

PROPOSED FAIR HOUSING REGULATIONS

PART I.**GENERAL PROVISIONS.****18 VAC 135-50-10. Definitions.**

The definitions provided in the Virginia Fair Housing Law, as they may be supplemented herein, shall apply throughout this chapter.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise:

"Authorized representative" means (i) an attorney licensed to practice law in the Commonwealth, or (ii) a law student appearing in accordance with the third-year student practice rule, or (iii) a non-lawyer under the supervision of an attorney and acting pursuant to Part 6, § 1, Rule 1 (UPR 1-101(A)(1)) of the Rules of the Supreme Court of Virginia, or (iv) a person who, without compensation, advises a complainant, respondent, or aggrieved person in connection with a complaint, a conciliation conference or proceeding before the board. When a complainant, respondent, or aggrieved person authorizes a person to represent him under subdivision (iv) of this definition, such authority shall be made to the board, in writing or orally in an appearance before the board, and shall be accepted by the representative by sending a written acknowledgment to the board or by the representative's appearance before the board.

"Board" means the Real Estate Board.

PROPOSED FAIR HOUSING REGULATIONS

"Broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fair housing law" means the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia, effective July 1, 1991.

"Fair housing administrator" means the individual employed and designated as such by the Director of the Department of Professional and Occupational Regulation.

~~"Handicap" is defined in 18 VAC 135-50-200 of this chapter.~~

~~"Housing for older persons" means housing: (i) provided under any state or federal program that the secretary of the Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons; (ii) intended for, and solely occupied by, persons 62 years of age or older; or (iii) intended and operated for occupancy by at least one person 55 years of age or older per unit.~~

"Person in the business of selling or renting dwellings" means any person who (i) within the

PROPOSED FAIR HOUSING REGULATIONS

preceding 12 months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; (ii) within the preceding 12 months, has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or (iii) is the owner of any dwelling designed or intended for occupancy by or occupied by, five or more families.

~~"Real estate-related transactions" means: (i) the making or purchasing of loans or providing other financial assistance (a) for purchasing, constructing, improving, repairing or maintaining a dwelling; (b) secured by residential real estate; or (ii) the selling, brokering, insuring or appraising of residential real property.~~

"Receipt of notice" means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail, or three days after the date of the proof of mailing of first class mail.

18 VAC 135-50-20. Purpose.

This chapter governs the exercise of the administrative and enforcement powers granted to and the performance of duties imposed upon the Real Estate Board by the Virginia Fair Housing Law.

This chapter provides the board's interpretation of the coverage of the fair housing law regarding discrimination related to the sale or rental of dwellings, the provision of services in connection

PROPOSED FAIR HOUSING REGULATIONS

therewith, and the availability of residential real estate-related transactions.

18 VAC 135-50-30. General construction.

This chapter shall be construed to further the policies and purposes of the Virginia Fair Housing Law. The board does not intend that a failure by the board to comply with this chapter should constitute a jurisdictional or other bar to administrative or legal action unless otherwise required under this chapter or the law. The board further intends that this chapter shall impose obligations, rights and remedies which are substantially equivalent to those provided by the federal fair housing law and regulations.

18 VAC 135-50-40. Authority. Repealed.

~~This chapter is promulgated pursuant to the authority conferred on the Real Estate Board under the Virginia Fair Housing Law.~~

18 VAC 135-50-50. Scope:

~~It is the policy of Virginia to provide, within constitutional limitations, for fair housing throughout the Commonwealth and to provide rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices because of race, color, religion, sex, handicap, elderliness, familial status, or national origin in the sale, rental, advertising of dwellings, inspection of dwellings or entry into a neighborhood, in the provision of~~

PROPOSED FAIR HOUSING REGULATIONS

~~brokerage services, financing or the availability of residential real estate-related transactions.~~

18 VAC 135-50-60. Notice.

Whenever any person is required by this chapter to give notice to any other person of any fact, matter, or event, then such notice shall be written, and delivery of such notice shall be sufficient if the person giving notice demonstrates that he has used any of the following methods: (i) certified mail, (ii) personal service which means handing a copy of the document to the person to be served or leaving a copy of the document with a person of suitable age and discretion at the place of business, residence or usual place of abode of the person to be served; and (iii) first class mailing with proof of mailing.

This section shall in no way be construed to invalidate delivery of notice in any case in which it can be shown that the person intended to receive the notice actually received it.

PROPOSED FAIR HOUSING REGULATIONS

PART II.**REGULATED CONDUCT.****Article 1. Prohibited Practices.****18 VAC 135-50-70. Real estate practices prohibited.**

~~A.~~ This chapter provides the board's interpretation of conduct that is unlawful housing discrimination under § 36-96.3 Code of Virginia. The list "~~...having the right to sell, rent, lease, control, construct or manage...~~" of unlawful discriminatory housing practices contained in § 36-96.3 of the Virginia Fair Housing Law is to be construed as broadly as possible. In general, the prohibited actions are set forth under sections of these regulations, which are most applicable to the discriminatory conduct described. However, an action illustrated in one section can constitute a violation under other sections in these regulations.

~~B. It shall be unlawful to:~~

- ~~1. Refuse to sell or rent a dwelling after a bona fide offer has been made, or to refuse to negotiate for the sale or rental of a dwelling because of race, color, religion, sex, familial status, elderliness or national origin, or to discriminate in the sale or rental of a dwelling because of handicap.~~

PROPOSED FAIR HOUSING REGULATIONS

- ~~2. Discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with sales or rentals, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.~~
- ~~3. Engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of race, color, religion, sex, handicap, familial status, elderliness or national origin.~~
- ~~4. Make, print or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, elderliness or national origin, or an intention to make any such preference, limitation or discrimination.~~
- ~~5. Represent to any person because of race, color, religion, sex, handicap, familial status, elderliness or national origin that a dwelling is not available for sale or rental when such dwelling is in fact available.~~
- ~~6. Engage in blockbusting practices in connection with the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, elderliness or national origin.~~
- ~~7. Deny access to or membership or participation in, or to discriminate against any person in~~

PROPOSED FAIR HOUSING REGULATIONS

~~his access to or membership or participation in, any multiple-listing service, real estate brokers' association, or other service organization or facility relating to the business of selling or renting a dwelling or in the terms or conditions or membership or participation, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.~~

~~C. The application of the fair housing law with respect to persons with handicaps is discussed in 18 VAC 135-50-200.~~

18 VAC 135-50-80. Unlawful refusal to sell or rent or to negotiate for the sale or rental.

~~A. It shall be unlawful for a person to refuse to sell or rent a dwelling to a person who has made a bona fide offer, because of race, color, religion, sex, familial status, elderliness, or national origin, or to refuse to negotiate with a person for the sale or rental of a dwelling because of race, color, religion, sex, familial status, elderliness, or national origin, or to discriminate against any person in the sale or rental of a dwelling because of handicap.~~

~~B. Prohibited actions under this section include, but are not limited to:~~

- ~~1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~
- ~~2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with,~~

PROPOSED FAIR HOUSING REGULATIONS

~~any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~

3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

~~4.2.~~ Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

~~5.3.~~ Evicting tenants because of their race, color, religion, sex, handicap, familial status, elderliness, or national origin or because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of a tenant's guest.

~~**NOTE:** § 36-96.2 D of the Virginia Fair Housing Law provides that "Nothing in this chapter prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in federal law."~~

18 VAC 135-50-90. Discrimination in terms, conditions and privileges and in services and facilities.

PROPOSED FAIR HOUSING REGULATIONS

~~A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to impose different terms, conditions or privileges relating to the sale or rental of a dwelling or to deny or limit services or facilities in connection with the sale or rental of a dwelling.~~

~~B. Prohibited actions under this section include, but are not limited to:~~

- ~~1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~
- ~~2. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~
- ~~3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~
- ~~4. Limiting the use of privileges, services or facilities associated with a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness or national origin of an owner, tenant or a person associated with him.~~

PROPOSED FAIR HOUSING REGULATIONS

5.4 Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

18 VAC 135-50-100. Other prohibited sale and rental conduct.

A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development.

Prohibited actions under subsection A of this section which are generally referred to as unlawful steering practices, include, ~~but are not limited to:~~

1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin or because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons in a community, neighborhood or development.
2. ~~Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or~~

PROPOSED FAIR HOUSING REGULATIONS

~~development.~~

3. Communicating to any prospective purchaser that he would not be comfortable or compatible with existing residents of a community, neighborhood or development because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

~~3.~~ Assigning any person to a particular section of a community, neighborhood or development or to a particular floor or section of a building because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. It shall be unlawful because of race, color, religion, sex, handicap, familial status, elderliness, or national origin to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited activities relating to dwellings sales and rental practices under subsection B of this section include, ~~but are not limited to:~~

1. Discharging or taking other adverse action against an employee, broker, or agent because he refused to participate in a discriminatory housing practice.
2. Employing codes or other devices to segregate or reject applicants, purchasers or renters, refusing to take or to show listings of dwellings in certain areas because of race, color,

PROPOSED FAIR HOUSING REGULATIONS

religion, sex, handicap, familial status, elderliness, or national origin or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, handicap, familial status, elderliness, or national origin.

3. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Refusing to provide municipal services or property or hazard insurance for dwelling or providing such services or insurance differently because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

18 VAC 135-50-110. Discriminatory advertisements, statements and notices.

- A. It shall be unlawful to make, print or publish, or cause to be made, printed or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status, elderliness, or national origin, or an intention to make any such preference, limitation, or discrimination.
- B. ~~The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used~~

PROPOSED FAIR HOUSING REGULATIONS

~~with respect to the sale or rental of a dwelling.~~

~~C.~~ Discriminatory notices, statements, and advertisements include, ~~but are not limited to:~~

1. Using words, phrases, photographs, illustrations, symbols, or forms which convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, handicap, familial status, elderliness or national origin.
2. Expressing to agents, brokers, employees, prospective sellers, or renters or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, handicap, familial status, elderliness, or national origin of such person.
3. Selecting media or locations for advertising the sale or rental of dwelling which deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

~~D.C.~~ Publishers' notice. All publishers ~~should~~ shall publish at the beginning of the real estate advertising section a notice such as that appearing in Table III, Appendix I to Part 109, 24 CFR, Ch. 1 (~~4-1-89~~ 4-1-00 edition). The notice ~~may~~ shall include a statement regarding the coverage

PROPOSED FAIR HOUSING REGULATIONS

of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

E.D. Fair housing poster requirements.

1. Persons subject. Except to the extent that 18 VAC 135-50-110 ~~E+D~~ D2 applies, all persons subject to § 36-96.3 of the Virginia Fair Housing Law, Unlawful Discriminatory Housing Practices, shall post and maintain a HUD approved fair housing poster as follows:
 - a. With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.
 - b. With respect to all other dwellings covered by the ~~law~~ Virginia Fair Housing Law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.

PROPOSED FAIR HOUSING REGULATIONS

- c. With respect to those dwellings to which subdivision 1 b of this section applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.
2. ~~This part shall not require posting and maintaining a fair housing poster. The poster requirement does not apply to~~
 - a. ~~On vacant land, or~~
 - b. ~~At any single-family dwelling, unless such dwelling (i) is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 b (ii) of this subsection, or (ii) is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 a of this subsection.~~
- ~~3.~~ 3. All persons subject to § 36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.
- ~~4.~~ 4. All persons subject to 18 VAC 135-50-140, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.

PROPOSED FAIR HOUSING REGULATIONS

~~3.5.~~ Location of posters. All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.

~~4.6.~~ Availability of posters. All persons subject to this part may obtain fair housing posters from the Virginia Department of Professional and Occupational Regulation. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department of Professional and Occupational Regulation. Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the administrator pursuant to Part III of this chapter.

~~5.~~ A failure to display the fair housing poster as required by this section shall be deemed prima facie evidence of a discriminatory housing practice.

~~6.~~ Additional fair housing advertising guidelines are found in 18 VAC 135-50-230 through 18 VAC 135-50-290.

18 VAC 135-50-120. Discriminatory representations on the availability of dwellings.

A. It shall be unlawful, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin, to provide inaccurate or untrue information about the availability of dwelling for sale or rental.

PROPOSED FAIR HOUSING REGULATIONS

B. Prohibited actions under this section include, ~~but are not limited to:~~

1. Indicating through words or conduct that a dwelling which is available for inspection, sale, or rental has been sold or rented, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Representing that covenants or other deed, trust, or lease provisions which purport to restrict the sale or rental of dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin preclude the sale or rental of a dwelling to a person.
3. Enforcing covenants or other deed, trust, or lease provisions which preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Limiting information by word or conduct regarding suitably priced dwellings available for inspection, sale or rental, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
5. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

PROPOSED FAIR HOUSING REGULATIONS

18 VAC 135-50-130. Blockbusting.

~~A. It shall be unlawful to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, elderliness, or national origin or with a handicap.~~

~~B. Prohibited actions under this section include, but are not limited to:~~

- ~~1. Engaging in conduct (including uninvited solicitations for listing) which conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons residing in it, in order to encourage the person to offer a dwelling for sale or rental.~~
- ~~2. Encouraging any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, elderliness or national origin, or with handicaps, can or will result in undesirable consequences for the project, neighborhood or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.~~

18 VAC 135-50-140. Discrimination in the provision of brokerage services.

PROPOSED FAIR HOUSING REGULATIONS

~~A. It shall be unlawful to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~

B: Prohibited actions under this section include, ~~but are not limited to:~~

1. Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
3. Imposing different standards or criteria for membership in a real estate sales, rental, or exchange organization because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
4. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, because of race, color, religion, sex, handicap, familial status, elderliness,

PROPOSED FAIR HOUSING REGULATIONS

or national origin.

~~18 VAC 135-50-150. Discriminatory practices in residential real estate-related transactions.~~

~~It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.~~

~~The term "residential real estate transactions" means: (i) the making or purchasing of loans or providing other financial assistance (a) for purchasing, constructing, improving, repairing or maintaining a dwelling; (b) secured by residential real estate; or (ii) the selling, brokering, insuring or appraising of residential real property.~~

18 VAC 135-50-160. Discrimination in the making of loans and in the provision of other financial assistance.

A. It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling, or which is or is to be secured by a dwelling, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

B. Prohibited practices under this section include, ~~but are not limited to,~~ failing or refusing to

PROPOSED FAIR HOUSING REGULATIONS

provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.

18 VAC 135-50-170. Discrimination in the purchasing of loans.

A. It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities which support the purchase, construction, improvement, repair or maintenance of a dwelling, or which are secured by residential real estate, to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, handicap, familial status, elderliness or national origin.

B. Unlawful conduct under this section includes, ~~but is not limited to:~~

1. Purchasing loans or other debts or securities which relate to, or which are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of persons in such neighborhoods or communities.
2. Pooling or packaging loans or other debts or securities which relate to, or which are secured by, dwellings differently because of race, color, religion, sex, handicap, familial status,

PROPOSED FAIR HOUSING REGULATIONS

elderliness, or national origin.

3. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities which relate to, or which are secured by, dwellings because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

C. This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, handicap, familial status, elderliness, or national origin.

18 VAC 135-50-180. Discrimination in the terms and conditions for making available loans or other financial assistance.

A. It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

PROPOSED FAIR HOUSING REGULATIONS

B. Unlawful conduct under this section includes, ~~but is not limited to:~~

1. Using different policies, practices or procedures in evaluating or in determining credit worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
2. Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration or other terms for a loan or other financial assistance for a dwelling or which is secured by residential real estate because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.

18 VAC 135-50-190. Unlawful practices in the selling, brokering, or appraising of residential real property.

- A. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, handicap, familial status, elderliness, or national origin.
- B. For the purposes of this section the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale,

PROPOSED FAIR HOUSING REGULATIONS

rental, financing or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

~~C. Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~

~~D. Practices which are unlawful under this section include, but are not limited to, using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, elderliness, or national origin.~~

18 VAC 135-50-200. General prohibitions against discrimination because of handicap.

A. Definitions. As used in 18 VAC 135-50-200 unless a different meaning is plainly required by the context:

"Accessible," when used with respect to the public and common use areas of a building containing covered multi-family dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with "accessible." A public or

PROPOSED FAIR HOUSING REGULATIONS

common use area that complies with the appropriate requirements of ANSI A117.1-1986 or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people is accessible within the meaning of this section.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD, is an "accessible route."

"ANSI A117.1" means the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

"Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and

PROPOSED FAIR HOUSING REGULATIONS

passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirements of this paragraph.

"Common use areas" shall include, ~~but not be limited to~~ rooms, spaces, or elements inside or outside of a building which are not part of the dwelling unit and which are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas and passageways among and between buildings.

"Controlled substance" means any drug or other substance, ~~or immediate precursor included in the definition in § 102 of the Controlled Substances Act (21 U.S.C. 802) as defined in Virginia or federal law.~~

~~"Covered multi-family dwellings" means buildings consisting of four or more dwelling units if such buildings have one or more elevators, and ground floor dwellings units in other buildings consisting of four or more dwelling units.~~

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping

PROPOSED FAIR HOUSING REGULATIONS

accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

~~"Handicap" means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a medical or psychological record of such an impairment; or being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance as defined in Virginia or federal law. For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.~~

As used in this definition:

"Physical or mental impairment" includes:

PROPOSED FAIR HOUSING REGULATIONS

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, ~~but is not limited to,~~ such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

"Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" means:

1. Has a physical or mental impairment that does not substantially limit one or more major life

PROPOSED FAIR HOUSING REGULATIONS

activities but that is treated by another person as constituting such a limitation;

2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
3. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.

"Interior" means the spaces, parts, components or elements of an individual dwelling unit.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

PROPOSED FAIR HOUSING REGULATIONS

~~"Standard for Accessibility and Usability for Physically Handicapped People" -- Compliance with the appropriate requirements of the American National Standard for building and facilities commonly cited as "ANSI A117.1" or with any other standard adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people.~~

B. General prohibitions against discrimination because of handicap.

~~1. It shall be unlawful to discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:~~

~~a. That buyer or renter;~~

~~b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available, or~~

~~c. Any person associated with that person.~~

~~2. It shall be unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:~~

~~a. That buyer or renter;~~

PROPOSED FAIR HOUSING REGULATIONS

~~b. A person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or~~

~~c. Any person associated with that person.~~

3.1. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this subdivision does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

- a. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
- b. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;
- c. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap;
- d. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;

PROPOSED FAIR HOUSING REGULATIONS

- e. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance;

~~4.2.~~ Nothing in 18 VAC 135-50-200 B requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or themselves, or whose tenancy would result in substantial physical damage to the property of others.

~~5. Housing cannot be denied because of current, illegal use of or addiction to a controlled substance which is not on the federal list of controlled substances, even if it is on the Virginia list of controlled substances.~~

C. Reasonable modifications of existing premises.

1. It shall be unlawful for any person to refuse to permit, at the expense of a handicapped person, reasonable modifications of existing premises, occupied or to be occupied by a handicapped person, if the proposed modifications may be necessary to afford the handicapped person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for handicapped persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for

PROPOSED FAIR HOUSING REGULATIONS

the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

2. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

~~D. Reasonable accommodations. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.~~

~~E. Design and construction requirements.~~

- ~~1. Covered multi-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. For purposes of this section, a covered multi-family dwelling shall be deemed to be designed and constructed for first occupancy on or before March 13, 1991, if they are occupied by that date or if the last building permit or renewal thereof for the covered multi-family dwellings~~

PROPOSED FAIR HOUSING REGULATIONS

~~is issued by a state, county or local government on or before June 15, 1990. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person or persons who designed or constructed the housing facility.~~

~~2. All covered multi-family dwellings for first occupancy after March 13, 1991, with a building entrance on an accessible route shall be designed and constructed in such a manner that:~~

~~a. The public and common use areas are readily accessible to and usable by handicapped persons;~~

~~b. All the doors designed to allow passage into and within all premises are sufficiently wide to allow passage by handicapped persons in wheelchairs; and~~

~~c. All premises within covered multi-family dwelling units contain the following features of adaptable design:~~

~~(1) An accessible route into and through the covered dwelling unit;~~

~~(2) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;~~

~~(3) Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and~~

PROPOSED FAIR HOUSING REGULATIONS

- ~~(4) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.~~
- ~~3. Compliance with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD providing accessibility and usability for physically handicapped people, suffices to satisfy the requirements of subdivision 2 c of this subsection.~~

18 VAC 135-50-210. Housing for older persons.

Nothing in the Virginia Fair Housing Law regarding unlawful discrimination because of familial status shall apply to housing for older persons. As used in this section, "housing for older persons" includes:

1. Housing provided under any state or federal program determined by the Secretary of Housing and Urban Development to be specifically designed and operated to assist elderly persons;
2. 62 or over housing. The provisions regarding familial status in these regulations shall not apply to housing intended for, and solely occupied by persons 62 years of age or older. Housing satisfies the requirements of this exemption even though:
 - a. There are persons residing in such housing on September 13, 1988, who are under 62 years of

PROPOSED FAIR HOUSING REGULATIONS

age, provided that all new occupants are persons 62 years of age or older;

b. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or older;

c. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

3. 55 or over housing. The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the following requirements: ~~of subdivision 3 a or b of this subsection and the requirements of subdivision 3 c of this subsection.~~

~~a. The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" may include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under~~

PROPOSED FAIR HOUSING REGULATIONS

~~this section); or~~

~~b. It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this requirement the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older person would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this subdivision:~~

~~(1) Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable.~~

~~(2) The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale;~~

~~(3) The income range of the residents of the housing facility;~~

~~(4) The demand for housing for older persons in the relevant geographic area;~~

PROPOSED FAIR HOUSING REGULATIONS

~~(5) The range of housing choices for older persons within the relevant geographic area;~~

~~(6) The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area then the housing facility does not meet the requirements of subdivision 2 b of this subsection;~~

~~(7) The vacancy rate of the housing facility.~~

e.(i) a. At least 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with ~~the subdivision 2c(1) of this subsection~~ section until 25% of the units in the facility are occupied; ~~and.~~

(ii) b. For purposes of this section, occupied unit means:

~~(a) (1) A dwelling unit that is actually occupied by one or more persons on the date that the exemption for 55-or-older housing is claimed; or~~

~~(b) (2) A temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.~~

PROPOSED FAIR HOUSING REGULATIONS

~~(iii) (3) For purposes of this section, occupied by at least one person 55 years of age or older means that on the date the exemption for 55-or-older housing is claimed:~~

~~(a) At least one occupant of the dwelling is 55 years of age or older; or~~

~~(b) If the dwelling unit is temporarily vacant, at least one of the occupants immediately prior to the date of which the unit was vacated was 55 years of age or older.~~

~~(iv) (4) Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of this section until at least 25 percent of the units are occupied. For purposes of this section, newly constructed housing includes facilities or communities that have been wholly unoccupied for at least 90 days prior to reoccupancy due to renovation or rehabilitation.~~

~~(2) The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this subdivision:~~

~~The manner in which the housing facility is described to prospective tenants.~~

~~The nature of any advertising designed to attract prospective residents.~~

PROPOSED FAIR HOUSING REGULATIONS

~~Age verification procedures.~~

~~Lease provisions.~~

~~Written rules and regulations.~~

~~Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.~~

~~d.c.~~ Housing satisfies the requirements of the 55 or older exemption even though:

~~(1) On September 13, 1988, under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants after September 13, 1988, are occupied by at least one person 55 years of age or older.~~

~~(2) There are unoccupied units, provided that at least 80% of the units are at least one person 55 years of age or older.~~

~~(3) There are units occupied by employees of the housing facility or community (and family members residing in the same unit) who are under 55 years of age provided ~~they~~ the employees perform substantial duties directly related to the management or maintenance~~

PROPOSED FAIR HOUSING REGULATIONS

of the housing facility or community.

(2) There are units occupied by persons who are necessary to provide a reasonable accommodation to disabled residents and who are under the age of 55.

(3) Reserves all unoccupied units for occupancy by at least one person 55 years of age or older until at least 80 percent of the units are occupied by at least one person who is 55 years of age or older.

d. Where application of the 80 percent rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person 55 years of age or older.

e. Each housing facility or community may determine the age restriction for units that are not occupied by at least one person 55 years of age or older so long as the housing facility or community complies with the provisions of 18 VAC 135-50-220.

18 VAC 135-50-212. Intent to operate as 55 or over housing.

A. In order for a housing facility or community to qualify as 55-or-older housing, it must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older. The following factors are considered relevant in determining whether the housing facility or community has complied with this requirement:

PROPOSED FAIR HOUSING REGULATIONS

1. The manner in which the housing facility or community is described to prospective residents;

2. Any advertising designed to attract prospective residents;

3. Lease provisions;

4. Written rules, regulations, covenants, deeds or other restrictions;

5. The maintenance and consistent application of relevant procedures;

6. Actual practices of the housing facility or community; and

7. Public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.

B. Phrases such as “adult living”, “adult community”, “40 and over community”, or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons 55 years of age or older.

C. If there is language in deeds or other community or facility documents which is inconsistent with the intent to provide housing for persons who are 55 years of age or older, the board shall

PROPOSED FAIR HOUSING REGULATIONS

consider documented evidence of a good faith attempt to remove such language in determining whether the housing facility or community complies with the requirements of this section.

D. A housing facility or community may allow occupancy by families with children as long as it meets the requirements of 18 VAC 135-50-210 3a and 18 VAC 135-50-212 A.

18 VAC 135-50-215. Verification of Occupancy.

A. In order for a housing facility or community to qualify as 55-or-older housing, it must be able to produce, in response to a housing complaint filed under the Virginia Fair Housing Law, verification of compliance with these regulations through reliable surveys and affidavits.

B. A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement.

C. The procedures described in subsection B of this section must provide for regular updates through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years.

D. The following documents are considered reliable documentation of the age of the occupants of the housing facility or community.

PROPOSED FAIR HOUSING REGULATIONS

1. Driver's license;

2. Birth Certificate;

3. Passports;

4. Immigration cards;

5. Military identification;

6. Any other state, local national or international official documents containing a birth date of comparable reliability; or

7. A certification in a lease, application, affidavit, or other document signed by an adult member of the household asserting that at least one person in the unit is 55 years of age or older.

E. If the occupants of a unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit occupied by at least one person 55 years of age or older. Such evidence may include:

1. Government records or documents, such as a census; or

PROPOSED FAIR HOUSING REGULATIONS

2. Prior forms or applications; or

3. A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under penalty of perjury.

E. Surveys and verification procedures that comply with the requirements of this section shall be admissible in administrative and judicial proceedings for the purpose of verifying occupancy.

G. Occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

18 VAC 135-50-217. Good faith defense against civil money damages.

A. A person shall not be held personally liable for monetary damages for discriminating on the basis of familial status, if the person acted with the good faith belief that the housing facility or community qualified as 55-or-older housing.

B. A person claiming the good faith belief defense must have actual knowledge that the housing facility or community has, through an authorized representative, asserted in writing that it qualifies as 55-or-older housing.

C. For purposes of this section, an authorized representative, of a housing facility or community

PROPOSED FAIR HOUSING REGULATIONS

means the individual, committee, management company, owner, or other entity having responsibility for adherence to the requirements established by these regulations.

D. A person shall not be entitled to the good faith belief defense if the person has actual knowledge that the housing facility or community does not, or will not qualify as 55-or-older housing. Such a person will be ineligible for the good faith belief defense regardless of whether the person received or viewed the written assurance described in subsection B of this section.

18 VAC 135-50-220. Interference, coercion or intimidation.

A. This section provides the board's interpretation of the conduct that is unlawful under § 36-96.5 of the Virginia Fair Housing Law.

~~B. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Virginia Fair Housing Law and these regulations:~~

~~€.~~ Conduct made unlawful under this section ~~includes, but is not limited to,~~ the following:

1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, handicap,

PROPOSED FAIR HOUSING REGULATIONS

familial status, elderliness, or national origin.

~~2. Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of such persons, or of visitors or associates of such persons.~~

3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, because of the race, color, religion, sex, handicap, familial status, elderliness, or national origin of that person or of any person associated with that person.

~~4.3.~~ Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.

~~5.4.~~ Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the fair housing law.

Article 2. Advertising.

The following information is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed or published,

PROPOSED FAIR HOUSING REGULATIONS

advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Virginia Fair Housing Law. ~~These regulations also describe the matters the board will review in evaluating compliance with the fair housing law in connection with investigations of complaints alleging discriminatory housing practices involving advertising.~~

~~18 VAC 135-50-230. Scope:~~

~~These guidelines describe the matters the board will review in evaluating compliance with the fair housing law in connection with the investigation of complaints alleging discriminatory housing practices involving advertising. These criteria will be considered in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.~~

~~18 VAC 135-50-240. Advertising media:~~

~~This section provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. These criteria will be considered in making determinations as to whether there is reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.~~

~~18 VAC 135-50-250. Persons placing advertisements:~~

~~A failure by persons placing advertisements to use the criteria contained in this part, when found in~~

PROPOSED FAIR HOUSING REGULATIONS

~~connection with the investigation of a complaint alleging the making or use of discriminatory advertisements, will be considered in making a determination of reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.~~

18 VAC 135-50-260. Affirmative advertising efforts.

Nothing in this section shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

18 VAC 135-50-270. Use of words, phrases, symbols and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. ~~These examples are not exhaustive.~~ In considering a complaint under the fair housing law, the board will ~~normally~~ consider the use of these and comparable words, phrases, symbols, and forms to ~~indicate~~ determine a possible violation of the law and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the law is likely to result.

1. Words descriptive of dwelling, landlord and tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.

PROPOSED FAIR HOUSING REGULATIONS

2. Words indicative of race, color, religion, sex, handicap, familial status, elderliness or national origin.
 - a. Race: Negro, Black, Caucasian, Oriental, American Indian
 - b. Color: White, Black, Colored.
 - c. Religion: Protestant, Christian, Catholic, Jewish
 - d. National origin: Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.
 - e. Sex: the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or intending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.
 - f. Handicap: crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this section restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

PROPOSED FAIR HOUSING REGULATIONS

- g. Familial status: adults, children, singles, mature persons. Nothing in this section restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute "housing for older persons" as defined in 18 VAC 135-50-210 of this chapter.
- h. Elderliness: elderly, senior citizens, young, old, active, available to those between 25 and 55; ~~the gray wave.~~
3. Catch Words. Words and phrases used in a discriminatory context should be avoided, e.g., "restricted," "exclusive," "private," "integrated," "traditional," "board approval," "membership approval."
4. Symbols or logotypes. Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.
5. Colloquialisms. Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, elderliness or national origin.
6. Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial

PROPOSED FAIR HOUSING REGULATIONS

or national origin significant area may indicate a preference. ~~References to a synagogue, congregation or parish may also indicate a religious preference.~~

7. Area (location) description. Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

18 VAC 135-50-280. Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the fair housing law. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

1. Selective geographic advertisements. Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in

PROPOSED FAIR HOUSING REGULATIONS

selected sales offices.

2. Selective use of equal opportunity slogan or logo. When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.
3. Selective use of human models when conducting an advertising campaign. Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs, or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

18 VAC 135-50-290. Fair housing policy and practices.

In the investigation of complaints, the board will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law.

1. Use of equal housing opportunity logotype, statement, or slogan. All advertising of residential real

PROPOSED FAIR HOUSING REGULATIONS

estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, elderliness, or national origin. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. See Appendix I to Part 109, 24 CFR Ch. 1, (~~4/1/89~~ 4/1/00 edition) for suggested use of the logotype, statement, or slogan and size of logotype and copies of the suggested equal housing opportunity logotype, statement and slogan.

2. Use of human models. Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, elderliness, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, elderliness, or national origin, and is not for the exclusive use of one such group. Human models include any depiction of a human being, paid or unpaid, resident or nonresident.
- ~~3. Coverage of local laws. Where the equal housing opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.~~

PROPOSED FAIR HOUSING REGULATIONS

~~4. Notification of fair housing policy. The following groups should be notified of the firm's fair housing policy:~~

~~a. Employees. All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental, or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.~~

~~b. Clients. All publishers of advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.~~

~~5. Publishers' notice. All publishers should publish at the beginning of the real estate advertising section the notice described in 18 VAC 135-50-110.~~

PART III.

PROCEDURES.

Article 1. Complaints.

This part contains the procedures established by the Department of Professional and Occupational Regulation for the investigation and conciliation of complaints under §§ 36-96.9 through 36-96.15 of the Virginia Fair Housing Law.

PROPOSED FAIR HOUSING REGULATIONS

18 VAC 135-50-300. Submission of information to file a complaint.

- A. The administrator or his designee will receive complaint information concerning alleged discriminatory housing practices from any person. ~~Where the information constitutes a complaint within the meaning of the fair housing law and these regulations and is furnished by an aggrieved person, a complaint will be considered filed in accordance with 18 VAC 135-50-350. Where additional information is required for the purpose of perfecting a complaint under the law, the administrator or his designee will advise the what additional information is needed and will provide appropriate assistance in the filing of the complaint.~~
- B. ~~The~~ Complaint information may also be made available to any appropriate federal, state or local agency having an interest in the matter. In making available such information, steps will be taken to protect the confidentiality of any informant or complainant where desired by the informant or complainant.
- C. ~~The administrator or his designee may counsel with an aggrieved party about the facts and circumstances which constitute the alleged discriminatory housing practices. If the facts and circumstances do not constitute discriminatory housing practices, the administrator or his designee shall so advise the aggrieved party. If the facts and circumstances constitute a alleged discriminatory housing practices, the administrator or his designee shall assist the aggrieved party in perfecting a complaint.~~

~~18 VAC 135-50-310. Who may file complaint.~~

PROPOSED FAIR HOUSING REGULATIONS

~~Any aggrieved person or the administrator on behalf of the board may file a complaint no later than one year after an alleged discriminatory housing practice has occurred or terminated. The complaint may be filed with the assistance of an authorized representative of an aggrieved person, including any organization acting on behalf of an aggrieved person.~~

18 VAC 135-50-320. Persons against whom complaints may be filed.

- A. A complaint may be filed against any person alleged to be engaged, to have engaged, or to be about to engage, in a discriminatory housing practice.

- B. A complaint may also be filed against any person who directs or controls, or has the right to direct or control, the conduct of another person with respect to any aspect of the sale, rental, advertising, or financing of dwellings, or the provision of brokerage services relating to the sale or rental of dwellings if that other person, acting within the scope of his authority as employee or agent of the directing or controlling person, is engaged, has engaged, or is about to engage, in a discriminatory housing practice.

~~18 VAC 135-50-330. Filing a complaint.~~

- ~~A. Aggrieved persons may file complaints in person with, or by mail, to the administrator or his designee on a form furnished by the board.~~

PROPOSED FAIR HOUSING REGULATIONS

~~B. Aggrieved persons may provide information to be contained in a complaint by telephone to personnel in the fair housing office. Personnel in the fair housing office will reduce information provided by telephone to writing on the prescribed complaint form and send the form to the aggrieved person to be signed and affirmed in accordance with 18 VAC 135-50-340 A.~~

18 VAC 135-50-340. Form and content of a complaint.

~~A. Each complaint must be in writing and must be signed and affirmed by the aggrieved person filing the complaint or if the complaint is filed by the administrator on behalf of the board, it must be signed and affirmed by the administrator. The signature and affirmation may be made at any time during the investigation. The affirmation shall state "I declare under penalty of perjury that the foregoing is true and correct."~~

~~B. The administrator may require complaints to be made on prescribed forms. The complaint forms will be available through the Department of Professional and Occupational Regulation. Notwithstanding any requirement for use of a prescribed form, the Department of Professional and Occupational Regulation will accept any written statement which substantially sets forth the allegations of a discriminatory housing practice under the fair housing law (including any such statement filed with a substantially equivalent local agency) as a fair housing law complaint. Personnel in the fair housing office will provide appropriate assistance in filling out forms and filing a complaint.~~

~~C. Each complaint must contain substantially the following information:~~

PROPOSED FAIR HOUSING REGULATIONS

- ~~1. The name and address of the aggrieved person.~~
- ~~2. The name and address of the respondent.~~
- ~~3. A description and address of the dwelling which is involved, if appropriate.~~
- ~~4. A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.~~

18 VAC 135-50-350. Date of filing of a complaint.

- ~~A. Except as provided in subsection B of this section, a complaint is filed when it is received by the board or dual filed with the federal government in a form that reasonably meets the standards of 18 VAC 135-50-340.~~
- ~~B. The administrator may determine that a complaint is filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone and reduced to writing by an employee of the board) identifying the parties and describing generally the alleged discriminatory housing practice.~~
- ~~C. Where a complaint alleges a discriminatory housing practice that is continuing, as manifested in a number of incidents of such conduct, the complaint will be timely if filed within one year of the~~

PROPOSED FAIR HOUSING REGULATIONS

last alleged occurrence of that practice.

~~18 VAC 135-50-360. Amendment of complaint.~~

~~Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to: (i) amendments to cure technical defects or omissions, including failure to sign or affirm a complaint, (ii) to clarify or amplify the allegations in a complaint, or (iii) to join additional or substitute respondents. Except for the purposes of notifying respondents, under 18 VAC 135-50-380, amended complaints will be considered as having been made as of the original filing date.~~

~~18 VAC 135-50-370. Service of notice on aggrieved person.~~

~~Upon the filing of a complaint, the administrator or his designee will notify, by certified mail or personal service, each aggrieved person on whose behalf the complaint was filed. The notice will:~~

- ~~1. Acknowledge the filing of the complaint and state the date that the complaint was accepted for filing.~~
- ~~2. Include a copy of the complaint.~~
- ~~3. Advise the aggrieved person of the time limits applicable to complaint processing and of the procedural rights and obligations of the aggrieved person under the Virginia Fair Housing Law and these regulations.~~

PROPOSED FAIR HOUSING REGULATIONS

- ~~4. Advise the aggrieved person of his right to commence a civil action under the fair housing law, in state circuit court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that the computation of this two-year period excludes any time during which an action arising from a breach of a conciliation agreement under the law is pending.~~

- ~~5. Advise the aggrieved person that retaliation against any person because he made a complaint or testified, assisted, or participated in an investigation or conciliation under these regulations is a discriminatory housing practice that is prohibited under the law and these regulations.~~

18 VAC 135-50-380. Respondent to be notified of complaint.

- ~~A. Within 10 days of the filing of a complaint under 18 VAC 135-50-350 or the filing of an amended complaint under 18 VAC 135-50-360, the administrator or his designee will serve a notice on each respondent by certified mail or by personal service. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under Part V of these regulations as a person who is alleged to be engaged, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of the identification.~~

- ~~B. 1. The notice will identify the alleged discriminatory housing practice upon which the~~

PROPOSED FAIR HOUSING REGULATIONS

~~complaint is based, and include a copy of the complaint and copies of any supporting documentation referenced in the complaint which are received with the complaint.~~

- ~~2. The notice will state the date that the complaint was accepted for filing.~~
- ~~3. The notice will advise the respondent of the time limits applicable to complaint processing under these regulations and of the procedural rights and obligations of the respondent under the law and these regulations, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice. The administrator, upon request, has the discretion to extend this time period for a reasonable time.~~
- ~~4. The notice will advise the respondent of the aggrieved person's right to commence a civil action under the law, in a state circuit court, no later than 180 days after the conclusion of the administrative process with respect to a complaint or charge, or, not later than two years after the occurrence or termination of the alleged discriminatory housing practice, whichever is longer.~~
- ~~5. If the person is not named in the complaint, but is being joined as an additional or substitute respondent, the notice will explain the basis for the administrator's belief that the joined person is properly joined as a respondent.~~
- ~~6. The notice will advise the respondent that retaliation against any person because he made a complaint or testified, assisted, or participated in an investigation or conciliation under this~~

PROPOSED FAIR HOUSING REGULATIONS

~~part is a discriminatory housing practice that is prohibited under the law and these regulations.~~

~~7. The notice may invite the respondent to enter into a conciliation agreement for the purpose of resolving the complaint.~~

~~8. The notice may include an initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.~~

Article 2. Responses.

18 VAC 135-50-390. Respondent may file response.

~~A. The respondent may file an answer not later than 10 days after receipt of the notice described in 18 VAC 135-50-380. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed in writing under oath or affirmation by the respondent. The affirmation must state: "I declare under penalty of perjury that the foregoing is true and correct."~~

~~B. An answer may be reasonably and fairly amended at any time.~~

Article 3. Investigations.

PROPOSED FAIR HOUSING REGULATIONS

18 VAC 135-50-400. Investigations.

A. Upon the filing of a complaint, the administrator ~~will initiate an investigation~~ shall investigate the allegations. The purposes of an investigation are:

1. To obtain information concerning the events or transactions that relate to the alleged discriminatory housing practice identified in the complaint.
2. To document policies or practices of the respondent involved in the alleged discriminatory housing practice raised in the complaint.
3. To develop factual data necessary for the administrator on behalf of the board to make a determination whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

B. Based on the authority delegated to the fair housing administrator by the Real Estate Board, the administrator may ~~initiate an investigation of~~ investigate housing practices to determine whether a complaint should be filed. Such ~~investigations will be conducted in accordance with the procedures described under this section~~ an initiation may include using testers and other established practices or procedures.

18 VAC 135-50-410. Systemic processing.

PROPOSED FAIR HOUSING REGULATIONS

Where the administrator determines that the alleged discriminatory practices contained in a complaint are pervasive or institutional in nature, or that the processing of the complaint will involve complex issues, novel questions of fact or law, or will affect a large number of persons, the administrator may identify the complaint for systemic processing. This determination can be based on the face of the complaint or on information gathered in connection with an investigation. Systemic investigations may focus not only on documenting facts involved in the alleged discriminatory housing practice that is the subject of the complaint but also on review of other policies and procedures related to matters under investigation, to make sure that they also comply with the nondiscrimination requirements of the law.

18 VAC 135-50-420. Conduct of investigation.

- A. In conducting investigations under these regulations, the voluntary cooperation of all persons will be sought to obtain access to premises, records, documents, individuals, and other possible sources of information; to examine, record, and copy necessary materials; and to take and record testimony or statements of persons reasonably necessary for the furtherance of the investigation.
- B. ~~The administrator and the respondent may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in a court of law in an administrative proceeding under the Virginia Fair Housing Law, except that the administrator or his designee, on behalf of the board, shall have the power to issue subpoenas described under the law, in support of the investigation.~~

PROPOSED FAIR HOUSING REGULATIONS

18 VAC 135-50-430. Cooperation with federal agencies.

The administrator, in processing complaints under the Virginia Fair Housing Law, may seek the cooperation and utilize the services of federal, state and local agencies, including any agency having regulatory or supervisory authority over financial institutions.

18 VAC 135-50-440. Completion of investigation.

- ~~A. The investigation will remain open until a determination, under these regulations and the Virginia Fair Housing Law, regarding reasonable cause is made or a conciliation agreement is executed and approved.~~
- ~~B. Unless it is impracticable to do so, the administrator will complete the investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint. In no event shall the investigation extend beyond one year from the receipt of the complaint by the board.~~
- ~~C. If the administrator is unable to complete the investigation within the 100-day period or dispose of all administrative proceedings related to the investigation within one year after the date the complaint is filed, the administrator will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.~~

PROPOSED FAIR HOUSING REGULATIONS

18 VAC 135-50-450. Final investigative report.

~~A.~~ At the end of each investigation under this article, the administrator or his designee will prepare a final investigative report. The investigative report will contain:

- ~~1.~~ ~~The~~ the names and dates of contacts with witnesses, except that the report will not disclose the names of witnesses who request anonymity. The board, however, may be required to disclose the names of such witnesses in the course of a civil action under the fair housing law;
- ~~2.~~ A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;
- ~~3.~~ A summary description of other pertinent records;
- ~~4.~~ A summary of witness statements; and
- ~~5.~~ Answers to interrogatories.

~~B.~~ A final investigative report may be amended at any time, if additional evidence is discovered.

~~C.~~ Notwithstanding the prohibitions and requirements with respect to disclosure of information contained in 18 VAC 135-50-510, the administrator will make information derived from an

PROPOSED FAIR HOUSING REGULATIONS

~~investigation, including the final investigative report, available to the aggrieved person and the respondent. Following the completion of an investigation, the administrator shall notify the aggrieved person and the respondent that the final investigative report is complete and will be provided upon request.~~

Article 4. Conciliation Procedures.**~~18 VAC 135-50-460. Conciliation process.~~**

- ~~A. During the period beginning with the filing of the complaint and ending with the filing of a charge or the dismissal of the complaint, the administrator or his designee will, to the extent feasible, attempt to conciliate the complaint.~~
- ~~B. In conciliating a complaint, the administrator will attempt to achieve a just resolution of the complaint and to obtain assurances that the respondent will satisfactorily remedy any violations of the rights of the aggrieved person, and take such action as will assure the elimination of discriminatory housing practices, or the prevention of their occurrence, in the future.~~

18 VAC 135-50-470. Conciliation agreement.

- A. The terms of a settlement of a complaint will be reduced to a written conciliation agreement. The conciliation agreement shall seek to protect the interests of the aggrieved person, other persons similarly situated, and the public interest. The types of relief that may be sought for the

PROPOSED FAIR HOUSING REGULATIONS

aggrieved person are described in 18 VAC 135-50-480 of this chapter and the Virginia Fair Housing Law. The provisions that may be sought for the vindication of the public interest are described in 18 VAC 135-50-490.

B. The agreement must be executed by the respondent and the complainant. The agreement is subject to the approval of the ~~administrator, who will indicate approval by signing the agreement board.~~ The administrator will approve an agreement and, if the administrator is the complainant, will execute the agreement, only if:

- ~~1. The complainant and the respondent agree to the relief accorded the aggrieved person;~~
- ~~2. The provisions of the agreement will adequately vindicate the public interest; and~~
- ~~3. If the administrator is the complainant, all aggrieved persons named in the complaint are satisfied with the relief provided to protect their interests.~~

~~C. The board may issue a charge under 18 VAC 135-50-530 if the aggrieved person and the respondent have executed a conciliation agreement that has not been approved by the administrator.~~

18 VAC 135-50-480. Relief sought for aggrieved persons during conciliation.

A. The following types of relief may be sought for aggrieved persons in conciliation:

PROPOSED FAIR HOUSING REGULATIONS

1. Monetary relief in the form of compensatory and punitive damages and attorney fees;
 2. Other equitable relief including, ~~but not limited to,~~ access to the dwelling at issue, or to a comparable dwelling, the provision of services or facilities in connection with a dwelling, or other specific relief; or
 3. Injunctive relief appropriate to the elimination of discriminatory housing practices affecting the aggrieved person or other persons.
- B. The conciliation agreement may provide for binding arbitration or other methods of resolving a dispute arising from the complaint. Arbitration may award appropriate relief as described in subsection A of this section. The aggrieved person and the respondent may, in the conciliation agreement, limit the types of relief that may be awarded under binding arbitration or other methods of dispute resolution.

18 VAC 135-50-490. Conciliation provisions relating to public interest.

The following are types of provisions that may be sought for the vindication of the public interest:

1. Elimination of discriminatory housing practices.
2. Prevention of future discriminatory housing practices.

PROPOSED FAIR HOUSING REGULATIONS

3. Remedial affirmative activities to overcome discriminatory housing practices.
4. Reporting requirements.
5. Monitoring and enforcement activities.

18 VAC 135-50-500. Termination of conciliation process.

- A. The administrator may terminate his efforts to conciliate the complaint if the respondent fails or refuses to confer with the administrator or his designee; the aggrieved person or the respondent fail to make a good faith effort to resolve any dispute; or the administrator finds, for any reason, that voluntary agreement is not likely to result.
- B. Where the aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced, the administrator will terminate conciliation unless the court specifically requests assistance from the board.

18 VAC 135-50-510. ~~Prohibition and requirements for disclosure~~ Disclosure of information obtained during conciliation.

- ~~A. Except as provided in subsection B of this section and 18 VAC 135-50-450 C, nothing that is~~

PROPOSED FAIR HOUSING REGULATIONS

~~said or done in the course of conciliation under this article may be made public or used as evidence in subsequent civil actions under the Virginia Fair Housing Law or this chapter without the written consent of the persons concerned.~~

B. Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the ~~administrator~~ board determines that disclosure is not required to further the purposes of the fair housing law. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the ~~administrator~~ board may publish tabulated descriptions of the results of all conciliation efforts.

18 VAC 135-50-520. Review of compliance with conciliation agreement.

The administrator may, from time to time, review compliance with the terms of any conciliation agreement. Whenever there is reasonable cause to believe that a respondent has breached a conciliation agreement, the board shall refer the matter to the Attorney General with a recommendation for the filing of a civil action under the Virginia Fair Housing Law for the enforcement of the terms of the conciliation agreement.

Article 5. Reasonable Cause Determination and Issuance of a Charge.**~~18 VAC 135-50-530. Reasonable cause determination.~~**

~~A. If a conciliation agreement has not been executed by the complainant and the respondent, the~~

PROPOSED FAIR HOUSING REGULATIONS

~~administrator, on behalf of the board, within the time limits set forth in 18 VAC 135-50-560, shall determine whether, based on the totality of the factual circumstance known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur. The reasonable cause determination will be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the board shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in the appropriate state court.~~

~~B. In all cases not involving the legality of local zoning or land use laws or ordinances:~~

~~1. If the board determines that reasonable cause exists, the board will issue a charge under § 36-96.14 of the fair housing law and these regulations on behalf of the aggrieved person, and shall notify the aggrieved person and the respondent of this determination by certified mail or personal service.~~

~~2. If a no reasonable cause determination is made, the board shall: Issue a short and plain written statement of the facts upon which the no reasonable cause determination was based; dismiss the complaint; notify the aggrieved person and the respondent of the dismissal (including the written statement of facts) in writing within 30 days of such determination by certified mail or personal service; and make public disclosure of the dismissal. Public disclosure of the dismissal shall be by issuance of a press release, except that the respondent may request that~~

PROPOSED FAIR HOUSING REGULATIONS

~~no release be made. Notwithstanding a respondent's request that no press release be issued, the fact of the dismissal, including the names of the parties, shall be public information available on request.~~

18 VAC 135-50-540. Local zoning and land use.

~~If the board determines that the matter involves the legality of local zoning or land use laws or ordinances, in lieu of making a determination regarding reasonable cause, the investigative materials shall be referred to the Attorney General for appropriate action under the fair housing law, and shall notify the aggrieved person and the respondent of this action by certified mail or personal service.~~

18 VAC 135-50-550. Pending private civil action.

The board may not issue a charge regarding an alleged discriminatory housing practice if an aggrieved person has commenced a civil action under federal law or a state law seeking relief with respect to the alleged discriminatory housing practice, and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the board will so notify the aggrieved person and the respondent by certified mail or personal service.

18 VAC 135-50-560. Time to make reasonable cause determination.

~~The board shall make a reasonable cause determination within 100 days after filing of the complaint, unless it is impracticable to do so. If the board is unable to make the determination within the 100-~~

PROPOSED FAIR HOUSING REGULATIONS

~~day period, the administrator will notify the aggrieved person and the respondent, by certified mail or personal service, of the reasons for the delay.~~

~~18 VAC 135-50-570. Time for administrative disposition.~~

~~The board is required to make final administrative disposition of the complaint within one year of the date of receipt of the complaint, unless it is impracticable to do so. If the agency is unable to do so it shall notify the complainant and respondent, in writing, of the reasons for not doing so.~~

~~18 VAC 135-50-580. Issuance of a charge.~~

~~A. A charge:~~

- ~~1. Shall consist of a short and plain written statement of the facts upon which the administrator has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur;~~
- ~~2. Shall be based on the final investigative report; and~~
- ~~3. Need not be limited to facts or grounds that are alleged in the complaint filed under this part and the Virginia Fair Housing Law. If the charge is based on grounds that are alleged in the complaint, a charge will not be issued with regard to the grounds unless the record of the investigation demonstrates that the respondent has been given notice and an opportunity to~~

PROPOSED FAIR HOUSING REGULATIONS

~~respond to the allegation.~~

~~B. Not later than the 20th day after the board issues a charge, a copy of the charge shall be sent to each respondent and each aggrieved person identified in the charge by certified mail or personal service.~~

~~18 VAC 135-50-590. Referral of a charge.~~

~~Once a charge has been issued, the board shall immediately notify and authorize the Attorney General to commence and maintain a civil action seeking relief under § 36-96.16 of the fair housing law on behalf of the aggrieved person in an appropriate circuit court. Such notification and authorization shall include transmission of the file in the case, including a copy of the final investigative report and the charge, to the Attorney General.~~