



[townhall.virginia.gov](http://townhall.virginia.gov)

## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Asbestos, Lead, and Home Inspectors
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC15-40
<b>VAC Chapter title(s)</b>	Home Inspector Licensing Regulations
<b>Action title</b>	SB 607 Amendment
<b>Date this document prepared</b>	February 20, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Virginia Board for Asbestos, Lead, and Home Inspectors ("the Board") is amending the Home Inspector Licensing Regulations to comply with the requirements of Chapter 398 of the 2022 Acts of Assembly (SB 607).

The legislation requires the Board to "...update the regulations in 18VAC15-40-130 to require that a home inspection and the report on its findings include a determination of whether the home's smoke detectors are in 'good working order,' as defined by the Board."

This action amends the regulation by (i) adding a definition for "good working order"; (ii) adding provisions to require that a home inspection report include a determination of whether readily accessible smoke alarms are in good working order; and (iii) adding a provision that a home inspector cannot exclude the inspection and assessment of smoke alarms from the home inspection contract. Other technical changes are made. The proposed amendments were developed and recommended by a committee of subject

matter experts with representation including a fire marshal, licensed home inspectors, a representative of the Department of Housing and Community Development, a representative of home builders, and other individuals involved in the building industry. The committee’s recommendations were adopted by the Board.

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

---

“IBC” means International Building Code.

“USBC” means Uniform Statewide Building Code.

There are no technical terms used in this form.

**Statement of Final Agency Action**

*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 November 30, 2023, the Board voted to adopt the SB 607 Amendment to Home Inspector Licensing Regulations.

**Mandate and Impetus**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

---

There are no changes to the previously reported information.

**Legal Basis**

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

---

The agency is the Virginia Board for Asbestos, Lead, and Home Inspectors. Chapter 5 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for home inspectors. Section 54.1-501 of the Code of Virginia states, in part:

The Board shall administer and enforce this chapter. The Board shall:

7. Promulgate regulations for the licensing of home inspectors not inconsistent with this chapter regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations, the proper conduct of its examinations, the proper conduct of the home inspectors licensed by the Board, and the proper discharge of its duties.

In addition, Chapter 398 of the 2022 Acts of Assembly directs the Board to amend its regulation to "...update the regulations in 18VAC15-40-130 to require that a home inspection and the report on its findings include a determination of whether the home's smoke detectors are in 'good working order,' as defined by the Board."

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

The General Assembly has charged the Board with the responsibility for regulating those who engage in the practice of home inspection by requiring that such individuals obtain a license in order to perform home inspections on residential buildings for compensation. Home inspections are a common component of residential real estate transactions. The parties to such transactions rely on the expertise of a home inspector to provide an accurate evaluation of the condition of a home that is being purchased. The evaluation provided by a home inspector can have a significant effect on the transaction, particularly if there are substantial defects in the condition of the property. Home inspections performed by individuals who lack sufficient training and expertise expose the public to the risk of harm, which can include financial harm to home purchasers who may have to assume costs after acquiring the property to remedy defects that were not properly identified during the home inspection. Similarly, home inspections and home inspection reports that fail to meet certain minimum standards can deprive the parties to a residential real estate transaction of an accurate evaluation of the condition of a home that is being purchased.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation the minimum qualifications for entry into the profession, as well as the minimum requirements for the provision of home inspection services.

This regulatory change mandated by the General Assembly is intended to provide additional protection to members of the public who utilize the services of a home inspector. By requiring a home inspection and report to include a determination of the working order of smoke alarms in the residential building or new residential structure, it is anticipated that smoke alarms which are not in good working order will be repaired or replaced. It is anticipated that this will help prevent loss of life or serious injury in the event there is a fire.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

The amendments were developed and recommended by a committee of subject matter experts with representation including licensed home inspectors, a fire marshal, a representative of the Department of Housing and Community Development, a representative of home builders, and other individuals involved in the building industry. The committee's recommendations were adopted by the Board.

The “Definitions” section (18VAC15-40-10) is amended by adding definitions for “good working order” and “smoke alarm.” “Good working order” means that a smoke alarm (i) is securely attached; (ii) is not physically damaged; and (iii) operation of the test function is successful.

The requirements for a home inspection contract (18VAC15-40-120) are amended to add a provision that the requirements for inspection and testing of smoke alarms cannot be excluded from a home inspection contract.

The requirements for a home inspection report (18VAC15-40-130) are amended to require that a home inspection report must include a determination of whether any smoke alarms that are readily accessible in the residential building or new residential structure are in good working order, as the term is defined in the regulation. A home inspector is not required to test a smoke alarm if the alarm is part of a central alarm system, or security system, that will automatically notify a fire department or other authorities. A home inspection report must state whether a smoke alarm is not readily accessible, or if there are limitations in determining its good working order. The home inspection report must also include an advisory regarding smoke alarms.

## Issues

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The expected advantage of the regulatory change to the public is that individuals who are informed about the condition and working order of smoke alarms in a home that is inspected will repair or replace any smoke alarms that are not in good working order. This could potentially avoid the loss of life or serious injury in the event of a fire.

There may be potential disadvantages resulting from the regulatory change. The regulatory change may result in additional costs for home inspections. Under the current regulation, a home inspector is only required to note the presence or absence of smoke detectors<sup>1</sup> in a home inspection report but is not required to assess their condition or perform any testing related to their functionality. The inspection of smoke alarms to determine their good working order, including operating the smoke alarm test function, would likely cause home inspections to take longer. This may affect the number of inspections a home inspector can perform in a day. In addition, the added requirement may cause home inspectors to spend more time in preparing home inspection reports, as these reports will now have to account for the condition of each smoke alarm in a home. A possible result is that the price of a home inspection may increase. An increase in costs for home inspections may cause some individuals to forgo requesting an inspection during a real estate transaction.

An issue that the regulatory change may not address is whether the operating of a smoke alarm test function is truly determinative of whether a smoke alarm is properly functional. According to some of the public comment received for this action, the only way to properly test whether a smoke alarm works is to test it with smoke. Operating of the test function may only serve to demonstrate the alarm sounds.

Another issue concerns the potential for home inspectors to be subject to sanctions by local authorities for generating “false alarms” as the result of testing smoke alarms. Some smoke alarms are parts of home security systems designed to automatically contact fire and emergency services whenever an alarm

---

<sup>1</sup> See note in “Detail of Changes” regarding the distinction between “smoke alarms” and “smoke detectors.”

activates. To the extent local fire and emergency response resources are caused to be diverted to non-emergency alarms, this may create a potential disadvantage.

Another issue concerns the extent to which a home inspector may be liable in the event of a fire at a home where the home inspector conducted an inspection and made a determination as to the good working order of the smoke alarms.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously report information.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory change.

Localities Particularly Affected

No localities are particularly affected by the regulatory change.

Other Entities Particularly Affected

No other entities are particularly affected by the regulatory change.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Alex Aderton – Virginia Association of Real Estate Inspectors (“VAREI”)	The commenter expresses support for the proposed regulation as they strike a balance between informing the homeowner and burdens for home inspectors.	The Board thanks the commenter for support of the change.

Ken Black	For general consideration the commenter posed a question as to whether or not there is a definition of "good working order" or if this is something to be determined based on the licensed professional's judgment.	The proposed regulations create a definition for good working order, stating "'Good working order" means, with respect to a smoke alarm inspected during a home inspection, that the smoke alarm is securely attached, not physically damaged, and operation of the test function is successful."
AMS Home Inspections LLC	The commenter recommended modification to Paragraph J.D.3 of the proposed language. The file attached to the comment appeared to be corrupted.	The Board appreciates the commenter's interest in the action but cannot identify the section or concern to which the commenter is referring.
Huffman Home Inspections LLC	The commenter suggested requiring language be added to a home inspection report stating that if the age of a smoke detector cannot be determined that the detector should be replaced.	The Board's Home Inspector SB607 Committee discussed this topic in their meeting. The committee ultimately decided against this requirement as it would add more burden than was necessary to protect the health, safety, and welfare of the public. The Board determined that the proposed disclaimer in 18 VAC15-40-130.D.3 was sufficient to protect the public through the least restrictive means.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

The are no additional changes made since the Proposed Stage.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements

40-10	N/A	<p>Incorporates by reference applicable definitions from §§ 54.1-500 and 54.1-517.2:1 of the Code of Virginia. Adds definitions that are necessary to make the regulation clear and understandable and provides definitions for other specific terms used throughout the regulation.</p>	<p>*Adds a definition for “good working order” which means, with respect to a smoke alarm inspected during a home inspection, that the smoke alarm (i) is securely attached, (ii) is not physically damaged; and (iii) operation of the test function is successful.</p> <p>The legislation required the Board to define the term “good working order.” This definition is based on input from members of the regulatory review committee that developed the proposed amendments for the Board’s consideration. The meaning of the term is designed to fit the intended goal of the legislation.</p> <p>*Adds a definition for “smoke alarm.” During review and development of this action, it was discovered that the terms “smoke alarm” and “smoke detector” refer to different types of devices in the <a href="#">IBC</a>. A smoke detector is a device that senses particles of combustion but does not contain control components and an alarm notification appliance. Smoke detectors are typically components of security systems.</p> <p>Most homes have smoke alarms, which are alarms that are responsive to smoke.</p> <p>This amendment defines the term “smoke alarm” based on the definition found in the IBC, which means a single station or multiple station alarm responsive to smoke. The definition also provides that the term “smoke alarm” means “smoke detector” as used in the legislation that mandated this regulatory change.</p> <p>A stylistic change is made to the term “financial interest” to replace the use of the word “his” with a gender neutral term. Minor corrections are made.</p>
40-120	N/A	<p>This section outlines the minimum standards and requirements for home inspection contracts.</p> <p>Contracts must be in writing and signed by the parties. Contracts</p>	<p>*Adds a new subsection that provides that the smoke alarm inspection requirements cannot be excluded from a home inspection contract.</p>

		<p>must clearly specify terms, conditions, limitations, and exclusions to the work the home inspector will perform.</p> <p>Contracts must contain certain information pertaining to (i) the home inspector, including name, contact information, and license information; (ii) the client; (iii) the property to be inspected; (iv) cost; and (v) the scope of the home inspection. Contracts must also contain the estimated delivery date of the home inspection report.</p> <p>Contracts must also contain a provision that the home inspection is not an inspection for regulatory compliance, such as compliance with the USBC or local ordinances.</p> <p>The section details several matters that, if not included as part of the inspection, must be disclosed as being exclusions to the contract. These include (i) non-accessible components or systems; (ii) the remaining life of systems or components; (iii) suitability of the property for any specialized use; (iv) market value of the property or marketability; and (v) advisability of the purchase of the property.</p> <p>Contracts must also disclose in writing that the inspection is based on upon visual observation of existing conditions at the time of inspection and are not intended to be construed as a guarantee, warranty, or a form of insurance.</p>	<p>As provided in statute<sup>2</sup>, a home inspection may be limited in scope as provided in a home inspection contract. The regulation requires that to the extent any items are not covered by a home inspection, they must be noted as exclusions in a home inspection report contract.</p> <p>The regulatory review committee was concerned that home inspectors could evade the requirement to determine whether smoke alarms are in good working order by excluding the inspection/determination of smoke alarms from the scope of a home inspection; thereby defeating the purpose of the legislation.</p> <p>Minor corrections are made.</p>
--	--	---	---

<sup>2 3</sup> Section 54.-500 states, in part: "Home inspection" means any inspection of a residential building for compensation conducted by a licensed home inspector. A home inspection shall include a written evaluation of the readily accessible components of a residential building, including heating, cooling, plumbing, and electrical systems; structural components; foundation; roof; masonry structure; exterior and interior components; and other related residential housing components. A home inspection may be limited in scope as provided in a home inspection contract, provided that such contract is not inconsistent with the provisions of this chapter or the regulations of the Board."



		<p>In cases where a home inspector recommends a person to a client to perform repairs or modifications to the inspected property, the contract must disclose any financial interest the home inspector has with the person whom the inspector recommends.</p>	
40-130	N/A	<p>This section outlines the minimum standards and requirements for home inspection reports.</p> <p>Home inspection reports must contain (i) certain information pertaining to the licensee, including the licensee’s name, address, and license information; (ii) certain information pertaining to the client; (iii) the address of the home that is inspected; and (iv) the date and time of the inspection and weather conditions at the time of the inspection.</p> <p>The section details the systems and components of a home that, unless limited by the home inspection contract, are to be inspected and included in the home inspection report. The home inspector must describe the composition and characteristics of the readily accessible systems and components and describe readily observable defects of the same.</p> <p>The section provides that a home inspector is not required to put into operation systems that are turned off, winterized, or secured so as to not respond to normal activation.</p> <p>The section further provides that if a home inspector observes yellow corrugated stainless steel tubing (defined in § 54.1-517.2:1 of the Code of Virginia) in a home built prior to the adoption of the 2006 Virginia Construction Code, the home inspector must include this</p>	<p>*Adds a new subsection to require that a home inspection report include a determination of whether readily accessible smoke alarms are in “good working order” as defined in the regulation.</p> <p>*A home inspector would not be required to make a determination for any smoke alarms that are not readily accessible, as defined in the regulation. “Readily accessible” means available for access without requiring moving or removing of any obstacles. As provided in statute<sup>3</sup>, a home inspection only includes an inspection of readily accessible components of a residential building.</p> <p>*The new subsection provides that a home inspector is not required to operate the test function of a smoke alarm if the alarm is part of a central system or security system where testing would automatically alert a fire department or other authority. If the home inspector is unable to determine whether testing will cause an automatic alert, the home inspector is not required to operate the test function.</p> <p>This provision was added to address concerns about fire departments and other emergency responders responding to what essentially would be a “false alarm” if a home inspector tested an alarm that automatically alerts authorities. These concerns were raised at the regulatory review committee meeting, and similar concerns were also expressed in public comments received.</p>

		<p>observation in the inspection report, along with a statement required by § 54.1- 517.2:1 of the Code of Virginia.</p>	<p>*The new subsection provides that if a smoke alarm is not readily accessible, or there are limitations in determining whether it is in good working order, then the home inspection report must state that the smoke alarm is not readily accessible or describe the limitations, as the case may be. Including this provision provides transparency to a home inspector's client as to what smoke alarms could not be inspected or determined to be in good working order.</p> <p>*The new subsection also requires the home inspection report to include a statement that provides an advisory. This statement must advise (i) that it is recommended a home have smoke alarms on each level of the dwelling, and in every bedroom or sleeping area; (ii) that clients should replace any existing smoke alarms that are not in good working order with new ones, and install smoke alarms where smoke alarms may be missing or not properly located; (iii) any test of a smoke alarm during a home inspection only reflects its condition at the time of inspection, and is not a guarantee, warranty, or any form of insurance; (iv) a test performed during the home inspection does not supersede the smoke alarm manufacturer's testing recommendations; and (v) that clients should follow the manufacturer's instructions for proper placement, installation, and maintenance of smoke alarms.</p> <p>The advisory statement provision was included to address concerns about potential liability for home inspectors as the result of the requirement to determine whether smoke alarms are in good working order. The advisory statement is derived, in part, from language recommended by the Virginia Association of Real Estate Inspectors for home inspectors to include as part of home inspection reports.</p>
--	--	--	--

			In subsection B, the term "smoke detectors" is replaced with "smoke alarms."
--	--	--	--