



Fast Track Proposed Regulation Agency Background Document

Agency name	Real Estate Board and Fair Housing Board
Virginia Administrative Code (VAC) citation	18 VAC135-50
Regulation title	Fair Housing Regulations
Action title	Amending
Date this document prepared	February 21, 2007

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

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The proposal adds language referencing the Fair Housing Board in accordance with § 54.1-2344 of the *Code of Virginia*, and specifically states the authority of both the Real Estate and Fair Housing Boards in administration and enforcement of the Virginia Fair Housing Law.

The proposal also adds language regarding the board's interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person's enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin.

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 taking the action, and (3) the title of the regulation.

The Real Estate Board adopted Fast-Track Regulations on January 25, 2007. The Fair Housing Board adopted Fast-Track Regulations on February 7, 2007.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2344 of the *Code of Virginia* gives the Real Estate Board the authority to administer and enforce the Fair Housing Law with respect to real estate brokers, real estate salespersons, and real estate brokerage firms licensed in accordance with § 54.1-2100 et seq. or their agents or employees. Section 54.1-2344 further gives the Fair Housing Board the authority to administer and enforce the Fair Housing Law with respect to all others who have allegedly violated or violated the law. Section 36-96.8 states that both the Real Estate and Fair Housing Boards may “perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.” Note that the Chapter 575 of the 2003 Acts of Assembly created the Fair Housing Board and contained an enactment clause as follows: “3. That all rules and regulations adopted by the Real Estate Board that are in effect as of the effective date of this act and that pertain to the subject of this act shall remain in full force and effect until altered, amended or rescinded by the Fair Housing Board.” The authority of the Boards is discretionary, however the proposed changes are necessary to comply with statute and maintain substantial equivalency status with the Department of Housing and Urban Development.

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 the regulation 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.

The Fair Housing Board was created in 2003 (Chapter 575, 200 Acts of Assembly). The regulatory proposal adds language referencing the Fair Housing Board in accordance with § 54.1-2344 of the *Code of Virginia*, and specifically states the authority of both the Real Estate and Fair Housing Boards in administration and enforcement of the Virginia Fair Housing Law. The Virginia Fair Housing Office and both the Real Estate and Fair Housing Boards have been administering and enforcing the provisions of the Virginia Fair Housing Law in accordance with changes made to the law in 2003 since the effective date of those changes on July 1, 2003. The regulatory proposal will clearly reference the 2003 changes and provide the public with a better understanding of the role of the boards in administration and enforcement of the Fair Housing Law.

The proposal also adds language regarding the board’s interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person’s enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin. This language was erroneously deleted during the last regulatory change in 2003 when several provisions that duplicated statutes were removed. These provisions do not duplicate statute and are necessary to enforce the law and to maintain Virginia’s substantial equivalency status with the Department of Housing and Urban Development.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day 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 with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Changes relating to the role of both the Real Estate and Fair Housing Boards in administration and enforcement of Virginia’s Fair Housing Law are proposed simply to clarify statutory changes made in 2003. The Virginia Fair Housing Office and both the Real Estate and Fair Housing Boards have been administering and enforcing the provisions of the Virginia Fair Housing Law in accordance with changes made to the law in 2003 since the effective date of those changes on July 1, 2003. The regulatory proposal will provide the public with a better understanding of the role of the Boards in administration and enforcement of the Fair Housing Law.

Changes made to Section 220 relating the board’s interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person’s enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin, were made to correct an error made during the regulatory review process in 2003. The language was erroneously deleted when several provisions that duplicated statutes were removed. The language does not duplicate statute and is necessary to enforce the law and to maintain Virginia’s substantial equivalency status with the Department of Housing and Urban Development. This change is not anticipated to be controversial.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

Changes relating to the role of both the Real Estate and Fair Housing Boards in administration and enforcement of Virginia’s Fair Housing Law are proposed simply to clarify statutory changes made in 2003. The change is not substantive.

Changes made to Section 220 relating the board’s interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person’s enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin, were made to correct an error made during the regulatory review process in 2003. The language was erroneously deleted when several provisions that duplicated statutes were removed. The language does not duplicate statute and is necessary to enforce the law and to maintain Virginia’s substantial equivalency status with the Department of Housing and Urban Development.

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.
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Changes relating to the role of both the Real Estate and Fair Housing Boards in administration and enforcement of Virginia’s Fair Housing Law are proposed simply to clarify statutory changes made in 2003. The advantage is that the public will have a better understanding of how the Fair Housing Law is administered and enforced. No disadvantages have been identified.

Changes made to Section 220 relating the board’s interpretation of conduct that is unlawful under the Fair Housing Law, specifically interfering with a person’s enjoyment of their dwelling based on race, color, religion, sex, handicap, familial status, elderliness, or national origin, are necessary to ensure enforcement of the Fair Housing Law. The advantages are to further protect members of protected classes from discrimination and to maintain substantial equivalency with the Department of Housing and Urban Development. No disadvantages have been identified.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is 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.

The proposal does not contain requirements that are more restrictive than federal laws and regulations.

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.

No localities will be specifically impacted by the proposed changes.

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 proposed changes comply with statute, no other alternatives are available.

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	
Projected cost of the regulation on localities	
Description of the individuals, businesses or other entities likely to be affected by the regulation	
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.	
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.	

No economic impact is anticipated.

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.

The proposed changes comply with statute, no other alternatives are available.

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.

No specific impact on families has been identified.

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
10		The definition of “Board” includes only the Real Estate Board.	The proposal adds the Fair Housing Board to the definition of “Board”. The change complies with Chapter 575 of the 2003 Acts of Assembly, it does not change the way the Fair Housing Law is administered and enforced.
20		The current language does not reference the Fair Housing Board or its role in administration and enforcement of the Virginia Fair Housing Law.	The proposal adds language specifically referencing the Fair Housing Board and describing the role of the Real Estate and Fair Housing Boards in the administration and enforcement of Virginia’s Fair Housing Law. The change complies with Chapter 575 of the 2003 Acts of Assembly, it does not change the way the Fair Housing Law is administered and enforced.
220		The current provisions do not contain language referencing the right of a member of a protected class to enjoy a dwelling free from interference, coercion or intimidation based on being a member of a protected class.	The proposal adds language erroneously deleted in 2003 when several provisions that duplicated statute were removed. This provision does not duplicate statute and is necessary to enforce the Fair Housing Law and to maintain substantial equivalency status with the Department of Housing and Urban Development.
400		The current language references the Real Estate Board.	The proposal deletes “Real Estate”, making the language applicable to both Boards.