



Final Regulation Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) citation	18 VAC135-20
Regulation title	Real Estate Board Regulations
Action title	Amending regulations to incorporate needed changes
Date this document prepared	October 16, 2007

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The changes being proposed in this action include updating the following sections: definitions, qualifications for initial and renewal licensure, place of business, maintenance of licenses, maintenance and management of escrow accounts, advertising, disclosure of interest, misrepresentation/omission, proprietary school standards, instructor qualifications and course requirements, fees and withdrawal of approval and add a section on effect of disciplinary action on concurrent licenses. The proposed changes are being made to ensure compliance with statutory amendments and current industry standards.

The changes being made in the final regulation which differ from proposed include amending qualifications for renewal in the continuing education requirements, clarifying language in improper brokerage commission, adding language concerning submittal of course completion data to the board and amending instructor qualifications in response to the public comment received.

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.

The Real Estate Board reviewed and adopted the final regulations, entitled “Real Estate Board Regulations” on September 20, 2007.

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.

Section 54.1-2105 of the Code of Virginia states that the Real Estate Board “may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate necessary regulations.”

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 goal of amending the regulations is to make clarifying changes, to incorporate new education requirements as a result of statutory changes, to ensure consistency with State law and to make other changes which may result from the periodic review of the regulations. The amendments are needed to ensure that the regulations conform to the most current statutes and standards of practice in the industry which are necessary to protect the health, safety and welfare of the citizens.

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.

Add definitions such as “actively participates in the brokerage business” for clarity.

Clarify qualification sections. For example remove redundant language in the criminal conviction section and clarify time frame for misdemeanor convictions.

Amend continuing education requirements to ensure consistency with statutory changes.

Clarify qualifications for renewal of reciprocal license to ensure that all licensees who obtain a license by reciprocity take the state portion of the exam.

Review supervision of business to ensure that the supervision is adequate.

Clarify names and what name changes need to be reported to the Board.

Clarify language regarding maintenance and management of escrow accounts.

Amend disclosure of brokerage relationships to be consistent with statute.

Clarify provision regarding improper brokerage commission.

Clarify provisions regarding misrepresentation and omission.

Review provisions regarding schools and courses to ensure consistency with changes to the statute.

Add provision regarding submission of course completion date to the board.

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.

The primary advantage to the public is ensuring that the regulants have the necessary education to get an initial license and to renew their license. The proposed changes also provide clarification and guidance to the regulants so that they can give better service to both the public and other licensees. The proposed regulations address the changing work environment and are needed to keep up with industry standards.

The primary advantage to the agency will be that the agency can better protect the health, welfare and safety of the citizens of the Commonwealth by having regulations which reflect current industry standards and comply with statutory amendments.

No disadvantages to the public or to the Commonwealth have been identified.

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
18 VAC 135-20-100	Amend language to show completion of sixteen hours of continuing education is required for renewal of license except for salespersons who are renewing for the first time who must complete thirty	Amend the language to show completion of sixteen hours of continuing education is required for renewal of license and amend the hours required for specific course topics for the mandatory eight hours of continuing education which now differs for salespersons and	This change is made pursuant to Chapter 809 of the Acts of the 2007 General Assembly.

	hours of post license education. Add the specific course topics for the mandatory eight hours of continuing education. This change is made pursuant to Chapter 998 of the Acts of the 2003 General Assembly.	brokers.	
18 VAC 135-20-190	Add language to comply with the new disclosure requirements in §54.1-2138.1 of the Code of Virginia.	Add the words “when applicable” to the proposed language dealing with disclosure requirements.	This change is being made to add clarification that the disclosure in § 54.1-2138.1 may not always be required.
18 VAC 135-20-360	Add language regarding the quality of instructors This change is needed to ensure the instructors are trained and qualified to teach.	Delete the requirement for a “train the trainer” course.	This change is being made to alleviate concerns raised by course providers that they would be unable to hire pre-license instructors due to the lack of such courses.

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.

Commenter	Comment	Agency response
Frank MaGann (from Town Hall)	Consider amending regulation 18 VAC 135-20-190 Advertising By Licensees to include the words “when applicable” to the other changes in paragraph B.	The agency concurs with your suggestion and will add the words “when applicable” to the regulation.
John Broadway with VAR (speaker at Public Hearing)	Please conform the regulations to the reflect the changes made by the General Assembly this year since the draft regulations predate the legislative amendments.	The agency will ensure that the regulations conform to the changes in the statutes as a result of this year’s General Assembly session.
Rob Bradham with Alpha College of Real Estate (speaker at Public Hearing)	They want to make sure the regulations reflect the recent legislative changes made during the 2007 General Assembly. They are also concerned about the trainer course requirement for pre-license instructors in 18 VAC 135-20-360.B. They would like this requirement removed due to the lack of availability of such courses. Also, it will make it more	The agency will ensure that the regulations conform to the changes in the statutes as a result of this year’s General Assembly session. The agency agrees to delete the “train the trainer” course or its equivalent requirement. The agency does not want to make it more difficult for schools to hire pre-license instructors.

	difficult for schools to hire pre-license instructors.	
Billy Reid with Moseley Flint Schools of Real Estate (speaker at Public Hearing)	They are also concerned about the trainer language.	The agency agrees to delete the “train the trainer” course or its equivalent requirement. The agency does not want to make it more difficult for schools to hire pre-license instructors.
Lawrence E. Marshall, II with VAR (written comment via e-mail)	<p>Please revise 18 VAC 135-20-280 dealing with Improper Brokerage commissions in order to reorganize the section into separate provisions dealing with activities by agents outside the firm that are connected to their dealings in the firm especially those activities governed by RESPA. It also adds the requirement that licensees obtain written consent from the principal broker before engaging in these activities.</p> <p>Please revise 18 VAC 135-20-260. Unworthiness and incompetence by removing the terms “improper” and “dishonest” from subsection 11 and changing the label of the section. The term “improper” is highly subjective which becomes a catch-all for any conduct the board disapproves of whether or not the licensee had notice of it.</p> <p>They don’t like the title of the section saying it is problematic in light of the undefined behavior that can be sanctioned under it. The regulations deal with misrepresentation in another section so the term “dishonest” should be deleted.</p>	<p>The agency agrees with your suggestions for changes to this section of the regulation as it provides clarification for the licensees.</p> <p>The agency does not think it needs to revise 18 VAC 135-20-260 at this time. This regulation provides public protection against licensees who have engaged in behavior which is detrimental to the profession and is not covered by other regulations. The agency has not had any issues or problems with enforcing this regulation.</p>

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
18 VAC 135-20-10		Definitions	Add definition for actively engaged in the brokerage business. This definition is needed to clarify language in Section 54.1-

<p>18 VAC 135-20- 30</p>		<p>An applicant for license shall not have been convicted of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury. An applicant who does not meet certain requirements may be approved for licensure following consideration by the board in accordance with §54.1-204 of the Code of Virginia.</p>	<p>2106.1 of the Code of Virginia Amend language to require disclosure of misdemeanors involving moral turpitude, sexual offense, drug distribution or physical injury within five years of application date. The Board has been approving applicants with older misdemeanor convictions therefore applicants with misdemeanor convictions over 5 years old should not have to wait for an administrative hearing to obtain a license. An applicant must have a high school diploma. This change is made pursuant to HB 211 from the 2006 General Assembly session. The language referencing Code section 54.1-204 needs to be removed as it is redundant to the language in an earlier subsection and does not apply to disciplinary actions.</p>
<p>18 VAC 135-20- 60</p>		<p>An applicant for license by reciprocity shall not have been convicted of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury. An applicant who does not meet certain requirements may be approved for licensure following consideration by the board in accordance with §54.1-204 of the Code of Virginia.</p>	<p>Amend language to require disclosure of misdemeanors involving moral turpitude, sexual offense, drug distribution or physical injury within five years of application date. The Board has been approving applicants with older misdemeanor convictions therefore applicants with misdemeanor convictions over 5 years old should not have to wait for an administrative hearing to obtain a license. An applicant must have a high school diploma. This change is made pursuant to HB 211 from the 2006 General Assembly session . The language referencing Code section 54.1-204 needs to be removed as it is redundant to the language in an earlier subsection and does not apply to disciplinary actions.</p>
<p>18 VAC 135-20- 100</p>		<p>A licensee must have completed eight hours of continuing education required for renewal.</p>	<p>Amend language to show completion of sixteen hours of continuing education is required for renewal of license except for salespersons who are renewing for the first time who must complete thirty hours of post license education. Add the specific course topics for the mandatory eight hours of continuing education. This change is made pursuant to Chapter 998 of the Acts of the 2003 General Assembly.</p>
	<p>18 VAC 135- 20-101</p>		<p>Add language to show completion of 16 hours of continuing education is required for renewal of license and amend the hours required for specific course topics for the mandatory eight hours of continuing education for salespersons and to show completion of 24 hours of continuing education is required for renewal of license and amend the hours required for specific course topics for the mandatory 16 hours of</p>

			continuing education for brokers. This change is made pursuant to Chapter 809 of the Acts of the 2007 General Assembly.
18 VAC 135-20-105		Provides that a licensee who obtained his license by reciprocity must pass the state portion of the exam prior to renewing his license. The licensing term is two years.	Add language to remove loophole which allows a licensee to upgrade his license without taking the state portion of the exam. This is needed to ensure that all licensees are treated equally. The loophole allows a person who received his salesperson's license by reciprocity to skip taking the state portion of the salesperson's exam if he upgrades his license to a broker license obtained by reciprocity within his first renewal cycle. This person may not complete the state portion of the exam for four years from initial licensure.
18 VAC 135-20-160		Provides that the branch office license and roster of licensees shall be available to the public and that each place of business shall have a supervising broker.	Amend the language concerning placement of licenses from being available to being posted in a conspicuous place. This change is being made so that the public will know by looking at the posting that the person with whom they are dealing is licensed. The amendments to supervising broker supervision provisions are necessary to keep up with changes in technology as more licensees telecommute and don't come into the physical office everyday. The changes are also being made to address concerns raised by licensees wanting more guidance on what supervising brokers need to do, The public, the supervising brokers and the licensees for whom the supervising broker is responsible need to know what is expected of a supervising broker.
18 VAC 135-20-170		Provides that a licensee may use a professional name. Provides that principal brokers must keep the board informed of firm and branch office address changes.	Add language to clarify what constitutes a professional name. Add language to include name changes for the firms and branch offices. These changes are needed so the public knows with whom they are dealing. The public needs to be able to verify that they are dealing with licensed individuals and firms.
18 VAC 135-20-180		Provides that certain enumerated actions are considered improper maintenance of escrow funds and that the principal broker must report only one of the actions if he believes a licensee did not comply with that specific subdivision.	Add a new subsection making the principal broker responsible for reporting noncompliance by a licensee with the entire section. This amendment is needed to provide more protection of funds placed in escrow by the public.
18 VAC 135-20-190		Provides information on how advertising is to be done by licensees.	Add language to comply with the new disclosure requirements in §54.1-2138.1 of the Code of Virginia.

			<p>Add the words “when applicable” to the proposed language dealing with the disclosure requirements. This change is being made to add clarification that the disclosure in § 54.1-2138.1 may not always be required.</p> <p>Add language to reflect current use of technology in advertising. Many licensees are now using the internet to advertise and the current regulations do not address this type of advertising.</p>
18 VAC 135-20-210		Provides one subsection for licensees to disclose their interest in the property if they are attempting to acquire real property and one subsection for licensees to disclose their interest if they are selling or leasing property in which they have an ownership interest.	Delete the second subsection and combine it into one section. This proposed change is needed to clarify that the licensee has the same duty to disclose his interest in the real property whether he is selling, leasing or acquiring real property.
18 VAC 135-20-220		Provides for disclosure of brokerage relationships.	The current regulation is not consistent with the statutory requirement. The proposed change makes the regulation language consistent with §54.1-2138 of the Code of Virginia.
18 VAC 135-20-280		Provides that certain actions involving acceptance of commissions or other valuable consideration may constitute improper conduct.	Amend language to reorganize the section into separate provisions dealing with activities by licensees outside the firm which are connected to their dealings with the firm. It also adds a requirement for the licensees to obtain prior approval from their broker before engaging in the activities. This change provides clarification to the licensees about what they can do regarding the acceptance of commissions or other valuable consideration.
18 VAC 135-20-300		Enumerates actions which constitute misrepresentation or omission or both.	<p>Add language to subsection 6 that the failure to include the complete terms and conditions of the real estate transaction include but are not limited to certain types of documents. This change is needed to clarify that the list in the regulation includes more than just those types of transactions named. This helps to protect the public.</p> <p>Delete language regarding reasonably relied upon by a third party to that party’s detriment. This change is needed to strengthen the board’s ability to discipline a licensee who harms others by removing the need for a third party to be harmed. This change provides better consumer protection.</p>
	18 VAC 135-20-345		Add section to allow the board to take action against all concurrent licenses held by an

			individual at the same time. Currently when the board suspends, revokes or fails to renew the license of a licensee who holds more than one broker's license, the board must initiate a separate action against the broker's other licenses which were not the subject of the initial disciplinary action. This change is needed for consumer protection. If a licensee commits a violation of the board's regulations which warrants the suspension or revocation of his license, he should not be able to continue to practice because he holds a concurrent license at another firm.
18 VAC 135-20- 360		Provides standards for instructor qualifications and course requirements.	Add language regarding the quality of instructors and put in place an expiration date for courses. These changes are needed to ensure the instructors have the necessary experience and expertise to teach courses. The course expiration is necessary to ensure the courses are up to date and relevant. Delete the requirement for a "train the trainer" course. This change is being made to alleviate concerns raised by course providers that they would be unable to hire pre-license instructors due to the lack of such courses. Add subsection detailing what information the course providers need to submit to the board for individual licensees course completion and when course providers need to submit this information. This change is needed to ensure the board receives the necessary information on education completion and receives it in a timely manner in order to renew licenses efficiently.
18 VAC 135-20- 370		Currently proprietary school certificates and pre-license instructor certificates expire biennially on June 30.	Amend language so that school and instructor certificates expire every two years from the last day of the month in which they were issued. This change will mirror how fees are handled for other real estate licenses. It will also make the fees cover a full two year licensing term. Add the words pre-license in front of instructor. This change is necessary to clarify that these provisions are only for instructors of pre-license education. Add language about expiration of school approvals. This change is needed to ensure that students take courses only from board approved schools as required by §54.1-2105 of the Code of Virginia.
18 VAC 135-20- 390		Provides reasons for which the board may withdraw approval.	Add the word course in the first sentence. This change is needed to ensure that the board may withdraw its approval of a course if the course no longer meets the board's standards as stated later in the regulation.

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 agency considers the proposed changes as the least burdensome and no other alternatives were identified. The proposed regulations do not impact small businesses any differently than other 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.

The proposed changes are not expected to have an impact on families.