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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>	18 VAC135-40
<b>VAC Chapter title(s)</b>	Fair Housing Regulations
<b>Action title</b>	General Review of Fair Housing Regulations
<b>Date this document prepared</b>	March 22, 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 Fair Housing Regulations. The regulation provides the Board’s interpretation of the coverage of the fair housing law regarding discrimination related to the sale or rental of dwellings, the related provision of services, the availability of residential real estate-related transactions, or any other discriminatory conduct prohibited by the Virginia Fair Housing Law (Chapter 5.1 of Title 36 of the Code of Virginia). The regulation also provides for the investigation and conciliation of complaints regarding violations of the Virginia Fair Housing Law.

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 Virginia Fair Housing Law, 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.*

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“DPOR” means Department of Professional and Occupational Regulation.

## 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.”*

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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.*

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The agency is the Real Estate Board.

Section 36-96.8 of the Code of Virginia provides:

- A. The Real Estate Board and the Fair Housing Board, as provided in this chapter, have the power for the purposes of this chapter to initiate and receive complaints, conduct investigations of any violation of this chapter, attempt resolution of complaints by conference and conciliation, and, upon failure of such efforts, issue a charge and refer it to the Attorney General for action.

B. The Real Estate Board and the Fair Housing Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend necessary regulations.

In addition, § 54.1-2344(D) of the Code of Virginia provides for the administration and enforcement of the Virginia Fair Housing Law, and states, in part:

The [Fair Housing Board] shall be responsible for the administration and enforcement of the Fair Housing Law. However, the Board shall have no authority with respect to any of the following respondents who have allegedly violated, or who have in fact violated, the Fair Housing Law: (i) a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees or (ii) a property owner or his agent or principal, who has engaged a real estate licensee to perform real estate activities within the purview of Chapter 21 (§ 54.1-2100 et seq.), which licensee has also been charged with a violation of the Fair Housing Law in the same case. In no event shall the jurisdiction be split between the Real Estate Board and the Board on the same such case.

### 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.*

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Section 36-96.1 of the Code of Virginia provides for Virginia's fair housing policy and states, in part:

B. It is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens, regardless of race, color, religion, national origin, sex, elderliness, familial status, source of funds, sexual orientation, gender identity, military status, or disability, and to that end to prohibit discriminatory practices with respect to residential housing by any person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all the inhabitants of the Commonwealth may be protected and ensured. This law shall be deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth.

The General Assembly has charged the Board with the responsibility for administering and enforcing the Virginia Fair Housing Law with respect to real estate licensees or their agents or employees who have allegedly violated or have violated the Virginia Fair Housing Law. The Fair Housing Board is responsible for the administering and enforcing the Virginia Fair Housing Law with respect to all others who have allegedly violated or violated the Virginia Fair Housing Law.

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 Virginia Fair Housing Law. 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 Virginia Fair Housing Law, 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 has formed a regulatory review committee composed of members of the Board and others involved in the real estate profession to conduct a review of this regulation. The committee’s membership includes individuals who are licensed to practice real estate, citizen members of the Board, and a representative of Virginia Realtors.

At this time, there are no new substantive provisions or substantive changes to existing provisions that are being considered.

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 Virginia Fair Housing Law. 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 Virginia Fair Housing Law, 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 Virginia Fair Housing Law, 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.*

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The Board has formed a regulatory review committee composed of members of the Board and others involved in the real estate profession to conduct a review of this regulation. Meetings of the committee will include opportunities for public comment.

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.