



## Final Regulation Agency Background Document

<b>Agency name</b>	DPOR/Auctioneers Board
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC25-21
<b>Regulation title</b>	Auctioneers Board Regulations
<b>Action title</b>	Review to amend existing regulations
<b>Date this document prepared</b>	July 17, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

This action makes changes to the regulations in order to provide clarification to existing regulations and modify sections relating to disciplinary actions. General changes are being considered as a means to achieve comprehensive and effective regulations that will improve clarity and increase compliance by the Board's licensees and thereby better protect the citizens of the Commonwealth of Virginia. The board made changes to the final regulations based upon the public comments received.

Other changes which may be necessary may also be considered.

### Statement of final agency action

*Please 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 or board taking the action, and (3) the title of the regulation.*

On April 23, 2014, the Auctioneers Board voted to adopt final Auctioneers Board Regulations.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

§ 54.1-602 of the Code of Virginia authorizes the Board to promulgate regulations for a regulatory system. While the Board is mandated to establish regulations, the content of the regulations is up to the discretion of the Board.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of the regulation review is to amend the existing regulations for further clarification.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The Board is proposing to perform a review of the existing regulations dealing with disciplinary actions and the compliance of such actions. The proposed changes and any other identified changes will improve the clarity of the regulations and thereby better protect the citizens of the Commonwealth.

### Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

The primary advantage to the public is that the revisions will improve the clarity of the regulations, assist with disciplinary actions and standards of practice in the industry, all to better

protect the health, safety, and welfare of citizens of the Commonwealth. No disadvantages to the Commonwealth could be identified

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
<p>18VAC25-21-110 A.1.a., b.</p>	<p>1. a. A detailed list of the real or personal property received for sale with adequate descriptions of the property so that the personal property can be readily identified. If a list cannot be made at the time of signing of the contract, then a list must be <u>signed and dated by the owner and</u> made a part of the contract (and attached) prior to auction of the real or personal property for that day; or</p>	<p>1. a. A detailed list of the real or personal property received for sale with adequate descriptions of the property so that the personal property [ <u>of material value</u> ] can be readily identified. If a list cannot be made at the time of signing of the contract, [ <u>and the owner of the items agrees to waive this requirement in writing in an addendum to the contract.</u> ] then a list must be [ <u>signed and dated by the owner and</u> ] made a part of the contract (and attached) prior to auction of the real or personal property for that day; or</p> <p>b. If the auctioneer or auction firm enters into a contract to sell items on a consignment basis where the total value of all the items to be sold at any one action does not exceed \$500, [ <del>and the owner of the items agrees to waive this requirement in writing on a document separate from, but made a part of, the contract</del> ], then the requirement contained in subdivision 1 a of this subsection is not applicable.</p>	<p>Based on comment received and Board review, changes will provide clarity and protect the seller in addition to the auctioneer.</p>

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
18VAC25-21-250.B.2 Sherry Truhlar, Red Apple Auctions	Commenter is in support of the proposed regulation which will allow the acceptance of continuing education from a reciprocal state provided that the reciprocal state affords the same privilege to Virginia licensees.	The Board concurs with Ms. Truhlar's comment.
18VAC25-21-70 Shields Jones Virginia Auctioneers Association	Commenter opposes the proposed regulations regarding examination and reexamination fees. Suggest that it would provide the Board authorization to revise fees without notice and comment rule marking.	The Board does not concur with the comment. The Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia) requires contracts to be negotiated.
18VAC25-21-110 Shields Jones Virginia Auctioneers Association	Commenter opposes the proposed regulations regarding the language. Proposed regulations make it difficult to provide the service at the time of the contract.	The Board does not concur with the specific changes; however, the Board believes the wording in this section can be clarified to better protect the seller while not overly burdening the auctioneer.

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
10		Definitions.	Language added to clarify definition.
50.A		Application.	Language deleted for clarity.

70		Fees.	Language removed due to contracted charges. Language added as required by § 2.2-4300 of the Code of Virginia.
80		Renewal/Reinstatement.	Language changed and added for clarity.
90		Failure to renew.	Language changed and added for clarity.
	95	Board Discretion to Deny Renewal.	Language added as required by § 2.2-4000 of the Code of Virginia.
110		Contracts.	Language added for clarity, in addition to disciplinary and compliance issues. Additional change based on comment received.
120		Conduct at auctions.	Language changed for clarity.
140		Documentation.	Language changed for clarity.
150		Escrow funds.	
160		Records.	Language changed for clarity.
170		Change of address.	Language changed and added for clarity.
180		Discipline.	Language changed and added for clarity.
185		Cooperation with the board.	Language changed for clarity.
220		Periodic requalification for continued course approval.	Language changed for clarity.
250		Continuing education requirements for renewal or reinstatement.	Language changed for clarity. B.2- New language added regarding licensee who has completed continuing education in another state who shares a reciprocal agreement and will provide the same privilege to Virginia licensees.
280		Periodic requalification for continued course approval.	Language changed for clarity.