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Fast Track Regulation Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) citation	18 VAC 135 -10
Regulation title	Real Estate Board Public Participation Guidelines
Action title	Changes to incorporate electronic notification lists
Document preparation date	09/26/03

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

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

The Real Estate Board Public Participation Guidelines (PPGs) mandate public participation in the regulation promulgation process. The PPGs outline the necessary procedures for being placed on or deleted from a notification list. The PPGs give specific instances when the agency must hold a comment period and when the agency must evaluate the regulations and establish the procedures to be taken when substantial changes have been made prior to final adoption of the regulations. The changes will permit the agency to maintain electronic notification lists to notify persons and organizations of intended regulatory action.

Statement of agency final 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 changes to their Public Participation Guidelines on September 4, 2003 and voted to submit the changes through the Fast Tracking Rulemaking Process set forth in § 2.2-4012.1 of the *Code of Virginia*.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, 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 54.1-2105 of the *Code of Virginia* provides the authority for the Real Estate Board to promulgate regulations. The content of the regulations is determined at the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority. Section 2.2-4007 of the *Code of Virginia* provides further authority for the promulgation of Public Participation Guidelines. The Public Participation Guidelines implement the requirements of the Administrative Process Act by establishing procedures to be followed by the Board in soliciting, receiving and considering public comments.

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 and the problems the proposal is intended to solve.

The Public Participation Guidelines are statutorily mandated and ensure the protection of the public's health, safety and welfare by documenting and formalizing the process through which the public has access to the regulatory review process. The amendments further increase the agency's efficiency in seeking public input into the regulatory process.

Rationale for using fast track process

Please explain why the fast track process is being used to promulgate this regulation.

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from (1) 10 or more persons, (2) any member of the applicable standing committee of either house of the General Assembly or (3) any member 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.

Section 2.2-4012.1 of the *Code of Virginia* permits the use of the Fast Track rulemaking process for regulations that are expected to be noncontroversial. The amendments to the regulations do not substantively change the rules for providing public input into the regulatory process. The amendments

permit persons and organizations to use additional options to be placed on a notification list while increasing the agency’s efficiency by decreasing costs associated with mailing notifications.

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.)

Section 10 will be amended to provide a definition of notification lists which includes electronic mailing lists as well as regular mailing lists, to provide a definition of Administrative Process Act and to amend the definition of agency for clarity. Section 20 will be amended to permit the agency to send notification of how to obtain a copy of documents electronically rather than sending the actual document. Section 30 will be amended to specify how persons or organizations are deleted from electronic lists.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as person 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, the agency and the Commonwealth is that the agency will be able to accept requests to be placed on a notification list, and to notify PPG list members via electronic means. This will result in a more cost effective and efficient way of interacting with list members. No disadvantages have been identified.

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	None
Projected cost of the regulation on localities	None
Description of the persons, businesses or other entities likely to be affected by the regulation	All regulated entities (approximately 59,000) and other individuals or organizations wishing to be placed on a notification list, anticipated to be

	approximately 200.
Agency’s best estimate of the number of such entities that will be affected	All regulated entities (approximately 59,000) and other individuals or organizations wishing to be placed on a notification list, anticipated to be approximately 200.
Projected cost of the regulation for affected persons, businesses, or other entities	None.

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.

No alternatives have been identified. Failure to adopt the changes will prevent the agency from improving the efficiency of notification thus failing to maximize public participation in the regulatory process.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The amendments are expected to have no impact on families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes.

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.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		No definitions for “Administrative Process Act” and “Notification lists” are provided.	A definition of “Administrative Process Act” is added to achieve clarity in the regulation. A definition of “Notification lists” is added to include electronic lists as well as regular mailing lists. The definition of “agency” is amended for clarity.

20		Requires the agency to maintain lists of persons or organizations to be mailed documents.	Requires the agency to maintain lists of persons or organizations to be mailed documents or notification of how to obtain a copy of the documents electronically.
30		<ul style="list-style-type: none"> - References persons. - Requires persons or organizations desiring to be placed on a mailing list to write to the agency. - Specifies that persons or individuals will be deleted from the list when their mail is returned as undeliverable. 	<ul style="list-style-type: none"> - References persons and organizations for purposes of clarity. - Permits persons or organizations desiring to be placed on the mailing list to make their request by electronic notification. - Adds a provision stating that persons or organizations will be deleted from the list when electronic notifications are returned as undeliverable over more than one day.
40		<ul style="list-style-type: none"> - Permits a person to petition the agency to adopt or amend a regulation. 	<ul style="list-style-type: none"> - Permits a person or organization to petition the agency to consider or review a regulation. This language is more consistent with the agency's statutory authority and responsibility.
50, 90		<ul style="list-style-type: none"> - Contains old citations to the Administrative Process Act. 	<ul style="list-style-type: none"> - Updates citations to the Administrative Process Act.