Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	135
VAC Chapter Number:	20
Regulation Title:	Real Estate Board Regulations
Action Title:	Amending
Date:	November 1, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The intent of the proposed changes in regulations is to increase licensing fees for regulants of the Real Estate Board. The board must establish licensing fees at a higher rate in order to provide adequate revenue to support the costs of Board operations and a proportionate share of the Department's operations. By the close of the 2002-04 biennium, current fees will not provide sufficient revenue for those costs.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded almost entirely from revenue collected for license applications, renewals, examination fees, and other licensing fees. The Department is self-supporting, and must collect adequate revenue necessary to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenue collected on behalf of the boards funds the Department’s authorized special revenue appropriation.

Licensing fees make up the Real Estate Board's primary source of revenue to fund its operations.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation maintained under § 54.1-308 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201.4 describes each regulatory board's power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department…”

Section 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid…"

Section 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

These Code sections require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- Accounts for the revenue collected for each board distinctly.

- Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board.
- Reviews the actual and projected financial position of each board biennially, or more often as needed, to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended to the board. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. In accordance with its authority under Section 54.1-201.4, each board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles and its decisions on how to best distribute costs among regulants.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Proposed Regulatory Changes:

The proposed regulatory change will increase licensing fees for regulants of the Real Estate Board. Fee increases are necessary because the accumulated cash balance and projected revenue to be collected from Real Estate licensing fees will be inadequate to cover the board's costs by the close of the 2002-04 biennium. Fee increases will allow the board to collect adequate revenue to support its ongoing expenses for the biennium and upcoming operating cycles.

Reasons for the Proposed Changes:

In accordance with statute, the Board collects licensing fees from which its operating costs and a proportionate share of the Department's expenses are paid. The Board receives no general fund revenue. Federal funds received by DPOR are designated for Fair Housing activities, and the Real Estate Transaction Recovery Act Fund is a trust fund handled by DPOR and the Real Estate Board in accordance with the specific purposes and limitations defined in the Code of Virginia. Neither can be used for operating expenses. The Board has no other source of revenue other than licensing fees from which to fund its ongoing operations. Fee increases are necessary so that the Board and the Department can continue to perform the essential functions of licensing, invstigation fo complaints, and adjudication of disciplinary cases.

Background:

The last fee increase for the Board was in 1995. At that time, individual salesperson fees were raised by 100% from $50 to $100, and broker and business fees were raised an average of about 80%. Shortly afterward, the Department was able to realize reductions in expenditures through participation in the Workforce Transition Act and other efficiencies. As a result, actual expenditures charged to the Real Estate Board were less than anticipated for the next few years.

By the end of FY98, the Board had accumulated a cash balance of $3.4 million, and revenues collected substantially exceeded expenditures charged to the Board. The Board determined that fees in place at the time were higher than necessary to support operations. To avoid collecting excessive revenues and continuing to increase its cash balance, the Board took action to reduce fees by an average of about 30%. Those reductions went into effect in 1999.

As a result, revenue collected for the 1998-00 biennium was less than expenditures, and the Board's accumulated cash balance was reduced to about $2.6 million as it was used to pay expenditures. In the 2000-02 biennium, expenditures continued to exceed revenues, bringing the Board's cash balance down to approximately $1.4 million. That balance, combined with projected revenues to be collected through licensing fees, will be adequate to provide operating funds for FY 2003 and part of FY 2004. However, the Board's cash reserves will be depleted during the biennium, and additional revenue will be needed to avoid a deficit and to provide adequate funding for the Board's continuing operations into future operating cycles.

For the 2000-02 biennium, the Real Estate Board had total direct and adminsitrative support costs of approximately $4.6 million, with revenue collections of about $3.2 million. Projections indicate that under the current fee structure, revenue collections in the 2002-04 biennium will increase to $3.3 million, with expenditures increasing to about $4.8 million for the biennium. Without fee increases, the Board is expected to incur a deficit of almost $200,000, about -3.8%, by the closure of the biennium.

The following chart shows the Board's actual and projected financial activity and position for the 1996-2008 bienna under its current and projected fee structure.

Biennium	Beginning Cash Balance	Revenues	Expenditures	Ending Cash Balance	Callahan Act %	Number of Regulants
1996-98	1,020,208	6,230,388	3,727,821	3,522,775	94.5%	52,178

1998-00	3,522,773	3,402,768	4,190,549	2,734,994	65.3%	52,236
2000-02	2,734.994	3, 228,190	4,604,494	1,358,690	29.5%	54,642
2002-04	1,358,690	3,295,699	4,836,848	-182,459	-3.8%	
2004-06	-182,459	3,340,701	5,053,722	-1,895,480	-37.5%	
2006-08	-1,895,480	3,380,789	5,455,599	-3,970,290	-72.8%	

Comparative Factors:

Since the most recent fee increase became effective in 1995, the consumer Price Index increased a total of 18%. Over that same period, licensing fees charged by the Real Estate Board have decreased an average of 29%. Proposed fees are expected to become effective in 2004. If the CPI continues to increase at about 2.5% annually, the total increase in CPI from 1995 until the next fee increase in 2004 would be about 23%. The proposed fees average about 24% higher than the 1995 fees.

The following table is used to compare the cost of a Real Estate license in Virginia with other nearby states. Comparisons are shown for the cost to a salesperson and a broker to become licensed and to renew a license and are adjusted to reflect a two year licensing period.

License	VA		NC	SC	WV	MD	FL	GA
	Current	Proposed						
Salesperson								
Application	75	90	60	75	80	45	20	88
Renewal	39	75	70	60	80	45	80	50
Broker								
Application	85	100	60	150	160	95	20	88
Renewal	42	100	70	120	160	95	90	100

Proposed fee increases will remain reasonable in comparison to amounts charged by other nearby states.

Potential Impact and Consequences:

Increases in fees are not expected to have a significant effect on individuals deciding to become licensed by the Board, or to affect the total volume of Real Estate licensees. No economic impact is anticipated beyond the direct impact of the increased cost to become and remain licensed. Licensing fees apply to the two-year period for which the license is valid.

If these fee increases are not implemented:

- The Board will have inadequate revenues to support its ongoing operations.
- Because this Board represents such a large portion of agency activities and revenue, the Department will have inadequate cash flow to pay for essential operations.
- Revenue collections will be inadequate to fund the Department's authorized appropriation.

Issues to be Addressed as Regulation is Developed:

The Board is expected to incur a cash deficit of almost $200,000 by the close of the 2002-04 biennium. Once the Board exhausts its cash balance, revenues will be inadequate to pay for ongoing operating expenses. There will be no additional source of revenue other than to borrow from the cash balances of other boards. Because the Real Estate Board is one of the Department’s largest boards, those cash balances could not support its operations for more than a few months, and would only delay the need for fee increases briefly. Any amounts borrowed from other boards would have to be repaid, and would result in even larger increases in proposed fees in order to repay the deficit.

The regulatory review process generally takes a minimum of 18 months, and often longer, so it is essential to consider fee increases now, before the deficit is actually incurred. To avoid the upcoming deficit and the need to increase fees to more than needed for ongoing operations, the new fees will need to become effective before the fourth quarter of fiscal year 2004. Otherwise, the Board’s deficit will increase and the new fees may be inadequate to provide sufficient revenue to repay the deficit and pay expenses for upcoming operating cycles, which could result in the Board having to consider additional fee increases in the near future.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The Department has considered the following alternatives to increasing fees for the Real Estate Board.

- Reduce services: Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative. Reductions in services would result in delays in issuing licenses, creating barriers to citizens’ ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety and welfare.

- Obtain a Treasury loan to fund operations: The Department could request a loan from the general fund to cover the Board’s deficit and supplement its ongoing operations. However, this would be a short-term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.

- Supplement Board activities with general funds: The Department currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriations Act. The Department's boards are intended to be self-funding per Sections 54.1-113, 54.1-201.4, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an appropriate use of taxpayer dollars.

- Reduce Department expenditures: The Department has already taken action to control its expenditures. Expenditure increases over the past four years are associated primarily with the following factors:
    - Salary increases for classified employees authorized by the General Assembly.
    - Development of a new automated licensing system beginning during the 2000-02 biennium, and continuing into FY 2004.
    - Increasing activity levels in the areas of enforcement, investigation, and adjudication.
    - New regulatory requirements and increasing volumes of licensees.

During fiscal year 2000, decisions were made to postpone discretionary spending, particularly in the area of information systems and equipment upgrades. In fiscal year 2001 and 2002, the Department implemented operating budgets below its appropriation level in an attempt to postpone cost increases. Such decisions have helped to delay fee increases, but cannot avoid them altogether. The Department's expects increases in FY03 and FY04 as it moves forward to finish development and implementation of the new automated licensing system.

Family Impact Statement

Please provide a preliminary analysis of the potential 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.

These fee increases are not anticipated to have any significant impact on Virginia's families.