



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Professional and Occupational Regulations
VAC Chapter Number:	18 VAC 135-40-10 et seq.
Regulation Title:	Virginia Real Estate Time-Share Regulations
Action Title:	Amending
Date:	August 17, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In 1981 the Virginia General Assembly enacted the Virginia Real Estate Time-Share Act, which was signed into law by the Governor. § 55-396 of the *Code of Virginia* (part of the Act) confers upon the Real Estate Board the general powers and duties of administering the Act and outlines specific responsibilities and punitive solutions at its disposal to enforce the provisions set forth in the Act.

Since the inception of the Act the General Assembly has passed a number of amendments that have altered many of the requirements of the documents required to be provided by regulants. Until 1987 the regulations were modified as required to keep up with those amendments. Since 1987 there have been numerous changes to the Act, but no revisions to the regulations.

This change to the Time-Share Regulations will eliminate duplication with the statutes, streamline the explanation of the registration and annual report process, and further clarify regulations that are somewhat vague and in some instances contrary to amendments that have been added to the statutes.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Chapter 21 of Title 55 of the Code of Virginia (The Virginia Real Estate Time-Share Act [the Act]) creates the statutory authority for the registration and regulation of time-share use projects, time-share estate projects, alternative purchases, conversions, and other aspects of the time-share industry by the Real Estate Board.

Specifically, § 55-396 of the Code of Virginia allows for the board to “adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives” of the Act. Additionally, the board is provided with the authority to prescribe forms and develop procedures for the submission of information to the board.

The proposed revisions to the regulations are submitted primarily to insure consistency with the Act, which has been amended numerous times since the promulgation of the existing regulations in 1987. These regulations have been developed by the board in a manner believed to be the least burdensome on the regulated industry while providing protection to the public by ensuring adequate disclosure of information in the purchase and/or use of a time-share.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

This is the first revision to the existing regulations since 1987. The purpose of this revision is to ensure that the regulations remain consistent with the Act, which has been amended numerous times in the past thirteen years. The purpose of the regulations is to create a regulatory framework to protect the public when purchasing or utilizing a time-share project.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The key provisions of the proposed regulations that make changes to the current status of law are identified and explained as follows:

Definitions: This section of the regulations replaces the general section and serves to define and explain terminology that may be used in this chapter that is not defined in the statutes.

Registration: Establishes and clarifies the procedure for filing a registration application and sets the filing fees.

Marketing: No substantive changes made to existing sections, editorial changes made to clarify existing regulations.

Public Offering Statement: Substantive changes to this section include the deletion of those sections which duplicated or were in conflict with the Public Offering Statement provision of the statutes.

Post Registration Provisions: Sections of this portion of the regulations were deleted to avoid duplication with the statutes. A 20 day reporting period was inserted in the requirement to report material changes, previously no grace period was allowed. Other changes were made to clarify and simplify existing regulations.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

Time-sharing, although relatively new to the United States, has been used in Europe on a limited basis for many years. Time-sharing is the concept of purchasing only that portion of time in a resort or other unit or facility that will actually be used by the owner. In the United States, time-shares are normally purchased in resort or second home areas and are normally divided into weekly increments.

Although there are several variations on the general concept, there are two general methods of structuring a time-share project. The first is fee simple ownership in which the individual purchasing a time-share actually acquires an interest in the real estate itself. As a property owner, this individual enjoys many of the same benefits and carries many of the same

burdens as purchasers and owners of other real property. This type of project is identified in the statute as a time-share estate.

The second type is a right-to-use project. This may be structured in several ways, but the individual has no ownership interest in the property itself, and, subsequently, fewer of the benefits and burdens that accompany such ownership. The owner is paying for the right to use the project, similar to paying rent. This type of project is identified in the statute as a time-share use.

Either the estate or the use project may be structured on a fixed or floating week basis (either a purchaser enjoys the opportunity to use the same week every year or the use by the purchaser “floats” within a given period of weeks during the year or among various units within the time-share project), be part of an exchange network (where a purchaser can exchange his rights at one project for those at a different project), be valued on a premium week structure (where certain calendar weeks are worth more than others) or include incidental benefits (any extra benefits or privileges worth more than \$100).

Regardless of the type of program offered the financial outlay is substantial, with premium weeks at premium resorts selling for prices above \$15,000. Additionally, potential time-share purchasers are enticed into attending sales presentations with offers of free prizes and contests, including chances to receive, vacations, vehicles, cash, appliances, airline tickets, or other prizes of a high value.

As with most real estate transactions the paperwork involved in the purchase of a time-share can seem overwhelming to the layperson. Sales contracts, legal declarations, public offering statements, bylaws, rules and regulations, and exchange agreements are just some of the documents presented to the purchaser during the sales presentation. Regulation of the time-share companies ensures that these documents disclose information to the potential purchasers to afford them the opportunity to make an informed decision as to whether or not to commit to this sort of purchase.

The primary advantage to the public in the proposed changes is to assist them in making more informed decisions when purchasing a time-share through full disclosure in all documents. The advantage to those registering time-share projects is achieved through simplification of registration procedures. No disadvantages have been identified.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The Real Estate Board was created in 1924 by the Virginia General Assembly to regulate businesses and individuals representing others in real property transactions, including condominiums, cooperatives, and time-shares. The time-share portion of the board generates revenue by collecting fees from newly established time-shares as well as those that are expanding. The board also assesses a fee to time-share exchange companies. In addition, each of the 66 currently registered time-shares pay an annual reporting fee. The board helps ensure that all laws and statutes applicable to property registration are adhered to. The Time-share Advisory Committee advises the full board in the exercise of its powers and the performance of its duties under the Virginia Real Estate Time-share Act. The regulations governing the registration and report requirements for time-shares are found in Chapter 21, Title 54.1, sections 360 through 400 of the Code of Virginia. The Real Estate Board is composed of nine representatives; seven members who have been licensed real estate brokers or salespersons for at least five consecutive years, and two citizen members. The Department of Professional and Occupational Regulation assists the board in a number of ways. The board relies on departmental staff to assist with: applicants seeking licensure, license renewal, and administrative support. All costs are borne by the department and funded through license fees paid by the applicants and licensees. In the analysis that follows, staff time and all other resources dedicated to this board are detailed as well as anticipated revenues generated by the board.

Background: All boards within the Department of Professional and Occupation Regulation must operate within the provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. As such, each program's fee revenues must support both its direct and a proportionate share of its indirect costs. To ensure that the provisions of the Callahan Act are met, the Department allocates costs to its regulatory programs based on consistent and equitable, yet cost-effective methodologies. In keeping with this, the Real Estate Board's total financial picture is presented. The expenditures presented represent the cost for all real estate salespersons, brokers and firms, as well as condominiums and time-shares. The fees collected for time-shares was approximately 1.09% of the \$6.1 million collected in the previous biennium. The program is expected to consume approximately 1.35% of the resources with the exception of the category for examinations. The program currently relies on the board's cash balance as well as current collections to maintain services to the program.

Direct Board & Board Administration Expenses:

1996-1998	\$1,564,984
1998-2000	\$1,474,121
2000-2002	\$1,518,345

Administration of Exams (not applicable to Timeshares):

1996-98	\$6,820
1998-00	\$23,245
2000-02	\$23,924

Legal Services (previously included in direct board expenses):

1998-00	\$151,855
2000-02	\$156,411

Enforcement:

1996-98	\$712,935
1998-00	\$838,001
2000-02	\$863,141

Information Systems & Records Management:

1996-98	\$569,257
1998-00	\$493,139
2000-02	\$507,933

Facilities Management & Support Services:

1996-98	\$273,604
1998-00	\$515,394
2000-02	\$530,856

Agency Administration:

1996-98	\$411,724
1998-00	\$470,538
2000-02	\$484,654

Indirect Costs/Transfers:

1996-98	\$56,868
1998-00	\$10,698
2000-02	\$21,019

Revenues:

1996-98	\$6,149,359
1998-00	\$3,485,575
2000-02	\$3,330,524

Callahan Calculations (at the end of the 1996-98 biennium, the Callahan percentage for this board was 92.3%. The Board approved a fee reduction on March 25, 1999, which will further reduce this calculation):

1996-98	92.3%
1998-00	74.2%
2000-02	53.3%

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Part I Definitions (was General)

- 18 VAC 135-40-10 Deleted passage as not necessary, not enforceable, and barely informational.
- 18 VAC 135-40-20 Modified to streamline section and indicate that the definitions in the Act are adequate.
- 18 VAC 135-40-30 Deleted as board doesn't require regulations to indicate its right/responsibility to form a committee.
- 18 VAC 135-40-40 Deleted as this would be something handled within the scope of authority of the agency.

Part II Registration (was Application for Registration)

- 18 VAC 135-40-50 Modified to clarify section.
- 18 VAC 135-40-60 Added "formats and document requirements" to those items the board has authority to regulate in the submission of an application.
- 18 VAC 135-40-70 Deleted: procedures in place for processing applications should not be a part of rules and regulations.
- 18 VAC 135-40-80 Item #5 modified in order to clarify the section.

Part III (was Registration) This entire section was merged with Part II

- 18 VAC 135-40-90 Deleted and merged with 18 VAC 135-40-50.

Part IV changed to Part III Marketing

18 VAC 135-40-100 Modified to match statutory definitions.

Part V changed to Part IV Public Offering Statement

18 VAC 135-40-130 Deleted.

18 VAC 135-40-150 Modified to conform to statutory requirements.

18 VAC 135-40-160 Modified to encourage the developer to use existing terminology.

18 VAC 135-40-170 Deleted as repetitive of statute.

18 VAC 135-40-180 Deleted as repetitive of statute.

18 VAC 135-40-190 Deleted as repetitive of statute.

18 VAC 135-40-200 Deleted as repetitive of statute.

18 VAC 135-40-210 Deleted as repetitive of statute.

18 VAC 135-40-220 Deleted as repetitive of statute.

18 VAC 135-40-230 Deleted as repetitive of statute.

18 VAC 135-40-240 Deleted as repetitive of statute.

18 VAC 135-40-250 Deleted as repetitive of statute.

18 VAC 135-40-260 Deleted as repetitive of statute.

18 VAC 135-40-270 Deleted as repetitive of statute.

18 VAC 135-40-280 Deleted as repetitive of statute.

18 VAC 135-40-290 Deleted as repetitive of statute.

18 VAC 135-40-300 Deleted as repetitive of statute.

18 VAC 135-40-310 Deleted as repetitive of statute.

18 VAC 135-40-330 Deleted as repetitive of statute.

Part VI Conversion Project (entire section deleted)

18 VAC 135-40-340 Deleted as repetitive of statute.

18 VAC 135-40-350 Deleted as repetitive of statute.

18 VAC 135-40-360 Deleted as repetitive of statute.

18 VAC 135-40-370 Deleted as repetitive of statute.

18 VAC 135-40-380 Deleted as repetitive of statute.

18 VAC 135-40-390 Deleted as repetitive of statute.

18 VAC 135-40-400 Deleted as repetitive of statute.

PART VII changed to Part VI Post Registration Provisions

18 VAC 135-40-410 Deleted as material change defined in § 55-362.

18 VAC 135-40-420 Modified to comply with § 55-394.1.

18 VAC 135-40-430 Modified to comply with § 55-374 (E)with those portions deleted that duplicate information in the statutes.

18 VAC 135-40-440 Deleted as repetitive of statute.

18 VAC 135-40-450 Deleted as repetitive of statute.

18 VAC 135-40-460 Deleted as repetitive of statute.

18 VAC 135-40-470 Deleted as repetitive of statute.

18 VAC 135-40-480 Deleted as repetitive of statute.

Part VIII Exchange Programs (entire section deleted)

18 VAC 135-40-490 Deleted as repetitive of statute.

18 VAC 135-40-500 Deleted as repetitive of statute.

18 VAC 135-40-510 Deleted as repetitive of statute.

18 VAC 135-40-520 Deleted as repetitive of statute.

18 VAC 135-40-530 Deleted as repetitive of statute.

Alternatives

Please describe the specific 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.

This paring of the regulations to the bare minimum requirements is the result of looking at various alternatives to the regulations as currently in place. The Virginia Real Estate Time-Share Act as amended has evolved to the point of specificity where the primary purpose of the regulations, with the exception of fees, is purely administrative. The board has concluded that these proposed regulations, as adopted, are the least burdensome on the regulant population while providing the support necessary to ensure protection to the citizens of the Commonwealth afforded by the Virginia Real Estate Time-Share Act.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comment has been received concerning the proposed revisions to the Virginia Real Estate Time-Share Regulations.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The proposed revisions to the Virginia Real Estate Time-Share Regulations were developed both by analyzing the regulations of other states with regulatory programs in place regarding the time-share industry (Florida, California, Texas et. al.) and finding the best way to convey the specificity of the Virginia Real Estate Time-Share Act (§ 55-360 et seq. of the *Code of Virginia*).

In addition the Real Estate Board utilized the resources available from its Time-Share Advisory Committee, made up of members of the time-share industry and members of the board. The goal of the Real Estate Board was to complete a comprehensive review of the existing regulations and to amend them, where necessary to comply with statutory changes which have occurred since the last revision, arriving at a regulatory program that was the least burdensome to the regulants, while simultaneously providing protection to purchasers and potential purchasers of time-share products in the way of disclosure requirements.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Real Estate Board will review and re-evaluate the proposed regulations in late 2004, after the end of the first biennium that the revised regulations are in effect. The evaluation of the necessity to adjust fees in compliance with § 54.1-113 of the *Code of Virginia* will initiate a review and re-evaluation of the regulations in their entirety.

The specific and measurable goals are:

- A regulatory program which provides protection to the public from time-share developers that do not comply with the statutory requirements of disclosure in their offering literature and time-share instruments.
- The protection to the public from time-share developers that use improper, fraudulent, or dishonest conduct in the offering of time-shares and related time-share products.
- A regulatory program which provides for the enforcement of current statutes and regulations.
- The reasonable expectation to the public that sufficient information will be provided to them to allow them to make an informed choice when determining whether or not to purchase a time-share or time-share related product.
- The reasonable expectation to the public that time-share developers whose projects are registered in the Commonwealth of Virginia will have adequate funds available or the necessary bonding to ensure that the project promised in the offering documents will be completed as planned.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

These proposed regulations will have no impact on the institution of the family or family stability nor will it strengthen or erode the marital commitment nor increase or decrease disposable family income.