



Final Regulation Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) citation	18 VAC135-50
Regulation title	Fair Housing Regulations
Action title	Amending regulations to incorporate needed changes
Date this document prepared	July 3, 2013

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

Brief summary

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

The changes being incorporated in this action include updating the following sections: definitions; purpose; scope; discriminatory advertisements, statements and notices; general prohibitions against discrimination because of handicap; use of words, phrases, symbols and visual aids; fair housing policy and practices; date of filing complaint; investigations and completion of investigation. The proposed changes are being made to ensure consistency with federal and state law.

Statement of final agency action

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

On March 27, 2013, the Real Estate Board and on April 17, 2013, the Fair Housing Board voted to adopt these amendments to 18VAC135-50 as final.

Legal basis

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

Section 2.2-4017 of the Code of Virginia provides that regulations shall be periodically reviewed as mandated by Executive Order of the Governor. In 2006, Executive Order 36 (2006) issued by the Governor of Virginia required that all existing regulations be reviewed at least once every four years to ensure the regulations are supported by statutory authority and every five years to ensure the regulations economic impact on small businesses is minimized as much as possible. Executive Order 14 (2010) likewise requires existing regulations to be periodically reviewed every four years. Since the regulations regarding the Fair Housing Law were last reviewed in 2003, the Real Estate Board and Fair Housing Board elected in 2008 to begin this periodic review of regulations.

Section 54.1-2105.A of the Code of Virginia states that the Real Estate Board “may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.” In accordance with § 54.1-2344.D of the Code of Virginia, the Real Estate Board is responsible for the administration and enforcement of the Fair Housing Law with respect to real estate licensees, their agents, or their employees and the Fair Housing Board is responsible for the administration and enforcement of the Fair Housing Law with respect to all others who allegedly violated or violated the Fair Housing Law. Section 36-96.8.B of the Code of Virginia permits the Real Estate Board and Fair Housing Board to coordinate the promulgation and amendment of necessary regulations to carry out the provisions of the Fair Housing Law.

Purpose

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

It is the policy of the Commonwealth of Virginia to ensure that all Virginia citizens are provided access to residential housing free from illegal discrimination. Through this periodic review of regulations, the Real Estate Board and the Fair Housing Board provide clarification of the provisions of the Fair Housing Law, ensure that the regulations are consistent with Federal and State law, and provide guidance regarding the provisions of the Fair Housing Law.

Substance

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

The substantive changes proposed by the Real Estate Board and Fair Housing Board clarify definitions and other aspects of the provisions of the Fair Housing Law, provide guidance regarding the Fair Housing Law's provisions for disabled persons, and amend information regarding advertising.

135-50-10 Amend definitions such as “authorized representative” for clarity.

135-50-20 Clarify purpose section. For example, clarify discriminatory conduct covered by the Virginia Fair Housing Law.

135-50-50 Clarify scope section to ensure it encompasses the scope of the Virginia Fair Housing Law.

135-50-110 Amend discriminatory, advertisements, statements and notices to include update language for publisher’s notices.

135-50-200 Amend general prohibitions against discrimination because of handicap to include new definitions such as “disability”; from where to obtain ANSI A117.1 accessibility standards and to include guidance document references for reasonable accommodations and reasonable modifications.

135-50-270 Amend list of words indicative of protected classes to ensure consistency.

135-50-290 Amend fair housing policy and practices to ensure individuals know how to obtain equal housing logos, statement, or slogan.

135-50-350 Clarify the procedure for determining the date of filing a fair housing complaint.

135-50-400 Clarify the administrator’s duties.

135-50-440 Clarify when investigations are complete.

Issues

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

The primary advantage to the public is ensuring the regulations are consistent with Federal and State law, and provide guidance regarding the provisions of the Fair Housing Law.

The primary advantage to the agency will be that the agency can better protect the health, welfare and safety of the citizens of Commonwealth by having regulations which are consistent with Federal and State law.

No disadvantages to the public or to the Commonwealth have been identified.

Changes made since the proposed stage

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

Section number	Requirement at proposed stage	What has changed	Rationale for change
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None			
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Public comment

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

No public comment received.

All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
135-50-10	n/a	Definitions	Amend definitions of “authorized representative” and “Board”. The rationale is to clarify that “Board” can mean either the Fair Housing Board and the Real Estate Board collectively or each Board individually.
135-50-20	n/a	Sets forth the Boards’ interpretation of the Fair Housing Law	The proposed change clarifies that the purpose of these regulations is to cover all discriminatory conduct prohibited by the Fair Housing Law.
135-50-50	n/a	Establishes that it is the policy of Virginia to provide within constitutional limits fair housing protections substantially equivalent to those granted under federal law.	The proposed change clarifies that the scope of these regulations covers all discriminatory conduct prohibited by the Fair Housing Law.
135-50-110	n/a	Requires publishers to include a non-discrimination notice at the beginning of real estate advertising sections.	Amend to include updated language for publisher’s notices. The rationale is to set forth in this regulation the referenced publisher’s notice which is found in the Code of Federal Regulations (“C.F.R.”) published by the federal government.
135-50-200	n/a	Prohibits housing discrimination against persons because of “handicap.”	The proposed changes amend the definition of “handicap” to be synonymous with the term “disability”; update the publisher’s information for obtaining copies of the ANSI A117.1 accessibility standards; and incorporate by reference federal guidance documents regarding reasonable

			accommodations and reasonable modifications. The use of the term “disability” and its variations is now preferred over “handicap” and the U.S. Supreme Court has ruled the terms are synonymous. The ANSI A117.1 information is updated to provide citizens with the current information on where those standards can be purchased. Since reasonable accommodations and reasonable modifications complaints are one of the leading complained-of discriminatory practices, the Boards seek to incorporate guidance documents on these issues developed by the U.S. Dept. of Housing and Urban Development (“HUD”) and the U. S. Dept. of Justice (“DOJ”) to provide citizens with guidance on complying with the reasonable accommodation/modification provisions of the Fair Housing Law.
135-50-270	n/a	Provides a list of words that may convey overt or tacit discriminatory preferences or limitations.	Amend list of words indicative of protected classes. The rationale of this proposed change is to update the list of words that may indicate a discriminatory preference or limitation with regard to residential housing.
135-50-290	n/a	Informs public of suggested use of the equal housing opportunity logotype, statement, or slogan.	Amend fair housing policy and practices to ensure citizens are aware of how to obtain equal housing logos, statements, or slogans. The consequence of this proposed change is that citizens will be able to efficiently obtain information on the equal housing logos, statement, or slogan directly from the Virginia Fair Housing Office.
135-50-350	n/a	Sets forth how to determine the date on which a complaint is filed with the Boards.	Clarify the procedure for determining the date of filing for a fair housing complaint. This proposed change establishes that complaints received electronically or by telephone are considered filed upon receipt.
135-50-400	n/a	Establishes the administrator’s delegated duties when investigating a complaint.	This proposed change clarifies that the administrator’s duties include developing through investigations the facts necessary to make a “recommendation” with regard to a fair housing complaint rather than a “determination,” since the latter is the Boards’ statutory duty.
135-50-440	n/a	Sets forth the conditions under which an investigation will be considered complete.	This proposed change clarifies that investigations in which the alleged discriminatory practice involves the legality of any local zoning or land use ordinance are complete when the Board makes such a determination. This particular determination is not addressed in the current 135-50-440 regulation.