



Virginia
Regulatory
Town Hall

Proposed Regulation
Agency Background Document

Agency Name:	Real Estate Board
VAC Chapter Number:	18 VAC 135-50-20
Regulation Title:	Fair Housing Regulations
Action Title:	Amendment to Fair Housing Regulations
Date:	05/29/01

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Real Estate Board (the Board) proposes to amend existing fair housing regulations that describe discriminatory housing practices and investigative and conciliation procedures. The Board proposes to amend and delete certain fair housing regulations as they relate to the fair housing law. Between 1992 and 2000 the General Assembly amended the fair housing law five times. In some cases the General Assembly deleted statutory language. In other cases the General Assembly added statutory language. The fair housing regulations on the other hand have not been reviewed since 1991.

Numerous discrepancies exist between the fair housing law and the fair housing regulations. In some instances fair housing regulations include language that the General Assembly deleted from the law. In other instances regulations are missing language that the General Assembly added to the law. In still other instances the regulations repeat verbatim what the law states, which is duplicative and unnecessary. The Board is therefore proposing to amend the fair housing regulations to make them consistent with the fair housing law. The Board is also proposing to delete certain regulations that are duplicative of the law and as such are unnecessary.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Virginia's Fair Housing Office is under the auspices of the Department of Professional and Occupational Regulation (DPOR). The Fair Housing Office investigates allegations of housing discrimination and functions as the investigative arm of Virginia's Real Estate Board (the Board). Chapter 21 of Title 54.1 of the Code of Virginia (specifically § 54.1-2105.A) provides that the Board may do all things necessary and convenient for carrying into effect the provisions of the chapter and may promulgate necessary regulations. Furthermore, since this explanation addresses the Board's authority to amend fair housing regulations, reference is made to Title 36, Chapter 5.1, § 36.96.20.C which states that "the Board shall perform all acts necessary and proper to carry out the provisions of this chapter and may promulgate and amend regulations." The Board's authority is discretionary.

The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulations and that they comport with applicable state and/or federal law.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

One of the fundamental needs of all citizens is for safe and affordable housing. In this regard it is the policy of the Commonwealth of Virginia to provide for fair housing throughout the Commonwealth, to all its citizens regardless of race, color, religion, national origin, sex, elderliness, familial status or handicap, and to that end to prohibit discriminatory practices with respect to residential housing by a person or group of persons, in order that the peace, health, safety, prosperity, and general welfare of all inhabitants of the Commonwealth may be protected and insured. This law shall be

deemed an exercise of the police power of the Commonwealth of Virginia for the protection of the people of the Commonwealth. § 36-96.1, Code of Virginia. Fair Housing regulations are therefore among the most important because they safeguard one of our most fundamental needs, housing.

Numerous discrepancies currently exist between the fair housing law and the fair housing regulations. In some instances fair housing regulations include language that the General Assembly deleted from the law. In other instances regulations are missing language that the General Assembly added to the law. In still other instances the regulations repeat verbatim what the law states, which is duplicative and unnecessary. The Board is therefore proposing to amend its fair housing regulations to make them consistent with the fair housing law. The Board is also proposing to delete certain regulations that are duplicative of the law and as such are unnecessary.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The Board's proposed regulatory changes include but are not limited to the following:

18VAC 135-50-70 Real estate practices prohibited. Delete sections B 1-7 as they are duplicative of the law, section 36.96.3.A.1-9.

18VAC 135-50-80 Unlawful refusal to sell or to negotiate for the sale or rental. Amend to add discriminatory terms or references and clarifying language.

18VAC 135-50-90 Discrimination in terms, conditions and privileges and in services and facilities. Amend to clarify discriminatory conduct..

18VAC 135-50-100 Other prohibited sale and rental conduct. Amend to clarify discriminatory conduct.

18VAC 135-50-150 Discriminatory practices in residential real estate related transaction. Delete section as it is duplicative of the law, section 36.96.4.

18VAC 135-50-210 Housing for older persons. Delete paragraph 3.a. Last year the General Assembly deleted the significant services and facilities requirements from the law. This change will conform the regulation to the law.

18VAC 135-50-230, Advertising: Scope, delete.

18VAC 135-50-240, Advertising: Advertising Media, delete.

18VAC 135-50-250, Advertising: Persons Placing Advertisements, delete.

18VAC 135-50-270 Use of words, phrases, symbols and visual aids. Delete the last sentence in paragraph six to conform regulation to changes that the General Assembly made to code section 36-96.3.3.

18VAC 135-50-300 Submission of information to file a complaint. Amend to clarify complaint filing procedure.

18VAC 135-50-310, Complaints: Who May File a Complaint, delete as duplicative of the law, section 36-96.9.

18VAC 135-50-330, Filing a Complaint, delete to provide regulatory flexibility.

18VAC 135-50-340, Form and Content, delete to provide regulatory flexibility.

18VAC 135-50-360, Amendment of Complaint, delete to provide regulatory flexibility.

18VAC 135-50-370, Service on Aggrieved Party, delete to provide regulatory flexibility.

18VAC 135-50-380, Respondent to be Notified, delete to provide regulatory flexibility.

18VAC 135-50-420 Conduct of investigation. Amend to add the words “or designee” after the word administrator. Delete the words beginning with, “and the respondent” and ending with “of the board.”

18VAC 135-50-440 Completion of investigation. Delete paragraphs B and C. Two years ago the General Assembly deleted the one-year requirement from the law. This amendment will conform the regulation to the law.

18VAC 135-50-450 Final investigative report. Delete most of the section as it is duplicative of the law, section 36-96.10.

18VAC 135-50-460, Conciliation process, delete to provide regulatory flexibility.

18VAC 135-50-530 Reasonable cause determination. Delete as duplicative of the law, section 36-96.11.

18VAC 135-50-540 Local Zoning and land use. Delete section as it is duplicative of the law, section 36-96.17.

18VAC 135-50-560 Time to make reasonable cause determination. Delete section as it is duplicative of the law, section 36-96.11.

18VAC 135-50-570 Time to make administrative disposition. Delete section as the General Assembly deleted the one-year requirement. The paragraph is otherwise duplicative of the law, section 36-96.11. and 36-96.12.

18VAC 135-50-580 Issuance of charge. Delete section as it is duplicative of the law, section 36-96.14.

18VAC 135-50-590, Referral of a Charge, delete as duplicative of the law, section 36-96.14.

The Board is also supplementing the Housing for Older Persons Regulation (18 VAC 135-50-210), to conform it more closely to parts of the Housing for Older Persons Act of 1995 passed by Congress. The Board proposes to add three related regulations, one that addresses a facilities intent to operate as housing for older persons facility (18 VAC 135-50-212), one that addresses verification of occupancy in housing for older persons facilities (18 VAC 135-50-215) and one that addresses good faith defense against civil money damages (18 VAC 135-50-217).

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The advantage to the public and the Commonwealth resulting from the proposed regulatory changes are two fold: 1) the proposed regulatory changes will reduce inconsistencies between the fair housing regulations and the fair housing law allowing the public and the Commonwealth to be better served; and 2) additions to the Housing for Older Persons regulation clarify state law as it relates to federal law, which should also better serve the public and the Commonwealth. There are no apparent disadvantages to the proposed changes.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

Currently, the fair housing office does not anticipate that the proposed regulatory changes will have any type of fiscal impact upon the state, localities, or businesses other than the regulations, once approved will need to be printed for distribution, which will be paid for from current fiscal year budgets with no added burden to state resources.

Those effected by the proposed regulations will be the same people who are effected by the current regulations: fair housing consumers and providers, including banks, mortgage brokers and insurance companies. The proposed changes to the Housing for Older Persons regulation will effect facilities that want to establish and are operating senior housing facilities. However, the cost of complying with the proposed housing for older persons regulation should be minimal since the proposed changes mirror changes that Congress made several years ago. Therefore facilities operating as housing for older persons are assumably already complying with the housing for older persons regulations proposed by the Board. Facilities wanting to establish themselves as senior facilities already have to meet federal guidelines. Consequently, the housing for older persons regulations proposed by the Board should not increase costs to any person or business.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

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Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Virginia’s Fair Housing Office has been certified by the U.S. Department of Housing and Urban Development as a substantially equivalent agency. Regulatory changes proposed by the Board help to maintain our substantially equivalent relationship with the U.S. Department of Housing and Urban Development by conforming, in part, state fair regulations to federal fair housing regulations. The proposed regulatory changes are therefore the least intrusive means of

maintaining our substantially equivalent relationship and of continuing to protect the public against discriminatory housing practices.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No comment was received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The purpose of many of the changes is to improve clarity in the regulations. The agency believes these changes will achieve clarity.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Real Estate Board will enter into the regulatory review process three years following the date of the final regulations in accordance with Executive Order No. 25. The review will be conducted to determine if the regulations should be continued, amended, or terminated, including a description of specific and measurable goals the regulations are intended to achieve.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

Current fair housing regulations serve to protect families as defined under the fair housing law, including families with children, by prohibiting certain practices that discriminate against families with children. The Board's review of its fair housing regulations will include reviewing

whether current or proposed regulations strengthen or erode parental rights and marital commitment.