



# Virginia Department of Planning and Budget **Economic Impact Analysis**

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**18 VAC 135-20 Virginia Real Estate Board Licensing Regulations**  
**Department of Professional and Occupational Regulation**  
**Town Hall Action/Stage: 5711/9705**  
September 14, 2022

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

## **Summary of the Proposed Amendments to Regulation**

The Real Estate Board (Board) proposes to increase the license application and renewal fees charged to brokers and salespersons, firms, branch offices, business entities, schools, and instructors so that projected revenues are sufficient to cover projected expenditures.

## **Background**

Section 54.1-2105 of the Code of Virginia (Code) provides for licensure requirements for real estate brokers and salespersons and § 54.1-2106.1 requires real estate firm licenses, business entity salesperson's licenses, and branch office licenses.<sup>2</sup> In addition, Virginia Code § 54.1-2105.02 authorizes the Board to regulate real estate schools and instructors, and requires Board

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> Firm licenses are for limited liability corporations, partnerships, and associations. A firm license requires every managing member or officer of a corporation who participates in the firm's brokerage business to have an active broker's license and for every employee or contractor who acts as a salesperson to hold a salesperson's or broker's license. There is no separate license for sole proprietorships as long as the proprietor holds a broker's license and does not operate the business under a fictitious name. Real estate teams, consisting of licensed brokers and/or salespersons, must obtain a business entity salesperson's license. Branch office licenses are required if any principal broker maintains more than one place of business.

regulations to include a procedure for processing applications of educational institutions, real estate professional associations, or related entities, to provide continuing education courses.

In general, Virginia Code § 54.1-201 A.4 imposes a duty on professional boards 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 proportional share of the expenses of the Department of Professional and Occupational Regulation (DPOR). . . .” In addition, Virginia Code § 54.1-113, known as the Callahan Act, newly requires DPOR boards to distribute excess revenue to current regulants and reduce the fees when “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.”<sup>3</sup> The Callahan Act previously required DPOR boards, as well as those administered by the Department of Health Professions, to adjust fees in situations in which “expenses allocated to [the board] for the past biennium. . . [are] more than ten percent greater or less than money collected on behalf of the board.”

Lastly the Appropriation Act was amended in 2019 to require DPOR to hold funds in reserve to “offset the anticipated, future costs of restructuring its organization, including additional staffing needs and the replacement or upgrade of the Department’s information technology systems requirements.” The most recent version of this language appears in Item 369 of the 2022 Appropriation Act.<sup>4</sup>

DPOR reports that the Board last increased fees in 2004 to comply with the Callahan Act requirements.<sup>5</sup> DPOR reports that all costs have increased in the interim, and that the number of licenses issued by this Board fluctuates significantly in response to economic conditions in general and to real estate market conditions in particular.<sup>6</sup> DPOR also noted that expenses have

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<sup>3</sup> See <https://law.lis.virginia.gov/vacode/title54.1/chapter1/section54.1-113/> for the full requirements of the Act. The new requirements regarding unspent revenue took effect on July 1, 2022; these changes were made by Chapters 517 and 697 of the 2019 *Acts of Assembly*.

<sup>4</sup> See <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/369/>. Under Item 4-13.00 of the Appropriation Act, “the provisions of this act shall prevail over any conflicting provision of any other law, without regard to whether such other law is enacted before or after this act.” Consequently, if a situation were to arise where the Appropriation Act conflicted with the new provisions of the Callahan Act, the language in the Appropriation Act would apply.

<sup>5</sup> See <https://townhall.virginia.gov/l/ViewAction.cfm?actionid=1172>.

<sup>6</sup> Email from DPOR dated August 26, 2022. DPOR noted that there were around 80,000 licensees in 2008 and only around 62,000 licensees in 2012.

consistently exceeded revenue since 2012. Based on DPOR's projections for Board revenues and expenditures at the current fee levels, the Board indicates that its fees are no longer sufficient to cover expenses in accordance with the Code provisions cited above.

The proposed fee increases are expected to increase the Board's revenues by approximately \$1,700,000 per year.<sup>7</sup> The fee changes are summarized in the table below.

<b>FEE TYPE</b>	<b>CURRENT FEE</b>	<b>NEW FEE</b>	<b>\$ CHANGE</b>	<b>PERCENTAGE CHANGE</b>
<b><i>APPLICATION FEES</i></b>				
Broker license	\$190	\$220	\$30	15.79%
Salesperson license	\$150	\$185	\$35	23.33%
Firm license	\$250	\$300	\$50	20.00%
Branch office license	\$190	\$220	\$30	15.79%
Salesperson's or broker's license as a business entity	\$190	\$220	\$30	15.79%
Upgrade to broker	\$85	\$120	\$35	41.18%
Downgrade to salesperson	\$85	\$120	\$35	41.18%
Concurrent broker	\$140	\$185	\$45	32.14%
Activate or transfer application	\$60	\$90	\$30	50.00%
Proprietary school certificate	\$190	\$220	\$30	15.79%
Instructor certificate	\$190	\$220	\$30	15.79%
<b><i>RENEWAL FEES</i></b>				
Broker license	\$80	\$115	\$35	43.75%
Salesperson license	\$65	\$95	\$30	46.15%
Concurrent broker	\$80	\$115	\$35	43.75%
Firm license	\$160	\$215	\$55	34.38%
Branch office license	\$90	\$145	\$55	61.11%
Salesperson or broker's license as a business entity	\$90	\$145	\$55	61.11%
Proprietary school certificate	\$90	\$145	\$55	61.11%
Instructor certificate	\$75	\$120	\$45	60.00%

<sup>7</sup> Agency Background Document (ABD), page 6. See [https://townhall.virginia.gov/l/GetFile.cfm?File=91\5711\9705\AgencyStatement\\_DPOR\\_9705\\_v1.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=91\5711\9705\AgencyStatement_DPOR_9705_v1.pdf).

<b><i>REINSTATEMENT FEES</i></b>				
Broker license	\$120	\$180	\$60	50.00%
Salesperson license	\$100	\$145	\$45	45.00%
Concurrent broker	\$120	\$180	\$60	50.00%
Firm license	\$245	\$315	\$70	28.57%
Branch office license	\$135	\$220	\$85	62.96%
Salesperson or broker's license as a business entity	\$135	\$220	\$85	62.96%
Proprietary school certificate	\$135	\$220	\$85	62.96%
Instructor certificate	\$110	\$180	\$70	63.63%

### **Estimated Benefits and Costs**

DPOR reports that the Board had a balance of \$1,956,311 at the end of the 2020-2022 biennium.<sup>8</sup> If fees remain unchanged, the Board's balance is projected to be -\$127,000 (a deficit) at the end of the current biennium (2022-2024) and -\$2,996,000 at the end of the following biennium (2024-2026). DPOR projections indicate that the fee increases would bring in an additional \$1,700,000 in annual revenue, and the Board anticipates that the new fees would become effective in FY 2024.<sup>9</sup>

The proposed changes would increase fees for real estate brokers, salespersons, and instructors, as well as firms, business entities, branch offices, and proprietary schools. Thus, individuals and businesses that are currently licensed, as well as individuals and businesses who seek licensure in the future, would incur additional costs. As detailed above, individuals and businesses would face fees that would be 16 to 64 percent higher than they currently are.

### **Businesses and Other Entities Affected**

DPOR reports that as of July 1, 2022, there were 11,400 brokers, 54,795 salespersons, 6,015 firms, 787 branches, 4,193 business entities, 210 proprietary schools, and 497 instructors,

<sup>8</sup> Email from DPOR dated August 26, 2022.

<sup>9</sup> Based on the projected deficits, this increase would not be sufficient to trigger the new Callahan Act requirements to reduce fees or redistribute revenues to regulants.

amounting to a total of 77,897 licensees.<sup>10</sup> The proposed amendments would also affect new applicants for these professional designations. DPOR did not provide estimates for the number of new individuals and businesses seeking licensure each year, but noted that the number of licensees fluctuates significantly from year to year, and is sensitive to the overall volume of real estate activity taking place.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>11</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Because the proposal raises fees, an adverse impact is indicated.

### **Small Businesses<sup>12</sup> Affected:<sup>13</sup>**

#### Types and Estimated Number of Small Businesses Affected

DPOR reports that most of the 6,015 firms and 4,193 business entities mentioned above are considered small businesses and would be affected by the higher fees.

However, the Board does not collect information regarding the size of firms or business entities, and does not charge different fees to those that are small businesses and those that are not.

#### Costs and Other Effects

Firms and business entities that are small businesses would face increased application, renewal, and reinstatement fees, as detailed in the table above.

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<sup>10</sup> ABD, page 6.

<sup>11</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>12</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>13</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

### Alternative Method that Minimizes Adverse Impact

If the Board collected information on the size of the firm or business entity at the time of license application and renewal, they could charge different fees accordingly.

This scenario may minimize adverse impact on small businesses, but larger businesses would have to pay higher fees to make up the difference, so that the Board still receives adequate revenues. On the whole, the Board cannot increase its revenues without increasing fees.

### **Localities<sup>14</sup> Affected<sup>15</sup>**

Localities would not be directly affected by the proposed fee increases and local governments would not incur new costs.

### **Projected Impact on Employment**

As mentioned previously, employment as a real estate broker or salesperson is largely driven by the level of activity in the real estate market. Considering the relatively robust real estate market in Virginia in the 2020-2022 biennium, the proposed fee increases are unlikely to impact employment.

### **Effects on the Use and Value of Private Property**

Real estate firms, business entities, and schools are all privately owned and would face increased costs due to the higher fees. However, the potential increase in cost would not likely be large enough to substantively affect the actions and value of these private businesses. The proposed amendments do not affect real estate development costs as the fee increases are too small relative to overall real estate development costs to significantly impact builders' or developers' incentives.

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<sup>14</sup> "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>15</sup> Code § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.