



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Real Estate Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC135-20
<b>Regulation title</b>	Real Estate Board Regulations
<b>Action title</b>	Amending regulations to incorporate needed changes
<b>Date this document prepared</b>	February 5, 2013

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

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

This action makes changes to the regulations in order to provide clarification to existing regulations and to incorporate revised education requirements. The proposed regulations also make changes to address statutory amendments to ensure consistency with current law such as new audit and voluntary compliance requirements. The regulations were developed by a committee of Board members and members of the public with expertise in the real estate industry. The committee worked to ensure the regulations complement the current real estate law, provide minimum burdens on the regulants while still protecting the public and reflect current procedures and policies of the Board and the Department of Professional and Occupational Regulation.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

DPOR- Department of Professional and Occupational Regulation.

No other acronyms or technical terms were identified which were not defined in the “Definitions” section of the regulations.

**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.*

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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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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Changes are made annually to the Real Estate Board’s statutes by the General Assembly. Since the regulations have not undergone substantial revision since 2008, a thorough review was necessary to ensure the regulations complement the Real Estate Board’s laws, provide minimum burdens on the regulants while still protecting the public and reflect current procedures and policies of the Board and DPOR.

**Substance**

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)*

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Proposed changes are intended to improve the clarity of the regulations, ensure consistency with current practices and legal requirements and standards of practice in the industry, all to better protect the health, safety, and welfare of citizens of the Commonwealth. As a result of this thorough review, it was determined that sections pertaining to previous education requirements and additional qualifications for renewal of reciprocal license were no longer relevant. The subsection on duties of supervising broker was moved from the place of business section to its own section to complement changes in the law. A new section was added on voluntary compliance to address a new section in the Code of Virginia. The Board also amended the unworthiness and incompetence section to provide more clarity on actions constituting failure to safeguard the interests of the public and engaging in improper, fraudulent or dishonest conduct.

**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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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The primary advantage to the public is that the revisions will improve the clarity of the regulations, ensure consistency with current board practices and legal requirements, and standards of practice in the industry, all to better protect the health, safety, and welfare of citizens of the Commonwealth.

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance that Virginia places on ensuring the regulations are the least burdensome but also provide protection to the citizens of the Commonwealth. No disadvantages to the Commonwealth could be identified.

**Requirements more restrictive than federal**

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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No impact on localities has been identified as resulting from the proposed regulation.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable

effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, fax to (866) 350-7849, or email to [reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b>	No one-time or on-going costs are expected as a result of this regulatory change.
<b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b>	No change anticipated.
<b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b>	This regulation change will affect all brokers, salespersons, business entities and firms.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	As of November 1, 2012, the Board regulates 61,750 individuals and businesses.
<b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b>	There is no anticipated additional cost to the regulants.
<b>Beneficial impact the regulation is designed to produce.</b>	The board is amending the regulations to better complement the changes in the law, to provide

	minimal burden to the regulants, and to reflect current policies and procedures of the Board and DPOR.
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**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

Section 54.1-2105 of Chapter 21 of Title 54.1 of the Code of Virginia mandates the establishment and maintenance of the regulations. Therefore, no alternatives exist to evaluate. Alternatives may be considered after the review of any submissions during the public comment period.

**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 Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on individuals and businesses and ensuring that the health, safety and welfare of the public is protected.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

No comments were received during the public comment period.

**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.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
135-20-10		This section contains definitions used throughout the regulations.	The proposed amendments are adding to definitions of two terms: 1. "Principal broker" making it clear the principal broker must have signatory authority on all firm escrow accounts and 2. "Sole proprietor" to include other forms of businesses which are registered with the State Corporation Commission.
135-20-20		This section sets out the necessity for licenses to enhance the information found in §54.1-2106.1 of the Code of Virginia.	The proposed change makes it clear a real estate firm is required to have a principal broker whose license is in good standing in order conduct business.
135-20-30		This section sets out the minimum qualifications for licensure.	The proposed change further clarifies what the board considers when determining if an applicant is in good standing. The amendment also adds language regarding the need for fingerprints to comply with a change in the law found in the 2009 Acts of Assembly, Chapter 667.
135-20-40		This section contains additional qualifications needed for a broker's license.	The proposed change puts the current board policy in regulation regarding verification of experience.
135-20-45		This section sets out the requirements for a business entity license.	The proposed change conforms the regulation to the current law as amended in 2012 Acts of Assembly, Chapter 750.
	135-20-55		This new section will allow a currently licensed broker to downgrade his license to

			that of a salesperson. Some brokers no longer want to meet the continuing education requirement to maintain the broker license. This amendment puts the board's recently adopted policy to address this concern into regulation.
135-20-60		This section addresses license qualifications for reciprocal applicants.	The first change adds a subsection (5) to comply with a change in the Code of Virginia requiring reciprocal applicants to pass the Virginia state portion of the exam prior to licensure, see 2010 Acts of Assembly, Chapter 373. The next proposed change (7) further clarifies what the board considers when determining if an applicant is in good standing. The amendment to now subsection (8) requiring equivalent education is to conform to new statutory requirements, see 2010 Acts of Assembly, Chapter 373. The next proposed change puts the current board policy in regulation regarding verification of experience. The now subsection 9 adds language regarding the need for fingerprints to comply with a change in the law found in the 2009 Acts of Assembly Chapter 667.
135-20-70		This section addresses what is needed to activate or transfer a license.	The first proposed change amends the Code of Virginia cite to the current code section. The other proposed changes clarify when completion of continuing education is required and when a licensee can begin to work with the new real estate firm.
135-20-80		This section addresses application fees.	The proposed change removes language capping the fee the exam vendor can charge the candidate.
135-20-100		This section sets out the renewal qualifications including education.	This section is repealed as it became obsolete in 2008 due to statutory changes.
135-20-101		This section sets out the renewal qualifications including education.	The proposed changes remove obsolete language from 2008; amend the Code of Virginia section cites to the current Code of Virginia cites; amends the language to track that which is in the statute and adds language regarding carry over continuing education hours to comply with statutory change in 2012 Acts of Assembly, Chapter 750.
135-20-105		This section set out additional renewal qualifications for licensees who received license by reciprocity.	This section is repealed due to changes in the law pursuant to 2010 Acts of Assembly, Chapter 373.
135-20-120		This section sets out renewal fees.	The proposed change removes the word "associate" as all brokers may now obtain a business entity license pursuant to an

			amendment to the statute, see 2012 Acts of Assembly, Chapter 750.
135-20-140		This section concerns reinstatement requirements.	The proposed changes amend the regulation cite to the correct section, clarify language regarding activation and remove the word “associate” to conform to the amended law, see 2012 Acts of Assembly, Chapter 750.
135-20-155		This section sets out the grounds for disciplinary action.	The proposed amendments add in relevant Code of Virginia cites and amend Code of Virginia cites to new sections due to re-codification. It also adds clarifying language.
135-20-160		This section sets out the requirements for a place of business.	The proposed change clarifies what’s needed to have a residence qualify as a place of business. The language concerning supervision of the place of business is being deleted from this section and put into its own section to better reflect the purpose of this specific subsection and to conform with an amendment to the statute, see 2012 Acts of Assembly, Chapter 750.
	135-20-165		This new section is being added to reflect that duties of supervising brokers are separate from the requirements of the place of business and also to conform with an amendment to the statute, see 2012 Acts of Assembly, Chapter 750.
135-20-170		This section sets out what a licensee needs to do to maintain his license.	The proposed change removes the need for a broker to return a license by certified mail. The board will accept returned licenses by any delivery method.
135-20-180		This section sets out the requirements for maintenance and management of escrow accounts.	The proposed changes remove obsolete language regarding accounts having to be in a Virginia bank, add clarifying language on the principal broker’s responsibilities and add language regarding interpleader to conform with statutory changes, see 2010 Acts of Assembly, Chapter 181.
135-20-185		This section sets out the requirements for maintenance and management of financial records.	The proposed changes amend the language to conform to statutory changes, see 2011 Acts of Assembly, Chapter 461 and clarify language regarding records needed to be kept by the principal or supervising broker.
135-20-190		This section sets out the requirements for advertising.	The proposed changes amend the language to reflect current business practices recognizing newer forms of advertising which no longer involve just print or online.
135-20-210		This section sets out when a licensee needs to disclose ownership interest in real property.	The proposed change amends the language to clarify what information a licensee needs to disclose regarding ownership interest.



135-20-220		This section sets out requirements for disclosure of brokerage relationships.	The proposed change amends the language to conform with statutory changes, see 2012 Acts of Assembly, Chapter 750.
	135-20-225		This section is added to conform with statutory changes, see 2010 Acts of Assembly, Chapters 373 and 637. A new section was added to the Code of Virginia mandating the board to promulgate regulations for a voluntary compliance program.
135-20-240		This section sets out requirements for records provided to the board.	The proposed change adds language to clarify more types of records which the board may request from a licensee.
135-20-260		This section sets out actions which the board considers unworthy and incompetent.	The proposed changes amend the title of the section to "Prohibited acts" to better reflect what the section is meant to deal with. Based upon recent disciplinary actions taken by the board, the board is clarifying which actions may result in a violation of this section. The board fleshed out actions constituting failing to safeguard the interests of the public as well as actions it feels are engaging in improper, fraudulent or dishonest conduct.
135-20-270		This section sets out what actions constitute a conflict of interest.	The proposed changes remove language which is covered by another section in regulation, add clarifying language and amend the language to conform with statutory changes, see 2012 Acts of Assembly, Chapter 750.
135-20-280		This section sets out what actions constitute paying an improper brokerage commission.	The proposed changes re-write the section to clarify and simplify the language to cover current business practices.
135-20-290		This section sets out what actions constitute improper dealings.	The proposed changes clarify language regarding advertising and remove language now covered in the statute, see 2011 Acts of Assembly, Chapter 461.
135-20-300		This section sets out what actions constitute misrepresentation or omission.	The proposed change amends the language to conform with statutory changes, see 2012 Acts of Assembly, Chapter 750.
135-20-310		This section sets out what actions constitute improper delivery of instruments.	The proposed change amends the language to add relevant cites to the Code of Virginia to conform with statutory changes, see 2012 Acts of Assembly, Chapter 750.
135-20-360		This section sets requirements and standards regarding education.	The proposed changes amend the language to add clarity, offer more options to qualify for pre-license instructor certification and amend the Code of Virginia cite to the correct code section.

