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Fast-Track Regulation Agency Background Document

Agency name	Virginia Manufactured Housing Board
Virginia Administrative Code (VAC) Chapter citation(s)	<u>13 VAC 6 - 20</u>
VAC Chapter title(s)	Manufactured Housing Licensing and Transaction Recovery Fund Regulations (MHLTRF)
Action title	Update of the MHLTRF
Date this document prepared	December 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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.

This regulatory action is to update the regulation so it is in line with the Code of Virginia. The changes relate to limitations on damages retained by dealers and limitations on recovery fund payments, present in the Code of Virginia.

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.

Manufactured Housing Licensing and Transaction Recovery Fund Regulations (MHLTRF)
Department of Housing and Community Development (DHCD)

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.

The Virginia Manufactured Housing Board took action on this regulation at their November 12, 2020 meeting. The title of the regulation is the Manufactured Housing Licensing and Transaction Recovery Fund Regulations

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

As required by Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

In an internal review of regulations it was determined that updating the provisions in the regulation related to limitations on damages retained by dealers to align with changes to state code (2009 Acts of Assembly, Ch. 579) had previously been considered by the Board, however, promulgation was not finalized. The Manufactured Housing Board, at its November 12, 2020 meeting, considered and approved the proposed changes regarding limitations on damages retained by dealers as well as additional updates to the limitations on recovery fund payments, to align the regulation with state code and directed staff to proceed with initiating the updates.

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 statutory authority to update the regulation is contained in §36-85.18 and §36-85.36 of the Code of Virginia. The promulgating agency is the Manufactured Housing Board. State law requires the Board to keep the regulation up to date.

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's intended to solve.

This regulatory action is to update the regulation so it is in line with the Code of Virginia. The regulations related to **limitations on damages retained by dealers** were considered by the Manufactured Housing Board in 2009 but were erroneously left out of subsequent updates. This action will bring those changes in line with the Code of Virginia.

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.

This is simply an editorial correction to ensure that the limitations on damages retained by dealers and limitations on recovery fund payments, in the regulations match what is already in the Code of Virginia.

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.

There will be no new issues created by implementing this regulation as it is being updated to comply with state code.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are not applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

None affected.

Localities Particularly Affected
None affected.

Other Entities Particularly Affected

None affected. The provisions are already required under the Code of Virginia and are currently being complied with. This regulatory change simply ensures that the regulations match what is already in the Code of Virginia.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is change versus the status quo.

There will be no economic impact as the limitations on damages retained by dealers have been in place since 2009.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	There will be no costs, savings, fees or revenues resulting from the regulatory change.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	There will be no costs, savings, fees or revenues resulting from the regulatory change.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Compliance with state code.

Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	There will be no costs, savings, fees or revenues resulting from the regulatory change.
Benefits the regulatory change is designed to produce.	Compliance with state code.

Impact on Other Entities

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	The regulatory change will have no impact on individuals, businesses or other entities.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small	No entities will be affected as a result of the regulatory change.

business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	No entities will be affected as a result of the regulatory change.
Benefits the regulatory change is designed to produce.	Compliance with state code.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no viable alternatives to amending the regulations.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This action is intended to create conformity with state code and there are not alternatives.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

As required by § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department of Housing and Community Development is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Jeff Brown, 600 E Main St. Suite 1100, Richmond, VA 23219, jeff.brown@dhcd.virginia.gov, 804-371-7161. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. 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. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
13VAC6-20-400	Same	A. If a buyer fails to accept delivery of a manufactured home, the dealer may retain actual damages from the buyer's deposit according to the following terms: 1. If the manufactured home is in the dealer's stock and is not specially ordered from the manufacturer for the	A. If a buyer fails to accept delivery of a manufactured home, the dealer may retain actual damages from the buyer's deposit according to the following terms: 1. If the manufactured home <u>is a single section unit and is</u> in the dealer's stock and is

		<p>buyer, the maximum retention shall be \$500.</p> <p>2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$1,000.</p> <p>3. If the manufactured home is a multi-section home (two or more sections) and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$5,000.</p> <p>B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer by the dealer, as listed in subsection A of this section, for failure to take delivery of the manufactured home as purchased.</p>	<p>not specially ordered from the manufacturer for the buyer, the maximum retention shall be \$500 <u>\$1,000</u>.</p> <p>2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$1,000 <u>\$2,000</u>.</p> <p>3. If the manufactured home is <u>larger than a single section unit in the dealer's stock</u> a multi-section home (two or more sections) and is <u>not specially ordered from the manufacturer</u> for the buyer, the maximum retention shall be \$5,000 <u>\$4,000</u>.</p> <p><u>4. If the manufactured home is larger than a single section unit and is specially ordered for the buyer from the manufacturer, the maximum retention shall be \$7,000.</u></p> <p>B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer by the dealer, as listed in subsection A of this section, for failure to take delivery of the manufactured home as purchased.</p>
<p>13VAC6-20-450</p>	<p>Same</p>	<p>A. If a regulant has not paid the awarded amount within 30 days as provided in 13VAC6-20-430 or filed an appeal to the circuit court as provided in 13VAC6-20-440, the board shall, upon request of the</p>	<p>A. If a regulant has not paid the awarded amount within 30 days as provided in 13VAC6-20-430 or filed an appeal to the circuit court as provided in 13VAC6-20-440, the board shall, upon</p>

	<p>claimant pay the awarded amount to the claimant from the recovery fund under the following conditions:</p> <ol style="list-style-type: none"> 1. The maximum claim of one claimant against the fund because of a single violation by one regulant shall be limited to \$20,000; 2. The fund balance is sufficient to pay the awarded amount; 3. The claimant has assigned the board all rights and claims against the regulant; and 4. The claimant agrees to subrogate to the board all rights of the claimant to the extent of payment. <p>B. The aggregate amount of claims paid from the fund for violations by any one regulant during any license period shall be as follows:</p> <ol style="list-style-type: none"> 1. For a manufacturer -- \$75,000. 2. For a dealer -- \$35,000. 3. For a broker -- \$35,000. 4. For a salesperson -- \$25,000. <p>If the board has reason to believe there may be additional claims against the fund from other transactions by the same regulant, the board may withhold any payments, involving that regulant, from the fund for a period of not more than one year from the date the board approved the original claimant's award. After this one-year period, if the aggregate of</p>	<p>request of the claimant pay the awarded amount to the claimant from the recovery fund under the following conditions:</p> <ol style="list-style-type: none"> 1. The maximum claim of one claimant against the fund because of a single <u>or multiple violations</u> violation by one <u>or more</u> regulant <u>regulants</u> shall be limited to \$20,000 <u>\$40,000</u>; 2. The fund balance is sufficient to pay the awarded amount; 3. The claimant has assigned the board all rights and claims against the regulant; and 4. The claimant agrees to subrogate to the board all rights of the claimant to the extent of payment. <p>B. The aggregate amount of claims paid from the fund for violations by any one regulant during any license period shall be as follows:</p> <ol style="list-style-type: none"> 1. For a manufacturer -- \$75,000. 2. For a dealer -- \$35,000. 3. For a broker -- \$35,000. 4. For a salesperson -- \$25,000. <p>If the board has reason to believe there may be additional claims against the fund from other transactions by the same regulant, the board may withhold any payments, involving that regulant, from the fund for a period of not more than one year</p>
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