



Final Regulation Agency Background Document

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| Agency name | Board for Contractors |
| Virginia Administrative Code (VAC) citation | 18 VAC 50-22 |
| Regulation title | Board for Contractor Regulations |
| Action title | Review of the Board for Contractors Contract Provisions |
| Date this document prepared | March 31, 2014 |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Board seeks to review and amend the prohibited act provisions within its regulations. The proposed amendments would include a requirement that language be added to all residential contractors to notify consumers of the existence of the Virginia Transaction Recovery Fund and to add information on how to contact the Board for claim information.

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

At its meeting of March 25, 2014, the Board for Contractors adopted as final these regulations that amend the Board for Contractors Regulations (18 VAC 50-22).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

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.

The proposed amendments will address Board concerns to increase consumer awareness about the existence of the Virginia Transaction Recovery Fund (the Fund). Amending these regulations will offer an extra layer of protection to the health, safety and welfare of the general public. Also, the intent of the planned regulatory action is to review the existing regulations and propose amendments to empower the board to take disciplinary action against licensees who failed to comply with such amendments.

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.

Section 18 VAC 50-22-260 of the Board for Contractor regulations outlines the Board's prohibited acts which includes contract provision requirements. The proposed amendments will expand the terms of the written contract requirements for residential contracting specified within the Board's 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 change is implemented to include a requirement that language be added to all residential contracts notifying consumers of the existence of the Virginia Transaction Recovery Fund and to add information on how to contact the Board for claim information. This change would be advantageous to the consumer as it would provide pertinent information regarding a level of protection, currently in the statutes, but often not known to consumers. The addition of contact information would give direction to consumers, who could then contact Recovery Fund staff for assistance in filing a claim or in determining eligibility.
- 2) In amending the regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. The proposed amendment will aid to increase consumer awareness about the existence of the Virginia Transaction Recovery Fund (the Fund) and offer an extra layer of protection to the health, safety and welfare of the general public.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

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.

The Board for Contractors added an effective date of July 1, 2015 for the new contract requirement. This will allow contractors time to make adjustments to their contracts before the change goes into effect.

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.

| Comment | Regulation Number | Commenter’s Name and Affiliation | Board Response |
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| Supports proposed regulation changes. He also proposes an additional change to 18 VAC 50-22-260-9g to remove the language “For contracts resulting from a door to door solicitation.” He states that this would require all residential contracts to include a copy of the Statement of Consumer Protection and not just door to door contractors. | 18 VAC 50-22-260-9 | Robert Gregory Contractors Institute Inc | After reviewing all public comment received on these regulations, the Board has adopted amended regulations that adds an effective date of July 1, 2015 for the addition of 18 VAC 50-22-260 9 j. The Board voted to leave 9 g as it currently is. |
| Supports the proposed changes | 18 VAC 50- | Mike Toalson | After reviewing all public |

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| <p>but requests the board to delay implementation of these regulations for 6 months or 1 year to provide small businesses time to redo their forms. He also would like to see that all contractors are notified about this change.</p> | <p>22-260-9</p> | <p>Home Builders Association of Virginia</p> | <p>comment received on these regulations, the Board has adopted amended final regulations that adds an effective date of July 1, 2015 for the addition of 18 VAC 50-22-260 9 j.</p> |
| <p>Opposes the proposed regulations. States that this change could give homeowners false hope because it can be difficult to pass a claim. Feels that all of the provisions that contractors have to put into residential contracts are negated by confidentiality clauses. These clauses prevent the homeowner from disclosing to DPOR or an attorney the contents of a contract. Urges the board to consider promulgating regulations that state what cannot be in a contract, such as these clauses.</p> <p>Heartily agrees with the Board's recent decision to pull remedial education in-house.</p> | <p>18 VAC 50-22-260-9</p> | <p>Ann Rackas Pate Don't Build Until LLC, Former Board for Contractors Board Member</p> | <p>After reviewing all public comment received on these regulations, the Board has adopted amended final regulations that adds an effective date of July 1, 2015 for the addition of 18 VAC 50-22-260 9 j.</p> |

All changes made in this regulatory action

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

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale |
|-------------------------|--|---------------------|---|
| <p>18 VAC 50-22-260</p> | | | <p>Adds item "j" to subsection B9 in order to make this item a violation of the regulations that are subject to sanction, if a contractor fails to follow or comply. This amendment came as a result of a work group, established by the Board for Contractors, to review current Transaction Recovery Fund statutes, regulations, policies, and procedures. The work group was made up of industry</p> |

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| | | | <p>representatives, board members, board counsel, and a citizen who had a claim against the Fund denied due to a technical interpretation of the law. The work group made two statutory recommendations, which became HB 1801 and HB 1802, both of which will become effective on July 1, 2013, and one regulatory recommendation. The addition of a requirement that consumers be notified of the existence of the Recovery Fund at the initial transaction point, will allow them the opportunity to become familiar with the eligibility criteria for the filing of a claim. The vast majority of claim denials are the result of consumers not following the requirements set forth in the statutes pertaining to the judgment language and follow-up requirements. This addition to the contract requirements is a simple and non-burdensome way to give consumers notification of those requirements up-front which, at the least, will result in contact with the Recovery Fund staff prior to the filing of a claim, ensuring that all criteria for payment have been met. The Board also put in an effective date of July 1, 2015 for this contract change to give contractors time to update their contracts.</p> |
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