



Proposed Regulation Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) citation	18 VAC 135-20
Regulation title	Real Estate Board Regulations
Action title	Amending regulations to incorporate needed changes
Date this document prepared	11-3-06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The changes being proposed in this action include updating the following sections: definitions, qualifications for initial and renewal licensure, place of business, maintenance of licenses, maintenance and management of escrow accounts, advertising, disclosure of interest, misrepresentation/omission, proprietary school standards, instructor qualifications and course requirements, fees and withdrawal of approval and add a section on effect of disciplinary action on concurrent licenses. The proposed changes are being made to ensure compliance with statutory amendments and current industry standards.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2105 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.”

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The goal of amending the regulations is to make clarifying changes, to incorporate new education requirements as a result of statutory changes, to ensure consistency with State law and to make other changes which may result from the periodic review of the regulations. The amendments are needed to ensure that the regulations conform to the most current statutes and standards of practice in the industry which are necessary to protect the health, safety and welfare of the citizens.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Add definitions such as "actively participates in the brokerage business" for clarity.

Clarify qualification sections. For example remove redundant language in the criminal conviction section and clarify time frame for misdemeanor convictions.

Amend continuing education requirements to ensure consistency with statutory changes.

Clarify qualifications for renewal of reciprocal license to ensure that all licensees who obtain a license by reciprocity take the state portion of the exam.

Review supervision of business to ensure that the supervision is adequate.

Clarify names and what name changes need to be reported to the Board.

Clarify language regarding maintenance and management of escrow accounts.

Amend disclosure of brokerage relationships to be consistent with statute.

Clarify provisions regarding misrepresentation and omission.

Review provisions regarding schools and courses to ensure consistency with changes to the statute.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the public is ensuring that the regulants have the necessary education to get an initial license and to renew their license. The proposed changes also provide clarification and guidance to the regulants so that they can give better service to both the public and other licensees. The proposed regulations address the changing work environment and are needed to keep up with industry standards.

The primary advantage to the agency will be that the agency can better protect the health, welfare and safety of the citizens of the Commonwealth by having regulations which reflect current industry standards and comply with statutory amendments.

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

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no known localities which will be particularly affected by the proposed regulation.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Christine Martine, DPOR, Real Estate Board 3600 West Broad Street Richmond, VA 23230, 804-367-8552, Fax 804-367-6946,

reboard@dpor.virginia.gov . Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	See below.
Projected cost of the regulation on localities	See below.
Description of the individuals, businesses or other entities likely to be affected by the regulation	See below.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. 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.	See below.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	See below.

This proposed regulatory change clarifies definitions and qualifications for licensure and renewal. The regulatory change also incorporates statute changes regarding education requirements and disclosure of brokerage relationships. While there will be an increase in costs to the regulants to take the additional education course work, the increase in education is a statutory mandate and is being implemented without additional costs other than the course itself.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2007	FY 2008	FY2009	FY2010
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	23,000	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	23,000	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: One time costs are expected in FY 2008 related to printing new regulation booklets and a postcard mailing that will notify regulants about the regulatory changes.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: All currently licensed real estate individuals and firms are affected by the changes. This includes approximately 79,000 licensees.

Estimated Number of Regulants: None

Projected Cost to Regulants: No change in licensing fees is anticipated as a result of these regulatory changes.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Failure to adopt these changes will result in regulations not being as clear as possible and not conforming to statutory changes. No viable alternatives could be determined.

Regulatory flexibility analysis

Please describe the agency’s analysis of 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 business. Alternative regulatory methods include, at a minimum: 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.

The agency considers the proposed changes as the least burdensome and no other alternatives were identified. The proposed regulations do not impact small businesses any differently than other businesses.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Deana Wilson Director of Education, Center for Real Estate 184 Business Park Drive, Suite 200 Virginia Beach, VA 23462	The purpose of my comment is to offer suggested changes to the regulations you might consider with regard to real estate schools and real estate instructors. We ask that the Real Estate Board consider the following suggestions: 1. Continuing education and post licensing education instructors not be forced to obtain instructor certificates or pay fees associated with doing so. A significant portion of our instructors teach one or two three hour courses per month and would not be willing to pay a fee in order to continue teaching. 2. The standard of entry for continuing education and post license education instructors should be different than pre-license education instructors and should include five years of experience in their field of expertise and sufficient documentation of their expertise. These instructors should not need to show evidence that they have completed a “train the trainer” course in order to be deemed qualified to teach.	The Board reviewed this comment when drafting proposed regulations. The Board did not include fees or the need to obtain instructor certificates in its proposed regulations as you suggested. The Board also agreed with your second suggestion and included different criteria for for pre-license instructors and for continuing education and post license education instructors. The continuing education and post license education instructors will not be required to complete a “train the trainer” course.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed changes are not expected to have an impact on families.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 135-20-10		Definitions	Add definition for actively engaged in the brokerage business. This definition is needed to clarify language in Section 54.1-2106.1 of the Code of Virginia
18 VAC 135-20-30		An applicant for license shall not have been convicted of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury. An applicant who does not meet certain requirements may be approved for licensure following consideration by the board in accordance with §54.1-204 of the Code of Virginia.	Amend language to require disclosure of misdemeanors involving moral turpitude, sexual offense, drug distribution or physical injury within five years of application date. The Board has been approving applicants with older misdemeanor convictions therefore applicants with misdemeanor convictions over 5 years old should not have to wait for an administrative hearing to obtain a license. An applicant must have a high school diploma. This change is made pursuant to HB 211. The language referencing Code section 54.1-204 needs to be removed as it is redundant to the language in an earlier subsection and does not apply to disciplinary actions.
18 VAC		An applicant for license by	Amend language to require disclosure of

<p>135-20-60</p>		<p>reciprocity shall not have been convicted of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury. An applicant who does not meet certain requirements may be approved for licensure following consideration by the board in accordance with §54.1-204 of the Code of Virginia.</p>	<p>misdemeanors involving moral turpitude, sexual offense, drug distribution or physical injury within five years of application date. The Board has been approving applicants with older misdemeanor convictions therefore applicants with misdemeanor convictions over 5 years old should not have to wait for an administrative hearing to obtain a license. An applicant must have a high school diploma. This change is made pursuant to HB 211. The language referencing Code section 54.1-204 needs to be removed as it is redundant to the language in an earlier subsection and does not apply to disciplinary actions.</p>
<p>18 VAC 135-20-100</p>		<p>A licensee must have completed eight hours of continuing education required for renewal.</p>	<p>Amend language to show completion of sixteen hours of continuing education is required for renewal of license except for salespersons who are renewing for the first time who must complete thirty hours of post license education. Add the specific course topics for the mandatory eight hours of continuing education. This change is made pursuant to Chapter 998 of the Acts of the 2003 General Assembly.</p>
<p>18 VAC 135-20-105</p>		<p>Provides that a licensee who obtained his license by reciprocity must pass the state portion of the exam prior to renewing his license. The licensing term is two years.</p>	<p>Add language to remove loophole which allows a licensee to upgrade his license without taking the state portion of the exam. This is needed to ensure that all licensees are treated equally. The loophole allows a person who received his salesperson's license by reciprocity to skip taking the state portion of the salesperson's exam if he upgrades his license to a broker license obtained by reciprocity within his first renewal cycle. This person may not complete the state portion of the exam for four years from initial licensure.</p>
<p>18 VAC 135-20-160</p>		<p>Provides that the branch office license and roster of licensees shall be available to the public and that each place of business shall have a supervising broker.</p>	<p>Amend the language concerning placement of licenses from being available to being posted in a conspicuous place. This change is being made so that the public will know by looking at the posting that the person with whom they are dealing is licensed. The amendments to supervising broker supervision provisions are necessary to keep up with changes in technology as more licensees telecommute and don't come into the physical office everyday. The changes are also being made to address concerns raised by licensees wanting more guidance on what supervising brokers need to do, The public, the supervising brokers and the licensees for whom the supervising broker is responsible need to know what is expected of a supervising broker.</p>

<p>18 VAC 135-20-170</p>		<p>Provides that a licensee may use a professional name. Provides that principal brokers must keep the board informed of firm and branch office address changes.</p>	<p>Add language to clarify what constitutes a professional name. Add language to include name changes for the firms and branch offices. These changes are needed so the public knows with whom they are dealing. The public needs to be able to verify that they are dealing with licensed individuals and firms.</p>
<p>18 VAC 135-20-180</p>		<p>Provides that certain enumerated actions are considered improper maintenance of escrow funds and that the principal broker must report only one of the actions if he believes a licensee did not comply with that specific subdivision.</p>	<p>Add a new subsection making the principal broker responsible for reporting noncompliance by a licensee with the entire section. This amendment is needed to provide more protection of funds placed in escrow by the public.</p>
<p>18 VAC 135-20-190</p>		<p>Provides information on how advertising is to be done by licensees.</p>	<p>Add language to comply with the new disclosure requirements in §54.1-2138.1 of the Code of Virginia. Add language to reflect current use of technology in advertising. Many licensees are now using the internet to advertise and the current regulations do not address this type of advertising.</p>
<p>18 VAC 135-20-210</p>		<p>Provides one subsection for licensees to disclose their interest in the property if they are attempting to acquire real property and one subsection for licensees to disclose their interest if they are selling or leasing property in which they have an ownership interest.</p>	<p>Delete the second subsection and combine it into one section. This proposed change is needed to clarify that the licensee has the same duty to disclose his interest in the real property whether he is selling, leasing or acquiring real property.</p>
<p>18 VAC 135-20-220</p>		<p>Provides for disclosure of brokerage relationships.</p>	<p>The current regulation is not consistent with the statutory requirement. The proposed change makes the regulation language consistent with §54.1-2138 of the Code of Virginia.</p>
<p>18 VAC 135-20-300</p>		<p>Enumerates actions which constitute misrepresentation or omission or both.</p>	<p>Add language to subsection 6 that the failure to include the complete terms and conditions of the real estate transaction include but are not limited to certain types of documents. This change is needed to clarify that the list in the regulation includes more than just those types of transactions named. This helps to protect the public. Delete language regarding reasonably relied upon by a third party to that party's detriment. This change is needed to strengthen the board's ability to discipline a licensee who harms others by removing the need for a third party to be harmed. This change</p>

			provides better consumer protection.
	18 VAC 135-20-345		Add section to allow the board to take action against all concurrent licenses held by an individual at the same time. Currently when the board suspends, revokes or fails to renew the license of a licensee who holds more than one broker's license, the board must initiate a separate action against the broker's other licenses which were not the subject of the initial disciplinary action. This change is needed for consumer protection. If a licensee commits a violation of the board's regulations which warrants the suspension or revocation of his license, he should not be able to continue to practice because he holds a concurrent license at another firm.
18 VAC 135-20-360		Provides standards for instructor qualifications and course requirements.	Add language regarding the quality of instructors and put in place an expiration date for courses. These changes are needed to ensure the instructors are trained and qualified to teach. The course expiration is necessary to ensure the courses are up to date and relevant.
18 VAC 135-20-370		Currently proprietary school certificates and pre-license instructor certificates expire biennially on June 30.	Amend language so that school and instructor certificates expire every two years from the last day of the month in which they were issued. This change will mirror how fees are handled for other real estate licenses. It will also make the fees cover a full two year licensing term. Add the words pre-license in front of instructor. This change is necessary to clarify that these provisions are only for instructors of pre-license education. Add language about expiration of school approvals. This change is needed to ensure that students take courses only from board approved schools as required by §54.1-2105 of the Code of Virginia.
18 VAC 135-20-390		Provides reasons for which the board may withdraw approval.	Add the word course in the first sentence. This change is needed to ensure that the board may withdraw its approval of a course if the course no longer meets the board's standards as stated later in the regulation.

Enter any other statement here