineering incidental to such work, but excluding the design of pressure hydraulic, structural, mechanical, and electrical systems. The work included in this section shall involve the use and application of standards prescribed by local or state authorities. The land surveyor shall pass an examination given by the Board in addition to that required for the licensing of land surveyors as defined in § 54.1-400. Any land surveyor previously licensed pursuant to subdivision (3) (b) of former § 54-17.1 may continue to do the work herein described without further examination.

Except as provided, nothing contained herein or in the definition of "practice of land surveying" in § 54.1-400 shall be construed to include engineering design and the preparation of plans and specifications for construction.

(1970, c. 671, § 54-17.1; 1974, c. 534; 1980, c. 757; 1982, c. 590; 1984, c. 437; 1988, c. 765.)

§ 54.1-409. Landscape architecture.

Resulting plans and specifications, submitted under the seal, stamp or certification of a certified landscape architect, shall be accepted for review by local and state authorities, in connection with both public and private projects. However, no landscape architect, unless he is also licensed as a land surveyor, shall provide boundary surveys, plats or descriptions for any purpose, except in conjunction with or under the supervision of an appropriately licensed professional, who shall provide certification, as required. Landscape architects shall only engage in projects which they are qualified to undertake based on education, training, and examination and in accordance with the practice of landscape architecture as defined in § 54.1-400.

Nothing contained herein or in the definition of "practice of landscape architecture" in § 54.1-400 shall be construed to restrict or otherwise affect the right of any nurseryman, landscape designer, land planner, community planner, landscape gardener, golf course designer, turf maintenance specialist or any other similar person from engaging in such occupation, or from rendering any service in connection therewith that is not otherwise proscribed. No person shall hold himself out as, or use the title of, "landscape architect" or "certified landscape architect," unless he has been certified pursuant to the provisions of this chapter.

Any person who (i) used and was identified by the title "landscape architect" for ten years prior to July 1, 2000, (ii) holds an accredited undergraduate or graduate degree in landscape architecture, and (iii) can demonstrate to the Board satisfactory evidence of ten years of professional practice experience representing the full range of landscape architectural knowledge, skills, and abilities represented on the examination used by the Board to certify landscape architects, shall be entitled to apply to and secure from the Board, without written examination, a certificate pursuant to the provisions of this chapter, provided all other requirements of this chapter relating to landscape architecture are complied with and application is or has been made on or before July 1, 2001.

(1970, c. 671, § 54-17.1; 1974, c. 534; 1980, c. 757; 1982, c. 590; 1984, c. 437; 1988, c. 765; 2000, c. 990; 2006, c. 643.)

§ 54.1-410. Other building laws not affected; duties of public officials.

A. Nothing contained in this chapter or in the regulations of the Board shall be construed to limit the authority of any public official authorized by law to approve plans, specifications or calculations in connection with improvements to real property. This shall include, but shall not be limited to, the authority of officials of local building departments as defined in § 36-97, to require pursuant to the Uniform Statewide Building Code, state statutes, local ordinances, or code requirements that such work be prepared by a person licensed or certified pursuant to this chapter.

B. Any public body authorized by law to require that plans, specifications or calculations be prepared in connection with improvements to real property shall establish a procedure to ensure that such plans, specifications or calculations be prepared by an architect, professional engineer,

land surveyor or landscape architect licensed, certified or authorized pursuant to this chapter in any case in which the exemptions contained in §§ 54.1-401, 54.1-402 or § 54.1-402.1 are not applicable.

Drafting of permits, reviewing of plans or inspection of facilities for compliance with an adopted code or standard by any public body or its designated agent shall not require the services of an architect, professional engineer, land surveyor or landscape architect licensed or certified pursuant to this chapter.

(1982, c. 590, § 54-37.2; 1988, c. 765; 1992, cc. 780, 783; 1993, c. 662.)

§ 54.1-411. Organization for practice; registration.

A. Nothing contained in this chapter or in the regulations of the Board shall prohibit the practice of architecture, engineering, land surveying or the offering of the title of certified landscape architect or certified interior designer by any corporation, partnership, sole proprietorship, limited liability company, or other entity provided such practice or certification is rendered through its officers, principals or employees who are correspondingly licensed or certified. No such organization shall limit the liability of any licensee or certificate holder for damages arising from his acts or limit such corporation, partnership, sole proprietorship, limited liability company, or other entity from liability for acts of its employees or agents. No such corporation, partnership, sole proprietorship, limited liability company, or other entity, or any affiliate thereof, shall, on its behalf or on behalf of any such licensee or certificate holder, be prohibited from (i) purchasing or maintaining insurance against any such liability; (ii) entering into any indemnification agreement with respect to any such liability; or (iii) receiving indemnification as a result of any such liability.

B. Except for professional corporations holding a certificate of authority issued in accordance with § 13.1-549, professional limited liability companies holding a certificate of authority issued in accordance with § 13.1-1111, and sole proprietorships that do not employ other individuals for which licensing is required, any person, corporation, partnership, limited liability company, or other entity offering or rendering the practice of architecture, engineering, land surveying or offering the title of certified landscape architect or certified interior designer shall register with the Board. As a condition of registration, the entity shall name at least one licensed architect, professional engineer, land surveyor, certified landscape architect or certified interior designer for such profession offered or rendered. The person or persons named shall be responsible and have control of the regulated services rendered by the entity.

C. The Board shall adopt regulations governing the registration of persons, corporations, partnerships, limited liability companies, sole proprietors and other entities as required in subsections A and B which:

1. Provide for procedural requirements to obtain and renew registration on a periodic basis;
2. Establish fees for the application and renewal of registration sufficient to cover costs;
3. Assure that regulated services are rendered and controlled by persons authorized to do so; and
4. Ensure that conflicts of interests are disclosed.

(1982, c. 590, § 54-37.3; 1983, c. 28; 1988, c. 765; 1992, c. 574; 2000, c. 763.)

§ 54.1-412. Applicability.

This chapter shall not be construed to restrict or otherwise affect the right of any uncertified interior designer, architect, engineer, or any other person from rendering any of the services which constitute the practice of interior design; however, no person may hold himself out as, or use the title of, "certified interior designer" unless he has been so certified pursuant to the provisions of this chapter.

(1990, c. 512.)

§ 54.1-413. Examination.

At least once each year the Board shall arrange for the National Council for Interior Design Qualification examination or an equivalent examination approved by the Board to be given to qualified applicants for certification as interior designers.

(1990, c. 512; 1991, c. 291.)

§ 54.1-414. Issuance of certification; waiver of examination.

The Board shall issue a certification to practice as a certified interior designer in the Commonwealth to every applicant who shall have complied with the requirements of this chapter and the regulations of the Board. The certificates shall be signed by at least three members of the Board.

The Board shall certify any person who is a graduate of a minimum four-year professional degree program accredited by the Foundation for Interior Design Education Research, an equivalent accrediting organization or a professional program approved by the Board and who has two years of monitored experience in the performance of interior design services and who has taken and passed the examination for certification as a certified interior designer.

The Board, in its discretion, shall determine whether an applicant's professional education and professional experience in the field of interior design are sufficient to establish eligibility for the examination.

The Board, in lieu of all examinations, may accept satisfactory evidence of licensing or certification in another state or country or the District of Columbia where (i) the qualifications for such licensure or certification are equal, in the opinion of the Board, to the qualifications required by the provisions of this chapter as of the date of application and (ii) the applicant is the holder of a license or certificate in good standing. Upon receipt of such satisfactory evidence and provided all other such requirements of this chapter are complied with, a certificate shall be issued to such applicant.

(1990, c. 512; 1991, c. 291; 1994, c. 625; 2000, c. 42.)

§ 54.1-415.

Repealed by Acts 2000, c. 42, cl. 2.

Code of Virginia

Title 54.1, Chapter 5

Asbestos, Lead and Home Inspection Contractors and Workers

§ 54.1-500. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Accredited asbestos training program" means a training program that has been approved by the Board to provide training for individuals to engage in asbestos abatement, conduct asbestos inspections, prepare management plans, prepare project designs or act as project monitors.
"Accredited lead training program" means a training program that has been approved by the Board to provide training for individuals to engage in lead-based paint activities.
"Asbestos" means the asbestiform varieties of actinolite, amosite, anthophyllite, chrysotile, crocidolite, and tremolite.
"Asbestos analytical laboratory license" means an authorization issued by the Board to perform phase contrast, polarized light, or transmission electron microscopy on material known or suspected to contain asbestos.
"Asbestos contractor's license" means an authorization issued by the Board permitting a person to enter into contracts to perform an asbestos abatement project.
"Asbestos-containing materials" or "ACM" means any material or product which contains more than 1.0 percent asbestos or such other percentage as established by EPA final rule.
"Asbestos inspector's license" means an authorization issued by the Board permitting a person to perform on-site investigations to identify, classify, record, sample, test and prioritize by exposure potential asbestos-containing materials.
"Asbestos management plan" means a program designed to control or abate any potential risk to human health from asbestos.
"Asbestos management planner's license" means an authorization issued by the Board permitting a person to develop or alter an asbestos management plan.
"Asbestos project" or "asbestos abatement project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding materials which when installed, encapsulated or removed do not become friable.
"Asbestos project designer's license" means an authorization issued by the Board permitting a person to design an asbestos abatement project.
"Asbestos project monitor's license" means an authorization issued by the Board permitting a person to monitor an asbestos project, subject to Department regulations.
"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Asbestos worker's license" means an authorization issued by the Board permitting an individual to work on an asbestos project.
"Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.
"Certified home inspection" means any inspection of a residential building for compensation conducted by a certified home inspector. A certified home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components. A certified home inspection may be limited in scope as provided in a home inspection contract, provided such contract is not inconsistent with the provisions of this chapter or the regulations of the Board.
"Certified home inspector" means a person who meets the criteria of education, experience, and testing required by this chapter and regulations of the Board and who has been certified by the Board.
"Friable" means that the material when dry, may be crumbled, pulverized or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.
"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards, including lead-contaminated dust or soil.
"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.
"Lead-based paint activity" means lead inspection, lead risk assessment, lead project design and abatement of lead-based paint and lead-based paint hazards, including lead-contaminated dust and lead-contaminated soil.
"Lead-contaminated dust" means surface dust that contains an area or mass concentration of lead at or in excess of levels identified by the Environmental Protection Agency pursuant to § 403 of TSCA (15 U.S.C. § 2683).
"Lead-contaminated soil" means bare soil that contains lead at or in excess of levels identified by the Environmental Protection Agency.
"Lead contractor" means a person who has met the Board's requirements and has been issued a license by the Board to enter into contracts to perform lead abatements.
"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provisions of a report explaining the results of the investigation.
"Lead inspector" means an individual who has been licensed by the Board to conduct lead inspections and abatement clearance testing.
"Lead project design" means any descriptive form written as instructions or drafted as a plan describing the construction or setting up of a lead abatement project area and the work practices to be utilized during the lead abatement project.
"Lead project designer" mean an individual who has been licensed by the Board to prepare lead project designs.
"Lead risk assessment" means (i) an on-site investigation to determine the existence, nature, severity and location of lead-based paint hazards and (ii) the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.
"Lead risk assessor" means an individual who has been licensed by the Board to conduct lead inspections, lead risk assessments and abatement clearance testing.

"Lead supervisor" means an individual who has been licensed by the Board to supervise lead abatements.
"Lead worker" or "lead abatement worker" means an individual who has been licensed by the Board to perform lead abatement.
"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other individual or entity.
"Principal instructor" means the individual who has the primary responsibility for organizing and teaching an accredited asbestos training course or an accredited lead training course or both.
"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.
"Training manager" means the individual responsible for administering a training program and monitoring the performance of instructors for an accredited asbestos training or an accredited lead training program or both.

(1987, c. 579, § 54-145.4; 1988, cc. 765, 802; 1989, c. 397; 1990, cc. 49, 73, 823; 1992, c. 152; 1993, cc. 499, 660; 1994, cc. 185, 911; 1996, cc. 76, 176, 180, 846; 1997, c. 885; 1998, c. 739; 2001, c. 723.)

§ 54.1-500.1. Virginia Board for Asbestos, Lead, and Home Inspectors; membership; meetings; offices; quorum.

The Virginia Board for Asbestos, Lead, and Home Inspectors shall be appointed by the Governor and composed of ten members as follows: one shall be a representative of a Virginia licensed asbestos contractor, one shall be a representative of a Virginia licensed lead contractor, one shall be either a Virginia-licensed asbestos inspector or project monitor, one shall be a Virginia licensed lead risk assessor, one shall be a representative of a Virginia-licensed asbestos analytical laboratory, one shall be a representative of an asbestos and lead training course provider, two shall be certified home inspectors and two shall be citizen members. Of the 1994 appointments, the terms shall be as follows: one member shall serve a term of two years, and one member shall serve a term of four years. Of the 2001 home inspector appointments, the terms shall be as follows: one home inspector shall serve a three-year term, and one home inspector shall serve a four-year term. Thereafter, the terms of members of the Board shall be four years, except that vacancies may be filled for the remainder of the unexpired term. The initially appointed representatives of the lead industry shall be deemed to be certified upon having completed lead training offered at an Environmental Protection Agency Regional Training Center. The two home inspector members appointed to the Board shall have practiced as home inspectors for at least five consecutive years immediately prior to appointment. Each home inspector appointment to the Board may be made from nominations submitted by the National Association of Home Inspectors and the American Society of Home Inspectors, who may each nominate no more than three persons for each home inspector vacancy. In no case shall the Governor be bound to make any appointment from such nominees. Home inspector members shall not vote on any matters before the Board except matters related to home inspectors until July 1, 2003.
The Board shall meet at least four times each year and other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. Six members of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

(1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 2001, c. 723.) § 54.1-501. Powers and duties of the Board.

The Board shall administer and enforce this chapter. The Board shall:

1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of asbestos and lead licenses, and governing conflicts of interest between various categories of asbestos and lead licenses;

2. Approve the criteria for accredited asbestos training programs, accredited lead training programs, training managers and principal instructors;

3. Approve accredited asbestos training programs, accredited lead training programs, examinations and the grading system for testing applicants for asbestos and lead licensure;

4. Promulgate regulations governing the licensing of and establishing performance criteria applicable to asbestos analytical laboratories;

5. Promulgate regulations governing the functions and duties of project monitors on asbestos projects, circumstances in which project monitors shall be required for asbestos projects, and training requirements for project monitors;

6. Promulgate, in accordance with the Administrative Process Act, regulations necessary to establish procedures and requirements for the: (i) approval of accredited lead training programs, (ii) licensure of individuals and firms to engage in lead-based paint activities, and (iii) establishment of standards for performing lead-based paint activities consistent with the Residential Lead-based Paint Hazard Reduction Act and United States Environmental Protection Agency regulations. If the United States Environmental Protection Agency (EPA) has adopted, prior to the promulgation of any related regulations by the Board, any final regulations relating to lead-based paint activities, then the related regulations of the Board shall not be more stringent than the EPA regulations in effect as of the date of such promulgation. In addition, if the EPA shall have outstanding any proposed regulations relating to lead-based paint activities (other than as amendments to existing EPA regulations), as of the date of promulgation of any related regulations by the Board, then the related regulations of the Board shall not be more stringent than the proposed EPA regulations. In the event that the EPA shall adopt any final regulations subsequent to the promulgation by the Board of related regulations, then the Board shall, as soon as practicable, amend its existing regulations so as to be not more stringent than such EPA regulations; and

7. Promulgate regulations for certification of home inspectors not inconsistent with this chapter regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the Board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

(1987, c. 579, § 54-145.5; 1988, c. 765; 1989, c. 397; 1990, cc. 49, 73, 823; 1991, c. 45; 1992, c. 477; 1993, cc. 499, 660; 1994, cc. 185, 911; 1995, cc. 543, 585; 1996, cc. 180, 846; 1997, cc. 649, 885; 1998, c. 739; 2001, c. 723.)

§ 54.1-501.1. Applicability.

The provisions of this chapter shall not apply to any employer, or any employees of such employer, regulated by the federal Occupational Safety and Health Act, and under the enforcement authority of the Occupational Safety and Health Administration.

(1992, c. 52.)

§ 54.1-502. Interdepartmental implementation plan.

The Board, in conjunction with the Departments of General Services, Health, Labor and Industry, Education, and Environmental Quality, shall develop a plan for the implementation of this chapter which specifies the duties of each agency.

(1987, c. 579, § 54-145.6; 1988, cc. 765, 802; 1989, c. 397; 1990, cc. 73, 823; 1993, c. 660.)

§ 54.1-503. Licenses required.

A. It shall be unlawful for any person who does not have an asbestos contractor's license to contract with another person, for compensation, to carry out an asbestos project or to perform any work on an asbestos project. It shall be unlawful for any person who does not have an asbestos project designer's license to develop an asbestos project design. It shall be unlawful for any person who does not have an asbestos inspector's license to conduct an asbestos inspection. It shall be unlawful for any person who does not have an asbestos management planner's license to develop an asbestos management plan. It shall be unlawful for any person who does not have a license as an asbestos project monitor to act as project monitor on an asbestos project.

B. It shall be unlawful for any person who does not possess a valid asbestos analytical laboratory license issued by the Board to communicate the findings of an analysis, verbally or in writing, for fee, performed on material known or suspected to contain asbestos for the purpose of determining the presence or absence of asbestos.

C. It shall be unlawful for any person who does not possess a license as a lead contractor to contract with another person to perform lead abatement activities or to perform any lead abatement activity or work on a lead abatement project. It shall be unlawful for any person who does not possess a lead supervisor's license to act as a lead supervisor on a lead abatement project. It shall be unlawful for any person who does not possess a lead worker's license to act as a lead worker on a lead abatement project. It shall be unlawful for any person who does not possess a lead project designer's license to develop a lead project design. It shall be unlawful for any person who does not possess a lead inspector's license to conduct a lead inspection. It shall be unlawful for any person who does not possess a lead risk assessor's license to conduct a lead risk assessment. It shall be unlawful for any person who does not possess a lead inspector's or lead risk assessor's license to conduct lead abatement clearance testing.

(1987, c. 579, § 54-145.7; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 73; 1993, c. 660; 1994, cc. 185, 911; 1995, cc. 543, 585; 1996, cc. 180, 846; 1997, cc. 560, 885; 1998, c. 739; 2004, c. 133.)

§ 54.1-504. Asbestos supervisor's or worker's license required; exception.

After July 1, 1988, it shall be unlawful for an individual who does not have an asbestos supervisor's license or worker's license to work on an asbestos project. No asbestos supervisor's license or worker's license shall be required for a supervisor or worker in the installation, maintenance, repair or removal of asbestos-containing roofing, flooring or siding material, provided that such supervisor or worker shall satisfy any training requirements promulgated by the Board pursuant to § 54.1-501.

(1987, c. 579, § 54-145.8; 1988, c. 765; 1989, c. 397; 1993, c. 660.)

§ 54.1-505. Qualification for an asbestos contractor's license.

To qualify for an asbestos contractor's license, an applicant shall:
1. Except as provided in § 54.1-504, ensure that each of his employees or agents who will come into contact with asbestos or who will be responsible for an asbestos project is licensed as an asbestos supervisor or worker; and
2. Demonstrate to the satisfaction of the Board that the applicant and his employees or agents are familiar with and are capable of complying fully with all applicable requirements, procedures and standards of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Department of Labor and Industry, and the State Air Pollution Control Board covering any part of an asbestos project.

(1987, c. 579, § 54-145.9; 1988, cc. 765, 802; 1989, c. 397; 1993, c. 660; 1996, cc. 180, 846.)

§ 54.1-506.

Repealed by Acts 1993, c. 660.

§ 54.1-507.

Repealed by Acts 1992, c. 477.

§§ 54.1-508. , 54.1-509.

Repealed by Acts 1993, c. 660.

§ 54.1-510.

Repealed by Acts 1988, c. 802.

§ 54.1-511.

Repealed by Acts 1993, c. 660.

§ 54.1-512. Exemptions from licensure.

A. In an emergency that results from a sudden unexpected event that is not a planned renovation or demolition, the Board may waive the requirement for asbestos contractor's, supervisor's and worker's licenses.
B. Any employer, and any employee of such employer, who conducts an asbestos project on premises owned or leased by such employer shall be exempt from licensure.
C. Notwithstanding the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), neither the Commonwealth nor any agency or employee of the Commonwealth shall be subject to any liability as the result of a determination made by the Board hereunder.
D. Nothing in this chapter shall be construed as requiring the licensure of a contractor who contracts to undertake a project, a portion of which constitutes an asbestos or lead abatement project if all of the asbestos or lead abatement work is subcontracted to a person licensed to perform such work in accordance with the provisions of this chapter.
E. This chapter shall not apply to any person who performs lead-based paint activities within residences which they own, unless the residence is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being conducted or a child is residing in the property and has been identified as having an elevated blood-lead level.

(1987, c. 579, § 54-145.10:6; 1988, cc. 765, 807; 1989, c. 397; 1993, c. 660; 1996, cc. 180, 846; 1998, c. 739.)

§ 54.1-513.

Repealed by Acts 1998, c. 739.

§ 54.1-514. Award of contracts by state agencies and political subdivisions.

A state agency or a political subdivision shall not award a contract in connection with an asbestos project to a person who does not hold an asbestos contractor's, inspector's, management planner's or project designer's license at the time the bid is submitted unless the general contractor to whom the contract is awarded will be contractually committed to have all asbestos related work performed by its own subcontractors who are appropriately licensed as asbestos contractors, inspectors, management planners or project designers pursuant to this chapter.

(1987, c. 579, § 54-145.10:8; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 105; 1996, cc. 180, 846.)

§ 54.1-515. Employer discrimination; penalty.

Any employer who discriminates against or otherwise penalizes an employee who complains to or cooperates with the Board or any other governmental agency in administering this chapter is subject to the penalties in § 54.1-517.

(1987, c. 579, § 54-145.10:9; 1988, c. 765; 1993, cc. 499, 660.)

§ 54.1-516. Disciplinary actions.

A. The Board may reprimand, fine, suspend or revoke (i) the license of a lead contractor, lead inspector, lead risk assessor, lead project designer, lead supervisor, lead worker, asbestos contractor, asbestos supervisor, asbestos inspector, asbestos analytical laboratory, asbestos management planner, asbestos project designer, asbestos project monitor or asbestos worker or (ii) the approval of an accredited asbestos training program, accredited lead training program, training manager or principal instructor, if the licensee or approved person or program:
1. Fraudulently or deceptively obtains or attempts to obtain a license or approval;
2. Fails at any time to meet the qualifications for a license or approval or to comply with the requirements of this chapter or any regulation adopted by the Board; or
3. Fails to meet any applicable federal or state standard when performing an asbestos project or service or performing lead-based paint activities.
B. The Board may reprimand, fine, suspend or revoke the license of, (i) any asbestos contractor who employs or permits an individual without an asbestos supervisor's or worker's license to work on an asbestos project or (ii) any lead contractor who employs or permits an individual without a lead supervisor's or lead worker's license to work on a lead abatement project.
C. The Board may reprimand, fine, suspend or revoke the certification of a home inspector.

(1987, c. 579, § 54-145.10:10; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 823; 1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 1998, c. 739; 2001, c. 723.)

§ 54.1-516.1. Summary suspension of licenses or approvals; allegations to be in writing.

The Board may suspend the license or the approval of any (i) accredited training program, (ii) training manager or (iii) principal instructor of any person holding a license issued by it without a hearing simultaneously with the institution of proceedings for a hearing or an informal fact finding conference, if the relevant board finds that there is a substantial danger to the public health or safety that warrants this action. The Board may meet by telephone conference call when summarily suspending a license or the approval of an accredited training program, training manager or principal instructor if a good faith effort to assemble a quorum of the Board has failed and, in the judgment of a majority of the members of the Board, the continued practice by the licensee or approved individual or training program constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing or an informal fact finding conference shall be provided simultaneously with the summary suspension. Such hearing or conference shall be scheduled within a reasonable time of the date of the summary suspension. Allegations of violations of this section shall be made in accordance with § 54.1-307.1.

(2004, c. 222.)

§ 54.1-517. Penalties for willful violations.

Notwithstanding any other provision of law, any person who willfully violates any provision of this chapter or any regulation related to licensure or training adopted pursuant to this chapter shall be guilty of a Class 1 misdemeanor for the first two violations and a Class 6 felony for a third and each subsequent violation within a three-year period.
In addition, licensed asbestos contractors, asbestos supervisors, asbestos inspectors, asbestos management planners, asbestos project designers, asbestos project monitors, asbestos analytical

laboratories and asbestos workers, lead contractors, lead inspectors, lead risk assessors, lead project designers, lead supervisors, lead workers, and accredited asbestos training programs, accredited lead training programs, training managers or principal instructors may be assessed a civil penalty by the Board of not more than $1,000 for an initial violation and $5,000 for each subsequent violation within a three-year period arising from a willful violation of standards established by the Environmental Protection Agency, Occupational Safety and Health Administration, Department of Labor and Industry, or the Divisions of Air Pollution Control and Waste Management of the Department of Environmental Quality in a three-year period.

(1987, c. 579, § 54-145.10:11; 1988, cc. 765, 802; 1989, c. 397; 1990, c. 823; 1993, c. 660; 1994, cc. 185, 911; 1996, cc. 180, 846; 1997, c. 885; 1998, c. 739.)

§ 54.1-517.1. Applicability.

The certification program established under this article shall be voluntary and shall not be construed to restrict or otherwise affect the right of any person to conduct an inspection of a residential building for any purpose; however, no person may (i) refer to the inspection conducted as a "certified home inspection" or (ii) hold himself out as, or use the title of "certified home inspector," unless he has been certified in accordance with this article. Any person offering to provide or conduct a "certified home inspection" within the meaning of this chapter or through verbal claim, sign, advertisement, or letterhead representing himself as a "certified home inspector" shall be subject to the provisions of § 54.1-111 of this title.

(2001, c. 723.)

§ 54.1-517.2. Requirements for certification.

The Board may issue a certificate to practice as a certified home inspector in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:
1. Completed any educational requirements as required by the Board;
2. Completed any experience requirements as required by the Board; and
3. Passed any written or electronic examination offered or approved by the Board.
The Board may issue a certificate to practice as a certified home inspector to any applicant who is a member of a national or state professional home inspectors association approved by the Board, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the Board for all applicants.

(2001, c. 723.)

Code of Virginia

Title 54.1, Chapter 6

Auctioneers

§ 54.1-600. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Absolute auction" means an auction where at the time of the auction sale the real or personal property to be sold will pass to the highest bidder regardless of the amount of the highest and last bid.
"Auction" means the sale of goods or real estate by means of exchanges between an auctioneer and members of his audience, the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and acceptance by the auctioneer of the highest or most favorable offer.
"Auction firm" means any corporation, partnership or entity, except a sole proprietorship, performing any of the acts of an auctioneer as defined in this section.
"Auctioneer" means any person who conducts or offers to conduct an auction.
"Board" means the Auctioneers Board.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Goods" means any chattels, merchandise, real or personal property, or commodities of any form or type which may be lawfully kept or offered for sale.
"Person" means any natural person, association, partnership, or corporation, and the officers, directors, and employees of a corporation.
"Virginia licensed auctioneer" means any auctioneer who meets the requirements for licensure as prescribed by the Board.

(1982, c. 538, § 54-824.2; 1983, c. 522; 1986, c. 61; 1988, c. 765; 1991, c. 299; 2003, c. 367.)

§ 54.1-601. Exemptions.

The provisions of this chapter and the terms "Virginia licensed auctioneer," "auctioneer" or "auction firm," as defined in § 54.1-600, shall not apply to:
1. Any person who auctions his own property, whether owned or leased, provided his regular business is not as an auctioneer;
2. Any person who is acting as a receiver, trustee in bankruptcy, guardian, conservator, administrator, or executor, or any person acting under order of a court;
3. A trustee acting under a trust agreement, deed of trust, or will;
4. An attorney-at-law licensed to practice in the Commonwealth of Virginia acting pursuant to a power of attorney;
5. Sales at auction conducted by or under the direction of any public authority, or pursuant to any judicial order or decree;

6. Sale of livestock at a public livestock market authorized by the Commissioner of Agriculture and Consumer Services;
7. Leaf tobacco sales conducted in accordance with the provisions of § 3.1-336;
8. Sale at auction of automobiles conducted under the provisions of § 43-34 or by a motor vehicle dealer licensed under the provisions of Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2;
9. Sale at auction of a particular brand of livestock conducted by an auctioneer of a livestock trade association;
10. Sales conducted by and on behalf of any charitable, religious, civic club, fraternal, or political organization if the person conducting the sale receives no compensation, either directly or indirectly, therefor and has no ownership interest in the merchandise being sold or financial interest in the entity providing such merchandise;
11. Sales, not exceeding one sale per year, conducted by or on behalf of a civic club or organization; or
12. Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, resales of goods by an aggrieved seller, or other resales conducted pursuant to Titles 8.1A through 8.10 and Chapter 23 (§ 55-416 et seq.) of Title 55.

(1982, c. 538, § 54-824.3; 1983, cc. 261, 522; 1986, c. 61; 1988, c. 765; 1991, c. 299; 1995, c. 227; 1997, c. 801.)

§ 54.1-602. Auctioneers Board; membership, meetings and powers.

A. The Auctioneers Board shall be composed of five members as follows: three shall be Virginia licensed auctioneers and two shall be citizen members. Board members shall serve four-year terms.
The Board shall meet at least twice each year for the purpose of transacting business. Special meetings of the Board may be held at the discretion of the Director.
B. The Board shall have the following authority and responsibilities:
1. Establish regulations to obtain and retain licensure of auctioneers.
2. Make all case decisions regarding eligibility for initial licensure and renewal thereof.
3. To fine, suspend, deny renewal or revoke for cause, as defined in regulation, any license.
4. To examine auctioneers for licensure.

(1982, c. 538, §§ 54-824.4, 54-824.7; 1983, c. 522, § 54-824.9:3; 1988, cc. 42, 765; 1991, c. 299.)

§ 54.1-603. License required; requirements for licensure; nonresident applicants.

A. Unless exempted by § 54.1-601, no person or firm shall sell at auction without being licensed by the Board. Any applicant for licensure who was certified by or registered with the Board prior to July 1, 1991, shall be exempt from the requirements of subsection B of this section if he applies prior to January 1, 1992.
B. Any auctioneer desiring to obtain a license may apply to the Board and shall establish to the satisfaction of the Board that he:
1. Is a resident of Virginia and meets the application fee requirements set by the Board;

2. Is covered by a surety bond, executed by a surety company authorized to do business in this Commonwealth, in a reasonable amount to be fixed by the Board, conditioned upon the faithful and honest conduct of his business or employment;
3. Has successfully completed a course of study at a school of auctioneering which has obtained course approval from the Board or an equivalent course; and
4. Has passed the Virginia Licensed Auctioneer's Examination, administered by the Auctioneers Board.
C. A nonresident of the Commonwealth may be licensed as an auctioneer by meeting one of the following requirements: (i) conform to the provisions of this chapter and regulations of the Board with reference to resident auctioneers or (ii) hold a valid auctioneer's license or certificate in another state with which reciprocity has been established by the Board. Nonresident applicants shall also file with the Board an irrevocable consent that service of process upon the Director is as valid and binding as service of process upon the applicant.
Any process or pleading served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the auctioneer at the last known address.

(1983, c. 522, § 54-824.9:1; 1986, c. 61; 1988, c. 765; 1991, c. 299; 1996, cc. 438, 822; 1997, c. 281.)

§ 54.1-603.1. Continuing education.

A. The Board shall promulgate regulations governing continuing education requirements for auctioneers licensed by the Board. Such regulations shall require the completion of the equivalent of at least six hours of Board-approved continuing education courses for any license renewal or reinstatement. The Board shall establish criteria for continuing education courses including, but not limited to (i) content and subject matter of continuing education courses, (ii) curriculum of required continuing education courses, (iii) standards and procedures for the approval of courses, course sponsors, and course instructors, (iv) methods of instruction for continuing education courses, and (v) the computation of course credit. Any continuing education courses completed by an auctioneer pursuant to a requirement of the Certified Auctioneer's Institute or participation in the educational programs sponsored by the National Auctioneer's Association or Virginia Auctioneer's Association shall satisfy the continuing education requirement of this section.
B. The Board may grant exemptions or waive or reduce the number of continuing education hours required in cases of certified illness or undue hardship.

(2004, c. 956.)

§ 54.1-604.

Repealed by Acts 1991, c. 299.

§ 54.1-605. Taxation of auctioneer.

An auctioneer may not have a local license tax imposed by any county, city, or town except that in which his office is maintained. If a branch office is maintained elsewhere in Virginia, a local license

tax may be imposed by the county, city or town in which the branch office is located, pursuant to §§ 58.1-3707 and 58.1-3709.

(1982, c. 538, § 54-824.15; 1988, c. 765.)

§ 54.1-606. Unlawful to advertise as an auctioneer.

It shall be unlawful for any person not licensed under the provisions of this chapter to advertise that he is in the auction business or to hold himself out to the public as an auctioneer.

(1982, c. 538, § 54-824.19; 1983, c. 522; 1988, c. 765; 1991, c. 299.)

§ 54.1-607. Advertising; absolute auctions involving real property.

A. No advertisements for any auction sale of personal or real property shall contain false, misleading, or deceptive statements, with respect to types or conditions of merchandise offered at auction, why merchandise is being sold, who has ownership, where the merchandise was obtained, or the terms and conditions of the auction and sale.
B. No auctioneer shall advertise an auction sale of real property as "absolute" unless all lots included in the sale meet that criteria.

(2003, c. 367.)

Code of Virginia

Title 54.1, Chapter 7

Barbers and Cosmetologists

§ 54.1-700. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Barber" means any person who shaves, shapes or trims the beard; cuts, singes, shampoos or dyes the hair or applies lotions thereto; applies, treats or massages the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays or other preparations in connection with shaving, cutting or trimming the hair or beard, and practices barbering for compensation and when such services are not performed for the treatment of disease.
"Barbering" means any one or any combination of the following acts, when done on the human body for compensation and not for the treatment of disease, shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair or applying lotions thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, cosmetics, antiseptics, powders, clays, or other preparations in connection with shaving, cutting or trimming the hair or a beard. The term "barbering" shall not apply to the acts described hereinabove when performed by any person in his home if such service is not offered to the public.
"Barber instructor" means any person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of barbering.
"Barbershop" means any establishment or place of business within which the practice of barbering is engaged in or carried on by one or more barbers.
"Board" means the Board for Barbers and Cosmetology.
"Body-piercer" means any person who for remuneration penetrates the skin of a person to make a hole, mark, or scar, generally permanent in nature.
"Body-piercing" means the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.
"Body-piercing salon" means any place in which a fee is charged for the act of penetrating the skin of a person to make a hole, mark, or scar, generally permanent in nature.
"Body-piercing school" means a place or establishment licensed by the Board to accept and train students in body-piercing.
"Braiding salon" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein hair braiding is offered or practiced on a regular basis for compensation.
"Braiding school" means a place or establishment licensed by the Board to accept and train students and which offers a hair braiding curriculum approved by the Board.
"Cosmetologist" means any person who administers cosmetic treatments; manicures or pedicures the nails of any person; arranges, braids, dresses, curls, waves, cleanses, cuts, shapes, singes, waxes, tweezes, shaves, bleaches, colors, relaxes, straightens, or performs similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical

apparatus or appliances unless such acts as adjusting, combing, or brushing prestyled wigs or hairpieces do not alter the prestyled nature of the wig or hairpiece, and practices cosmetology for compensation.

"Cosmetology" includes, but is not limited to, the following practices: administering cosmetic treatments; manicuring or pedicuring the nails of any person; arranging, braiding, dressing, curling, waving, cleansing, cutting, shaping, singeing, waxing, tweezing, shaving, bleaching, coloring, relaxing, straightening, or similar work, upon human hair, or a wig or hairpiece, by any means, including hands or mechanical or electrical apparatus or appliances, but shall not include such acts as adjusting, combing, or brushing prestyled wigs or hairpieces when such acts do not alter the prestyled nature of the wig or hairpiece.

"Cosmetology instructor" means a person who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of cosmetology.

"Cosmetology salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein cosmetology is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.

"Esthetician" means a person who engages in the practice of esthetics for compensation.

"Esthetics" includes, but is not limited to, the following practices of administering cosmetic treatments to enhance or improve the appearance of the skin: cleansing, toning, performing effleurage or other related movements, stimulating, exfoliating, or performing any other similar procedure on the skin of the human body or scalp by means of cosmetic preparations, treatments, any nonlaser device, electrical, mechanical, or manual, for care of the skin; applying make-up or eyelashes to any person, tinting or perming eyelashes and eyebrows, and lightening hair on the body except the scalp; and removing unwanted hair from the body of any person by the use of tweezing, chemical, or mechanical means. However, "esthetics" is not a healing art and shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, or chiropractic. The terms "healing arts," "practice of medicine," "practice of osteopathic medicine," and "practice of chiropractic" shall mean the same as those terms are defined in § 54.1-2900.

"Esthetics instructor" means a licensed esthetician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of esthetics.

"Esthetics spa" means any commercial establishment, residence, vehicle, or other establishment, place, or event wherein esthetics is offered or practiced on a regular basis for compensation under regulations of the Board.

"Hair braider" means a person who engages in the practice of hair braiding on a regular basis for compensation.

"Hair braiding" means the braiding, twisting, wrapping, weaving, extending, or locking of natural human hair by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.

"Master esthetician" means a licensed esthetician who, in addition to the practice of esthetics, offers to the public for compensation, without the use of laser technology, lymphatic drainage, chemical exfoliation, or microdermabrasion, and who has met such additional requirements as determined by the Board to practice lymphatic drainage, chemical exfoliation with products other

than Schedules II through VI controlled substances as defined in the Drug Control Act (§ 54.1-3400 et seq.), and microdermabrasion of the epidermis.
"Nail care" means manicuring or pedicuring natural nails or performing artificial nail services.
"Nail salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein nail care is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.
"Nail school" means a place or establishment licensed by the board to accept and train students in nail care.
"Nail technician" means any person who for compensation manicures or pedicures natural nails, or who performs artificial nail services for compensation, or any combination thereof.
"Nail technician instructor" means a licensed nail technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of nail care.
"Physical (wax) depilatory" means the wax depilatory product or substance used to remove superfluous hair.
"School of cosmetology" means a place or establishment licensed by the Board to accept and train students and which offers a cosmetology curriculum approved by the Board.
"School of esthetics" means a place or establishment licensed by the Board to accept and train students and which offers an esthetics curriculum approved by the Board.
"Tattoo parlor" means any place in which tattooing is offered or practiced.
"Tattoo school" means a place or establishment licensed by the Board to accept and train students in tattooing.
"Tattooer" means any person who for remuneration practices tattooing.
"Tattooing" means the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.
"Wax technician" means any person licensed by the Board who removes hair from the hair follicle using a physical (wax) depilatory or by tweezing.
"Wax technician instructor" means a licensed wax technician who has been certified by the Board as having completed an approved curriculum and who meets the competency standards of the Board as an instructor of waxing.
"Waxing" means the temporary removal of superfluous hair from the hair follicle on any area of the human body through the use of a physical (wax) depilatory or by tweezing.
"Waxing salon" means any commercial establishment, residence, vehicle or other establishment, place or event wherein waxing is offered or practiced on a regular basis for compensation and may include the training of apprentices under regulations of the Board.
"Waxing school" means a place or establishment licensed by the Board to accept and train students in waxing.

(1962, c. 639, § 1, § 54-83.2; 1966, c. 610; 1973, c. 86; 1974, c. 534; 1988, c. 765; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829.)

§ 54.1-701. Exemptions.

The provisions of this chapter shall not apply to:

1. Persons authorized by the laws of the Commonwealth to practice medicine and surgery or osteopathy or chiropractic;
2. Registered nurses licensed to practice in the Commonwealth;
3. Persons employed in state or local penal or correctional institutions, rehabilitation centers, sanatoria, or institutions for care and treatment of the mentally ill or mentally deficient or for care and treatment of geriatric patients, as barbers, cosmetologists, wax technicians, nail technicians, hair braiders, estheticians, barber instructors, cosmetology instructors, wax technician instructors, nail technician instructors, or esthetics instructors who practice only on inmates of or patients in such sanatoria or institutions;
4. Persons licensed as funeral directors or embalmers in the Commonwealth;
5. Gratuitous services as a barber, nail technician, cosmetologist, wax technician, hair braider, tattooer, body-piercer, or esthetician;
6. Students enrolled in an approved school taking a course in barbering, nail care, cosmetology, waxing, hair braiding, tattooing, body-piercing, or esthetics;
7. Persons working in a cosmetology salon whose duties are expressly confined to hair braiding or the shampooing and cleansing of human hair under the direct supervision of a cosmetologist or barber;
8. Apprentices serving in a barbershop, nail salon, waxing salon, cosmetology salon, hair braiding salon, or esthetics spa licensed by the Board in accordance with the Board's regulations;
9. Schools of barbering, nail care, waxing, cosmetology, or hair braiding in public schools; and
10. Persons whose activities are confined solely to applying make-up, including such activities that are ancillary to applying make-up.

(1962, c. 639, § 4, § 54-83.5; 1968, c. 622; 1988, c. 765; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829.)

§ 54.1-702. Board for Barbers and Cosmetology; membership; officers; quorum.

A. The Board for Barbers and Cosmetology shall be composed of 10 members as follows: two members shall be licensed barbers, one of whom may be an owner or operator of a barber school; two members shall be licensed cosmetologists, at least one of whom shall be a salon owner and one of whom may be an owner or operator of a cosmetology school; one member shall be a licensed nail technician or a licensed cosmetologist engaged primarily in the practice of nail care, each of whom shall have been licensed in their respective professions for at least three years immediately prior to appointment; one member shall be either a licensed tattooer or a licensed body-piercer; two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school; and two citizen members. The terms of Board members shall be four years. No member shall serve for more than two full successive terms. The Board shall elect a chairman and a vice-chairman. A majority of the Board shall constitute a quorum.
B. The Governor shall appoint to the Board two estheticians who have practiced as an esthetician for at least five consecutive years immediately prior to appointment, effective July 1, 2005. The esthetician members shall not vote on any matters before the Board, except matters related to esthetics, until July 1, 2007.

Of the esthetician members initially appointed to the Board, one shall be appointed for a term of two years. Thereafter, all such appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms.
(1962, c. 639, § 21, § 54-83.22; 1974, c. 534; 1979, c. 327; 1981, c. 447; 1988, cc. 42, 765; 2000, c. 726; 2002, c. 869; 2004, c. 945; 2005, c. 829.) § 54.1-703. License required.
No person shall offer to engage in or engage in barbering, cosmetology, nail care, waxing, hair braiding, tattooing, body-piercing, or esthetics without a valid license issued by the Board, except as provided in § 54.1-701.

(1979, c. 408, § 54-83.22:1; 1988, c. 765; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829.)

§ 54.1-703.1. Waiver of examination; wax technicians.

The Board shall waive the examination requirements for licensure as a wax technician for any individual who (i) makes application for licensure between July 1, 2002, and July 1, 2003; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions:
1. Has at least three years of documented work experience as a wax technician that is deemed satisfactory by the Board;
2. Has completed a training program that is deemed satisfactory by the Board; or
3. Holds an unexpired certificate of registration, certification, or license as a wax technician issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.

(2002, c. 797.)

§ 54.1-703.2. Waiver of examination; hair braiders.

The Board shall waive the examination requirements for licensure as a hair braider for any individual who (i) makes application for licensure between July 1, 2003, and July 1, 2004, or the effective date of hair braiding regulations of the Board, whichever comes first; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions:
1. Has at least three years of documented work experience as a hair braider that is deemed satisfactory pursuant to guidelines issued by the Board;
2. Has completed a training program that is deemed satisfactory pursuant to guidelines issued by the Board; or
3. Holds an unexpired certificate of registration, certification, or license as a hair braider issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.

(2003, c. 600.)

§ 54.1-703.3. Waiver of examination; estheticians.

The Board shall waive the examination requirements for licensure as an esthetician or master esthetician for any individual who (i) makes application for licensure between July 1, 2007, and July 1, 2008; (ii) otherwise complies with Board regulations relating to moral turpitude; and (iii) meets any of the following conditions:
1. Has at least three years of documented work experience as an esthetician or a master esthetician that is deemed satisfactory by the Board;
2. Has completed a training program that is deemed satisfactory by the Board; or
3. Holds an unexpired certificate of registration, certification, or license as an esthetician or a master esthetician issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States, or the District of Columbia.

(2005, c. 829.)

§ 54.1-704. Temporary licenses.

The Board may issue a temporary license to any person who is eligible for examination. Persons issued a temporary license shall be subject to the regulations of the Board.
The Board shall promulgate regulations consistent with this section to permit individuals to be granted temporary licenses for a specified period of time.

(1984, c. 220, § 54-83.22:2; 1988, c. 765; 2000, c. 726.)

§ 54.1-704.1. License required for barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, body-piercing salon, and esthetics spa.

No individual or entity shall operate a barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, body-piercing salon, or esthetics spa without a valid license issued by the Board.
The provisions of this section shall not apply to a licensed barber, cosmetologist, nail technician, waxing technician, tattooer, body-piercer, or esthetician who does not have an ownership interest in a licensed barbershop, cosmetology salon, nail care salon, waxing salon, hair braiding salon, tattoo parlor, body-piercing salon, or esthetics spa in which he is employed.

(2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829.)

§ 54.1-704.2. License required for schools of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, body-piercing, or esthetics.

Except as provided in § 54.1-701, no person, firm or corporation shall operate or attempt to operate a school of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, body-piercing, or esthetics unless licensed by the Board pursuant to its regulations.

(2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829.)

§ 54.1-705. Inspections.

A. Inspectors and sanitarians of the State Department of Health, or an affiliated local health department, may inspect each barbershop, cosmetology salon, waxing salon, nail care salon, hair braiding salon, tattoo parlor, body-piercing salon, and esthetics spa in the Commonwealth regularly. Any infractions shall be immediately reported to the Health Department and the Director of the Department of Professional and Occupational Regulation for disciplinary action.
B. The Board may inspect barbershops, barber schools, cosmetology salons and schools, waxing salons and schools, nail care salons and schools, hair braiding salons and schools, tattoo parlors and schools, body-piercing salons and schools, and esthetics spas and schools for compliance with regulations promulgated by the Board.
C. The Board shall specify procedures for enforcement of compliance with the disease control and disclosure requirements of § 18.2-371.3, including unannounced inspections by appropriate personnel.
D. The Board or the Virginia Department of Health, or an affiliated local health department, may regulate the sanitary condition of the personnel, equipment and premises of tattoo parlors and body-piercing salons.

(1962, c. 639, § 26, § 54-83.27; 1974, c. 534; 1988, c. 765; 1993, c. 499; 2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829.)

§ 54.1-706. Different requirements for licensure.

The Board shall have the discretion to impose different requirements for licensure for the practice of barbering, cosmetology, nail care, waxing, hair braiding, tattooing, body-piercing, and esthetics.

(2000, c. 726; 2002, cc. 797, 869; 2003, c. 600; 2005, c. 829.)

Code of Virginia

Title 54.1, Chapter 8.1

Boxing and Wrestling Events

§ 54.1-828. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Boxer" means a person competing in the sport of boxing.
"Boxing" means the contact sport of attack or defense using fists, feet, or both, including professional kick boxing, boxing, martial arts, or any similar contest.
"Cable television system" means any facility consisting of a set of closed transmission paths and associated equipment designed to provide video programming to multiple subscribers when subscriber interaction is required to select a specific video program for an access fee established by the cable television system for that specific video program.
"Contractor" means any person who has been recognized by the Director, through a contract, as an appropriate responsible party to provide services to assist the Commonwealth in complying with the provisions of this chapter.
"Department" means the Department of Professional and Occupational Regulation or its successor.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Event" means any professional boxing or wrestling show which includes one or more contests or matches.
"License" means a method of regulation whereby any person arranging, conducting or participating in boxing or wrestling activities is required to obtain a prior authorization from the Department.
"Manager" means any person who receives compensation for service as a representative or agent of a boxer or wrestler to arrange for his participation in an event.
"Martial arts" means any of several Asian arts of combat or self-defense, including but not limited to aikido, karate, judo, or tae kwon do, usually practiced as sport and which may involve the use of striking weapons.
"Matchmaker" means any person who proposes, selects, arranges for, or in any manner procures specific individuals to be contestants in an event.
"Person" means a natural person, corporation, partnership, sole proprietorship, firm, enterprise, franchise, association or any other entity.
"Promote" or "promotion" means to organize, arrange, publicize, or conduct an event in the Commonwealth.
"Promoter" means any person who undertakes to promote an event.
"Trainer," "second" or "cut man" means an individual who undertakes to assure the well-being of a boxer by providing instruction or advice concerning techniques or strategies of boxing, and who may work in the corner with a boxer between the rounds of a match to assure his well-being and provide necessary equipment and advice concerning match participation.
"Wrestler" means any person competing or participating as an opponent in wrestling.

"Wrestling" means any contact sport or exhibition in which individuals attempt to subdue or unbalance an opponent.

(1998, c. 895; 2005, c. 287.)

§ 54.1-829. License required; bond; physical examination; ambulance; physician; and health insurance.

A. Unless exempted by § 54.1-830, no person shall promote or conduct a boxing, martial arts, or wrestling event in the Commonwealth without first having obtained a license for such event from the Department. No such license shall be granted except to a licensed promoter.
B. Unless exempted by § 54.1-830, no person shall act as a promoter, matchmaker, trainer, boxer or wrestler in the Commonwealth without first having obtained a license for such activity from the Department and such license remains in full force and effect.
C. No license to act as a promoter shall be granted unless the applicant executes and files with the Department a bond, in such penalty as the Department shall determine through regulation, conditioned on the payment of the fees and penalties imposed by this chapter and for the fulfillment of contracts made with boxers and wrestlers in accordance with Department regulations.
D. Each boxer shall, and each wrestler may, be examined prior to entering the ring by a physician who has been licensed to practice medicine in the Commonwealth for at least five years. The physician shall be appointed by the Department and shall certify in writing that the contestant's physical condition is such that he is physically able to engage in the contest.
E. No boxing event shall be conducted without the continuous presence at ringside of a physician who has been licensed to practice medicine in the Commonwealth for at least five years, and unless an ambulance is at the site of the boxing event.
F. No boxer shall participate in any event unless covered by a health insurance policy with minimum coverage in an amount determined by Department regulation.

(1998, c. 895; 2007, c. 853.)

§ 54.1-830. Exemptions.

Amateur exhibitions and the participants therein shall be exempt from the provisions of this chapter provided the participants receive no money, compensation or reward other than a suitably inscribed memento for their participation.

(1998, c. 895.)

§ 54.1-831. Powers and duties of the Department.

The Department shall administer and enforce the provisions of this chapter. In addition to the powers and duties otherwise conferred by law, the Director shall have the powers and duties of a regulatory board as contained in § 54.1-201, and shall have the power and duty to:
1. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which implement the federal Professional Boxing Safety Act of 1996 (15 U.S.C. § 6301 et seq.) and

protect the public against incompetent, unqualified, unscrupulous or unfit persons engaging in the activities regulated by this chapter.
The regulations shall include requirements for (i) initial and renewal licensure, (ii) licensure and conduct of events, (iii) standards of practice for persons arranging, promoting, conducting, supervising and participating in events, (iv) grounds for disciplinary actions against licensees, (v) records to be kept and maintained by licensees, (vi) manner in which fees are to be accounted for and submitted to the Department, and (vii) minimum health coverage for injuries sustained in a boxing match. The Department shall have direct oversight of events to assure the safety and well-being of boxers and wrestlers.
2. Charge each applicant for licensure and for renewals of licensure a nonrefundable fee subject to the provisions of § 54.1-113 and subdivision 4 of § 54.1-201.
3. Conduct investigations to determine the suitability of applicants for licensure and to determine the licensee's compliance with applicable statutes and regulations.
4. Conduct investigations as to whether monopolies, combinations or other circumstances exist to restrain matches or exhibitions of professional boxing or wrestling anywhere in the Commonwealth. The Attorney General may assist investigations at the request of the Department.
5. Exercise jurisdiction over all wrestling and boxing conducted within the Commonwealth by any person, except where otherwise exempted.

(1998, c. 895.)

§ 54.1-831.01. Professional Boxing, Wrestling and Martial Arts Advisory Board.

A. The Professional Boxing, Wrestling and Martial Arts Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government to advise the Director on matters relating to professional boxing and wrestling events and martial arts competitions in the Commonwealth.
B. The Board shall consist of seven members appointed by the Director as follows: one representative of the sport of boxing; one representative of the sport of wrestling; one representative of the sport of nontraditional mixed martial arts; one representative of either the sport of boxing, wrestling or nontraditional mixed martial arts; one member who is a martial arts instructor who has obtained the rank of black belt or higher; and two citizen members. All members shall be residents of the Commonwealth. After the original appointments, all appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive full terms.
C. The Board shall elect its chairman and vice-chairman from among its members. The Board shall meet monthly to conduct its business or upon the call of the Director or chair of the Board. Four members shall constitute a quorum.
D. Members of the Board shall receive no compensation for their services, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.
E. Such staff support as is necessary for the conduct of the Board's business shall be furnished by the Department.

(2007, c. 853.)

§ 54.1-831.1. Summary suspension of boxing license.

When required in order to comply with applicable federal law, the Department may suspend the license of any person holding a license as a boxer on medical grounds or when there is substantial danger to the public health or safety without a hearing or informal fact-finding conference. Institution of a proceeding for a hearing or conference shall be provided simultaneously with the summary suspension. The hearing or conference shall be scheduled within a reasonable time of the date of the summary suspension. The suspension shall remain in effect only so long as the medical grounds or danger to the public health or safety shall exist.

(2002, c. 33.) § 54.1-832. Director authorized to contract for certain services; award of contract; authority when no contract is in effect.

A. The Director may contract with a private person, firm, corporation or association to provide any or all of the following services on behalf of the Department: examining and recommending licensure, investigating and ensuring that events are conducted in compliance with statutes and regulations, performing clerical duties, collecting fees, maintaining records, developing proposed regulations in accordance with Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, and recommending enforcement actions in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

B. The Director shall procure any or all of such services in accordance with the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). Prior to the award of such contract, a proposer shall demonstrate, to the satisfaction of the Director:

1. Personnel and financial resources necessary to carry out the provisions of the contract;
2. Adequate indemnification to protect the Commonwealth and its agencies and instrumentalities from all claims and losses incurred as a result of the contract;
3. Compliance with all applicable federal, state, and local laws;
4. Ability to develop, implement, and maintain the internal operations necessary to carry out the provisions of the contract; and
5. Ability to meet any other qualifications the Director deems appropriate in the procurement process.

C. Any contract awarded in accordance with this section shall not exceed a three-year term, but may be renewed annually upon the approval of the Director. The Director shall be the signatory to the contract on behalf of the Commonwealth.

D. Nothing herein is intended to deprive the contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

E. Nothing herein is intended to deprive the Director of his authority to carry out the requirements of this chapter when no contract is in effect.

(1998, c. 895.)

§ 54.1-833. Reports; cable television systems; fee on receipts.

A. Each promoter shall furnish to the Department, within twenty-four hours after the completion of each event, a written and verified report on the form provided by the Department showing the

number of tickets sold, unsold and given away and the amount of gross proceeds thereof for such events originating in the Commonwealth, and its total gross receipts from the sale of rights to distribute in any manner such event by any video, telephonic or other communication method involving the control of electrons or other charge carriers for such live events originating in the Commonwealth. Within the twenty-four-hour period, the promoter shall pay to the Department a fee of (i) five percent of the first $100,000 of its total gross receipts; and (ii) two and one-half percent of the remainder of its total gross receipts. Records of the promoter shall be subject to audit by the Department.

B. Each cable television system shall report to the Department in writing the name and address of each person from whom it obtains the rights to provide a live event originating in the Commonwealth.

C. The Department shall hold all license fees in a special fund of the state treasury subject to appropriation of the General Assembly. Payments from this fund shall be made to the contractors for their services on behalf of the Commonwealth. No payment shall exceed the balance of the fund. The Department shall draw from the fund to cover any expenses associated with the provisions of this chapter.

(1998, c. 895.)

§ 54.1-834. Prohibited activities; penalties.

A. No person licensed to conduct an event shall permit betting or wagering before, during or after the event in the building where the event is held.

B. No boxer, promoter or trainer shall participate in a sham or fake boxing contest. The Department shall have the authority to order, without a hearing, the person controlling the purse to hold the distribution to contestants, promoters and trainers pending a public hearing by the Department. The Department shall, simultaneously with the issuance of such order to retain the share or purse, institute proceedings for a hearing to determine whether a sham or fake boxing contest has occurred.

C. Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

(1998, c. 895.)

§ 54.1-835. Other penalties.

A. It shall be a Class 1 misdemeanor for any person required to possess a license under subsection A of § 54.1-829 to engage in the promotion, arrangement or conduct of or participate in a boxing or wrestling event without first obtaining the appropriate license from the Department.

B. It shall be a Class 1 misdemeanor for any person to employ or otherwise arrange for an individual to compete in a boxing or wrestling event who is not licensed as required by subsection B of § 54.1-829.

C. It shall be a Class 1 misdemeanor for any person conducting a boxing or wrestling event to permit any betting or wagering at the event before, during or after the event, in the building where the contest is held.

D. It shall be a Class 1 misdemeanor for any person to violate any statute or regulation governing a profession regulated pursuant to this chapter.

E. The third or any subsequent conviction for violating any provision of this section during a thirty-six-month period shall constitute a Class 6 felony.

(1998, c. 895.)

Code of Virginia

Title 54.1, Chapter 9

Branch Pilots

§ 54.1-900. Definitions.

For the purposes of this chapter, unless the context requires a different meaning:
"Board" means the Board for Branch Pilots.
"Branch pilots" means pilots who have qualified and been licensed in accordance with the provisions of § 54.1-905.
"Limited branch pilots" means pilots who have qualified and been licensed in accordance with the provisions of § 54.1-909.
"Pilot" means branch pilot and limited branch pilot.

(Code 1950, § 54-525; 1988, c. 765.)

§ 54.1-901. Appointment and removal of members; quorum; clerk.

The Board for Branch Pilots shall consist of nine members to be appointed as follows: the Circuit Court of the City of Hampton shall appoint three persons, only one of whom shall be a branch pilot, and the Circuit Court of the City of Norfolk shall appoint four persons, only two of whom shall be branch pilots, and the Circuit Court of the City of Portsmouth shall appoint two persons, only one of whom shall be a branch pilot. The court which appointed a member may remove him for incapacity, neglect of duty or misconduct and may fill the vacancy.
Four members of the Board shall constitute a quorum. The Board shall appoint a clerk, who shall keep a record of the Board's proceedings.

(Code 1950, §§ 54-527, 54-528, 54-530, 54-531; 1978, c. 834; 1988, c. 765.)

§ 54.1-902. Regulations; suspension or revocation of license; penalty for violation.

A. The Board is authorized to promulgate regulations necessary for the proper government and regulation of pilots and to prescribe penalties for the violation of regulations in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Regulations may include the right to suspend or revoke the branch of any pilot. Such suspension or revocation may be in addition to any other penalty imposed by law for the violation.
Reasonable notice and an opportunity to be heard in accordance with the Administrative Process Act shall be given before the Board shall take any action to revoke or suspend the license of any licensee.
B. The Board may suspend a license of any person without a hearing, simultaneously with the institution of proceedings for a hearing, if it finds that there is substantial danger to the public health

or safety which warrants such action. The Board may meet by telephone conference call when summarily suspending a license, if a good faith effort to assemble a quorum of the Board has failed and in the judgment of a majority of the members of the Board, the continued practice of the licensee constitutes a substantial danger to the public health or safety. Institution of proceeding for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.
C. Before any penalty for violation of the regulations may be imposed, a printed copy of the regulations shall be furnished to each pilot.

(Code 1950, § 54-529; 1988, c. 765; 1989, c. 584.)

§ 54.1-903. Decisions of controversies between pilots and masters, etc.; judgment of Board.

The Board may decide any controversy between pilots or between a pilot and the master, owner, or consignee of any vessel, which may arise under any law concerning pilots in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). If the decision requires the payment of money, the Board shall enter a judgment therefor on the record of its proceedings. When an authorized officer receives a copy of the judgment, he shall enforce the payment as if it were an execution against the property of the debtor.

(Code 1950, §§ 54-533, 54-534; 1988, c. 765.)

§ 54.1-904. Limitation of powers of Board.

Nothing in this chapter shall authorize the Board to decide upon the liability of a pilot or his apprentice to any person injured by his negligence or misconduct, or to prevent such person from recovering for any damage occasioned thereby.

(Code 1950, § 54-535; 1988, c. 765.)

§ 54.1-905. Examination of pilots; issuance of license; bonds and oath of office.

Applicants for examination shall submit to the Board a certificate from the circuit court in the county or city of their residence stating that the applicant is of good character and a resident of the Commonwealth. The applicant shall also submit proof that he has served as an apprentice for five years, including three years as a limited branch pilot. If the Board finds the applicant qualified to act as a branch pilot it shall issue him a license, and he shall thereupon become a state officer, to be known as a branch pilot and shall hold office as such for one year next ensuing. Before he may perform any of the duties of his office he shall give bond before the clerk of the circuit court of the county or city in which he resides in the penalty of $500, conditioned for the faithful performance of his duties and he shall take the oath of office required by § 49-1.
Branch pilots may conduct and pilot any vessel.

(Code 1950, §§ 54-536, 54-555; 1988, c. 765.)

§ 54.1-906. Expiration and renewal of licenses.

All licenses issued by the Board shall expire on December 31 of the year in which issued. Every pilot who holds a license as a branch pilot shall appear before the Board every twelve months, and, if the Board deems him qualified, it shall renew his license, which shall continue his term of office for one year following each renewal. Upon each renewal he shall appear before the clerk before whom he originally qualified, and renew his oath of office, but the bond given by him shall remain in force.

(Code 1950, §§ 54-537, 54-538; 1988, c. 765.)

§ 54.1-907. Fee for original license and license renewal.

Upon the application for license as a branch pilot and each renewal thereof, the applicant for license or license renewal shall pay a fee established by the Board pursuant to § 54.1-113.

(Code 1950, §§ 54-539, 54-540; 1988, c. 765; 1990, c. 72.)

§ 54.1-908. State and local licenses prohibited.

No state, city, town or county licenses shall be assessed against any branch pilot.

(Code 1950, § 54-541; 1988, c. 765.)

§ 54.1-909. License as limited branch pilot.

Any apprentice may apply to the Board for a license as a limited branch pilot. The Board may grant him a license after proper examination if in the opinion of the Board the applicant is qualified. The Board may endorse on the license such limitations as it deems proper, and a limited branch pilot shall perform his duties of piloting and conducting vessels within the limitations imposed by his license.

(Code 1950, §§ 54-542, 54-543, 54-556; 1988, c. 765; 2007, cc. 326, 559.)

§ 54.1-910. What vessels to take pilots and where.

The master of every vessel, other than vessels exclusively engaged in the coastwise trade and those made exempt by United States statutes, inward bound from sea to any port in Virginia or any intermediate or other point in Hampton Roads, the Virginia waters of Chesapeake Bay, or in any navigable river in Virginia which flows into Chesapeake Bay or Hampton Roads, shall take the first Virginia pilot that offers his services. Any such vessel outward bound, or bound from one port or point in Virginia to another port or point, shall take the first Virginia pilot that offers his services at the port, point, or place of departure or sailing. Any master refusing to do so shall immediately pay

to such pilot full pilotage from the point where the services are offered to the point of destination of the vessel.

(Code 1950, § 54-544; 1988, c. 765.)

§ 54.1-911. Notice to pilot officers.

The master, agent or consignee of any vessel requiring a pilot shall give at least two hours' notice of the need for a pilot to the pilot officers.

(Code 1950, § 54-547; 1988, c. 765.)

§ 54.1-912. Employing unlicensed pilots.

No master shall employ any person who is not licensed as a pilot to act as a pilot of his vessel.

(Code 1950, § 54-548; 1988, c. 765.)

§ 54.1-913. Concealing name of vessel.

The master of a vessel shall not conceal or obscure or refuse to disclose the name of his vessel when spoken to by a pilot.

(Code 1950, § 54-549; 1988, c. 765.)

§ 54.1-914. Keeping pilot boat.

Every pilot, or the company to which he belongs, shall keep one sufficient boat of at least thirty feet keel.

(Code 1950, § 54-550; 1988, c. 765.)

§ 54.1-915. Pilot first meeting vessel at sea to have preference.

The first pilot who meets a vessel coming in, which his branch entitles him to conduct, shall have the right to take charge of and conduct her into port.

(Code 1950, § 54-554; 1988, c. 765.)

§ 54.1-916. Discretion of pilot piloting vessel.

Any pilot piloting a vessel shall have full discretion as to when the vessel shall be piloted to or from sea, or to or from any port or place within the Commonwealth or situated within any of the waters referred to in § 54.1-910. The pilot's discretion shall be exercised in a reasonable way, with a view to the vessel's safety as well as with a view to the safety of the Commonwealth's waters and ports.

(Code 1950, § 54-558; 1988, c. 765.)

§ 54.1-917. Enforcement of suspension.

If any individual whose pilot's license has been suspended is found on board any vessel as a pilot, or offers to conduct any vessel, he may be dismissed from the vessel by any licensed pilot, to whom all the pilotage shall be paid. The Board may proceed against the individual under the provisions of § 54.1-924 as if the individual had never been licensed. An individual whose pilot's license has been suspended may also be proceeded against under § 54.1-111.

(Code 1950, § 54-561; 1988, c. 765.)

§ 54.1-918. State Corporation Commission to prescribe and enforce rates of pilotage and other charges.

The State Corporation Commission shall prescribe and enforce the rates of pilotage and other charges to be observed in the business of pilotage, but before the Commission fixes or prescribes rates or charges it shall give ten days' notice of the time and place of a hearing by publication in a newspaper of general circulation in each of the Cities of Norfolk, Portsmouth and Newport News. For the purpose of determining the fair basis of such rates and charges, the Commission shall, for the two years next preceding, have access to the books and records of the individual pilots who have no organized association, and of any association of pilots who have an organized association whose rates are to be fixed by the Commission, and shall have the same powers given by law in fixing rates and charges of transportation companies.

The Commission shall fix amounts that will be a fair charge for the service rendered. The Commission shall have due regard for necessary operating expenses, maintenance of, depreciation on, and return on investment in properties used and useful in the business of pilotage, and the rates and charges of pilotage at comparable and competing ports of the United States.

When such rates and charges have been fixed and prescribed by the Commission, they shall be the legal rates and charges of pilotage in Virginia, and shall be enforced as provided by law, and the Commission shall have the power to change or alter rates or charges after notice and hearing as provided in this section.

(Code 1950, § 54-562; 1988, c. 765; 1992, c. 10.)

§ 54.1-919. Appeal from action of Commission.

From any action of the State Corporation Commission under § 54.1-918, an appeal may be taken by the individual pilots, company or association affected, or by any other person, firm or corporation aggrieved by such action, in the manner prescribed in Article IX, Section 4 of the Constitution of Virginia.

(Code 1950, § 54-563; 1971, Ex. Sess., c. 37; 1988, c. 765.)

§ 54.1-920. Detention on seagoing vessel.

If a pilot is detained on board any seagoing vessel he shall be paid by the master, owner, or consignee of the vessel the rate prescribed by the State Corporation Commission for a day's detention for each day detained. If any pilot is carried beyond the limits of the Commonwealth against his will, he shall be entitled to recover $300 from the master or owner of the vessel upon which he has been carried away.

(Code 1950, § 54-564; 1988, c. 765.)

§ 54.1-921. Quarantine detention.

If any pilot is permitted to go on board a vessel without being informed of a contagious or infectious disease on board, and is obligated to remain on board, or perform quarantine in consequence thereof he shall be paid for each day's detention in accordance with the rate prescribed for a day's detention by the State Corporation Commission.

(Code 1950, § 54-565; 1988, c. 765.)

§ 54.1-922. Liability for pilotage and other allowances.

The master and the owner of every vessel shall each be liable to the pilot for his pilotage and other allowances, and also the consignee or supercargo of any vessel not owned by a resident of the Commonwealth. If the consignee or supercargo refuses to become responsible to the pilot for his fees, the master or owner of the vessel shall, before she leaves her port of departure, deposit with some responsible person, subject to the order of the pilot, the amount of the pilotage due him.
(Code 1950, § 54-566; 1988, c. 765.) § 54.1-923. When pilot to produce branch.
Every pilot shall, if required, produce his branch at the time of demanding his fees, before he shall be entitled to receive the same.

(Code 1950, § 54-569; 1988, c. 765.)

§ 54.1-924. Piloting, etc., vessel without license; how offenders proceeded against.

No person shall conduct or pilot a vessel to or from sea, or to or from any port or place in Virginia unless he is licensed under this chapter.
Warrants for persons violating this section may be issued by any magistrate, upon the oath of any party complaining, and shall be returnable to the Circuit Court of the City of Norfolk. After a bond hearing held pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, the bond shall be returned by the judicial officer to the circuit court of the City of Norfolk, which shall have jurisdiction for trial of such misdemeanor.

(Code 1950, § 54-571; 1988, c. 765.)

§ 54.1-925. Exception as to vessels in distress.

Section 54.1-924 shall not prevent any person from assisting a vessel in distress.

(Code 1950, § 54-572; 1988, c. 765.)

§ 54.1-926. Pilot receiving unlawful fees.

No pilot shall demand or receive other than the lawful fee for any service. Any pilot who violates this section may be suspended by the Board for up to six months.

(Code 1950, § 54-573; 1988, c. 765.)

§ 54.1-927. Violation of chapter a misdemeanor.

Any person who violates any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor.

(1988, c. 765.)

Code of Virginia

Title 54.1, Chapter 11

Contractors

§ 54.1-1100. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Contractors.
"Class A contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is $120,000 or more, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is $750,000 or more.
"Class B contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is $7,500 or more, but less than $120,000, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any 12-month period is $150,000 or more, but less than $750,000.
"Class C contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over $1,000 but less than $7,500, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is less than $150,000. The Board shall require a master tradesmen license as a condition of licensure for electrical, plumbing and heating, ventilation and air conditioning contractors.
"Contractor" means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property.
"Department" means the Department of Professional and Occupational Regulation.
"Designated employee" means the contractor's full-time employee, or a member of the contractor's responsible management, who is at least 18 years of age and who has successfully completed the oral or written examination required by the Board on behalf of the contractor.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Owner-developer" means any person who, for a third party purchaser, orders or supervises the construction, removal, repair, or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by the owner-developer, or any other improvement to such property and who contracts with a person licensed in accordance with this chapter for the work undertaken.
"Person" means any individual, firm, corporation, association, partnership, joint venture, or other legal entity.
"Value" means fair market value. When improvements are performed or supervised by a contractor, the contract price shall be prima facie evidence of value.

(Code 1950, § 54-113; 1954, c. 428; 1970, c. 319; 1972, c. 771; 1977, c. 640; 1978, c. 521; 1980, c. 634; 1984, c. 434; 1987, c. 358; 1988, c. 765; 1990, c. 911; 1992, cc. 330, 713, 715, 812; 1993, cc. 499, 815; 1994, cc. 601, 754; 1995, c. 581; 1997, c. 885; 1998, c. 754; 2005, c. 348.)

§ 54.1-1101. Exemptions; failure to obtain certificate of occupancy; penalties.

A. The provisions of this chapter shall not apply to:
1. Any governmental agency performing work with its own forces;
2. Work bid upon or undertaken for the armed services of the United States under the Armed Services Procurement Act;
3. Work bid upon or undertaken for the United States government on land under the exclusive jurisdiction of the federal government either by statute or deed of cession;
4. Work bid upon or undertaken for the Department of Transportation on the construction, reconstruction, repair or improvement of any highway or bridge;
5. Any other persons who may be specifically excluded by other laws but only to such an extent as such laws provide;
6. Any material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;
7. Any person who performs or supervises the construction, removal, repair or improvement of no more than one primary residence owned by him and for his own use during any 24-month period;
8. Any person who performs or supervises the construction, removal, repair or improvement of a house upon his own real property as a bona fide gift to a member of his immediate family provided such member lives in the house. For purposes of this section, "immediate family" includes one's mother, father, son, daughter, brother, sister, grandchild, grandparent, mother-in-law and father-in-law;
9. Any person who performs or supervises the repair or improvement of industrial or manufacturing facilities, or a commercial or retail building, for his own use;
10. Any person who performs or supervises the repair or improvement of residential dwelling units owned by him that are subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.);
11. Any owner-developer, provided that any third party purchaser is made a third party beneficiary to the contract between the owner-developer and a licensed contractor whereby the contractor's obligation to perform the contract extends to both the owner-developer and the third party; and
12. Work undertaken by students as part of a career and technical education project as defined in § 22.1-228 established by any school board in accordance with Article 5 (§ 22.1-228 et seq.) of Chapter 13 of Title 22.1 for the construction of portable classrooms or single family homes.
All other contractors performing work for any government or for any governmental agency are subject to the provisions of this chapter and are required to be licensed as provided herein.
B. Any person who is exempt from the provisions of this chapter as a result of subdivision 7, 10, 11, or 12 of subsection A shall obtain a certificate of occupancy for any building constructed, repaired or improved by him prior to conveying such property to a third party purchaser, unless such purchaser has acknowledged in writing that no certificate of occupancy has been issued and that such purchaser consents to acquire the property without a certificate of occupancy.

C. Any person who is exempt from the provisions of this chapter as a result of subdivision 7, 8, 9, 10, 11, or 12 of subsection A shall comply with the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).
D. Any person who violates the provisions of subsections B or C shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction of violating subsections B or C during a 36-month period shall constitute a Class 6 felony.

(Code 1950, § 54-141; 1970, c. 319; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1998, c. 754; 2003, c. 1025; 2004, c. 189; 2005, c. 348; 2007, c. 332.)

§ 54.1-1102. Board for Contractors membership; offices; meetings; seal; record.

A. The Board for Contractors shall be composed of thirteen members as follows: one member shall be a licensed Class A general contractor; the larger part of the business of one member shall be the construction of utilities; the larger part of the business of one member shall be the construction of commercial and industrial buildings; the larger part of the business of one member shall be the construction of single-family residences; the larger part of the business of one member shall be the construction of home improvements; one member shall be a subcontractor as generally regarded in the construction industry; one member shall be in the business of sales of construction materials and supplies; one member shall be a local building official; one member shall be a licensed plumbing contractor; one member shall be a licensed electrical contractor; one member shall be a licensed heating, ventilation and air conditioning contractor; and two members shall be citizen members. The terms of the Board members shall be four years.
The Board shall meet at least four times each year, once in January, April, July and October, and at such other times as may be deemed necessary. Annually, the Board shall elect from its membership a chairman and a vice-chairman to serve for a one-year term. Seven members of the Board shall constitute a quorum.
The Board shall promulgate regulations not inconsistent with statute necessary for the licensure of contractors and tradesmen and the certification of backflow prevention device workers, and for the relicensure of contractors and tradesmen and for the recertification of backflow prevention device workers, after license or certificate suspension or revocation. The Board shall include in its regulations a requirement that as a condition for initial licensure as a contractor, the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course, which shall not exceed eight hours of classroom instruction.
The Board may adopt regulations requiring all Class A, B, and C residential contractors, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to use legible written contracts including the following terms and conditions:
1. General description of the work to be performed;
2. Fixed price or an estimate of the total cost of the work, the amounts and schedule of progress payments, a listing of specific materials requested by the consumer and the amount of down payment;
3. Estimates of time of commencement and completion of the work; and
4. Contractor's name, address, office telephone number and license or certification number and class.

In transactions involving door-to-door solicitations, the Board may require that a statement of protections be provided by the contractor to the homeowner, consumer or buyer, as the case may be.
The Board shall adopt a seal with the words "Board for Contractors, Commonwealth of Virginia." The Director shall have charge, care and custody of the seal.
B. The Director shall maintain a record of the proceedings of the Board.

(Code 1950, §§ 54-114, 54-115, 54-119, 54-120, 54-121, 54-123, 54-124; 1954, c. 415; 1970, c. 319; 1977, c. 640; 1979, c. 408; 1980, c. 634; 1981, c. 447; 1988, cc. 42, 765; 1991, c. 659; 1994, c. 895; 1995, c. 771; 1996, cc. 380, 934, 1006; 1997, c. 885; 2006, cc. 454, 475.)

§ 54.1-1103. Necessity for license; requirements for water well drillers and landscape irrigation contractors; exemption.

A. No person shall engage in, or offer to engage in, contracting work in the Commonwealth unless he has been licensed under the provisions of this chapter. The Board may waive any provision of this chapter for Habitat for Humanity, its local affiliates or subsidiaries, and any other nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal Revenue Code (26 U.S.C. § 501 (c) (3)) for the purpose of constructing single-family dwellings that will be given to or sold below the appraised value to low-income persons. Prior to a joint venture engaging in, or offering to engage in, contracting work in the Commonwealth, (i) each contracting party of the joint venture shall be licensed under the provisions of this chapter or (ii) a license shall be obtained in the name of the joint venture under the provisions of this chapter.
B. Except as provided in § 54.1-1117, the issuance of a license under the provisions of this chapter shall not entitle the holder to engage in any activity for which a special license is required by law.
C. When the contracting work is for the purpose of landscape irrigation or the construction of a water well as defined in § 62.1-255, the contractor shall be licensed, regardless of the contract amount, as follows:
1. A Class C license is required when the total value referred to in a single contract or project is no more than $7,500, or the total value of all such water well or landscape irrigation contracts undertaken within any 12-month period is no more than $150,000;
2. A Class B license is required when the total value referred to in a single contract is $7,500 or more, but less than $120,000, or the total value of all such water well or landscape irrigation contracts undertaken within any 12-month period is $150,000 or more, but less than $750,000; and
3. A Class A license is required when the total value referred to in a single contract or project is $120,000 or more, or when the total value of all such water well or landscape irrigation contracts undertaken within any 12-month period is $750,000 or more.
D. Notwithstanding the other provisions of this section, an architect or professional engineer who is licensed pursuant to Chapter 4 (§ 54.1-400 et seq.) of this title shall not be required to be licensed or certified to engage in, or offer to engage in, contracting work or operate as an owner-developer in the Commonwealth in accordance with this chapter when bidding upon or negotiating design-build contracts or performing services other than construction services under a design-build contract. However, the construction services offered or rendered in connection with such contracts shall only be rendered by a contractor licensed or certified in accordance with this chapter.
E. Notwithstanding the other provisions of this section, any person licensed under the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 as a private security services business shall

not be required to be licensed or certified to engage in, or offer to engage in, contracting work in the Commonwealth in accordance with this chapter when bidding upon or performing services to install, service, maintain, design or consult in the design of any electronic security equipment as defined in § 9.1-138 including but not limited to, low voltage cabling, network cabling and computer or systems integration.

(Code 1950, § 54-128; 1972, c. 16; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1992, c. 713; 1994, cc. 601, 754; 1995, cc. 581, 771; 1997, c. 885; 1998, cc. 271, 754; 1999, cc. 959, 977, 991; 2002, c. 653; 2004, c. 190; 2005, c. 348.)

§ 54.1-1104. Register of applicants.

The Director shall keep a register of all applicants showing their date of application, name, qualifications, place of business, place of residence, and whether such application was approved or refused. The books and register of the Board shall be prima facie evidence of all matters recorded therein.

(Code 1950, § 54-125; 1977, c. 640; 1980, c. 634; 1988, c. 765.)

§ 54.1-1105.

Repealed by Acts 1991, c. 151.

§ 54.1-1106. Application for Class A license; fees; examination; issuance.

A. Any person desiring to be licensed as a Class A contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain the name, place of employment, and business address of the proposed designated employee, and information on the knowledge, skills, abilities, and financial position of the applicant. The Board shall determine whether the past performance record of the applicant, including his reputation for paying material bills and carrying out other contractual obligations, satisfies the purposes and intent of this chapter. The Board shall also determine whether the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all other laws affecting those engaged in the practice of contracting as set forth in this chapter. If the Board determines that sufficient questions or ambiguities exist in an individual applicant's presentation of his financial information, the Board may require the applicant to provide a balance sheet reviewed by a certified public accountant licensed in accordance with § 54.1-4409.1. In addition, if the applicant is a sole proprietor, he shall furnish to the Board his name and address. If the applicant is a member of a partnership, he shall furnish to the Board the names and addresses of all of the general partners of the partnership. If the applicant is a member of an association, he shall furnish to the Board the names and addresses of all of the members of the association. If the applicant is a corporation, it shall furnish to the Board the names and addresses of all officers of the corporation. If the applicant is a joint venture, it shall furnish to the Board the names and addresses of (i) each member of the joint venture and (ii) any sole proprietor, general partner of any partnership, member of any

association, or officer of any corporation who is a member of the joint venture. The applicant shall thereafter keep the Board advised of any changes in the above information.
B. If the application is satisfactory to the Board, the proposed designated employee shall be required by Board regulations to take an oral or written examination to determine his general knowledge of contracting, including the statutory and regulatory requirements governing contractors in the Commonwealth. If the proposed designated employee successfully completes the examination and the applicant meets or exceeds the other entry criteria established by Board regulations, a Class A contractor license shall be issued to the applicant. The license shall permit the applicant to engage in contracting only so long as the designated employee is in the full-time employment of the contractor or is a member of the contractor's responsible management. No examination shall be required where the licensed Class A contractor changes his form of business entity provided he is in good standing with the Board. In the event the designated employee leaves the full-time employ of the licensed contractor or is no longer a member of the contractor's responsible management, no additional examination shall be required of such designated employee, except in accordance with § 54.1-1110.1, and the contractor shall within 90 days of that departure provide to the Board the name of the new designated employee.
C. The Board may grant a Class A license in any of the following classifications: (i) building contractor, (ii) highway/heavy contractor, (iii) electrical contractor, (iv) plumbing contractor, (v) heating, ventilation, and air conditioning contractor, and (vi) specialty contractor.

(1980, c. 634, § 54-129.1; 1984, c. 45; 1988, c. 765; 1990, c. 911; 1992, c. 713; 1994, c. 601; 1996, c. 707; 1998, c. 754; 1999, c. 393; 2003, c. 892; 2005, c. 348; 2007, c. 804.)

§ 54.1-1106.1. Violations of certain State Board of Health regulations; penalty.

The Board for Contractors shall consider violations of regulations of the State Board of Health relating to water wells as violations of this chapter, punishable by a fine of not more than $1,000 or suspension or revocation of license. No contractor shall be subject to the monetary penalties provided by this section if he has been assessed a civil penalty for such violation pursuant to § 32.1-27.

(1989, c. 241; 1990, c. 911.)

§§ 54.1-1107. , 54.1-1107.1.

Repealed by Acts 1990, c. 911, effective January 1, 1991.

§ 54.1-1108. Application for Class B license; fees; examination; issuance.

A. Any person desiring to be licensed as a Class B contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain the name, place of employment, and business address of the proposed designated employee; information on the knowledge, skills, abilities, and financial position of the applicant; and evidence of holding a current local license pursuant to local ordinances adopted pursuant to § 54.1-1117. The Board shall determine whether the past performance record of the applicant, including his reputation for paying

material bills and carrying out other contractual obligations, satisfies the purpose and intent of this chapter. The Board shall also determine whether the applicant has complied with the laws of the Commonwealth pertaining to the domestication of foreign corporations and all other laws affecting those engaged in the practice of contracting as set forth in this chapter. In addition, if the applicant is a sole proprietor, he shall furnish to the Board his name and address. If the applicant is a member of a partnership, he shall furnish to the Board the names and addresses of all of the general partners of that partnership. If the applicant is a member of an association, he shall furnish to the Board the names and addresses of all of the members of the association. If the applicant is a corporation, it shall furnish to the Board the name and address of all officers of the corporation. If the applicant is a joint venture, it shall furnish to the Board the names and addresses of (i) each member of the joint venture and (ii) any sole proprietor, general partner of any partnership, member of any association, or officer of any corporation who is a member of the joint venture. The applicant shall thereafter keep the Board advised of any changes in the above information.

B. If the application is satisfactory to the Board, the proposed designated employee shall be required by Board regulations to take an oral or written examination to determine his general knowledge of contracting, including the statutory and regulatory requirements governing contractors in the Commonwealth. If the proposed designated employee successfully completes the examination and the applicant meets or exceeds the other entry criteria established by Board regulations, a Class B contractor license shall be issued to the applicant. The license shall permit the applicant to engage in contracting only so long as the designated employee is in the full-time employment of the contractor and only in the counties, cities, and towns where such person has complied with all local licensing requirements and for the type of work to be performed. No examination shall be required where the licensed Class B contractor changes his form of business entity provided he is in good standing with the Board. In the event the designated employee leaves the full-time employ of the licensed contractor, no additional examination shall be required of such designated employee, except in accordance with § 54.1-1110.1, and the contractor shall within 90 days of that departure provide to the Board the name of the new designated employee.

C. The Board may grant a Class B license in any of the following classifications: (i) building contractor, (ii) highway/heavy contractor, (iii) electrical contractor, (iv) plumbing contractor, (v) HVAC contractor, and (vi) specialty contractor.

(1980, c. 634, § 54-129.3; 1987, c. 110; 1988, c. 765; 1990, c. 911; 1994, c. 601; 1996, c. 707; 2003, c. 892.)

§ 54.1-1108.1. Waiver of examination; designated employee.

Any Class A contractor licensed in the Commonwealth of Virginia prior to January 1, 1991, and in business on December 31, 1990, shall provide to the Board in writing the name of one full-time employee or member of the contractor's responsible management who is at least 18 years of age and that employee shall be deemed to have fulfilled the requirement for examination in § 54.1-1106, so long as he remains a full-time employee of the contractor or remains a member of the contractor's responsible management. The designated employee shall not be required to take an examination if the Class A contractor changes his form of business entity and is in good standing with the Board. Upon his leaving the employ of the contractor or his leaving as a member of the contractor's responsible management, the contractor shall name another full-time employee or member of the contractor's responsible management in accordance with § 54.1-1106.

Any Class B contractor registered in the Commonwealth prior to January 1, 1991, and in business on December 31, 1990, shall, within its current period of registration, provide on a form prescribed by the Board satisfactory information on the financial position, and knowledge, skills and abilities of the registered firm; and the name of a full-time employee who is at least 18 years of age and that employee shall be deemed to have fulfilled the requirement for examination in § 54.1-1108, so long as he remains a full-time employee of the contractor. The designated employee shall not be required to take an examination if the Class B contractor changes his form of business entity and is in good standing with the Board. If such employee leaves the employ of the contractor, the contractor shall name another full-time employee in accordance with § 54.1-1108.

(1990, c. 911; 1996, c. 707; 2003, c. 892; 2005, c. 348.)

§ 54.1-1108.2. Application for Class C license; fees; issuance.

A. Any person desiring to be licensed as a Class C contractor shall file with the Department a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain information concerning the name, location, nature, and operation of the business, and information demonstrating that the applicant possesses the character and minimum skills to properly engage in the occupation of contracting.
B. The Board may grant a Class C license in any of the following classifications: (i) building contractor, (ii) highway/heavy contractor, (iii) electrical contractor, (iv) plumbing contractor, (v) heating, ventilation, and air conditioning contractor, and (vi) specialty contractor.

(1995, c. 771; 1997, c. 885; 1998, c. 754; 2003, c. 892.)

§ 54.1-1109. Expiration and renewal of license or certificate.

A license or certificate issued pursuant to this chapter shall expire as provided in Board regulations. Application for renewal of a license or certificate may be made as provided by Board regulations. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

(Code 1950, § 54-131; 1970, c. 319; 1977, c. 640; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1995, c. 771; 1996, c. 1014.)

§ 54.1-1110. Grounds for denial or revocation of license or certificate.

The Board shall have the power to require remedial education, suspend, revoke, or deny renewal of the license or certificate of any contractor who is found to be in violation of the statutes or regulations governing the practice of licensed or certified contractors in the Commonwealth.
The Board may suspend, revoke, or deny renewal of an existing license or certificate, or refuse to issue a license or certificate, to any contractor who is shown to have a substantial identity of interest with a contractor whose license or certificate has been revoked or not renewed by the Board. A substantial identity of interest includes but is not limited to (i) a controlling financial interest by the individual or corporate principals of the contractor whose license or certificate has

been revoked or nonrenewed, (ii) substantially identical principals or officers, or (iii) the same designated employee as the contractor whose license or certificate has been revoked or not renewed by the Board.
Additionally, the Board may suspend, revoke or deny renewal of an existing license or certificate, or refuse to issue a license or certificate to any contractor who violates the provisions of Chapter 5 (§ 60.2-500 et seq.) of Title 60.2 and Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.
Any person whose license is suspended or revoked by the Board shall not be eligible for a license or certificate under any circumstances or under any name, except as provided by regulations of the Board pursuant to § 54.1-1102.

(1980, c. 634, § 54-132.1; 1988, c. 765; 1990, c. 911; 1992, c. 243; 1995, c. 771; 1996, c. 380.)

§ 54.1-1110.1. Re-examination of designated employee.

The Board shall have the power to require remedial education or may require a designated employee to retake the examination required by this chapter, in any case where the conduct of the designated employee, while in the employ of a licensed Class A or Class B contractor, has resulted in any disciplinary action by the Board against such contractor.
(1996, c. 707.) § 54.1-1111. Prerequisites to obtaining building, etc., permit.
Any person applying to the building inspector or any other authority of a county, city, or town in this Commonwealth, charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, or structure, or any removal, grading or improvement shall furnish prior to the issuance of the permit, either (i) satisfactory proof to such inspector or authority that he is duly licensed or certified under the terms of this chapter to carry out or superintend the same, or (ii) file a written statement, supported by an affidavit, that he is not subject to licensure or certification as a contractor or subcontractor pursuant to this chapter. The applicant shall also furnish satisfactory proof that the taxes or license fees required by any county, city, or town have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.
It shall be unlawful for the building inspector or other authority to issue or allow the issuance of such permits unless the applicant has furnished his license or certificate number issued pursuant to this chapter or evidence of being exempt from the provisions of this chapter.
The building inspector, or other such authority, violating the terms of this section shall be guilty of a Class 3 misdemeanor.

(Code 1950, § 54-138; 1970, c. 319; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1991, c. 151; 1992, c. 713; 1995, c. 771; 1998, c. 754.)

§ 54.1-1111. Prerequisites to obtaining building, etc., permit.

Any person applying to the building inspector or any other authority of a county, city, or town in this Commonwealth, charged with the duty of issuing building or other permits for the construction of any building, highway, sewer, or structure, or any removal, grading or improvement shall furnish prior to the issuance of the permit, either (i) satisfactory proof to such inspector or authority that he is duly licensed or certified under the terms of this chapter to carry out or superintend the same, or (ii) file a written statement, supported by an affidavit, that he is not subject to licensure or

certification as a contractor or subcontractor pursuant to this chapter. The applicant shall also furnish satisfactory proof that the taxes or license fees required by any county, city, or town have been paid so as to be qualified to bid upon or contract for the work for which the permit has been applied.

It shall be unlawful for the building inspector or other authority to issue or allow the issuance of such permits unless the applicant has furnished his license or certificate number issued pursuant to this chapter or evidence of being exempt from the provisions of this chapter.

The building inspector, or other such authority, violating the terms of this section shall be guilty of a Class 3 misdemeanor.

(Code 1950, § 54-138; 1970, c. 319; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1991, c. 151; 1992, c. 713; 1995, c. 771; 1998, c. 754.)

§ 54.1-1112. Invitations to bid and specifications to refer to law.

All architects and engineers preparing plans and specifications for work to be contracted in Virginia shall include in their invitations to the bidder and in their specifications a reference to this chapter so as to convey to the invited bidder prior to the consideration of the bid (i) whether such person is a resident or nonresident of the Commonwealth, (ii) whether the proper license or certificate has been issued to the bidder, and (iii) the information required of the bidder to show evidence of proper licensure or certification under the provisions of this chapter.

(Code 1950, § 54-139; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1995, c. 771.)

§ 54.1-1113. Nonresident bidders to appoint statutory agent for service of process.

Before any nonresident person or any foreign corporation bids on any work in this Commonwealth, the nonresident person or foreign corporation, by written power of attorney, shall appoint the Director as his agent upon whom all lawful process against or notice to such nonresident person or foreign corporation may be served, and authorize the Director to enter an appearance on his behalf. Upon the filing of the power of attorney the provisions of §§ 13.1-763 through 13.1-766, with reference to service of process and notice, and judgments, decrees and orders, shall be applicable as to such nonresident person or foreign corporation.

(Code 1950, § 54-140; 1970, c. 319; 1980, c. 634; 1988, c. 765.)

§ 54.1-1114. Filing and hearing of charges.

Any person may file complaints against any contractor licensed or certified pursuant to this chapter. The Director shall investigate complaints and the Board may take appropriate disciplinary action if warranted. Disciplinary proceedings shall be conducted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Board shall immediately notify the Director and the clerk and building official of each city, county or town in the Commonwealth of its findings in the case of the revocation of a license or certificate, or of the reissuance of a revoked license or certificate.

(Code 1950, § 54-133; 1970, c. 319; 1975, c. 421; 1977, c. 640; 1980, c. 634; 1988, c. 765; 1990, c. 911; 1995, c. 771.)

§ 54.1-1115. Prohibited acts.

A. The following acts are prohibited and shall constitute the commission of a Class 1 misdemeanor:
1. Contracting for, or bidding upon the construction, removal, repair or improvements to or upon real property owned, controlled or leased by another person without a license or certificate, or without the proper class of license as defined in § 54.1-1100 for the value of work to be performed.
2. Attempting to practice contracting in the Commonwealth, except as provided for in this chapter.
3. Presenting or attempting to use the license or certificate of another.
4. Giving false or forged evidence of any kind to the Board or any member thereof in an application for the issuance or renewal of a license or certificate.
5. Impersonating another or using an expired or revoked license or certificate.
6. Receiving or considering as the awarding authority a bid from anyone whom the awarding authority knows is not properly licensed or certified under this chapter. The awarding authority shall require a bidder to submit his license or certificate number prior to considering a bid.
B. Any person who undertakes work without (i) any valid Virginia contractor's license or certificate when a license or certificate is required by this chapter or (ii) the proper class of license as defined in § 54.1-1100 for the work undertaken, shall be fined an amount not to exceed $500 per day for each day that such person is in violation, in addition to the authorized penalties for the commission of a Class 1 misdemeanor. Any violation of clause (i) of this subsection shall also constitute a prohibited practice in accordance with § 59.1-200 provided the violation involves a consumer transaction as defined in the Virginia Consumer Protection Act (§ 59.1-196 et seq.), and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act.
C. No person shall be entitled to assert the lack of licensure or certification as required by this chapter as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge that a license or certificate was required by this chapter to perform the work for which he seeks to recover payment.
Failure to renew a license or certificate issued in accordance with this chapter shall create a rebuttable presumption of actual knowledge of such licensing or certification requirements.

(Code 1950, § 54-142; 1956, c. 397; 1970, c. 319; 1980, c. 634; 1985, c. 356; 1988, c. 765; 1990, c. 911; 1994, c. 79; 1995, c. 771; 1998, c. 691; 2000, c. 33; 2003, cc. 429, 430; 2004, c. 131; 2008, c. 294.)

§ 54.1-1115.1. Evidence of violation of the Virginia Uniform Statewide Building Code.

In any proceeding pursuant to § 54.1-1114, the Board shall consider any written documentation of a violation of the Uniform Statewide Building Code (§ 36-97 et seq.) provided by a local building official as evidence of a violation of such building code. Such written documentation shall not be prima facie evidence of a building code violation.

(1993, c. 942.)

§ 54.1-1116.

Repealed by Acts 1993, c. 717.

§ 54.1-1117. Licensing of certain contractors by cities, counties and towns; qualifications and procedure; registration of certain persons engaged in business of home improvement.

A. Except as to contractors currently licensed under the provisions of § 54.1-1106, the governing body of every city, county or town shall have the power and authority to adopt ordinances, not inconsistent with the provisions of this chapter, requiring every person who engages in, or offers to engage in, the business of home improvement or the business of constructing single- or multi-family dwellings, in such city, county or town, to obtain a license from such city, county or town.
B. The governing body of every city, county or town adopting ordinances pursuant to this section may require every applicant for such license, other than those currently licensed under the provisions of § 54.1-1106, (i) to furnish evidence of his ability and proficiency; and (ii) to successfully complete an examination to determine his qualifications. The governing body may designate or establish an agent or board and establish the procedures for an examination according to the standards set forth in this chapter and in the regulations of the Board for Contractors. Except contractors currently licensed under the provisions of § 54.1-1106, licensure may be refused to any person found not to be qualified. Persons not currently licensed pursuant to § 54.1-1106 may be required to furnish bond in a reasonable penal sum, with reasonable condition, and with surety as the governing body deems necessary. The governing body may provide for the punishment of violations of such ordinances, provided that no such punishment shall exceed that provided for misdemeanors generally.
C. For the purpose of this section the business of home improvement shall mean the contracting for and/or providing labor and material or labor only for repairs, improvements, and additions to residential buildings or structures accessory thereto where any payment of money or other thing of value is required.

(1958, c. 522, § 54-145.2; 1964, c. 479; 1970, c. 319; 1972, c. 438; 1977, c. 476; 1979, c. 439; 1980, c. 634; 1988, c. 765; 1994, c. 895.)

§ 54.1-1118. Definitions.

As used in this article, unless the context requires a different meaning:
"Act" means the Virginia Contractor Transaction Recovery Act.
"Biennium" means a two-year period beginning on July 1 of an even-numbered year and continuing through June 30 of the next even-numbered year.
"Claimant" means any person with an unsatisfied judgment involving residential construction against a regulant, who has filed a verified claim under this Act.
"Fund" means the Contractor Transaction Recovery Fund.
"Improper or dishonest conduct" includes only the wrongful taking or conversion of money, property or other things of value which involves fraud, material misrepresentation or conduct constituting gross negligence, continued incompetence, or intentional violation of the Uniform Statewide Building Code (§ 36-97 et seq.). The term "improper or dishonest conduct" does not include mere breach of contract.
"Judgment" includes an order of a United States Bankruptcy Court (i) declaring a claim against a regulant who is in bankruptcy to be a "Debt Nondischargeable in Bankruptcy" or (ii) extinguishing a

claim against a regulant who is in bankruptcy and for which claim no distribution was made from the regulant's bankruptcy estate but excluding any such claim disallowed by order of the bankruptcy court.

"Regulant" means any individual, person, firm, corporation, association, partnership, joint venture or any other legal entity licensed by the Board for Contractors. "Regulant" shall not include tradesmen or backflow prevention device workers licensed or certified in accordance with Article 3 (§ 54.1-1128 et seq.) of this chapter.

(1980, c. 635, § 54-145.3:1; 1984, c. 270; 1987, c. 555; 1988, cc. 393, 765; 1990, cc. 437, 911; 1994, c. 895; 1995, cc. 771, 784; 1996, cc. 934, 1006; 1997, c. 885; 1999, c. 55.)

§ 54.1-1119. Assessments by Director; assignment to Fund; minimum balance; notice; penalties; costs of administration.

A. Each initial regulant, at the time of application, shall be assessed twenty-five dollars, which shall be specifically assigned to the Fund. Initial payments may be incorporated in any application fee payment and transferred to the Fund by the Director within thirty days.

All assessments, except initial assessments, for the Fund shall be deposited within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings institutions or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings and loan associations or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 26-40.01.

B. The minimum balance of the Fund shall be $400,000. Whenever the Director determines that the balance of the Fund is or will be less than this minimum balance, the Director shall immediately inform the Board, which shall assess each regulant at the time of his license renewal a sum sufficient to bring the balance of the Fund to an amount of not less than $400,000, when combined with similar assessments of other regulants. No regulant shall be assessed a total amount of more than fifty dollars during any biennium.

Notice to regulants of these assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail addressed to the Director within forty-five days after the mailing of the notice to regulants.

C. If any regulant fails to remit the required assessment mailed in accordance with subsection B within forty-five days of such mailing, the Director shall notify such regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within thirty days after mailing the second notice, the license of the regulant shall be automatically suspended and shall be restored only upon the actual receipt by the Director of the delinquent assessment.

Interest earned on the deposits constituting the Fund shall be used for administering the Fund. The remainder of this interest may be used for the purposes of providing educational programs about the Uniform Statewide Building Code (§ 36-97 et seq.), for providing education on subjects of benefit to licensees or members of the public relating to contracting, or shall accrue to the Fund.

(1980, c. 635, § 54-145.3:2; 1984, c. 270; 1987, c. 555; 1988, c. 765; 1990, cc. 3, 437, 911; 1992, c. 810; 1995, c. 771; 1996, c. 96; 1997, c. 885.)

§ 54.1-1120. Recovery from Fund generally.

A. Whenever any person is awarded a judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct occurring (i) during a period when such individual or entity was a regulant and (ii) in connection with a transaction involving contracting, the claimant may file a verified claim with the Director to obtain a directive ordering payment from the Fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board in the manner prescribed by law. Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service of process required by this subdivision.

2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.

3. For judgments entered on or after July 1, 1996, a verified claim shall be filed with the Director no later than twelve months after the judgment became final. Such verified claim shall be accompanied by the copies of the order for the underlying judgment, and evidence of compliance with subdivisions 6 and 7 below.

4. The claimant shall be (i) an individual whose contract with the regulant involved contracting for the claimant's residence(s) located in the Commonwealth or (ii) a property owners' association as defined in § 55-509 whose contract with the regulant involved contracting for improvements to the common area owned by such association.

5. The claimant shall not himself be (i) an employee of such judgment debtor, (ii) a vendor of such judgment debtor, (iii) another licensee, (iv) the spouse or child of such judgment debtor nor the employee of such spouse or child, or (v) any financial or lending institution nor anyone whose business involves the construction or development of real property.

6. No directive ordering payment from the Fund shall be entered unless and until the claimant has filed with the Director a verified claim containing the following statements:

a. That the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment.

b. A description of the assets disclosed by such interrogatories.

c. That all legally available actions have been taken for the sale, or application of the disclosed assets and the amount realized therefrom.

d. The balance remaining due the claimant after the sale or application of such assets.

7. A claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper or dishonest conduct." Any language in the order which supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

B. If the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board. The Board shall

determine (i) whether the conduct that gave rise to the claim was improper or dishonest and (ii) what amount, if any, such claimant is entitled to recover from the Fund.

(1980, c. 635, § 54-145.3:3; 1984, c. 270; 1987, c. 555; 1988, cc. 393, 765; 1990, cc. 215, 437, 911; 1995, c. 784; 1996, c. 96; 1997, c. 885; 1999, cc. 55, 261.)

§ 54.1-1121. Investigations.

Upon receipt of the notice of proceedings against the regulant, the Board may cause its own investigation to be conducted.

(1987, c. 555, § 54-145.3:3.1; 1988, c. 765.)

§ 54.1-1122. Consideration of applications for payment.

A. The Department shall promptly consider the verified claim of the claimant administratively. If it appears that a prima facie case has been made for payment of the claim, the Department shall provide the regulant with a notice offering the opportunity to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000, et seq.). Such notice shall state that if the regulant does not request an informal fact-finding conference within 30 days, with three days added in instances where the notice is sent by mail, the Department shall present the claim to the Board with a recommendation to pay the verified claim.

B. If the Board finds there has been compliance with the required conditions, the Board shall issue a directive ordering payment from the fund to the claimant the amount remaining unpaid on the judgment, subject to the limitations set forth in § 54.1-1123. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

(1980, c. 635, § 54-145.3:4; 1984, c. 270; 1987, c. 555; 1988, c. 765; 2006, c. 723.)

§ 54.1-1123. Limitations upon recovery from Fund; certain actions not a bar to recovery.

A. The maximum claim of one claimant against the Fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving contracting, is limited to $20,000, regardless of the amount of the unpaid judgment of the claimant.

B. The aggregate of claims against the Fund based upon unpaid judgments arising out of the improper or dishonest conduct of any one regulant involving contracting, is limited by the Board to $40,000 during any biennium. If a claim has been made against the Fund, and the Board has reason to believe there may be additional claims against the Fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the Fund involving such regulant for a period of not more than one year from the date on which the claimant is awarded in a court of competent jurisdiction in the Commonwealth the final judgment on which his claim against the

Fund is based. After this one-year period, if the aggregate of claims against the regulant exceeds $40,000, during a biennium, $40,000 shall be prorated by the Board among the claimants and paid from the Fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

C. Excluded from the amount of any unpaid judgment upon which a claim against the Fund is based shall be any sums representing interest, or punitive or exemplary damages, or any amounts that do not constitute actual monetary loss to the claimants. Such claim against the Fund may include court costs and attorneys' fees.

D. If, at any time, the amount of the Fund is insufficient to fully satisfy any claims or claim filed with the Board and authorized by this Act, the Board shall pay such claims, claim, or portion thereof to the claimants in the order that the claims were filed with the Board.

E. Failure of a claimant to comply with the provisions of subdivisions 1, 2, and 7 of § 54.1-1120 and the provisions of § 54.1-1124 shall not be a bar to recovery under this Act if the claimant is otherwise entitled to such recovery.

F. The Board shall have the authority to deny any claim which otherwise appears to meet the requirements of the Act if it finds by clear and convincing evidence that the claimant has presented false information or engaged in collusion to circumvent any of the requirements of the Act.

(1980, c. 635, § 54-145.3:5; 1984, c. 270; 1987, cc. 555, 562; 1988, c. 765; 1990, cc. 437, 911; 1997, c. 885; 1999, c. 262; 2005, c. 252.)

§ 54.1-1124. Participation by Board or Director in proceeding.

Upon service of process as provided in subdivision 1 of § 54.1-1120, the Board, the Director, or duly authorized representatives of the Board shall then have the right to request leave of court to intervene.

(1980, c. 635, § 54-145.3:6; 1984, c. 270; 1987, c. 555; 1988, c. 765.)

§ 54.1-1125. Assignment of claimant's rights to Board; payment of claim.

Subject to the provisions of § 54.1-1123 upon the claimant's execution and delivery to the Director of an assignment to the Board of his rights against the regulant, to the extent he received satisfaction from the Fund, the Director shall pay the claimant from the Fund the amount ordered by the Board.

(1980, c. 635, § 54-145.3:7; 1987, c. 555; 1988, c. 765; 1997, c. 885.)

§ 54.1-1126. Revocation of license upon payment from Fund.

Upon payment by the Director to a claimant from the Fund as provided in § 54.1-1125, the Board shall immediately revoke the license of the regulant whose improper or dishonest conduct resulted in this payment. Any regulant whose license is revoked shall not be eligible to apply for a license as a contractor until the regulant has repaid in full the amount paid from the Fund on his account, plus interest at the judgment rate of interest from the date of payment.

(1980, c. 635, § 54-145.3:8; 1984, c. 270; 1987, c. 555; 1988, c. 765; 1990, c. 911; 1995, c. 771; 1997, c. 885.)

§ 54.1-1127. No waiver by Board of disciplinary action against regulant.

This article shall not limit the authority of the Board to take disciplinary action against any regulant for any violation of this title or the regulations of the Board. Full repayment of the amount paid from the Fund on a regulant's account shall not nullify or modify the effect of any disciplinary proceeding against that regulant for any violation.

(1980, c. 635, § 54-145.3:9; 1988, c. 765; 1997, c. 885.)

§ 54.1-1128. Definitions.

"Backflow prevention device worker" means any individual who engages in, or offers to engage in, the maintenance, repair, testing, or periodic inspection of cross connection control devices, including but not limited to reduced pressure principle backflow preventors, double check-valve assemblies, double-detector check-valve assemblies, pressure type vacuum breaker assemblies, and other such devices designed, installed, and maintained in such a manner so as to prevent the contamination of the potable water supply by the introduction of nonpotable liquids, solids, or gases, thus ensuring that the potable water supply remains unaltered and free from impurities, odor, discoloration, bacteria, and other contaminants which would make the potable water supply unfit or unsafe for consumption and use.
"Board" means the Board for Contractors.
"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems which require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.
"Natural gas fitter provider" means any individual who engages in or offers to engage in work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires heating, ventilation and air conditioning or plumbing certification.
"Tradesman" means any individual who engages in, or offers to engage in, work for the general public for compensation in the trades of electrical, plumbing and heating, ventilation and air conditioning.
"Water well systems provider" means any individual who is certified by the Board in accordance with this article and who is engaged in drilling, installation, maintenance, or repair of water wells, water well pumps, and other equipment associated with the construction, removal, or repair of water wells and water well systems.

(1994, c. 895; 1996, cc. 934, 1006; 1997, c. 403; 1999, c. 343; 2005, c. 792.)

§ 54.1-1129. Necessity for licensure.

A. Beginning July 1, 1995, no individual shall engage in, or offer to engage in, work as a tradesman as defined in § 54.1-1128 unless he has been licensed under the provisions of this article. Individuals shall not be subject to licensure as a tradesman when working under the supervision of a tradesman who is licensed in the specialty for which work is being performed. Individuals holding a license in one specialty shall not be required to have a tradesman license in another specialty when performing work which is incidental to work being performed under their own specialty license.
B. Beginning July 1, 1998, no individual shall present himself as a certified backflow prevention device worker as defined in § 54.1-1128 unless he has been certified under the provisions of this article. Individuals certified as backflow prevention device workers shall not be required to hold any other professional or occupational license or certification; however, nothing in this subsection shall prohibit an individual from holding more than one professional or occupational license or certification. The certification program set forth in this article concerning backflow prevention device workers shall be voluntary and shall not be construed to prevent or affect the practice of backflow prevention device workers by those not certified by the Board, so long as any requirements of the applicable local governing body's programs relating to backflow prevention device workers are met. All local governing bodies shall accept certification by the Board of backflow prevention device workers as proof of experience and training without requiring additional examination.
C. Beginning one year after the effective date of the Board's final regulations, no individual shall engage in, or offer to engage in, work as a liquefied petroleum gas fitter or natural gas fitter provider as defined in § 54.1-1128 unless he has been licensed under the provisions of this article.
D. Beginning July 1, 2007, no individual shall engage in the drilling, installation, maintenance, or repair of a water well or water well system unless a certified water well systems provider is onsite at all times. Until June 30, 2012, any level of certification shall satisfy this requirement. Beginning July 1, 2012, only a certified individual shall engage in the drilling, installation, maintenance, or repair of a water well or water well system and a then certified master water well systems provider shall be available at all times. Nothing in this subsection shall be construed to prohibit licensed plumbing tradesman from (i) completing work contained in the applicable plumbing code, or (ii) performing normal maintenance and repair on large-diameter bored or hand-dug water table wells provided such wells are 100 feet or less in depth and the work is being performed for an entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code.

(1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343; 2000, c. 406; 2005, c. 792; 2008, c. 631.)

§ 54.1-1129.1. Certification of water well systems providers; continuing education.

A. The Board shall establish three levels of certification as follows: (i) trainee, which shall require proof of at least one year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider; (ii) journeyman, which shall require proof of at least three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider; and (iii) master, which shall require proof of at least six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems, under the supervision of a certified master water well systems provider.

B. A certified water well systems provider, as a condition of renewal or reinstatement and as part of the renewal or reinstatement application, shall certify to the Board that the applicant has completed at least eight hours of continuing education, approved by the Board, in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction. The Board may establish requirements for approval of training instructors, criteria for continuing education, and other regulations it deems necessary to protect the public health, safety or welfare. In addition, the Board may require continuing education for renewal or reinstatement for any individual found to be in violation of the statutes or regulations governing the licensing or certification of water well system providers.
(2005, c. 792.)

§ 54.1-1130. Application for licensure; fees; examinations; issuance; waiver of examination for water well systems providers.

A. Any individual desiring to be licensed as a tradesman, liquefied petroleum gas fitter or natural gas fitter provider, or certified as a backflow prevention device worker or water well systems provider shall file a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain, at a minimum, the applicant's name, place of employment, and business address; and information on the knowledge, skills, abilities and education or training of the applicant.
If the application is satisfactory to the Board, the applicant shall be required by Board regulations to take an oral or written examination to determine his general knowledge of the trade in which he desires licensure or of backflow prevention devices if he desires voluntary certification unless he is exempt pursuant to § 54.1-1131. If the applicant successfully completes the examination, a license as a tradesman, liquefied petroleum gas fitter, or natural gas fitter provider, or a certificate as a backflow prevention device worker, shall be issued.
B. The Board shall require an applicant for certification as a water well systems provider, unless otherwise exempt, to take an oral or written examination to determine the applicant's general knowledge of water well systems, including relevant statutory and regulatory requirements. If the applicant successfully completes a required examination, a certificate shall be issued.
Notwithstanding any other provision of this section, unless an applicant is found by the Board to have engaged in any act that would constitute grounds for disciplinary action, the Board shall issue a certificate without examination to any applicant who provides satisfactory proof to the Board of having been actively and continuously engaged in water well construction activities immediately prior to July 1, 2007, as follows: (i) at least one year for trainee certification; (ii) at least three years for journeyman certification; and (iii) at least six years for master certification. This subsection shall apply only to individuals who have been employed by a properly licensed water well contractor during such period of active and continuous engagement in water well construction activities.

(1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343; 2003, c. 892; 2005, c. 792.)

§ 54.1-1131. Exemptions.

A. An individual certified or licensed by any one of the following agencies shall not be required to fulfill the examination requirement specified in § 54.1-1130 for a tradesman license:
1. The Board of Housing and Community Development prior to July 1, 1995.

2. Any local governing body prior to July 1, 1978.
3. An apprenticeship program which is approved by the Virginia Apprenticeship Council.
Individuals applying for a tradesman license between July 1, 1995, and July 1, 1998, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have the required number of years of discipline-free experience set forth in Board regulations.
B. Upon satisfactory evidence to the Board, the following individuals shall not be required to fulfill the examination requirement specified in § 54.1-1130 to be certified as a backflow prevention device worker or licensed as a liquefied petroleum gas fitter:
1. Individuals approved, or recognized as having expertise, by a local governing body prior to July 1, 1998, to perform backflow prevention device work;
2. Individuals applying for certification as a backflow prevention device worker between July 1, 1998 and July 1, 1999, who are able to demonstrate that they have the required number of years of discipline-free experience and education or training set forth in Board regulations; or
3. Individuals applying for licensure as a liquefied petroleum gas fitter within one year of the effective date of the Board's final regulations, who are able to demonstrate that they have at least five years' experience as a liquefied petroleum gas fitter.
C. The provisions of this article shall not apply to any individual who is performing work on (i) any ship, boat, barge or other floating vessel or (ii) a single-family residence where the value of the work performed is less than $250 and such individual does not hold himself out to the general public as a tradesman.
D. Individuals applying for a natural gas fitter provider license within one year of the effective date of the Board's final regulations, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have five years' prior experience as a natural gas fitter provider.
E. Individuals applying for a natural gas fitter provider license between July 1, 1999 and July 1, 2004, shall be deemed to have fulfilled the examination requirement if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter.
F. Individuals applying for licensure as a liquefied petroleum gas fitter between July 1, 2000 and July 1, 2005, shall be deemed to have fulfilled the examination requirements if they are able to demonstrate that they have at least five years' experience in an apprenticeship capacity under the direct supervision of a gas fitter.

(1994, c. 895; 1995, c. 581; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, cc. 343, 817, 833; 2000, c. 406.)

§ 54.1-1132. Expiration and renewal of license or certificate.

A license as a tradesman, liquefied petroleum gas fitter or natural gas fitter provider, or a certificate as a backflow prevention device worker, issued pursuant to this article shall expire as provided in Board regulations and shall become invalid on that date unless renewed, subject to approval of the Board. Application for renewal of any certificate or license issued pursuant to this article shall be made as provided by Board regulations and shall be accompanied by a fee set by the Board pursuant to § 54.1-201.

(1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343.)

§ 54.1-1133. Continuing education.

The Board may establish in the regulations requirements for continuing education as a prerequisite to renewal of any certificate or license issued under this article. The Board shall require evidence of knowledge of code changes as a prerequisite to renewal of any certificate or license issued under this article. In addition, the Board may require continuing education for any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen or certificate holders issued under this article.

(1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 817.)

§ 54.1-1134. Grounds for denial or revocation of certification or license; reports of building officials and others.

The Board shall have the power to require remedial education and to suspend, revoke or deny renewal of the certification or license of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers or certified backflow prevention device workers in the Commonwealth.
Any building official who finds that an individual is practicing as a tradesman, liquefied petroleum gas fitter or natural gas fitter provider without a license as required by this article shall file a report to such effect with the Board. Any water purveyor or building official who finds that an individual is practicing as a backflow prevention device worker without a certificate, if a certificate is required by the locality in which an individual is engaging in backflow prevention device worker activities, shall file a report to such effect with the Board.
Any building official who has reason to believe that (i) a tradesman, liquefied petroleum gas fitter or natural gas fitter provider is performing incompetently as demonstrated by an egregious or repeated violation of the Uniform Statewide Building Code (§ 36-97 et seq.) or (ii) a certified backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board. Any water purveyor who has reason to believe that a certified backflow prevention device worker is performing incompetently as demonstrated by an egregious or repeated violation of the standards adopted by the American Society of Sanitary Engineering referenced in the plumbing code adopted by the Virginia Uniform Statewide Building Code shall file a report to such effect with the Board and local building official.

(1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, c. 343.)

§ 54.1-1135. Prohibited acts.

A. Practicing or attempting to practice as a tradesman, liquefied petroleum gas fitter or natural gas fitter provider in the Commonwealth, except as provided for in this article, is prohibited and shall constitute the commission of a Class 1 misdemeanor.
B. No person shall represent himself as a certified backflow prevention device worker unless he has been certified by the Board. Any person engaging or offering to engage in backflow prevention

device worker activities within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified backflow prevention device worker without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.
C. No person shall be entitled to assert the lack of licensure as required by this article as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the licensure requirements of this article.
D. In any locality which requires state certification to engage in backflow prevention device worker activities, no person shall be entitled to assert a lack of certification as a defense to any action at law or suit in equity if the party who seeks to recover from such person gives substantial performance within the terms of the contract in good faith and without actual knowledge of the locality's certification requirements.

(1994, c. 895; 1996, cc. 934, 1006; 1997, cc. 403, 885; 1999, cc. 343, 833.)

§ 54.1-1140. Definitions.

As used in this article, unless the context requires a different meaning:
"Certified elevator mechanic" means an individual who is certified by the Board in accordance with this article to engage in work as an elevator mechanic.
"Elevator mechanic" means an individual who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

(2004, c. 188; 2007, c. 424.)

§ 54.1-1141. Certification required; exemption.

A. No person shall engage in, or offer to engage in, work as an elevator mechanic in the Commonwealth unless he has been certified under the provisions of this article. Individuals certified as elevator mechanics shall not be required to hold any other professional or occupational license or certification; however, nothing in this subsection shall prohibit an individual from holding more than one professional or occupational license or certification.
B. Any individual desiring to be certified as an elevator mechanic shall file a written application on a form prescribed by the Board. The application shall be accompanied by a fee set by the Board pursuant to § 54.1-201. The application shall contain, at a minimum, the applicant's name, place of employment, business address, and information on the knowledge, skills, abilities and education or training of the applicant.
C. Nothing in this article shall be construed to prevent a person who is not certified as an elevator mechanic from performing maintenance that is not related to the operating integrity of an elevator, escalator, or related conveyance.

(2004, c. 188; 2007, c. 424.)

§ 54.1-1142. Issuance of certification; emergency certification.

A. The Board shall issue a certificate to practice as a certified elevator mechanic in the Commonwealth to any applicant who has submitted satisfactory evidence that he has successfully:
1. Completed the educational requirements as required by the Board, which shall at a minimum include such requirements as the Board determines will establish minimum competency on the part of the applicant;
2. Completed the experience requirements as required by the Board, which shall at a minimum consist of at least three years in the elevator industry; and
3. Passed an examination offered or approved by the Board.
B. The Board may issue a certificate to practice as a certified elevator mechanic to any applicant who has a certification from an association approved by the Board that is equal to or exceeds the requirements established by the Board for all applicants.

(2004, c. 188; 2007, c. 424.)

§ 54.1-1142.1. Certifications in event of declared emergency or work stoppage.

A. Whenever the Governor declares a state of emergency in accordance with § 44-146.17 or in the event of a work stoppage by elevator mechanics and the Board determines that the number of certified elevator mechanics is insufficient to meet the demands of the emergency or work stoppage, the Board shall issue a certificate to practice as a certified elevator mechanic under the following conditions:
1. A contractor licensed under the provisions of this chapter (a) certifies to the Board, in a form prescribed by the Board, that an applicant has an acceptable combination of documented experience and education to perform work as an elevator mechanic without direct and immediate supervision and (b) provides such proof thereof as required by the Board; and
2. The applicant certified to the Board by the licensed contractor applies to the Board for certification as an emergency certified elevator mechanic.
B. Each such certification shall be valid for a period of 30 days from the date of issuance and for such geographic areas or such elevators, escalators, or related conveyances as the Board may designate. Such certification shall entitle the certificate holder to engage in work as a certified elevator mechanic. The Board shall renew such certification as often as necessary to ensure that there is a sufficient number of certified elevator mechanics to meet the demands of the emergency. No fee shall be charged for application for such certification or any renewal thereof.
C. In addition, when notified by a contractor licensed under the provisions of this section that there is a shortage of certified personnel to perform elevator work, the Board may issue temporary elevator mechanic certifications under the following conditions:
1. The licensed contractor certifies to the Board, in a form prescribed by the Board, that an applicant has an acceptable combination of documented experience and education to perform work as an elevator mechanic without direct and immediate supervision and provide such proof thereof as required by the Board;
2. The applicant certified to the Board by the licensed contractor applies to the Board for such temporary certification as an elevator mechanic; and
3. The applicant pays an application fee as set by the Board.
D. Each such certification shall be valid for a period of 30 days from the date of issuance provided the applicant is employed by the licensed contractor. The Board shall renew such certification as

often as necessary to ensure that there is a sufficient number of certified elevator mechanics to meet the shortage.

(2007, c. 424.)

§ 54.1-1143. Continuing education.

A. The Board shall establish in the regulations requirements for continuing education as a prerequisite to renewal of any certificate issued under this article. The Board shall require evidence of knowledge of the Uniform Statewide Building Code changes as a prerequisite to renewal of any certificate issued under this article. In addition, the Board may require continuing education for any individual who is found to be in violation of law or regulations governing the practice of an elevator mechanic certified under this article.

B. A certified elevator mechanic, as a condition of recertification and as part of the recertification application, shall certify to the Board that he has completed at least eight hours of continuing education, approved by the Board, in the specialty of elevator/escalator contracting. The Board may establish such requirements for approval of training instructors, the criteria for the continuing education and such other regulations to ensure the protection of the public interest. Such criteria shall include approval of curriculum sponsored by national or state professional elevator industry associations approved by the Board.

C. The provisions of this section shall not apply to certifications issued by the Board under § 54.1-1142.1.

(2004, c. 188; 2007, c. 424.)

Code of Virginia

Title 54.1, Chapter 14

Geologists

§ 54.1-1400. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Geology.
"Geologist" means a person engaged in the public practice of geology.
"Geology" means the science dealing with (i) the earth and its history in general; (ii) the investigation, prediction, evaluation, and location of materials and structures which compose the earth; (iii) the natural processes that cause changes in the earth; and (iv) the application of knowledge of the earth, its processes, and its constituent rocks, minerals, liquids, gases, and other natural materials.
"Practice of geology" means the performance of any service or work for the general public wherein the principles and methods of geology are applied.
"Qualified geologist" means an uncertified person who possesses all the qualifications specified in this chapter for certification.
"Virginia certified professional geologist" means a person who possesses all qualifications specified in this chapter for certification and whose competence has been attested by the Board through certification.

(1981, c. 132, § 54-962; 1988, c. 765.)

§ 54.1-1401. Exemptions.

A. The certification program set forth in this chapter is voluntary and shall not be construed to prevent or affect the practice of geology by uncertified geologists; however, no person may represent himself as a Virginia certified professional geologist unless he has been so certified by the Board.
B. This chapter shall not prevent or affect the practice of any profession or trade for which licensing, certification, or registration is required under any other Virginia law, including the practice of licensed professional engineers lawfully practicing engineering in its various specialized branches.

(1981, c. 132, § 54-968; 1988, c. 765.)

§ 54.1-1402. Board membership; officers; quorum.

The Board for Geology shall be composed of five members as follows: three geologists of varied geological backgrounds and two citizen members. Each geologist member of the Board shall be a

Virginia certified professional geologist under this chapter. Board members shall serve four-year terms. The Board shall elect a chairman from its membership. A quorum of the Board shall consist of not fewer than three members, two of whom shall be geologist members. In addition to the appointed Board members, the State Geologist shall serve as an ex officio member of the Board. The Board shall establish regulations necessary for the reasonable administration of this chapter.

(1981, c. 132, § 54-963; 1988, cc. 42, 765.)

§ 54.1-1403. Certification; minimum qualifications.

A. Any person practicing or offering to practice as a geologist or in a geological specialty in this Commonwealth may submit reasonable evidence to the Board that he is qualified to practice and to be certified as herein provided. The Board shall approve the application for certification of any person who, in the opinion of the Board, has satisfactorily met the requirements of this chapter and who has paid any applicable fees fixed by the Board.

Certifications shall expire at intervals as designated by the Board. A certification may be renewed by the Board upon receipt of a formal request accompanied by any applicable fees.

B. To be eligible for certification as a professional geologist, an applicant shall meet each of the following minimum qualifications:

1. Be of ethical character.

2. Have a baccalaureate or higher degree from an accredited college or university with either a major in geology, engineering geology, geological engineering, or related geological sciences; or have completed at least thirty semester hours or the equivalent in geological science courses leading to a major in geology.

3. Have at least seven years of geological work which shall include either a minimum of three years of geological work under the supervision of a qualified or certified professional geologist, or a minimum of three years of experience in responsible charge of geological work. The adequacy of the position and the required supervision and experience shall be determined by the Board in accordance with standards set forth in its regulations. The following criteria of education and experience qualify toward the required seven years of geological work:

a. Each year of full-time undergraduate study in the geological sciences shall count as one-half year of experience up to a maximum of two years, and each year of full-time graduate study shall count as a year of experience up to a maximum of three years. Credit for undergraduate and graduate study shall in no case exceed a total of four years toward meeting the requirements for at least seven years of geological work.

b. The Board may consider in lieu of the above-described geological work, the cumulative total of geological work or geological research of persons occupying research or post-graduate positions as well as those teaching geology courses at the college or university level, provided such work or research can be demonstrated to be of a sufficiently responsible nature to be equivalent to the geological work required above.

4. Successfully pass an appropriate examination approved by the Board and designed to demonstrate that the applicant has the necessary knowledge and skill to exercise the responsibilities of the public practice of geology.

At the discretion of the Board, separate examinations may be prepared for various subsections of geology; however, there will be no specialty certification, only certification as a professional geologist.

(1981, c. 132, §§ 54-964, 54-965; 1984, c. 51; 1988, c. 765.)

§ 54.1-1404. Waiver of examination.

The Board may waive the examination requirement for certification as a professional geologist for an applicant who otherwise meets the requirements of this chapter and who also meets any of the following conditions:
1. Makes written application to the Board and has at least twelve years of geological work which includes the geological work as specified in subsection B of § 54.1-1403.
2. Makes written application to the Board and holds an unexpired certificate of registration, certification, or license to engage in the practice of geology issued to him on the basis of comparable requirements by a proper authority of a state, territory, or possession of the United States or the District of Columbia.

(1981, c. 132, § 54-966; 1988, c. 765; 1994, c. 247; 1996, c. 49.)

§ 54.1-1405. Professional ethics and conduct.

A. The Board, in coordination with an ad hoc panel of certified professional geologists convened by the Board and representing various geological interests in Virginia, shall have prepared and adopt a Code of Professional Ethics and Conduct which shall be published and made known in writing to every Virginia certified professional geologist and applicant for certification under this chapter. The Board may revise and amend this code as needed and shall forthwith notify each certified professional geologist in writing of such revisions or amendments.
B. The full Board, by majority vote, shall have the power to suspend, revoke, or refuse to renew the certification of any professional geologist who, after an appropriate formal hearing, is found to have been involved in:
1. Any fraud or deceit in obtaining certification;
2. Any violation of the Code of Professional Ethics and Conduct or other regulations of the Board;
3. Demonstrated gross negligence, incompetence, or misconduct in the practice of geology as a professional geologist; or
4. Any conviction of a felony which in the opinion of the Board would adversely affect the practice of geology.
C. The Board, by majority vote of the quorum, may reinstate a revoked or suspended certification to any professional geologist who makes written application to the Board showing good cause for such action.

(1981, c. 132, § 54-967; 1988, c. 765.)

Code of Virginia

Title 54.1, Chapter 15

Hearing Aid Specialists

§ 54.1-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Hearing Aid Specialists.
"Hearing aid" means any wearable instrument or device designed or offered to aid or compensate for impaired human hearing and any parts, attachments, or accessories, including earmolds, but excluding batteries and cords.
"License" means a license issued under this chapter to hearing aid specialists.
"Practice of fitting or dealing in hearing aids" means (i) the measurement of human hearing by means of an audiometer or by any other means solely for the purpose of making selections, adaptations or sale of hearing aids, (ii) the sale of hearing aids, or (iii) the making of impressions for earmolds. A practitioner, at the request of a physician or a member of a related profession, may make audiograms for the professional's use in consultation with the hard-of-hearing.
"Sell" or "sale" means any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or practitioners.
"Temporary permit" means a permit issued while an applicant is in training to become a licensed hearing aid specialist.

(1970, c. 571, § 54-524.110; 1988, c. 765; 2005, c. 599.)

§ 54.1-1501. Exemptions; sale of hearing aids by corporations, etc., measuring hearing.

A. Physicians licensed to practice in Virginia and certified by the American Board of Otolaryngology or eligible for such certification shall not be required to pass an examination as a prerequisite to obtaining a license under this chapter.
B. Nothing in this chapter shall prohibit a corporation, partnership, trust, association or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license, provided that it employs only licensed practitioners in the direct sale and fitting of such products.
C. Nothing in this chapter shall prohibit any person who does not sell hearing aids or accessories or who is not employed by an organization which sells hearing aids or accessories from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids.

(1970, c. 571, §§ 54-524.111, 54-524.112; 1974, c. 534; 1986, c. 279; 1988, c. 765; 1996, c. 741.)

§ 54.1-1502. Board; qualifications and terms of members; officers.

The Board for Hearing Aid Specialists shall consist of seven members, as follows: four licensed hearing aid specialists, of which at least one shall be licensed as an audiologist by the Board of Audiology and Speech-Language Pathology, one otolaryngologist, and two citizen members. One of the citizen members shall be a hearing aid user and the other a person who has a family member who is or has been a hearing aid user. Each hearing aid specialist and the otolaryngologist shall have at least five years of experience in their respective fields immediately prior to appointment. The terms of Board members shall be four years.
There shall be a chairman and vice-chairman, each of whom shall be elected by the Board from its membership.

(1970, c. 571, § 54-524.113; 1974, c. 534; 1979, c. 296; 1981, c. 447; 1988, c. 765; 1994, c. 26.)

§ 54.1-1503. Nominations for Board appointments.

The appointment of the otolaryngologist member may be made from a list of at least three names submitted to the Governor by the Medical Society of Virginia. The appointment of one of the hearing aid specialist members may be made from a list of at least three names submitted to the Governor by the Speech-Language Hearing Association of Virginia. The appointment of the remaining hearing aid specialist members may be made from a list of at least three names for each vacancy submitted to the Governor by the Virginia Society of Hearing Aid Specialists. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the Society or Association, respectively, of any vacancy other than by expiration, and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

(1970, c. 571, § 54-524.114; 1988, c. 765; 1994, c. 26.)

§ 54.1-1504. License required.

No person shall engage in the practice of fitting or dealing in hearing aids or display a sign or in any other way advertise or represent himself as a person who practices the fitting or dealing of hearing aids unless he holds a license as provided in this chapter.

(1970, c. 571, § 54-524.111; 1974, c. 534; 1986, c. 279; 1988, c. 765; 2005, c. 599.)

§ 54.1-1505. Return of hearing aid by purchaser or lessee.

A. Within thirty days of the date of delivery, any purchaser or lessee of a hearing aid shall be entitled to return the hearing aid for any reason, provided such aid is returned in satisfactory condition. Such purchaser or lessee shall be entitled to a replacement or a refund of all charges paid, less a reasonable charge for medical, audiological, and hearing aid evaluation services provided by the hearing aid specialist.

B. The right of a purchaser or lessee to return a hearing aid and the charges to be imposed upon the return of such hearing aid, as provided in subsection A of this section, shall be explained and given in writing in at least ten-point, bold-faced type to such purchaser or lessee by the hearing aid specialist.

C. The provisions of this section shall be subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

(1990, c. 584.)

Code of Virginia

Title 54.1, Chapter 17

Opticians

§ 54.1-1700. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Opticians.
"Licensed physician" means any person licensed by the Board of Medicine to practice medicine and surgery.
"Optician" means any person, not exempted by § 54.1-1701, who prepares or dispenses eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists, or as duplications or reproductions of previously prepared eyeglasses, spectacles, lenses, or related appurtenances; or who, in accordance with such prescriptions, duplications or reproductions, measures, adapts, fits, and adjusts eyeglasses, spectacles, lenses, or appurtenances, to the human face.
"Licensed optician" means any person who is the holder of a license issued by the Board for Opticians.
"Licensed optometrist" means any person authorized by Virginia law to practice optometry.

(1954, c. 237, § 54-398.2; 1988, c. 765.)

§ 54.1-1701. Exemptions.

The provisions of this chapter shall not apply to:
1. Any licensed physician or licensed optometrist; or
2. Any individual, partnership or corporation engaged in supplying ophthalmic prescriptions and supplies exclusively to licensed physicians, licensed optometrists, licensed opticians, or optical scientists; or
3. Any person who does not hold himself out to the public as an "optician," and who works exclusively under the direct supervision and control of a licensed physician or licensed optometrist or licensed optician, and in the same location; or
4. The sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, or binoculars which are completely preassembled and sold as merchandise; or
5. Any optician who (i) does not regularly practice in Virginia, (ii) holds a current valid license or certificate to practice as an optician in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board, within fifteen days prior to the voluntary provision of services

of the dates and location of such services, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board.

(1954, c. 237, §§ 54-398.1, 54-398.3; 1974, c. 534; 1988, c. 765; 2002, c. 740.)

§ 54.1-1702. Board for Opticians; members; terms.

The Board for Opticians shall consist of five members as follows: three licensed opticians of at least five years' experience prior to appointment, one ophthalmologist who has practiced ophthalmology for at least five years prior to appointment, and one citizen member. Terms shall be for four years.
There shall be a chairman and a vice-chairman, each of whom shall be elected annually by the Board from its membership.

(1954, c. 237, § 54-398.10; 1974, c. 534; 1978, c. 534, § 54-398.4:1; 1981, c. 447; 1988, cc. 42, 765.)

§ 54.1-1703. Nominations for Board appointments.

Appointments to the Board may be made from a list of at least three names for each vacancy submitted to the Governor by the Opticians Association of Virginia for each appointee who is an optician, and by the Medical Society of Virginia for each appointee who is a physician. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the above societies of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

(1954, c. 237, § 54-398.5; 1988, c. 765; 1999, c. 532.)

§ 54.1-1704. Practice of opticians restricted.

No person shall practice or offer to practice as an optician in this Commonwealth unless he holds a license issued under this chapter.

(1954, c. 237, § 54-398.3; 1974, c. 534; 1988, c. 765.)

§ 54.1-1705. Optical prescriptions, ocular refraction, etc.

Nothing in this chapter shall authorize an optician, or anyone else not otherwise authorized by law, to make, issue, or alter optical prescriptions, or to practice ocular refraction, orthoptics, or visual training, or to fit contact lenses except on the prescription of an ophthalmologist or optometrist and under his direction, or to advertise or offer to do so in any manner.

(1954, c. 237, § 54-398.27; 1964, c. 101; 1988, c. 765.)

§ 54.1-1706. Permissible practices.

Notwithstanding the provisions of subdivision 7 of § 54.1-3204, a licensed optician is authorized to prepare and dispense eyeglasses, spectacles, lenses, or related appurtenances, for the intended wearers or users, on prescriptions from licensed physicians or licensed optometrists; duplicate and reproduce previously prepared eyeglasses, spectacles, lenses, or related appurtenances; and, in accordance with such prescriptions, duplications or reproductions, measure, adapt, fit, and adjust eyeglasses, spectacles, lenses, or appurtenances, to the human face. A licensed optician shall not, however, duplicate a contact lens solely from a previously prepared contact lens.

(1990, c. 718; 1993, c. 206.)

Code of Virginia

Title 54.1, Chapter 18

Polygraph Examiners

§ 54.1-1800. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Course of instruction" means a formal course of instruction in the detection of deception in an institution approved by the Director.
"Department" means the Department of Professional and Occupational Regulation.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Person" means any natural person, partnership, association, corporation or trust.
"Polygraph" means any mechanical or electronic instrument or device used to test or question individuals for the purpose of determining truthfulness.
"Polygraph examiner" or "examiner" means any person who uses any device or instrument to test or question individuals for the purpose of determining truthfulness.
"Polygraph examiner intern" means any person engaged in the study of polygraphy and the administration of polygraph examinations under the personal supervision and control of a polygraph examiner.

(1975, c. 522, § 54-916; 1988, c. 765; 1993, c. 499.)

§ 54.1-1801. Licenses.

All polygraph examiners shall be licensed pursuant to this chapter.

(1975, c. 522, § 54-918; 1988, c. 765.)

§ 54.1-1802. Regulations.

The Director shall promulgate regulations not inconsistent with the laws of Virginia necessary to carry out the provisions of this chapter and Chapter 1 (§ 54.1-100 et seq.).

(1975, c. 522, § 54-917; 1988, c. 765.)

§ 54.1-1803. Approval of schools to teach courses of instruction.

The Director shall promulgate regulations for the approval of schools in which courses of instruction are taught.

(1975, c. 522, § 54-920; 1988, c. 765.)

§ 54.1-1804. Submission of fingerprints.

Each applicant for licensure as a polygraph examiner and each polygraph examiner intern shall submit his fingerprints to the Department on a form provided by the Department.

(1975, c. 522, § 54-921; 1988, c. 765.)

§ 54.1-1805. Instrument to be used.

Each examiner shall use an instrument which records permanently and simultaneously the subject's cardiovascular and respiratory patterns as minimum standards, but such an instrument may record additional physiological changes pertinent to the determination of truthfulness.

(1975, c. 522, § 54-922; 1988, c. 765.)

§ 54.1-1806. Prohibition of use of certain questions on polygraph tests for employment.

No licensed polygraph operator shall, during a polygraph examination required as a condition of employment, ask any question concerning the sexual activities of the person being examined if the question violates state or federal law. A violation of this section shall constitute grounds for disciplinary action pursuant to § 54.1-1802.

(1989, c. 693.)

Code of Virginia

Title 54.1, Chapter 20.1

Real Estate Appraisers

§ 54.1-2009. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:
"Appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by subject matter into either a valuation or analysis. A "valuation" is an estimate of the value of real estate or real property. An "analysis" is a study of real estate or real property other than estimating value. The term "appraiser" or "appraisal" may be used only by a person licensed or certified by the Board.
"Appraisal report" means any communications, written or oral, of an appraisal.
"Board" means the Real Estate Appraiser Board.
"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser. This designation is identified in Title 11, § 1116 (a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3345(a)) as a "state certified real estate appraiser."
"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of (i) all types of real estate and real property that a licensed residential real estate appraiser is permitted to appraise and (ii) such other real estate and real property as the Board, by regulation, may permit.
To the extent permitted by federal law and regulation, a certified residential real estate appraiser shall be considered a state certified real estate appraiser within the meaning of Title 11, § 1116 (a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3345(a)).
"Department" means the Department of Professional and Occupational Regulation.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Evaluation" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
"Federal financial institutions regulatory agencies" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Resolution Trust Corporation, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.
"Federally related transaction" means any real estate-related financial transaction which:
1. A federal financial institutions regulatory agency engages in, contracts for or regulates; and
2. Requires the services of an appraiser.
"General real estate appraisal" means an appraisal conducted by an individual licensed as a certified general real estate appraiser.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of any residential real estate or real property of one to four family residential units as the Board, by regulation, may permit, and such other real estate and real property as the Board, by regulation, may permit.
This designation is identified in Title 11, § 1116 (c) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3345(c)) as a "state-licensed appraiser."
"Real estate" means an identified parcel or tract of land, including improvements thereon, if any.
"Real estate-related financial transaction" means any transaction involving:
1. The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof;
2. The refinancing of real property or interests in real property; or
3. The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.
"Real property" means one or more defined interests, benefits or rights inherent in the ownership of real estate.
"Regulation" means any regulations promulgated by the Real Estate Appraiser Board pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).
"Residential real estate appraisal" means an appraisal conducted by a licensed residential real estate appraiser or a certified residential real estate appraiser.

(1990, c. 459; 1995, c. 327.)

§ 54.1-2010. Exemptions from licensure.

A. The provisions of this chapter shall not apply to:
1. A real estate broker or salesperson licensed in the Commonwealth who, in the ordinary course of business, provides a valuation or analysis of real estate for a fee; however, such person shall not hold himself out as a real estate appraiser, and the valuation shall not be referred to as an appraisal and shall not be used in lieu of an appraisal performed by a licensed appraiser.
2. An officer or employee of the United States of America, or of the Commonwealth or a political subdivision thereof, where the employee or officer is performing his official duties, provided that such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in the Commonwealth or any political subdivision thereof in connection with the appraisal of real estate or real property.
3. Any person who, in the ordinary course of business, provides consulting services or consultative brokerage for a fee, which services may include a valuation or analysis of real estate or standing or severed timber; provided such consulting services or consultative brokerage shall not be referred to as an appraisal and shall not be used in connection with obtaining a loan to finance or refinance real property or standing or severed timber or in connection with any federally related transaction.
4. Any person who, in the regular course of business, provides services to his employer, which services may include a valuation or analysis of real estate, provided such services shall not be referred to as an appraisal and shall not be used in lieu of an appraisal performed by an appraiser licensed hereunder.
5. Any person, or an employee of a financial institution or lender, who provides an evaluation of real estate or real property in connection with a real estate-related financial transaction where an appraisal by a state-certified or state-licensed appraiser is not required by the state or federal

financial institution's regulatory agency engaging in, contracting for or regulating such real estate-related financial transaction or regulating the financial institution or lender engaged in or about to engage in such real estate-related financial transaction. The evaluations provided by such persons shall comply with any standards imposed by the state or federal financial institution's or lender's regulatory agencies for evaluations prepared by nonstate-certified or nonstate-licensed appraisers.
B. Nothing contained herein shall proscribe the powers of a judge to determine who may qualify as an expert witness to testify in any legal proceeding.

(1990, c. 459; 1992, c. 68; 1995, c. 327; 1999, c. 259.)

§ 54.1-2011. Necessity for license.

A. After December 31, 1992, except as provided in § 54.1-2010 and in subsections C and E of this section, it shall be unlawful to engage in the appraisal of real estate or real property for compensation or valuable consideration in this Commonwealth without first obtaining a real estate appraiser's license in accordance with Board regulations promulgated pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).
B. After December 31, 1992, except as provided in § 54.1-2010, it shall be unlawful for any person who is not licensed pursuant to this chapter to perform an appraisal in connection with a federally related transaction.
C. Notwithstanding subsections A and B of this section, an individual who is not a licensed residential real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser may assist in the preparation of and sign an appraisal if:
1. The assistant is under the direct supervision of a licensed residential real estate appraiser, a certified residential real estate appraiser, or a certified general real estate appraiser; and
2. The appraisal is reviewed, attested to be accurate and complete, and signed by such licensed residential real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser in accordance with this chapter.
D. This chapter shall not prevent or affect the practice of any profession or trade for which licensing, certification, or registration is required under any other Virginia law.
E. A corporation, partnership, or other business entity may provide appraisal services if each appraisal is prepared and signed by an individual licensed in accordance with this chapter and such corporation, partnership, or other business entity has registered with the Board.

(1990, c. 459; 1992, c. 338.)

§ 54.1-2012. Real Estate Appraiser Board; membership; chairman; meetings; seal.

A. Except as provided in the next paragraph, the Real Estate Appraiser Board shall be composed of nine members as follows: (i) six members shall be licensed as real estate appraisers, provided that, at all times, at least two of the appraiser members on the Board shall be certified general real estate appraisers and one shall be a certified residential real estate appraiser, and provided further, that all six appraiser members have been licensed for a period of at least five years prior to their appointment; (ii) one member shall be an officer or employee familiar with mortgage lending of a financial institution as defined in § 6.1-2.1 or an affiliate or subsidiary thereof; and (iii) two members shall be citizen members. The terms of Board members shall be four years.

The persons initially appointed to the Board as appraiser members, and those appraiser members thereafter appointed until such time as this chapter has been in effect for six years, need not be licensed for five years as required by this chapter, but they shall have demonstrated professional competence in the field of real estate appraisal, including not less than seven years of full-time, discipline-free experience. All appraiser members appointed to the Board after this chapter has been in effect for two years shall be licensed as provided herein.

The appointment of appraiser members may be made from lists of at least three names each, submitted by Virginia affiliates of professional appraisal organizations that are members of the Appraisal Foundation. The appointment of the bank or savings institution member may be made from lists of at least three names each, submitted by the Virginia Bankers Association and the Virginia Association of Community Banks. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the above organizations of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

Notwithstanding § 54.1-200, all members of the Board, including the citizen members, shall be eligible to participate in all matters, including decisions regarding the examination of applicants for licensure and decisions regarding the professional competence of licensees.

The Board shall elect a chairman and a vice-chairman from its membership, provided that the chairman shall be an appraiser member.

The Board shall meet at least four times annually, and additional meetings may be called by the chairman or, if the chairman is incapacitated, by the vice-chairman, as deemed necessary.

The Board shall adopt a seal by which it shall authenticate its proceedings.

B. As soon as practicable, the Board shall determine the anticipated availability of licensed and certified appraisers to perform appraisals in Virginia. If, at any time, the Board determines that there is, or will be, a scarcity of certified general real estate appraisers, certified residential real estate appraisers, or licensed residential real estate appraisers to perform appraisals in connection with federally related transactions in any part of Virginia that leads, or will lead, to significant delays in the performance of such appraisals, the Board, subject to federal approval, shall extend the effective date of the licensing requirements of this chapter to the extent permitted under any temporary waiver granted under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. § 3301 et seq.).

(1990, c. 459; 1992, c. 68; 1999, cc. 208, 505.)

§ 54.1-2013. General powers of Real Estate Appraiser Board; regulations; educational requirements for licensure.

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. The Director shall have the authority to promulgate initial emergency regulations upon the enactment of this chapter as necessary to comply with applicable federal requirements, provided that within

twelve months from the effective date of such emergency regulations, the Board promulgates the regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

The Board shall include in its regulations educational and experience requirements as conditions for licensure, provisions for the supervision of appraiser practices, provisions for the enforcement of standards of professional appraiser practice, and provisions for the disposition of referrals of improper appraiser conduct from any person or any federal agency or instrumentality except that, until December 31, 1992, the Board shall issue transitional licenses to applicants who have satisfied the educational requirements as conditions for licensure and have passed the applicable examination required by the Board but either lack or are not able to verify the experience requirements imposed by the Board. Such transitionally licensed persons must satisfy the experience requirements, within two years of having been issued a transitional license as a condition to remaining licensed under this chapter. Each transitional license shall indicate clearly its transitional nature, period of validity and a nonextendible termination date. This paragraph shall not be construed to limit the powers and authority of the Board.

The Board may set different education and experience requirements for licensed residential real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers. All applicants for licensure under this chapter shall meet applicable educational and experience requirements prior to licensure.

Applicants for licensure as a certified residential real estate appraiser or a certified general real estate appraiser shall successfully complete an examination administered or approved by the Board prior to licensure. The Board may set different examination requirements for certified residential real estate appraisers and certified general real estate appraisers. The Board may require that licensed residential real estate appraisers successfully complete an examination administered or approved by the Board prior to licensure or prior to the renewal of an initial license.

All regulations established by the Board shall satisfy any minimum criteria that are necessary in order that the federal financial institution's regulatory agencies recognize and accept licenses for licensed residential real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers issued by the Board.

(1990, c. 459; 1992, c. 68; 1993, c. 539.)

§ 54.1-2013.1.

Expired.

§ 54.1-2014. Continuing education.

The Board may establish in regulations requirements for continuing education as a prerequisite to renewal of a license issued under this chapter.

(1990, c. 459.)

§ 54.1-2015. Subpoena power.

In addition to all other authority to issue subpoenas, the Board or its designees shall have the authority to subpoena the records of any bank, savings institution, or credit union relating to real estate appraisals.

(1990, c. 459.)

§ 54.1-2016. Additional licenses.

A. The Board may establish in regulations other categories of licensure, as well as the conditions required for such licensure, in order to safeguard the public interest or as may be required to satisfy any additional qualification criteria adopted by any federal agency or instrumentality.
B. Unless expressly prohibited by federal law or regulation, an individual who is certified or licensed as a real estate appraiser in another jurisdiction may obtain a Virginia real estate appraiser's license if (i) the Board determines that the requirements for certification or licensure, as the case may be, in such jurisdiction are substantially equivalent to the requirements for licensure under this chapter, and (ii) the applicant meets such other requirements as may be established by the Board.
C. In accordance with Title 11, § 1122 (a) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3351(a)), the Board shall adopt regulations that provide for temporary practice in Virginia by appraisers licensed or certified by another state.

(1990, c. 459.)

§ 54.1-2017. Use of terms "Licensed Residential Real Estate Appraiser," "Certified Residential Real Estate Appraiser," and "Certified General Real Estate Appraiser"; authentication of reports.

An individual who is not licensed by the Board as a certified general real estate appraiser, a certified residential real estate appraiser, or a licensed residential real estate appraiser shall not represent himself as being so licensed or use in connection with his name or place of business the term "real estate appraiser," "general real estate appraiser," "certified general real estate appraiser," "licensed residential real estate appraiser," "certified residential real estate appraiser," "state certified real estate appraiser," "state licensed real estate appraiser," or any words, letters, abbreviations, or insignia indicating or implying that he is licensed as a certified general real estate appraiser, a licensed residential real estate appraiser, or a certified residential real estate appraiser in this Commonwealth.
Each licensed residential real estate appraiser, certified residential real estate appraiser, and certified general real estate appraiser shall comply with the standards of professional appraisal practice and code of ethics adopted by the Board and shall authenticate all written appraisal reports with his signature, license designation and license number.
All appraisal reports rendered in connection with federally related transactions shall be written.

(1990, c. 459; 1999, c. 57.)

§ 54.1-2018. Roster of appraisers.

A roster showing the names and addresses of all licensed residential real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers shall be published annually and made available to all interested parties at a cost, as determined by the Director.

(1990, c. 459.)

§ 54.1-2019. Consent to suits and service of process of nonresidents; manner of service.

A. Every nonresident applicant shall file with the Board an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county or city of this Commonwealth in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this Commonwealth on the Director of the Department of Professional and Occupational Regulation. The consent shall stipulate that such service of process or pleadings on the Director shall be taken and held in all courts to be as valid and binding as if due service has been made upon the applicant in the Commonwealth of Virginia.
B. Any process or pleading served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the licensee at the last known address.

(1990, c. 459; 1993, c. 499.)

Code of Virginia

Title 54.1, Chapter 21

Real Estate Brokers and Salespersons

§ 54.1-2100. Definitions.

As used in this chapter:
"Distance learning" means instruction delivered by an approved provider through a medium other than a classroom setting. Such courses shall be those offered by an accredited university, college, community college, high school offering adult distributive education courses, other school or educational institution, or real estate professional association or related entities.
"Real estate broker" means any person or business entity, including, but not limited to, a partnership, association, corporation or limited liability company, who, for compensation or valuable consideration (i) sells or offers for sale, buys or offers to buy, or negotiates the purchase or sale or exchange of real estate, including units or interest in condominiums, cooperative interest as defined in § 55-426, or time-shares in a time-share program even though they may be deemed to be securities, or (ii) leases or offers to lease, or rents or offers for rent, any real estate or the improvements thereon for others.

(Code 1950, § 54-730; 1974, c. 409; 1982, c. 440; 1984, c. 283; 1988, c. 765; 1996, c. 993; 2001, c. 548; 2007, c. 809.)

§ 54.1-2101. Real estate salesperson defined.

For the purposes of this chapter, "real estate salesperson" means any person, or business entity of not more than two persons unless related by blood or marriage, who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a real estate broker, to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange of real estate, or to lease, rent or offer for rent any real estate, or to negotiate leases thereof, or of the improvements thereon.

(Code 1950, § 54-731; 1974, c. 685; 1978, c. 138; 1984, c. 201; 1988, c. 765; 1992, c. 84; 1996, c. 993.)

§ 54.1-2101.1. Preparation of real estate contracts by real estate licensees.

Notwithstanding any rule of court to the contrary, any person licensed under this chapter may prepare written contracts for the sale, purchase, option, exchange, or rental of real estate provided the preparation of such contracts is incidental to a real estate transaction in which the licensee (i) is involved and (ii) does not charge a separate fee for preparing the contracts.

(1997, cc. 200, 231.)

§ 54.1-2102.

Repealed by Acts 1992, c. 84.

§ 54.1-2103. Exemptions from chapter.

A. The provisions of this chapter shall not apply to:
1. Any person, partnership, association or corporation, or their regular employees, who as owner or lessor perform any of the acts enumerated in §§ 54.1-2100 and 54.1-2101 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;
2. Any person acting without compensation as attorney-in-fact under a power of attorney issued by a property owner solely for the purpose of authorizing the final performance required of such owner under a contract for the sale, lease, purchase, or exchange of real estate;
3. Service rendered by an attorney-at-law in the performance of his duties as such;
4. A person acting as a receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court;
5. A trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof;
6. Any corporation managing rental housing when the officers, directors, and members in the ownership corporation and the management corporation are the same and the management corporation manages no other property for other persons, partnerships, associations, or corporations;
7. Any existing tenant of a residential dwelling unit who refers a prospective tenant to the owner of the unit or to the owner's duly authorized agent or employee and for the referral receives, or is offered, a referral fee from the owner, agent or employee;
8. Any auctioneer licensed in accordance with Chapter 6 (§ 54.1-600 et seq.) of this title selling real estate at public auction when employed for such purpose by the owner of the real estate and provided the bidding at such auction is held open for no longer than forty-eight hours. An auctioneer shall not advertise that he is authorized to sell real estate. An auctioneer may advertise for sale at public auction any real estate when employed to do so as herein provided, and may advertise that he is authorized to auction real estate at public auction.
9. —Expired.]
B. The provisions of this chapter shall not prohibit the selling of real estate (i) by an attorney-at-law in the performance of his duties as such, (ii) by a receiver, trustee in bankruptcy, administrator or executor, a special commissioner or any person selling real estate under order of court, or (iii) by a trustee acting under the trust agreement, deed of trust or will, or the regular salaried employees thereof.
C. The provisions of this chapter shall not apply to any salaried person employed by a licensed real estate broker for and on behalf of the owner of any real estate or the improvements thereon which the licensed broker has contracted to manage for the owner if the actions of such salaried employee are limited to (i) exhibiting residential units on such real estate to prospective tenants, if the employee is employed on the premises of such real estate; (ii) providing prospective tenants with factual information about the lease of residential real estate; (iii) accepting applications for

lease of such real estate; and (iv) accepting security deposits and rentals for such real estate. Such deposits and rentals shall be made payable to the owner or the broker employed by such owner. The salaried employee shall not negotiate the amounts of such security deposits or rentals and shall not negotiate any leases on behalf of such owner or broker.
D. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

(Code 1950, § 54-734; 1972, c. 324; 1973, cc. 487, 527; 1975, c. 238; 1980, c. 127; 1982, cc. 633, 682; 1988, c. 765; 1992, c. 84; 1993, cc. 816, 899; 1995, c. 227; 1998, cc. 261, 262.)

§ 54.1-2104. Real Estate Board; membership; chairman; seal.

The Real Estate Board shall be composed of nine members as follows: seven members who have been licensed real estate brokers or salespersons for at least five consecutive years before their appointment and two citizen members. For purposes of implementation of these provisions, one licensee and one citizen member of the Board shall be appointed effective July 1, 1992, and one licensee and one citizen member appointed effective July 1, 1994. The terms of Board members shall be four years.
The Board shall elect a chairman from its membership.
The Board shall adopt a seal by which it shall authenticate its proceedings.

(Code 1950, §§ 54-737, 54-738, 54-739, 54-744; 1956, c. 145; 1981, c. 447; 1984, c. 201; 1985, c. 448; 1988, cc. 42, 765; 1992, c. 809.)

§ 54.1-2105. General powers of Real Estate Board; regulations; educational and experience requirements for licensure.

A. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.
B. The Board shall adopt regulations establishing minimum educational requirements as conditions for licensure. Board regulations relating to initial licensure shall include the following requirements:
1. Every applicant for an initial license as a real estate salesperson shall have:
a. At a minimum, a high school diploma or its equivalent; and
b. Completed a course in the principles of real estate that carried an academic credit of at least four semester hours, but not less than 60 hours of classroom, correspondence, or other distance learning instruction, offered by an accredited university, college, community college, high school offering adult distributive education courses, or other school or educational institution offering an equivalent course.
2. Every applicant for an initial license as a real estate broker shall have:
a. At a minimum, a high school diploma or its equivalent; and
b. Completed not less than 12 semester hours of classroom or correspondence or other distance learning instruction in real estate courses offered by an accredited university, college, community college, or other school or educational institution offering equivalent courses.

C. The Board may waive any requirement under the regulations relating to education or experience when the broker or salesperson is found to have education or experience equivalent to that required. No regulation imposing educational requirements for initial licensure beyond those specified by law shall apply to any person who was licensed prior to July 1, 1975, and who has been continuously licensed since that time, except that licensure as a salesperson prior to such time shall not exempt a salesperson who seeks to be licensed as a broker from the educational requirements established for brokers.

D. The Board shall establish criteria to ensure that prelicensure and broker licensure courses meet the standards of quality deemed by the Board to be necessary to protect the public interests. For correspondence and other distance learning instruction offered by an approved provider, such criteria may include appropriate testing procedures. The Board may establish procedures to ensure the quality of the courses.

Noncollegiate institutions shall not be authorized to grant collegiate semester hours for academic credit.

The specific content of the real estate courses shall be in real estate brokerage, real estate finance, real estate appraisal, real estate law, and such related subjects as are approved by the Board.

(Code 1950, § 54-740; 1974, c. 663; 1977, c. 3; 1980, c. 571; 1981, c. 117; 1984, cc. 201, 283; 1985, c. 116; 1988, cc. 9, 765; 1989, c. 244; 1991, c. 576; 1992, cc. 65, 446, 624, 717; 1995, c. 125; 1996, cc. 890, 903; 1997, c. 389; 1998, c. 268; 2000, c. 759; 2003, cc. 998, 1027; 2006, cc. 61, 627; 2007, c. 809.)

§ 54.1-2105.01. Educational requirements for all salespersons within one year of licensure.

A. (Effective July 1, 2008) The Board shall establish guidelines for an educational curriculum of at least 30 hours of classroom, or correspondence or other distance learning, instruction, in specified areas, which shall be required of all salespersons within one year of issuance of a license by the Board. Failure of a new licensee to complete the 30-hour curriculum within one year of obtaining a real estate salesperson's license shall result in the license being placed on inactive status by the Board until the curriculum has been completed.

B. To establish the guidelines required by this section, the Board shall establish an industry advisory group to focus on the following three practice tracks: (i) residential real estate, (ii) commercial real estate, and (iii) property management. The industry advisory group shall consist of licensed real estate salespersons and real estate brokers, and meet at the direction of the Board, at least annually, to update the guidelines in each of the three educational practice tracks. The Board shall review and may approve educational curriculum developed by an approved school or other provider of real estate education authorized by this chapter. The industry advisory group shall serve at no cost to the Board.

C. The guidelines in each of the three practice tracks for new licensees shall include topics that new licensees need to know in their respective practices, including, but not limited to, contract writing, handling customer deposits, listing property, leasing property, agency, current industry issues and trends, property owners' and condominium association law, landlord-tenant law, Board regulations, and such other topics as designated by the Board. The continuing education requirements of this section for new licensees shall be in lieu of the continuing education requirements otherwise specified in this chapter and Board regulations.

(2007, c. 809.)

§ 54.1-2105.02. Regulation of real estate education providers and courses.

A. The Board may regulate any school that is established to offer real estate courses except such schools as are regulated by another state agency. Such authority shall include, but not be limited to, qualification of instructors, approval of course curricula, and requirement that such schools submit evidence of financial responsibility to ensure that these schools protect the public health, safety, and welfare.

B. Board regulations shall include a procedure for processing applications of educational institutions, real estate professional associations, or related entities, to provide continuing education courses, which procedure, at a minimum, shall (i) provide for a broad range of subject matters suitable for the continuing education of licensed professionals in a multifamily residential and commercial office, as well as single-family residential, sales, leasing and property management; (ii) acknowledge, in writing, receipt of such applications within 10 calendar days after receipt; and (iii) provide written notification to the applicant, within 75 calendar days of receipt of the application, whether the application has been approved or disapproved, and if disapproved, the reasons therefor. In addition, the Board shall prepare a comprehensive listing of courses, pre-approved by the Board, related to the professional competency requirements for the multifamily residential and commercial office industries.

Board regulations shall include criteria for evaluating and approving continuing education course credits and for awarding credit hours for such courses, as well as procedures for ensuring the quality of real estate courses. The Board shall approve recommended course titles, content, and hours of continuing education credit developed and published by national professional real estate trade associations, unless the Board determines in writing that such titles, content, or credit hours should not be approved and specifies the reasons therefor.

(2007, c. 809.)

§ 54.1-2105.03. Continuing education; relicensure of brokers and salespersons.

A. Board regulations shall include educational requirements as a condition for relicensure of brokers and salespersons to whom active licenses have been issued by the Board beyond those now specified by law as conditions for licensure.

1. (Effective July 1, 2008) Brokers to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 24 hours of classroom or correspondence or other distance learning instruction during each licensing term. Of the total 24 hours, the curriculum shall include:

a. A minimum of eight required hours to include at least three hours of ethics and standards of conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging trends, real estate agency, and real estate contracts;

b. A minimum of eight hours of courses relating to supervision and management of real estate agents and the management of real estate brokerage firms as are approved by the Board; and

c. Eight hours of general elective courses as are approved by the Board.

The fair housing requirements shall include an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1, 2007, every applicant for relicensure as an active broker shall complete at a minimum one two-hour continuing education course on limited service agency prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board that certifies that he has taken a two-hour continuing education course on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the Board, which, in the determination of the Board, covered substantially the information in a continuing education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required. A licensee who takes one two-hour continuing education class on limited service agency shall satisfy the requirements for continuing education and may but shall not be required to take any further continuing education on limited service agency.

2. Salespersons to whom active licenses have been issued by the Board shall be required to satisfactorily complete courses of not less than 16 hours of classroom or correspondence or other distance learning instruction during each licensing term. Of the total 16 hours, the curriculum shall include:

a. A minimum of eight required hours to include at least three hours of ethics and standards of conduct, two hours of fair housing, and the remaining three hours of legal updates and emerging trends, real estate agency, and real estate contracts; and

b. Eight hours of general elective courses as are approved by the Board.

The fair housing requirements shall include an update on current cases and administrative decisions under fair housing laws. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in fair housing shall not be required; instead, such licensee shall receive training in other applicable federal and state discrimination laws and regulations.

The Board shall approve a continuing education curriculum of not less than two hours, and as of July 1, 2007, every applicant for relicensure as an active salesperson shall complete at a minimum one two-hour continuing education course on limited service agency prior to renewal or reinstatement of his license. If the licensee submits a notarized affidavit to the Board that certifies that he has taken a two-hour continuing education course on limited service agency between July 1, 2006, and June 30, 2007, offered by a school approved by the Board, which, in the determination of the Board, covered substantially the information in a continuing education course approved by the Board subsequent to July 1, 2007, the licensee may receive credit for the two hours of continuing education. If the licensee submits a notarized affidavit to the Board that certifies that he does not practice residential real estate and shall not do so during the licensing term, training in limited service agency shall not be required. A licensee who takes one two-hour continuing education class on limited service agency shall satisfy the requirements for continuing education and may but shall not be required to take any further continuing education on limited service agency.

3. For correspondence and other distance learning instruction offered by an approved provider, the Board shall establish the appropriate testing procedures to verify completion of the course and require the licensee to file a notarized affidavit certifying compliance with the course requirements. The Board may establish procedures to ensure the quality of the courses. The Board shall not require testing for continuing education courses completed through classroom instruction.
B. Every applicant for relicensure as an active salesperson or broker shall complete the continuing education requirements prior to each renewal or reinstatement of his license. The continuing education requirement shall also apply to inactive licensees who make application for an active license. Notwithstanding this requirement, military personnel called to active duty in the armed forces of the United States may complete the required continuing education within six months of their release from active duty.

(2007, c. 809.)

§ 54.1-2105.04. Education requirements; reactivation of licenses; waiver.

A. Board regulations shall include remedial educational requirements for any salesperson or broker who has been inactive for more than three years. The regulations shall require the applicant to meet the educational requirements for a salesperson or broker in effect at the time either becomes active.
B. When the license has been inactive for more than three years, the Board may waive the educational requirements for reactivation of a license under the following conditions: (i) during the time the license has been inactive, the holder of such inactive license has been engaged in an occupation whereby the knowledge of real estate would be retained or (ii) the holder of such license is a member or the spouse of a member of the armed forces of the United States who has been permanently assigned outside Virginia for a portion of the time the license has been inactive, and the holder of the inactive license remained current in the field of real estate and demonstrates this fact to the satisfaction of the Board.
C. The Board or its agent shall require proof of identity prior to an applicant taking the state examination.

(2007, c. 809.)

§ 54.1-2105.1. Other powers and duties of the Real Estate Board.

In addition to the provisions of §§ 54.1-2105.01 through 54.1-2105.04, the Board shall develop a residential property disclosure statement form for use in accordance with the provisions of Chapter 27 (§ 55-517 et seq.) of Title 55.

(1993, c. 958; 2000, c. 759; 2007, cc. 265, 809; 2008, cc. 851, 871.)

§ 54.1-2105.2. Cease and desist orders for unlicensed activity; civil penalty.

A. Notwithstanding any other provision of law, the Board may issue an order requiring any person to cease and desist from acting as a real estate broker or salesperson when such person is not licensed by the Board in accordance with this chapter. The order shall be effective upon its entry

and shall become final unless such person files an appeal with the Board in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) within 21 days of the date of entry of the order.
B. If the person fails to cease and desist the unlicensed activity after entry of an order in accordance with subsection A, the Board may refer the matter for enforcement pursuant to § 54.1-306.
C. Any person engaging in unlicensed activity shall be subject to further proceedings before the Board and the Board may impose a civil penalty not to exceed $1,000 for any real estate transaction or the compensation received from any such real estate transaction, whichever is greater. Any penalties collected under this section shall be paid to the Literary Fund after deduction of the administrative costs of the Board in furtherance of this section.

(2005, c. 437.)

§ 54.1-2106.

Repealed by Acts 1996, c. 993.

§ 54.1-2106.1. Licenses required.

A. No business entity, other than a sole proprietorship, shall act, offer to act, or advertise to act, as a real estate firm without a real estate firm license from the Board. Such firm may be granted a license in a fictitious name. No business entity shall be granted a firm license unless (i) every managing member of a limited liability company or officer of a corporation who actively participates in the firm brokerage business holds a license as a real estate broker and (ii) every employee or independent contractor who acts as a salesperson for such business entity holds a license as a real estate salesperson or broker. An individual holding a broker's license may operate a real estate brokerage firm which he owns as a sole proprietorship without any further licensure by the Board, although such individual shall not operate in a fictitious name. A non-broker-owned sole proprietorship shall obtain a license from the Board.
B. No individual shall act as a broker without a real estate broker's license from the Board. An individual who holds a broker's license may act as a salesperson for another broker. A broker acting as a salesperson may be an owner, member, or officer of a business entity salesperson as defined in subsection C.
C. No individual shall act as a salesperson without a salesperson's license from the Board. A business entity may act as a salesperson with a separate business entity salesperson's license from the Board. No business entity shall be granted a business entity salesperson's license unless every owner or officer who actively participates in the brokerage business of such entity holds a license as a salesperson or broker from the Board. The Board shall establish standards in its regulations for the names of business entity salespersons when more than one licensee is an owner or officer.

(1996, c. 993; 1998, c. 265; 1999, cc. 82, 105; 2008, c. 319.)

§ 54.1-2107. Certain action to constitute real estate broker or salesperson.

One act for compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell or exchange real estate, or leasing, or renting, or offering to rent real estate, except as specifically excepted in § 54.1-2103, shall constitute the person, firm, partnership, copartnership, association or corporation, performing, offering or attempting to perform any of the acts enumerated above, a real estate broker or real estate salesperson.

(Code 1950, § 54-732; 1984, c. 201; 1988, c. 765.)

§ 54.1-2108. Protection of escrow funds, etc., held by broker.

No licensee or any agent of the licensee shall divert or misuse any funds held in escrow or otherwise held by him for another. Where escrow funds or other funds are held by the licensee or his agents and the Real Estate Board or its agents have reason to believe that the licensee is not able to adequately protect the interests of persons involved, or his conduct threatens their interests, the Board shall file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by the licensee. If the court finds him unable to make such payment, the Board shall determine whether the expenses and fees shall be paid from the Virginia Real Estate Transaction Recovery Fund or from funds received by the Board. Such determination shall be made within thirty days of the Board's receipt of the court-approved receiver invoices. If the court finds that the licensee was without fault and that he is found not to have violated any provisions of this chapter or of the regulations of the Board, then the receiver's expenses and fees shall be paid by the Board. Such payments shall be paid from funds received by the Board.

(1973, c. 487, § 54-764.5; 1988, c. 765; 1997, c. 82; 1998, c. 29.)

§ 54.1-2109. Death or disability of a broker.

Upon the death or disability of a licensed real estate broker who was engaged in a proprietorship or who was the only licensed broker in a corporation or partnership, the estate, an adult family member, or an employee of the licensee may be granted approval by the Real Estate Board to carry on the business of the deceased or disabled broker for 180 days following the death or disability of the broker solely for the purpose of concluding the business of the deceased or disabled broker. In the event no such person is available or suitable, the Board may appoint any other suitable person to terminate the business within 180 days.

(1984, c. 283, § 54-731.3; 1988, c. 765.)

§ 54.1-2110. Resident broker to maintain place of business in Virginia.

Every resident real estate broker shall maintain a place of business in this Commonwealth.

(Code 1950, § 54-733; 1981, c. 34; 1988, c. 765.)

§ 54.1-2111. Consent to suits and service of process by nonresidents; manner of service.

A. Every nonresident applicant shall file with the Real Estate Board an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county or city of this Commonwealth in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this Commonwealth on the Director of the Department of Professional and Occupational Regulation. The consent shall stipulate that such service of process or pleadings on the Director shall be taken and held in all courts to be as valid and binding as if due service had been made upon the applicant in the Commonwealth of Virginia.
B. Any process or pleadings served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the licensee at the last known address.

(Code 1950, §§ 54-773, 54-774; 1988, c. 765; 1993, c. 499.)

§ 54.1-2112. Definitions.

As used in this article, unless the context requires a different meaning:
"Act" means the Virginia Real Estate Transaction Recovery Act.
"Balance of the fund" means cash, securities that are legal investments for fiduciaries under the provisions of subdivisions (1), (2), and (4) of § 26-40, and repurchase agreements secured by obligations of the United States government or any agency thereof, and shall not mean accounts receivable, judgments, notes, accrued interest, or other obligations payable to the fund.
"Board" means the Real Estate Board.
"Claimant" means any person with an unsatisfied judgment against a regulant, who has filed a verified claim under this act.
"Director" means the Director of the Department of Professional and Occupational Regulation.
"Fund" means the Virginia Real Estate Transaction Recovery Fund.
"Improper or dishonest conduct" includes only the wrongful and fraudulent taking or conversion of money, property or other things of value or material misrepresentation or deceit.
"Regulant" means a person, partnership, association, corporation, agency, firm or any other entity licensed by the Real Estate Board as a real estate broker or real estate salesperson.
(1977, c. 69, § 54-765.2; 1984, cc. 266, 283; 1985, c. 448; 1987, c. 555; 1988, c. 765; 1992, c. 348; 1993, c. 499.) § 54.1-2113. Establishment and maintenance of fund, duty of Director, assessments of regulants.
A. Each initial regulant at the time of licensure shall be assessed twenty dollars, which shall be specifically assigned to the fund. Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director within thirty days.
B. All assessments, except initial assessments, for the fund shall be deposited, within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings and loan associations or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under

the Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings institutions or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 26-40.01. The Director shall maintain in his office an accurate record of all transactions involving the fund, which records shall be open for inspection and copying by the public during the normal business hours of the Director.

C. The minimum balance of the fund shall be $400,000. Whenever the Director determines that the balance of the fund is or will be less than such minimum balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount of interest earnings to the fund to bring the balance of the fund to the amount required by this subsection. Such transfer of interest shall be considered by the Board within thirty days of the notification of the Director.

D. If available interest earnings are insufficient to bring the balance of the fund to the minimum amount required by this section, or if a transfer of available interest earnings to the fund has not occurred, the Board shall assess each regulant within thirty days of notification by the Director, a sum sufficient to bring the balance of the fund to the required minimum amount. The Board may order an assessment of regulants at any time in addition to any required assessment. No regulant shall be assessed a total amount of more than twenty dollars during any biennial license period or part thereof, the biennial period expiring on June 30 of each even-numbered year. Assessments of regulants made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

E. At the close of each fiscal year, whenever the balance of the fund exceeds $2,000,000, the amount in excess of $2,000,000 shall be transferred to the Virginia Housing Partnership Revolving Fund. Except for transfers pursuant to this subsection, there shall be no transfers out of the fund, including transfers to the general fund, regardless of the balance of the fund.

F. If the Board determines that all regulants will be assessed concurrently, notice to the regulants of such assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail to the Director within forty-five days after the mailing to regulants of such notice.

If the Board determines that all regulants will be assessed in conjunction with license renewal, notice to the regulants may be included with the license renewal notice issued by the Board. The assessment shall be due with the payment of the license renewal fees. No license shall be renewed or reinstated until any outstanding assessments are paid.

G. If any regulant fails to remit the required payment mailed in accordance with subsection F within forty-five days of the mailing, the Director shall notify the regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within thirty days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

H. The costs of administering the act shall be paid out of interest earned on deposits constituting the fund. The remainder of the interest, at the discretion of the Board, may (i) be used for providing research and education on subjects of benefit to real estate regulants or members of the public, (ii) be transferred to the Virginia Housing Partnership Revolving Fund, or (iii) accrue to the fund in accordance with subsection C.

(1977, c. 69, § 54-765.3; 1982, c. 6; 1984, c. 266; 1987, c. 555; 1988, c. 765; 1990, c. 3; 1992, cc. 348, 810; 1997, c. 82; 2007, c. 791.)

§ 54.1-2114. Recovery from fund generally.

A. Whenever any person is awarded a final judgment in any court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity for improper or dishonest conduct as defined in the act, and the improper or dishonest conduct occurred during a period when the individual or entity was a regulant and occurred in connection with a transaction involving the sale, lease, or management of real property by the regulant acting in the capacity of a real estate broker or real estate salesperson and not in the capacity of a principal, or on his own account, the person to whom such judgment was awarded may file a verified claim with the Director for a directive ordering payment from the fund of the amount unpaid upon the judgment, subject to the following conditions:

1. If any action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board in the manner prescribed by law. Included in such service shall be an affidavit stating all acts constituting improper or dishonest conduct. The provisions of § 8.01-288 shall not be applicable to the service of process required by this subdivision.
2. A copy of any pleading or document filed subsequent to the initial service of process in the action against a regulant shall be provided to the Board. The claimant shall submit such copies to the Board by certified mail, or the equivalent, upon his receipt of the pleading or document.
3. For judgments entered on or after July 1, 1996, the verified claim shall be filed with the Director no later than twelve months after the judgment becomes final.
4. The claimant shall not himself be (i) a regulant, (ii) the personal representative of a regulant, (iii) the spouse or child of the regulant against whom the judgment was awarded, nor the personal representative of such spouse or child, or (iv) any lending or financial institution nor anyone whose business involves the construction or development of real property.
5. The claimant shall have made an investigation to determine whether or not the judgment debtor is possessed of real or personal property or other assets which are available to be sold or otherwise applied in satisfaction of the judgment and shall file an affidavit that an investigation has been made. Satisfactory evidence of the results of subdivision 6 below shall be submitted with this affidavit.
6. The investigation shall include but shall not be limited to (i) the conducting of debtor interrogatories and (ii) the investigation of any listings held by the regulant and any commissions due thereby.
7. The investigation shall not have disclosed such real or personal property or other assets available to be so sold or applied, or the investigation shall have disclosed certain of such assets, which shall be described in detail, and the claimant shall have taken all legally available actions and proceedings for such sale or application, and the amount so realized shall have been insufficient to satisfy the judgment, which amount shall be stated together with the balance remaining due on the judgment after the sale or application.
8. If the judgment debtor has filed bankruptcy, the claimant shall file with the proper bankruptcy court a complaint under 11 U.S.C. § 523 (a) and obtain an order determining dischargeability of the debt.

B. The Department shall promptly consider the application, affidavit, and investigation of the claim. If it appears that a prima facie case has been made for payment of the claim, the Department shall provide the regulant with a notice offering the opportunity to be heard at an informal fact-finding conference pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000, et seq.). Such

notice shall state that if the regulant does not request an informal fact-finding conference within 30 days, with three days added in instances where the notice is sent by mail, the Department shall present the claim to the Board with a recommendation to pay the verified claim.

C. If the Board finds that there has been compliance with the statutory conditions to which reference is made in this section, the Board shall issue a directive ordering payment to the claimant from the fund the amount unpaid on the judgment, subject to the limitations set forth in § 54.1-2116. The claimant shall be notified in writing of the findings of the Board. The Board's findings shall be considered a "case decision" and judicial review of these findings shall be in accordance with § 2.2-4025 of the Administrative Process Act (§ 2.2-4000 et seq.). Notwithstanding any other provision of law, the Board shall have the right to appeal a decision of any court which is contrary to any distribution recommended or authorized by it.

(1977, c. 69, § 54-765.4; 1984, c. 266; 1987, c. 555; 1988, c. 765; 1996, c. 115; 2006, c. 723.)

§ 54.1-2115. Investigations.

Upon receipt of the notice of proceedings against the regulant the Board may cause its own investigation to be conducted.

(1987, c. 555, § 54-765.4:1; 1988, c. 765.)

§ 54.1-2116. Limitations upon recovery from fund; certain actions not a bar to recovery.

A. The aggregate of claims by claimants against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, is limited to $50,000. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund arising out of the same transaction, the Board may withhold any payment(s) from the fund for a period of not more than one year. After such one-year period, if the aggregate of claims arising out of the same transaction exceeds $50,000, such $50,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

B. The maximum claim of one claimant against the fund based upon an unpaid judgment arising out of the improper or dishonest conduct of one regulant in connection with a single transaction involving the sale, lease, or management of real property, shall be limited to $20,000, regardless of the number of claimants and regardless of the amount of the unpaid judgment of the claimant.

C. The aggregate of claims against the fund based upon unpaid judgments arising out of the improper or dishonest conduct of one regulant in connection with more than a single transaction involving the sale, lease, or management of real property is limited to $100,000 during any biennial license period, the biennial periods expiring on June 30 of each even-numbered year. If a claim has been made against the fund, and the Board has reason to believe that there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payment(s) from the fund involving such regulant for a period of not more than one year. After the one-year period, if the aggregate of claims against the regulant exceeds $100,000, such $100,000 shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their judgments against the regulant remaining unpaid.

D. Excluded from the amount of any unpaid judgment upon which a claim against the fund is based shall be any sums included in the judgment which represent interest, or punitive or exemplary damages. The claim against the fund may include court costs and attorneys' fees.
E. If, at any time, the amount of the fund is insufficient to satisfy any claims, claim, or portion thereof filed with the Board and authorized by the act, the Board shall, when the amount of the fund is sufficient to satisfy some or all of such claims, claim, or portion thereof, pay the claimants in the order that such claims were filed with the Board.
F. Failure of a claimant to comply with the provisions of subdivisions 1 and 2 of subsection A of § 54.1-2114 and the provisions of § 54.1-2117 shall not be a bar to recovery under this act if the claimant is otherwise entitled to such recovery.

(1977, c. 69, § 54-765.5; 1987, c. 555; 1988, c. 765.)

§ 54.1-2117. Participation by Board in proceedings.

Upon service of process as provided in subdivision A 1 of § 54.1-2114, the Board, the Director, or duly authorized representatives of the Board, shall then have the right to request leave of court to intervene.

(1977, c. 69, § 54-765.6; 1987, c. 555; 1988, c. 765.)

§ 54.1-2118. Payment of claim; assignment of claimant's rights to Board.

The Director shall, subject to the provisions of § 54.1-2116, pay to the claimant from the fund such amount as shall be directed by the Board upon the execution and delivery to the Director by such claimant of an assignment to the Board of the claimant's rights against the regulant to the extent that such rights were satisfied from the fund.

(1977, c. 69, § 54-765.7; 1987, c. 555; 1988, c. 765.)

§ 54.1-2119. Revocation of license of regulant upon payment from fund.

Upon payment by the Director to a claimant from the fund as provided in § 54.1-2118, the Board shall immediately revoke the license of the regulant whose improper or dishonest conduct, as defined in the act, resulted in payment from the fund. The regulant whose license was so revoked shall not be eligible to apply for a license as a real estate broker or real estate salesperson until he has repaid in full the amount paid from the fund on his account, plus interest at the judgment rate of interest from the date of payment from the fund.

(1977, c. 69, § 54-765.8; 1984, c. 266; 1987, c. 555; 1988, c. 765.)

§ 54.1-2120. No waiver by Board of disciplinary action against regulant.

Nothing contained in this article shall limit the authority of the Board to take disciplinary action against any regulant for any violation of this chapter or Board regulations, nor shall the repayment

in full by a regulant of the amount paid from the fund on such regulant's account nullify or modify the effect of any disciplinary proceeding against such regulant for any such violation.
(1977, c. 69, § 54-765.9; 1978, c. 129; 1987, c. 555; 1988, c. 765.)

§ 54.1-2130. Definitions.

As used in this article:
"Agency" means every relationship in which a real estate licensee acts for or represents a person by such person's express authority in a real estate transaction, unless a different legal relationship is intended and is agreed to as part of the brokerage relationship. Agency includes representation of a client as a standard agent or a limited service agent. Nothing in this article shall prohibit a licensee and a client from agreeing in writing to a brokerage relationship under which the licensee acts as an independent contractor or which imposes on a licensee obligations in addition to those provided in this article. If a licensee agrees to additional obligations, however, the licensee shall be responsible for the additional obligations agreed to with the client in the brokerage agreement. A real estate licensee who enters into a brokerage relationship based upon a written brokerage agreement that specifically states that the real estate licensee is acting as an independent contractor and not as an agent shall have the obligations agreed to by the parties in the brokerage agreement, and such real estate licensee and its employees shall have no obligations under §§ 54.1-2131 through 54.1-2135 of this article.
"Brokerage agreement" means the agreement by which a real estate licensee represents a client in a brokerage relationship.
"Brokerage relationship" means the contractual relationship between a client and a real estate licensee who has been engaged by such client for the purpose of procuring a seller, buyer, option, tenant, or landlord ready, able, and willing to sell, buy, option, exchange or rent real estate on behalf of a client.
"Client" means a person who has entered into a brokerage relationship with a licensee.
"Common source information company" means any person, firm, or corporation that is a source, compiler, or supplier of information regarding real estate for sale or lease and other data and includes, but is not limited to, multiple listing services.
"Customer" means a person who has not entered into a brokerage relationship with a licensee but for whom a licensee performs ministerial acts in a real estate transaction. Unless a licensee enters into a brokerage relationship with such person, it shall be presumed that such person is a customer of the licensee rather than a client.
"Designated agent" or "designated representative" means a licensee who has been assigned by a principal or supervising broker to represent a client when a different client is also represented by such principal or broker in the same transaction.
"Dual agent" or "dual representative" means a licensee who has a brokerage relationship with both seller and buyer, or both landlord and tenant, in the same real estate transaction.
"Licensee" means real estate brokers and salespersons as defined in Article 1 (§ 54.1-2100 et seq.) of Chapter 21 of this title.
"Limited service representative" means a licensee who acts for or represents a client with respect to real property containing from one to four residential units, pursuant to a brokerage agreement that provides that the limited service representative will not provide one or more of the duties set forth in subdivision A 2 of §§ 54.1-2131, 54.1-2132, 54.1-2133, and 54.1-2134, inclusive. A limited service representative shall have the obligations set out in the brokerage agreement, except that a

limited service representative shall provide the client, at the time of entering the brokerage agreement, copies of any and all disclosures required by federal or state law, or local disclosures expressly authorized by state law, and shall disclose to the client the following in writing: (i) the rights and obligations of the client under the Virginia Residential Property Disclosure Act (§ 55-517 et seq.); (ii) if the client is selling a condominium, the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the condominium resale certificate required by § 55-79.97; and (iii) if the client is selling a property subject to the Property Owners' Association Act (§ 55-508 et seq.), the rights and obligations of the client to deliver to the purchasers, or to receive as purchaser, the association disclosure packet required by § 55-509.5. A limited service representative may act as the agent or representative of the client only by so providing in writing in the brokerage agreement. If the brokerage agreement does not so state, the limited service representative shall be deemed as acting as an independent contractor of the client.
"Ministerial acts" means those routine acts which a licensee can perform for a person which do not involve discretion or the exercise of the licensee's own judgment.
"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in this article and any additional obligations agreed to by the parties in the brokerage agreement.

(1995, cc. 741, 813; 2006, c. 627; 2008, cc. 851, 871.)

§ 54.1-2131. Licensees engaged by sellers.

A. A licensee engaged by a seller shall:
1. Perform in accordance with the terms of the brokerage relationship;
2. Promote the interests of the seller by:
a. Conducting marketing activities on behalf of the seller in accordance with the brokerage agreement. In so doing, the licensee shall seek a sale at the price and terms agreed upon in the brokerage relationship or at a price and terms acceptable to the seller; however, the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract of sale, unless agreed to as part of the brokerage relationship or as the contract of sale so provides;
b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the seller's objectives;
c. Receiving and presenting in a timely manner written offers and counteroffers to and from the seller and purchasers, even when the property is already subject to a contract of sale; and
d. Providing reasonable assistance to the seller to satisfy the seller's contract obligations and to facilitate settlement of the purchase contract.
3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the seller consents in writing to the release of such information;
4. Exercise ordinary care;
5. Account in a timely manner for all money and property received by the licensee in which the seller has or may have an interest;

6. Disclose to the seller material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
7. Comply with all requirements of this article, all applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
B. Licensees shall treat all prospective buyers honestly and shall not knowingly give them false information. A licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. A licensee shall not be liable to a buyer for providing false information to the buyer if the false information was provided to the licensee by the seller or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this article shall limit in any way the provisions of the Virginia Residential Property Disclosure Act (§ 55-517 et seq.).
C. A licensee engaged by a seller in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to a buyer or potential buyer by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the seller unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage or agency relationship with such buyer or potential buyer.
D. A licensee engaged by a seller does not breach any duty or obligation owed to the seller by showing alternative properties to prospective buyers, whether as clients or customers, or by representing other sellers who have other properties for sale.
E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

(1995, cc. 741, 813; 2006, c. 627; 2008, c. 741.)

§ 54.1-2132. Licensees engaged by buyers.

A. A licensee engaged by a buyer shall:
1. Perform in accordance with the terms of the brokerage relationship;
2. Promote the interests of the buyer by:
a. Seeking a property of a type acceptable to the buyer and at a price and on terms acceptable to the buyer; however, the licensee shall not be obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase property unless agreed to as part of the brokerage relationship;
b. Assisting in the drafting and negotiating of offers and counteroffers, amendments, and addenda to the real estate contract pursuant to § 54.1-2101.1 and in establishing strategies for accomplishing the buyer's objectives;
c. Receiving and presenting in a timely manner all written offers or counteroffers to and from the buyer and seller, even when the buyer is already a party to a contract to purchase property; and

d. Providing reasonable assistance to the buyer to satisfy the buyer's contract obligations and to facilitate settlement of the purchase contract.
3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the buyer consents in writing to the release of such information;
4. Exercise ordinary care;
5. Account in a timely manner for all money and property received by the licensee in which the buyer has or may have an interest;
6. Disclose to the buyer material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
7. Comply with all requirements of this article, all applicable fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
B. Licensees shall treat all prospective sellers honestly and shall not knowingly give them false information. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. In the case of a residential transaction, a licensee engaged by a buyer shall disclose to a seller whether or not the buyer intends to occupy the property as a principal residence. The buyer's expressions of such intent in the contract of sale shall satisfy this requirement and no cause of action shall arise against any licensee for the disclosure or any inaccuracy in such disclosure, or the nondisclosure of the buyer in this regard.
C. A licensee engaged by a buyer in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to the seller, or prospective seller, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the buyer unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with such seller.
D. A licensee engaged by a buyer does not breach any duty or obligation to the buyer by showing properties in which the buyer is interested to other prospective buyers, whether as clients or customers, by representing other buyers looking at the same or other properties, or by representing sellers relative to other properties.
E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

(1995, cc. 741, 813; 2006, c. 627.)

§ 54.1-2133. Licensees engaged by landlords to lease property.

A. A licensee engaged by a landlord shall:
1. Perform in accordance with the terms of the brokerage relationship;
2. Promote the interests of the landlord by:
a. Conducting marketing activities on behalf of the landlord pursuant to the brokerage agreement with the landlord. In so doing, the licensee shall seek a tenant at the rent and terms agreed in the brokerage relationship or at a rent and terms acceptable to the landlord; however, the licensee shall not be obligated to seek additional offers to lease the property while the property is subject to a lease or a letter of intent to lease under which the tenant has not yet taken possession, unless agreed as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;

b. Assisting the landlord in drafting and negotiating leases and letters of intent to lease, and presenting in a timely manner all written leasing offers or counteroffers to and from the landlord and tenant pursuant to § 54.1-2101.1, even when the property is already subject to a lease or a letter of intent to lease; and
c. Providing reasonable assistance to the landlord to finalize the lease agreement.
3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the landlord consents in writing to the release of such information;
4. Exercise ordinary care;
5. Account in a timely manner for all money and property received by the licensee in which the landlord has or may have an interest;
6. Disclose to the landlord material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
7. Comply with all requirements of this article, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
B. Licensees shall treat all prospective tenants honestly and shall not knowingly give them false information. A licensee engaged by a landlord shall disclose to prospective tenants all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee. As used in this section, the term "physical condition of the property" shall refer to the physical condition of the land and any improvements thereon, and shall not refer to: (i) matters outside the boundaries of the land or relating to adjacent or other properties in proximity thereto, (ii) matters relating to governmental land use regulations, and (iii) matters relating to highways or public streets. Such disclosure shall be made in writing. A licensee shall not be liable to a tenant for providing false information to the tenant if the false information was provided to the licensee by the landlord or was obtained from a governmental entity or from a person licensed, certified, or registered to provide professional services in the Commonwealth, upon which the licensee relies, and the licensee did not (i) have actual knowledge that the information was false or (ii) act in reckless disregard of the truth. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law. Nothing in this subsection shall limit the right of a prospective tenant to inspect the physical condition of the property.
C. A licensee engaged by a landlord in a real estate transaction may, unless prohibited by law or the brokerage relationship, provide assistance to a tenant, or potential tenant, by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the landlord unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with such tenant or potential tenant.
D. A licensee engaged by a landlord does not breach any duty or obligation owed to the landlord by showing alternative properties to prospective tenants, whether as clients or customers, or by representing other landlords who have other properties for lease.
E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

(1995, cc. 741, 813; 2006, c. 627; 2008, c. 741.)

§ 54.1-2134. Licensees engaged by tenants.

A. A licensee engaged by a tenant shall:
1. Perform in accordance with the terms of the brokerage relationship;
2. Promote the interests of the tenant by:
a. Seeking a lease at a rent and with terms acceptable to the tenant; however, the licensee shall not be obligated to seek other properties for the tenant while the tenant is a party to a lease or a letter of intent to lease exists under which the tenant has not yet taken possession, unless agreed to as part of the brokerage relationship, or unless the lease or the letter of intent to lease so provides;
b. Assisting in the drafting and negotiating of leases, letters of intent to lease, and rental applications, and presenting, in a timely fashion, all written offers or counteroffers to and from the tenant and landlord pursuant to § 54.1-2101.1, even when the tenant is already a party to a lease or a letter of intent to lease;
c. Providing reasonable assistance to the tenant to finalize the lease agreement.
3. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the tenant consents in writing to the release of such information;
4. Exercise ordinary care;
5. Account in a timely manner for all money and property received by the licensee in which the tenant has or may have an interest;
6. Disclose to the tenant material facts related to the property or concerning the transaction of which the licensee has actual knowledge; and
7. Comply with all requirements of this article, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
B. Licensees shall treat all prospective landlords honestly and shall not knowingly give them false information. No cause of action shall arise against any licensee for revealing information as required by this article or applicable law.
C. A licensee engaged by a tenant in a real estate transaction may provide assistance to the landlord or prospective landlord by performing ministerial acts. Performing such ministerial acts that are not inconsistent with subsection A shall not be construed to violate the licensee's brokerage relationship with the tenant unless expressly prohibited by the terms of the brokerage relationship, nor shall performing such ministerial acts be construed to form a brokerage relationship with the landlord or prospective landlord.
D. A licensee engaged by a tenant does not breach any duty or obligation to the tenant by showing properties in which the tenant is interested to other prospective tenants, whether as clients or customers, by representing other tenants looking for the same or other properties to lease, or by representing landlords relative to other properties.
E. Licensees shall disclose brokerage relationships pursuant to the provisions of this article.

(1995, cc. 741, 813; 2006, c. 627.)

§ 54.1-2135. Licensees engaged to manage real estate.

A. A licensee engaged to manage real estate shall:
1. Perform in accordance with the terms of the property management agreement;
2. Exercise ordinary care;

3. Disclose in a timely manner to the owner material facts of which the licensee has actual knowledge concerning the property;
4. Maintain confidentiality of all personal and financial information received from the client during the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential unless otherwise provided by law or the owner consents in writing to the release of such information;
5. Account for, in a timely manner, all money and property received in which the owner has or may have an interest; and
6. Comply with all requirements of this article, fair housing statutes and regulations, and all other applicable statutes and regulations which are not in conflict with this article.
B. Except as provided in the property management agreement, a licensee engaged to manage real estate does not breach any duty or obligation to the owner by representing other owners in the management of other properties.
C. A licensee may also represent the owner as seller or landlord if they enter into a brokerage relationship that so provides; in which case, the licensee shall disclose such brokerage relationships pursuant to the provisions of this article.

(1995, cc. 741, 813.)

§ 54.1-2136. Preconditions to brokerage relationship.

Prior to entering into any brokerage relationship provided for in this article, a licensee shall advise the prospective client of (i) the type of brokerage relationship proposed by the broker and (ii) the broker's compensation and whether the broker will share such salary or compensation with another broker who may have a brokerage relationship with another party to the transaction.

(1995, cc. 741, 813.)

§ 54.1-2137. Commencement and termination of brokerage relationships.

A. The brokerage relationships set forth in this article shall commence at the time that a client engages a licensee and shall continue until (i) completion of performance in accordance with the brokerage relationship or (ii) the earlier of (a) any date of expiration agreed upon by the parties as part of the brokerage relationship or in any amendments thereto, (b) any mutually agreed upon termination of the relationship, (c) a default by any party under the terms of the brokerage relationship, or (d) a termination as set forth in subsection D of § 54.1-2139.
B. Brokerage relationships shall have a definite termination date; however, if a brokerage relationship does not specify a definite termination date, the brokerage relationship shall terminate ninety days after the date the brokerage relationship was entered into.
C. Except as otherwise agreed to in writing, a licensee owes no further duties to a client after termination, expiration, or completion of performance of the brokerage relationship, except to (i) account for all moneys and property relating to the brokerage relationship and (ii) keep confidential all personal and financial information received from the client during the course of the brokerage relationship and any other information that the client requests during the brokerage relationship be maintained confidential, unless otherwise provided by law or the client consents in writing to the release of such information.

(1995, cc. 741, 813.)

§ 54.1-2138. Disclosure of brokerage relationship.

A. Upon having a substantive discussion about a specific property or properties with an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee, a licensee shall disclose any broker relationship the licensee has with another party to the transaction. Further, except as provided in § 54.1-2139, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time when specific real estate assistance is first provided. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF BROKERAGE RELATIONSHIP

The undersigned do hereby acknowledge disclosure that:

The licensee .....

Name of Firm

represents the following party in a real estate transaction:

..... Seller(s) or ..... Buyer(s)

..... Landlord(s) or ..... Tenant(s)

....

Date Name

....

Date Name

B. A licensee shall disclose to an actual or prospective landlord or tenant, who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in all applications for lease or in the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, disclosure shall be made in writing no later than the signing of the lease. Such disclosure requirement shall not apply to lessors or lessees in single or multifamily residential units for lease terms of less than two months.

C. If a licensee's relationship to a client or customer changes, the licensee shall disclose that fact in writing to all clients and customers already involved in the specific contemplated transaction.
D. Copies of any disclosures relative to fully executed purchase contracts shall be kept by the licensee for a period of three years as proof of having made such disclosure, whether or not such disclosure is acknowledged in writing by the party to whom such disclosure was shown or given.
E. A limited service representative shall also make the disclosure required by § 54.1-2138.1.

(1995, cc. 741, 813; 1997, cc. 86, 119; 2006, c. 627.)

§ 54.1-2138.1. Limited service representative, contract disclosure required.

A. A licensee may act as a limited service representative only pursuant to a written brokerage agreement in which the limited service representative (i) discloses that the licensee is acting as a limited service representative; (ii) provides a list of the specific services that the licensee will provide to the client; and (iii) provides a list of the specific duties of a standard agent set out in subdivision A 2 of § 54.1-2131, subdivision A 2 of § 54.1-2132, subdivision A 2 of § 54.1-2133, or subdivision A 2 of § 54.1-2134, as applicable, that the limited service representative will not provide to the client. Such disclosure shall be conspicuous and printed either in bold lettering or all capitals, and shall be underlined or in a separate box. In addition, a disclosure that contains language that complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:
"By entering into this brokerage agreement, the undersigned do hereby acknowledge their informed consent to the limited service representation by the licensee and do further acknowledge that neither the other party to the transaction nor any real estate licensee representing the other party is under any legal obligation to assist the undersigned with the performance of any duties and responsibilities of the undersigned not performed by the limited service representative."
B. A licensee engaged by one client to a transaction and dealing with an unrepresented party or with a party represented by a limited service representative and who, without additional compensation, provides such other party information relative to the transaction or undertakes to assist such other party in securing a contract or with such party's obligations thereunder, shall not incur liability for such actions except in the case of gross negligence or willful misconduct. A licensee does not create a brokerage relationship by providing such assistance or information to the other party to the transaction. A licensee dealing with a client of a limited service representative may enter into an agreement with that party for payment of a fee for services performed or information provided by that licensee. Such payment shall not create a brokerage relationship; however, the licensee providing such services or information for a fee shall be held to the ordinary standard of care in the provision of such services or information.

(2006, c. 627.)

§ 54.1-2139. Disclosed dual or designated representation authorized.

A. A licensee may act as a dual representative only with the written consent of all clients to the transaction. Such written consent and disclosure of the brokerage relationship as required by this article shall be presumed to have been given as against any client who signs a disclosure as provided in this section.

B. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with this disclosure requirement:

DISCLOSURE OF DUAL REPRESENTATION

The undersigned do hereby acknowledge disclosure that:

The licensee .....

(Name of Broker, Firm or Salesperson as applicable)

represents more than one party in this real estate transaction as indicated below:

..... Seller(s) and Buyer(s)

..... Landlord(s) and Tenant(s).

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

....

Date Name (One Party)

....

Date Name (One Party)

....

Date Name (Other Party)

....

Date Name (Other Party)

C. No cause of action shall arise against a dual representative for making disclosures of brokerage relationships as provided by this article. A dual representative does not terminate any brokerage relationship by the making of any such allowed or required disclosures of dual representation.
D. In any real estate transaction, a licensee may withdraw, without liability, from representing a client who refuses to consent to a disclosed dual representation thereby terminating the brokerage relationship with such client. Such withdrawal shall not prejudice the ability of the licensee to continue to represent the other client in the transaction nor to limit the licensee from representing the client who refused the dual representation in other transactions not involving dual representation.
E. A principal or supervising broker may assign different licensees affiliated with the broker as designated representatives to represent different clients in the same transaction to the exclusion of all other licensees in the firm. Use of such designated representatives shall not constitute dual representation if a designated representative is not representing more than one client in a particular real estate transaction; however, the principal or broker who is supervising the transaction shall be considered a dual representative as provided in this article. Designated representatives may not disclose, except to the affiliated licensee's broker, personal or financial information received from the clients during the brokerage relationship and any other information that the client requests during the brokerage relationship be kept confidential, unless otherwise provided for by law or the client consents in writing to the release of such information.
F. Use of designated representatives in a real estate transaction shall be disclosed in accordance with the provisions of this article. Such disclosure may be given in combination with other disclosures or provided with other information, but if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box. Any disclosure which complies substantially in effect with the following shall be deemed in compliance with such disclosure requirement:

DISCLOSURE OF THE USE OF DESIGNATED REPRESENTATIVES

The undersigned do hereby acknowledge disclosure that:

The licensee .....

(Name of Broker and Firm)

represents more than one party in this real estate transaction as indicated

below:

..... Seller(s) and Buyer(s)

..... Landlord(s) and Tenant(s).

The undersigned understands that the foregoing dual representative may not disclose to either client or such client's designated representative any information that has been given to the dual representative by the other client within the confidence and trust of the brokerage relationship except for that information which is otherwise required or permitted by Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia to be disclosed. The undersigned by signing this notice do hereby acknowledge their informed consent to the disclosed dual representation by the licensee.

The principal or supervising broker has assigned

..... to act as Designated Representative

(Licensee/Sales Associate)

for the one party as indicated below:

..... Seller(s) or ..... Buyer(s)

..... Landlord(s) or .....

Tenant(s).

and

..... to act as Designated Representative

(Licensee/Sales Associate)

for the other party as indicated below:

..... Seller(s) or ..... Buyer(s)

..... Landlord(s) or .....

Tenant(s)

....

Date Name (One Party)

....

Date Name (One Party)

....

Date Name (Other Party)

....

Date Name (Other Party)

(1995, cc. 741, 813.)

§ 54.1-2140. Compensation shall not imply brokerage relationship.

The payment or promise of payment or compensation to a real estate broker does not create a brokerage relationship between any broker, seller, landlord, buyer or tenant.

(1995, cc. 741, 813.)

§ 54.1-2141. Brokerage relationship not created by using common source information company.
No licensee representing a buyer or tenant shall be deemed to have a brokerage relationship with a seller, landlord or other licensee solely by reason of using a common source information company. However, nothing contained in this article shall be construed to prevent a common source information company from requiring, as a condition of participation in or use of such common source information, that licensees providing information through such company disclose the nature of the brokerage relationship with the client, including, but not limited to, whether the licensee is acting as (i) an independent contractor, (ii) a limited service representative, or (iii) a transaction broker, facilitator or in some other capacity as provided in the brokerage agreement. A common source information company may, but shall not be obligated to, require disclosure of a standard agency relationship, and may adopt rules providing that absent any disclosure, a licensee providing information through such company may be assumed to be acting as a standard agent. A common source information company shall have the right, but not the obligation, to make information about the nature of brokerage relationships available to its participants and to settlement service it provides including, without limitation, title insurance companies, lenders, and settlement agents.

(1995, cc. 741, 813; 2006, c. 627.)

§ 54.1-2142. Liability; knowledge not to be imputed.

A. A client is not liable for (i) a misrepresentation made by a licensee in connection with a brokerage relationship, unless the client knew or should have known of the misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or (ii) the negligence, gross negligence or intentional acts of any broker or broker's licensee.
B. A broker who has a brokerage relationship with a client and who engages another broker to assist in providing brokerage services to such client shall not be liable for (i) a misrepresentation made by the other broker, unless the broker knew or should have known of the other broker's misrepresentation and failed to take reasonable steps to correct the misrepresentation in a timely manner, or (ii) the negligence, gross negligence or intentional acts of the assisting broker or assisting broker's licensee.
C. Clients and licensees shall be deemed to possess actual knowledge and information only. Knowledge or information among or between clients and licensees shall not be imputed.
D. Nothing in this article shall limit the liability between or among clients and licensees in all matters involving unlawful discriminatory housing practices.
E. Except as expressly set forth in this section, nothing in this article shall affect a person's right to rescind a real estate transaction or limit the liability of (i) a client for the misrepresentation, negligence, gross negligence or intentional acts of such client in connection with a real estate transaction, or (ii) a licensee for the misrepresentation, negligence, gross negligence or intentional acts of such licensee in connection with a real estate transaction.

(1995, cc. 741, 813.)

§ 54.1-2143. Real estate board regulations to be consistent.

Any regulations adopted by the Virginia Real Estate Board shall be consistent with this article, and any such regulations existing as of the effective date of this article shall be modified to comply with the provisions of this article.

(1995, cc. 741, 813.)

§ 54.1-2144. Common law abrogated.

The common law of agency relative to brokerage relationships in real estate transactions to the extent inconsistent with this article shall be expressly abrogated.

(1995, cc. 741, 813.)

§ 54.1-2145. Article does not limit antitrust laws.

Nothing in this article shall be construed to limit, modify, impair, or supercede the applicability of any federal or state antitrust laws.

(2006, c. 627.)

Code of Virginia

Title 54.1, Chapter 22

Soil Scientists and Wetland Delineators

§ 54.1-2200. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Professional Soil Scientists and Wetland Professionals.
"Department" means the Department of Professional and Occupational Regulation.
"Eligible soil scientist" means a person who possesses the qualifications specified in this chapter to become certified.
"Eligible wetland professional" means a person who possesses the qualifications specified in this chapter to become certified.
"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.
"Practice of wetland delineation" means the delineation of wetlands by accepted principles and methods including, but not limited to, observation, investigation, and consultation on soil, vegetation, and hydrologic parameters; and preparation of wetland delineations, descriptions, reports and interpretive drawings.
"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.
"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.
"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.
"Soil scientist" means a person having special knowledge of soil science and the methods and principles of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.
"Virginia certified professional soil scientist" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who has been granted certification by the Board.
"Virginia certified professional wetland delineator" means a person who possesses the qualifications required for certification by the provisions of this chapter and the regulations of the Board and who is granted certification by the Board.
"Wetland delineation" means delineating wetland limits in accordance with prevailing state and federal regulatory guidance and describing wetland types.

"Wetland professional" means a person having special knowledge of wetland science and the methods and principles of wetland delineation as acquired by education and experience in the formation, description and mapping of wetlands.
"Wetland science" means the science dealing with the physical, chemical, and biological properties of wetland systems integrated through ecological and morphological relationships.
"Wetlands" means the same as that term is defined in §§ 62.1-44.3 and 28.2-1300.

(1987, c. 626, § 54-969; 1988, c. 765; 1993, c. 499; 2002, c. 784.)

§ 54.1-2201. Exceptions.

A. The certification programs set forth in this chapter are voluntary and shall not be construed to prohibit:
1. The practice of soil evaluation or wetland delineation by individuals who are not certified soil scientists or certified professional wetland delineators as defined in this chapter;
2. The work of an employee or a subordinate of a certified soil scientist or of an individual who is practicing soil evaluation without being certified;
3. The work of an employee or a subordinate of a certified professional wetland delineator or of an individual who is practicing wetland delineation without being certified;
4. The work of any professional engineer, certified landscape architect, or land surveyor as defined by § 54.1-400 in rendering any of the services that constitute the practice of wetland delineation or the practice of soil evaluation; or
5. The practice of any profession or occupation which is regulated by another regulatory board within the Department of Professional and Occupational Regulation.
B. Nothing in this chapter shall authorize an individual to engage in the practice of engineering, the practice of land surveying or to use the title of landscape architect, unless such individual is licensed or certified pursuant to Chapter 4 (§ 54.1-400 et seq.) of this title.
(1987, c. 626, § 54-970; 1988, c. 765; 1993, c. 499; 2002, c. 784.) § 54.1-2202. Board; membership; quorum.
Notwithstanding the provisions of § 54.1-200, the Board for Professional Soil Scientists and Wetland Professionals shall be composed of seven members as follows: three certified professional soil scientists, three certified professional wetland delineators and one citizen member. The professional soil scientist members shall have experience in at least one of the following areas (i) soil mapping and classification, (ii) soil suitability and land use, (iii) teaching and research in soil science, and (iv) environmental protection regulations. Of the wetland professional members, one shall have experience in wetland delineation and description, one shall have experience in teaching and research in wetland science and one shall have experience with natural resource regulations. For the initial appointments of the wetland professionals the terms shall be as follows: one member shall serve a term of two years, one member shall serve a term of three years, and one member shall serve a term of four years. Initial appointments of wetland professional members to the Board shall not be certified professional wetland delineators but shall have a record of at least ten years of experience in wetland delineation. Subsequent terms of the members shall be for four years.
The Board shall annually elect a chairman from its membership. Four board members, consisting of two soil scientists and two professional wetland delineators, shall constitute a quorum.

The Governor may select the professional soil scientist members from a list of at least three names for each vacancy submitted by the Virginia Association of Professional Soil Scientists. The Governor may notify the Virginia Association of Professional Soil Scientists of any professional vacancy other than by expiration among the professional soil scientist members of the Board and nominations may be made for the filling of the vacancy.
The Governor may select the wetland professionals from a list of at least three names for each vacancy submitted by the Virginia Association of Wetland Professionals. The Governor may notify and request nominations from the Virginia Association of Wetland Professionals of any professional vacancy other than by expiration among the wetland professional members.

(1987, c. 626, § 54-972; 1988, c. 765; 2002, c. 784.)

§ 54.1-2203. Eligibility for certification.

A. Any person practicing or offering to practice as a soil scientist in the Commonwealth may submit to the Board evidence of qualification to be certified as provided in this chapter. The Board may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.
B. Any person practicing or offering to practice as a wetland professional in the Commonwealth may submit to the Board evidence of qualification to be a certified professional wetland delineator as provided in this chapter. The Board may certify any applicant who has satisfactorily met the requirements of this chapter and its regulations and shall specify on the certificate the appropriate endorsement.
C. Any individual who allows his certification to lapse by failing to renew the certificate or failing to meet professional activity requirements stipulated in the regulations may be reinstated by the Board upon submission of satisfactory evidence that he is practicing in a competent manner and upon payment of the prescribed fee.

(1987, c. 626, § 54-973; 1988, c. 765; 2002, c. 784.)

§ 54.1-2204. Requirements for application for certification.

The Board may certify any applicant as a Virginia certified professional soil scientist who has submitted satisfactory evidence verified by affidavits that the applicant:
1. Is eighteen years of age or more;
2. Is of good moral character; and
3. Has successfully completed such educational and experiential requirements as are required by this chapter and the regulations of the Board.

(1987, c. 626, § 54-974; 1988, c. 765.)

§ 54.1-2205. Requirements for certification.

A. In order to be certified as a professional soil scientist, an applicant shall achieve a score acceptable to the Board on an examination in the principles and practice of soil evaluation and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a soils curriculum which has been approved by the Board and have at least four years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or
2. Hold a bachelor's degree in one of the natural sciences and have at least five years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or
3. Have a record of at least eight years of experience in soil evaluation, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist; or
4. Have at least four years of experience in soil science research or as a teacher of soils curriculum in an accredited institution of higher education which offers an approved four-year program in soils and at least two years of soil evaluation experience, the quality of which demonstrates to the Board that the applicant is competent to practice as a professional soil scientist.
B. Notwithstanding the requirements in subsection A, any person appointed to serve on the Board as a professional soil scientist member prior to July 1, 1991, shall be deemed certified for the purposes of this chapter.

(1987, c. 626, § 54-975; 1988, c. 765; 1991, c. 181.)

§ 54.1-2206. Waiver of examination.

A. The Board may waive the requirement for examination pursuant to § 54.1-2205 upon written application from an individual who holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body which could result in the suspension or revocation of his certificate, if such other state, territory or possession recognizes the certificates issued by the Board.
B. The Board shall waive the requirement for examination pursuant to § 54.1-2206.2 upon the written application from an individual who (i) holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States or has been provisionally certified under the U.S. Army Corps of Engineers Wetland Delineator Certification Program of 1993 and is not the subject of any disciplinary proceeding before such regulatory body, which could result in the suspension or revocation of his certificate or (ii) has a record of at least 10 years of experience in wetland delineation the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator. This provision shall expire two years after initiation of the program.

(1987, c. 626, § 54-976; 1988, c. 765; 1991, c. 181; 2002, c. 784; 2003, c. 447.)

§ 54.1-2206.1. Requirements for application for professional wetland delineator certification.

The Board may certify any applicant as a Virginia certified professional wetland delineator who has submitted satisfactory evidence verified by affidavits that the applicant:
1. Is eighteen years of age or older;
2. Is of good moral character; and

3. Has successfully completed such educational and experiential requirements as are required by this chapter and the regulations of the Board.

(2002, c. 784.)

§ 54.1-2206.2. Requirements for professional wetland delineator certification.

A. In order to be certified as a professional wetland delineator, an applicant shall achieve a score acceptable to the Board on an examination, which may include a field practicum, in the principles and practice of wetland delineation, provide three written references from wetland professionals with at least one from a certified professional wetland delineator, and satisfy one of the following criteria:
1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, biological engineering, civil and environmental engineering, ecology, soil science, geology, hydrology or any similar biological, physical, natural science or environmental engineering curriculum that has been approved by the Board; have successfully completed a course of instruction, in state and federal wetland delineation methods, that has been approved by the Board; and have at least four years of experience in wetland delineation under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator;
2. Have a record of at least six years of experience in wetland delineation under the supervision of a certified professional wetland delineator, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator; or
3. Have a record of at least four years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator.
B. Notwithstanding the requirements of subsection A, the requirement for a reference from and supervision by a certified professional wetland delineator shall be waived for the first six years of the program.

(2002, c. 784; 2007, c. 334.)

§ 54.1-2207. Unprofessional conduct.

Any professional soil scientist or wetland delineator who is certified as provided in this chapter shall be considered guilty of unprofessional conduct and subject to disciplinary action by the Board, if he:
1. Obtains his certification through fraud or deceit;
2. Violates or cooperates with others in violating any provision of this chapter, the Code of Professional Ethics and Conduct or any regulation of the Board;
3. Performs any act likely to deceive, defraud or harm the public;
4. Demonstrates gross negligence, incompetence or misconduct in the practice of soil evaluation or wetland delineation; or
5. Is convicted of a felony.

(1987, c. 626; 1988, c. 765; 2002, c. 784.)

§ 54.1-2208. Unlawful representation as a certified professional soil scientist or wetland delineator.

A. No person shall represent himself as a certified professional soil scientist unless he has been so certified by the Board. Any person practicing or offering to practice soil evaluation within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified professional soil scientist without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.

B. No person shall represent himself as a certified professional wetland delineator unless he has been so certified by the Board. Any person practicing or offering to practice wetland delineation within the meaning of this chapter who, through verbal claim, sign, advertisement, or letterhead, represents himself as a certified professional wetland delineator without holding such a certificate from the Board shall be guilty of a Class 1 misdemeanor.

(1987, c. 626, § 54-971; 1988, c. 765; 2002, c. 784.)

Code of Virginia

Title 54.1, Chapter 22.1

Waste Management Facility Operators

§ 54.1-2209. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Waste Management Facility Operators.
"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.
"Waste management facility" means a site used for planned treatment, storage or disposal of nonhazardous solid waste.
"Waste management facility operator" means any person, including an owner, who is in charge of the actual, on-site operation of a waste management facility during any period of operation.

(1991, c. 551.)

§ 54.1-2210. Board for Waste Management Facility Operators; membership; terms.

The Board for Waste Management Facility Operators shall consist of seven members appointed by the Governor as follows: a representative from the Department of Waste Management, a representative from a local government that owns a sanitary landfill, a representative from a local government that owns a waste management facility other than a sanitary landfill, a representative of a private owner of a sanitary landfill, a representative of a private owner of a waste management facility other than a sanitary landfill, and two citizen members, one of whom shall be a representative of a commercial waste generator. No owner shall be represented by more than one representative or employee. Of the 1999 appointments, the terms shall be as follows: two shall serve a two-year term, two shall serve a three-year term, and three shall serve a four-year term. Thereafter the terms of Board members shall be four years, except that vacancies shall be filled for the unexpired term. No member shall serve more than two consecutive four-year terms.

(1991, c. 551; 1996, cc. 78, 824.)

§ 54.1-2211. Duties; licensing.

A. The Board shall promulgate regulations and standards for the training and licensing of waste management facility operators. The Board may establish classes of training and licensing based upon the type of waste management facility for which a waste management facility operator seeks a license. Training and licensing requirements may vary for the classes of license established by the Board based upon the type of facility and the type of waste managed at the facility. The Board

shall consider an applicant's prior experience in determining whether the applicant meets the training requirements imposed by this chapter.
B. Any person may apply to the Board for approval of the training programs it administers to waste management facility operators. Such training programs shall be approved by the Board if they meet the requirements established by the Board. Any person successfully completing a training program approved by the Board shall be deemed to have met the training requirements imposed by this chapter.

(1991, c. 551; 1997, c. 885.)

§ 54.1-2212. License required.

Effective January 1, 1993, no person shall be a waste management facility operator or represent himself as a waste management facility operator without a license from the Board.

(1991, c. 551; 1997, c. 885.)

Code of Virginia

Title 54.1, Chapter 23

Waterworks and Wastewater Works Operators

§ 54.1-2300. (Effective until July 1, 2009) Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Waterworks and Wastewater Works Operators.
"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.
"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, firm or company organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.
"Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.
"Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18, if so certified by the State Water Control Board; and (iii) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the State Water Control Board.
"Waterworks means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a waterworks unless certified by the Board to be such.

(1970, c. 768, § 54-573.2; 1972, c. 682; 1988, c. 765.)

§ 54.1-2300. (Effective July 1, 2009) Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.
"Onsite sewage system" means a conventional onsite sewage system or alternative onsite sewage system as defined in § 32.1-163.
"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a

substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations or to operate and maintain onsite sewage systems. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.
"Owner" means the Commonwealth of Virginia, or any political subdivision thereof, any public or private institution, corporation, association, firm or company organized or existing under the laws of this Commonwealth or of any other state or nation, or any person or group of persons acting individually or as a group, who own, manage, or maintain waterworks or wastewater works.
"Person" means any individual, group of individuals, a corporation, a partnership, a business trust, an association or other similar legal entity engaged in operating waterworks or wastewater works.
"Wastewater works" means each system of (i) sewerage systems or sewage treatment works, serving more than 400 persons, as set forth in § 62.1-44.18; (ii) sewerage systems or sewage treatment works serving fewer than 400 persons, as set forth in § 62.1-44.18, if so certified by the State Water Control Board; and (iii) facilities for discharge to state waters of industrial wastes or other wastes, if certified by the State Water Control Board.
"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping. Systems serving fewer than 400 persons shall not be considered to be a waterworks unless certified by the Board to be such.

(1970, c. 768, § 54-573.2; 1972, c. 682; 1988, c. 765; 2007, cc. 892, 924.)

§ 54.1-2301. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals; membership; terms; duties.

A. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals shall consist of 11 members as follows: the Director of the Office of Water Programs of the State Department of Health, or his designee, the Executive Director of the State Water Control Board, or his designee, a currently employed waterworks operator having a valid license of the highest classification issued by the Board, a currently employed wastewater works operator having a valid license of the highest classification issued by the Board, a faculty member of a state university or college whose principal field of teaching is management or operation of waterworks or wastewater works, a representative of an owner of a waterworks, a representative of an owner of a wastewater works, a licensed alternative onsite sewage system operator, a licensed alternative onsite sewage system installer, a licensed onsite soil evaluator, and one citizen member. The alternative onsite sewage system operator, alternative onsite sewage system installer, and onsite soil evaluator shall have practiced for at least five consecutive years immediately prior to appointment. No owner shall be represented on the Board by more than one representative or employee operator. The term of Board members shall be four years.
B. The Board shall examine waterworks and wastewater works operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

C. The Board shall establish a program for licensing individuals as onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators.
D. The Board, in consultation with the Board of Health, shall adopt regulations for the licensure of (i) onsite soil evaluators; (ii) installers of alternative onsite sewage systems, as defined in § 32.1-163; and (iii) operators of alternative onsite sewage systems, as defined in § 32.1-163. Such regulations shall include requirements for (a) minimum education and training, including approved training courses; (b) relevant work experience; (c) demonstrated knowledge and skill; (d) application fees to cover the costs of the program, renewal fees, and schedules; (e) the division of onsite soil evaluators into classes, one of which shall be restricted to the design of conventional onsite sewage systems; and (f) other criteria the Board deems necessary.

(1970, c. 768, §§ 54-573.1, 54-573.3; 1981, c. 447; 1988, c. 765; 1989, c. 97; 2007, cc. 892, 924; 2008, c. 67.)

§ 54.1-2302. (Effective until July 1, 2009) License required.

No person shall operate a waterworks or wastewater works without a valid license.

(1979, c. 408, § 54-573.18; 1988, c. 765.)

§ 54.1-2302. (Effective July 1, 2009) License required.

No person shall operate a waterworks or wastewater works, perform the duties of an onsite soil evaluator, or install or operate an alternative onsite sewage system, without a valid license.

(1979, c. 408, § 54-573.18; 1988, c. 765; 2007, cc. 892, 924.)

Code of Virginia

Title 54.1, Chapter 23.1

Cemetery Operators, Perpetual Care Trust Funds and Preneed Burial

§ 54.1-2310. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Advertisement" means any information disseminated or placed before the public.
"At-need" means at the time of death or while death is imminent.
"Board" means the Cemetery Board.
"Cemetery" means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.
"Cemetery company" means any person engaged in the business of (i) selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery, a single grave, or entombment right therein will be perpetually cared for; (ii) selling property or services, vaults, grave liners, urns, memorials, markers, and monuments used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed more than 120 days after receipt of the initial payment on account of such sale; or (iii) maintaining a facility used for the interment or disposal of the remains and required to maintain perpetual care or preneed trust funds in accordance with this chapter. Such property or services include but are not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.
"Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this chapter.
"Cost requirement" means the total cost to the seller of the property or services subject to the deposit requirements of § 54.1-2325 required by that seller's total contracts.
"Department" means the Department of Professional and Occupational Regulation.
"Garden crypt" means a burial receptacle, usually constructed of reinforced concrete, installed in quantity on gravel or tile underlay. Each crypt becomes an integral part of a given garden area and is considered real property.
"General funds" means the sum total of specific funds put together in a single fund.
"Grave" means a below-ground right of interment.
"In-person communication" means face-to-face communication and telephonic communication.
"Interment" means all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment. The sprinkling of ashes on church grounds shall not constitute interment.

"Lawn crypt" means a burial vault with some minor modifications for the improvement of drainage in and around the receptacle and is considered personal property.
"Licensee" means any person holding a valid license issued by the Board.
"Marker base" means the visible part of the marker or monument upon which the marker or monument rests and is considered personal property.
"Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.
"Memorials, markers or monuments" means the object used to identify the deceased and is considered personal property.
"Perpetual care trust fund" means a fund created to provide income to a cemetery to provide care, maintenance, administration and embellishment of the cemetery.
"Preneed" means at any time other than either at the time of death or while death is imminent.
"Preneed burial contract" means a contract for the sale of property or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than 120 days after the receipt of initial payment on account of such sale. Such property includes but is not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.
"Retail sales price" means the standard, nondiscounted price as listed on the general price list required by § 54.1-2327.
"Seller" means the cemetery company.
"Seller's trust account" means the total specific trust funds deposited from all of a specific seller's contracts, plus income on such funds allotted to that seller.
"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a cemetery.
"Specific trust funds" means funds identified to a certain contract for personal property or services.

(1998, cc. 708, 721; 2000, c. 36.)

§ 54.1-2311. Cemetery operators required to be licensed by the Board.

No person shall engage in the business of a cemetery company in the Commonwealth without first being licensed by the Board. The cemetery company shall renew its license as required by the Board. Such license and such renewal of license shall (i) be on forms prescribed by the Board and shall include the name and address of each cemetery in Virginia in which the cemetery company has a business interest, the name and address of all officers and directors of the cemetery company, the registered agent for the cemetery company, the compliance agent, and any such other information as the Board may require consistent with the purposes of this chapter and (ii) include a fee as prescribed by the Board for each cemetery in Virginia in which the cemetery company has a business interest. The cemetery company shall notify the Board of any change in the information required to be filed within thirty days after the change. A new license shall be required if there is a change in the ownership of the cemetery company. If there is a change in the compliance agent designated by the cemetery company, it shall promptly notify the Board in writing. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Department to be used in the administration of this chapter.

(1998, cc. 708, 721.)

§ 54.1-2312. Exemptions.

A. The provisions of this chapter shall not apply to cemeteries wholly owned and operated by the state or a county, city or town; a church; or a nonstock corporation not operated for profit if the corporation (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, (ii) does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn, garden or mausoleum crypts, and (iii) uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery.

B. The provisions of this chapter shall not apply to any community cemetery not operated for profit if the cemetery (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, and uses the proceeds from the sale of the graves and mausoleum spaces for the sole purpose of defraying the direct expenses of maintaining its facilities or (ii) was chartered by the Commonwealth prior to 1857 A.D.

C. The provisions of this chapter regarding preneed burial contracts shall not apply to prearranged funeral plans entered into by licensees of the Board of Funeral Directors and Embalmers.

D. The provisions of the chapter shall not apply to any family cemetery provided that no graves or entombment rights therein are sold or offered for sale to the public.

(1998, cc. 708, 721.)

§ 54.1-2313. Board; appointment; terms; vacancies; meetings; quorum; other powers; regulations.

A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows: four cemetery operators who have operated a cemetery in the Commonwealth for at least five consecutive years immediately prior to appointment, no more than two of whom shall be affiliated with a cemetery company incorporated in the Commonwealth which is owned, operated or affiliated, directly or indirectly, with a foreign corporation; one representative of local government, and two citizen members. Appointments to the Board shall generally represent the geographical areas of the Commonwealth.

B. Of the members initially appointed to the Board, three shall be appointed for a term of four years, two shall be appointed for a term of three years, and two shall be appointed for a term of two years. Thereafter, all appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive four-year terms.

C. The Board shall annually elect a chairman and a vice-chairman from among its members. The Board shall hold at least two meetings each year and may meet as often as its duties require. Four members shall constitute a quorum.

D. In addition to the general powers and duties conferred in this subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure

performance of preneed contracts, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this chapter.

E. In addition to such other regulations the Board deems appropriate, the Board shall adopt regulations which provide:

1. A method for executing, at-need, a preneed burial contract, including the petitioning a court of competent jurisdiction for the appointment of a receiver, where a licensee who is a party to such preneed burial contract has had his license to operate a cemetery revoked or suspended for violation of this chapter or Board regulations; and

2. Consumer protections which are consistent with those provisions of the Federal Trade Commission Funeral Rules which the Board finds may be appropriately applied to cemetery companies.

(1998, cc. 708, 721; 2004, c. 247.)

§ 54.1-2313.1. Protection of preneed burial and perpetual care trust funds; operation of cemetery company; appointment of receiver.

No licensee or any agent of the licensee shall divert or misuse any funds held in trust or otherwise held by him for another. If preneed or perpetual care funds are held in trust and the Board or its agents have reason to believe that (i) the licensee is not able to adequately protect the interest of the person involved, (ii) the licensee has had his license suspended, revoked or surrendered, or (iii) the conduct of the licensee or the operation of the cemetery threatens the interests of the public, the Board may file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies and the relief requested. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to ensure that the cemetery company is operated in full compliance with this chapter and the Board's regulations, or to conserve, protect, and disburse the funds involved, or both, including the appointment of a receiver to operate the cemetery company. The Board shall not be liable for any expenses or fees of the receiver.

(2004, c. 192.)

§ 54.1-2314. Refusal, suspension or revocation of license or registration.

The Board may refuse to license or register any applicant, suspend a license or registration for a stated period or indefinitely, revoke any license or registration, censure or reprimand any person licensed or registered by the Board or place such person on probation for such time as it may designate for any of the following causes related to the sale or offering to the public of cemetery vaults, grave liners, urns, memorials, markers or monuments:

1. Conviction of any felony or any crime involving moral turpitude;
2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;
3. Misrepresentation or fraud in the conduct of the cemetery company or its sales personnel, or in obtaining or renewing a license or registration;
4. False or misleading advertising;

5. Solicitation in violation of subsection B of § 54.1-2327;
6. Direct or indirect payment or offer of payment of a commission to others by the licensee, his sales representatives, agents, or employees for the purpose of securing business;
7. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed or registered activity;
8. Aiding or abetting an unlicensed person to engage in the business of a cemetery company;
9. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has been interred or otherwise disposed of;
10. Violation of any statute, ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
11. Failure to comply with subsection A of § 54.1-2327 and to keep on file an itemized statement of all retail prices and fees charged related to the sale of property or services as required by Board regulations and this chapter;
12. Charging third-party handling fees, which shall not include installation fees; and
13. Refusing to honor the transfer of preneed contract arrangements to another party. However the licensee shall not be responsible for paying additional costs associated with any actual transfer.

(1998, cc. 708, 721.)

§ 54.1-2315. Other prohibited activities.

The following acts shall be prohibited:
1. Employment directly or indirectly of any sales representative, agent, employee or other person, on a part-time or full-time basis, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment or cemetery company;
2. Solicitation, offer, payment, or acceptance by a licensee or registered sales personnel of a licensee, of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;
3. Violating or cooperating with others to violate any provision of this chapter or Board regulations;
4. Interfering with the freedom of choice of the general public in the choice of persons or establishments providing funeral services, preneed funeral planning or preneed funeral contracts.
Nothing in this section shall preclude a cemetery company employing or retaining a sales representative, agent, employee or other person, on a part-time or full-time basis, from offering cemetery company goods and services on a commission basis.

(1998, cc. 708, 721.)

§ 54.1-2316. Certain representations unlawful; perpetual care trust fund required.

It shall be unlawful to sell or offer for sale in the Commonwealth any grave or entombment right in a cemetery and, in connection therewith, to represent to the public in any manner, express or implied, that the entire cemetery or any grave or entombment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all graves and entombment rights therein as to which such representation has been made.

Each cemetery company shall establish in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, an irrevocable trust fund in the amount of at least $50,000 before the first lot, parcel of land, burial or entombment right is sold. This fund shall be designated the perpetual care trust fund.

(1998, cc. 708, 721; 2004, c. 192.)

§ 54.1-2317. Who may serve as trustee of perpetual care trust fund.

A. The trustee of the perpetual care trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when it has become satisfied that the applicant:

1. Employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;
2. Will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized; and
3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Perpetual Care Trust Fund for (name of cemetery company)," in a sum equal to not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a perpetual care trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(1998, cc. 708, 721.)

§ 54.1-2318. Application of Title 26.

Trustees appointed pursuant to this chapter shall be governed in their investment of trust funds by §§ 26-40 through 26-45.1, except as otherwise provided in this chapter.

(1998, cc. 708, 721.)

§ 54.1-2319. Deposit in perpetual care trust fund required upon sale of graves, etc.

Each cemetery company shall deposit a minimum of ten percent of the receipts from the sale of graves and above-ground crypts and niches, excluding below-ground burial vaults, in cash in the perpetual care trust fund within thirty days after the close of the month in which such receipts are paid to it. If the purchaser's payment is made on an installment or deferred payment basis, the cemetery company shall have the option of paying ten percent of the amount of principal in each payment received into the perpetual care trust fund. If the cemetery company provides a grave or an above-ground crypt or niche without compensation, ten percent of the retail sales price shall be deposited within thirty days after the close of the month in which the property is provided to the consumer.

(1998, cc. 708, 721; 2000, c. 36.)

§ 54.1-2320. Additional deposit not required upon subsequent sale of same grave, crypt or niche.

If ten percent of the sales price of a grave or above-ground crypt or niche has been deposited in a perpetual care trust fund, no deposit shall be required on subsequent sales of the same grave, crypt or niche.

(1998, cc. 708, 721.)

§ 54.1-2321. Recovery of original perpetual care trust fund deposit.

Once the cemetery company has deposited in the perpetual care trust fund a sum equal to twice the amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery company to recover its original deposit by withholding the money that would otherwise be required to be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once the cemetery company has recovered an amount equal to its original deposit, deposits to the perpetual care trust fund shall be resumed.

(1998, cc. 708, 721.)

§ 54.1-2322. Use of income from perpetual care trust fund.

The income from the perpetual care trust fund shall be used solely and exclusively for the general care, maintenance, administration and embellishment of the cemetery. Unless prior approval has been obtained from the Board or a court of competent jurisdiction, the principal of the perpetual care trust fund shall only be used for investment purposes.

(1998, cc. 708, 721; 2004, c. 192.)

§ 54.1-2323. Financial records required.

The cemetery company shall file with the Board detailed accounts of all transactions, receipts and accounts receivable subject to the ten percent trust requirement and of all expenditures of income from the perpetual care trust fund at such times as required by the Board.

(1998, cc. 708, 721.)

§ 54.1-2324. Financial report and written assurance required for perpetual care trust funds.

A. Within four months after the close of its fiscal year, the cemetery company shall report the following information to the Board, on forms prescribed by the Board:
1. The total amount of principal in the perpetual care trust fund;
2. The securities in which the perpetual care trust fund is invested and the amount of cash on hand as of the close of the fiscal year;
3. The income received from the perpetual care trust fund, and the sources of such income, during the preceding fiscal year;
4. An affidavit executed by the compliance agent that all applicable provisions of this chapter relating to perpetual care trust funds have been complied with;
5. The total receipts subject to the 10 percent trust requirement;
6. All expenditures from the perpetual care trust fund;
7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect;
8. A separate total of expenses incurred for general care and maintenance, embellishment and administration of its cemeteries.
B. The cemetery company shall employ an independent certified public accountant to audit and provide assurance that, with regard to the total of all receipts subject to § 54.1-2317, the report of the owner, operator or developer is true and correct and that the required deposits to the perpetual care trust fund have been made on a timely basis. Such audit shall provide full disclosure of any transactions between the perpetual care trust fund and any directors, officers, stockholders, or employees of the cemetery company, or relatives of the cemetery company's employees, and shall include a description of the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for the transactions.
C. The information required to be filed hereunder with the Board shall be exempt from the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

(1998, cc. 708, 721; 2000, c. 36; 2004, c. 247.)

§ 54.1-2325. Deposit in preneed trust required upon sale of property or services not to be delivered within 120 days.

A. Each cemetery company shall deposit into a trust fund at least forty percent of the receipts from the sale of property or services purchased pursuant to a preneed burial contract, when the delivery thereof will be delayed more than 120 days from the initial payment on said contract. The cemetery company shall establish a special trust fund in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth. The trust shall bear the legend "Preneed Trust Account." Deposits are required to be made by the cemetery company within thirty days after the close of the month in which said receipts are paid to it.
B. If the purchaser's payment is made on an installment or deferred payment basis, the seller shall have the option of paying each payment received into the preneed trust account.

(1998, cc. 708, 721.) § 54.1-2326. Who may serve as trustee of preneed trust fund.

A. The trustee of the preneed trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when the Board has become satisfied that the applicant:

1. Employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

2. Will perform its duties in a proper and legal manner and that the trust funds and interest of the public generally will not be jeopardized; and

3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Preneed Trust Fund for (name of cemetery company)," in a sum equal to but not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a preneed trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(1998, cc. 708, 721.)

§ 54.1-2327. Itemized statement and general price list of burial fees to be furnished; solicitations prohibited.

A. Every cemetery company licensed pursuant to the provisions of this chapter shall furnish a written general price list and a written itemized statement of charges in connection with burial services provided by the cemetery company.

Individuals inquiring in person about burial arrangements or the prices of property or services shall be given the general price list. Upon beginning discussion of burial arrangements or the selection of any property or services, the general price list shall be offered by the cemetery company.

The itemized statement shall include, but not be limited to, the following charges: burial vaults or other burial receptacles, facilities used, and other professional services used, which shall be set forth in a clear and conspicuous manner.

The general price list and itemized statement of burial fees shall comply with forms prescribed by Board regulation, which regulations shall promote the purposes of this section.

B. No cemetery company licensed pursuant to the provisions of this chapter shall make any solicitation at-need or any preneed solicitation using in-person communication by the cemetery

company, his agents, assistants or employees, which is false, misleading, or contrary to the stated purpose. However, general advertising and preneed solicitation shall be permitted.

(1998, cc. 708, 721.)

§ 54.1-2328. Requirements of preneed burial contracts.

A. It shall be unlawful for any person doing business within the Commonwealth to make, either directly or indirectly by any means, a preneed burial contract unless the contract:
1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;
2. Identifies the seller, seller's license number, contract buyer and person for whom the contract is purchased if other than the contract buyer;
3. Contains a complete description of the property or services purchased;
4. Clearly discloses whether the price of the property and services purchased is guaranteed;
5. States, for funds required to be trusted pursuant to § 54.1-2325, the amount to be trusted and the name of the trustee;
6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;
7. Provides that any purchaser who makes payment under the contract may terminate the agreement within three days of execution and that such purchaser shall be refunded all consideration paid or delivered, less amounts paid for any property or supplies that have been delivered;
8. Provides that if the particular property or services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property or services similar in size and style and at least equal in quality of material and workmanship and that the representative of the deceased shall have the right to choose the property or services to be substituted, which shall be at least equal or reasonably equivalent in quality of material, workmanship, and cost;
9. Discloses any additional costs that the purchaser may be required to pay at-need, including disclosure of the cost of opening and closing the grave;
10. Complies with all disclosure requirements imposed by the Board;
11. Is executed in duplicate and a signed copy given to the buyer; and
12. Provides that the contract buyer shall have the right to change the contract provider at any time prior to the furnishing of the property or services, excluding any mausoleum crypt or garden crypt, contracted for under the preneed burial contract. If the contract seller will not be furnishing the property and services to the purchaser, the contract seller shall attach to the preneed burial contract a copy of the seller's agreement with the provider.
B. Any preneed burial contract sold or offered by any cemetery company or agent with a trust fund deposit of less than 100 percent shall be required to include the following printed statement in capitalized letters, in ten-point, bold-faced type:
THIS PRENEED BURIAL CONTRACT REQUIRES THE PLACEMENT IN TRUST OF A MINIMUM OF 40% OF THE FUNDS INCLUDED IN THIS CONTRACT. THE BALANCE OF FUNDS MAY BE USED FOR CARE AND MAINTENANCE OF THE CEMETERY AND ARE NOT REQUIRED TO BE PLACED IN TRUST.

(1998, cc. 708, 721.)

§ 54.1-2329. Identification of specific funds.

Specific funds deposited in the trust account shall be identified in the records of the seller by the contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed trust account for the purposes of the management thereof and the investment of funds therein.

(1998, cc. 708, 721.)

§ 54.1-2330. Specific funds and income to remain in preneed trust account; exception.

Specific funds shall remain intact until the property is delivered or services performed as specified in the contract. The net income from the preneed trust account, after payment of any appropriate trustee fees, commissions, and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions, and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon written assurance to the trustee of a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the specific funds, is in excess of the current cost requirements for all undelivered property or services included in the seller's preneed burial contracts. The seller's cost requirements shall be certified in its records by an affidavit sworn by the compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal year.

(1998, cc. 708, 721.)

§ 54.1-2331. Disbursement of trust funds upon performance of contract.

A. Upon performance of the preneed burial contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified to the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property or services and the consideration paid or to be paid therefor, to which the deposit requirements of this chapter apply. In such case, the seller may, upon certification to the trustee of performance or delivery of such property or services and of the amount of specific trust funds identified in its records to such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

B. If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed burial contract. In such case, upon performance of that portion of the contract identified to a particular individual, the seller may request, by certification in the manner described above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

(1998, cc. 708, 721.)

§ 54.1-2332. Seller required to keep records.

Each seller of a preneed burial contract shall file with the Board at such time as the Board may prescribe, detailed accounts of all contracts and transactions regarding preneed burial contracts.

(1998, cc. 708, 721.)

§ 54.1-2333. Financial report and written assurance required for preneed trust accounts.

A. The cemetery company shall report the following information to the Board within four months following the cemetery company's fiscal year, on forms prescribed by the Board:
1. The total amount of principal in the preneed trust account;
2. The securities in which the preneed trust account is invested;
3. The income received from the trust and the source of that income during the preceding fiscal year;
4. An affidavit executed by the compliance agent that all provisions of this chapter applicable to the seller relating to preneed trust accounts have been complied with;
5. Forty percent of the total receipts required to be deposited in the preneed trust account;
6. All expenditures from the preneed trust account; and
7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect.
B. The cemetery company shall employ an independent certified public accountant to audit and provide assurance that 40 percent of the cash receipts from the sale of preneed property or services not to be delivered or performed within 120 days after receipt of the initial payment on account has been deposited in the account within 30 days after the close of the month in which the payment was received. Such audit shall provide full disclosure of any transactions between the preneed trust account and any directors, officers, stockholders, or employees of the cemetery company, or relatives of the cemetery company's employees, and shall include a description of the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for the transactions.
C. The information required to be filed hereunder with the Board shall be exempt from the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

(1998, cc. 708, 721; 2000, c. 36; 2004, c. 247.)

§ 54.1-2334. Inclusion of property and services to be delivered within 120 days.

Nothing in this chapter shall be deemed to prohibit the sale within the preneed burial contract of property or services to be delivered within 120 days after the receipt of the initial payment on account of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property or services not to be delivered or provided within 120 days after receipt of initial payment. If a contract does not so specify, the seller shall deposit forty percent of the total consideration for the entire contract.

(1998, cc. 708, 721.)

§ 54.1-2335. Breach of contract by seller; trust to be single purpose trust.

If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to or receive notice of any proceeding brought pursuant to this section relating to the performance of any other contract.
The trust shall be a single purpose trust, and the trust funds shall not be available to any creditors as assets of the seller.

(1998, cc. 708, 721.)

§ 54.1-2336. Trustee may rely on certifications and affidavits.

The trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of this chapter and shall not be liable to any person for such reasonable reliance.

(1998, cc. 708, 721.)

§ 54.1-2337. Transfer of trust funds to another trustee.

The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another trustee qualified under the provisions of this chapter. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another trustee qualified under the provisions of this chapter. No seller's account funds or trustee's trust funds may be transferred to another trustee unless the seller provides written notice at least five days prior to such transfer to the Board.

(1998, cc. 708, 721.)

§ 54.1-2338. Use of trustee's name in advertisements.

No person subject to the provisions of this chapter shall use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

(1998, cc. 708, 721.)

§ 54.1-2339. Construction and development of mausoleums and garden crypts.

Within four years after the date of the first sale, a cemetery company or other seller of mausoleums and garden crypts shall be required to start construction or development of that undeveloped ground or section of a mausoleum or garden crypt in which sales, contracts for sales, or agreements for sales are being made. The construction or development of such undeveloped mausoleum section or garden crypt shall be completed within five years after the date of the first such sale. Completed construction shall be deemed performance for purposes of this chapter.

(1998, cc. 708, 721.)

§ 54.1-2340. Waiver of chapter void.

Any provision of any contract which purports to waive any provision of this chapter shall be void.

(1998, cc. 708, 721.)

§ 54.1-2341. Exemption from levy, garnishment and distress.

Any money, personal property or real property paid, delivered or conveyed subject to § 54.1-2325 shall be exempt from levy, garnishment or distress.

(1998, cc. 708, 721.)

§ 54.1-2342. Penalties.

Any person who violates any of the provisions of this chapter shall be subject to the sanctions provided in Chapter 1 (§ 54.1-100 et seq.) and Chapter 2 (§ 54.1-200 et seq.) and in §§ 54.1-2314, 54.1-2317, and 54.1-2326. Any person who is convicted of willfully violating any of the provisions of this chapter is guilty of a Class 1 misdemeanor. Any person convicted of violating, or failing to comply with, any of the provisions of § 54.1-2317, 54.1-2319, 54.1-2321, 54.1-2322, 54.1-2325 or 54.1-2326 with the intent to defraud is guilty of a Class 6 felony.
For the purposes of this section, "person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, instrumentality, officer or employee thereof.

(1998, cc. 708, 721; 2005, c. 691.)

Code of Virginia

Title 54.1, Chapter 23.2

Fair Housing

§ 54.1-2343. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Fair Housing Board.
"Fair Housing Law" means the provisions of Chapter 5.1 (§ 36-96.1 et seq.) of Title 36.

(2003, c. 575.)

§ 54.1-2344. Fair Housing Board; membership; terms; chairman; powers and duties.

A. The Fair Housing Board shall be composed of 12 members, to be appointed by the Governor, as follows: one representative of local government, one architect licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of this title, one representative of the mortgage lending industry, one representative of the property and casualty insurance industry, two representatives of the residential property management industry not licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of this title, at least one of whom is a member of a property owners' association or condominium unit owners' association, one contractor licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of this title, one representative of the disability community, one representative of the residential land lease industry subject to Chapter 13.3 (§ 55-248.41 et seq.) of Title 55, and three citizen members selected in accordance with § 54.1-107. Initial terms of Board members shall be as follows: four members shall be appointed for a term of four years; four members shall be appointed for a term of three years, and three members shall be appointed for a term of two years. Thereafter, all terms of Board members shall be for terms of four years.
B. The Board shall elect a chairman from its membership.
C. The Board shall adopt a seal by which it shall authenticate its proceedings.
D. The Board shall be responsible for the administration and enforcement of the Fair Housing Law. However, the Board shall have no authority with respect to a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees who have allegedly violated, or who have in fact violated, the Fair Housing Law.
The Board shall have the power and duty to establish, by regulation, an education-based certification or registration program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.
No education-based program established by the Board shall require Board certification or registration where an individual holds a valid license issued by the Real Estate Board. Any courses approved by the Real Estate Board to meet the fair housing requirement of § 54.1-2105.03 and the

instructors approved by the Real Estate Board to teach continuing education courses in accordance with § 54.1-2105.02 shall not require additional approval by the Fair Housing Board to meet any education requirements in this section and in the regulations of the Fair Housing Board.

(2003, c. 575; 2007, cc. 809, 874.)

Code of Virginia

Title 54.1, Chapter 23.3

Common Interest Communities

§ 54.1-2345. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Association" means the same as that term is defined in § 55-528.
"Board" means the Common Interest Community Board.
"Common interest community" means the same as that term is defined in § 55-528; provided that for the purposes of this chapter only, a common interest community shall not include any time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) or any additional land that is a part of such registration.
"Common interest community manager" means a person or business entity, including but not limited to a partnership, association, corporation, or limited liability company, who, for compensation or valuable consideration, provides management services to a common interest community.
"Declaration" means the same as that term is defined in § 55-528.
"Governing board" means the governing board of an association, including the executive organ of a condominium unit owners' association, the executive board of a cooperative proprietary lessees' association, and the board of directors or other governing body of a property owners' association.
"Lot" means the same as that term is defined in § 55-528.
"Management services" means (i) acting with the authority of an association in its business, legal, financial, or other transactions with association members and nonmembers; (ii) executing the resolutions and decisions of an association or, with the authority of the association, enforcing the rights of the association secured by statute, contract, covenant, rule, or bylaw; (iii) collecting, disbursing, or otherwise exercising dominion or control over money or other property belonging to an association; (iv) preparing budgets, financial statements, or other financial reports for an association; (v) arranging, conducting, or coordinating meetings of an association or the governing body of an association; (vi) negotiating contracts or otherwise coordinating or arranging for services or the purchase of property and goods for or on behalf of an association; or (vii) offering or soliciting to perform any of the aforesaid acts or services on behalf of an association.

(2008, cc. 851, 871.)

§ 54.1-2346. License required; certification of employees; renewal; provisional license.

A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this chapter prior to engaging in such management services.

B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111.
C. On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.
D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of $2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be $10,000.
E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.
F. The Board shall issue a provisional license to any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009. Such provisional license will expire on June 30, 2011, and may not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.

(2008, cc. 851, 871.)

§ 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this chapter shall not be construed to prevent or prohibit:
1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;
2. An employee of an association from providing management services for that association's common interest community;
3. A resident of a common interest community acting without compensation from providing management services for that common interest community;
4. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;
5. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;
6. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;
7. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;
8. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or
9. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) from providing management services for such time-share project.
B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

(2008, cc. 851, 871.)

§ 54.1-2348. Common Interest Community Board; membership; meetings; quorum.

There is hereby created the Common Interest Community Board (the Board) as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. Members of the Board shall be appointed by the Governor and consist of eleven members as follows: three shall be representatives of Virginia common interest community managers, one shall be a Virginia attorney whose practice includes the representation of associations, one shall be a representative of a Virginia certified public accountant whose practice includes providing attest services to associations, one shall be a representative of the Virginia time-share industry, two shall be representatives of developers of Virginia common interest communities, and three shall be Virginia citizens, one of whom serves or who has served on the governing board of an association and two of whom reside in a common interest community. Of the initial appointments, one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of two years and one representative of Virginia common interest community managers and one representative of developers of Virginia common interest communities shall serve terms of three years; the Virginia attorney shall serve a term of

three years; the Virginia certified public accountant shall serve a term of one year; the Virginia citizen who serves or who has served on the governing board of an association shall serve a term of two years, and the two Virginia citizens who reside in a common interest community shall serve terms of one year. All other initial appointments and all subsequent appointments shall be for terms for four years, except that vacancies may be filled for the remainder of the unexpired term. Each appointment of a representative of a Virginia common interest community manager to the Board may be made from nominations submitted by the Virginia Association of Community Managers, who may nominate no more than three persons for each manager vacancy. In no case shall the Governor be bound to make any appointment from such nominees. No person shall be eligible to serve for more than two successive four-year terms.
The Board shall meet at least four times each year and at other such times as it deems necessary. The Board shall elect from its membership a chairman and a vice-chairman to serve for a period of one year. A majority of the Board shall constitute a quorum. The Board is vested with the powers and duties necessary to execute the purposes of this chapter.

(2008, cc. 851, 871.)

§ 54.1-2349. Powers and duties of the Board.

A. The Board shall administer and enforce the provisions of this chapter. In addition to the provisions of § 54.1-201, the Board shall:
1. Promulgate regulations necessary to carry out the requirements of this chapter in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) to include but not be limited to the prescription of fees, procedures, and qualifications for the issuance and renewal of common interest community manager licenses. The Board shall annually assess each common interest community manager an amount equal to the lesser of $1,000 (or such other amount as the Board may establish by regulation) or 0.02 percent of the gross receipts from common interest community management during the preceding calendar year to be remitted to the State Treasurer and placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529;
2. Establish criteria for the licensure of common interest community managers to ensure the appropriate training and educational credentials for the provision of management services to common interest communities. Such criteria may include experiential requirements and shall include designation as an Accredited Association Management Company by the Community Associations Institute. As an additional alternative to such designation, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of common interest community managers;
3. Establish criteria for the certification of the employees of common interest community managers who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community to ensure the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community. Such criteria shall include designation as a Certified Manager of Community Associations by the National Board of Certification for Community

Association Managers, designation as an Association Management Specialist by the Community Associations Institute, or designation as a Professional Community Association Manager by the Community Associations Institute. As an additional alternative to such designations, the Board shall have authority, by regulation, to include one of the following: (i) successful completion of another Board-approved training program and certifying examination, or (ii) successful completion of a Virginia testing program to determine the quality of the training and educational credentials for and competence of the employees of common interest community managers who participate directly in the provision of management services to a common interest community. The fee paid to the Board for the issuance of such certificate shall be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529;
4. Approve the criteria for accredited common interest community manager training programs;
5. Approve accredited common interest community manager training programs;
6. Establish, by regulation, standards of conduct for common interest community managers and for employees of common interest community managers certified in accordance with the provisions of this chapter; and
7. Establish, by regulation, an education-based certification program for persons who are involved in the business or activity of providing management services to common interest communities. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.
B. The Board shall have the sole responsibility for the administration of this chapter and for the promulgation of regulations to carry out the requirements thereof. The Board shall also be responsible for the enforcement of this chapter, provided that the Real Estate Board shall have the sole responsibility for the enforcement of this chapter with respect to a real estate broker, real estate salesperson, or real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) who is also licensed as a common interest community manager.
C. The Board is authorized to obtain criminal history record information from any state or federal law-enforcement agency relating to an applicant for licensure or certification. Any information so obtained is for the exclusive use of the Board and shall not be released to any other person or agency except in furtherance of the investigation of the applicant or with the authorization of the applicant or upon court order.

(2008, cc. 851, 871.)

§ 54.1-2350. Annual report and disclosure packets.

In addition to the provisions of § 54.1-2349, the Board shall:
1. Administer the provisions of Chapter 29 (§ 55-528 et seq.) of Title 55;
2. Develop and disseminate an association annual report form for use in accordance with §§ 55-79.93:1, 55-504.1, and 55-516.1; and
3. Develop and disseminate a one-page form to accompany association disclosure packets required pursuant to § 55-509.5, which form shall summarize the unique characteristics of property owners' associations generally and shall make known to prospective purchasers the unusual and material circumstances affecting a lot owner in a property owners' association, including but not limited to the obligation of a lot owner to pay regular annual or special assessments to the association, the penalty for failure or refusal to pay such assessments, the purposes for which such

assessments may be used, and the importance the declaration of restrictive covenants and other governing documents play in association living.

(2008, cc. 851, 871.)

§ 54.1-2351. General powers and duties of Board concerning associations.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action or suit involving a violation by a declarant or a developer of a time-share project of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this chapter, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund of not more than $1,000 per violation against any person who violates any provision of this section. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

(2008, cc. 851, 871.)

§ 54.1-2352. Cease and desist orders.

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter, if the Board determines after notice and hearing that the governing board of an association has:
1. Violated any statute or regulation governing the association regulated pursuant to this chapter, including engaging in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's regulations or orders;
2. Failed to register as an association or to file an annual report as required by statute or regulation;
3. Materially misrepresented facts in an application for registration or an annual report; or
4. Willfully refused to furnish the Board information or records required or requested pursuant to statute or regulation.
B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Board shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

(2008, cc. 851, 871.)

§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable

time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.
B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to this subsection shall be placed under seal.
C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager; and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.
D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.
E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such

successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Information Fund as a cost of administering the Fund pursuant to § 55-530, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of

all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.
J. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

(2008, cc. 851, 871.)

§ 54.1-2354. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. All management agreements entered into by common interest community managers shall comply with the terms of this chapter and the provisions of Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, as applicable.

(2008, cc. 851, 871.)

Code of Virginia

Title 54.1, Chapter 23.2

Fair Housing

§ 54.1-2343. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Fair Housing Board.
"Fair Housing Law" means the provisions of Chapter 5.1 (§ 36-96.1 et seq.) of Title 36.

(2003, c. 575.)

§ 54.1-2344. Fair Housing Board; membership; terms; chairman; powers and duties.

A. The Fair Housing Board shall be composed of 12 members, to be appointed by the Governor, as follows: one representative of local government, one architect licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of this title, one representative of the mortgage lending industry, one representative of the property and casualty insurance industry, two representatives of the residential property management industry not licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of this title, at least one of whom is a member of a property owners' association or condominium unit owners' association, one contractor licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of this title, one representative of the disability community, one representative of the residential land lease industry subject to Chapter 13.3 (§ 55-248.41 et seq.) of Title 55, and three citizen members selected in accordance with § 54.1-107. Initial terms of Board members shall be as follows: four members shall be appointed for a term of four years; four members shall be appointed for a term of three years, and three members shall be appointed for a term of two years. Thereafter, all terms of Board members shall be for terms of four years.
B. The Board shall elect a chairman from its membership.
C. The Board shall adopt a seal by which it shall authenticate its proceedings.
D. The Board shall be responsible for the administration and enforcement of the Fair Housing Law. However, the Board shall have no authority with respect to a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees who have allegedly violated, or who have in fact violated, the Fair Housing Law.
The Board shall have the power and duty to establish, by regulation, an education-based certification or registration program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.
No education-based program established by the Board shall require Board certification or registration where an individual holds a valid license issued by the Real Estate Board. Any courses approved by the Real Estate Board to meet the fair housing requirement of § 54.1-2105.03 and the

instructors approved by the Real Estate Board to teach continuing education courses in accordance with § 54.1-2105.02 shall not require additional approval by the Fair Housing Board to meet any education requirements in this section and in the regulations of the Fair Housing Board.

(2003, c. 575; 2007, cc. 809, 874.)

Code of Virginia

Title 2.2, Chapter 31

State and Local Government Conflict of Interests Act

§ 2.2-3100. Policy; application; construction.

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ 15.2-852, 15.2-2287, 15.2-2287.1, and 15.2-2289 and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § 2.2-3104.2 regulating receipt of gifts.

This chapter shall be liberally construed to accomplish its purpose.

(1987, Sp. Sess., c. 1, § 2.1-639.1; 1990, c. 672; 2001, c. 844; 2003, c. 694; 2008, c. 532.)

§ 2.2-3100.1. Copy of chapter; review by officers and employees.

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § 2.2-3114, subsections A or B of § 2.2-3115 or § 2.2-3116 shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

(2004, cc. 134, 392.)

§ 2.2-3101. Definitions.

As used in this chapter:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Dependent" means a son, daughter, father, mother, brother, sister or other person, whether or not related by blood or marriage, if such person receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, $10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, $10,000 annually; (iv) ownership of real or personal property if the interest exceeds $10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § 2.2-3114.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

(1987, Sp. Sess., c. 1, § 2.1-639.2; 1988, c. 536; 1992, c. 865; 1993, c. 303; 1994, cc. 74, 724; 1995, c. 495; 1996, c. 77; 1997, c. 641; 2001, c. 844; 2003, c. 694; 2004, cc. 134, 392.)

§ 2.2-3102. Application.

This article applies to generally prohibited conduct that shall be unlawful and to state and local government officers and employees.

(1987, Sp. Sess., c. 1, § 2.1-639.3; 2001, c. 844.)

§ 2.2-3103. Prohibited conduct.

No officer or employee of a state or local governmental or advisory agency shall:
1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;
2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;
3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;
4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;
5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;
6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;
7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The prohibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;
8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties; or
9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties.

(1987, Sp. Sess., c. 1, § 2.1-639.4; 1994, cc. 663, 815, 851; 2001, c. 844; 2006, cc. 787, 892.)

§ 2.2-3104. Prohibited conduct for certain officers and employees of state government.

In addition to the prohibitions contained in § 2.2-3103, no state officer or employee shall, during the one year after the termination of his public employment or service, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer or employee.
For the purposes of this section, "state officer or employee" shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the

General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a payband 6 or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.
The prohibitions of this section shall apply only to persons engaged in activities that would require registration as a lobbyist under § 2.2-422.
Any person subject to the provisions of this section may apply to the Attorney General, as provided in § 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

(1994, cc. 727, 776, § 2.1-639.4:1; 2001, c. 844.)

§ 2.2-3104.1. Exclusion of certain awards from scope of chapter.

The provisions of this chapter shall not be construed to prohibit or apply to the acceptance by (i) any employee of a local government, or (ii) a teacher or other employee of a local school board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal income taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code.

(2001, c. 48, § 2.1-639.4:2; 2008, cc. 478, 497.)

§ 2.2-3104.2. Ordinance regulating receipt of gifts.

The governing body of any county, city, or town may adopt an ordinance setting a monetary limit on the acceptance of any gift by the officers, appointees or employees of the county, city or town and requiring the disclosure by such officers, appointees or employees of the receipt of any gift.

(2003, c. 694.)

§ 2.2-3105. Application.

This article proscribes certain conduct relating to contracts by state and local government officers and employees. The provisions of this article shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title.

(1987, Sp. Sess., c. 1, § 2.1-639.5; 2001, c. 844; 2003, c. 694.)

§ 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School.

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 2.2-4301 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. The personal interest of an officer or employee of a state institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;

3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;

4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. An employee's personal interest in a contract with his or her employing public institution of higher education to acquire the collections or scholarly works owned by the employee, including manuscripts, musical scores, poetry, paintings, books or other materials, writings, or papers of an academic, research, or cultural value to the institution, provided the president of the institution approves the acquisition of such collections or scholarly works as being in the best interests of the institution's public mission of service, research, or education;

7. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in Virginia that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;

8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee

promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or

9. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by the institution's medical center or the Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

D. Notwithstanding the provisions of subdivisions C 8 and C 9, if the research and development or commercialization of intellectual property or the employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interests, the policies established by the Eastern Virginia Medical School pursuant to such federal requirements shall constitute compliance with subdivisions C 8 and C 9, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence of their compliance with such federal policies and regulations.

E. The board of visitors may delegate the authority granted under subdivision C 8 to the president of the institution. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision C 8. In those instances where the board has delegated such authority, on or before December 1 of each year, the president of the relevant institution shall file a report with the relevant board of visitors

disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the board of visitors.

(1987, Sp. Sess., c. 1, § 2.1-639.6; 1989, c. 74; 1991, c. 470; 1993, c. 876; 1995, c. 403; 1998, c. 838; 2001, c. 844; 2002, cc. 87, 478; 2003, c. 646; 2006, c. 839.)

§ 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils.

A. No person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.
B. The provisions of this section shall not apply to:
1. A member's personal interest in a contract of employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;
2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or
3. A contract awarded to a member of a governing body as a result of competitive sealed bidding where the governing body has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the governing body. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

(1987, Sp. Sess., c. 1, § 2.1-639.7; 2001, c. 844.)

§ 2.2-3108. Prohibited contracts by members of school boards.

A. No person elected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency that is subject to the ultimate control of the school board of which he is a member.
B. The provisions of this section shall not apply to:
1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;
2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

(1996, c. 548, § 2.1-639.7:1; 2001, c. 844.)

§ 2.2-3109. Prohibited contracts by other officers and employees of local governmental agencies.

A. No other officer or employee of any governmental agency of local government shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.
B. No officer or employee of any governmental agency of local government shall have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as defined in § 2.2-4301 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivisions 10 or 11 of § 2.2-4343 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.
C. The provisions of this section shall not apply to:
1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;
2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;
3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;
4. Members of local governing bodies who are subject to § 2.2-3107;
5. Members of local school boards who are subject to § 2.2-3108; or
6. (Effective until July 1, 2009) Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided such interest has been disclosed in the public charter school application as required by § 22.1-212.8.

(1987, Sp. Sess., c. 1, § 2.1-639.8; 1996, c. 548; 2001, c. 844; 2004, c. 530.)

§ 2.2-3110. Further exceptions.

A. The provisions of Article 3 (§ 2.2-3106 et seq.) of this chapter shall not apply to:
1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such

officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;
2. The publication of official notices;
3. Contracts between the government or school board of a town or city with a population of less than 10,000 and an officer or employee of that town or city government or school board when the total of such contracts between the town or city government or school board and the officer or employee of that town or city government or school board or a business controlled by him does not exceed $10,000 per year or such amount exceeds $10,000 and is less than $25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § 2.2-3115;
4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of $10,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;
5. When the governmental agency is a public institution of higher education, an officer or employee whose personal interest in a contract with the institution is by reason of an ownership in the contracting firm in excess of 3% of the contracting firm's equity, provided that (i) the officer or employee's ownership or other equity interest and that of any immediate family member in the contracting firm is disclosed in writing to the president of the institution, which writing certifies that the officer or employee has not and will not participate in the contract negotiations on behalf of the contracting firm or the institution, (ii) the president of the institution makes a written finding as a matter of public record that the contract is in the best interests of the institution, (iii) the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the institution or disqualifies himself as a matter of public record, and (iv) does not participate on behalf of the institution in negotiating the contract or approving the contract;
6. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;
7. Contracts for the purchase of goods or services when the contract does not exceed $500;
8. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency; or
9. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee.
B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the former Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) or the former Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and

thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f) (4) of § 2.1-348 Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is $22,500 or more.

(1987, Sp. Sess., c. 1, § 2.1-639.9; 1990, c. 51; 1993, c. 303; 1994, cc. 450, 713; 1997, c. 641; 2001, c. 844; 2006, c. 839.)

§ 2.2-3111. Application.

This article proscribes certain conduct by state and local government officers and employees having a personal interest in a transaction.

(1987, Sp. Sess., c. 1, § 2.1-639.10; 2001, c. 844.)

§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions.

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision 2, 3 or 4. Any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by § 2.2-3114 E or 2.2-3115 E and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time;

2. May participate in the transaction if he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of § 2.2-3114 F or 2.2-3115 G;

3. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of § 2.2-3114 G or 2.2-3115 H; or

4. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

B. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

C. Notwithstanding any other provision of law, if disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

D. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

E. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

(1987, Sp. Sess., c. 1, § 2.1-639.11; 2001, c. 844; 2003, c. 694; 2007, c. 613.)

§ 2.2-3113. Application.

This article requires disclosure of certain personal and financial interests by state and local government officers and employees.

(1987, Sp. Sess., c. 1, § 2.1-639.12; 2001, c. 844.)

§ 2.2-3114. Disclosure by state officers and employees.

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and members of the State Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor or, in the case of officers or employees of the legislative branch, by the Joint Rules Committee of the General Assembly, shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday.

B. Nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, and the State Lottery Board, shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that set forth in § 2.2-3118.

C. The disclosure forms required by subsections A and B shall be provided by the Secretary of the Commonwealth to each officer and employee so designated, including officers appointed by legislative authorities, not later than November 30 of each year. Disclosure forms shall be filed and maintained as public records for five years in the Office of the Secretary of the Commonwealth.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subdivision A 1 of § 2.2-3112, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the

provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

(1987, Sp. Sess., c. 1, § 2.1-639.13; 1988, cc. 767, 849; 1992, c. 710; 1993, c. 303; 1997, c. 641; 2001, cc. 217, 844; 2003, c. 694; 2005, c. 169; 2006, c. 779.)

§ 2.2-3114.1. Filings of statements of economic interests by General Assembly members.

The filing of a current statement of economic interests by a General Assembly member, member-elect, or candidate for the General Assembly pursuant to §§ 30-110 and 30-111 of the General Assembly Conflict of Interests Act (§ 30-100 et seq.) shall suffice for the purposes of this chapter (§ 2.2-3100 et seq.). The Secretary of the Commonwealth may obtain from the Clerk of the House of Delegates or the Senate, as appropriate, a copy of the statement of a General Assembly member who is appointed to a position for which a statement is required pursuant to § 2.2-3114. No General Assembly member, member-elect, or candidate shall be required to file a separate statement of economic interests for the purposes of § 2.2-3114.

(2002, c. 36.)

§ 2.2-3115. Disclosure by local government officers and employees.

A. The members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

The members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of $10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such a statement annually on or before January 15, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117.

Persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

Persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is specified on the form set forth in § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is specified on the form set forth in § 2.2-3118 and thereafter shall file such form annually on or before January 15.

C. The disclosure forms required by subsections A and B shall be provided by the Secretary of the Commonwealth to the clerks of the governing bodies and school boards not later than November 30 of each year, and the clerks of the governing body and school board shall distribute the forms to designated individuals no later than December 10 of each year. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public records for five years in the office of the clerk of the governing body of the county or city.

D. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subdivision A 1 of § 2.2-3112 or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

F. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. Such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city or town on or before January 15. Such disclosures shall be filed and maintained as public records for five years. Forms for the filing of such reports shall be prepared and distributed by the Secretary of the Commonwealth to the clerk of each governing body.

G. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes of his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

(1987, Sp. Sess., c. 1, § 2.1-639.14; 1988, c. 849; 1995, c. 495; 1996, c. 526; 2000, c. 317; 2001, cc. 217, 844; 2003, c. 694.)

§ 2.2-3116. Disclosure by certain constitutional officers.

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court and commissioner of the revenue of each county and city, shall be deemed to be local officers and shall be required to file the Statement of Economic Interests set forth in § 2.2-3117. These officers shall file statements pursuant to § 2.2-3115 and candidates shall file statements as required by § 24.2-502.

(1988, c. 469, § 2.1-639.14:1; 2001, c. 844.)

§ 2.2-3117. Disclosure form.

The disclosure form to be used for filings required by § 2.2-3114 A and D, and § 2.2-3115 A and D shall be substantially as follows:

STATEMENT OF ECONOMIC INTERESTS.

Name .....

Office or position held or sought .....

Address .....

Names of members of immediate family .....

DEFINITIONS AND EXPLANATORY MATERIAL.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" means an association in which the person filing shares significant financial involvement with an individual and the

filer would reasonably be expected to be aware of the individual's business activities and would have access to the necessary records either directly or through the individual. "Close financial association" does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed, or (ii) the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has had no communications with the state governmental agency.

"Contingent liability" means a liability that is not presently fixed or determined, but may become fixed or determined in the future with the occurrence of some certain event.

"Dependent" means any person, whether or not related by blood or marriage, who receives from the officer or employee, or provides to the officer or employee, more than one-half of his financial support.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. "Relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

TRUST. If you or your immediate family, separately or together, are the only beneficiaries of a trust, treat the trust's assets as if you own them directly. If you or your immediate family has a proportional interest in a trust, treat that proportion of the trust's assets as if you own them directly. For example, if you and your immediate family have a one-third interest in a trust, complete your Statement as if you own one-third of each of the trust's assets. If you or a member of your immediate family created a trust and can revoke it without the beneficiaries' consent, treat its assets as if you own them directly.

REPORT TO THE BEST OF INFORMATION AND BELIEF. Information required on this Statement must be provided on the basis of the best knowledge, information

and belief of the individual filing the Statement as of the date of this report unless otherwise stated.

COMPLETE ITEMS 1 THROUGH 10. REFER TO SCHEDULES ONLY IF DIRECTED.

You may attach additional explanatory information.

1. Offices and Directorships.

Are you or a member of your immediate family a paid officer or paid director of a business?

EITHER check NO / / OR check YES / / and complete Schedule A.

2. Personal Liabilities.

Do you or a member of your immediate family owe more than $10,000 to any one creditor including contingent liabilities? (Exclude debts to any government and loans secured by recorded liens on property at least equal in value to the loan.)

EITHER check NO / / OR check YES / / and complete Schedule B.

3. Securities.

Do you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $10,000 invested in one business? Account for mutual funds, limited partnerships and trusts.

EITHER check NO / / OR check YES / / and complete Schedule C.

4. Payments for Talks, Meetings, and Publications.

During the past 12 months did you receive lodging, transportation, money, or anything else of value with a combined value exceeding $200 for a single talk, meeting, or published work in your capacity as an officer or employee of your agency?

EITHER check NO / / OR check YES / / and complete Schedule D.

5. Gifts.

During the past 12 months did a business, government, or individual other than a relative or personal friend (i) furnish you with any gift or entertainment at a single event, and the value received by you exceeded $50 in value or (ii) furnish you with gifts or entertainment in any combination and the value received by you exceeded $100 in total value; and for which you

neither paid nor rendered services in exchange? Account for entertainment events only if the average value per person attending the event exceeded $50 in value. Account for all business entertainment (except if related to your private profession or occupation) even if unrelated to your official duties.

EITHER check NO / / OR check YES / / and complete Schedule E.

6. Salary and Wages.

List each employer that pays you or a member of your immediate family salary or wages in excess of $10,000 annually. (Exclude state or local government or advisory agencies.)

If no reportable salary or wages, check here / /.

. . . . . .

. . . . . .

. . . . . .

7. Business Interests.

Do you or a member of your immediate family, separately or together, operate your own business, or own or control an interest in excess of $10,000 in a business?

EITHER check NO / / OR check YES / / and complete Schedule F.

8. Payments for Representation and Other Services.

8A. Did you represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agencies, excluding courts or judges, for which you received total compensation during the past 12 months in excess of $1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-1.)

EITHER check NO / / OR check YES / / and complete Schedule G-1.

8B. Subject to the same exceptions as in 8A, did persons with whom you have a close financial association (partners, associates or others) represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agency for which total compensation was received during the past 12 months in excess of $1,000? (Officers and employees of

local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-2.)

EITHER check NO / / OR check YES / / and complete Schedule G-2.

8C. Did you or persons with whom you have a close financial association furnish services to businesses operating in Virginia pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses for which total compensation in excess of $1,000 was received during the past 12 months?

EITHER check NO / / OR check YES / / and complete Schedule G-3.

9. Real Estate.

9A. State Officers and Employees.

Do you or a member of your immediate family hold an interest, including a partnership interest, valued at $10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.

EITHER check NO / / OR check YES / / and complete Schedule H-1.

9B. Local Officers and Employees.

Do you or a member of your immediate family hold an interest, including a partnership interest, or option, easement, or land contract, valued at $10,000 or more in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.

EITHER check NO / / OR check YES / / and complete Schedule H-2.

10. Real Estate Contracts with Governmental Agencies.

Do you or a member of your immediate family hold an interest valued at more than $10,000 in real estate, including a corporate, partnership, or trust interest, option, easement, or land contract, which real estate is the subject of a contract, whether pending or completed within the past 12 months, with a governmental agency? If the real estate contract provides for the leasing of the property to a governmental agency, do you or a member of your immediate family hold an interest in the real estate valued at more than $1,000? Account for all such contracts whether or not your interest is reported in Schedule F, H-1, or H-2. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership

interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

EITHER check NO / / OR check YES / / and complete Schedule I.

Statements of Economic Interests are open for public inspection.

AFFIRMATION BY ALL FILERS.

I swear or affirm that the foregoing information is full, true and correct to the best of my knowledge.

Signature .....

Commonwealth of Virginia

..... of ..... to wit:

The foregoing disclosure form was acknowledged before me

This ..... day of ....., 20. . . , by .....

Notary Public

My commission expires .....

(Return only if needed to complete Statement.)

SCHEDULES

to

STATEMENT OF ECONOMIC INTERESTS.

NAME .....

SCHEDULE A - OFFICES AND DIRECTORSHIPS.

Identify each business of which you or a member of your immediate family is a paid officer or paid director.

--- ---

--- ---

Name of Business	Address of Business	Position Held
---	---	---
---	---	---
---	---	---

---------- ---------- ----------

SCHEDULE B - PERSONAL LIABILITIES.

Report personal liability by checking each category. Report only debts in excess of $10,000. Do not report debts to any government. Do not report loans secured by recorded liens on property at least equal in value to the loan. Report contingent liabilities below and indicate which debts are contingent.

1. My personal debts are as follows:

Check appropriate categories	Check one $10,001 to $50,000	More than $50,000
Banks		
Savings institutions		
Other loan or finance companies		
Insurance companies		
Stock, commodity or other brokerage companies		
Other businesses: (State principal business activity for each creditor.)		

_____

_____

Individual creditors:

(State principal business or

occupation of each creditor.)

_____

_____

2. The personal debts of the members of my immediate family are as follows:

--- ---

--- ---

Check appropriate categories	Check one $10,001 to $50,000	More than $50,000
Banks		
Savings institutions		
Other loan or finance companies		
Insurance companies		
Stock, commodity or other brokerage companies		
Other businesses: (State principal business activity for each creditor.)		

_____

_____

Individual creditors:

(State principal business or

occupation of each creditor.)

_____

_____

SCHEDULE C - SECURITIES.

"Securities" INCLUDES stocks, bonds, "Securities" EXCLUDES

mutual funds, limited partnerships, certificates of deposit,

and commodity futures contracts. money market funds, annuity

contracts, and insurance policies.

Identify each business or Virginia governmental entity in which you or a

member of your immediate family, directly or indirectly, separately or

together, own securities valued in excess of $10,000.

Name each entity and type of security individually.

Do not list U.S. Bonds or other government securities not issued by the

Commonwealth of Virginia or its authorities, agencies, or local governments.

Do not list organizations that do not do business in this Commonwealth, but

most major businesses conduct business in Virginia. Account for securities

held in trust.

If no reportable securities, check here / /.

--- ---

--- ---

Check one

Name of Issuer	Type of Security Entity	Type of (stocks, bonds, mutual funds, etc.)	$10,001 to $50,000	$50,001 to $250,000	More than $250,000

SCHEDULE D - PAYMENTS FOR TALKS, MEETINGS, AND PUBLICATIONS.

List each source from which you received during the past 12 months lodging,

transportation, money, or any other thing of value (excluding meals or drinks

coincident with a meeting) with combined value exceeding $200 for your

presentation of a single talk, participation in one meeting, or publication of a work in your capacity as an officer or employee of your agency.

List payments or reimbursements by an advisory or governmental agency only for meetings or travel outside the Commonwealth.

List a payment even if you donated it to charity.

Do not list information about a payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

If no payment must be listed, check here / /.

--- ---

--- ---

Payer	Approximate Value	Circumstances	Type of payment (e.g. honoraria, travel reimbursement, etc.)

--- ---

--- ---

SCHEDULE E - GIFTS.

List each business, governmental entity, or individual that, during the past 12 months, (i) furnished you with any gift or entertainment at a single event and the value received by you exceeded $50 in value, or (ii) furnished you with gifts or entertainment in any combination and the value received by you exceeded $100 in total value; and for which you neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment

events unless the average value per person attending the event exceeded $50 in value. Do not list business entertainment related to your private profession or occupation. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2 of the Code of Virginia.

--- ---

--- ---

Name of Business, Organization, or Individual	City or County and State	Gift or Event	Approximate Value

SCHEDULE F - BUSINESS INTERESTS.

Complete this Schedule for each self-owned or family-owned business (including rental property, a farm, or consulting work), partnership, or corporation in which you or a member of your immediate family, separately or together, own an interest having a value in excess of $10,000.

If the enterprise is owned or operated under a trade, partnership, or corporate name, list that name; otherwise, merely explain the nature of the enterprise. If rental property is owned or operated under a trade, partnership, or corporate name, list the name only; otherwise, give the address of each property. Account for business interests held in trust.

--- ---

--- ---

Name of Business,	Gross Income

Corporation,

Partnership, Nature of Enterprise $50,001 More

Farm; Address of City or (farming, law, rental $50,000 to than

County

Rental Property and State property, etc.) or less $250,000 $250,000

--- --- --- ---

--- --- --- ---

--- --- --- ---

--- --- --- ---

--- ---

--- ---

SCHEDULE G-1 - PAYMENTS FOR REPRESENTATION BY YOU.

List the businesses you represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, for which you received total compensation during the past 12 months in excess of $1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by you.

Identify each business, the nature of the representation and the amount received by dollar category from each such business. You may state the type, rather than name, of the business if you are required by law not to reveal the name of the business represented by you.

Only STATE officers and employees should complete this Schedule.

--- ---

--- ---

Amount Received

Name Type Pur- Name

Business of Representation	Business of Agency	Purpose of Agency	$1,001 to $10,000	$10,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	$250,001 and over

If you have received $250,001 or more from a single business within the reporting period, indicate the amount received, rounded to the nearest $10,000.

SCHEDULE G-2 - PAYMENTS FOR REPRESENTATION BY ASSOCIATES.

List the businesses that have been represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, by persons who are your partners, associates or others with whom you have a close financial association and who received total compensation in excess of $1,000 for such representation during the past 12 months, excluding representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by your partners, associates or others with whom you have a close financial association.

Identify such businesses by type and also name the state governmental agencies before which such person appeared on behalf of such businesses.

Only STATE officers and employees should complete this Schedule.

--- ---

--- ---

Type of business Name of state governmental agency

--- ---

--- ---

--- ---

--- ---

--- ---

--- ---

SCHEDULE G-3 - PAYMENTS FOR SERVICES GENERALLY.

Indicate below types of businesses that operate in Virginia to which services were furnished by you or persons with whom you have a close financial association pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses and for which total compensation in excess of $1,000 was received during the past 12 months.

Identify opposite each category of businesses listed below (i) the type of business, (ii) the type of service rendered and (iii) the value by dollar category of the compensation received for all businesses falling within each category.

--- ---

--- ---

Value of Compensation

Check Type

if of

ser- ser-

vices vice

were ren-

	ren- dered	dered	$1,001 to $10,000	$10,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	$250,001 and over
Electric utilities							
Gas utilities							
Telephone utilities							
Water utilities							
Cable television companies							
Interstate transportation companies							
Intrastate transportation companies							
Oil or gas retail companies							
Banks							
Savings institutions							
Loan or finance companies							
Manufacturing companies (state type of product, e.g., textile, furniture, etc.)							
Mining companies							

Life insurance

companies

Casualty insurance

companies

Other insurance

companies

Retail companies

Beer, wine or liquor

companies or

distributors

Trade associations

Professional

associations

Associations of

public employees or

officials

Counties, cities or

towns

Labor organizations

Other

SCHEDULE H-1 - REAL ESTATE - STATE OFFICERS AND EMPLOYEES.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at $10,000 or more. You may list each parcel of real estate individually if you wish.

--- ---

--- ---

List each location Describe the type of real If the real estate is

(state, and county or city) where you own real estate.	estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	owned or recorded in a name other than your own, list that name.
---	---	---
---	---	---
---	---	---
---	---	---
---	---	---
---	---	---
---	---	---

SCHEDULE H-2 - REAL ESTATE - LOCAL OFFICERS AND EMPLOYEES.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest or option, easement, or land contract, valued at $10,000 or more. You may list each parcel of real estate individually if you wish. Also list the names of any co-owners of such property, if applicable.

List each location (state, and county or city) where you own real estate	Describe the type of real estate you own in each location, (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.	List the names of any co-owners, if applicable.
---	---	---	---
---	---	---	---

--- --- --- ---

--- --- --- ---

--- --- --- ---

--- --- --- ---

--- --- --- ---

--- ---

--- ---

SCHEDULE I - REAL ESTATE CONTRACTS WITH GOVERNMENTAL AGENCIES.

List all contracts, whether pending or completed within the past 12 months, with a governmental agency for the sale or exchange of real estate in which you or a member of your immediate family holds an interest, including a corporate, partnership or trust interest, option, easement, or land contract, valued at $10,000 or more. List all contracts with a governmental agency for the lease of real estate in which you or a member of your immediate family holds such an interest valued at $1,000 or more. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

State officers and employees report contracts with state agencies.

Local officers and employees report contracts with local agencies.

--- ---

--- ---

List your real estate interest and the person or entity, including the type of entity, which is party to	List each governmental agency which is a party to the contract and indicate the county or city where the real estate	State the annual income from the contract, and the amount, if any, of income you or any immediate family

the contract.	is located.	member derives
Describe any		annually from the
management role and		contract.
the percentage		
ownership		
interest you or your		
immediate family		
member has in the real		
estate or entity.		
---	---	---
---	---	---
---	---	---
---	---	---
---	---	---
---	---	---
---	---	---

(1987, Sp. Sess., c. 1, § 2.1-639.15; 1988, c. 849; 1994, cc. 724, 733, 777, 793; 1995, c. 763; 1996, c. 77; 1997, cc. 577, 844; 1998, c. 732; 2001, c. 844; 2006, cc. 310, 779, 787, 892; 2008, c. 239.)

§ 2.2-3118. Disclosure form; certain citizen members.

A. The financial disclosure form to be used for filings required pursuant to subsection B of § 2.2-3114 and subsection B of § 2.2-3115 shall be substantially as follows:

DEFINITIONS AND EXPLANATORY MATERIAL.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" means an association in which the person filing shares significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual's business activities and would have access to the necessary records either directly or through the individual. "Close financial association" does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed, or (ii) the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any

state governmental agency when the person filing has no communications with the state governmental agency.
"Contingent liability" means a liability that is not presently fixed or determined, but may become fixed or determined in the future with the occurrence of some certain event.
"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the filer, who is a dependent of the filer or of whom the filer is a dependent.
"Dependent" means any person, whether or not related by blood or marriage, who receives from the filer, or provides to the filer, more than one-half of his financial support.
"Personal interest" means, for the purposes of this form only, a personal and financial benefit or liability accruing to a filer or a member of his immediate family. Such interest shall exist by reason of (i) ownership in real or personal property, tangible or intangible; (ii) ownership in a business; (iii) income from a business; or (iv) personal liability on behalf of a business; however, unless the ownership interest in a business exceeds three percent of the total equity of the business, or the liability on behalf of a business exceeds three percent of the total assets of the business, or the annual income, and/or property or use of such property, from the business exceeds $10,000 or may reasonably be anticipated to exceed $10,000, such interest shall not constitute a "personal interest."

Name .....

Office or position held or to be held

.....

Address .....

I. FINANCIAL INTERESTS

My personal interests and those of my immediate family are as follows:

Include all forms of personal interests held at the time of filing: real

estate, stocks, bonds, equity interests in proprietorships and partnerships.

You may exclude:

1. Deposits and interest bearing accounts in banks, savings institutions and

other institutions accepting such deposits or accounts;

2. Interests in any business, other than a news medium, representing less than

three percent of the total equity value of the business;

3. Liability on behalf of any business representing less than three percent of

the total assets of such business; and

4. Income (other than from salary) less than $10,000 annually from any business. You need not state the value of any interest. You must state the name or principal business activity of each business in which you have a personal interest.

A. My personal interests are:

1. Residence, address, or, if no address, location .....

2. Other real estate, address, or, if no address, location .....

3. Name or principal business activity of each business in which stock, bond or equity interest is held .....

B. The personal interests of my immediate family are:

1. Real estate, address or, if no address, location .....

2. Name or principal business activity of each business in which stock, bond or equity interest is held .....

II. OFFICES, DIRECTORSHIPS AND SALARIED EMPLOYMENTS

The paid offices, paid directorships and salaried employments which I hold or which members of my immediate family hold and the businesses from which I or members of my immediate family receive retirement benefits are as follows: (You need not state any dollar amounts.)

A. My paid offices, paid directorships and salaried employments are:

--- ---

--- ---

Position held Name of business

--- ---

--- ---

--- ---

B. The paid offices, paid directorships and salaried employments of members of my immediate family are:

--- ---

--- ---

Position held Name of business

--- ---

--- ---

--- ---

III. BUSINESSES TO WHICH SERVICES WERE FURNISHED

A. The businesses I have represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, for which I have received total compensation in excess of $1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows:

Identify businesses by name and name the state governmental agencies before which you appeared on behalf of such businesses.

--- ---

--- ---

Name of business Name of governmental agency

--- ---

--- ---

--- ---

B. The businesses that, to my knowledge, have been represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, by persons with whom I have a close financial association and who received total compensation in excess of $1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows:
Identify businesses by type and name the state governmental agencies before which such person appeared on behalf of such businesses.

--- ---

--- ---

Type of business Name of state governmental agency

--- ---

--- ---

--- ---

--- ---

C. All other businesses listed below that operate in Virginia to which services were furnished pursuant to an agreement between you and such businesses and for which total compensation in excess of $1000 was received during the preceding year:
Check each category of business to which services were furnished.

Electric utilities

Gas utilities

Telephone utilities

Water utilities

Cable television companies

Intrastate transportation companies

Interstate transportation companies

Oil or gas retail companies

Banks

Savings institutions

Loan or finance companies

Manufacturing companies (state type of product, e.g.,

textile, furniture, etc.)

Mining companies

Life insurance companies

Casualty insurance companies

Other insurance companies

Retail companies

Beer, wine or liquor companies or distributors

Trade associations

Professional associations

Associations of public employees or officials

Counties, cities or towns

Labor organizations

IV. COMPENSATION FOR EXPENSES

The persons, associations, or other sources other than my governmental agency from which I or a member of my immediate family received remuneration in excess of $200 during the preceding year, in cash or otherwise, as honorariums or payment of expenses in connection with my attendance at any meeting or other function to which I was invited in my official capacity are as follows:

--- ---

--- ---

Name of Source	Description of occasion	Amount of remuneration for each occasion
---	---	---
---	---	---
---	---	---

B. The provisions of Part III A and B of the disclosure form prescribed by this section shall not be applicable to officers and employees of local governmental and local advisory agencies.

C. Except for real estate located within the county, city or town in which the officer or employee serves or a county, city or town contiguous to the county, city or town in which the officer or employee serves, officers and employees of local governmental or advisory agencies shall not be required to disclose under Part I of the form any other interests in real estate.

(1988, c. 849, § 2.1-639.15:1; 1996, c. 77; 2001, c. 844; 2006, c. 779.)

§ 2.2-3118.1. Special provisions for individuals serving in or seeking multiple positions or offices; reappointees.

A. The filing of a single current statement of economic interests by a state officer or employee required to file the form prescribed in § 2.2-3117 shall suffice for the purposes of this chapter as filing for all state positions or offices held or sought by such individual during a single reporting period. The filing of a single current financial disclosure statement by a state officer or employee required to file the form prescribed in § 2.2-3118 shall suffice for the purposes of this chapter as filing for all state positions or offices held or sought by such individual and requiring the filing of the § 2.2-3118 form during a single reporting period.

B. Any individual who has met the requirement for annually filing a statement provided in § 2.2-3117 or 2.2-3118 shall not be required to file an additional statement upon such individual's reappointment to the same office or position for which he is required to file, provided such reappointment occurs within 12 months after the annual filing.

(2005, c. 397.)

§ 2.2-3119. Additional provisions applicable to school boards, and employees of school boards.

A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.

This section shall apply to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

B. This section shall not be construed to prohibit the employment, promotion, or transfer within a school division of any person within a relationship described in subsection A when such person:

1. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the taking of office of any member of such board or division superintendent of schools; or

2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the inception of such relationship; or

3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of such school board or division superintendent of schools.

C. A person employed as a substitute teacher may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions in subdivisions B. 1., B. 2., and B. 3. shall apply only if the prior employment has been in the same school division where the employee and the superintendent or school board member now seek to serve simultaneously.

D. If any member of the school board or any division superintendent knowingly violates these provisions, he shall be personally liable to refund to the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered funds shall be paid into the local treasury for the use of the public schools.

(1987, Sp. Sess., c. 1, § 2.1-639.16; 1994, c. 758; 1995, c. 186; 1997, c. 84; 2001, c. 844.)

§ 2.2-3120. Knowing violation of chapter a misdemeanor.

Any person who knowingly violates any of the provisions of Articles 2 through 6 (§§ 2.2-3102 through 2.2-3119) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates § 2.2-3112 A or § 2.2-3115 C or E shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

(1987, Sp. Sess., c. 1, § 2.1-639.17; 2001, c. 844.)

§ 2.2-3121. Advisory opinions.

A. A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts.
B. A local officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the attorney for the Commonwealth made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts. The written opinion shall be a public record and shall be released upon request.
C. If any officer or employee serving at the local level of government is charged with a knowing violation of this chapter, and the alleged violation resulted from his reliance upon a written opinion of his city, county or town attorney, made after a full disclosure of the facts, that such action was not in violation of this chapter, then the officer or employee shall have the right to introduce a copy of the opinion at his trial as evidence that he did not knowingly violate this chapter.

(1987, Sp. Sess., c. 1, § 2.1-639.18; 2001, c. 844; 2003, c. 694.)

§ 2.2-3122. Knowing violation of chapter constitutes malfeasance in office or employment.

Any person who knowingly violates any of the provisions of this chapter shall be guilty of malfeasance in office or employment. Upon conviction thereof, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of such office or employment.

(1987, Sp. Sess., c. 1, § 2.1-639.19; 2001, c. 844.)

§ 2.2-3123. Invalidation of contract; recision of sales.

A. Any contract made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of recision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.
B. Any purchase by an officer or employee made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

(1987, Sp. Sess., c. 1, § 2.1-639.20; 2001, c. 844.)

§ 2.2-3124. Forfeiture of money, etc., derived from violation of this chapter.

In addition to any other fine or penalty provided by law, any money or other thing of value derived by an officer or employee from a violation of §§ 2.2-3103 through 2.2-3112 shall be forfeited and, in the event of a knowing violation, there may also be imposed a civil penalty in an amount equal to the amount of money or thing of value forfeited to the Commonwealth or the local government as the case may be. If the thing of value received by the officer or employee in violation of this chapter should enhance in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of forfeiture.

(1987, Sp. Sess., c. 1, § 2.1-639.21; 1994, cc. 727, 776; 2001, c. 844.)

§ 2.2-3125. Limitation of actions.

The statute of limitations for the criminal prosecution of a person for violation of any provision of this chapter shall be one year from the time the Attorney General, if the violation is by a state officer or employee, or the attorney for the Commonwealth, if the violation is by a local officer or employee, has actual knowledge of the violation or five years from the date of the violation, whichever event occurs first. Any prosecution for malfeasance in office shall be governed by the statute of limitations provided by law.

(1987, Sp. Sess., c. 1, § 2.1-639.22; 2001, c. 844.)

§ 2.2-3126. Enforcement.

A. The provisions of this chapter relating to an officer or employee serving at the state level of government shall be enforced by the Attorney General.
In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties within the area for which he is responsible under this section:
1. He shall advise the agencies of state government and officers and employees serving at the state level of government on appropriate procedures for complying with the requirements of this chapter. He may review any disclosure statements, without notice to the affected person, for the

purpose of determining satisfactory compliance, and shall investigate matters that come to his attention reflecting possible violations of the provisions of this chapter by officers and employees serving at the state level of government;

2. If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee;

3. He shall render advisory opinions to any state officer or employee who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this chapter. He shall determine which opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

B. The provisions of this chapter relating to an officer or employee serving at the local level of government shall be enforced by the attorney for the Commonwealth within the political subdivision for which he is elected.

Each attorney for the Commonwealth shall be responsible for prosecuting violations by an officer or employee serving at the local level of government and, if the Attorney General designates such attorney for the Commonwealth, violations by an officer or employee serving at the state level of government. In the event the violation by an officer or employee serving at the local level of government involves more than one local jurisdiction, the Attorney General shall designate which of the attorneys for the Commonwealth of the involved local jurisdictions shall enforce the provisions of this chapter with regard to such violation.

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (§ 2.2-3113 et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

Each attorney for the Commonwealth shall render advisory opinions as to whether the facts in a particular case would constitute a violation of the provisions of this chapter to the governing body and any local officer or employee in his jurisdiction and to political subdivisions other than a county, city or town, including regional political subdivisions whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. If the advisory opinion is written, then such written opinion shall be a public record and shall be released upon request. In case the opinion given by the attorney for the Commonwealth indicates that the facts would constitute a violation, the officer or employee affected thereby may request that the Attorney General review the opinion. A conflicting opinion by the Attorney General shall act to revoke the opinion of the attorney for the Commonwealth. The Attorney General shall determine which of his reviewing opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the attorney for the Commonwealth or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

(1987, Sp. Sess., c. 1, § 2.1-639.23; 2001, c. 844; 2003, c. 694.)

§ 2.2-3127. Venue.

Any prosecution for a violation involving an officer serving at the state level of government shall be brought in the Circuit Court of the City of Richmond. Any prosecution for a violation involving an employee serving at the state level of government shall be within the jurisdiction in which the employee has his principal place of state employment.
Any proceeding provided in this chapter shall be brought in a court of competent jurisdiction within the county or city in which the violation occurs if the violation involves an officer or employee serving at the local level of government.

(1987, Sp. Sess., c. 1, § 2.1-639.24; 2001, c. 844.)

§ 2.2-3128. Semiannual orientation course.

Each state agency shall offer at least semiannually to each of its state filers an orientation course on this chapter, on ethics in public contracting pursuant to Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title, if applicable to the filer, and on any other applicable regulations that govern the official conduct of state officers and employees.

(2004, cc. 134, 392.)

§ 2.2-3129. Records of attendance.

Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to § 2.2-3128 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with § 2.2-3704.

(2004, cc. 134, 392.)

§ 2.2-3130. Attendance requirements.

Except as set forth in § 2.2-3131, each state filer shall attend the orientation course required in § 2.2-3128, as follows:
1. For a state filer who holds a position with the agency on January 1, 2004, not later than December 31, 2004 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2006.
2. For a person who becomes a state filer with the agency after January 1, 2004, within two months after he or she becomes a state filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.
(2004, cc. 134, 392.) § 2.2-3131. Exemptions.
A. The requirements of § 2.2-3130 shall not apply to state filers with a state agency who have taken an equivalent ethics orientation course through another state agency within the time periods set forth in subdivision 1 or 2 of § 2.2-3130, as applicable.

B. State agencies may jointly conduct and state filers from more than one state agency may jointly attend an orientation course required by § 2.2-3128, as long as the course content is relevant to the official duties of the attending state filers.
C. Before conducting each orientation course required by § 2.2-3128, state agencies shall consult with the Attorney General regarding appropriate course content.

(2004, cc. 134, 392.)

Code of Virginia

Title 2.2, Chapter 40

Administrative Process Act

§ 2.2-4000. Short title; purpose.

A. This chapter may be cited as the "Administrative Process Act."
B. The purpose of this chapter is to supplement present and future basic laws conferring authority on agencies either to make regulations or decide cases as well as to standardize court review thereof save as laws hereafter enacted may otherwise expressly provide. This chapter shall not supersede or repeal additional procedural requirements in such basic laws.

(1975, c. 503, §§ 9-6.14:1. 9-6.14:3; 1977, c. 647; 1984, c. 5; 2001, c. 844.)

§ 2.2-4001. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.
"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.
"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.
"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.
"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.
"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007.01 and 2.2-4019 and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.
"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024.

"Public assistance and social services programs" means those programs specified in § 63.2-100.
"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.
"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

(1975, c. 503, § 9-6.14:4; 1977, cc. 377, 381; 1979, c. 613; 1984, c. 187; 1985, cc. 67, 602; 1997, c. 11; 2001, c. 844; 2002, c. 747; 2007, cc. 873, 916.)

§ 2.2-4002. Exemptions from chapter generally.

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030 and 2.2-4031:
1. The General Assembly.
2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.
3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.
4. The Virginia Housing Development Authority.
5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.
6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.
7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.
8. The Virginia Resources Authority.
9. Agencies expressly exempted by any other provision of this Code.
10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.
11. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.
12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726 and in adopting regulations pursuant to § 3.1-741.6.
13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, §§ 3.1-271.1, 3.1-530.1, and 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.
15. The Virginia War Memorial Foundation.
16. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
17. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.
18. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.
19. The Virginia Small Business Financing Authority.
20. The Virginia Economic Development Partnership Authority.
21. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.
22. The Insurance Continuing Education Board pursuant to § 38.2-1867.
23. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.
24. The nonprofit, nonstock corporation established by the Commissioner of Agriculture and Consumer Services pursuant to § 3.1-14.01.
25. (Expires December 31, 2010) The Secretary of Natural Resources in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.
26. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.
B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:
1. Money or damage claims against the Commonwealth or agencies thereof.
2. The award or denial of state contracts, as well as decisions regarding compliance therewith.
3. The location, design, specifications or construction of public buildings or other facilities.
4. Grants of state or federal funds or property.
5. The chartering of corporations.
6. Customary military, naval or police functions.
7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.
8. The conduct of elections or eligibility to vote.
9. Inmates of prisons or other such facilities or parolees therefrom.
10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.
11. Traffic signs, markers or control devices.
12. Instructions for application or renewal of a license, certificate, or registration required by law.
13. Content of, or rules for the conduct of, any examination required by law.
14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.) of this title.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.
16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.
17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.
18. The regulations for the implementation of the Health Practitioners' Intervention Program and the activities of the Intervention Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.
19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5.
20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.
21. The Virginia Breeders Fund created pursuant to § 59.1-372.
22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.
23. The administration of medication or other substances foreign to the natural horse.
C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of this title, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

(1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, cc. 465, 523, 688, 820, 844; 2003, cc. 639, 695; 2004, c. 802; 2006, c. 442; 2007, cc. 41, 870, 932; 2008, c. 672.)

§ 2.2-4003. Venue.

In all proceedings under § 2.2-4019 or 2.2-4020 venue shall be in the city or county where the administrative agency maintains its principal office or as the parties may otherwise agree. In all proceedings under § 2.2-4026, venue shall be as specified in subdivision 1 of § 8.01-261.
(1975, c. 503, § 9-6.14:5; 1977, c. 624; 2001, c. 844; 2007, cc. 873, 916.) § 2.2-4004. Severability.
The provisions of regulations adopted under this chapter or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other regulations, provisions or applications that can be given effect without the invalid provisions or applications. The provisions of all regulations are severable unless (i) the regulation specifically provides that its provisions are not severable or (ii) it is apparent that two or more regulations or provisions must operate in accord with one another.

(1987, c. 55, § 9-6.14:5.1; 2001, c. 844.)

§ 2.2-4005. Review of exemptions by Joint Legislative Audit and Review Commission.

The Joint Legislative Audit and Review Commission shall conduct a review periodically of the exemptions authorized by this chapter. The purpose of this review shall be to assess whether there are any exemptions that should be discontinued or modified.

(1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844.)

§ 2.2-4006. Exemptions from requirements of this article.

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:
1. Agency orders or regulations fixing rates or prices.
2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.
3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.
4. Regulations that are:
a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;
b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or
c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.
5. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.
6. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.
7. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.
8. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.
9. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§

62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§ 10.1-603.1 et seq.) of Title 10.1, and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

10. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

11. Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

12. Regulations of the Marine Resources Commission.

13. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

14. Amendments to the list of drugs susceptible to counterfeiting adopted by the Board of Pharmacy pursuant to subsection B of § 54.1-3307.

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002, or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

(1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844; 2003, c. 436; 2005, c. 102; 2006, cc. 632, 719; 2007, cc. 873, 916.)

§ 2.2-4007. Petitions for new or amended regulations; opportunity for public comment.

A. Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. The petition shall state (i) the substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections, and (ii) reference to the legal authority of the agency to take the action requested.
B. Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request and the agency's plan for disposition of the petition to the Registrar for publication in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031.
C. A 21-day period for acceptance of written public comment on the petition shall be provided after publication in the Virginia Register. The agency shall issue a written decision to grant or deny the petitioner's request within 90 days following the close of the comment period. However, if the rulemaking authority is vested in an entity that has not met within that 90-day period, the entity shall issue a written decision no later than 14 days after it next meets. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations. Agency decisions to initiate or not initiate rulemaking in response to petitions shall not be subject to judicial review.

(1984, c. 5, § 9-6.14:7.1; 1985, c. 602; 1989, c. 71; 1991, c. 488; 1993, cc. 898, 944; 1994, c. 938; 1995, cc. 25, 677, 717, 790; 1997, c. 87; 2001, c. 844; 2002, cc. 241, 391, 747; 2003, c. 224; 2005, cc. 619, 682; 2007, cc. 873, 916.)

§ 2.2-4007.01. Notice of intended regulatory action; public hearing.

A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, 2.2-4011, or 2.2-4012.1, an agency shall provide the Registrar of Regulations with a Notice of Intended Regulatory Action that describes the subject matter and intent of the planned regulation. At least 30 days shall be provided for public comment, to include an on-line public comment forum on the Virginia Regulatory Town Hall, after publication of the Notice of Intended Regulatory Action. An agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.
B. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings if required by basic law. If the agency states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action, (i) the Governor directs the agency to hold a public hearing or (ii) the agency receives requests for a public hearing from at least 25 persons.

(2007, cc. 873, 916.)

§ 2.2-4007.02. Public participation guidelines.

A. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted, and used by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and

notification of interested parties and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency, to include an on-line public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

(2007, cc. 873, 916.)

§ 2.2-4007.03. Informational proceedings; effect of noncompliance.

A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, or 2.2-4011, the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031. In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. The Register and any newspaper publication shall be made at least 60 days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts and summaries or notations of oral presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

B. If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section.

C. In no event shall the failure to comply with the requirements of this section be deemed mere harmless error for the purposes of § 2.2-4027.

(2007, cc. 873, 916.)

§ 2.2-4007.04. Economic impact analysis.

A. Before delivering any proposed regulation under consideration to the Registrar as required in § 2.2-4007.05, the agency shall submit on the Virginia Regulatory Town Hall a copy of that regulation to the Department of Planning and Budget. In addition to determining the public benefit, the Department of Planning and Budget in coordination with the agency shall, within 45 days, prepare an economic impact analysis of the proposed regulation, as follows:

1. The economic impact analysis shall include but need not be limited to the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and

value of private property, including additional costs related to the development of real estate for commercial or residential purposes; and the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. A copy of the economic impact analysis shall be provided to the Joint Commission on Administrative Rules;

2. If the regulation may have an adverse effect on small businesses, the economic impact analysis shall also include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. As used in this subdivision, "small business" has the same meaning as provided in subsection A of § 2.2-4007.1; and

3. In the event the Department cannot complete an economic impact statement within the 45-day period, it shall advise the agency and the Joint Commission on Administrative Rules as to the reasons for the delay. In no event shall the delay exceed 30 days beyond the original 45-day period.

B. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in § 2.2-4007.05, a copy to the Registrar for publication with the proposed regulation, and an electronic copy to each member of the General Assembly. No regulation shall be promulgated for consideration pursuant to § 2.2-4007.05 until the impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 5 (§ 2.2-4025 et seq.) or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

(2007, cc. 316, 561, 873, 916.)

§ 2.2-4007.05. Submission of proposed regulations to the Registrar.

Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety, or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and

disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to § 2.2-4007.04. Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure that the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary; the statement of the basis, purpose, substance, and issues; the economic impact analysis; and the agency's response shall be published in the Virginia Register of Regulations and be available on the Virginia Regulatory Town Hall, together with the notice of opportunity for oral or written submittals on the proposed regulation.

(2007, cc. 873, 916.)

§ 2.2-4007.06. Changes between proposed and final regulations.

If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least 25 persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for 30 days to solicit additional public comment and (ii) file notice of the additional 30-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

(2007, cc. 873, 916.)

§ 2.2-4007.07. State Air Pollution Control Board; variances.

The provisions of §§ 2.2-4007 through 2.2-4007.06 shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

(2007, cc. 873, 916.)

§ 2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations.

A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.
B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the adoption of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of

applicable law while minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of the following methods of reducing the effects of the proposed regulation on small businesses:
1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.
C. Prior to the adoption of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.
D. In addition to the requirements of § 2.2-4017, on or before July 1, 2009, an agency shall review its existing regulations to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. If an agency head determines that completion of the review of existing regulations is not feasible by July 1, 2009, that agency shall publish a statement certifying that determination. An agency may extend the date required by this subsection in increments of one year, not to exceed a total of five years.
E. In addition to other requirements of § 2.2-4017, all final regulations adopted after July 1, 2005, shall be reviewed every five years to ensure that they minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law.
F. The regulatory review required by this section shall include consideration of:
1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

(2005, cc. 619, 682; 2007, cc. 873, 916.)

§ 2.2-4008. Availability of guidance documents.

It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency currently relies. The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make the list available for public inspection, (ii) make available for public inspection the full texts of all guidance documents to the extent inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

(1997, c. 11, § 9-6.14:7.2; 2001, c. 844.)

§ 2.2-4009. Evidentiary hearings on regulations.

Where an agency proposes to consider the exercise of authority to promulgate a regulation, it may conduct or give interested persons an opportunity to participate in a public evidentiary proceeding; and the agency shall always do so where the basic law requires a hearing. Evidentiary hearings may be limited to the trial of factual issues directly related to the legal validity of the proposed regulation in any of the relevant respects outlined in § 2.2-4027 of this chapter.

General notice of the proceedings shall be published as prescribed in § 2.2-4007.01. In addition, where the proposed regulation is to be addressed to named persons, the latter shall also be given the same notice individually by mail or otherwise if acknowledged in writing. The proceedings may be conducted separately from, and in any event the record thereof shall be separate from, any other or additional proceedings the agency may choose or be required to conduct for the reception of general data, views, and argument pursuant to § 2.2-4007.02 or otherwise. Any probative evidence may be received except that the agency shall as a matter of efficiency exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, and may deny rebuttal, or cross-examination. Testimony may be admitted in written form provided those who have prepared it are made available for examination in person.

The agency or one or more of its subordinates specially designated for the purpose shall preside at the taking of evidence and may administer oaths and affirmations. The proceedings shall be recorded verbatim and the record thereof shall be made available to interested persons for transcription at their expense or, if transcribed by or for the agency, for inspection or purchase at cost.

Where subordinates preside at the taking of the evidence, they shall report their recommendations and proposed findings and conclusions that shall be made available upon request to the participants in the taking of evidence as well as other interested persons and serve as a basis for exceptions, briefs, or oral argument to the agency itself. Whether or not subordinates take the evidence, after opportunity for the submittal of briefs on request and such oral argument as may be scheduled, the agency may settle the terms of the regulation and shall promulgate it only upon (i) its findings of fact based upon the record of evidence made pursuant to this section and facts of which judicial notice may be taken, (ii) statements of basis and purpose as well as comment upon data received in any informational proceedings held under § 2.2-4007.01 and (iii) the conclusions required by the terms of the basic law under which the agency is operating.

(1975, c. 503, § 9-6.14:8; 1985, c. 602; 2001, c. 844; 2007, cc. 873, 916.)

§ 2.2-4010. Pilot programs for regulations imposing local government mandates.

Where an agency proposes to consider the exercise of authority to promulgate a regulation that will impose a statewide mandate on the Commonwealth's localities, the agency shall consider, where appropriate, implementing the regulation on a limited basis with a representative number of localities. An agency may use such a pilot program to determine the effectiveness or impact of proposed regulations prior to statewide adoption.

(1993, c. 168, § 9-6.14:8.1; 2001, c. 844.)

§ 2.2-4011. Emergency regulations; publication; exceptions.

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations.

C. All emergency regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within sixty days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

D. In the event that an agency concludes that despite its best efforts, a replacement regulation cannot be adopted before expiration of the 12-month period described in subsection C, it may seek the prior written approval of the Governor to extend the duration of the emergency regulation for a period of not more than six additional months. Any such request must be submitted to the Governor at least 30 days prior to the scheduled expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a replacement regulation together with the reasons that a replacement regulation cannot be adopted before the expiration of the emergency regulation. Upon approval of the Governor, the duration of the emergency regulation shall be extended for a period of no more than six months. Such approval shall be in the sole discretion of the Governor and shall not be subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable.

E. Emergency regulations shall be published as soon as practicable in the Register.

F. The Regulations of the Marine Resources Commission shall be excluded from the provisions of this section.

(1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 71, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793, 829; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801, 938; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39,

619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844; 2007, cc. 873, 916.)

§ 2.2-4012. Purpose; adoption; effective date; filing; duties of Registrar of Regulations.

A. The purpose of the regulatory procedures shall be to provide a regulatory plan that is predictable, based on measurable and anticipated outcomes, and is inclined toward conflict resolution.

B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations, including those that agencies, pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011, may elect to dispense with the public procedures provided by §§ 2.2-4007.01 and 2.2-4009, may be formally and finally adopted by the signed order of the agency so stating. No regulation except an emergency regulation or a noncontroversial regulation promulgated pursuant to § 2.2-4012.1 shall be effective until the expiration of the applicable period as provided in § 2.2-4015. In the case of an emergency regulation filed in accordance with § 2.2-4011, the regulation shall become effective upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as required by other laws.

C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies of the summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget and the agency's response thereto as required by § 2.2-4007.04 shall be transmitted to the Registrar of Regulations, who shall retain these documents.

D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the Code of Virginia that authorizes or requires the regulations and, where the regulations are required to conform to federal law or regulation in order to be valid, a citation to the specific federal law or regulation to which conformity is required.

E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

(1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1989, c. 71; 1992, c. 829; 1993, c. 898; 1994, c. 938; 2001, c. 844; 2003, c. 224; 2007, cc. 873, 916.)

§ 2.2-4012.1. Fast-track rulemaking process.

Notwithstanding any other provision, rules that are expected to be noncontroversial may be promulgated or repealed in accordance with the process set out in this section. Upon the

concurrence of the Governor, and after written notice to the applicable standing committees of the Senate of Virginia and the House of Delegates, and to the Joint Commission on Administrative Rules, the agency may submit a fast-track regulation without having previously published a Notice of Intended Regulatory Action. The fast-track regulation shall be published in the Virginia Register of Regulations and posted on the Virginia Regulatory Town Hall, along with an agency statement setting out the reasons for using the fast-track rulemaking process. Such regulations shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, and 2.2-4007.05, except that the time for receiving public comment need not exceed 30 days after (i) publication of the regulation in the Virginia Register of Regulations and (ii) a public comment forum opens on the Virginia Regulatory Town Hall. The time for preparation of the economic impact analysis shall not exceed 30 days. If an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation will become effective or shall be repealed as appropriate, 15 days after the close of the comment period, unless the regulation or repeal is withdrawn or a later effective date is specified by the agency.

(2003, c. 224; 2007, cc. 873, 916.)

§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact.

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the agency no later than fifteen days following the completion of the public comment period provided for in § 2.2-4007.01. The Governor may recommend amendments or modifications to any regulation that would bring that regulation into conformity with statutory authority or state or federal laws, regulations or judicial decisions.

Not less than fifteen days following the completion of the public comment period provided for in § 2.2-4007.01, the agency may (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's recommendations for change.

B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be explained in the final regulation.

C. If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may require the agency to provide an additional thirty days to solicit additional public comment on the changes by transmitting notice of the additional public comment period to the agency and to the Registrar within the thirty-day adoption period described in subsection D, and publishing the notice in the Register. The additional public comment period required by the Governor shall begin upon publication of the notice in the Register.
D. A thirty-day final adoption period for regulations shall commence upon the publication of the final regulation in the Register. The Governor may review the final regulation during this thirty-day final adoption period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014, or both.
If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar and agency prior to the conclusion of the thirty-day final adoption period. The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he fails to suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014 during the thirty-day final adoption period. The Governor's objection, or the suspension of the regulation, or both if applicable, shall be published in the Register.
A regulation shall become effective as provided in § 2.2-4015.
E. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

(1984, c. 5, § 9-6.14:9.1; 1993, cc. 551, 772, 898; 1995, cc. 25, 736; 2001, c. 844; 2007, cc. 873, 916.)

§ 2.2-4014. Legislative review of proposed and final regulations.

A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable or the Joint Commission on Administrative Rules may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the objecting legislative committee or the Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within the final adoption period, subdivision A 1 of § 2.2-4015 shall govern.
B. In addition or as an alternative to the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable or the Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or (ii) the Joint Commission on Administrative Rules may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the 30-day adoption period, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of § 2.2-4006, if it makes no changes to the regulation other than those required by statutory law or (ii) shall follow the provisions of §§ 2.2-4007.01 through 2.2-4007.06, if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at the next regular legislative session, then the suspended regulation shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.
C. A regulation shall become effective as provided in § 2.2-4015.
D. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

(1984, c. 5, § 9-6.14:9.2; 1993, cc. 551, 772; 2001, c. 844; 2002, c. 677; 2003, c. 212; 2004, c. 777; 2007, cc. 873, 916.)

§ 2.2-4015. Effective date of regulation; exception.

A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100 et seq.) shall become effective at the conclusion of the thirty-day final adoption period provided for in subsection D of § 2.2-4013, or any other later date specified by the agency, unless:
1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable twenty-one-day extension period provided in § 2.2-4014;
2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;
3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular legislative session; or
4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.
B. Whenever the regulatory process has been suspended for any reason, any action by the agency that either amends the regulation or does not amend the regulation but specifies a new effective date shall be considered a readoption of the regulation for the purposes of appeal. If the regulation is suspended under § 2.2-4007.06, such readoption shall take place after the thirty-day public comment period required by that subsection. Suspension of the regulatory process by the agency may occur simultaneously with the filing of final regulations as provided in subsection B of § 2.2-4013.
When a regulation has been suspended, the agency must set the effective date no earlier than fifteen days from publication of the readoption action and any changes made to the regulation. During that fifteen-day period, if the agency receives requests from at least twenty-five persons for the opportunity to comment on new substantial changes, it shall again suspend the regulation pursuant to § 2.2-4007.06.

C. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

(1984, c. 5, § 9-6.14:9.3; 1993, cc. 551, 772, 898; 1995, c. 25; 2001, c. 844; 2002, cc. 391, 677; 2004, c. 777; 2007, cc. 873, 916.)

§ 2.2-4016. Withdrawal of regulation.

Nothing in this chapter shall prevent any agency from withdrawing any regulation at any time prior to the effective date of that regulation. A regulation may be repealed after its effective date only in accordance with the provisions of this chapter that govern the adoption of regulations.

(1984, c. 5, § 9-6.14:9.4; 1985, c. 602; 2001, c. 844.)

§ 2.2-4017. Periodic review of regulations.

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.
The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

(1984, c. 5, § 9-6.14:25; 2001, c. 844.)

§ 2.2-4018. Exemptions from operation of Article 3.

The following agency actions otherwise subject to this chapter shall be exempted from the operation of this article.
1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.
2. The award or denial of claims for workers' compensation.
3. The grant or denial of public assistance or social services.
4. Temporary injunctive or summary orders authorized by law.
5. The determination of claims for unemployment compensation or special unemployment.
6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.
7. The determination of accreditation or academic review status of a public school or public school division or approval by the Board of Education of a school division corrective action plan required by § 22.1-253.13:3.

(1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844; 2002, c. 747; 2004, c. 965.)

§ 2.2-4019. Informal fact finding proceedings.

A. Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures shall include rights of parties to the case to (i) have reasonable notice thereof, (ii) appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case, (iii) have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision, (iv) receive a prompt decision of any application for a license, benefit, or renewal thereof, and (v) be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case.

B. Agencies may, in their case decisions, rely upon public data, documents or information only when the agencies have provided all parties with advance notice of an intent to consider such public data, documents or information. This requirement shall not apply to an agency's reliance on case law and administrative precedent.

(1975, c. 503, § 9-6.14:11; 1986, c. 615; 1989, c. 601; 1993, c. 898; 1994, c. 748; 1995, c. 398; 2001, c. 844.)

§ 2.2-4020. Formal hearings; litigated issues.

A. The agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing and may do so in any case to the extent that informal procedures under § 2.2-4019 have not been had or have failed to dispose of a case by consent.

B. Parties to formal proceedings shall be given reasonable notice of the (i) time, place, and nature thereof, (ii) basic law under which the agency contemplates its possible exercise of authority, and (iii) matters of fact and law asserted or questioned by the agency. Applicants for licenses, rights, benefits, or renewals thereof have the burden of approaching the agency concerned without such prior notice but they shall be similarly informed thereafter in the further course of the proceedings whether pursuant to this section or to § 2.2-4019.

C. In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. The burden of proof shall be upon the proponent or applicant. The presiding officers at the proceedings may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged,

or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing. Where a hearing officer presides, or where a subordinate designated for that purpose presides in hearings specified in subsection F of § 2.2-4024, he shall recommend findings and a decision unless the agency shall by its procedural regulations provide for the making of findings and an initial decision by the presiding officers subject to review and reconsideration by the agency on appeal to it as of right or on its own motion. The agency shall give deference to findings by the presiding officer explicitly based on the demeanor of witnesses.

D. Prior to the recommendations or decisions of subordinates, the parties concerned shall be given opportunity, on request, to submit in writing for the record (i) proposed findings and conclusions and (ii) statements of reasons therefor. In all cases, on request, opportunity shall be afforded for oral argument (i) to hearing officers or subordinate presiding officers, as the case may be, in all cases in which they make such recommendations or decisions or (ii) to the agency in cases in which it makes the original decision without such prior recommendation and otherwise as it may permit in its discretion or provide by general rule. Where hearing officers or subordinate presiding officers, as the case may be, make recommendations or decisions, the agency shall receive and act on exceptions thereto.

E. All decisions or recommended decisions shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

(1975, c. 503, § 9-6.14:12; 1986, c. 615; 1991, c. 584; 1993, c. 898; 1995, c. 398; 2001, c. 844.)

§ 2.2-4020.1. Summary case decisions.

A. Any person who has (i) applied for a permit, certificate, or license from an agency or (ii) received written notice of a potential violation from an agency may request a summary case decision from the agency. The request for a summary case decision shall be in writing, signed by or on behalf of the requestor, and be submitted to the agency secretary as defined by the Rules of the Supreme Court of Virginia. The request shall include:

1. A statement that no material facts are in dispute;
2. A proposed stipulation of all such undisputed material facts concerning the application or notice;
3. A clear and concise statement of the questions of law to be decided by summary case decision; and
4. A statement that the requestor waives his right to any other administrative proceeding provided in this article by the agency on the questions of law to be decided by summary case decision.

B. Within 21 days of receipt of a complete request for summary case decision, the agency shall determine whether the matter in dispute properly may be decided by summary case decision and shall promptly notify the requestor of its determination in writing. If a request for summary case decision is not complete, the agency may request additional specific information from the requestor. The agency shall decide the matter by summary case decision if it determines that there are no disputed issues of material fact. However, if (i) an informal fact-finding proceeding as provided in § 2.2-4019, a formal hearing as provided in § 2.2-4020, or other proceeding authorized by the agency's basic law concerning the application or notice has been scheduled, the requestor

has been notified, and the issues that are the subject of such proceeding or hearing include questions that are the subject of the request for summary case decision or (ii) the matter must be decided through any public participation requirements under this chapter or the agency's basic law, the agency shall not be required to decide the matter by summary case decision.

C. Denial of a request for summary case decision shall not be subject to judicial review in accordance with this chapter and the Rules of the Supreme Court of Virginia, and shall not prejudice any rights the requestor has or may have under this chapter or the agency's basic law. Nothing in this article shall prevent an agency from consolidating the summary case decision proceeding into, or proceeding with, a separate informal fact-finding proceeding, formal hearing, or other proceeding authorized by the agency's basic law concerning the matter in question.

D. Upon granting a request for summary case decision, the agency shall establish a schedule for the parties to submit briefs on the questions of law in dispute and may, by agreement of the parties, provide for oral argument.

E. All decisions or recommended decisions shall be served on the requestor, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence contained in the record and relevant to the basic law under which the agency is operating, together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

(2006, c. 702.)

§ 2.2-4021. Timetable for decision; exemptions.

A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a decision on a litigated issue, and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.

B. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 90 days from the date of the informal fact-finding, formal proceeding, or completion of a summary case decision proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notification to the named party of its decision within five days of the decision.

C. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 30 days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision

within 30 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notice to the named party of its decision within five days of the decision.

D. The provisions of subsection B notwithstanding, if the board members or agency personnel who conducted the informal fact-finding, formal proceeding, or summary case decision proceeding are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection B shall be reset and commence from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notice within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.

(1975, c. 503, §§ 9-6.14:11, 9-6.14:12; 1986, c. 615; 1989, c. 601; 1991, c. 584; 1993, c. 898; 1994, c. 748; 1995, c. 398; 2001, c. 844; 2005, c. 102; 2006, c. 702.)

§ 2.2-4022. Subpoenas, depositions and requests for admissions.

The agency or its designated subordinates may, and on request of any party to a case shall, issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence. Any person so subpoenaed who objects may, if the agency does not quash or modify the subpoena at his timely request as illegally or improvidently granted, immediately procure by petition a decision on the validity thereof in the circuit court as provided in § 2.2-4003; and otherwise in any case of refusal or neglect to comply with an agency subpoena, unless the basic law under which the agency is operating provides some other recourse, enforcement, or penalty, the agency may procure an order of enforcement from such court. Depositions de bene esse and requests for admissions may be directed, issued, and taken on order of the agency for good cause shown; and orders or authorizations therefor may be challenged or enforced in the same manner as subpoenas. Nothing in this section shall be taken to authorize discovery proceedings.

(1975, c. 503, § 9-6.14:13; 2001, c. 844.)

§ 2.2-4023. Final orders.

The terms of any final agency case decision, as signed by it, shall be served upon the named parties by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies; and they, or facsimiles thereof, together with the full record or file in every case shall be made available for public inspection or copying except (i) so far as the agency may withhold the same in whole or part for the purpose of protecting individuals mentioned from personal embarrassment, obloquy, or disclosures of a private nature including statements

respecting the physical, mental, moral, or financial condition of such individuals or (ii) for trade secrets or, so far as protected by other laws, other commercial or industrial information imparted in confidence.

(1975, c. 503, § 9-6.14:14; 2001, c. 844.)

§ 2.2-4024. Hearing officers.

A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and
3. Completion of a course of training approved by the Executive Secretary of the Supreme Court.

In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than ten days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within ninety days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within ninety days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within thirty days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show

good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission and the Virginia Resources Authority pursuant to their basic laws.

(1986, c. 615, § 9-6.14:14.1; 1988, c. 865; 1990, c. 219; 1991, c. 214; 1992, c. 659; 1993, c. 898; 1995, cc. 744, 776, 803, 805; 1996, cc. 189, 205, 639, 658; 2001, c. 844; 2002, cc. 448, 698.)

§ 2.2-4025. Exemptions operation of this article; limitations.

A. This article shall not apply to any agency action that (i) is placed beyond the control of the courts by constitutional or statutory provisions expressly precluding court review, (ii) involves solely the internal management or routine of an agency, (iii) is a decision resting entirely upon an inspection, test, or election save as to want of authority therefor or claim of arbitrariness or fraud therein, (iv) is a case in which the agency is acting as an agent for a court, or (v) encompasses matters subject by law to a trial de novo in any court.

B. The provisions of this article, however, shall apply to case decisions regarding the grant or denial of Temporary Assistance for Needy Families, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization. However, no appeal may be brought regarding the adequacy of standards of need and payment levels for public assistance and social services programs. Notwithstanding the provisions of § 2.2-4027, the review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § 2.2-4028.

(1975, c. 503, §§ 9-6.14:4.1, 9-6.14:15, 9-6.14:16; 1986, c. 615; 1989, cc. 677, 734; 2001, c. 844; 2002, c. 747.)

§ 2.2-4026. Right, forms, venue.

Any person affected by and claiming the unlawfulness of any regulation, or party aggrieved by and claiming unlawfulness of a case decision and whether exempted from the procedural requirements of Article 2 (§ 2.2-4006 et seq.) or 3 (§ 2.2-4018 et seq.) of this chapter, shall have a right to the direct review thereof by an appropriate and timely court action against the agency or its officers or agents in the manner provided by the rules of the Supreme Court of Virginia. Actions may be instituted in any court of competent jurisdiction as provided in § 2.2-4003, and the judgments of the courts of original jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise provided by law. In addition, when any regulation or case decision is the subject of an enforcement action in court, it shall also be reviewable by the court as a defense to the action, and the judgment or decree therein shall be appealable as in other cases.

(1975, c. 503, § 9-6.14:16; 1986, c. 615; 1989, cc. 677, 734; 2001, c. 844.)

§ 2.2-4027. Issues on review.

The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. The determination of such fact issue shall be made upon the whole evidentiary record provided by the agency if its proceeding was required to be conducted as provided in § 2.2-4009 or 2.2-4020 or, as to subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for opportunity for an agency record of and decision upon the evidence therein.

In addition to any other judicial review provided by law, a small business, as defined in subsection A of § 2.2-4007.1, that is adversely affected or aggrieved by final agency action shall be entitled to judicial review of compliance with the requirements of subdivision A 2 of § 2.2-4007.04 and § 2.2-4007.1 within one year following the date of final agency action.

When the decision on review is to be made on the agency record, the duty of the court with respect to issues of fact shall be limited to ascertaining whether there was substantial evidence in the agency record upon which the agency as the trier of the facts could reasonably find them to be as it did.

Where there is no agency record so required and made, any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings under § 2.2-4007.01 or 2.2-4019 as augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency.

Whether the fact issues are reviewed on the agency record or one made in the review action, the court shall take due account of the presumption of official regularity, the experience and

specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

(1975, c. 503, § 9-6.14:17; 1989, c. 601; 2001, c. 844; 2005, cc. 619, 682; 2007, cc. 873, 916.)

§ 2.2-4028. Intermediate relief.

When judicial review is instituted or is about to be, the agency concerned may, on request of any party or its own motion, postpone the effective date of the regulation or decision involved where it deems that justice so requires. Otherwise the court may, on proper application and with or without bond, deposits in court, or other safeguards or assurances as may be suitable, issue all necessary and appropriate process to postpone the effective dates or preserve existing status or rights pending conclusion of the review proceedings if the court finds the same to be required to prevent immediate, unavoidable, and irreparable injury and that the issues of law or fact presented are not only substantial but that there is probable cause for it to anticipate a likelihood of reversible error in accordance with § 2.2-4027. Actions by the court may include (i) the stay of operation of agency decisions of an injunctive nature or those requiring the payment of money or suspending or revoking a license or other benefit and (ii) continuation of previous licenses in effect until timely applications for renewal are duly determined by the agency.

(1975, c. 503, § 9-6.14:18; 2001, c. 844.)

§ 2.2-4029. Court judgments.

Unless an error of law as defined in § 2.2-4027 appears, the court shall dismiss the review action or affirm the agency regulation or decision. Otherwise, it may compel agency action unlawfully and arbitrarily withheld or unreasonably delayed except that the court shall not itself undertake to supply agency action committed by the basic law to the agency. Where a regulation or case decision is found by the court not to be in accordance with law under § 2.2-4027, the court shall suspend or set it aside and remand the matter to the agency for further proceedings, if any, as the court may permit or direct in accordance with law.

(1975, c. 503, § 9-6.14:19; 2001, c. 844.)

§ 2.2-4030. Recovery of costs and attorneys' fees from agency.

A. In any civil case brought under Article 5 (§ 2.2-4025 et seq.) of this chapter or §§ 2.2-4002, 2.2-4006, 2.2-4011, or § 2.2-4018, in which any person contests any agency action, such person shall be entitled to recover from that agency, including the Department of Game and Inland Fisheries, reasonable costs and attorneys' fees if such person substantially prevails on the merits of the case and the agency's position is not substantially justified, unless special circumstances would make an award unjust. The award of attorneys' fees shall not exceed $25,000.
B. Nothing in this section shall be deemed to grant permission to bring an action against an agency if the agency would otherwise be immune from suit, or to grant a right to bring an action by a person who would otherwise lack standing to bring the action.

C. Any costs and attorneys' fees assessed against an agency under this section shall be charged against the operating expenses of the agency for the fiscal year in which the assessment is made, and shall not be reimbursed from any other source.

(1981, c. 446, § 9-6.14:21; 1997, c. 692; 2001, c. 844.)

§ 2.2-4031. Publication of Virginia Register of Regulations; exceptions; notice of public hearings of proposed regulations.

A. The Registrar shall publish every two weeks a Virginia Register of Regulations that shall include (i) proposed and final regulations; (ii) emergency regulations; (iii) executive orders; (iv) notices of all public hearings on regulations; (v) petitions for rulemaking made in accordance with § 2.2-4007; and (vi) tax bulletins. The entire proposed regulation shall be published in the Register; however, if an existing regulation has been previously published in the Virginia Administrative Code, then only those sections of regulations to be amended need to be published in the Register. If the length of the regulation falls within the guidelines established by the Registrar for the publication of a summary in lieu of the full text of the regulation, then, after consultation with the promulgating agency, the Registrar may publish only the summary of the regulation. In this event, the full text of the regulation shall be available for public inspection at the office of the Registrar and the promulgating agency.

If a proposed regulation is adopted as published or, in the sole discretion of the Registrar of Regulations, the only changes that have been made are those that can be clearly and concisely explained, the adopted regulation need not be published at length. Instead, the Register shall contain a notation that the proposed regulation has been adopted as published as a proposed regulation without change or stating the changes made. The proposed regulation shall be clearly identified with a citation to the issue and page numbers where published.

A copy of all reporting forms the promulgating agency anticipates will be incorporated into or be used in administering the regulation shall be published with the proposed and final regulation in the Register.

B. Each regulation shall be prefaced with a summary explaining that regulation in plain and clear language. Summaries shall be prepared by the promulgating agency and approved by the Registrar prior to their publication in the Register. The notice required by § 2.2-4007.01 shall include (i) a statement of the date, time and place of the hearing at which the regulation is to be considered; (ii) a brief statement as to the regulation under consideration; (iii) reference to the legal authority of the agency to act; and (iv) the name, address and telephone number of an individual to contact for further information about that regulation. Agencies shall present their proposed regulations in a standardized format developed by the Virginia Code Commission in accordance with subdivision 1 of § 2.2-4104 of the Virginia Register Act (§ 2.2-4100 et seq.). Notwithstanding the exemptions allowed under § 2.2-4002, 2.2-4006 or 2.2-4011, the proposed and final regulations of all agencies shall be published in the Register. However, proposed regulations of the Marine Resources Commission and regulations exempted by subject from the provisions of this chapter by subsection B of § 2.2-4002 shall be exempt from this section.

C. The Virginia Register of Regulations shall be published by posting the Register on the Virginia Code Commission's website. The Virginia Code Commission may arrange for the printing of the Virginia Register as provided in § 30-146.

(1984, c. 5, § 9-6.14:22; 1985, cc. 67, 602; 1986, c. 615; 1988, c. 364; 1989, c. 71; 1992, c. 216; 2001, c. 844; 2002, c. 241; 2003, c. 212; 2007, cc. 300, 873, 916.)

§§ 2.2-4032. , 2.2-4033.

Repealed by Acts 2003, c. 212, cl. 2, effective March 16, 2003.

Code of Virginia

Title 2.2, Chapter 37

Virginia Freedom of Information Act

§ 2.2-3700. Short title; policy.

A. This chapter may be cited as "The Virginia Freedom of Information Act."
B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.
The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.
All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.
Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

(1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.)

§ 2.2-3701. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Closed meeting" means a meeting from which the public is excluded.
"Electronic communication" means any audio or combined audio and visual communication method.
"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.
"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of

the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. The gathering of employees of a public body shall not be deemed a "meeting" subject to the provisions of this chapter.
"Open meeting" or "public meeting" means a meeting at which the public may be present.
"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.
For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.
"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.
"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.
"Scholastic records" means those records containing information directly related to a student and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

(1968, c. 479, § 2.1-341; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358; 1990, c. 538; 1993, cc. 270, 720; 1994, cc. 845, 931; 1996, c. 609; 1997, c. 641; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393; 2003, c. 897; 2007, c. 945; 2008, cc. 233, 789.)

§ 2.2-3702. Notice of chapter.

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

(1976, c. 467, § 2.1-341.1; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.)

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility.

A. The provisions of this chapter shall not apply to:
1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;
2. Petit juries and grand juries;
3. Family assessment and planning teams established pursuant to § 2.2-5207;
4. The Virginia State Crime Commission; and
5. The records required by law to be maintained by the clerks of the courts of record, as defined in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.
B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.
C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

(1999, cc. 703, 726, § 2.1-341.2; 2001, c. 844; 2003, cc. 989, 1018; 2004, cc. 398, 690; 2007, cc. 438, 548, 626.)

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges.

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld because their release is prohibited by law or the custodian has exercised his discretion to withhold the records in accordance with this chapter. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records in accordance with this chapter. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records. When a portion of a requested record is withheld, the public body may delete or excise only that portion of the record to which an exemption applies and shall release the remainder of the record.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsections G and J, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or

portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed $200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. Every public body of state government shall compile, and annually update, an index of computer databases that contains at a minimum those databases created by them on or after July 1, 1997. "Computer database" means a structured collection of data or records residing in a computer. Such index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of data fields, a description of the format or record layout, the date last updated, a list of any data fields to which public access is restricted, a description of each format in which the database can be copied or reproduced using the public body's computer facilities, and a schedule of fees for the production of copies in each available form. The form, context, language, and guidelines for the indices and the databases to be indexed shall be developed by the Virginia Information Technologies Agency in consultation with the Librarian of Virginia and the State Archivist. The public body shall not be required to disclose its software security, including passwords.

(1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc.

213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. 485, 532, 606, 839, 853, 918; 1995, cc. 299, 362, 499, 562, 638, 722, 812, 837; 1996, cc. 168, 469, 589, 599, 783, 786, 794, 855, 862, 902, 905, 1001, 1046; 1997, cc. 198, 295, 439, 567, 636, 641, 777, 782, 785, 838, 861; 1998, cc. 427, 891; 1999, cc. 438, 703, 726; 2001, c. 844; 2002, cc. 715, 830; 2003, cc. 275, 981, 1021; 2007, c. 439.)

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state public bodies; assistance by the Freedom of Information Advisory Council.

A. All state public bodies created in the executive branch of state government and subject to the provisions of this chapter shall make available the following information to the public upon request and shall post such information on the Internet:
1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this subdivision "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;
2. Contact information for the person designated by the public body to (i) assist a requester in making a request for records or (ii) respond to requests for public records; and
3. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter.
B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request.

(2004, c. 730.)

§ 2.2-3705.

Repealed by Acts 2004, c. 690.

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:
1. Personnel records containing information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of any personnel record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.
2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other records protected by the attorney-client privilege.
3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

4. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

6. Vendor proprietary information software that may be in the official records of a public body. For the purpose of this subdivision, "vendor proprietary software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

7. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

9. Records concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of this title, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall prohibit the disclosure of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

12. Records relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such records would adversely affect the bargaining position or negotiating strategy of the public body. Such records shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the

provisions of this subdivision shall not apply, and any release of records relating to such transactions shall be governed by the Virginia Public Procurement Act.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690.)

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:
1. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
2. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information, the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.
Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.
Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.
3. Documentation or other information that describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.
4. Plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person, including (i) critical infrastructure sector or structural components; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes or other records; and (iii) engineering or architectural records, or records containing information derived from such records, to the extent such records reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems. The same categories of records of any governmental or

nongovernmental person or entity submitted to a public body for the purpose of antiterrorism response planning may be withheld from disclosure if such person or entity in writing (a) invokes the protections of this subdivision, (b) identifies with specificity the records or portions thereof for which protection is sought, and (c) states with reasonable particularity why the protection of such records from public disclosure is necessary to meet the objective of antiterrorism planning or protection. Such statement shall be a public record and shall be disclosed upon request. Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the structural or environmental soundness of any building, nor shall it prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

5. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

6. Engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes or other records, the disclosure of which would reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols, to the extent such disclosure would jeopardize the security of any governmental facility, building or structure or the safety of persons using such facility, building or structure.

7. Security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to prohibit the disclosure of records relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster or other catastrophic event, or (ii) any person on school property has suffered or been threatened with any personal injury.

8. —Expired.]

9. Records of the Commitment Review Committee concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2; except that in no case shall records identifying the victims of a sexually violent predator be disclosed.

10. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system, if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

11. Subscriber data, which for the purposes of this subdivision, means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier, collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.), and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911

emergency dispatch system or an emergency notification or reverse 911 system, if such records are not otherwise publicly available. Nothing in this subdivision shall prevent the release of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.
12. Records of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local or regional military affairs organization appointed by a local governing body, to the extent such records (i) contain information relating to strategies under consideration or development by the Council, the Authority, or such organizations to prevent the closure or realignment of federal military installations located in Virginia, to limit the adverse economic effect of such realignment or closure, or to seek additional tenant activity growth from the Department of Defense or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council, the Authority, or such organizations in connection with their work. In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities for which records are sought.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 398, 482, 690, 770; 2005, c. 410; 2008, c. 721.)

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:
1. Confidential records of all investigations of applications for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the State Lottery Department, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.
2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth.
3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management or to such personnel of any local public body, including local school boards as are responsible for conducting such investigations in confidence.

However, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form that does not reveal the identity of charging parties, persons supplying the information or other individuals involved in the investigation.
4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.
5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-2638, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.
6. Records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be open to inspection and copying upon completion of the study or investigation.
7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the (i) Auditor of Public Accounts; (ii) Joint Legislative Audit and Review Commission; (iii) Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline; (iv) committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (v) auditors, appointed by the local governing body of any county, city or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department or program of such body. Records of completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is prohibited by this section, the records disclosed shall include, but not be limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.
8. Records of the Virginia Office for Protection and Advocacy consisting of documentary evidence received or maintained by the Office or its agents in connection with specific complaints or investigations, and records of communications between employees and agents of the Office and its clients or prospective clients concerning specific complaints, investigations or cases. Upon the conclusion of an investigation of a complaint, this exclusion shall no longer apply, but the Office may not at any time release the identity of any complainant or person with mental illness, mental retardation, developmental disabilities or other disability, unless (i) such complainant or person or his legal representative consents in writing to such identification or (ii) such identification is required by court order.

9. Information furnished in confidence to the Department of Employment Dispute Resolution with respect to an investigation, consultation, or mediation under Chapter 10 (§ 2.2-1000 et seq.) of this title, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. However, nothing in this section shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.
10. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints made to a local governing body.
11. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.
12. Records furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of records to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.
13. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation conducted by or for the Board of Education related to the denial, suspension, or revocation of teacher licenses. However, this subdivision shall not prohibit the disclosure of records to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Records of completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The records disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information in the records regarding a current or former student shall be released except as permitted by state or federal law.
14. Records, notes and information provided in confidence and related to an investigation by the Attorney General under Article 5 (§ 3.1-336.1 et seq.) or Article 6 (§ 3.1-336.3 et seq.) of Chapter 18 of Title 3.1, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, records related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging parties, complainants, persons supplying information, witnesses or other individuals involved in the investigation.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518,

844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 605, 690, 766; 2005, c. 601; 2006, cc. 25, 95; 2008, cc. 387, 668, 689, 758.)

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such records for inspection and copying.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

3. Records of the Brown v. Board of Education Scholarship Awards Committee relating to personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

5. All records of the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

6. Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form that does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.
7. Records maintained in connection with fundraising activities by or for a public institution of higher education to the extent that such records reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690; 2006, c. 518; 2008, cc. 561, 665.)

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:
1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.
Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.
Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a

student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and copying as provided in § 2.2-3704. No such summaries or data shall include any patient-identifying information.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 2.2-706 and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2. However, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information and records acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Records of the Intervention Program Committee within the Department of Health Professions, to the extent such records may identify any practitioner who may be, or who is actually, impaired to the extent disclosure is prohibited by § 54.1-2517.

12. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5, to the extent such records contain (i) medical or mental records, or other data identifying individual patients or (ii) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.
13. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.
14. Records, information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.
15. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.
16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.
17. Records of the State Health Commissioner relating to the health of any person or persons subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1; this provision shall not, however, be construed to prohibit the disclosure of statistical summaries, abstracts or other information in aggregate form.
18. Records containing the names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 65, 666, 690, 773, 1014, 1021; 2005, cc. 181, 227, 716; 2008, c. 539.)

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:
1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.
2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.
3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, the Tobacco Indemnification and Community

Revitalization Commission, a nonprofit, nonstock corporation created pursuant to § 2.2-2240.1, or local or regional industrial or economic development authorities or organizations, used by the Department, the Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by such entities, where competition or bargaining is involved and where, if such records are made public, the financial interest of the governmental unit would be adversely affected.
4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.
5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.
6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.
7. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.
8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.
9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.
10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.
11. a. Memoranda, staff evaluations, or other records prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, § 56-573.1:1 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Records provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, to the extent that such records contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the records specified in clauses (i), (ii) and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the records afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 56-573.1:1 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction," "affected local jurisdiction," "comprehensive agreement," "interim agreement," "qualifying project," "qualifying transportation facility," "responsible public entity," and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary records that are not generally available to the public through regulatory disclosure or

otherwise, provided by a (a) bidder or applicant for a franchise or (b) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the records relate to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant application, or accompanying a grant application, to the Innovative Technology Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2, to the extent that disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of

the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.
20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial records of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Minority Business Enterprise as part of an application for (i) certification as a small, women- or minority-owned business in accordance with Chapter 14 (§ 2.2-1400 et seq.) of this title or (ii) a claim made by a disadvantaged business or an economically disadvantaged individual against the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311. In order for such trade secrets or financial records to be excluded from the provisions of this chapter, the business shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reasons why protection is necessary.
21. Documents and other information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to § 32.1-276.5:1.
22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial records, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the Inspector General of the Virginia Department of Transportation for the purpose of an audit, special investigation, or any study requested by the Inspector General's Office in accordance with law.
In order for the records specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the Department:
1. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.
The Inspector General of the Virginia Department of Transportation shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial records of the private entity. The Virginia Department of Transportation shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 593, 690; 2005, cc. 258, 411; 2006, cc. 73, 76, 467, 831, 921, 936; 2006, Sp. Sess. I, c. 1; 2007, cc. 374, 693; 2008, cc. 71, 102, 266, 387, 633, 689, 736, 743.)

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exemptions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:
1. State income, business, and estate tax returns, personal property tax returns, scholastic and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor; Lieutenant Governor; the Attorney General; the members of the General Assembly or the Division of Legislative Services; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no record, which is otherwise open to inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence.
As used in this subdivision:
"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and the Director of the Virginia Liaison Office; and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.
"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.
3. Library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.
4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.
5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.
6. Records and writings furnished by a member of the General Assembly to a meeting of a standing committee, special committee or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.
7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.
8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.
9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.
10. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such

information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

11. Records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, relating to the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of records relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Records of the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; data, records or information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and data, records or information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern,

when such data, records or information have not been publicly released, published, copyrighted or patented.
16. Records of the Department of Environmental Quality, the State Water Control Board, State Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been proposed to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.
17. As it pertains to any person, records related to the operation of toll facilities that identify an individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.
18. Records of the State Lottery Department pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.
19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.
20. Records, investigative notes, correspondence, and information pertaining to the planning, scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents, employees or persons employed to perform an audit or examination of holder records.
21. Records of the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body, to the extent that such records reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.
22. Records of state or local park and recreation departments and local and regional park authorities to the extent such records contain information identifying a person under the age of 18 years, where the parent or legal guardian of such person has requested in writing that such information not be disclosed. However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For records of such persons who are emancipated, the right of access may be asserted by the subject thereof.
23. Records submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management, to the extent that they reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other

wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.
24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.
25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30 or of a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system) relating to:
a. Internal deliberations of or decisions by the retirement system on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, to the extent that disclosure of such records would have an adverse impact on the financial interest of the retirement system; and
b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system, to the extent disclosure of such records would have an adverse impact on the financial interest of the retirement system.
For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system:
(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;
(2) Identifying with specificity the data or other materials for which protection is sought; and
(3) Stating the reasons why protection is necessary.
The retirement system shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.
Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.
26. Records of the Department of Corrections made confidential by § 53.1-233.
27. Records maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 426, 690, 832; 2005, cc. 165, 508; 2007, cc. 406, 652, 660, 737, 739; 2008, cc. 16, 739.)

§ 2.2-3705.8. Limitation on record exclusions.

A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees.

The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is $10,000 or less.
B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

(1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690.)

§ 2.2-3706. Disclosure of criminal records; limitations.

A. As used in this section:
"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.
B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.
C. Information in the custody of law-enforcement agencies relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.
D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.
E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.
F. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:
1. Complaints, memoranda, correspondence, case files or reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;
2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;
3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;
5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;
6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;
7. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;
8. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation services agency in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1; and
9. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.
G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this chapter except:
1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;
2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or
3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law.
H. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 are excluded from the provisions of this chapter, including information obtained from state, local and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913.
I. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

(1999, cc. 703, 726, § 2.1-342.2; 2000, c. 227; 2001, c. 844; 2002, cc. 393, 715, 769, 830; 2004, cc. 685, 735; 2006, cc. 857, 914; 2007, c. 133.)

§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes.

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.
B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708, 2.2-3709 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices by electronic means by other public bodies shall be encouraged. The notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. Nothing in this chapter shall be construed to prohibit the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall include, but are not limited to, (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means.

(1968, c. 479, § 2.1-343; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358; 1990, c. 538; 1993, c. 720; 1995, c. 562; 1999, cc. 696, 703, 726; 2000, c. 227; 2001, c. 844; 2004, cc. 730, 768; 2005, c. 352; 2007, c. 300.)

§ 2.2-3707.01. Meetings of the General Assembly.

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § 2.2-3708.

(2004, c. 768; 2005, c. 352.)

§ 2.2-3707.1. Posting of minutes for state boards and commissions.

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's website, if any, and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Draft minutes of meetings shall be posted as soon as possible but no later than ten working days after the

conclusion of the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

(2002, cc. 580, 618; 2006, cc. 474, 595; 2007, c. 300.)

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; notice; report.

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. Except as provided in subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location. State public bodies, however, may meet by electronic communication means without a quorum of the public body physically assembled at one location when (a) the Governor has declared a state of emergency in accordance with § 44-146.17, (b) the meeting is necessary to take action to address the emergency, and (c) the public body otherwise complies with the provisions of this section.

If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any meetings held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

D. Agenda packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G or that are continued to address an emergency or to conclude the

agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year:

1. The total number of electronic communication meetings held that year;
2. The dates and purposes of the meetings;
3. The number of sites for each meeting;
4. The types of electronic communication means by which the meetings were held;
5. The number of participants, including members of the public, at each meeting location;
6. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;
7. A summary of any public comment received about the electronic communication meetings; and
8. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

G. Any local governing body, school board, or any authority, board, bureau, commission, district, or agency of local government may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The local public body convening a meeting in accordance with this subsection shall (a) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the local public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions of this section. The nature of the emergency and the fact that the meeting was held by electronic communication means shall be stated in the minutes.

(1984, c. 252, § 2.1-343.1; 1989, c. 358; 1991, c. 473; 1992, c. 153; 1993, c. 270; 1995, c. 278; 1996, c. 289; 1999, cc. 703, 726; 2001, c. 844; 2003, cc. 981, 1021; 2005, c. 352; 2007, cc. 512, 945; 2008, cc. 233, 789.)

§ 2.2-3708.1. Participation in meetings in event of emergency; certain disabilities; distance from meeting location for certain public bodies.

A. A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend the meeting due to an emergency and identifies with specificity the nature of the emergency, and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in

its minutes the specific nature of the emergency and the remote location from which the member participated.
Such participation by the member shall be limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer;
2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or
3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting (a) approves such member's participation by a majority vote of the members present and (b) records in its minutes the remote location from which the member participated.
B. Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:
1. A quorum of the public body is physically assembled at the primary or central meeting location; and
2. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

(2007, c. 945.)

§ 2.2-3709.

Expired.

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited.

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.
B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

(1987, c. 71, § 2.1-343.2; 1999, cc. 703, 726; 2000, c. 932; 2001, cc. 710, 844; 2002, c. 491.)

§ 2.2-3711. Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:
1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board.
2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.
3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.
4. The protection of the privacy of individuals in personal matters not related to public business.
5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.
6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.
7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.
8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign

governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.
9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.
10. Discussion or consideration of honorary degrees or special awards.
11. Discussion or consideration of tests, examinations, or other records excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.
12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.
13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.
14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.
15. Discussion or consideration of medical and mental records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.
16. Deliberations of the State Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of State Lottery Department matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.
17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.
18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.
19. Discussion of plans to protect public safety as it relates to terrorist activity and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such activity or a related threat to public safety; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.
20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, regarding the acquisition, holding or disposition

of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or provided to the retirement system under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system or the Rector and Visitors of the University of Virginia. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.
21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, and those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, and those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3.
22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.
23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees.
24. Those portions of the meetings of the Intervention Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.
25. Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.
26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.
28. Discussion or consideration of records excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected local jurisdiction, as those terms are defined in § 56-557, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.
29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.
30. Discussion or consideration of grant application records excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovative Technology Authority or a grant allocation committee appointed to advise the Innovative Technology Authority on the grant applications.
31. Discussion or consideration by the Commitment Review Committee of records excluded from this chapter pursuant to subdivision 9 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.
32. —Expired.]
33. Discussion or consideration of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6.
34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary records and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.
35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.
36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision F 1 of § 2.2-3706.
37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of records or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.
38. Discussion or consideration by the Virginia Port Authority of records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.
39. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, or the Investment Advisory Committee appointed pursuant to § 51.1-124.26, or by any local retirement system, acting pursuant to § 51.1-803 of records excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.
40. Discussion or consideration by the Department of Business Assistance, the Virginia Economic Development Partnership, the Virginia Tourism Authority, the Tobacco Indemnification and Community Revitalization Commission, a nonprofit, nonstock corporation created pursuant to §

2.2-2240.1, or local or regional industrial or economic development authorities or organizations of records excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.
41. Discussion or consideration by the Board of Education of records relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 13 of § 2.2-3705.3.
42. Those portions of meetings of the Virginia Military Advisory Council, the Virginia National Defense Industrial Authority, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of records excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.2.
B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.
C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.
D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.
E. This section shall not be construed to (i) require the disclosure of any contract between the Intervention Program Committee within the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

(1968, c. 479, § 2.1-344; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478; 1990, cc. 435, 538; 1991, c. 708; 1992, c. 444; 1993, cc. 270, 499; 1995, c. 499; 1996, cc. 855, 862, 902, 905, 1046; 1997, cc. 439, 641, 785, 861; 1999, cc. 485, 518, 703, 726, 849, 867, 868; 2000, cc. 382, 400, 720, 1064; 2001, cc. 231, 844; 2002, cc. 87, 393, 455, 478, 499, 655, 715, 830; 2003, cc. 274, 291, 332, 618, 703; 2004, cc. 398, 690, 770; 2005, cc. 258, 411, 568; 2006, cc. 430, 499, 518, 560; 2007, cc. 133, 374, 566, 739; 2008, cc. 626, 633, 668, 721, 743.)

§ 2.2-3712. Closed meetings procedures; certification of proceedings.

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-3711. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions

from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.
B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within fifteen days thereafter.
C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.
D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.
E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.
F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.
G. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.
H. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

(1989, c. 358, § 2.1-344.1; 1999, cc. 703, 726; 2001, c. 844.)

§ 2.2-3713. Proceedings for enforcement of chapter.

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Venue for the petition shall be addressed as follows:
1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and
3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.
B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.
C. The petition for mandamus or injunction shall be heard within seven days of the date when the same is made. However, any petition made outside of the regular terms of the circuit court of a county that is included in a judicial circuit with another county or counties, the hearing on the petition shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.
D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.
E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exemption by a preponderance of the evidence. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.
F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

(1968, c. 479, § 2.1-346; 1976, c. 709; 1978, c. 826; 1989, c. 358; 1990, c. 217; 1996, c. 578; 1999, cc. 703, 726; 2001, c. 844; 2007, c. 560.)

§ 2.2-3714. Violations and penalties.

In a proceeding commenced against members of public bodies under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than $250 nor more than $1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than $1,000 nor more than $2,500.

(1976, c. 467, § 2.1-346.1; 1978, c. 826; 1984, c. 252; 1989, c. 358; 1996, c. 578; 1999, cc. 703, 726; 2001, c. 844; 2003, c. 319; 2004, c. 690; 2008, cc. 233, 789.)

Legislative Process

The *Code of Virginia* (Section 54.1 et seq.) provides the statutory authority for regulatory boards and programs at the Department of Professional and Occupational Regulation. The law sets the parameters within which a board can regulate an occupation or profession as well as establishes the board's authority for the enforcement of the law and its regulations.

Any additions to the *Code* or revisions to a statute must be passed by the General Assembly and signed by the Governor. The Department of Professional and Occupational Regulation and the regulatory boards it administers use the following process to initiate all legislative proposals for a given year.

At regularly scheduled meetings, a regulatory board may identify additions to a statute it believes are needed. The board may also identify provisions within the statute that could be revised or deleted. When such additions or revisions are discussed, the board also determines whether alternative means exist which would achieve the same results.

Each summer, the Governor will request state agencies to submit legislative proposals for consideration. The Department requests regulatory boards to submit any legislative proposals or suggestions that have arisen at board meetings throughout the year. When a legislative proposal or suggestion comes up during a meeting, a board is asked to vote on it. The Director is then responsible for compiling those proposals which have been approved by the boards and prioritizing them along with the Department's own submission. Since the Department has numerous regulatory boards submitting proposals, not all proposals will be included in the final list of submissions which is presented to the Secretary of Commerce and Trade.

If the Secretary approves a submission from the list, legislation will then be drafted and submitted to the Attorney General's Office for a "Letter of Assurance" that the legislation is constitutional and does not conflict with state or federal laws. If the "Letter of Assurance" is granted, the "Letter" along with the draft legislation is submitted to the Secretary of Commerce and Trade for his review. If the "Letter" is not granted, the submission may be returned to the board which proposed it so that the Board can address the Attorney General's Office's concerns. Alternatively, nothing may be done with the submission and in turn it will not be submitted to the General Assembly that year.

If the Secretary of Commerce and Trade submits the legislation to the Governor, it will be judged on outlined criteria such as whether the proposed legislation is necessary to comply with federal law or a recent court decision, or whether the proposal is critical to the operation of state government. The Governor's Office reviews the numerous legislative proposals it receives from all state agencies and selects only those that are determined to be "critical" for inclusion in the Governor's legislative package to the General Assembly.

If the Governor elects not to include particular proposals in his package, Board members should not seek outside entities to pursue legislation. All Board proposals must follow the procedures for introduction outlined by the Governor and the Department.

If the Governor approves a legislative proposal, the Department will work with the Governor's Office to ensure passage. Board members may be requested by the agency to lend support through the legislative process. The General Assembly assigns every legislative proposal to a committee. The committee allows for public comment at a hearing. If the committee reports the legislation, it proceeds to the full legislative house of origin. If the house of origin adopts the bill, it goes to the other chamber where again it is reviewed in committee. If the bill passes both houses, it is sent to the Governor. Newly enacted laws are effective July 1 of the year in which the legislation was introduced unless the bill establishes a different enactment date.

If the Board is interested in pursuing legislation, please notify your Executive Director, Deputy Director, or the Director. If the Department or the Office of the Governor decides to include the legislation in the Governor's legislative package, you will be informed by the Department. However, if the Department, the Secretary of Commerce and Trade, or the Office of the Governor decide not to carry the legislation, the Department will inform the Board of this decision as well.

There may be times when legislation that may affect your program is introduced by an outside entity. The Department will inform the Board and you may wish to take a position as a Board. Without a formal Board vote, however, you may only express your opinion as an individual citizen – not as a Board member – to avoid speaking improperly on behalf of the Board. There will be occasions when the Department or a Board will not take a specific position on a piece of legislation. Please call your Executive Director immediately if you receive a call from a member of the General Assembly or their staff regarding a piece of legislation currently before them that will either affect a regulatory board administered by the Department or the Department in general.

Please feel free to contact staff at any time with questions or concerns you may have about this process.

Regulatory Review Process

The regulatory review process is governed by the Administrative Process Act and the Governor's Executive Order. A regulation is promulgated, amended or repealed through a regulatory action. All regulatory actions are tracked through the Regulatory Town Hall website – www.townhall.virginia.gov. The website contains a wealth of information about the regulatory process. Following is an excerpt from the website of common questions and answers and a chart detailing the process.

What is a regulation?

A regulation is a general rule governing people's rights or conduct that is promulgated by a state agency and has the force of law. Agencies promulgate regulations in order to administer and enforce specific state laws and to implement general agency objectives. Each regulation must be authorized by law. Each chapter of the Virginia Administrative Code (VAC) contains a single regulation.

How is a regulation promulgated?

A regulation is created, amended, or repealed through a regulatory action. Typically, regulatory actions take about 18 months from start to finish. The purpose of a regulatory action is to ensure that the public has an opportunity to participate in the rulemaking process and that all perspectives are considered in the development of a final regulation. In addition, proposed regulations must meet the Governor's policy goals as set out in his Executive Order and are usually subject to an economic impact analysis. Unless there are special circumstances (detailed at the end of this section), each regulatory action goes through a mandatory three stage process. These stages are the Notice of Intended Regulatory Action (NOIRA), Proposed regulation, and Final regulation.

Notice of Intended Regulatory Action (NOIRA): The public receives notification that a regulatory change is being considered, along with a description of the changes being considered. Once this stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is at least a 30-day period during which the agency receives comments from the public. The agency reviews these comments as it develops the proposed regulation.

Proposed: The public is provided with the full text of the regulation, a statement explaining the substance of the regulatory action, and an Economic Impact Analysis (EIA) prepared by the Department of Planning and Budget. Once the proposed stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is at least a 60-day public comment period. Based on the comments received, the agency may modify the proposed text of the regulation. The agency also provides a summary of comments that have been received during the NOIRA period, and the agency's response.

Final: The public is provided with the full text of the regulation, this time with an explanation of any changes made to the text of the regulation since the proposed stage. Once the final stage is published in *The Virginia Register of Regulations* and appears on the Town Hall, there is a 30-day final adoption period.

Special circumstances

Emergency regulations: Sometimes, the General Assembly passes a law requiring an emergency regulation. Emergency regulations are effective for up to one year and are exempt from the usual regulatory process. Usually, an agency will promulgate an emergency regulation and, at the same time, begin a regulatory action for a permanent replacement regulation.

Exempt regulations: Some regulatory actions are exempt from the regulatory process described above: actions of exempt agencies, regulations setting rates or prices or relating to internal agency working, and regulations with technical changes or changes to strictly conform to changes in federal or state law. Most exempt regulations are published in final form only, however, some exempt actions can include notice and publication of a proposed text.

Fast-track regulations: The fast-track rulemaking process is for rules that are expected to be noncontroversial. Whether a rule is noncontroversial is determined by the process as follows:

After review by the Governor, a notice of a proposed fast-track rulemaking will be published in the Virginia Register and will appear on the Virginia Regulatory Town Hall. This will be followed by a public comment period of at least 60 days.

If, during the public comment period, any of the follow raise objections, the proposed rulemaking is continued using the normal process:

- · Any member of the applicable standing committee of Senate,
- · Any member of the applicable standing committee of the House of Delegates,
- · Any member of the Joint Commission on Administrative Rules (JCAR), or
- · Any objection from ten or more members of the public.

The agency will not have to start over from the beginning, however, as the initial publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action (NOIRA).

If there are no objections as described above, the regulation will become effective 15 days after the close of the public comment period, unless the regulation is withdrawn or a later effective date is specified by the agency.

For additional information, please refer to § 2.2-4012.1 of the Code of Virginia.

What is the Virginia Administrative Code (VAC)?

The Virginia Administrative Code (VAC) is the official source for Virginia's regulations. The VAC consists of approximately 1,250 chapters (regulations). You can link to the official text of a regulation in the VAC on each Chapter Information page of the Town Hall. Here is the format of a VAC citation:

Example: 24 VAC 5-20-40

24	Title Number: There are 24 titles in the Virginia Administrative Code. For example, Title 24 contains all regulations pertaining to Transportation and Motor Vehicles.
VAC	Abbreviation for Virginia Administrative Code.
5	Board Number: There are 122 boards in Virginia. For example, Board 5 of Title 24 contains regulations of the Virginia Aviation Board.
20	Chapter Number: There are approximately 1,250 chapters in the Virginia Administrative Code. Each chapter contains one regulation. For example, chapter 20 under Title 24, Board 5 contains a regulation about the licensing and operation of airports and aircraft and obstructions to airspace in Virginia.
40	Section Number: Each regulation is divided into parts, e.g., definitions, purpose, and scope. For example, section 40 of this citation is about the expiration and renewal of aircraft licenses.

What is the Virginia Administrative Process Act (APA)?

The Virginia Administrative Process Act (APA) provides the basic framework for rulemaking in Virginia. Article 2 of the APA, in particular, sets out the stages of the regulatory process, including notice and comment; requires agencies to promulgate public participation guidelines on how the public can be involved in the rulemaking process; and requires the Governor to publish procedures for executive review of regulations.

What is executive branch review?

Before a stage of a regulatory action becomes available for public comment, it often undergoes review by the Office of Attorney General, the Department of Planning and Budget, the Cabinet Secretary, and the Governor. Executive branch review includes certifying that the regulation is consistent with statutory authority and assessing the economic costs and benefits of the regulation. It also includes making sure that regulations are clearly written and easily understandable to the regulated community, determining if the regulation is essential to protect public health, safety, and welfare, and is the least burdensome and intrusive regulation possible.

What is an economic impact analysis (EIA)?

An economic impact analysis (EIA) is prepared by the Department of Planning and Budget. An EIA summarizes the costs and benefits that are expected to result from the implementation of the regulatory language. The analysis includes an evaluation of any unintended consequences the new rule may have and assessment of any less intrusive and more cost effective alternatives. The EIA must also include information on the number and types of entities affected by a regulatory action, and on the effects the regulation will have on particular localities, on employment, and on the use and value of private property. The Department has 45 days from the date of submission to complete its economic analysis. EIAs can be found on the Stage Information page for each proposed regulatory action.

What are guidance documents?

Guidance documents are developed by state agencies to provide general information to agency staff or the public on how to implement or interpret state law or agency regulations. Guidance documents are often helpful in understanding how agencies apply and enforce regulations. Links to guidance document lists can be found on Board and Chapter Information pages.

What is The Virginia Register of Regulations?

The Virginia Register of Regulations is the official publication of legal record in Virginia for regulatory actions. Citations to the Register are available on each Stage Information page of the Town Hall.

Standard regulatory process: Basic outline

Notice of Intended Regulatory Action (NOIRA)

Agency approves NOIRA.

Governor approves NOIRA.

NOIRA is published in *The Virginia Register of Regulations*.*

Submit your comment during the 30-day public comment period.**

Proposed regulation

Agency considers public comment and drafts proposed regulation.

Governor approves proposed regulation.

Proposed regulation and economic impact analysis are published in the *Register*.*

Submit your comment during the 60-day public comment period.**

Final regulation

Agency/board considers public comment and adopts final regulation.

Governor approves final regulation.

Final regulation is published in the *Register*.*

30-day final adoption period begins

Regulation becomes effective

***A regulatory stage is announced as follows:**

Email notification is sent to registered users of the Virginia Regulatory Town Hall (townhall.virginia.gov) and users may view the regulatory stage on the Town Hall;

Fourteen (14) days after Town Hall notice, the regulatory stage is published in *The Virginia Register of Regulations* (register.state.va.us/issfiles.htm), the official publication of legal record for regulations in Virginia; and

The rulemaking agency will notify individuals on its mailing list and may post information on the agency's website.

****During the public comment period** (that begins on the date the stage is published in the *Register*), submit your comment to the Town Hall Public Comment Forum.

Source: Sections 2.2-4006 through 2.2-4017 of the Code of Virginia (Article 2 of the Administrative Process Act)

For more information on regulations in Virginia, visit the award-winning Virginia Regulatory Town Hall @ townhall.virginia.gov

Produced by the Virginia Department of Planning and Budget Economic and Regulatory Analysis Division (ERAD) 2/07

Emergency regulations

Effective for up to one year, and beginning July 1, 2007, this one year period may be extended up to 6 months if the Governor approves;

Becomes effective upon approval by the Governor and filing with the Registrar of Regulations;

Promulgated if there is an "emergency situation" (1) involving an imminent threat to public health or safety or (2) in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt; and

Usually replaced with a permanent regulation; therefore, a Notice of Intended Regulatory Action (NOIRA) to promulgate the permanent replacement regulation is often filed at the same time as the emergency regulation.

Source: Section 2.2-4011 of the Code of Virginia

For more information on regulations in Virginia, visit the award-winning Virginia Regulatory Town Hall @

townhall.virginia.gov

Regulatory process:

Agency/board approves emergency regulation and submits it for executive branch review

↓

Executive branch review:

Office of the Attorney General
Department of Planning and Budget
Cabinet Secretary
Governor

↓

Agency sends **emergency regulation** to *The Virginia Register of Regulations* via the Town Hall and it **becomes effective on the date of filing** (unless otherwise indicated by the agency)

↓

1) **Email notification** is sent to registered Town Hall users and
(2) t**he public may view** the emergency regulation and supporting documents on the Town Hall

↓

14 days after Town Hall notice, the emergency regulation is published in the *Register* (register.state.va.us/issfiles.htm)

If NOIRA for permanent replacement regulation was also filed, then 30-day public comment begins

Fast-track regulations

The fast-track process is for proposed regulations that **are expected to be noncontroversial**. Whether a proposed regulation is noncontroversial is determined by the process detailed on this page.

Source: Section 2.2-4012.1 of the Code of Virginia

For more information on regulations in Virginia, visit the award-winning Virginia Regulatory Town Hall @ townhall.virginia.gov

Regulatory process:

Agency approves fast-track regulation and submits it for executive branch review.

↓

Executive branch review:

Office of the Attorney General
Department of Planning and Budget:
Cabinet Secretary
Governor

↓

Agency submits fast-track regulation to the *Virginia Register* via the Town Hall.

↓

Email notification is sent by the Town Hall to registered Town Hall users and appropriate committees of the General Assemby, and **the public may view** the fast track regulation and supporting documents on the Town Hall

↓

14 days after Town Hall notice, the fast-track regulation is published in the *Register* (register.state.va.us/issfiles.htm).

60-day period (minimum) for public comment begins. This will change to a 30-day period as of 7/1/2007.

If, during the public comment period, an objection to the fast-track regulation is received from:

-Any member of the applicable standing committee of Senate,
-Any member of the applicable standing committee of the House of Delegates,
-Any member of the Joint Commission on Administrative Rules (JCAR), or
-10 or more members of the public,

then publication of the fast-track regulation will serve as the Notice of Intended Regulatory Action (NOIRA).

↓

Proposed stage

↓

Final stage
Regulation becomes effective

15 days after the close of the public comment period, **the regulation becomes effective** (unless the regulation is withdrawn or a later effective date is specified by the agency).

Petitions for rulemaking

A "petition for rulemaking" is a request by a person(s) to an agency/board to develop a new regulation or amend an existing regulation.

Source: Section 2.2-4007.A of the Code of Virginia

For more information on regulations in Virginia, visit the award-winning Virginia Regulatory Town Hall @

townhall.virginia.gov

Regulatory process:

Submit to the agency/board a letter/email that includes the following:

Though not legally required, be sure to include the phrases, "Code of Virginia Section 2.2-4007.A" and "petition for rulemaking" so that an agency is sure to know how to handle your request .

The reason(s) why you wish to change an existing regulation or create a new regulation,
(if an existing regulation, include the Virginia Administrative Code citation, e.g., 1 VAC 2-30)

Cite the legal authority of the agency/board to take the action requested, e.g., Code of Virginia § 12.3-45, i.e., the language that says a board or agency can or must promulgate regulations.

↓

Within 14 days of receiving your request, the agency/board must send a notice with your name, the nature of your request, and its plan for handling your request to the *Virginia Register.*

Once this notice has been submitted to the *Virginia Register,* it will appear on the Town Hall website at townhall.virginia.gov

↓

Request for rule change is published in the *Register* (register.state.va./issfiles.htm)

21-day public comment period also begins on this date

↓

Within 90 days, the agency issues a written decision to grant or deny your request
(unless the agency/board has not met within the 90-day period, in which case it must provide a written decision no later than 14 days after it next meets).

The agency's decision must include its reasons for taking action or no action and be published in the *Register.* The agency's decision also appears on the Town Hall.

Note: Agency decisions regarding requests to change a rule are not subject to court review

Produced by Virginia Department of Planning and Budget Economic and Regulatory Analysis Division (ERAD) 2/07

COMMONWEALTH OF VIRGINIA

OFFICE OF THE GOVERNOR

Executive Order 36 (2006)

1

DEVELOPMENT AND REVIEW OF REGULATIONS PROPOSED BY STATE AGENCIES

By virtue of the authority vested in me as Governor under Article V of the Constitution of the Commonwealth of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.2-4013 and 2.2-4017 of the *Code of Virginia,* and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish policies and procedures for review of all new, revised, and existing regulations proposed by state agencies, which shall include for purposes of this executive order all agencies, boards, commissions and other entities of the Commonwealth within the Executive Branch which issue regulations. Nothing in this Executive Order shall be construed to limit my authority under Section 2.2-4013 to require an additional 30-day final adoption period, or to exercise any other rights and prerogatives existing under Virginia law.

General Policy

The Executive Branch agencies of the Commonwealth must consider, review, and promulgate many regulations each year. This Executive Order sets out procedures and requirements to ensure the efficiency and quality of Virginia's regulatory process.

All state employees who draft, provide policy analysis for, or review regulations shall carefully consider and apply the principles outlined below during the regulatory development and review process. All regulatory activity should be undertaken with the least possible intrusion in the lives of the citizens of the Commonwealth consistent with public health, safety, and welfare. Where applicable and to the extent permitted by law, it

shall be the policy of the Commonwealth that, unless otherwise mandated by law, only regulations that are necessary to interpret the law or to protect the public health, safety, or welfare shall be promulgated.

A. Agencies shall identify the nature and significance of the problem a regulation is intended to address, including, where applicable, the failure of private markets and institutions to adequately address the problem.

B. Agencies shall identify and assess reasonably available alternatives in lieu of regulation for achieving the goals of a regulation, including where feasible and consistent with public health, safety, and welfare:

   a. The use of economic incentives to encourage the desired outcomes (such as user fees or marketable permits);
   b. The use of information disclosure requirements, rather than regulatory mandates, so that the public can make more informed choices; and
   c. The use of performance standards in place of mandating specific techniques or behavior.

C. Regulatory development shall be based on the best reasonably available scientific, economic, and other information concerning the need for, and consequences of, the intended regulation. Agencies shall specifically cite the best reasonably available scientific, economic, and other information in support of regulatory proposals.

D. Regulations shall be designed to achieve their intended objective in the most efficient, cost-effective manner.

E. Regulations shall be clearly written and easily understandable by the individuals and entities affected.

F. All legal requirements related to public participation and all public participation guidelines shall be strictly followed to ensure that citizens have reasonable access and opportunity to present their comments and concerns, use of the Townhall website should be specifically offered in each instance. Agencies shall establish procedures that provide for a timely written response to all comments and the inclusion of suggested changes that would improve the quality of the regulation.

G. In addition to requirements set out in the Virginia Administrative Process Act, agencies shall post all rulemaking actions on the Virginia Regulatory Town Hall to ensure that the public is adequately informed of rulemaking activity.

H. Agencies, as well as reviewing entities, shall endeavor to perform their tasks in the regulatory process as expeditiously as the regulatory subject matter will allow and shall adhere to the time frames set out in this Executive Order.

I. Each agency head will be held accountable for ensuring that the policies and objectives specified in this Executive Order are put into effect. Agency heads shall ensure that information requested by the Department of Planning and Budget (DPB) or the Office of the Governor in connection with this Executive Order is provided on a timely basis. Incomplete packages may be returned to the appropriate agency by DPB after timely notice to DPB.

J. Regulations shall not be considered perpetual and will be subject to periodic evaluation and review and modification, as appropriate, in accordance with the Administrative Process Act.

K. Public comment will be encouraged for all regulations. The Department of Planning and Budget shall work with state agencies to promote use of the Town Hall to facilitate public comment.

L. Regulatory development shall be conducted in accordance with statutory provisions related to impact on small businesses. The Department of Planning and Budget shall work with state agencies to address these requirements during the regulatory review process, including notifications as appropriate to the Joint Commission on Administrative Rules.

Applicability

The review process in this Executive Order applies to rulemaking initiated by agencies of the Commonwealth of Virginia in accordance with Article 2 of the Administrative Process Act (APA) (Section 2.2-4006 et seq. of the *Code of Virginia*).

With the exception of the requirements governing the periodic review of existing regulations, the posting of meeting agenda and minutes, and the posting of guidance documents, the requirements of this Executive Order may not apply to regulations exempt from Article 2 of the APA. A Cabinet Secretary or the Governor may request in writing that an agency comply with all or part of the requirements of this Executive Order for regulations exempt from Article 2 of the APA. Copies of such requests shall be forwarded to the Governor's Policy Office and DPB. In addition, a Cabinet Secretary may request in writing that certain Article 2 exempt regulations be further exempted from all or part of the requirements of this Executive Order.

These procedures shall apply in addition to those already specified in the APA, the agencies' public participation guidelines, and the agencies' basic authorizing statutes.

Any failure to comply with the requirements set forth herein shall in no way affect the validity of a regulation, create any cause of action or provide standing for any person under Article 5 of the APA (Section 2.2-4025 et seq. of the *Code of Virginia*), or otherwise challenge the actions of a government entity responsible for adopting or reviewing regulations.

Regulatory Review Process

Regulations shall be subject to Executive Branch review as specified herein. For each stage of the regulatory development process, DPB shall develop an appropriate background form describing the regulatory action. Agencies shall use the form to inform the public about the substance and reasons for the rulemaking. All agency regulatory packages shall be submitted on the Virginia Regulatory Town Hall and shall include the completed form for that stage of the regulatory process and the text of the regulation where applicable.

Agencies shall submit regulatory packages to the Registrar on the Virginia Regulatory Town Hall within 14 days of being authorized to do so. The Counselor to the Governor may grant exceptions to this requirement for good cause.

A. Notice of Intended Regulatory Action (NOIRA)

DPB shall conduct an initial review of the submission of a Notice of Intended Regulatory Action to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. The NOIRA shall include the nature of the regulatory changes being considered and the relevant sections of the *Virginia Administrative Code*. The Director of DPB shall develop an appropriate review form for NOIRAs to ensure the most efficient use of DPB staff resources. DPB shall advise the appropriate Secretary and the Governor of DPB's determination. The agency shall be authorized to submit the NOIRA to the Registrar for publication when the Governor approves the NOIRA for publication. Public comments received following publication of the NOIRA should be encouraged and carefully considered in development of the proposed stage of a regulation.

If the Director of DPB advises the appropriate Secretary and the Governor that the NOIRA presents issues requiring further review, the NOIRA shall be forwarded to the Secretary. The Secretary shall review the NOIRA within seven days and forward a recommendation to the Governor. The Chief of Staff is hereby authorized to approve NOIRAs on behalf of the Governor.

B. Proposed Regulation and Fast-Track Regulations

Following the initial public comment period required by Section 2.2-4007.B of the *Code of Virginia* and taking into account the comments received, the agency shall prepare a regulatory review package. Agencies should complete the proposed regulation after the close of the NOIRA comment period as expeditiously as the subject matter will allow.

If a regulatory package is submitted to DPB, and DPB determines that the package is not substantially complete, then DPB shall notify the agency within 10 calendar days. At that time, the agency must withdraw the package from the Town Hall and resubmit the package only after all important missing elements identified by DPB have been completed.

A proposed regulatory action shall be in as close to final form as possible, including completed review by all appropriate technical advisory committees. A proposed regulation shall not address new issues that were not disclosed to the public when the NOIRA was published. If an agency can demonstrate a compelling reason to include new issues, an exception to this policy may be granted by the Chief of Staff during the proposed regulation review process.

In addition to the information required on the regulation background form, the agency shall also include in the regulatory package a memorandum from the Office of the Attorney General certifying that the agency has legal authority to promulgate the regulation being proposed.

The Attorney General's Office will also be requested to provide any appropriate comments for consideration by the Governor with respect to the proposed regulation. It is my intent that this process for feedback be managed in a manner similar to the process that has traditionally been used for soliciting the Attorney General's advice and recommendations on enrolled legislation.

DPB shall review the proposed regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. Within 45 days of receiving a complete proposed regulation package from the agency, the Director of DPB shall advise the Secretary of DPB's determination. The Secretary shall review the proposed regulation package within 14 days and forward a recommendation to the Governor. The Chief of Staff is hereby authorized to approve proposed regulations on behalf of the Governor. Within 14 days of receiving notification that the Governor has approved the proposed regulation package, the agency shall submit the proposed regulation package to the Registrar for publication,

unless an exception to this requirement is granted for good cause by the Counselor to the Governor.

With respect to fast-track regulations, the Department of Planning and Budget shall review the fast-track regulation to determine whether the regulatory change is appropriately within the intended scope of fast-track regulatory authority. Agencies shall report to DPB and the Governor's Policy Office all comments and or objections received with respect to a fast-track rulemaking.

If the Governor does not approve the regulatory package, the appropriate agency or board shall revisit the regulation as appropriate.

C. Final Regulation

After the agency has reviewed the comments received during the public comment period following publication of the proposed regulation and has revised the proposed regulation, as the agency deems necessary and proper, the agency shall prepare the final regulation package for submission to the Department of Planning and Budget.

The agency shall submit the final regulation to DPB after the close of the proposed regulation comment period as expeditiously as the subject matter will allow. The Attorney General's Office will also be requested to provide any appropriate comments for consideration by the Governor with respect to the final regulation. It is my intent that this process for feedback be managed in a manner similar to the process that has traditionally been used for soliciting the Attorney General's advice and recommendations on enrolled legislation.

DPB shall review the final regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the regulatory action comports with the policy of the Commonwealth as set forth herein. In particular, DPB shall assess the effect of any substantive changes made since the publication of the proposed regulation and the responsiveness of the agency to public comment. Within 14 days of receiving a complete final regulation package from the agency, the Director of DPB shall advise the Secretary and the Governor of DPB's determination.

After DPB's review, the final regulation shall be forwarded to the appropriate Secretary and the Governor. The Secretary shall make a recommendation to the Governor within seven days. The agency shall be authorized to submit the final regulation to the Registrar for publication if and when the Governor approves the final regulatory package for publication.

If the Governor does not approve the regulatory package, the appropriate agency or board shall revisit the regulation as appropriate.

D. Emergency Regulation

In addition to the information required on the background form, the agency shall also include in the regulatory package for any emergency regulation a memorandum from the Office of the Attorney General certifying that the agency has legal authority to promulgate the emergency regulation.

DPB shall review the emergency regulation package to determine whether it complies with all requirements of this Executive Order and applicable statutes and whether the contemplated regulatory action comports with the policy of the Commonwealth as set forth herein. Within 14 days of receiving a complete emergency regulation package from the agency, the Director of DPB shall advise the Secretary of DPB's determination. The Secretary shall review the emergency regulation package within 14 days and forward a recommendation to the Governor. Upon receiving notification that the Governor has approved the emergency regulation package, the agency may then submit the emergency regulation package to the Registrar for publication.

If the Governor does not approve the regulatory package, the appropriate agency or board shall revisit the regulation as appropriate.

Periodic Review of Existing Regulations

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 review shall ensure that each regulation complies with the principles set out in this Executive Order. In addition, each periodic review shall include an examination by the Office of the Attorney General to ensure statutory authority for the regulation and that the regulation does not exceed the authority to regulate granted in the enabling legislation. The periodic review of a regulation shall be reported on a form established by DPB. Such form shall minimally provide an opportunity for the agency to demonstrate the regulation's compliance with the policies set out in this Executive Order.

Agencies shall cooperate with reviews of regulations by the Office of the Attorney General, including but not limited to, reasonable requests for data and other supporting information as may be necessary to conduct the review.

Prior to the commencement date of the periodic review for a regulation, an agency shall post on the Town Hall a notice of the periodic review. The agency shall provide for

a minimum of 21 days of public comment commencing on the posted date for the review. No later than 90 days after the close of the public comment period, the agency shall post a completed periodic review report on the Virginia Regulatory Town Hall.

When a regulation has undergone a comprehensive review as part of a regulatory action and when the agency has solicited public comment on the regulation, a periodic review shall not be required until four years after the effective date of this regulatory action.

The Governor may request a periodic review of a regulation at any time deemed appropriate. Such a request may outline specific areas to be addressed in the review. In the case of such a request, the agency shall follow the procedures for periodic review as established herein or such other procedures as may be stipulated by the Governor.

Petitions for Rulemaking

Agencies shall post petitions for rulemaking and written decisions to grant or deny the petitioner's request on the Virginia Regulatory Town Hall in accordance with the time frames established in Section 2.2-4007 of the Code of Virginia.

Waivers from Process Deadlines

Agencies shall file all regulatory actions in a timely manner. Agencies shall file all actions in as timely a manner as possible, and in all instances within 90 days of approval by the Governor unless a waiver of this requirement is granted. The Chief of Staff may waive the deadlines an agency must meet when submitting NOIRAs, proposed, and final regulatory packages. A waiver shall only be granted when an agency has demonstrated a compelling need for extending the deadlines set out herein. An agency shall submit a waiver request as soon as possible prior to the expiration of a deadline. Such requests shall be submitted on forms prepared by DPB.

Electronic Availability of Meeting Agenda and Minutes

Executive Branch agencies that promulgate regulations and keep minutes of regulatory meetings shall post such minutes of their public meetings on the Virginia Regulatory Town Hall in accordance with the time frames established in Section 2.2-3707.1 of the *Code of Virginia*. In addition, wherever feasible, agencies shall post the agenda for a public meeting on the Virginia Regulatory Town Hall at least seven days prior to the date of the meeting.

Electronic Availability of Guidance Documents

To the extent feasible, agencies shall make all guidance documents, as defined by Section 2.2-4001 of the *Code of Virginia*, available to the public on the Virginia Regulatory Town Hall. Any guidance document currently available in electronic format shall be posted on the Virginia Regulatory Town Hall. Any changes to a guidance document shall be reflected on the Virginia Regulatory Town Hall within 10 days of the change. The Counselor to the Governor may waive these requirements or extend these deadlines in cases where agencies have demonstrated a compelling need. An agency shall submit a waiver request as soon as possible prior to the expiration of the deadline. Such requests shall be submitted on forms prepared by DPB.

This Executive Order rescinds Executive Order Number Twenty-One (2002) issued by Governor Mark R. Warner. This Executive Order shall become effective upon its signing and shall remain in full force and effect until June 30, 2010, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 20th day of September 2006.

Timothy M. Kaine, Governor

Attest:

Secretary of the Commonwealth

Compliance and Investigations

Disciplinary complaints are handled by four sections within the Compliance and Investigations Division: Complaint Analysis and Resolution; Alternative Dispute Resolution; Investigations; and Adjudication.

Complaints are received by the Complaint Analysis and Resolution Section. Initial review of a complaint is to determine whether DPOR has jurisdiction over the complaint. In other words, does the complaint relate to a profession or occupation regulated by one of the DPOR Boards? If not, the complaint is referred to the appropriate agency. If the answer is yes, the next determination is whether the Board has jurisdiction over the complaint. If the facts alleged are true, is there a violation of a Board regulation or statute? If so, the case is investigated.

The purpose of the investigation is to determine what took place. If the investigation does not establish at least probable cause that a violation has occurred, the case is closed. If the investigation determines a violation has occurred, and the violation does not represent a serious threat to the public welfare, an attempt at resolution of the complaint through mediation, compliance, or a consent order is made. (A consent order is an agreement between the licensee and the Board regarding the violation and appropriate sanctions.) If the complaint is not resolved through these alternatives, it is referred to the Adjudication Section to conduct an Informal Fact-Finding Conference (IFF).

The Adjudication Section sends a Notice of the IFF to the respondent (the licensee alleged to have violated a regulation or statute). A Board member, former Board member, or staff member serve as the presiding officer at the IFF. Adjudication staff presents the Department's case to the presiding officer. The respondent, and any other appropriate witnesses, have the opportunity to present additional evidence to the presiding officer and a court reporter transcribes the proceedings. A consent order may still be offered at this time. If a consent order agreement is not reached, the presiding officer writes a summary of the facts learned during the IFF, recommends whether or not a violation has occurred; and recommends an appropriate sanction to be imposed (a Summary and Recommendation). Staff members assist the presiding officer with preparation of the Summary and Recommendation, which is presented to the Board at a board meeting for consideration. The full Board reviews the consent order or Summary and Recommendation, whichever may be the case, prior to making the final determination.

The Compliance and Investigations Division is also responsible for enforcing criminal laws under DPOR's jurisdiction, including practicing without a license and filing false or fraudulent applications for licensure. After investigation, criminal matters are referred to local Commonwealth's Attorneys for prosecution.

FINANCIAL OVERVIEW

Regulatory Fees

The activities of the Department and its regulatory boards are funded almost entirely from licensing fees. The general powers and duties of the boards related to financing their programs are addressed in the *Code of Virginia*, Section 54.1-204:

> To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board of Professional and Occupational Regulation.

In Section 54.1.113, the Code addresses the specific responsibilities of the board for setting fee amounts:

> Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

The Budget Section maintains a detailed accounting of the revenues and expenditures of each board to support the boards in their responsibility to establish fees and maintain adequate revenues. The Budget Section also provides monthly reports to inform the board of its financial status. After the close of each biennium, or more frequently if necessary, the Budget Section reviews the financial position of the board, prepares projections of expected revenues and expenditures for the next biennium, and provides recommendations to the board concerning the need to adjust its fees. If fee adjustments are necessary, the Budget Section will prepare alternative fee structures for the board's consideration. The recommendations are designed to maintain the board's financial stability and to comply with the Department's Guidelines for establishing fees and Code of Virginia requirements.

Changes to fees must be proposed and published for public comment under the provisions of the Administrative Process Act. Fees do not become effective until the processes and approvals required by the Act are completed, which generally takes 18-36 months. For that reason, each regulatory board's current and projected financial position are monitored closely to plan for any

upcoming need for fee adjustments, and recommendations for fee adjustments are presented to the board to ensure adequate time to complete required processes and maintain financial stability.

Budgets

Licensing fees are established at amounts that provide sufficient revenue to pay each board's and the Department's operating expenses. Amounts collected from fees are designated as nongeneral fund revenues, which means they are collected for a specific purpose (professional and occupational licensure), and must be expended for that purpose. The Department receives no general fund (i.e., tax) revenues from the Commonwealth.

Revenues collected by the Department must be appropriated before they can be expended. The Department's appropriation represents the amount of money it is authorized to spend each year. The appropriation is authorized by the General Assembly in each year's 'Virginia Acts of Assembly', known as the Appropriations Act.

Each fiscal year, the Department establishes an internal operating budget that distributes available funds (the appropriation) to support all the operations and activities of the Department and the regulatory boards. During the budgeting process, managers have the opportunity to explain plans and request funding for specific activities for the year. Board administrators may ask the board for input during this process about plans for promulgation of regulations, travel and training, board meetings, changes in regulatory requirements, or other planned activities that impact funding needs. The Director approves the final operating budget based on the agency's total available funds/appropriation.

Board Expenses and Reimbursements

Costs that relate to a single board's activities are reported in a separate cost center and are charged directly to the board. Costs commonly charged directly to a board include board member per diem and travel costs, board member or staff training, printing, postage, and legal services.

Board members may incur certain expenses associated with working or traveling on official board business. Those expenses may be reimbursed within the requirements of the state and agency travel policies. Board members are reimbursed for mileage when traveling to and from board meetings and authorized workshops or conventions. Lodging costs and meals are also reimbursed when the board member is in overnight travel status (subject to state spending caps.) Board members should be familiar with the basic provisions for authorized travel expenses and reimbursement and should read the agency travel brochure provided during orientation before traveling. Board members should contact their Executive Director or the Finance Section to obtain approvals for overnight travel or assistance with travel-related questions. In addition to reimbursements for travel expenses, board members receive a daily 'per diem' amount while conducting official board business.

Consent and Final Order Penalty Collections

Monetary penalties collected pursuant to disciplinary actions of a board are deposited to a special state fund known as the Literary Fund and are not available for spending by DPOR. The Literary Fund provides low-interest loans to localities for funding school building projects. The law requires all monetary penalties to be deposited into this fund, thereby providing the boards clear independence from any appearance of improper assessment of penalties.

BOARD FINANCIAL STATEMENTS

Background

Section 54.1-113 of the *Code of Virginia* (Callahan Act) requires the Department to account for revenues collected for each board and expenses allocated to each board on a biennial (two-year) basis. That information is used for the purpose of maintaining or adjusting fees so that revenues collected are sufficient to cover expenses, but not excessive. In order to reasonably and appropriately allocate and account for each board's expenses, the Department uses a Cost Allocation System. Under this System, direct expenditures of each board are identified from the accounting records. The indirect costs incurred by the agency to provide operational support are then identified and distributed to each board using specific allocation techniques. Through this system, the revenues collected through regulatory fees and the total expenses incurred to support operations are accounted for by each individual board.

Format

Because of the requirements of the Callahan Act, the Cost Allocation System is designed to account for each board's financial position for an entire biennium. A biennium begins on July 1 of each even-numbered year, and ends on June 30th of the next even-numbered year.

The Cost Allocation System produces two financial statements for each board:

Statement of Financial Activity

This statement is produced for each board on a monthly basis. The Board name, biennium, and current month are reported in the heading.

The first column lists each item by type, beginning with revenues, then details expenditures by Cost Category (see explanations below).

The second column reports revenues collected and each type of expenditure for the *current month*.

The third and fourth columns provide a *comparison of financial activity for the previous and the current biennium*. Each column reports the board's total financial activity from the beginning of the applicable biennium through the report month.

The fourth column is a statement of the board's *current financial position,* including the balance brought forward from the previous biennium and the cash/revenue balance at the close of the current month.

The final section of the Statement reports the board's actual Callahan Act percentage at the close of the previous biennium. It also reports the target Callahan Act percentage for the end of the current biennium, once it becomes available. The target percentage is determined from the fee analysis performed for each board after the close of each biennium, and represents where the board is expected to be in the course of adjusting its revenues, expenditures, and/or cash balance as required by the Callahan Act.

Supporting Statement of Year-to-Date Activity and Budget

This supporting Statement provides a summary of each board's financial activity on a *fiscal year basis* for the purpose of monitoring plans and variations from budgeted amounts. Although the Callahan Act requires accounting for board activities on a biennial basis, most operational planning and budgeting is conducted on an annual basis.

For monitoring purposes, the agency's budgets for each type of expenditure are entered into the Cost Allocation System to provide estimates of anticipated annual costs for each board in each category. Because the allocations are based on volume and activity levels (see explanations below) which may not be constant, allocated budget amounts and actual allocated expenses can vary substantially. This Statement can assist the boards in understanding the underlying causes for such variations, and how operational, regulatory, or legal activities impact budget and actual allocations.

The Year-to-Date Activity Statement details each type of expenditure for each month and provides a *fiscal year-to-date* total. It reports the budget allocated to the board for each type of expenditure and the remaining budget. It then provides a straight-line projection of estimated costs at the close of the fiscal year (assuming that all costs remain relatively stable and continue at the same rate for the remainder of the year), and provides projected variances from budgeted amounts.

Cost Categories and Allocation Methodologies

Board Expenditures consist of charges incurred directly in support of board operations, such as travel, per diem, printing and postage. Board Expenditures include the board's share of the costs of processing fees, based on the number of fees processed for each board during the month.

Board Administration represents the cost of staff that support regulatory program operations. The allocated cost is based on each board's number of licensees.

Exam Administration represents the cost of providing direct support in the development, administration, and contracting of exams. Costs are allocated based on percentages of time and effort given to each board by Examination staff, and number of exams given.

Enforcement represents the costs associated with complaint processing, investigation, and adjudication. These costs are allocated based on enforcement activity for each board.

Legal Service charges include billings from the Office of the Attorney General for hourly support provided to each board, which are allocated based on activity and number of licensees. It also includes the costs of court reporters and hearing officers which are charged directly to the board.

Information Systems represents charges incurred for information technology services and records management. The costs are allocated based on each board's percentage of licensees.

Facilities Management includes facilities and equipment, mailroom, and procurement costs incurred in support of board activities. The costs are allocated based on each board's percentage of licensees, as well as the percentage of mail processed for the board.

Agency Administration includes the agency's general administrative support and overhead costs. Charges are allocated based on each board's percentage of licensees.

The *Transfers/Other* category is used to allocate other charges to each board. The most common type of charge reported here is mandated transfers to the General Fund of the Commonwealth as mandated in the Appropriations Act, or to pay the agency's share of central state processes and support costs. The charges are allocated based on each board's percentage of licensees.

Fee Analysis

The information accumulated through the Cost Allocation System provides the data required for an analysis of each board's financial position after the close of each biennium, and provides the basis for recommended adjustments in fees. The Budget Section will discuss financial position, projections, and the need for any fee recommendations with each board as needed.

If additional information, explanation, or assistance is needed, please contact the Budget Section.

EDUCATION AND EXAMINATION OVERVIEW

Organization

The Office of Education and Examinations is staffed with a Director, Examination Manager and two Examination Specialists, one of which also serves as the Department's Internship Coordinator. The Office of Education and Examinations reports directly to the Deputy Director for Administration and Finance, who reports to the Director.

Functions

The Director of the Office of Education and Examinations serves as the Department representative and coordinator for the Professional Licensing Education Task Force (PLET) in accordance with the Department's mission and goals.

PLET goals include increasing communication between those designing Virginia's education programs and those responsible for establishing licensing requirements; creating partnerships to increase efficiency and service through the coordination, development and operation of education, licensing and testing programs; and to ensure that state education and licensing requirements are coordinated to maximize the opportunities for licensure to the public.

The Office of Education and Examinations also houses and coordinates the Department's Internship Program which offers students paid educational and work-related experience opportunities within all of its Divisions.

The Office of Education and Examinations provides centralized examination services for all regulatory boards which require examination for licensure or certification. Once approved to take an examination, this office works with the candidate until the examination is successfully passed or the candidate makes no further attempts.

PROFESSIONAL LICENSING EDUCATION TASK FORCE

In 1997, The Department of Professional and Occupational Regulation, with key leaders of the State Council of Higher Education, Department of Education, Virginia Community College System, Department of Labor and Industry, Virginia Business Education Partnership and the Virginia Employment Commission formed the Professional Licensing Education Task Force.

The Task Force is a cooperative effort to coordinate education programs and licensing requirements for regulated professions in the Commonwealth.

PLET has been responsible for the implementation of programs such as the:

Basic Contractor Licensing Business Class-the Department and Board for Contractors in partnership with the Virginia Community College System created a one day remedial class for licensed contractors. Goals of the course are to educate respondents in disciplinary cases to avoid future regulatory and statutory violations and to protect the safety, health and welfare of the public. The class also meets the pre-licensing education requirements for contractors and is taught by the Virginia Community College System and other approved providers.

Advanced Contractor Licensing Class-(Business and Project Management for Virginia Contractors) the Department and Board for Contractors in partnership with the Virginia Community College System created a twenty hour course for those interested in obtaining licensure as Class A and Class B Contractors. Objectives are to develop knowledge of construction management and successful operation of a business, including compliance with government regulations related to the profession. This curriculum is now being taught on many community college campuses throughout Virginia.

This course is also used as a remedial course to educate respondents and meets the pre-licensing education requirement for contractors.

Virginia Cemetery Management Training- Developed to respond to Cemetery Board regulations for compliance agent and designee qualifications, this course focuses on procedures regarding cemetery rules and regulations as they relate to various aspects of cemetery operation. It will prepare the participants to interpret, communicate, and comply with cemetery law while meeting the needs of the consumers.

Opticians Apprenticeship Related Instruction Curriculum Development-The Department, in partnership with the VCCS, and the Department of Labor and Industry Apprenticeship Program created a curriculum which is currently taught by all related instruction coordinators in Virginia. The goals are to create consistency in instruction, allow students to transfer without losing credit or educational opportunities and to maintain a relevant and progressive curriculum which keeps pace with the standards of the profession.

PLET also participates in career development outreach programs, business ethics forums, curriculum and examination development projects, and as presenters in educational and workforce related conferences.

INTERNSHIP PROGRAM

An internship is a paid or unpaid supervised work experience designed to provide students with

knowledge and experience in a career field. Internships may or may not be for academic credit depending on the educational institution.

The Office of Education and Examinations coordinates the Internship Program. Responsibilities include, but are not limited to, guidance to Department staff on preparation of Internship Descriptions, announcement of internship openings, liaison between the Department and educational institutions with internship programs, coordination of internship applications and interviews with Internship Supervisors. In addition, an Internship Coordinator represents the Department at Career and Job Fairs and other events to advise the public and potential internship candidates of the internship program and positions openings.

The Department shall apply consistent and objective standards in the offering of internship opportunities. Applicants for internship will be afforded equal opportunity without regard to race, color, religion, political affiliation, national origin, disability, marital status, gender or age.

EXAMINATIONS

Essential Services

The Office of Education and Examinations (the Office) provides the following essential examination services and is responsible for the testing of approximately 50,0000 individuals per year:

- Developing examinations
- Developing and providing Candidate Bulletins of Information
- Scheduling the candidate for the examination
- Administering examinations
- Maintaining examination security
- Scoring examinations
- Posting examination results on the Department's automated system
- Providing the candidate with individual examination results
- Developing and providing diagnostic reports to failing candidates
- Scheduling exam reviews with failing candidates
- Rescheduling failing candidates
- Issuing licenses to successful candidates
- Providing a point of contact for answering telephonic inquiries and written correspondence about any exam
- Investigating security violations and cheating incidents
- Resolving complaints
- Providing a variety of statistical data to the Department, Boards and others
- Managing vendor contracts

- Evaluating vendor performance

Services vary depending on whether the development and administration of the examination is contracted to an outside vendor.

The Education & Examinations Director is responsible for working with the Boards and Executive Directors in the development of in-house examinations, conducting and coordinating examination workshops, supervising the Office, communicating with candidates, approving Americans With Disabilities Act (ADA) accommodations, making informational presentations to Boards, and performing the functions of Administrative Contract Officer for all contracted examination services.

Purpose of Examinations in the Licensing Process

Licensing examinations are our best method of assuring the public that an individual possesses minimal competence to practice a profession at the entry level.

Regulatory Boards are empowered to establish the criteria for licensing which candidates must meet. Criteria are designed to insure that licensees possess the knowledge and skills to perform important occupational activities safely and effectively. One of these criteria is the ability to pass a Board specified examination.

EXAMINATION DEVELOPMENT

There are three primary sources for examinations in the Department:

Board Developed (In-House) Exams

Some examinations are developed by the Board/Department. Typically both Board members and non-Board members, Subject Matter Experts (SMEs) are invited to participate in examination development workshops. The Education and Examinations Director then facilitates the development of exams and provides technical expertise to ensure the exams are "psychometrically" sound and legally defensible.

Vendor Developed

Contracts with vendors require the vendor to develop the exam in much the same manner as those developed by the Board/Department. Board members and SMEs are invited to participate in the exam development workshops. Vendor created exams are developed under the guidance of vendor psychometricians and the exams are typically "tailor made" for use in Virginia.

Purchase of a "National" Exam

This arrangement involves the least participation of Board members and the Department. Board members and other Virginia SMEs are usually invited to participate in national exam development workshops. This participation helps to ensure the exam is not oriented toward one geographic region of the country. However, state participation is not always possible. The national developer is responsible for the psychometric credibility and legal defensibility of the exam. Examples of these types of exams are the Fundamentals of Land Surveying Exam and the Professional Engineer Exam. National examinations are often administered by a vendor under contract with the Department to ensure application, scheduling, and scoring processes meet Departmental requirements.

Public Protection

Although not always possible with national exams, Board developed and vendor developed exams can be and should be reviewed by the Board and/or Board appointed committees of SMEs to ensure the exam reflects the knowledge and skills necessary for competent performance in Virginia from the perspective of public protection. Most importantly the exam should be reflective of current practice in Virginia. In order for a test to measure potential competent performance of a candidate, it must be both valid and reliable.

Test Validity

An exam is considered valid if it accurately measures competencies for safe and effective entry-level job performance. This criterion is met by establishing a link between the questions on the examination and the tasks essential to public safety that are actually performed on the job. This linkage is initially established through a Job or Task Analysis and maintained by ensuring that all test forms (versions) reflect the results of the job analysis.

The examination must distinguish between candidates who do and do not possess these competencies. This criterion is satisfied by establishing a minimum passing score which defines the minimum level of competence in terms of examination performance for public protection. This is normally done through the conduct of a Cut-Score Study. A Cut-Score Study consists of the meeting of a panel of SMEs who review each question (item) on an

examination or bank of questions and estimate the percentage of competent candidates who will answer each question correctly. When the proportions established by the panel are summed across all questions, the result is a recommended minimum "cut-score" or passing score.

The use of the Cut-Score Study and statistical methods of computing the cut-score such as the "Angoff Method" separates Criterion Referenced examinations from Norm Referenced examinations. All licensing examinations used by the Department are Criterion Reference as opposed to Norm Referenced. A Criterion Referenced exam sets minimum competence based on how the individual candidate performs and not how the group of test takers performs as is the case with a Norm Referenced exam. The Board or its appointed representative or committee will be asked to approve the cut-score derived from a Cut-Score Study.

Test Reliability

An examination is said to be reliable, or to generate reliable scores, if the results of the examination are stable. That is, the examination should consistently pass candidates who can demonstrate that they have the knowledge, skills and abilities needed to perform the job competently, and should consistently fail candidates who cannot demonstrate such knowledge, skills and abilities.

Item Writing

After the job analysis has been completed and the Board has determined the tasks required of minimally competent entry-level practitioners, the test specifications or blueprint for the examination is created. Test specifications outline the content of the examination and indicate the relative emphasis to be given to various content areas. Test questions, or "Items", are usually written at an Item Writing Workshop. A panel of SMEs meets to prepare and review actual questions to be used on the examination. The review aspect of this process is very important. Specific guidance is given to panel members on item writing techniques. All items approved by the panel are placed in the Item Bank for future use in examinations. At another workshop called an Examination Construction Workshop, the actual questions to be used on a particular form (version) of the exam are selected or "pulled" from the Item Bank and placed in the test form. Examination vendors typically use automated systems to store and retrieve items in a method to ensure each form is equivalent to the next in content and difficulty level.

Post Examination Analysis

A statistical analysis of examination performance is completed after each exam administration either by the Education & Examination Director or vendor. "P" (performance) values are calculated on each question which indicates the percentage of candidates who answered the question correctly. Items with low "P" values are reviewed by the Board or other SMEs to

determine if there was any reason why the item did not perform well. If the item is clearly written and otherwise valid and reliable, the item remains in the exam regardless of the "P" value. If problems are discovered, the Board can adjust the exam by dropping items from the exam or multiple keying items, as necessary.

Practical or Performance Examinations

Several professions require that the candidate actually demonstrate skills in addition to passing a written examination. Practical examinations are administered by vendors and some by Board members themselves. Practical examinations are more time consuming and costly to administer than written examinations. Practical examinations are challenging to conduct since they must be developed to be objective in a subjective environment.

EXAMINATION ADMINISTRATION

Administration of In-House Exams

In-House, or Board/Department developed examinations are administered by the Office of Education and Examinations Staff or by professional proctors contracted by the Department. A facility is rented or Department facilities used for the administration of the examination.

Administration of Contracted Exams

Contracted examinations are usually developed, administered, scored and proctored by the vendor depending on the provisions of the contract. With this type of arrangement, the vendor is totally responsible for securing the examination site and properly administering the examination.

Scoring Examinations

Examinations are scored by various means depending on the profession. Most contracted examinations are scored by the vendor who reports scores to the Department electronically. The Office of Education and Examinations posts scores to the Department's automated system which then generates a fail letter for those who fail and a license and/or a pass letter for those who pass the examination. Some vendors have the capability of reporting scores to the candidate immediately while at the test site. Others will send the pass or fail notice to the candidate instead of the Department. No vendor issues a license. The Department issues all licenses on behalf of the Boards.

Examination Security

Examination security is maintained by the Office of Education and Examinations for "in-house" examinations and by the vendor for contracted examinations. Review of examinations by Board members is necessary at times. Specific content of examinations must never be divulged to potential candidates or to the general public. Board members participating in exam workshops are required to sign a statement of non-disclosure.

Examination security is a key responsibility of test administrators. Towards this end, on May 1, 1998, the Department implemented an Examination Site Conduct policy to protect the validity and reliability of the exams. The policy also deals with handling disruptive and prohibited conduct by candidates during exam administration such as abusive behavior and cheating.

Candidate Bulletins of Information

Candidate Bulletins of Information are created by the Office of Education and Examinations or the vendor to provide the candidate information on general examination content and references, fees, test dates, application deadlines, test sites, and scoring and reporting procedures.

Examination Fees

Board Rules and Regulations may include specific fees or that fees are based on negotiated contracts with vendors. Fees cover such administrative costs as reviewing candidate applications, scheduling, examination development and production costs, scoring, and reporting. Some exam fees are paid directly to the vendor which constitutes their full payment for exam development and administration. Other fees are paid directly to the Department. Depending on the profession, unless the candidate can document extenuating circumstances supporting a request for an exam cancellation or postponement, individual candidate examination fees are non-refundable. In addition to exam fees, some professions also have application fees that cover the cost of reviewing initial applications required to ensure the candidate is eligible to take the examination.

Accommodating Candidates With Disabilities

Americans With Disabilities Act (ADA)

The ADA of 1990 provides specific requirements related to testing for qualified individuals with disabilities. Candidates with disabilities are to be offered examinations in an accessible place and manner. Qualified disabled candidates will not be charged for special accommodations, special services or alternate test formats. Such accommodations may include, but are not limited to, qualified readers, interpreters for signing, additional time, and Braille examinations. Qualified candidates with disabilities must provide reasonable advance notice and appropriate

documentation of the disability, the need for accommodation and identify any modifications to the examination process or other aids that will be required. Any requirements for such documentation must be reasonable and must be limited to the need for the accommodation. Candidates with disabilities must make their disability known and the need for special accommodations by annotating their application for examination and providing adequate evidence of their disability. Examination vendors are very much in tune with the requirements of the ADA and provide good advice to aid the Education and Examinations Director and Boards in making decisions. The Department Policy 100-02 addresses the ADA.

Examination Summary

All licensing examinations need to be valid, reliable and legally defensible. They must measure entry-level knowledge and skills, and be developed with the ultimate goal of discriminating between competent and incompetent candidates in order to protect the public. Examinations must be administered in a standardized manner to maintain security and all facets of the examination program should be documented to explain how:

- The content of the examination is designed
- Questions are developed, reviewed and edited
- The examination forms are assembled
- Candidates register and schedule
- The examination is administered
- The examination is analyzed, scored and reported after the administration
- Security is maintained.

Whether the examination used is developed by a national organization, test developer or Board/Department, the Board has the ultimate responsibility for ensuring the development and administration of a valid, reliable and legally defensible examination.

Media Relations

The Department of Professional and Occupational Regulation recognizes the importance of providing accurate and timely information, as well as the value of pursuing a proactive public awareness strategy. Therefore, the Department strives to respond promptly to information queries and also to seek out external communications opportunities.

As public servants, all Department staff and Board members must keep in mind that our work is open to public scrutiny. The Department operates in a culture of openness, meaning that our business – the people's business – is conducted in a public forum and that we welcome public input, attention and comment. An inquiry from a reporter should not be seen as a threat, but as an excellent opportunity to tell the Department's story. When we do talk with the public, either directly or through the media, it is important that the Department's messages be consistent and knowledgeable – and so we ask you to observe the following procedures:

All press releases regarding the Department and its regulatory boards must be approved by the Director's Office, and may then be submitted to the Secretary of Commerce and Trade for approval by the Governor's Office. Press releases are circulated to print, radio, and television media outlets across the state and posted on the Department's web site.

At times, a licensee or a regulatory program may become involved in a highly visible news event. The Department will respond to reporters' inquiries with information that is subject to public disclosure. If a reporter requests technical information or requests to speak to a board member, Department staff will provide a board member's business telephone number. Staff will call the board member with a "heads-up" regarding the possible media inquiry. <u>All staff and Board members must advise the Communications Director or appropriate Executive Director of all media-related contacts they receive as soon as possible</u>.

The Department confirms the existence of open disciplinary cases only when an investigation has determined that sufficient evidence exists to establish probable cause of a violation. However, no specific information concerning an individual or business under investigation by the Compliance and Investigations Division or under review by a regulatory board may be released to the media until the case is closed. If Board members are questioned about an open case, they should refer reporters to the Freedom of Information Act's prohibition on disclosing information about open complaint files [§54.1-108].