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## Final Regulation Agency Background Document

<b>Agency name</b>	Real Estate Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC135-20
<b>VAC Chapter title(s)</b>	Virginia Real Estate Board Licensing Regulations
<b>Action title</b>	Fee Adjustment 2021
<b>Date this document prepared</b>	March 22, 2024 (revised April 11, 2024)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Real Estate Board (“the Board”) is amending the Virginia Real Estate Board Licensing Regulations to adjust license application, renewal, and reinstatement fees for real estate licenses and certificates.

The Department of Professional and Occupational Regulation (“DPOR”) is funded almost entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees. DPOR receives no general fund money. The Board must establish fees adequate to support the costs of the Board’s operations and a proportionate share of DPOR’s operations. By the close of fiscal year 2024, fees will not provide adequate revenue for those costs.

DPOR is self-supporting and must collect adequate revenue 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 various boards funds DPOR’s authorized special revenue appropriation. The Board has no other source of revenue from which to fund its operations.

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

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“DPOR” means Department of Professional and Occupational Regulation.

## Statement of Final Agency Action

*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.*

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On March 21, 2024, the Real Estate Board voted to amend the Virginia Real Estate Board Licensing Regulations.

## Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to the previously reported information.

## Legal Basis

*Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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The promulgating agency is the Real Estate Board. Chapter 21 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for real estate licensees.

Section 54.1- 2105 of the Code of Virginia states, in part:

- A. The board may do all things necessary and convenient for carrying into effect the provisions of this chapter and may promulgate regulations.

In addition, § 54.1-201 of the Code of Virginia states, in part:

- A. The powers and duties of regulatory boards shall be as follows:
  - 4. To levy and collect fees for 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 of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation.

Further, § 54.1-113 of the Code of Virginia states, in part:

A. 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 that unspent and unencumbered revenue exceeds \$100,000 or 20 percent of the total expenses allocated to the regulatory board for the past biennium, whichever is greater, the regulatory board shall (i) distribute all such excess revenue to current regulants and (ii) reduce the fees levied by it for certification, licensure, registration, or permit and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

The General Assembly has charged the Board with the responsibility for regulating those who assist persons with the buying, selling, and leasing of real property by requiring the Board examine such individuals and issue licenses to those who have demonstrated sufficient competency to buy, sell or lease real property for others, while protecting the public health, welfare, and property of the Commonwealth. Real estate licensees who are not properly trained may pose a risk to the public health and welfare. The regulation helps fulfill this mandate from the General Assembly by ensuring that those who receive a license from the Board meet minimum requirements for education and experience in order to assist others in a real estate transaction.

The goal of this regulatory change is to adjust the Board’s fees. The Board must establish fees adequate to support the costs of the Board operations and a proportionate share of DPOR’s operations. Current fees do not provide adequate revenue for those costs.

DPOR is funded entirely from revenue collected for license applications, renewal, examination fees, and other licensing fees and receives no general fund money. DPOR is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fee revenue collected on behalf of the various boards funds DPOR’s authorized special revenue appropriation.

The Board has no other source of revenue from which to fund its operations. As detailed in the “Issues” section, failure to adjust fees may result in several disadvantages to the public, the regulated community, and the Commonwealth.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.*

The Board reviewed the fees listed in 18VAC135-20-80, 18VAC135-20-120, 18VAC135-20-140, and 18VAC135-20-370 and based on projected revenues and expenses, developed a fee schedule that meets the requirements of the applicable statutes while being the least burdensome to the licensee population.

FEE TYPE	CURRENT FEE	NEW FEE	\$ CHANGE
<b>APPLICATION FEES</b>			
Broker license	\$190	\$220	+\$30
Salesperson license	\$150	\$185	+\$35
Firm license	\$250	\$300	+\$50
Branch office license	\$190	\$220	+\$30
Salesperson's or broker's license as a business entity	\$190	\$220	+\$30
Upgrade to broker	\$85	\$120	+\$35
Downgrade to salesperson	\$150	\$120	-\$30
Concurrent broker	\$140	\$185	+\$45
Activate or transfer application	\$60	\$90	+\$30
Proprietary school certificate	\$190	\$220	+\$30
Instructor certificate	\$190	\$220	+\$30
<b>RENEWAL FEES</b>			
Broker license	\$80	\$115	+\$35
Salesperson license	\$65	\$95	+\$30
Concurrent broker	\$80	\$115	+\$35
Firm license	\$160	\$215	+\$55
Branch office license	\$90	\$145	+\$55
Salesperson or broker's license as a business entity	\$90	\$145	+\$55
Proprietary school certificate	\$90	\$145	+\$55
Instructor certificate	\$75	\$120	+\$45
<b>REINSTATEMENT FEES</b>			
Broker license	\$120	\$180	+\$60
Salesperson license	\$100	\$145	+\$45
Concurrent broker	\$120	\$180	+\$60
Firm license	\$245	\$315	+\$70
Branch office license	\$135	\$220	+\$85
Proprietary school certificate	\$135	\$220	+\$85

Instructor certificate	\$110	\$180	+\$70
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**Issues**

*Identify the issues associated with the regulatory change, 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, include a specific statement to that effect.*

The Code of Virginia establishes the Board as the state agency that oversees licensure of real estate individuals and firms providing services in Virginia. The Board’s primary mission is to protect the citizens of the Commonwealth by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations.

As detailed in the Agency Background Document for the previous stage, DPOR and the Board are obligated to comply with the Callahan Act and other applicable statutes. The fee adjustments adopted by the Board will ensure that the Board has sufficient revenues to fund its operating expenses.

The following primary advantages of the regulatory change are:

- Continued services. With the change, there would be no delays in processing applications and issuing licenses to applicants who are required to obtain credentials to perform the business of real estate professionals.
- Maintained public protection. DPOR would be effective in ensuring that real estate services are performed in a manner that protects the public health, safety, and welfare of citizens of the Commonwealth of Virginia.

There are no disadvantages to the public or the Commonwealth in adjusting the Board’s fees as detailed. The adjusted fees allow the Board to meet the requirements of applicable statutes, while being the least burdensome to the Board’s regulant population.

Disadvantages of not allowing this regulatory change are as follows:

- Reduction of services. Reductions in services would result in delays in issuing licenses, creating barriers to applicants’ and licensees’ ability to work, and would decrease DPOR’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare. Because the regulatory activities conducted by the Board are mandated by statute, this is not considered a viable alternative.
- Obtain a Treasury loan to fund operations. DPOR might have to 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 loan repayment.
- Supplement Board activities with general funds. DPOR currently receives no general fund revenue, and this would require a change in the Code of Virginia and the Appropriation Act. DPOR’s Boards are intended to be self-funding pursuant to §§ 54.1-113, 54.1-201, 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.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Gregory Burrus Green	The commenter asked that the Board not raise fees.	This regulatory change is prompted by a department review of the Board’s financial position, including projected revenues and expenses. To comply with Section 54.1-113 of the Code of Virginia (Callahan Act), the fees must be reviewed and revised as necessary if “revenue exceeds \$100,000 or 20% of total expenses allocated to the regulatory board for the past biennium, whichever is greater.” The Real Estate Board must continue to be financially solvent to protect the health, safety, and welfare of the public.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
20-9998	Not applicable.	Not applicable.	<p>Application forms are updated to reflect changes in fees.</p> <p>Application forms for Universal License Recognition are added to the Forms section of the regulation.</p> <p>The forms do not impose any new requirements.</p>	The forms have been changed to reflect the new fees in the final amended regulation.

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
20-80	Not applicable.	<p>This section establishes the application fees for initial license applications, transfer applications, and activation applications.</p> <p>See the fee chart below for current application fee requirements.</p>	<p>See fee chart below for the amended fee schedule for application fees.*</p> <p>The amended fee schedule includes new fees for (i) upgrading to a broker license; and (ii) downgrading to a salesperson license. Fees are currently charged to regulants for these transactions; however, the fees are not currently in VAC.</p> <p>The fee schedule meets the requirements of the applicable statutes while being the least burdensome to the licensee population.</p>
20-120	Not applicable.	This section establishes the fees for renewal of licenses.	See fee chart below for the amended fee schedule for renewal fees.*

		See the fee chart below for current renewal requirements.	The fee schedule meets the requirements of the applicable statutes while being the least burdensome to the licensee population.
20-140	Not applicable.	This section establishes the fees for the reinstatement of licenses.  See the fee chart below for current reinstatement fee requirements.	See fee chart below for the amended fee schedule for reinstatement fees.*  The fee schedule meets the requirements of the applicable statutes while being the least burdensome to the licensee population.
20-370	Not applicable.	This section establishes the fees for the certification of proprietary schools and pre-license education instructors. The section includes fees for renewal and reinstatement of these certifications.	See fee chart below for the amended fee schedule for certification fees.*  The fee schedule meets the requirements of the applicable statutes while being the least burdensome to the regulant population.
20-9998	Not applicable.	The section contains application and other forms used in administering the regulation.	Application forms are updated.  Application forms for Universal License Recognition are added to the Forms section of the regulation.  The forms have been changed to reflect the new fees in the final amended regulation.  The forms do not impose any new requirements.

Application Fees (18VAC135-20-80)

Fee Type	Current Fee	New Fee	Change
Initial Broker License (by education and examination or by reciprocity)	\$190	\$220	+\$30
Initial Salesperson License (by education and examination or by reciprocity)	\$150	\$185	+\$35
Initial Firm License	\$250	\$300	+\$50
Initial Branch Office License	\$190	\$220	+\$30
Initial Business Entity License (broker or salesperson)	\$190	\$220	+\$30
Upgrade to Broker License	\$85	\$120	+\$35
Downgrade to Salesperson License	\$150	\$120	-\$30
Concurrent Broker License	\$140	\$185	+\$45



Activate/Transfer Applications	\$60	\$90	+\$30
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Renewal Fees (18VAC135-20-120)

Fee Type	Current Fee	New Fee	Change
Broker License Renewal	\$80	\$115	+\$35
Salesperson License Renewal	\$65	\$95	+\$30
Branch Office License Renewal	\$90	\$145	+\$55
Firm License Renewal	\$160	\$215	+\$55
Business Entity License Renewal (broker or salesperson)	\$90	\$145	+\$55

Reinstatement Fees (18VAC135-20-140)

Fee Type	Current Fee	New Fee	Change
Broker License Reinstatement	\$120	\$180	+\$60
Salesperson License Reinstatement	\$100	\$145	+\$35
Firm License Reinstatement	\$245	\$315	+\$70
Branch Office License Reinstatement	\$135	\$220	+\$85
Business Entity License Reinstatement (broker or salesperson)	\$135	\$220	+\$85

Proprietary School and Pre-License Education Instructor Certification Fees (18VAC135-20-370)

Fee Type	Current Fee	New Fee	Change
Proprietary School Certificate	\$190	\$220	+\$30
Pre-License Education Instructor Certificate	\$190	\$220	+\$30
Proprietary School Certificate Renewal	\$90	\$145	+\$55
Pre-License Education Instructor Certificate Renewal	\$75	\$120	+\$45
Proprietary School Certificate Reinstatement	\$135	\$220	+\$85
Pre-License Education Instructor Certificate Reinstatement	\$110	\$180	+\$70