



## Final Regulation Agency Background Document

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| <b>Agency name</b>                                 | DPOR/Auctioneers Board                        |
| <b>Virginia Administrative Code (VAC) citation</b> | <u>18 VAC 25-21</u>                           |
| <b>Regulation title</b>                            | Regulations of the Virginia Auctioneers Board |
| <b>Action title</b>                                | General review to amend existing regulations  |
| <b>Date this document prepared</b>                 | December 21, 2007                             |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The purpose is to review and amend the Board's regulations to allow for clearer and more effective regulations administered by the Board.

Other changes which may be necessary may also be considered.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On October 18, 2007, the Auctioneers Board adopted final Auctioneers Board Regulations.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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§ 54.1-602 of the Code of Virginia provides the Board with its broad authority to establish regulations in order to obtain and retain licenses.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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General changes to amend the existing regulations to clarify the basic qualifications for license by examination and license by reciprocity, modify the examination application procedures, and to establish and modify the standards of practice and standards of conduct to identify requirements that affect the administration of, and compliance with, the Board's regulations. Ensuring that the regulations are as clear as possible to improve and enhance compliance by the Board's licensees and thereby better protect the citizens of the Commonwealth of Virginia.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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General changes are being considered as a means to achieve comprehensive and effective regulations that will improve clarity and increase compliance by the Board's licensees and thereby better protect the citizens of the Commonwealth of Virginia.

Other changes which may be necessary may also be considered.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

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The primary advantage to the public is that the Board’s regulants will have a clearer set of regulations and means to achieve comprehensive and effective regulations that will improve clarity and increase compliance by the Board’s licensees and thereby better protect the citizens of the Commonwealth of Virginia. In addition, the Board will have the authority to discipline those regulants who show themselves to be a danger to the public.

There are no anticipated disadvantages.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

| Section number   | Requirement at proposed stage   | What has changed  | Rationale for change   |
|------------------|---|---|--|
| 18 VAC 25-21-50  | B. If a corporation, the application shall include <del>certified true</del> copies of the <u>certificate of incorporation issued by the Virginia State Corporation Commission</u> , articles of incorporation, bylaws and charter, <del>and, if</del><br><br><u>If a foreign corporation, a certificate of authority to conduct business issued by the Virginia State Corporation Commission, shall be required in lieu of the certification of incorporation.</u> | B. If a corporation, [ <del>limited liability company, or other entity,</del> ] the application shall include <del>certified true</del> copies of the <u>certificate of incorporation issued by the Virginia State Corporation Commission</u> , articles of incorporation, [ <del>and</del> ] bylaws [ <del>and charter,</del> ]. <del>and, if</del><br><br>[C.] <u>If a foreign corporation, [foreign limited liability company, or other entity, the application shall include copies of the a] certificate of authority to conduct business issued by the Virginia State Corporation Commission shall be required in lieu of the certification of incorporation [as required by subsection B].</u> | Add language for clarification by adding the type of business and to make a distinction between domestic and foreign corporations. |
| 18 VAC 25-21-110 | 9. A legible executed copy of the contract shall be given to the owner at the time of execution.  | <del>9. A legible executed copy of the contract shall be given to the owner at the time of execution.</del><br><br>[A legible executed copy of the contract shall be given to the owner at the time of execution.]  | Modify current language to more clearly state the Board’s requirement.   |

**Public comment**

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

The public comment period was June 25, 2007, through August 24, 2007, with a public hearing held on July 12, 2007

| Commenter   | Comment  | Agency response  |
|---|--|--|
| Frank W. MaGann, Virginia Auctioneer License #2907-003199 | Add language for clarification by adding the type of business and to make a distinction between domestic and foreign corporations. | Add language for clarification by adding the type of business and to make a distinction between domestic and foreign corporations.   |
| Frank W. MaGann, Virginia Auctioneer License #2907-003199 | Modify current language to allow alternate language regarding the terms and acceptance of the contract.                            | Concur to add suggested language regarding limited liability company to clarify type of auction firm and to make a distinction between domestic and foreign corporations (see below). The term "business trust" and other suggested documentation are uncommon; therefore, not recommended. The current language is clear and provides official evidence of the existence of a business. |

**All changes made in this regulatory action**

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

| Current section number | Proposed new section number, if applicable | Current requirement | Proposed change and rationale   |
|------------------------|--|---------------------|---|
| 18 VAC 25-21-20        |  | N/A                 | Amend to allow exam flexibility by the Board.   |
| 18 VAC 25-21-40        |  | N/A                 | Delete language as a firm cannot apply for reciprocal licenses.   |
| 18 VAC 25-21-50        |  | N/A                 | Amend as notarization is no longer required on application. Also language added to clarify and allow less burdensome standards. |
| 18 VAC 25-21-60        |  | N/A                 | Change to simplify when revisions occur to the Code of Virginia.  |
|                        | 18 VAC 25-21-95                            | N/A                 | Language added to discipline licenses, public protection.   |
| 18 VAC                 |  | N/A                 | Amend to include term "auction firm" as this  |

|                   |  |     |  |
|-------------------|--|-----|--|
| 25-21-110         |  |     | regulation also applies to the auction firm. Language added to clarify and provide detailed information regarding contracts.   |
| 18 VAC 25-21-120  |  | N/A | Amend to include term "auction firm" as this regulation also applies to the auction firm. Added and deleted language for clarity regarding conduct at auctions.  |
| 18 VAC 125-21-150 |  | N/A | Amend language to add clarity regarding the accounts of escrow funds. The added language provides procedural instructions for the disbursement and management of escrow accounts which should increase protection to the public. |
| 18 VAC 25-21-170  |  | N/A | Amend to clarify business license.   |
| 18 VAC 25-21-180  |  | N/A | Add and remove language to clarify disciplinary issues.  |

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations were developed with consideration that the industry consists of small businesses. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The contemplated changes are not anticipated to have any significant impact on Virginia's families.