



Virginia Department of Planning and Budget **Economic Impact Analysis**

13 VAC 6-20 Manufactured Housing Licensing and Transaction Recovery Fund Regulations

Department of Housing and Community Development

Town Hall Action/Stage: 5599/9065

March 18, 2021

Summary of the Proposed Amendments to Regulation

As the result of an internal review and a 2009 legislative mandate, the Board of Housing and Community Development (Board) proposes to amend 13 VAC 6-20 *Manufactured Housing Licensing and Transaction Recovery Fund Regulations* (regulation) to conform to §§ 36-85.28 and 36-85.32 of the Code of Virginia.

Background

Chapter 579 of the 2009 *Acts of Assembly* amended §§ 36-85.28, 36-85.31, and 36-85.32 of the Code of Virginia (Code) to provide greater financial protection to both dealers and purchasers of manufactured homes. In particular, §36-86.28 of the Code was amended to:

- i. Limit to \$4,000 the amount of actual damages that a manufactured home dealer may retain when a buyer fails to accept delivery of a manufactured home that is larger than a single section unit and in the manufactured home dealer's stock.
- ii. Raise the limit of actual damages from \$5,000 to \$7,000 when a buyer fails to accept delivery of a manufactured home that is larger than a single section unit and is specially ordered for the buyer.
- iii. Raise the limit of actual damages from \$500 to \$1000 when a buyer fails to accept delivery of a manufactured home that is a single section unit in the dealer's stock.

- iv. Raise the limit of actual damages from \$1000 to \$2000 when a buyer fails to accept delivery of a manufactured home that is a single section unit and is specially ordered for the buyer.

Section 36-85.32 of the Code was amended to raise the maximum claim amount of a single claimant against the Manufactured Housing Transaction Recovery Fund (recovery fund) for single or multiple violations by one or more regulants from \$20,000 to \$40,000.¹

The Department of Housing and Community Development (DHCD) has been operating with the understanding that these legislative changes were reflected in the regulation when it was last amended in 2012 and recently realized that they had been inadvertently excluded.² Hence, the Board proposes to amend the regulation to implement the changes to the Code, as summarized above.³ In addition, the Board proposes to specify that the amount of damages awarded from the recovery fund shall be limited to actual, compensatory damages and shall not include attorney's fees for representation before the Board.⁴

Estimated Benefits and Costs

The increased damages would benefit dealers of manufactured homes who are faced with situations wherein buyers make an upfront payment towards the purchase of a manufactured home but subsequently fail to accept delivery. DHCD did not specify if such occurrences were common, or the frequency had been diminished since the 2009 legislation had passed. The increased damages may also deter buyers from placing orders if they are uncertain of their ability to accept delivery.

Claimants who had not received the damages owed to them by a regulant (that had been awarded to them by the Board following a hearing) are allowed to request to the Board that they be paid from the recovery fund. Such claimants would benefit from the increased maximum claim amount, since it would allow them to recoup up to an additional \$20,000 in damages from

¹ See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=091&typ=bil&val=ch579>. Note that Chapter 579 also amended § 36-85.31 of the Code to raise the minimum balance of the Fund from 250,000 to \$300,000 and to authorize parts of the fund to be applied towards education programs and conducting investigations. However, the bill specified that the amendments to § 36-85.31 were to expire on July 1, 2011, rendering these changes moot as of this writing.

² See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2736> for the 2012 action.

³ See https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\84\31103\Minutes_DHCD_31103_v1.pdf

⁴ A statement to this effect is already included in Section 430 of this regulation, which addresses filing claims.

the recovery fund if they had been awarded \$40,000 or more, but the regulant had failed to pay the award.

Lastly, to the extent that regulants as well as purchasers of manufactured housing had already been aware of the changes made by the 2009 legislation described above, the proposed amendments are unlikely to create any new costs or benefits beyond conforming the regulation to the Code.

Businesses and Other Entities Affected

DHCD reports that there are currently 198 licensed dealers of manufactured housing who would benefit from the increased damages. In addition, DHCD reports there are 13 licensed brokers, 38 licensed manufacturers, and 368 licensed salespersons. Although these regulants are not directly affected by the proposed amendments, clients of all four classes of licensees potentially stand to benefit from the increase in maximum damages to the extent that they may have to seek damages from the recovery fund.

Small Businesses⁵ Affected

DHCD could not provide the number of regulants that are small businesses, since they do not collect information on regulants' revenues or number of employees. However, the proposed amendments would not introduce any costs to businesses, including small businesses.

Localities⁶ Affected⁷

The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment

The proposed amendments are unlikely to affect the aggregate number of licensed manufacturers, brokers, dealers, or salespersons of manufactured homes.

⁵ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "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."

⁶ "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷ § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Effects on the Use and Value of Private Property

The proposed amendments are unlikely to affect the use and value of private property, including manufactured homes. Real estate development costs are not affected.

Legal Mandates

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.