



Final Regulation Agency Background Document

Agency name	Virginia Board for Asbestos, Lead, and Home Inspectors
Virginia Administrative Code (VAC) citation	18 VAC 15 -40
Regulation title	Certified Home Inspectors Regulations
Action title	General review of regulations, including standards of practice and continuing education.
Date this document prepared	March 23, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

Amendments are proposed to the definitions, the qualifications for certification, the certified home inspection contract provisions, the certified home inspection report provisions, the conflict of interest provisions, and the unworthiness and incompetence provisions. A continuing professional education requirement is proposed. Several sections are proposed for amendment to conform to DPOR's Model Regulations and have no substantive impact.

Changes between proposed and final regulations include adding a definition of "financial interest", adding a requirement that the home inspection contract disclose any financial interest which the home inspector may have with a person recommended for repairs, and the language defining a conflict of interest situation has been further clarified.

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.

On February 4, 2010, the Board for Asbestos, Lead, and Home Inspectors adopted final regulations entitled "Certified Home Inspectors Regulations".

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 numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The promulgating entity is the Virginia Board for Asbestos, Lead, and Home Inspectors.

§ 54.1-201.5 of the *Code of Virginia* (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) states that the Board has the power and duty "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.

Section 54.1-501 (7) (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-501>) states that the Board shall promulgate regulations 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.

The imperative form of the verb "shall" is used, making the Board's authority to regulate mandatory rather than discretionary.

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.

Purchasing a home is the largest financial decision and investment made by most Virginia citizens. A competent home inspection is critical to the purchase decision to avoid unexpected expenses.

The current regulations were the first to be promulgated under the statutory authority granted by the 2001 Session of the Virginia General Assembly and have been in effect since July 1, 2003, without amendment. The passing of four years since initial promulgation and the Board's experience with the current regulations led the Board to conclude that a general review of its regulations as well as consideration of continuing professional education (CPE) provisions is appropriate.

The goal of the proposal is to ensure that the regulatory standards for minimum competency are up-to-date for the certified home inspector resulting in a more detailed and accurate home inspection for the prospective home buyer.

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.

Substantive changes include:

- the addition and deletion of definitions
- the expansion of entry qualification options
- additions are made to the specific requirements of what components of a building must be inspected
- conflict of interest situations, previously prohibited, are allowed only in specific situations where full disclosure is made to the client
- additions are made to the actions that constitute unworthiness and incompetence

New substantive provisions include:

- a requirement for certificate holders to complete CPE
- a provision that a certificate holder's act of renewing indicates his compliance with the CPE requirement
- a requirement to include conflict of interest information as an item in the inspection contract

A number of non-substantive amendments are made to clarify and reorganize the current regulation provisions to conform to the DPOR Model Regulations.

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.

1. The primary advantage of the new and amended provisions to the public is the availability of minimally competent home inspectors using contracts designed to disclose the scope and limitations of the planned home inspection and using inspection reports that document, in writing, any defects found. Further, the public will benefit from certified home inspectors who keep up with changes in technology and other aspects of housing construction through CPE. Revising contracts and inspection reports currently in use as well as completing CPE will add some costs, however; these are expected to be minor. Many regulants belong to professional organizations that already require CPE as a condition of continued membership.

2. The primary advantage to DPOR and the Commonwealth is an amended regulation that can be administered effectively and is anticipated to provide a reasonable level of public protection with a minimum intrusion into the conduct of commerce. No disadvantage has been identified.

3. A pertinent matter of interest to the regulated community is the amendment to the regulation provisions pertaining to conflict of interest. In the more rural regions of the Commonwealth, few home inspectors are available and most home inspectors also perform building repair and construction. If a home inspector is prohibited from performing repairs to a property where he conducted an inspection, this can severely limit the options of the consumer. The conflict of interest provisions are modified in the regulation to allow a home inspector to perform, or recommend a person to perform, repairs to a property that he inspected as long as full, written disclosure occurs to the homeowner. This requirement will be satisfied by the inclusion of financial interest disclosure in the home inspection contract. The home inspector can conduct business as a home inspector and contractor if the home owner acknowledges and determines this to be acceptable upon full disclosure of all financial interests.

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
10	Definitions of terms	Definition of "Financial Interest" added	The provisions for conflict of interest situations were amended to allow specific situations as long as disclosure of financial interest was made to the client. "Financial Interest" must be defined in order to protect the homeowner.
120	Certified Home Inspection Contract Items	The disclosure of any financial interest between the home inspector and a person recommended for repairs or modifications is a required home inspection contract item.	The Board determined that situations of potential conflict of interest would be acceptable as long as the home inspector disclosed to the client any financial interests which he has with a person recommended for repairs. Section 120 was amended to require that this disclosure to the consumer be included as a home inspection contract item.
140	Conflict of Interest	The language describing conflicts of interest changed the term "party" to "person".	This change was made so as to cover all possible entities as "person" is defined in 54.1-500 of the <i>Code of Virginia</i> .

		<p>In subdivision A.3, the language is clarified pertaining to a certified home inspector referring a client to a person for repairs on a residential building which the home inspector inspected.</p>	<p>The language during the proposed stage was intended to allow a home inspector to recommend to the homeowner another person for repairs on a property that the home inspector inspected as long as he discloses any relationship that he has with the person recommended for repairs. The language was ambiguous during the proposed stage, so it was clarified during the final stage.</p>
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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.

#	COMMENTS	REGULATION #	COMMENTOR	RESPONSE
1	<p>Suggests the regulation list the exams approved by the Board which would eliminate any confusion or vagueness.</p> <p>States the grace period of two years after the expiration is too lenient.</p> <p>Also the second half of the sentence is unclear in 18VAC15-40-140 A (3) and should be removed.</p>	<p>All & 18VAC15-40-140A(3)</p>	<p>Jamie Wilks</p>	<p>The Board is authorized to approve exam providers that meet the Board's requirements for home inspector certification. Approved exam providers are subject to change at any time. Through its authority to approve exam providers, the Board will most efficiently accomplish the publication of its approved exam providers by establishing a document on its website.</p> <p>The Board feels that the reinstatement period of up to two years from certification expiration is sufficient to allow a certificate holder to continue to practice without having to meet initial entry requirements again. (No alternative to the existing</p>

			<p>standard was offered by the comment.)</p> <p>18VAC15-40-140 A 3 was established to prevent referrals by home inspectors who may have a financial interest in the organization conducting the repairs. The Board will amend the language to make clear that referrals by the home inspector to the client are allowed as long as specific conditions are satisfied including the disclosure of any financial interest between the certified home inspector and the firm to which the client is referred for repairs or modifications.</p>
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All changes made in this regulatory action

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

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		Regulation Definitions	<p>Adds definition of "adjacent" to specify the physical limits of a home inspection.</p> <p>Adds definition of "financial interest" to specify the parameters of what constitutes such interest for the purposes of determining a conflict of interest.</p> <p>The term "function" is deleted as it is not used in the regulation language.</p> <p>Adds definition of "outbuilding" to describe structures that are more than three feet from the residential building being inspected but close enough to affect a residential building should it burn or collapse.</p>

			The term "structural component" is deleted as it is not used in the regulation language.
30		Establishes the educational and experience requirements to qualify for a home inspector certification.	<p>Subdivision 2 a (2) is added to allow applicants to qualify for certification with 35 contact hours of classroom training and 50 (rather than 100) inspections when those inspections were completed under the direct supervision of a Virginia certified home inspector. Performing inspections under the supervision of a regulant will allow an individual to develop the required minimal competency more quickly.</p> <p>Subdivision 2 a (4) is added to allow applicants to qualify for certification with 70 contact hours of classroom training and 25 (rather than 50) inspections when those inspections were completed under the direct supervision of a Virginia certified home inspector. Performing inspections under the supervision of a regulant will allow an individual to develop the required minimal competency more quickly.</p> <p>Current language allows applicants to qualify for certification who may not have the classroom training hours but have ten years or more of experience as a home inspector. No quantified amount of home inspections is specified for those ten years of experience. The language is modified to require that, during those ten years, at least 250 home inspections were completed by the applicant in substantial compliance with the Board's regulations. The number "250" was determined by the Board to be reasonable to expect during ten years of experience in order to become minimally competent, provided that the inspections were performed in substantial accordance with the Board's regulations. Inspections performed using other standards (such as the electrical inspections performed by building officials) will not be considered.</p>
	45		The new section is added to continue repealed language from subdivision 110 A which authorizes the Board to deny an initial certificate for failure to meet entry requirements or for any of the reasons that it may discipline a regulant. The language conforms to DPOR's model regulations and

			has no substantive impact.
	48		The new section is added to combine language from subdivision 50 A and subdivision 100 A concerning fees being nonrefundable and the date used to determine timely receipt. The language applies to all fees and requires payment to be made to the Treasurer of Virginia. The amendment conforms to DPOR model regulations and has no substantive impact.
50		Makes fees nonrefundable, establishes the date used to determine timely receipt, and establishes the application fee.	Amended to move language concerning fees to a one area (section 48) and rephrased to continue to establish the application fee at \$25. The amendment has no substantive impact.
	52		The new section is added to consolidate the language concerning renewal and reinstatement fees from subdivision 100 B to one section to conform to DPOR model regulations. The amendment has no substantive impact.
70		Establishes the qualifications for renewal of a certificate	<p>Language from subsection A is moved to subsection 80 C which states that the applicant's renewal of his certificate is his affirmation that he continues to meet the insurance requirement. The language concerning grounds for disciplinary action is deleted because subdivision 190.2 establishes misrepresentation as unworthiness and incompetence.</p> <p>The language from subsection B is moved to subsection 80 B, which establishes the procedures for renewal. This conforms to the DPOR model regulations and has no substantive impact.</p>
	72		Establishes a requirement for 16 hours of continuing professional education (CPE) every two years as a condition of renewal beginning two years after the amendment's effective date. The technology found in homes is evolving, making periodic training to update one's competence necessary to assure public protection. Many certificate holders undergo a similar CPE requirement in order to maintain professional organization

			membership. The language establishes standards for CPE subject matter, certification of completion, timeliness, and records maintenance.
80		Describes the procedure for the renewal of certificates.	<p>Subsection A's single amendment adds the words "of record" after "last known home address" to clarify that the address used will be the last known address as reflected in the Board's records. The amendment is for clarification and has no substantive impact.</p> <p>Subsection B includes language from subsection 70 A pertaining to an applicant's affirmation that his act of renewing his certificate indicates that he continues to meet the insurance requirement. Language is also amended to further indicate that an act of certificate renewal is the certificate holder's affirmation that he has completed the CPE requirement and is in continued compliance with the regulations.</p> <p>Subsection C contains the language from subsection 70 B which establishes the procedures for renewal. This conforms to the DPOR model regulations and has no substantive impact.</p>
	85		A new section is created containing language from subsection 90 A establishing late renewal requirements. This conforms to the DPOR model regulations and has no substantive impact.
90		Establishes the standards for certificate reinstatement.	<p>Subsection A is moved to section 85.</p> <p>Subsection B's language specifies exactly when a certificate must be reinstated.</p> <p>Subsection C includes updated regulation citations.</p> <p>Subsection E's language is moved to the new section 105.</p> <p>All subsections are renumbered accordingly.</p> <p>This conforms to the DPOR model regulations and has no substantive impact.</p>

100		Establishes fees for renewal, reinstatement, and examination	<p>Subsection 100 A is repealed. It currently contains language concerning fees being nonrefundable and the date used to determine timely receipt. The language is combined with language from other sections into a single regulation section (section 48) that applies to all fees and requires payment to be made to the Treasurer of Virginia.</p> <p>Subsection 100 B is repealed and its language concerning renewal and reinstatement fees is moved to a new section (section 52) to conform to DPOR model regulations. The amendment has no substantive impact.</p> <p>Subsection 100 C is deleted in its entirety as the Board charges no examination fee. Passing one of three Board-approved examinations is an entry standard that must be met before a certificate may be issued. Applicants must show evidence of having passed a Board-approved examination to qualify for a certificate. These examinations are offered by various home inspection associations.</p>
	105		<p>This new section is added to contain language from subsection 90 E. The language establishes the Board's authority over a regulant during the entire period of time prior to the reinstatement of a certificate. This conforms with DPOR's model regulations and is not a substantive change.</p>
110		Establishes the Board's authority to deny renewal or reinstatement of a certificate	<p>Subsection A is moved to the new section 45 to conform to DPOR's model regulations.</p> <p>Subsection B is deleted because the Board's authority to deny renewal or reinstatement of a license due to a regulant's failure to meet the terms of an agreement, not paying monetary penalties, not satisfying sanctions, or not paying costs to the Board is established by the Board's authority to discipline a regulant in section 190. Terms of certificate renewal and reinstatement contingent on these situations are delineated in consent orders and final orders issued by the Board as a result of disciplinary actions.</p>
120		Establishes the standards	Subdivision B 6 repeals the words "and

		<p>for a home inspection contract</p>	<p>components” as systems are composed of components and a system inspection report must address the condition of the entire system including any components needing attention. Some components may not be accessible to inspect and their condition must be inferred from the overall function of the complete system.</p> <p>Subdivision B 7 l adds the words “asbestos, lead-based paint, mold, [and] radon” to the exclusion language in the inspection contract. Inspection for any of these four items requires specific credentials some of which include licensure. Given the health hazards that may result from exposure to any of these hazards, the public is protected by a specific disclosure and may, if desired, employ properly trained individuals to determine whether these hazards exist. A lawful inspection for the presence asbestos and lead-based paint must be performed by an individual with a license issued by the Board authorizing him to inspect for the presence of asbestos or lead, as appropriate. The home inspector may perform these further inspections only if trained and licensed accordingly.</p> <p>Subdivision B 7 p is a new provision that requires contracts to state whether the presence of components involved in manufacturers' recalls will be inspected and reported upon. The public will be protected by the disclosure and may negotiate with the regulant or contact another party if knowledge of recalls is desired.</p> <p>Subdivision B 7 q is a new provision that requires contracts to state whether outbuildings on the property will be a part of the inspection. Some clients assume that an inspection will include all structures on the property when this is not always the case. The public will benefit by knowing beforehand whether an outbuilding will be inspected.</p> <p>Subdivision B 9 adds language to empower the client to authorize another person to act as his representative in a contract transaction. Situations occur when the client cannot be present to sign the contract and will designate another to act in his stead. The public as well as the regulant benefits from</p>
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			<p>additional flexibility. The client's interests are protected through the client's due diligence in selecting a representative.</p> <p>Subsection D is added to specify that any person, recommended to the homeowner by the home inspector for repairs or modifications, must be listed in the home inspection contract. The home inspector must disclose any financial interest that he has with the person recommended for repairs in the contract. This provision was added to allow flexibility to the home inspector to make recommendations for repairs while simultaneously allowing the homeowner to make an informed decision whether to agree to use the home inspector's recommendation.</p>
<p>130</p>		<p>Describes the requirements of the certified home inspection report</p>	<p>Subdivision A 2 provides for a client to authorize another individual to act in his stead. It further adds language relieving the regulant of including information that is not available to him at the time of the inspection.</p> <p>Subsection B mandates that the report be provided in writing and describe the "readily accessible" and "readily observable defects." This protects both the regulant and the public by specifying the limits of an inspection.</p> <p>Subdivision B 2 d adds the language "if readily visible." Roof flashings are usually at least partially covered by shingles and those defects hidden from view cannot be inspected.</p> <p>Subdivision B 2 g repeals the language "due to size or condition of structure" as an attic may be inaccessible for reasons other than size or condition.</p> <p>Subdivision B 3 a repeals the language "protective coatings" as they are cosmetic and subjective in nature. The client is less likely to enter into a contract with an unreasonable expectation.</p> <p>Subdivision B 3 c adds the language "or adjacent and on the same property" to cover such structures that may not be attached but close enough to the structure as to reasonably affect the integrity of the property.</p>

			<p>Subdivision B 3 f repeals the language “immediately” before “adjacent” as the new definition of “adjacent” sets a specific standard of three feet, making the word “immediately” unnecessary.</p> <p>Subdivision B 4 a adds the word “adjacent” before garage to make clear that a garage within three feet (as specified in the new definition of “adjacent”) of the structure may affect the integrity of the dwelling and must be inspected unless specifically excluded from the contract.</p> <p>Subdivision B 4 b adds the phrase “and associated railings” to make clear that railings are a part of steps, etc., and are to be inspected. The client is less likely to be injured by a defective railing as the client would expect the condition of the railings to be reported upon.</p> <p>Subdivision B 4 e adds language concerning the methods to be used to inspect the automatic safety reverse function of garage door openers and relieves the regulant of any obligation to test the safety function if it cannot be performed safely or if the test will cause damage to the homeowner’s property.</p> <p>Subdivision B 5 d deletes the word “heat” from “heat energy source” as the deleted word is redundant.</p> <p>Subdivision B 6 l adds language requiring arc fault interrupters to be noted as present but not tested if equipment is attached to them. Testing with equipment attached can adversely affect the function of the attached equipment.</p> <p>Subdivision B 8 a removes the provision concerning the inspection of window air conditioners as they are personal property rather than a part of the real property. The language continues to require units installed through the wall to be inspected as it is most likely a permanent installation which constitutes real property.</p> <p>Subsection C adds a new provision specifying the actions the regulant must take when a home has been winterized. The client will benefit from a full disclosure of the</p>
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			inspection limitations imposed by the winterization.
140		This section specifies situations which may result in a conflict of interest between the certified home inspector and the homeowner	<p>Subdivision A 2 prohibits a regulant from performing a home inspection on a property where he performed repairs or modifications within the preceding twelve months. However, new language will allow for this as long as the home inspector discloses in the home inspection contract all the specifics of the repairs or modifications that he performed. The client will then have the option of entering into the contract or seeking another regulant. This will have more impact in the less densely populated areas of the Commonwealth as home inspectors are often involved in repair and modification activities as the demand for home inspections is low.</p> <p>Subdivision A 3 currently prohibits a home inspector from making recommendations to a client for repairs or modifications if the home inspector performed an inspection on the property within the preceding twelve months. New language will allow for this situation provided that the home inspector discloses any financial interest that he has with the person recommended to the client for repairs or modifications. The disclosure must be a part of the certified home inspection contract.</p> <p>Subdivision A 5 is added which prohibits a regulant from performing an inspection under a contingent agreement based on any compensation or future referrals being dependent on the outcome of the inspection or the sale of the property. Such agreements tend to shift the regulant's loyalty from the client to the entity of the contingent agreement. The regulant's loyalty must be to the client and serve the client's best interest. This provision will make divided loyalty less likely and thereby protect the client.</p> <p>Subsection E changes the word "tool" to "pretext" for clarity.</p>
190		This section establishes the criteria for what constitutes actions by the regulant that can result in disciplinary action by the Board.	The introductory paragraph is amended to make clear that unworthiness and incompetence are grounds for disciplinary action. This is a clarification of language.

		<p>Subdivision 9 is added to authorize disciplinary action by the Board should a regulant perform an inspection that he is not competent to perform. The public benefits by the standard for competence set by this language and may be protected through disciplinary action taken against regulants that fail to comply.</p> <p>Subdivision 10 is added to authorize disciplinary action by the Board should a regulant fail to maintain his proficiency as a home inspector. The public benefits by this standard for competence and may be protected through disciplinary action taken against regulants that fail to comply.</p>
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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 enabling statute mandates that the Board promulgate regulations that protect the public. The preceding section describes the Board’s analysis of a number of alternatives.

- 1) The current compliance and reporting requirements are the least stringent consistent with public protection.
- 2) The current regulation provisions and the proposed amendments do not establish schedules or deadlines for compliance or reporting requirements.
- 3) No compliance or reporting requirements exist to simplify.
- 4) The current regulations and the proposed amendments apply to individuals and not to businesses.
- 5) The current regulation and the proposed amendments apply to individuals and not to businesses.

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 family impact has been identified.