



Economic Impact Analysis Virginia Department of Planning and Budget

18 VAC 135-20 – Real Estate Board Regulations
Department of Professional and Occupational Regulation
January 19, 2007

Summary of the Proposed Regulation

The Real Estate Board (board) proposes to amend its regulations to bring them into compliance with Chapter 998 of the 2003 Acts of the Assembly and Chapter 61 of the 2006 Acts of the Assembly. Chapter 998 requires that:

- Real estate salespeople complete at least 30 hours of continuing education within two years of initial licensure (before they renew their licenses for the first time) and
- Brokers complete at least 16 hours of continuing education before biannual license renewal. Real estate salespeople must meet this same continuing education requirement for every renewal cycle but their first. At least eight of these hours must cover education on ethics, standards of behavior, fair housing, changes in law that affect real estate brokerage or real estate contracts.

Chapter 61 mandates that successful applicants for licensure have at least a high school diploma or its equivalent.

In addition to these changes that are driven by new legislation, the board proposes several other substantive amendments to its regulations. The board proposes to:

- Require that salesmen licensed by reciprocity take the state portion of the real estate salesperson's exam before biennial license renewal even if they have upgraded to a broker's license in the interim.
- Require principal brokers to report all instances where they reasonably believe that escrow accounts are being improperly maintained.

- Require licensees who are selling a property in which they (or a friend, family member or associate) have an ownership interest, disclose that interest as soon as any substantive discussions about that property are held.
- Allow the board to suspend, revoke or fail to renew all licenses held by an individual at once.
- Require that licensees who provide pre-licensure training take a “Train the Trainer” course, The board also proposes to specify that the experience required of these licensees must be consecutive and “immediately prior to application” for approval as an instructor.
- Reduce the number of years of experience that non-licensee subject area pre-licensure instructors must have in their area of expertise from five years to three and
- Reword language in the fees section of this regulation so that (non-revoked) licenses will always be valid for two calendar years.

Result of Analysis

There is insufficient data to weigh the magnitude of costs versus benefits for these proposed regulations. Costs and benefits are discussed below.

Estimated Economic Impact

Current regulation does not include any requirement that individuals graduate high school or earn their GED before they apply for licensure but does require successful completion of courses required by Code of Virginia 54.1-2105. Current regulation requires all licensees to complete eight hours of continuing education before their biennial license renewal. Pursuant to Chapter 61 of the 2006 Acts of the Assembly, the board must now require that all initial licensees have a high school diploma or equivalent education. Additionally, pursuant to Chapter 998 of the 2003 Acts of the Assembly, the board will require real estate salespeople to complete 30 hours of continuing education before they renew their licenses for the first time and will require that these individuals complete 16 hours of continuing education each renewal cycle thereafter. Real estate brokers will have to complete 16 hours of continuing education during all biennial renewal cycles.

Both the requirement that successful applicants for licensure have a high school diploma (or its equivalent) and the additional hours of continuing education that are now mandated by the legislature are attempts to improve the quality of services offered by real estate salespeople and real estate brokers. To the extent that increased education leads to salespeople and brokers making fewer mistakes that cost their clients money, the public may benefit from these more stringent requirements.

The costs that will be incurred on account of these legislative changes will vary. The Department of Professional and Occupational Regulation (DPOR) reports that, since the restrictions in Chapter 61 took effect in July 2006, one individual who would have otherwise been eligible has been denied licensure because they had not obtained a high school diploma or its equivalent. This requirement is unlikely to adversely affect a large number of individuals. There will be larger and more widely felt costs associated with additional hours of mandatory continuing education.

The board currently licenses approximately 57,200 real estate salespeople. Of these, 10,268 have been licensed since January 2004 and will need to complete 22 more hours of continuing education than they would have under old requirements. DPOR estimates that the per-hour cost of continuing education is approximately \$100. This means that newly licensed salespeople will have to spend approximately \$2,200 more on continuing education fees in their first two years of licensure than the previously would have. The total cost of these additional hours of education for individuals who are now licensed will be approximately \$22,589,600 in fees plus the costs incurred for traveling (when necessary) to attend training as well as the value of their time spent in training.

Salespeople who have already been through a renewal cycle (45,979 licensees) and all brokers (12,892 licensees) will need to complete 8 more hours of continuing education than under old requirements. The total cost of this training of the next two years will be approximately \$47,096,800 in fees plus the costs incurred for traveling (when necessary) to attend training as well as the value of their time spent in training. Assuming a fairly constant population of licensees and a constant stream of new licensees, the biennial cost incurred because of increased required continuing education will likely be approximately \$70 million in fees alone. DPOR reports that licensure in these fields correlates with the state of the economy,

That is, during expansionary periods the board receives more applications for initial licensure and for license renewal. During contractionary periods the board receives fewer applications for new licensure and more individuals will choose to allow their license to lapse.

Current regulation requires that licensees who are licensed by reciprocity take the state specific portion of the exam for their particular license before they can renew their licenses. Real estate brokers who are licensed by reciprocity have to take the state portion of the real estate broker's exam before they can renew their broker's license and salespeople have to take the state portion of the real estate salesperson's exam before they can renew their salesperson's license. This means these individuals are tested within two years on their knowledge of state-specific real estate knowledge. However, individuals who are licensed as salespeople by reciprocity and upgrade to a broker's license before their renewal date have not had to take a state specific exam until they renew their broker's license. This can be as long as four years after they were initially licensed by the Commonwealth.

The board proposes to close this loophole by requiring that salespeople who are licensed by reciprocity take the state portion of the salesperson's exam within two years of initial licensure whether or not these individuals have upgraded their license in the interim. This regulatory change will help insure that all licensees are treated equally and that licensees have an understanding of state specific real estate laws and issues. The small number of individuals who follow this licensure track will incur costs that include the \$60.50 exam fee and the value of their time spent taking the required exam.

Current regulation requires that principal brokers report to the board when they reasonably believe that an escrow account does not contain sufficient funds to cover all relevant accounts. Principal brokers are not currently required to report other types of improper maintenance of escrow funds. Regulation also currently requires, apparently contrary to legislative requirements, that licensees report any ownership interest they have, or somebody close to them has, in a property they are selling or leasing only in written offers for lease or purchase. Relevant legislation requires that such ownership interest be disclosed "upon having substantive discussions about specific real property".

The board proposes to require brokers to report all instances where they have knowledge of improper maintenance of escrow funds. The board also proposes to amend ownership

disclosure requirements to conform to the Code of Virginia. Both of these changes will benefit the public by allowing the board information to better police escrow accounts, in the first instance, and by allowing the public more access to information when deciding whether to lease or purchase a property, in the second instance. These two changes will likely cost little or nothing to implement. Principal brokers will incur miniscule time costs if they report improper maintenance of escrow funds more often than they have previously. Licensees who have to report ownership interest in properties they sell earlier than they would have previously will likely incur no costs since only the timing of their reporting will change.

Currently, the board may revoke a license for set causes but the revocation is license rather than individual specific. This means, when a regulant who holds multiple licenses has acted in a manner inconsistent with licensure requirements, the board must bring multiple disciplinary actions against that individual. The board proposes to amend its regulations so that all licenses held by a regulant can be revoked simultaneously. This will keep regulants who have proved to be dishonest, or otherwise unfit to be licensed, from practicing under other licenses during the time it takes to go through the disciplinary process multiple times. The public will likely benefit from this change as it will remove unfit regulants from the market more quickly.

Current regulation requires that licensed brokers who want to gain certification to teach pre-licensure classes have either a Baccalaureate degree and two years of discipline-free active real estate experience or five years of discipline-free active real estate experience. Non-licensee pre-licensure subject area instructors are currently required to have five years of experience in their field of expertise (which must also be the topic of their subject area teaching).

The board proposes to require that licensed brokers' years of experience be consecutive and immediately prior to application for instructor status. The board also proposes to reduce the required number of years of experience for non-licensee subject matter instructors from five to three. Changing experience requirements for licensee instructors are more restrictive and will likely slightly limit the number of brokers who qualify as instructors. Individuals who choose to not work as brokers for a time, for example, would have to work either two or five years upon resuming their former careers before they would be eligible as instructors. Changing experience requirements for non-licensees will be less restrictive and will likely mean more of these individuals would be eligible instructors. DPOR reports that there are 396 instructors in the

Commonwealth who are eligible to conduct pre-licensure classes. DPOR does not keep information, however, that would indicate how many of these instructors are licensees and how many are not.

Currently licenses issued by this board expire biennially on June 30. This means that some licensees have to renew their licenses in less than two years. The board proposes to amend this section so that licenses will expire “every two years on the last day of the month in which they are issued”. Licensees will benefit from having licenses which are valid for a full two years.

Businesses and Entities Affected

These proposed regulations will affect all real estate firms, real estate brokers and real estate salespeople who are currently licensed by the board as well as all individuals who might seek to enter these professions in the future. The board currently licenses approximately 79,000 such entities.

Localities Particularly Affected

No locality will be particularly affected by these proposed regulations.

Projected Impact on Employment

Taken together, the cost of additional required hours of continuing education and the requirement that applicants have a high school diploma (or its equivalent) will likely decrease the number of individuals who work as real estate salespeople and real estate brokers. These requirements, and their costs, are a function of legislative change. Slightly less restrictive experience requirements for non-licensee pre-licensure instructors will likely increase the pool of available real estate instructors; this affect may be somewhat, or completely, offset by more burdensome requirements for licensee pre-licensure instructors (licensees’ years of experience must be consecutive and immediate).

Effects on the Use and Value of Private Property

To the extent that small real estate firms absorb the costs of added training for owners or employees, costs for these firms will likely increase. If these firms are not able to raise their fees to offset increased costs, profits, and the value of these firms, may fall slightly.

Small Businesses: Costs and Other Effects

To the extent that small real estate firms absorb the costs of added training for owners or employees, costs for these firms will likely increase. The board licenses 8,100 real estate firms; approximately three quarters of these firms qualify as small businesses. The biennial cost incurred because of increased required continuing education will likely be approximately \$70 million in fees alone. See **Estimated Economic Impact** above for detailed information

Small Businesses: Alternative Method that Minimizes Adverse Impact

Within the confines of legislative requirements for this licensure program, there is likely no alternate method that the board could have employed to minimize adverse impacts.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

