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Regulatory
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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Manufactured Housing Board
Virginia Administrative Code (VAC) citation	13 VAC 6 - 20
Regulation title	Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations
Action title	Updating and clarifying the Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations
Document preparation date	May 26, 2004

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*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Virginia Manufactured Housing Licensing and Transaction Recovery Fund Regulations were last amended on January 1, 1996. Administration and enforcement of the Regulations by the Virginia Manufactured Housing Board and Department since then has resulted in the recognition of sections in need of clarity and of out-date and unnecessary restrictions in sections that need to be deleted. The Board proposes under this regulatory action to review issues related to licensing requirements for the manufactured housing industry members that will provide better protection to consumers without imposing unnecessary regulatory burdens on the licensees. The amended Regulations will better define the parameters for warranties on the homes, when and what disclosures must be given to buyers, and define and implement a substantial identity of interest to restrict repeated violations and company name changes. The Regulations currently restrict ownership of a retail location by a manufacturer. This carry-over from the days the industry was regulated as a part of the motor vehicle industry will be proposed to be removed as an unnecessary restriction of business. The Board will receive suggestions and review other requirements and/or restrictions in the Regulations to address any perceived problems and improve the Regulations for consumers and regulators.

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 number(s), 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 statutory authority for the Virginia Manufactured Housing Board to promulgate regulations regarding manufactured housing licensing and the manufactured housing transaction recovery fund is found in Section 36-85.18 of the Code of Virginia. That Section directs the Board to promulgate regulations for the licensing of manufactured home manufacturers, dealers, brokers and salespersons; the establishment and administration of a recovery fund; the resolution of complaints; making case decisions in accordance with the Administrative Process Act; and the levying and collection of fees sufficient to cover the expenses for the administration of this program by the Board and Department.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Board wants to receive input to evaluate a proposal to allow the Board to require that an applicant for licensure as a dealer, broker, manufacturer or salesperson pass an examination prior to receiving a license. Currently, there is no such requirement. Requiring the applicant to pass an examination would help improve the competency of licensees and would confirm that the applicant has adequate knowledge of the business they are entering.

The Board will consider adding a section to allow the Board to deny, suspend, revoke or refuse to renew the license of an applicant who is shown to have a substantial identity of interest in a company whose license was revoked or denied by the Board. Substantial identity of interest will be clearly defined and explained. Including this authority in the Regulations will provide more protection to consumers. It will prevent individuals from operating under one company name and committing violations of the Regulations and causing sufficient harm to consumers to lose their license and then getting licensed under another name and harming more consumers.

Several clarifying changes to the licensing requirements will be evaluated. A minimum age of 18 for salespersons may be added since the salesperson negotiates and handles complex contracts and has access to applicants' financial records and accounts. The Board will evaluate a proposal to allow "probationary" licenses to be issued when there are potential problems with the criminal history of an applicant. This will allow the Board to evaluate the performance of the applicant during a probationary period to determine the fitness of the applicant for full licensure and to provide more consumer protection. Requiring the submittal of a recent financial statement for evaluation prior to licensing will solve a problem of licenses being issued to financially unstable dealers and brokers. A provision will be added to allow the Board to suspend a license when the check for the license is returned for insufficient funds will solve a problem of trying to collect for bad checks. The Board will evaluate a proposal to allow renewable, temporary licenses to be issued to permit licensees to operate at temporary locations for various reasons such as being

forced from the usual business location due to fire, flooding, remodeling, etc. to minimize the interruption of the business or avoid closing of the business and loss of jobs.

The Regulations need to be amended to clearly state that dealer/manufacture sales agreements are not required and unnecessary or overly-restrictive provisions related to the agreements need to be removed. These amendments would eliminate the confusion of whether the Regulations require the dealers and manufacturers to have a written sales agreement and would delete certain provisions determined to be unnecessary, redundant, or outside of this Board's authority.

The Regulations currently prohibit a manufacturer from owning a retail operation except under limited times and conditions. This prohibition is a "throw-back" to the days when manufactured (mobile) homes were regulated as motor vehicles and subject to the same manufacturer/dealer restrictions. This restriction needs to be deleted from the Regulations to allow ownership of dealer locations by manufacturers to remove unnecessary restrictions and to more properly reflect the manufactured housing industry of today.

The warranty provisions will be evaluated for proposals to more clearly delineate when the manufacturer's required warranty period starts and ends. This review and amendment will help resolve problems regarding when a home is considered new and under full warranty, when the manufacturer is no longer responsible for the warranty of the home, and what information must be disclosed to the potential purchaser.

The Board will attempt to better define the "time of sale" and what "accepting or taking delivery of a manufactured home by a buyer" means for purposes of when the required disclosure must be given to the buyer and under what conditions the dealer may retain damages from the buyer's down payment. There have been problems and at least one court case because the Regulations do not clearly define how the buyer "accepts delivery" of a manufactured home.

The Board will review proposals for amendments to the provisions related to the administration of the Transaction Recovery Fund. Adding language that interest earned by the Transaction Recovery Fund may be used to pay damages awarded from the Fund will put into the Regulations a long-standing opinion of the Board for clarity. The Board will also review a proposal to clearly state that the Board does not award attorney's fees when paying damages from the Transaction Recovery Fund. This has been the policy of the Board and should be added to the Regulations for clarity.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

There are no other viable alternatives to amending the Regulations.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

Not Applicable.