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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Real Estate Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18VAC135-20
<b>VAC Chapter title(s)</b>	Virginia Real Estate Board Licensing Regulations
<b>Action title</b>	Fee Adjustment 2021
<b>Date this document prepared</b>	April 19, 2021

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).*

The Real Estate Board (“the Board”) intends to amend its regulations to adjust license application, renewal, and reinstatement fees for real estate licenses. The Board must establish fees adequate to support the costs of its operations and a proportionate share of the Department’s operations. By the close of the next biennium (2022-2024), fees will not provide adequate revenue for those costs.

The Department of Professional and Occupational Regulation (“the Department”) is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards funds the Department’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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“Department” and “DPOR” means the Department of Professional and Occupational Regulation.

“Board” means the Real Estate Board.

## 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.”*

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Section 54.1-113 of the Code of Virginia (“the Callahan Act”) states, in part:

Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or 54.1-2505 shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

This regulatory change is prompted by a Department review of the Board’s current financial position, and projected revenues and expenses for the current (2020-2022) and next (2022-2024) biennia. DPOR’s Financial Services Director reports that by the close of the current biennium, expenses are expected to exceed revenues by approximately 26 percent. By the close of the next biennium, expenses are expected to exceed revenues by approximately 24 percent.

This regulatory change is also made in anticipation of an upcoming change to the Callahan Act that will become effective July 1, 2022 (FY 2023). The fee adjustment is expected to ensure revenue to the Board’s account will be approximately equal to expenditures allocated to the Board, while keeping the cash balance of the account relatively stable to ensure compliance with the Callahan Act.

On September 17, 2020, the Board reviewed its current and projected financial position, and authorized this regulatory action to adjust license application, renewal, and reinstatement fees so that they are sufficient, but not excessive, to cover expenses.

## 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.*

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The promulgating agency is the Real Estate Board. Chapter 21 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for real estate licensees. Section 54.1- 2105.A of the Code of Virginia states, in part:

A. The board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate regulations.

In addition, § 54.1-201 of the Code of Virginia states, in part:

A. The powers and duties of regulatory boards shall be as follows:

4. To levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.

Further, § 54.1-113 of the Code of Virginia states, in part:

A. Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or 54.1-2505 shows expenses allocated to it for the past biennium to be more than 10 percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Finally, § 54.1-304.3 provides the authority of DPOR to collect and account for fees, and § 54.1-308 requires costs be paid by the regulatory boards.

**All of these provisions of the Code of Virginia are mandatory.**

**Purpose**

*Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.*

The General Assembly has charged the Board with the responsibility for regulating those who assist persons with the buying, selling, and leasing of real property by requiring the Board examine such individuals and issue licenses to those who have demonstrated sufficient competency to buy, sell or lease real property for others, while protecting the public health, safety, and welfare. Real estate licensees who are not properly trained may pose a risk to the public.

This regulation helps fulfill this legislative mandate by making sure the Board has adequate resources to operate, ensuring that those who receive a license from the Board meet minimum competency standards in order to assist others in a real estate transaction. The action is limited to adjusting license application, renewal, and reinstatement fees; no other potential issues are expected to be addressed.

**Substance**

*Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

The Board reviewed the fees listed in 18VAC135-20-80, 18VAC135-20-120, 18VAC135-20-140, and 18VAC135-20-370 and based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the licensee population.

The following is the expected range of the proposed fee increases to be made in this regulatory action.

Fee Type	Current Fee	New Fee	Change
Initial Broker	\$190	\$220	\$30
Initial Salesperson	\$150	\$185	\$35
Initial Firm	\$250	\$300	\$50
Initial Branch	\$190	\$220	\$30
Initial Business Entity	\$190	\$220	\$30
Initial Course Instructor	\$190	\$220	\$30
Initial Proprietary School	\$190	\$220	\$30
Upgrade to Broker	\$85	\$120	\$35
Downgrade to Salesperson	\$85	\$120	\$35
Concurrent Broker	\$140	\$185	\$45
Activate/Transfer	\$60	\$90	\$30
Renewal Broker	\$80	\$115	\$35
Renewal Salesperson	\$65	\$95	\$30
Renewal Branch	\$90	\$145	\$55
Renewal Firm	\$160	\$215	\$55
Renewal Business Entity	\$90	\$145	\$55
Renewal Proprietary School	\$90	\$145	\$55
Renewal Course Instructor	\$75	\$120	\$45
Reinstatement Broker	\$40	\$65	\$25
Reinstatement Salesperson	\$35	\$50	\$15
Reinstatement Firm	\$85	\$100	\$15
Reinstatement Branch	\$135	\$150	\$15
Reinstatement Business Entity	\$135	\$150	\$15
Reinstatement Proprietary School	\$135	\$150	\$15
Reinstatement Course Instructor	\$110	\$130	\$20

**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.*

The following alternatives to the regulatory change were considered:

- **Reduce services.** Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to applicants' and licensees' ability to work, and would decrease the Department's effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare.
- **Obtain a Treasury loan to fund operations.** The Department could request a loan from the general fund to cover the Board's deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for loan repayment.
- **Supplement Board activities with general funds.** The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. The Department's Boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 54.1-304(3), and 54.1-308 of the Code of Virginia. Use of general funds to support Board operations does not appear to be an appropriate use of taxpayer dollars.

Real estate licenses are issued primarily to individuals. This regulation does not impose reporting requirements or design or operational standards on small businesses as defined in § 2.2-4007.1.

### Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or small business impact review.

### 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. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.*

The Real Estate Board is providing an opportunity for comments on this regulation, including but not limited to: (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

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:

Christine Martine, Executive Director  
Real Estate Board  
9960 Mayland Drive, Suite 400  
Richmond, VA 23233  
866-826-8863 (FAX)  
[reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.