



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 135-20 – Real Estate Board Regulations
Department of Professional Occupational Regulations
March 28, 2013

Summary of the Proposed Amendments to Regulation

The Real Estate Board (the Board) proposes to 1) incorporate statutory voluntary audit and compliance procedures, 2) require a reciprocity licensee to pass the Board's written examination within 12 months prior to applying for a license pursuant to the changes in law, 3) require initial license applicants to submit to fingerprinting pursuant to changes in law, 4) allow a licensee to carry over excess continuing education credits into the next renewal period pursuant to changes in law, 5) allow a broker to downgrade his license to that of a salesperson, 6) remove the \$90 cap on the license examination fee, and 7) require that a proprietary school applicant demonstrate a minimum net worth and offer more options to qualify for pre-license instructor certification.

Result of Analysis

There is insufficient data to accurately compare the magnitude of the benefits versus the costs for some of the proposed changes. The benefits exceed the costs for other proposed changes. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact

The proposed amendments mainly incorporate numerous changes made to the related statutes since 2008. Pursuant to the Chapters 373 and 637 of the 2010 Acts of Assembly, one of the proposed changes incorporates voluntary audit and compliance procedures. This change requires a principal broker or a supervising broker to audit the practices, policies, and procedures of his firm or sole proprietorship at least once every two years. If the results of self audit indicate non-compliance with regulations or law, the broker is required to remedy the non-compliance. When such a report is submitted, it provides immunity to the broker from enforcement.

This requirement introduces additional compliance costs on the principal or supervising brokers in terms of added self audit costs. However, it also affords an opportunity to them to identify problematic practices and correct deficiencies voluntarily without risking enforcement action from the Board. The voluntary audit and compliance procedures are expected to improve compliance with the regulations and law without increasing the administrative costs of the Board. While the proposed voluntary audit and compliance procedures represent a significant change, they have already been implemented in practice under the statutory language. Thus, the proposed incorporation of the voluntary audit and compliance procedures in the regulations are not expected to create a significant economic impact upon incorporation of these amendments in the regulations.

Pursuant to the Chapters 373 and 637 of the 2010 Acts of Assembly, another proposed change requires a reciprocity licensee to pass the Board's written examination within 12 months prior to applying for a license. Previously, a reciprocity licensee could wait up to two years to pass the written test. This change shortens the time frame a reciprocity licensee can perform as a real estate salesperson or broker in Virginia from two years to 12 months. According to the Department of Professional Occupational Regulation (DPOR), a few hundred reciprocity licenses are granted in a year. Since this requirement has already been implemented under the statutory authority, no significant economic effect is expected from this proposed language upon its promulgation.

The proposed changes also require initial license applicants to submit to fingerprinting pursuant to Chapter 667 of the 2009 Acts of Assembly. This change is expected to affect approximately 3,000 individuals applying for licensure every year. The fingerprinting is estimated to cost \$62 per case, of which \$37 goes to the State Police and \$25 goes to the vendor. This additional cost is paid by the applicant. The main benefit of this requirement is likely improved compliance with the Boards existing background requirements.

Pursuant to Chapter 750 of the 2012 Acts of Assembly, the proposed changes allow a licensee to carry over excess continuing education credits into the next renewal period if they are obtained six months prior to the license expiration date. This change is expected to benefit regulants who have taken more than the required amount of continuing education credits for renewal.

The proposed changes also allow a broker to downgrade his license to that of a salesperson. Such applicants are required to submit a complete application package for the salesperson license and be subject to the requirements of the broker license if he wishes to become licensed as a broker again. According to DPOR, some brokers no longer want to meet the continuing education requirements to maintain the broker license. While brokers are required to have 24 hours of continuing education per year, salespersons are required to have only 16 hours of continuing education per year. The additional 8 hours of continuing education is estimated to cost approximately \$50. Of the 11,835 brokers, how many may choose this option is not known. The Board has already implemented this requirement. Thus, no significant economic effect is expected from this proposed language upon its promulgation.

One of the proposed changes removes the \$90 cap on the license examination fee. The exam is administered by a contracted vendor. The current fee amount negotiated with the Board is \$60 which is in effect until 2015. Currently, the regulations allow the exam fee to be adjusted according to proper procurement procedures not to exceed \$90. The proposed removal of the cap will allow the Board to contract with a vendor with a negotiated price above \$90 per exam when the contract needs to be renewed. Approximately, 6,300 individuals take this test every year.

The proposed changes require that a proprietary school applicant demonstrate a minimum net worth of \$2,000 by a Certified Public Accountant certified letter and include more options to qualify for pre-license instructor certification. The net worth requirement has been established in guidance documents for three years. It was added to the regulation to require evidence of financial responsibility. Under the proposed changes, there are more options to qualify for pre-license instructor certification, but the applicant must meet two of the six options listed instead of one of the three. The Board receives 80 – 100 applications per year for pre-license instructor certification. The goal of this change is to make the instructor a more effective teacher. The board has also added a provision that would allow the board to waive the requirements if proof of experience in related field of real estate can be demonstrated.

The proposed changes also update the requirements for maintenance and management of financial records and actions that constitute an improper dealing pursuant to Chapter 461 of the 2011 Acts of Assembly; and the requirements for maintenance and management of escrow accounts pursuant to Chapter 181 of the 2010 Acts of Assembly.

Businesses and Entities Affected

This regulation change will affect all brokers, salespersons, business entities and firms. As of March 1, 2013, 55,753 individuals and 6,199 firms/sole proprietorships are regulated by the Board.

Localities Particularly Affected

The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment

While some of the changes discussed above are expected to have a positive impact on employment, some others are expected to have a negative impact. For example, voluntary audit and compliance procedures are likely to add to demand for labor. Shortening the time frame a reciprocity licensee can perform as an agent or broker in Virginia is likely to reduce supply of real estate professionals in Virginia. Fingerprinting requirements are likely to add to the demand for fingerprinting services. Being able to carryover excess continuing education credits are likely to reduce demand for continuing education services. Allowing a broker to downgrade his license to that of a salesperson is likely to reduce demand for continuing education services. The net impact of these opposing effects on employment is not known.

Effects on the Use and Value of Private Property

While some of the changes discussed above are expected to reduce compliance costs, some others are expected to increase them. For example, voluntary audit and compliance procedures, shortening the time frame a reciprocity licensee can perform as an agent or broker in Virginia, and fingerprinting requirements are likely to add to the compliance costs. Being able to carryover excess continuing education credits and allowing a broker to downgrade his license to that of a salesperson is likely to reduce the compliance costs. The net impact of these opposing effects on compliance costs and consequently on asset value of affected firms is not known.

Small Businesses: Costs and Other Effects

Most of the 6,199 firms/sole proprietorships are likely to be small businesses. Costs and other effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Shortening the time frame a reciprocity licensee can perform as an agent or broker in Virginia and fingerprinting requirements are the changes with probably the most significant adverse impact. There is no known alternative that minimizes these adverse impacts.

Real Estate Development Costs

No significant impact on real estate development costs is expected.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.