



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Department of Professional and Occupational Regulations
<b>VAC Chapter Number:</b>	18 VAC 135-40-10 et seq.
<b>Regulation Title:</b>	Virginia Real Estate Time-Share Regulations
<b>Action Title:</b>	Amending
<b>Date:</b>	October 28, 2002

Please refer to the Administrative Process Act (§ 2.2-4000 *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* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The Virginia General Assembly enacted the Virginia Real Estate Time-Share Act in 1981. § 55-396 of the *Code of Virginia* (part of the Act) confers upon the Real Estate Board the general powers and duties of administering the Act and outlines specific responsibilities and punitive solutions at its disposal to enforce the provisions set forth in the Act.

Since enactment, the General Assembly has passed a number of amendments that have altered many of the provisions regarding the documents required to be provided by regulants. Until 1987 the regulations were modified as required to keep up with those amendments. Since 1987 there have been numerous changes to the Act, but no revisions to the regulations.

This change to the Time-Share Regulations will eliminate duplication with the statutes, streamline the explanation of the registration and annual report process, and further clarify regulations that are somewhat vague and in some instances contrary to amendments that have been added to the statutes.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

The Virginia Real Estate Board reviewed and adopted the final regulations, entitled “Time-Share Regulations,” on October 24, 2002.

## 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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

Chapter 21 of Title 55 of the Code of Virginia (The Virginia Real Estate Time-Share Act [the Act]) creates the statutory authority for the registration and regulation of time-share use projects, time-share estate projects, alternative purchases, conversions, and other aspects of the time-share industry by the Real Estate Board.

Specifically, § 55-396 of the Code of Virginia allows for the board to “adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives” of the Act. Additionally, the board is provided with the authority to prescribe forms and develop procedures for the submission of information to the board.

The proposed revisions to the regulations are submitted primarily to insure consistency with the Act, which has been amended numerous times since the promulgation of the existing regulations in 1987. These regulations have been developed by the board in a manner believed to be the least burdensome on the regulated industry while providing protection to the public by ensuring adequate disclosure of information in the purchase and/or use of a time-share.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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.*

This is the first revision to the existing regulations since 1987. The purpose of this revision is to ensure that the regulations remain consistent with the Act, which has been amended numerous times in the past thirteen years. The purpose of the regulations is to create a regulatory framework to protect the public when purchasing or utilizing a time-share project.

## 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 of the regulatory action's detail.*

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The key provisions of the regulations are:

**Definitions:** This section of the regulations replaces the general section and serves to define and explain terminology that may be used in this chapter that is not defined in the statutes.

**Registration:** Establishes and clarifies the procedure for filing a registration application and sets the filing fees.

**Marketing:** No substantive changes made to existing sections, editorial changes made to clarify existing regulations.

**Public Offering Statement:** Substantive changes to this section include the deletion of those sections which duplicated or were in conflict with the Public Offering Statement provision of the statutes.

**Post Registration Provisions:** Sections of this portion of the regulations were deleted to avoid duplication with the statutes. A 20 day reporting period was inserted in the requirement to report material changes, previously no grace period was allowed. Other changes were made to clarify and simplify existing regulations.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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.*

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Time-sharing, although relatively new to the United States, has been used in Europe on a limited basis for many years. Time-sharing is the concept of purchasing only that portion of time in a resort or other unit or facility that will actually be used by the owner. In the United

States, time-shares are normally purchased in resort or second home areas and are normally divided into weekly increments.

Although there are several variations on the general concept, there are two general methods of structuring a time-share project. The first is fee simple ownership in which the individual purchasing a time-share actually acquires an interest in the real estate itself. As a property owner, this individual enjoys many of the same benefits and carries many of the same burdens as purchasers and owners of other real property. This type of project is identified in the statute as a time-share estate.

The second type is a right-to-use project. This may be structured in several ways, but the individual has no ownership interest in the property itself, and, subsequently, fewer of the benefits and burdens that accompany such ownership. The owner is paying for the right to use the project, similar to paying rent. This type of project is identified in the statute as a time-share use.

Either the estate or the use project may be structured on a fixed or floating week basis (either a purchaser enjoys the opportunity to use the same week every year or the use by the purchaser "floats" within a given period of weeks during the year or among various units within the time-share project), be part of an exchange network (where a purchaser can exchange his rights at one project for those at a different project), be valued on a premium week structure (where certain calendar weeks are worth more than others) or include incidental benefits (any extra benefits or privileges worth more than \$100).

Regardless of the type of program offered the financial outlay is substantial, with premium weeks at premium resorts selling for prices above \$15,000. Additionally, potential time-share purchasers are enticed into attending sales presentations with offers of free prizes and contests, including chances to receive, vacations, vehicles, cash, appliances, airline tickets, or other prizes of a high value.

As with most real estate transactions the paperwork involved in the purchase of a time-share can seem overwhelming to the layperson. Sales contracts, legal declarations, public offering statements, bylaws, rules and regulations, and exchange agreements are just some of the documents presented to the purchaser during the sales presentation. Regulation of the time-share companies ensures that these documents disclose information to the potential purchasers to afford them the opportunity to make an informed decision as to whether or not to commit to this sort of purchase.

The primary advantage to the public in the changes is to assist them in making more informed decisions when purchasing a time-share through full disclosure in all documents. The advantage to those registering time-share projects is achieved through simplification of registration procedures. No disadvantages have been identified.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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1. 18 VAC 135-40-110(B) – added an “or” between “interest in” and “a nonbinding”
2. 18 VAC 135-40-140 (A) – deleted the second and third sentence which would take out the matters dealing with not allowing underscored, italicized or bold text in the public offering statement.
3. 18 VAC 135-40-150 (A) – delete “and, thereby, to protect the interests of purchasers.” and replace it with “of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered.”
4. 18 VAC 135-40-150 (F) – add the term “time-share” between “the” and “instrument”.
5. 18 VAC 135-40-150 (G) – insert the following at the end of the sentence “of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered.”
6. 18 VAC 135-40-160 – insert “Virginia” before “Real Estate Time-Share Act.
7. 18 VAC 135-40-430 (A) – insert “generated pursuant to 18 VAC 135-40-420” at the end of the first sentence in this section.
8. 18 VAC 135-40-430 (B) – insert “pursuant to 18 VAC 135-40-420” between “board” and “, and”.
9. Appendix A – revised Appendix A to include grammatical corrections and to accurately reflect the current law as stated in the Virginia Real Estate Time-Share Act.

**Public Comment**

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

The following comments were supplied both in writing and at the public hearing by the following commenter:

Francis T. Eck  
16 South Second Street  
Richmond, Virginia 23219

Summary of Comment	Proposed Response
Change any reference in the regulations to “this chapter” to “these regulations (18 VAC 135-40-20, 140. 160, 420).	The proposed change requested by Mr. Eck should not be approved. The reference to “this chapter” is correct and should not be changed. In the Virginia Administrative Code (“VAC”), the second set of numbers after the VAC, for these regulations the number 40, represents the chapter. Since the term “chapter” is used as a reference in the Virginia Administrative Code, there is no problem leaving the term “chapter” in the regulations.
18 VAC 135-40-80 (2) – strike “adding a phase or phases to the time share project”. This would not link the amendment fee to the filing of a phase since a phase is considered to be the orderly development of the project and a public offering statement is not amended when a phase is completed.	The proposed change requested by Mr. Eck should not be approved. To request \$250 every time an amendment to any of the documents related to the application occurs could potentially cause developers to never file amendments with the Board which would potentially harm consumers due to the lack of updated information. Alternatively, developers may wait and file all amendments at a given point in a year. Such a mass filing of amendments could overwhelm the Board’s staff and would still not protect the public since much of the information in the amendment would not be timely.
18 VAC 135-40-110 (B) – add an “or” between “interest in” and “a nonbinding”	There are no problems with the change being requested.
18 VAC 135-40-140 (A) – delete the second and third sentence which would take out the matters dealing with not allowing underscored, italicized or bold text in the public offering statement. Developers are already doing this even though the current regulations do not permit it so keeping this in the proposed regulation	There are no problems with the change being requested.

would serve no purpose. Also delete the (s) after “page(s)”	
18 VAC 135-40-140 (C) – delete the whole section since it is simply paraphrasing what exists in the Time-Share Act (§ 55-374 (A)). Doing this would cut down on any redundancy between the regulations and the Time-Share Act.	The proposed change requested by Mr. Eck should not be approved. There is no problem with paraphrasing language that exists in the Time-Share Act especially since the language in question is of such importance to both developers and potential purchasers. Additionally, Mr. Eck proposes language be added to 18 VAC 135-40-150 that is also a recitation of existing law so it would make no sense to delete such “redundant” language in this section only to add a similar recitation of existing law in a later section.
18 VAC 135-40-150 (A) – delete “chapter” and insert “part”.	See first proposed response regarding deleting references to “chapter” from the regulations.
18 VAC 135-40-150 (A) – delete “and, thereby, to protect the interests of purchasers” and insert language that is more in line with what is called for in § 55-374 of the Time-Share Act regarding meaningful disclosure of the characteristics of the project and the time-shares being offered.	There are no problems with the change being requested. However, the addition being proposed should be altered to read as follows:  <u>of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered.</u>  The change being proposed to Mr. Eck’s comment would cause it to be more in line with § 55-374 of the Time-Share Act.
18 VAC 135-40-150 (F) – insert “time-share” between “the” and “instrument”	There are no problems with the change being requested.
18 VAC 135-40-150 (G) – insert “and circumstances” at the end of the sentence.	There are no problems with the change being requested. However, the addition being proposed should be altered to read as follows:  <u>of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered.</u>  The change being proposed to Mr. Eck’s comment would cause it to be more in line with § 55-374 of the Time-Share Act.
18 VAC 135-40-160 – insert “Virginia” before “Real Estate Time-Share Act”	There are no problems with the change being requested.
18 VAC 135-40-430 (A) – delete “an” and insert “the” before “amended” in the first sentence	There are no problems with the change being requested.
18 VAC 135-40-430 (A) – delete “The” and insert “Such” before “amended” in the third sentence.	There is no reason to implement the change being requested by Mr. Eck. The current wording is adequate for the regulations.
18 VAC 135-40-430 (A) and	There are no problems with the change being requested.



<p>(B) – include a reference to 18 VAC 135-40-420 to show that a public offering statement only needs to be resubmitted if a material change occurs in the project.</p>	
<p>Create a new Appendix A to the regulations that is correct with regards to the Time-Share Act (§ 55-376) and that corrects grammatical errors in the existing Appendix A.</p>	<p>Some of Mr. Eck’s proposed changes to Appendix A should be made while others should not.</p> <p>A new Appendix A has been attached to these comments that incorporates some of Mr. Eck’s changes.</p>

**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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

Part I Definitions (was General)

- 18 VAC 135-40-10 Deleted passage as not necessary, not enforceable, and barely informational.
- 18 VAC 135-40-20 Modified to streamline section and indicate that the definitions in the Act are adequate.
- 18 VAC 135-40-30 Deleted as board doesn’t require regulations to indicate its right/responsibility to form a committee.
- 18 VAC 135-40-40 Deleted as this would be something handled within the scope of authority of the agency.

Part II Registration (was Application for Registration)

- 18 VAC 135-40-50 Modified to clarify section.

18 VAC 135-40-60	Added "formats and document requirements" to those items the board has authority to regulate in the submission of an application.
18 VAC 135-40-70	Deleted: procedures in place for processing applications should not be a part of rules and regulations.
18 VAC 135-40-80	Item #5 modified in order to clarify the section.
Part III (was Registration)	This entire section was merged with Part II
18 VAC 135-40-90	Deleted and merged with 18 VAC 135-40-50.
Part IV changed to Part III	Marketing
18 VAC 135-40-100	Modified to match statutory definitions.
18 VAC 135-40-110(B)	added an "or" between "interest in" and "a nonbinding"
Part V changed to Part IV	Public Offering Statement
18 VAC 135-40-130	Deleted.
18 VAC 135-40-140 (A)	deleted the second and third sentence which would take out the matters dealing with not allowing underscored, italicized or bold text in the public offering statement.
18 VAC 135-40-150	Modified to conform to statutory requirements.
18 VAC 135-40-150 (A)	delete "and, thereby, to protect the interests of purchasers." and replace it with "of the characteristics of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered."
18 VAC 135-40-150 (F)	add the term "time-share" between "the" and "instrument".
18 VAC 135-40-150 (G)	insert the following at the end of the sentence "of and material circumstances affecting the time-share project and the characteristics of the time-share(s) being offered."

- 18 VAC 135-40-160 Modified to encourage the developer to use existing terminology.
- VAC 135-40-160 Insert "Virginia" before "Real Estate Time-Share Act.
- 18 VAC 135-40-170 Deleted as repetitive of statute.
- 18 VAC 135-40-180 Deleted as repetitive of statute.
- 18 VAC 135-40-190 Deleted as repetitive of statute.
- 18 VAC 135-40-200 Deleted as repetitive of statute.
- 18 VAC 135-40-210 Deleted as repetitive of statute.
- 18 VAC 135-40-220 Deleted as repetitive of statute.
- 18 VAC 135-40-230 Deleted as repetitive of statute.
- 18 VAC 135-40-240 Deleted as repetitive of statute.
- 18 VAC 135-40-250 Deleted as repetitive of statute.
- 18 VAC 135-40-260 Deleted as repetitive of statute.
- 18 VAC 135-40-270 Deleted as repetitive of statute.
- 18 VAC 135-40-280 Deleted as repetitive of statute.
- 18 VAC 135-40-290 Deleted as repetitive of statute.
- 18 VAC 135-40-300 Deleted as repetitive of statute.
- 18 VAC 135-40-310 Deleted as repetitive of statute.
- 18 VAC 135-40-330 Deleted as repetitive of statute.

Part VI Conversion Project (entire section deleted)

- 18 VAC 135-40-340 Deleted as repetitive of statute.
- 18 VAC 135-40-350 Deleted as repetitive of statute.
- 18 VAC 135-40-360 Deleted as repetitive of statute.
- 18 VAC 135-40-370 Deleted as repetitive of statute.
- 18 VAC 135-40-380 Deleted as repetitive of statute.

18 VAC 135-40-390 Deleted as repetitive of statute.

18 VAC 135-40-400 Deleted as repetitive of statute.

PART VII changed to Part VI Post Registration Provisions

18 VAC 135-40-410 Deleted as material change defined in § 55-362.

18 VAC 135-40-420 Modified to comply with § 55-394.1.

18 VAC 135-40-430 Modified to comply with § 55-374 (E)with those portions deleted that duplicate information in the statutes.

18 VAC 135-40-430 (A) insert “generated pursuant to 18 VAC 135-40-420” at the end of the first sentence in this section.

18 VAC 135-40-430 (B) insert “pursuant to 18 VAC 135-40-420” between “board” and “, and”.

18 VAC 135-40-440 Deleted as repetitive of statute.

18 VAC 135-40-450 Deleted as repetitive of statute.

18 VAC 135-40-460 Deleted as repetitive of statute.

18 VAC 135-40-470 Deleted as repetitive of statute.

18 VAC 135-40-480 Deleted as repetitive of statute.

Part VIII Exchange Programs (entire section deleted)

18 VAC 135-40-490 Deleted as repetitive of statute.

18 VAC 135-40-500 Deleted as repetitive of statute.

18 VAC 135-40-510 Deleted as repetitive of statute.

18 VAC 135-40-520 Deleted as repetitive of statute.

18 VAC 135-40-530 Deleted as repetitive of statute.

Appendix A revised Appendix A to include grammatical corrections and to accurately reflect the current law as stated in the Virginia Real Estate Time-Share Act.

## Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the 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.*

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These proposed regulations will have no impact on the institution of the family or family stability nor will they strengthen or erode the marital commitment nor increase or decrease disposable family income.