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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Real Estate Board
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC135-20
VAC Chapter title(s)	Virginia Real Estate Board Licensing Regulations
Action title	General Review of Virginia Real Estate Board Licensing Regulations
Date this document prepared	April 2, 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 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 undertake a general regulatory review of the Virginia Real Estate Board Licensing Regulations. The regulation provides for the licensure of real estate brokers, real estate salespersons, real estate firms, and business entities. The regulation also provides for the certification of real estate schools, pre-license education instructors, and courses.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);

2. Review to ensure the regulation complements current Virginia law and meets applicable federal requirements, if any;
3. Review to ensure the regulation is organized, clear, and understandable; and
4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

“DPOR” means Department of Professional and Occupational Regulation.

“SCC” means State Corporation Commission.

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 the ORM procedures, “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.”

The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”

This action is not the result of a mandate.

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 Real Estate Board.

Section 54.1-201 of the Code of Virginia provides, in part:

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

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

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 individuals, firms, and business entities that act as a real estate broker or salesperson, or act or offer to act as a real estate firm or real estate team by requiring such individuals, firms, and business entities to obtain a license in order to engage in this activity.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

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 formed a regulatory review committee composed of current and former members of the Board, as well as industry representatives, to conduct a review of this regulation. The committee’s membership includes licensed real estate brokers, a real estate attorney, a representative of Virginia Realtors, and citizen members of the Board.

The regulatory review committee is performing a review of the regulation. The Board is expected consider the substantive changes detailed below. However, the Board may consider other changes prior to adoption of the proposed regulation.

Part I – General (18 VAC 135-20-10 et seq.):

Definitions (18 VAC 135-20-10): Consolidating definitions contained throughout the regulation into a single section. Applicable provisions in other sections of the regulation will be repealed. This change is intended to streamline the regulation.

Fees (18 VAC 135-20-15): Adding a new section that establishes a consolidated fee schedule. This change is intended to streamline the regulation. Applicable provisions in other sections of the regulation will be repealed.

Part II – Entry (18 VAC 135-20-20 et seq.):

Necessity for License (18 VAC 135-20-20): Adding a provision that specifies applicants operating under a fictitious or assumed name must provide proof that the name is properly registered with the SCC in accordance with applicable law. The change is designed to complement current law which requires that firms register trade or fictitious names with the SCC.

Qualifications for Licensure (18 VAC 135-20-30):

- Revising the qualifications for licensure to remove a provision that requires an applicant to “have a good reputation for honesty, truthfulness, and fair dealing.” This requirement is not necessary. Applicants for licensure are required to submit to fingerprinting and disclose prior criminal history. Applicants are also required to disclose any prior regulatory discipline. Any adverse information reported would be sufficient for the Board to make a determination as to an applicant’s fitness for licensure.
- Revising the qualifications for licensure to remove a provision that requires an applicant be competent to transact the business of a real estate broker or salesperson in such a manner as to safeguard the interests of the public. The requirement is not necessary. The Board’s entry requirements for education, experience, and examination are sufficient to establish minimum competency to transact business.
- Revising the qualifications for licensure to incorporate pertinent provisions from section -60 relating to applicants for licensure by reciprocity.

Part III – Renewal of License (18 VAC 135-20-90 et seq.):

Qualification for Renewal; Continuing Education Requirements (18 VAC 135-20-101):

- Removing a requirement that proof of continuing education course completion be made on a form prescribed by the Board.
- Revising a provision that allows a licensee to carryover continuing education credits completed during a license cycle that are in excess of the amount required for renewal of a license. Currently, a licensee may carry over excess credits that are obtained six (6) months immediately prior to the expiration date of the license. The timeframe would be expanded to one (1) year immediately prior to the expiration date of the license.

Board Discretion to Deny Renewal (18 VAC 135-20-130): This section will be repealed. This section provides that the Board may deny renewal of a license for (i) the same reasons it may refuse initial licensure or discipline a licensee; (ii) failure to meet the terms of an agreement for licensure or other Board order; or (iii) failure to fully pay monetary penalties and costs imposed by the Board. Section -150 will be revised to provide that the Board may deny renewal or reinstatement for these reasons.

Part IV – Reinstatement (18 VAC 135-20-140 et seq.):

Failure to Renew; Reinstatement Required (18 VAC 135-20-140): Revising the provisions of this section to address the continuity of licensure for individuals and firms that reinstate licenses.

Board Discretion to Deny Reinstatement (18 VAC 135-20-150): Revising the provisions of this section to provide that the Board may deny renewal or reinstatement of licenses for (i) the same reasons it may

refuse initial licensure or discipline a licensee; (ii) failure to meet the terms of an agreement for licensure or other Board order; or (iii) failure to fully pay monetary penalties and costs imposed by the Board.

Part V – Standards of Practice and Conduct (18 VAC 135-20-155 et seq.):

Place of Business (18 VAC 135-20-160): Revising the provisions of this section to remove (i) a requirement that a place of business must be an office where the principal broker and the broker's employees and associates can receive calls and direct business calls to be made; and (ii) a requirement that the a place of business in a residence must be separate and distinct from the living quarters of the residence with its own entrance and accessible by the public. These changes are made to reduce regulatory burdens and provide flexibility to licensees.

Maintenance of Licenses (18 VAC 135-20-170):

- Revising the provisions of this section to require that a principal broker notify the Board within 10 days when any salesperson or broker is discharged or terminates active status with the firm. Currently, a principal broker is required to return the license to the Board within 10 days, after signing and dating the license. A similar change is made regarding the requirement for a firm to return a license when the principal broker is discharged or terminates active status.
- Adding a provision that allows the Board to terminate the license of a firm if the firm is no longer authorized to conduct business in Virginia. The termination could be lifted once the firm becomes authorized again to conduct business.

Maintenance and Management of Escrow Accounts (18 VAC 135-20-180): Revising the provisions of this section which provides for (i) maintaining escrow accounts; (ii) depositing of funds in escrow accounts; (iii) disbursement of funds from escrow accounts; and (iv) actions that are considered improper maintenance of escrow funds.

Maintenance and Management of Financial Records (18 VAC 135-20-185): Revising the provisions of this section which provides for (i) recordkeeping requirements for financial transactions; (ii) standards for bookkeeping or recordkeeping systems; and (iii) actions that constitute improper recordkeeping.

Advertising by Licensees (18 VAC 135-20-190): Revising the provisions of this section to clarify and simplify requirements related to advertising.

Response to Any Inquiry of the Board (18 VAC 135-20-250): Repealing this section. The provisions of this section, which requires a licensee to respond to any inquiry of the Board other than request under section -240, will be consolidated with section -240.

Audits (18 VAC 135-20-255): Revising the provisions of this section which provides for procedures for (i) voluntary compliance, self-audits, or third-party audits; and (ii) mandatory audits.

Prohibited Acts (18 VAC 135-20-260): Revising the provisions of this section which provides for prohibited acts.

Conflicts of Interest (18 VAC 135-20-270): Revising the provisions of this section which outlines actions that constitute a conflict of interest.

Improper Brokerage Commission (18 VAC 135-20-280): Revising the provisions of this section which provides for actions that constitute an improper brokerage commission.

Improper Dealing (18 VAC 135-20-290): Revising the provisions of this section which provides for actions that constitute improper dealing.

Misrepresentation/Omission (18 VAC 135-20-300): Revising the provisions of this section which provides for actions that constitute misrepresentation or omission.

Improper Delivery of Instruments (18 VAC 135-20-310): Revising the provisions of this section which provides for actions that constitute improper delivery of instruments.

Part VI – Schools (18 VAC 135-20-350 et seq.):

- Revising the provisions of this part to create stand-alone sections that each address (i) certification of proprietary schools; (ii) certification of pre-license education instructors; and (iii) approval of pre-license and continuing education courses.
- Revising the qualifications for individuals to qualify for certification as a pre-license education instructor.
- Revising the requirements for approval of pre-license and continuing education courses.

Posting of School Certificates of Approval and Instructor Certificates (18 VAC 135-20-380): Repealing this section, which requires that copies of school certificates of approval and instructor certificates be available at the location a course is taught. These requirements are burdensome and not necessary.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

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.

A goal of this regulatory action is to review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a 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 Board formed a regulatory review committee composed of current and former members of the Board, as well as industry representatives, to conduct a review of this regulation.

The Real Estate Board is providing an opportunity for comments on this regulatory proposal, 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:

Anika Coleman
Executive Director
9960 Mayland Drive
Perimeter Center, Suite 400
Richmond, VA 23233
reboard@dpor.virginia.gov
(866) 826-8863 (fax)

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.