

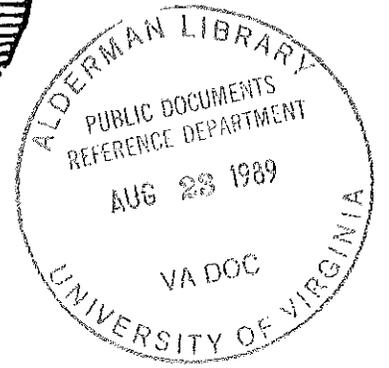
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# THE VIRGINIA REGISTER

OF REGULATIONS

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August 14, 1989

# 1989

Pages 3381 Through 3612

## VIRGINIA REGISTER

The *Virginia Register* is an official state publication issued every other week throughout the year. Indexes are published quarterly, and the last index of the year is cumulative.

The *Virginia Register* has several functions. The full text of all regulations, both as proposed and as finally adopted or changed by amendment are required by law to be published in the *Virginia Register of Regulations*.

In addition, the *Virginia Register* is a source of other information about state government, including all Emergency Regulations issued by the Governor, and Executive Orders, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of all public hearings and open meetings of state agencies.

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of proposed action; a basis, purpose, impact and summary statement; a notice giving the public an opportunity to comment on the proposal, and the text of the proposed regulations.

Under the provisions of the Administrative Process Act, the Registrar has the right to publish a summary, rather than the full text, of a regulation which is considered to be too lengthy. In such case, the full text of the regulation will be available for public inspection at the office of the Registrar and at the office of the promulgating agency.

Following publication of the proposal in the *Virginia Register*, sixty days must elapse before the agency may take action on the proposal.

During this time, the Governor and the General Assembly will review the proposed regulations. The Governor will transmit his comments on the regulations to the Registrar and the agency and such comments will be published in the *Virginia Register*.

Upon receipt of the Governor's comment on a proposed regulation, the agency (i) may adopt the proposed regulation, if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

The appropriate standing committee of each branch of the General Assembly may meet during the promulgation or final adoption process and file an objection with the *Virginia Registrar* and the promulgating agency. The objection will be published in the *Virginia Register*. Within twenty-one days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative Committee, and the Governor.

When final action is taken, the promulgating agency must again publish the text of the regulation, as adopted, highlighting and explaining any substantial changes in the final regulation. A thirty-day final adoption period will commence upon publication in the *Virginia Register*.

The Governor will review the final regulation during this time and if he objects, forward his objection to the Registrar and the agency. His objection will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days and require the agency to solicit additional public comment on the substantial changes.

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall

be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

Proposed action on regulations may be withdrawn by the promulgating agency at any time before final action is taken.

### EMERGENCY REGULATIONS

If an agency determines that an emergency situation exists, it then requests the Governor to issue an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited in time and cannot exceed a twelve-months duration. The emergency regulations will be published as quickly as possible in the *Virginia Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures (See "Adoption, Amendment, and Repeal of Regulations," above). If the agency does not choose to adopt the regulations, the emergency status ends when the prescribed time limit expires.

### STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 of Chapter 1.1:1 (§§ 9-6.14:6 through 9-6.14:9) of the Code of Virginia be examined carefully.

### CITATION TO THE VIRGINIA REGISTER

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# PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text. Language which has been stricken indicates proposed text for deletion.

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

*Code of Virginia.*

### Title of Regulation: VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

### PART II. DEFINITIONS.

Statutory Authority: § 10.1-2103 of the Code of Virginia.

§ 2.1. *The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:*

Public Hearing Date: N/A - Written comments will be received through October 13, 1989 - 5 p.m.

(See Calendar of Events section for additional information)

"Board" means the Chesapeake Bay Local Assistance Board established under § 10.1-2102 of the Code of Virginia.

### Summary:

*These regulations are to be used as public participation guidelines by the Chesapeake Bay Local Assistance Board and when adopted in final form will supersede the current emergency regulations.*

"Department" means the Chesapeake Bay Local Assistance Department.

*The guidelines provide for the initiation of regulation development procedures, including: (i) the procedure and form of a petition by any individual or group requesting adoption or change of any regulation; (ii) the development and maintenance of information dissemination lists including general information and regulation development mailing lists; and (iii) public participation procedures for providing notification to individuals or groups contained in the information dissemination lists of proposed regulatory actions, adoption or change of regulations, formation of an advisory committee and other policy and technical advisory groups, as considered desirable, to assist in development of initial draft regulations, scheduling and notification for public hearings, and procedures for submission of proposed regulations for public comments.*

"Director" means the Executive Director of the Chesapeake Bay Local Assistance Department.

"Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

### PART III. INITIATION OF REGULATION DEVELOPMENT PROCEDURES.

VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

### PART I. PURPOSE AND AUTHORITY.

§ 1.1. *These regulations establish public participation procedures for the development or revision of regulations by the Chesapeake Bay Local Assistance Board. These procedures are required under § 9-6.14:7.1 of the Code of Virginia (Administrative Process Act), and under § 10.1-2100 et seq. of the Code of Virginia (Chesapeake Bay Preservation Act). These guidelines do not apply to any regulation adopted on an emergency basis nor to other regulations excluded from the operation of Article 2 of The Administrative Process Act under § 9-6.14:4.1 C of the*

§ 3.1. *Regulation development may be initiated at any time by the board on its own motion or in response to a petition.*

§ 3.2. *Any group or individual may petition the board for the promulgation, amendment, addition, or repeal of a regulation. The petition shall, at a minimum, contain the following information:*

1. *Name of petitioner.*
2. *Petitioner's mailing address and telephone number.*
3. *Petitioner's interest in the proposed action.*
4. *Recommended regulation or addition, deletion, or amendment to a specific regulation or regulations.*
5. *Statement of need and justification for the proposed action.*
6. *Statement of impact on the petitioner and other affected persons.*
7. *Supporting documents, as applicable.*

*If the board determines not to act upon a petition it*

# Proposed Regulations

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shall provide a written response to such petition.

## PART IV. INFORMATION DISSEMINATION LISTS.

§ 4.1. The board shall develop and maintain a general information mailing list of persons who indicate an interest in its activities or whom the board believes are interested in its activities.

§ 4.2. The board shall develop a regulation development mailing list for each regulatory proceeding, consisting of persons from the general information mailing list who express an interest in the proceeding and such other persons as the board believes have an interest in the proceeding. The board shall maintain such list until the conclusion of each proceeding.

## PART V. PUBLIC PARTICIPATION PROCEDURES.

§ 5.1. When the board decides to adopt or change regulations, it shall notify its general information mailing list of the subject matter of the proposed regulations and invite any interested persons to indicate their interest in the proposed regulation. Those who indicate an interest in the proposed regulation shall be placed on the regulation development list for that regulation.

§ 5.2. Persons will be added to the regulation development list when they so request, or on motion of the director or of a board member.

§ 5.3. The board shall schedule one or more public information meetings to assist in the formulation of the regulation and to provide interested persons an opportunity to submit data, views and arguments either orally or in writing. Notice of such meetings shall be mailed to the regulation development mailing list and given such other reasonable notice as the board determines. The notice shall include the following information:

1. Subject of proposed action.
2. Discussion of the purpose of the proposed action and the issues involved.
3. Proposed timetable for reaching a decision.
4. Request for comments from interested persons and a date by which comments must be received.
5. Name, address, and telephone number of staff person to be contacted for further information. held.

§ 5.4. The board will form an advisory committee consisting of persons selected from the regulation development mailing list to assist in developing an initial draft of the proposed regulation. The board may also form such other policy and technical advisory groups as it considers desirable.

§ 5.5. After consideration of all public input, the board shall prepare a final draft of the proposed regulation and publish a notice requesting public comment in accordance with the Administrative Process Act.

§ 5.6. The board will send a copy of the final draft of the proposed regulation to any person who requests it.

§ 5.7. The board shall submit any proposed regulation, or change thereto, for a 60-day public comment period pursuant to § 9-6.14:7.1 by forwarding the following required documents to the Registrar of Regulations for publication in the Virginia Register of Regulations.

§ 5.8. The board shall mail a copy of the notice of hearing to persons on its regulation development mailing list. The board may also publish the notice of hearing in other media as it may deem appropriate.

§ 5.9. Upon expiration of the public comment period, the remaining steps in the adoption process shall be carried out in accordance with the provisions of the Administrative Process Act.

§ 5.10. The failure of any person to receive notice or copies of documents shall not affect the validity of any regulation otherwise properly adopted under the provisions of the Administrative Process Act.

## DEPARTMENT OF CORRECTIONS (BOARD OF)

**Title of Regulation:** VR 230-01-003. Regulations Governing the Certification Process.

**Statutory Authority:** § 53.1-5 of the Code of Virginia.

**Public Hearing Date:** November 14, 1989  
(See Calendar of Events section for additional information)

### Summary:

The regulations for the certification process have been developed in order to clearly define the compliance audit policies and procedures established by the Department of and Board of Corrections. This regulation addresses the following:

The scheduling of compliance audits;  
Programs subject to audit;  
Audit frequency;  
Team process on-site;  
Post audit reports;  
Development of the plan of action;  
Variance requests;  
Appeal processes; and  
Board actions on audit results.

VR 230-01-003. Regulations Governing the Certification Process.

# Proposed Regulations

## PART I. INTRODUCTION.

### § 1.1. Definitions.

The following words and terms when used in these regulations shall have the following meaning, unless the context clearly indicates otherwise:

"Affiliated agencies" means agencies which are not under the administrative control of the Board of Corrections or Department of Corrections, but which are subject to board standards.

"Appeal" means the action taken by a unit, facility or program after an audit when there is disagreement relative to a team finding of noncompliance.

"Board" means the State Board of Corrections.

"Certification" means the status assigned to programs which satisfactorily comply with standards promulgated by the Board of Corrections.

"Certification team leader or certification specialist" means a person assigned to the Certification Unit.

"Certification team" means those persons designated by the Department of Corrections to conduct compliance audits.

"Compliance" means that no deficiency was cited by the audit team or that cited deficiencies have been corrected through completion of the tasks identified in the plan of action.

"Compliance audit" means a review of a program's compliance with standards promulgated by the board.

"Compliance documentation" means those records, reports, observations and verbal responses required to verify a program's adherence to standards.

"Department" means the State Department of Corrections.

"Life, health, safety standards" are those related to life, health or safety issues as defined by the board and must be in 100% compliance in order for a program to receive an Unconditional Certificate from the Board of Corrections.

"Plan of action" means a document which explicitly states what has or will be done to bring all deficiencies into compliance with standards.

"Program administrator" means the individual responsible for the operation of a program, facility or institution, subject to standards, rules or regulations of the board.

"Related professional agencies" means any unit within

the Department of Corrections or any agency, public or private, which serves a similar clientele or provides services similar to those of the program to be certified.

"Variance" means a decision by the Board of Corrections to temporarily relieve a program of the requirements of a specified standard for a specific period of time.

### § 1.2. References.

Department of Corrections Operating Procedure 1-4, Regulations Development.

Code of Virginia:

§ 53.1-69. Board may prohibit confinement and require transfer of prisoners in substandard facilities.

§ 53.1-144. Term of probation and parole officers; suspension and removal.

§ 53.1-178. Board to establish standards (for halfway houses).

§ 16.1-233. Department to develop court services,...appointment and removal of employees, salaries.

§ 16.1-234. Duties of department...(to ensure that minimum standards are adhered to).

§ 16.1-311. Board to prescribe certain standards; how order of board enforced.

§ 16.1-312. Visitation and management of detention homes.

## PART II. ADMINISTRATION.

### §2.1. Legal basis.

Section 53.1-5 of the Code of Virginia requires the Board of Corrections to prescribe program standards and to monitor the activities of the department in implementing the standards.

### § 2.2. Supersession.

These regulations replace and supersede Department of Corrections operating procedure 2-1, Certification Services.

### § 2.3. Effective date.

These regulations shall become effective on January 1, 1990.

## PART III. GENERAL PROVISIONS.

# Proposed Regulations

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## § 3.1. Preaudit procedures.

### A. Scheduling of audits.

The certification unit shall develop a compliance audit schedule which shall cover a two-year period.

1. The schedule shall be submitted to the deputy directors or their designees for review and comment. After review, the Certification Unit shall:

a. Disseminate the final schedule to the regional offices; and

b. Review the schedule at least annually and make adjustments for additional audits which need to be incorporated into the schedule.

2. Exceptions from the schedule are allowable, when:

a. Agreed upon by the appropriate deputy director or his designee and the certification manager, if reasonable notification of the exception is given to all parties involved; and

b. The exception does not extend the audit date beyond the frequency limits established by the board, unless approved by the board.

### B. Appointment of certification team members.

Team members shall be appointed by the deputy director and shall have had prior compliance audit experience or have completed certification training. At least two-thirds of the team, when available (but no less than one person), shall be staff members of the same type of program, but at least one such member shall be from outside the region. The team leader shall coordinate and facilitate the compliance audit. Jails and lockups shall be audited by the Manager for state and local adult community facilities and the assigned certification specialist.

### C. Notification.

The certification unit shall notify the program administrator at least 60 days in advance of the audit. The letter of notification shall include a copy of this regulation, a self-audit questionnaire and the compliance determination.

### D. Previsit.

Certification specialists shall visit the program administrator prior to the audit to discuss the compliance audit process and procedures. Exceptions to this procedure shall be documented and approved by the certification unit manager.

## § 3.2. Frequency of audits.

All state and local correctional facilities, programs and units operated by or affiliated with the Department of Corrections shall be audited every other year and, in the case of local jails and lockups, every three years. Exceptions shall be granted for the following reasons:

A. When a new program opens it shall undergo a compliance audit within 12 months.

1. The regional office shall immediately notify the certification unit in writing when a new unit or facility begins operation (Operation begins upon acceptance of the first client).

2. The new unit or facility shall undergo a preparatory audit by the regional office during the first six months of operation.

3. An official audit shall be conducted as soon after six months of operation as can be arranged by the certification unit, not to exceed one year, and as regularly scheduled thereafter.

4. New and existing jails shall be audited and approved for holding juveniles prior to housing juveniles. Upon notification by the regional manager that a facility intends to hold juveniles, the certification unit manager shall arrange an audit date for the facility. The audit results shall be presented at the first regular board meeting after the audit.

B. When the board alters its policy regarding frequency of audits.

C. When circumstances beyond the control of the program prohibit it from demonstrating compliance with the standards. Examples: natural or manmade disaster.

## § 3.3. On-site audit procedures.

The on-site audit process shall include the following:

### A. Administrator interview.

During the first day of the audit and prior to gathering data, the certification specialist will afford the administrator an opportunity to brief the team on any unique aspects of the program which may have a direct bearing on the audit process.

### B. Team orientation.

Prior to data-gathering, the certification specialist shall orient the team to the audit process.

### C. Data-gathering.

During the audit, data will be collected through documentation, interview and observation. The team leader shall brief the program administrator daily relative to the audit process and preliminary findings.

# Proposed Regulations

## D. Team voting.

Decisions relative to compliance with standards shall be made by the entire audit team. These decisions shall include the following steps or considerations:

1. When a team member(s) finds an indication of noncompliance, he shall:

a. Bring the findings to the attention of the entire team.

b. Share all information that he has regarding the standard in question.

2. The decision shall rest with the team to determine if the program is or is not demonstrating compliance with the standard. This decision should be based upon whether or not the program has made a good faith effort to comply. That is, a deficiency resulting from a minor lapse in practice or documentation, or one found in only a few of a large number of instances should not be considered as noncompliance with the standard. Further, the team must find that the deviation is minor in nature containing no threat to life, health or safety and resulting in no damage of substance to the program and its services. If a consensus decision is not reached, a majority vote shall determine the team's decision. If a majority decision is not reached, the matter shall be referred to the appropriate deputy director for a decision.

## E. Predebriefing.

After team voting has occurred, a meeting shall be held with the program administrators to inform them of the team's findings. At this time, any additional data that may have a direct bearing on the team's findings shall be discussed.

## F. Debriefing.

After the predebriefing, a review of the team's findings shall be held for the entire staff, unless the program administrators opt to hold their own debriefing on the audit findings.

## § 3.4. Postaudit procedures.

Upon completion of an audit the following activities shall apply:

### A. Report of audit findings.

Within 10 working days following any compliance audit, the certification unit shall mail the audit findings to the program administrator, and shall send a copy to the appropriate regional manager.

### B. Action plan development.

The program administrator shall develop a plan of action to correct any instances of noncompliance noted in the findings. Completion of the plan of action shall be as follows:

1. Appropriate regional office staff shall be available to assist in the development of plan of action.

2. The plan of action must identify:

a. The tasks which have been or will be completed to correct a noted deficiency;

b. The designated personnel at all levels responsible for the accomplishment of the tasks; and

c. The deadlines for the accomplishment of tasks.

3. Within 20 working days of receipt of the notification of deficiencies, the program administrator shall submit the plan of action to the appropriate regional manager. (See § 3.4 F2 for time extensions for development of the plan of action.)

4. Within five working days, the regional manager shall sign the plan indicating approval, and forward it to the regional administrator who also shall have five working days to review and forward it to the appropriate deputy director for review and approval.

5. Within 10 working days of receipt, the deputy director shall approve, amend or return the plan of action for revision.

6. If returned, the appropriate regional office staff shall have 10 working days to complete any revisions and return the revised plan to the appropriate deputy director.

## C. Failure to submit an acceptable action plan.

When a program administrator fails to submit an acceptable action plan within the timeframe specified in § 3.4 of these regulations, the department shall refer the matter to the Board of Corrections with recommendations for action.

## D. Variance request.

If compliance with a standard will be impossible, for nonfinancial reasons, the program administrator may submit a request for a variance to the appropriate regional office. The regional administrator shall review and forward the request to the deputy director, accompanied by a recommendation. The deputy director shall review the variance request and decide whether to proceed to the board for approval or return the request for an alternative action. The deputy director shall inform the board of the variance requests which have been disapproved. If the variance request is created during the development of a plan of action, it should be attached and reviewed as part

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of the plan.

1. The request shall state:

- a. The standard for which a variance is requested;
- b. Justification for the request;
- c. The actions being taken to come into compliance;
- d. The person responsible for such action;
- e. An estimated date of when compliance is expected; and
- f. The specific number of months requested for this variance.

2. Should the program be subject to a compliance audit during the period of the variance, a copy of the approved variance shall be provided to the certification team during the on-site audit.

E. Appeal process.

A program administrator may appeal a team decision in the following manner:

1. **Appeal request.** The administrator shall submit a plan of action (POA) to the regional office administrator/manager, as appropriate, to correct all deficiencies which are not being appealed. In a separate memorandum, the administrator shall state which findings are being appealed and the rationale for the appeal(s).

2. **Region office review.** The regional administrator/manager shall review the appeal information and, if the matter remains unresolved, forward the POA, appeal request and the regional office analysis of the validity of the appeal to the appropriate deputy director. After resolving questions regarding POAs, the deputy director shall send the approved POA and the appeal information to the certification unit manager, who shall arrange for the appeal hearings.

3. **Appeal hearing levels.** The appeal hearing levels are as follows:

- a. Planning and evaluation director and the appropriate chief of operations or deputy director designee;
- b. Deputy director of administration and the deputy director of the operating division;
- c. Director for the Department of Corrections; and
- d. Board of Corrections.

Appeal hearing levels a and b above shall apply to appeals submitted by state-operated programs. Levels a, b, c, and d shall apply to nonstate operated programs.

4. **Appeal timeframes.** The administrators cited above shall complete required reviews or appeal decisions within five workdays from receipt of the appeal documents. The certification unit manager shall arrange all appeal hearings and distribute required documents within three workdays of receipt of appeal documents. Upon completion of each appeal hearing, the certification unit manager shall notify all parties involved of the appeal decisions within three workdays. If the appeal is denied, a plan of action shall be submitted to the appropriate regional office manager in accordance with the POA timeframes stated previously. If the appeal is granted, the certification unit manager shall note this decision on the plan of action.

F. Board review of audit results:

The certification unit manager shall submit audit reports at the first regular board meeting which occurs 75 days or more after the audit date.

1. **Report content:** The audit reports shall include the deficiencies, plans of corrective action with notation of completion status, similar deficiencies from the previous audit and a recommended action for board consideration.

2. **Deputy director extension:** In exceptional situations, the deputy director may grant a 30-day extension to a program administrator for the development of an acceptable action plan. The deputy director shall notify the board of each such extension and the circumstances justifying it.

§ 3.5. Board action on audit results.

Based upon the information submitted by the director, the board shall make one of the following findings based upon the program's status as of the date of the board's review:

A. The program is unconditionally certified.

If the board finds that the program has achieved the following performance requirements, an unconditional certificate may be issued:

1. Compliance with all life, health, safety (LHS) standards; and
2. Compliance with a minimum of 90% of the remaining standards (those not identified as life, health, safety).

A program's unconditional certification status shall

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remain in effect until the board notifies the program administrator of a change in status.

## **B. The program is conditionally certified.**

If the board finds that the program has not met the requirements of an unconditional certificate but can be approved to operate pending completion of certain specified requirements, a conditional certificate may be issued with the following stipulations:

1. The program must achieve unconditional certificate requirements within a period of time specified by the board.
2. The department shall provide the board with periodic status reports until an unconditional certificate is issued.
3. The program and department shall comply with all other stipulations required by the board.

## **C. The program is placed in probationary status.**

If the board finds that a program cannot meet all life, health, and safety standards for reasons beyond the control of the facility (such as the lack of legislative action or the lack of capital funding) the board may determine not to certify the program and may, in lieu of placing the program in uncertified status, place the program on probationary status for a period of time as determined by the board, not to exceed one year, pending correction of the LHS deficiencies. If the program does not achieve compliance with all LHS standards within the specified period, it shall be deemed uncertified.

## **D. The program is uncertified:**

In the event the program fails to meet the requirements of unconditional certification within the time fixed by the board, the program shall be uncertified. If the board determines that a program does not meet the requirements for unconditional certification or conditional certification, the board shall assign the program to uncertified status. The board may utilize the provisions of § 3.9 of these regulations in such instances.

## **E. Action is deferred.**

If the board finds that insufficient information upon which to base a decision exists, it may defer action and require additional or clarifying information.

## **§ 3.6. Notifications.**

After board action is taken, information regarding program status shall be made available to the appropriate departmental, state, and local authorities as specified by the Board of Correctoins.

## **§ 3.7. Certificates/letters.**

A certificate shall be issued by the board for all programs which are unconditionally or conditionally certified. A letter shall be issued for programs which are uncertified. This letter shall state the board's position and recommendations relative to the programs' operating status. Programs shall post certificates or status letters upon receipt. The certificate or letter shall be posted in a conspicuous place in the facility so that it is visible to the public. The chairman of the board shall acknowledge those programs which achieve 100% compliance with all standards with a letter of recognition.

## **§ 3.8. Department action on audit results.**

If it is found that the program did not achieve a certifiable level of compliance with standards, or did not submit an acceptable plan of action within the prescribed timeframes, the director or his designee shall:

A. Give the program administrator 30 days to respond in writing to justify the program's unresponsiveness.

B. When a program is locally operated, send a copy of such notice to the head of the local governing body and to the chief judge of the circuit court.

C. Take official action, as specified in § 3.4 C of these regulations, failure to submit an acceptable action plan, or § 3.9, failure to achieve certification.

## **§ 3.9. Failure to achieve certification.**

When a program fails to achieve certification, the following actions may be taken, in compliance with statutes, policies, and procedures established by the board, the department or other state or federal agencies.

### **A. Department-administered.**

If the Department of Corrections administers the program, actions may include, but are not limited to, the following:

1. The administrator(s), authorized to take such action, may bring about a reorganization of the program structure or take such personnel action as may be necessary to bring the program into compliance with standards, or both; or
2. The program may be closed. The procedure for such action shall be in compliance with all board, department, state and federal regulations, policies, or requirements of law.

### **B. Administrator not department-appointed.**

If the program's administrator is not appointed by the Department of Corrections, actions may include, but are not limited to, the following:

1. A recommendation may be made to the

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administrator, authorized to take action to bring about reorganization of the program structure or take such personnel action as may be necessary to bring the program into compliance with standards, or both; or

2. In the event that action is not taken to achieve certification as set forth in § 3.4 C, the assistance of the appointment authority may be requested to develop a mutually acceptable plan which will bring the unit into compliance.

## C. Locally operated.

If the program is locally operated, but affiliated with the Department of Corrections, actions may include, but are not limited to, the following:

1. A recommendation may be made to the administrator, authorized to take action, to bring about a reorganization of the program structure or to take such personnel action as may be necessary to bring the program into compliance with standards, or both; or

2. The director of the department or the Board of Corrections may initiate proceedings to utilize their proper authority under the appropriate sections of the Code of Virginia. The director will notify the appropriate local governing official and the program administrator of the department's recommendation prior to submission to the board; or

3. Any program which is uncertified may request to be reaudited at any time. Such reaudit shall be conducted upon notification to the certification unit manager by the deputy director having authority over the program, that it has achieved compliance with a sufficient percentage of the applicable standards to warrant unconditional or conditional certification by the board

## § 3.10. Newly adopted standards.

When standards are adopted for a program which has not previously been subject to a compliance audit, the following procedures shall be followed:

A. All programs affected shall be placed on the regular schedule, beginning at least 90 days after the effective date of the standards.

B. All programs for which standards have been adopted for the first time shall undergo a preparatory audit by the appropriate regional office prior to undergoing their first official audit.

## BOARD OF GAME AND INLAND FISHERIES

**NOTE:** The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4

of the Code of Virginia); however, it is required by § 9-6.14:22 to publish all proposed and final regulations.

**Title of Regulation:** VR 325-02-1. In General. § 6. Hunting with Dogs or Possession of Weapons in Certain Locations During Closed Season.

**Statutory Authority:** §§ 29.1-501 and 29.1-502 of the Code of Virginia.

**Public Hearing Date:** August 25, 1989  
(See Calendar of Events section for additional information)

## **Public Hearing Notice:**

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§ 29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amended board regulation. A public hearing on the advisability of adopting, or amending and adopting, the proposed regulation, or any part thereof, will be held at the board's offices, 4010 West Broad Street, Richmond, Virginia, beginning at 9:30 a.m. on Friday, August 25, 1989, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulation, or any part thereof, is advisable, in the form in which published or as amended as a result of the public hearing, the board may adopt such proposal at that time, acting upon the proposal in whole or in part.

## **Summary:**

Summaries are not provided since, in most instances, the summary would be as long or longer than the full text.

VR 325-02. Game.

VR 325.02-1. In General.

**Proposed Effective Date:** October 1, 1989.

§ 6. Hunting with dogs or possession of weapons in certain locations during closed season.

## A. National forests and department lands.

It shall be unlawful to hunt with dogs or a gun or to have in possession a strung bow, or a gun which is not unloaded and cased or dismantled, in the national forests and on department-owned lands and on lands managed by the department under cooperative agreement except during the period when it is lawful to hunt bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, in all counties west of the Blue Ridge Mountains and, in addition, migratory game birds in all counties east of the Blue Ridge Mountains. The provisions of this section shall not prohibit the conduct of any activities authorized by the Board or the establishment and operation of archery and

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shooting ranges on national forest the above-mentioned lands for the purpose of sighting in rifles and general shooting within established and identified range boundaries. The use of firearms and bows in such ranges during the closed season period will be restricted to the area within established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms or bows during the closed hunting period in such ranges will be restricted to target practice only and no birds or animals shall be molested.

## B. Certain counties.

It shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the counties of Augusta, Clarke, Frederick, Page, Shenandoah and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.

## C. Meaning of "possession" of bow or firearm.

For the purpose of this section the word "possession" shall include having any bow or firearm in one's car or conveyance.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

NOTICE: The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

**Title of Regulation:** VR 400-02-0011. Rules and Regulations for Allocation of Low Income Housing Tax Credits.

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

**Effective Date:** September 1, 1989 - 10 a.m.

(Agency exempted from APA)

### Summary:

*This proposed amendment to the Regulations permits the Authority's Board of Commissioners to adopt a point system to rate the applications for federal low income housing tax credits received by the Authority.*

VR 400-02-0011. Rules and Regulations for Allocation of Low Income Housing Tax Credits.

### § 1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Credits" means the low-income housing tax credits as described in § 42 of the Code.

"Low-income housing units" means those units which are defined as "low income units" under § 42 of the Code.

"Qualified low-income buildings" means those buildings which meet the applicable requirements in § 42 of the Code to qualify for an allocation of credits thereunder.

### § 2. Purpose and applicability.

The following rules and regulations will govern the allocation by the authority of credits pursuant to § 42 of the Code.

Notwithstanding anything to the contrary herein, acting at the request or with the consent of the applicant for credits, the executive director is authorized to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Code.

The rules and regulations set forth herein are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of the credits. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

### § 3. General description.

The Code provides for credits to the owners of residential rental projects comprised of qualified low-income buildings in which low-income housing units are provided, all as described therein. The aggregate amount of such credits (other than credits for developments financed with certain tax-exempt bonds) allocated in any calendar year within the Commonwealth may not exceed the Commonwealth's annual low-income credit authority limitation for such year under the Code. An amount equal to 10% of such limitation is set-aside for certain qualified nonprofit organizations. Credit allocations are counted against the Commonwealth's annual credit authority limitation for the calendar year in which the credits are allocated. The Code provides for the allocation of the Commonwealth's credit authority limitation to the housing credit agency of the Commonwealth. The authority has been designated by executive order of the Governor as the housing credit agency under the Code and, in such capacity, shall allocate for each calendar year credits to qualified low-income buildings in accordance herewith.

Credits are allocated to each qualified low-income building in a development separately. Credits may be allocated to such buildings either (i) during the calendar

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year in which such building is placed in service or (ii) if the building meets the requirements of § 42 (h)(1)(E) of the Code, during one of the two years preceding the calendar year in which such building is expected to be placed in service. Prior to such allocation, the authority shall receive and review applications for reservations of credits as described hereinbelow and shall make such reservations of credits to qualified low-income buildings, subject to satisfaction of certain terms and conditions as described herein. Upon compliance with such terms and conditions and, as applicable, either (i) the placement in service of the qualified low-income buildings or (ii) the satisfaction of the requirements of § 42 (h)(1)(E) of the Code with respect to such buildings, the credits shall be allocated to such buildings in the calendar year for which such credits were reserved by the authority.

The authority shall charge to each applicant who applies for credits an administrative fee in such amount as the executive director shall determine to be necessary to cover the administrative costs to the authority, but not to exceed the maximum amount permitted under the Code. Such fee shall be payable at such times as the executive director shall require.

## § 4. Solicitations of applications.

The executive director may from time to time take such action he may deem necessary or proper in order to solicit applications for credits. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications and the selection thereof as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available credits are to be allocated and such other matters as he shall deem appropriate relating to the selection of applications. The authority may also consider and approve applications submitted from time to time to the authority without any solicitation therefor on the part of the authority.

## § 5. Application.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority, including, but not limited to: site, elevation and unit plans; information with respect to the status of the proposed development site and the surrounding community; any option or sales contract to acquire the site; evidence of a source of financing for the proposed development; an evaluation of the need and

effective demand for the proposed development in the market area of such site; information regarding the legal, business and financial status and experience of the members of the applicant's proposed development team and of the principals in any entity which is a member thereof, including current financial statements (which shall be audited in the case of a business entity) for the mortgagor (if existing), the general contractor and the principals therein; information regarding amenities and services proposed to be offered to the tenants; an estimate of the housing development costs and the individual components thereof; the proposed schedule of rents; identification of the low-income housing units; the maximum incomes of the persons and families who are to occupy the low-income housing units and the maximum rents which may be charged to such persons and families under the Code; an estimate of the annual operating budget and the individual components thereof; the estimated utility expenses to be paid by the residents of units in the proposed development; the allowances permitted by the Code for utility expenses to be paid by the residents of the low-income housing units; the amount of any governmental loan, insurance, subsidy or assistance which the applicant expects to receive for the proposed development; a schedule for the acquisition of the property, obtaining any financing, commencement and completion of any construction or rehabilitation, and placement of the development in service; a legal opinion or other assurances satisfactory to the executive director as to compliance of the proposed development with the Code; and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations.

In the case of developments which are to be financed or otherwise assisted by a federal agency or instrumentality or on which the financing is to be insured by such an agency or instrumentality, the application may be submitted on the forms provided by such agency or instrumentality, provided that all information required by this § 5 is set forth on such forms or other documents submitted with such forms.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance

herewith, both the reservation and the allocation of credits to buildings in any developments which the authority may own or may intend to acquire, construct and/or rehabilitate.

## § 6. Review of application.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each application. Such review shall include, but not be limited to, the following:

1. A review of the rights of the applicant with respect to the acquisition and ownership of the site and an analysis of the site characteristics, surrounding land uses, available utilities, transportation, employment opportunities, recreational opportunities, shopping facilities and other factors affecting the site;
2. A review of the proposed housing development costs and an analysis of the adequacy of the proposed financing and other available moneys to fund such costs;
3. A review and evaluation of the applicant's schedule and of the feasibility of placing the low-income housing units in service in accordance therewith;
4. A review of the estimated operating expenses, utility expenses and allowances, and proposed rents and an evaluation of the adequacy of the proposed rents and other income to sustain the proposed development based upon the occupancy rate approved or required by the authority and upon estimated operating expenses and financing costs;
5. A market analysis as to the present and projected demand for the proposed development in the market area;
6. A review of the terms and conditions of the proposed financing and any governmental assistance;
7. A review of the (i) ability, experience and financial capacity of the applicant and general contractor and (ii) the qualifications of the architect, management agent and other members of the proposed development team;
8. An analysis of the proposed design and structure of the development, including the functional use and living environment for the proposed residents, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed development; and
9. An analysis as to the feasibility of the applicant's qualifying for the credits in accordance with the Code.

In reviewing applications, the executive director may rely on the underwriting or other review procedures performed by or on behalf of any federal agency or instrumentality which is to finance, insure the financing on, or otherwise assist the development.

## § 7. Selection of application; reservations of credits.

Based on the authority's review of applications, documents and any additional information submitted by the applicants or obtained from other sources by the authority, the executive director shall prepare a recommendation to the board of the authority that a reservation of credits in the form of a binding commitment as described in § 42 of the Code be made with respect to the buildings described in those applications which he determines best satisfy the following criteria:

1. The vicinity of the proposed development is and will continue to be a residential area suitable for the proposed development and is not now, nor is it likely in the future to become, subject to uses or determination which could adversely affect its operation, marketability or economic feasibility.
2. There are or will be available on or before the estimated completion date such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks, recreational facilities and major public and private employers) in the area of the proposed development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.
3. The characteristics of the site (such as its size, topography, terrain, soil and subsoil conditions, vegetation, and drainage conditions) are suitable for the construction and operation of the proposed development.
4. The location of the proposed development will promote and enhance the marketability of the units to the person and families intended for occupancy thereof.
5. The applicant either owns or leases the site of the proposed development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to proceed with the development in accordance with the proposed schedule and these rules and regulations.
6. The design of the proposed development will contribute to the marketability of the proposed development and will provide a safe living environment for such residents.
7. The applicant and general contractor have the experience, ability and financial capacity necessary to

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carry out their respective responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development.

8. The architect, management agent and other members of the proposed development team have the qualifications necessary to perform their respective functions and responsibilities.

9. The application and proposed development conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations .

10. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multifamily rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the applicant will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

11. All operating expenses (including customary replacement and other reserves) necessary or appropriate for the operation of the proposed development are included in the proposed operating budget, and the estimated amounts of such operating expenses are reasonable, are based on valid data and information and are comparable to operating expenses experienced by similar developments.

12. Based upon the proposed rents and projected occupancy level required or approved by the executive director, the estimated income from the proposed development is reasonable and comparable to income received on similar developments. The estimated income may include (1) rental income from commercial space within the proposed development if the executive director determines that a strong, long-term market exists for such space and (ii) income from other sources relating to the operation of the proposed development.

13. The estimated income from the proposed development, including any governmental subsidy or assistance, is sufficient to pay debt service, operating expenses, and customary replacement and other reserves.

14. The low-income housing units will, prior to such data and during such period as the Code shall require, be occupied by persons and families whose incomes do not exceed the limits prescribed by the Code.

15. Sufficient demand in the market area of the development exists and will exist for the units in the development during the term of the credits. Occupancy of the development will be achieved in such time and manner that the proposed development will (i) attain self-sufficiency (i.e., the rental and other income from the development is sufficient to pay all operating expenses, debt service and replacement and other reserves and escrows) within the usual and customary time for a development for its size, nature, location and type and (ii) will continue to be self-sufficient for the full term of the credits.

16. The estimated utility expenses and other costs to be paid by the residents are reasonable, are based upon valid data and information and are comparable to such expenses experienced by similar developments, and the estimated amounts of such utility expenses and costs will not have a materially adverse effect on the occupancy of the units in accordance with paragraph 15 of this section.

17. The proposed development includes such appliances, equipment, facilities and amenities as are customarily used or enjoyed by the contemplated residents in similar developments.

18. In the case of any development to be insured, subsidized or otherwise assisted or aided by any federal, state or local government, the proposed development will comply in all respects with any laws, rules and regulations relating thereto, and adequate insurance, subsidy, or assistance is available for the development and will be expected to remain available in the due course of processing with the applicable governmental entity.

19. The gross rents to be paid by families for the low-income housing units do not exceed 30% of the applicable qualifying income for a family of its size (reduced by any utility allowances as required by the Code). The amounts of any utility allowances are calculated in accordance with the requirements of the Code.

20. The applicant will be able to proceed with the development in accordance with the schedule submitted with the application, and as a result the proposed development will be placed in service within the time period required by the Code.

21. A reliable source of financing is available in an amount and on terms and conditions which will permit the applicant to proceed with the development as proposed. Such financing, together with other moneys to be available to the applicant, will be sufficient to fund the acquisition and any construction or rehabilitation of the proposed development.

22. The prerequisites necessary for the members of the applicant's development team to acquire, own,

construct or rehabilitate, operate and manage the proposed development have been satisfied or can be satisfied within a period of time consistent with the applicant's schedule for the proposed development. These prerequisites include, but are not limited to obtaining: (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed development, (v) building, occupancy, and other permits required for any construction or rehabilitation and occupancy of the proposed development, and (vi) licenses and other legal authorizations necessary to permit each member to perform his or its duties and responsibilities in the Commonwealth of Virginia.

23. The allocation of credits to the applicant will result in an increase, or will prevent a decrease, in the supply of decent, safe and sanitary housing at affordable rents for the low-income persons and families intended to be served by the credits under the Code.

24. The applicant and the proposed development will satisfy all requirements set forth in the Code in order to be eligible for receipt of the credits in the amount requested.

In the application of the above criteria for the selection of applicants, the objective of the authority shall be that credits shall be reserved for those developments which will best provide (with respect to location; design; quality of construction and management; cost of acquisition, rehabilitation or construction and operation; and other characteristics described in such criteria) decent, safe and sanitary housing at rents affordable to low income persons and families; will permit maximum use of the credits; will proceed successfully to completion or acquisition and operation; will qualify under the Code for such credits upon completion or acquisition; will thereafter continue to qualify for and fully utilize such credits in accordance with the requirements of the Code; and will best serve the housing needs of the Commonwealth.

If applications are being reviewed on a first-come, first-served basis or if only one application is being reviewed, the executive director shall recommend to the board of the authority that a reservation of credits be made with respect to the buildings described in each such application if he determines that such application adequately satisfies the criteria set forth above in this section.

In determining whether to recommend the selection of an application or applications, the executive director may take into account the desirability of allocating credits with respect to different developments located throughout the Commonwealth. The executive director may also give

special consideration to developments located in areas having severe shortages of low-income housing and to developments for the mentally and physically disabled and for persons and families having special housing needs.

*In addition, the board may, by resolution, adopt a rating system to govern the selection of an application or applications. Under such a system, points shall be assigned to all or some of the foregoing criteria and shall be awarded to the application or applications which satisfy such criteria. Such a system may also include the assignment of points to additional requirements which the board deems necessary or desirable to promote and accomplish the above-described objective of the authority in applying such criteria. Upon adoption of such a system by the board, the executive director shall review each application and award points thereto in accordance with such system. The application or applications awarded more points shall be preferred for selection over an application or applications awarded fewer points. Such system shall be in writing and copies thereof shall be made available to the public upon request.*

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual credit authority limitation shall be available for reservation and allocation to buildings of developments in which "qualified nonprofit organizations" materially participate in the development and operation thereof, as described in the Code. In no event shall more than 90% of the Commonwealth's annual credit authority limitation be available for developments other than those described in the preceding sentence.

If the executive director determines not to recommend the reservation of credits to an applicant, he shall so notify the applicant.

If the executive director determines that one or more of the criteria set forth above in this section have not been adequately satisfied by any applicant, he may nevertheless in his discretion recommend to the board that the reservation be approved subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board shall review and consider the analysis and recommendation of the executive director for the reservation of credits, and, if it concurs with such recommendation, it shall by resolution approve the application and authorize the executive director to reserve the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the Code and these rules and regulations. If the board determines not to approve an application for a reservation of credits, the executive director shall so notify the applicant.

Upon approval by the board of a reservation of credits to an applicant, the executive director shall notify the applicant of such reservation and of any terms and

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conditions imposed with respect thereto. The executive director may require the applicant to make a good faith deposit to assure that the applicant will comply with all requirements under the Code and these rules and regulations for allocation of the credits. Upon allocation of the credits, such deposit (or a pro rata portion thereof based upon the portion of credits so allocated) shall be refunded to the applicant.

The executive director may reserve or allocate credits as provided herein prior to approval, but subject to ratification, by the board if he determines that circumstances warrant such action without further delay.

As a condition to the reservation of credits, the executive director may require the submission of such legal and accounting opinions as he shall deem necessary to evidence that the buildings of the development will be entitled to the credits under the Code.

If all or certain of the buildings of a development are qualified low-income buildings as of the date the application is approved by the board and if the owner thereof is otherwise then entitled to the credits under the Code, the executive director may at that time allocate credits to such qualified low-income buildings without first providing a reservation of such credits.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development at its compliance with the schedule submitted with the application. If on the basis of such written confirmation and documentation and other available information the executive director determines that the buildings in the development which were to be qualified low-income buildings will not be placed in service within the time period required by the Code or will not otherwise qualify for such credits, then the executive director may terminate the reservation of such credits.

Any material changes to the development, as proposed in the application, occurring subsequent to the reservation of the credits therefor shall be subject to the prior written approval of the executive director. If such changes are made without the prior written approval of the executive director, he may terminate the reservation of such credits.

In the event that any reservation of credits are terminated by the executive director under this section, he may reserve or allocate, as applicable, such credits to other qualified applicants in accordance with the provisions hereof on a competitive basis, on a first-come, first-served basis, on a pro rata basis or in such other manner as he shall deem appropriate.

## § 8. Allocation of credits.

At such time as one or more of an applicant's buildings

which have received a reservation of credits become qualified low-income buildings, the applicant shall so advise the authority, shall request the allocation of all of the credits so reserved or such portion thereof to which the applicant's buildings are then entitled under the Code, and shall submit such certifications, legal and accounting opinions, and other documentation as the executive director shall require in order to determine that the applicant's buildings are entitled to such credits under the Code and these rules and regulations. If the executive director determines that such buildings are so entitled to the credits, he shall allocate the credits (or such portion thereof to which he deems the buildings to be entitled) to the applicant's qualified low-income buildings in accordance with the requirements of the Code. If the executive director shall determine that the applicant's buildings are not so entitled to the credits, he shall not allocate the credits and shall so notify the applicant. In the event that any such applicant shall not request an allocation of all of its reserved credits or whose buildings shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings of other qualified applicants in accordance with the provisions hereof on a competitive basis, on a first-come, first-served basis, on a pro rata basis or in such other manner as he shall deem appropriate.

The executive director may prescribe such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year.

Prior to the initial determination of the "qualified basis" (as defined in the Code) of the qualified low-income buildings of a development pursuant to the Code, an applicant to whose buildings credits have been reserved may request a reservation of additional credits. Subsequent to such initial determination of the qualified basis, the applicant may request an additional allocation of credits by reason of an increase in qualified basis based on an increase in the number of low-income housing units or in the amount of floor space of the low-income housing units. Any request for an additional allocation of credits shall include such opinions, certifications and documentation as the executive director shall require in order to determine that the applicant's buildings will be entitled to such additional credits under the Code and these rules and regulations and shall be submitted, reviewed and selected by the executive director in accordance with the provisions hereof.

\* \* \* \* \*

**Title of Regulation:** VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons.

**Statutory Authority:** § 36-55.30:3 of the Code of Virginia.

**Public Hearing Date:** September 1, 1989 - 10 a.m.  
(Agency exempt from APA)

**Summary:**

*This proposed amendment increases the Authority's flexibility in allocating the funds available from the Authority's Virginia Housing Fund for its housing program for the mentally disabled. It permits allocation of the funding to certain types of housing sponsors or developments in order to best promote the goals of the program and, in addition, permits such special allocations to be based on the satisfaction of certain conditions.*

VR 400-02-0013. Rules and Regulations for Multi-Family Housing Developments for Mentally Disabled Persons.

§ 1. Definitions.

"Closing" means the time of execution by the mortgagor of the documents evidencing the M/D loan, including the deed of trust note, deed of trust and other documents required by the authority. (In the case of a construction loan, "closing" means the initial closing of the M/D loan.)

"Construction" means construction of new structures and the rehabilitation, preservation or improvement of existing structures.

"DMHMR" means the Department of Mental Health, Mental Retardation and Substance Abuse Services of the Commonwealth of Virginia.

"Final closing" means, for a construction loan, the time of final disbursement of the M/D loan proceeds after satisfaction by the mortgagor of all of the authority's requirements therefor.

"M/D development" means a multi-family housing development intended for occupancy by persons of low and moderate income who are mentally disabled.

"M/D loan" means a mortgage loan made by the authority to finance the development, construction, rehabilitation and/or the ownership and operation of an M/D development.

"Seed loan" means a mortgage loan made by the authority to finance preconstruction or other related costs approved by the authority and the financing of which by the authority is determined by the authority to be necessary to the mortgagor's ability to obtain an M/D loan for the construction of an M/D development.

§ 2. Purpose and applicability.

The following rules and regulations will be applicable to mortgage loans which are made or financed or are proposed to be made or financed by the authority to mortgagors to provide the construction and/or permanent

financing of M/D developments. These rules and regulations shall be applicable to the making of such M/D loans directly by the authority to mortgagors, the purchase of such M/D loans, the participation by the authority in such M/D loans with mortgage lenders and any other manner of financing of such M/D loans under the Act. These rules and regulations shall not, however, apply to any M/D developments which are subject to any other rules and regulations adopted by the authority. If any M/D loan is to provide either the construction or permanent financing (but not both) of an M/D development, these rules and regulations shall be applicable to the extent determined by the executive director to be appropriate for such financing. In addition, notwithstanding the foregoing, the executive director may, in his discretion, determine that any M/D loan should be processed under the authority's Rules and Regulations for Multi-Family Housing Developments, whereupon the application for such M/D loan and any other information related thereto shall be transferred to the authority's multi-family division for processing under the aforementioned multi-family rules and regulations.

Mortgage loans may be made or financed pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any M/D development to waive or modify any provision herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act and covenants and agreements with the holders of its bonds.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority, the mortgagor, the contractor or other members of the development team under the closing documents as described in § 8 of these rules and regulations.

These rules and regulations are intended to provide a general description of the authority's processing requirements and are not intended to include all actions involved or required in the processing and administration of M/D loans under the authority's multi-family housing programs for M/D developments. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time with respect to any particular development or developments or any multi-family housing program or programs for M/D developments.

§ 3. Income limits and general restrictions.

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The amounts payable, if any, by persons occupying M/D developments are deemed not to be rent. As a result, the authority's income limit set forth under its rules and regulations limiting a person's or family's adjusted family income to an amount not greater than seven times the total annual rent is inapplicable; instead, in accordance with the authority's rules and regulations, the income limits for persons occupying such developments shall be as follows: All units of each M/D development, with the sole exception of those units occupied by an employee or agent of the mortgagor, shall be occupied or held available for occupancy by persons who have adjusted family incomes (as defined in the authority's rules and regulations and as determined at the time of their initial occupancy) which do not exceed 150% of the applicable area median income as determined by the authority and who are mentally disabled.

The board may establish, in the resolution authorizing any mortgage loan to finance an M/D development under these rules and regulations, income limits lower than those provided herein for the occupants of the units in such M/D development.

If federal law or rules and regulations impose limitations on the incomes of the persons or families who may occupy all or any of the units in an M/D development, the occupancy of the M/D development shall comply with such limitations, and the adjusted family incomes (as defined in the authority's rules and regulations) of applicants for occupancy of all of the units in the M/D development shall be computed, for the purpose of determining eligibility for occupancy thereof under these rules and regulations in the manner specified in such federal law and rules and regulations, subject to such modifications as the executive director shall require or approve in order to facilitate processing, review and approval of such applications.

Notwithstanding anything to the contrary herein, all M/D developments and the processing thereof under the terms hereof must comply with (i) the Act and the authority's rules and regulations, (ii) the applicable federal laws and regulations governing the federal tax exemption of the notes or bonds issued by the authority to finance such M/D developments, and (iii) the requirements set forth in the resolutions pursuant to which the notes or bonds, if any, are issued by the authority to finance the M/D developments. Copies of the authority's applicable note and bond resolutions, if any, are available upon request.

## § 4. Terms of mortgage loans.

The authority may make or finance mortgage loans secured by a lien on real property or, subject to certain limitations in the Act, a leasehold estate in order to finance M/D developments. The term of the mortgage loan shall be equal to (i) if the M/D loan is to finance the construction of the proposed M/D development, the period determined by the executive director to be necessary to: (1) complete construction of the M/D development, and

(2) consummate the final closing of the M/D loan; plus (ii) if the M/D loan is to finance the ownership and operation of the proposed M/D development, an amortization period set forth in the M/D loan commitment but not to exceed 45 years. The executive director may require that such amortization period not extend beyond the termination date of any assistance or subsidy.

M/D loans may be made to (i) for-profit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed 95% of the fair market value of the property as determined by the authority) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 95%, and (ii) nonprofit housing sponsors in original principal amounts not to exceed the lesser of the maximum principal amount specified in the M/D loan commitment (which amount shall in no event exceed 100% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is the Commonwealth of Virginia or any agency or instrumentality thereof, and which shall in no event exceed 95% of the fair market value of the property as determined by the authority in those cases in which the nonprofit sponsor is not the Commonwealth of Virginia or an agency or instrumentality thereof) or such percentage of the housing development costs of the M/D development as is established in such commitment, but in no event to exceed 100%.

The maximum principal amount and percentage of housing development costs specified or established in the M/D loan commitment shall be determined by the authority in such manner and based upon such factors as it deems relevant to the security of the M/D loan and the fulfillment of its public purpose. Such factors may include the economic feasibility of the proposed M/D development in terms of its ability to pay the projected debt service on the M/D loan and the projected operating expenses of the proposed M/D development.

The categories of cost which shall be allowable by the authority in the acquisition and construction of an M/D development financed under these rules and regulations shall include all reasonable, ordinary and necessary costs and expenses (including, without limitations, those categories of costs set forth in the authority's rules and regulations for multi-family housing developments) which are incurred by the mortgagor in the acquisition and construction of the M/D development. Upon completion of the acquisition and construction of the M/D development, the total of housing development costs shall be certified to the authority in accordance with these rules and regulations, subject to the review and determination of the authority. In lieu of such certification of housing development costs, the executive director may require such other assurances of housing development costs as he shall deem necessary to enable the authority to determine with reasonable accuracy the actual amount of such

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housing development costs.

The interest rate on the M/D loan shall be established at the closing and may be thereafter adjusted in accordance with the authority's rules and regulations and the terms of the deed of trust note. The authority shall charge a financing fee equal to 1.5% of the M/D loan amount, unless the executive director shall for good cause require the payment of a different financing fee. Such fee shall be payable at such times as hereinafter provided or at such other times as the executive director shall for good cause require.

## § 5. Solicitation of proposals.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit proposals for the financing of M/D developments. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of proposals and the selection of M/D developments as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which available funds of the authority are to be allocated and such other matters as he shall deem appropriate relating to the selection of proposals. The authority may also consider and approve proposals for financing of M/D developments submitted from time to time to the authority without any solicitation therefor on the part of the authority.

## § 6. Application and review.

### A. Information to be submitted.

Application for an M/D loan shall be commenced by filing with the authority an application, on such form or forms as the executive director may from time to time prescribe, together with such documents and additional information as may be requested by the authority, including, but not limited to:

1. Information with respect to the status of the proposed development site and the surrounding community;
2. Any option or sales contract to acquire the site;
3. An evaluation of the need and effective demand for the proposed M/D development in the market area of such site;
4. Information regarding the legal, business and financial status and experience of the applicant;

5. Information regarding amenities and services proposed to be offered to the tenants;

6. A determination by DMHMR on such form or forms as the executive director may from time to time prescribe to the effect that (i) the mortgagor has the intent and ability to provide the services deemed necessary by DMHMR for the success of a housing development intended for occupancy by persons of low and moderate income who are mentally disabled, (ii) that the proposed location and type of housing are suitable for the contemplated residents and that there exists a need in the area of the proposed location for housing for the mentally disabled, and (iii) that the development is economically feasible to the extent that it is projected to have or receive funds in an amount sufficient to pay the debt service on the proposed M/D loan and to pay for all of the requisite services deemed necessary by DMHMR for the success of such a development (for those M/D developments which are to receive funding other than that directly from the mortgagor, a breakdown of the source and amount of such funding upon which DMHMR relied in making its determination must be included);

7. Architectural and engineering plans, drawings and specifications in such detail as shall be necessary or

8. The applicant's (i) best estimates of the housing development costs and the components thereof, (ii) proposed M/D loan amount, (iii) proposed annual operating budget and the individual components thereof, (iv) best estimates of the monthly utility expenses and other costs for each dwelling unit if paid by the resident, and (v) amount of any subsidy or assistance, including any described in item 6 above, that the applicant is requesting for the proposed M/D development. The applicant's estimates shall be in such detail and with such itemization and supporting information as shall be requested by the executive director;

9. The applicant's proposed tenant selection plan which shall include, among other information that the executive director may require from time to time, the following: (i) any proposed fees to be charged to the tenants; (ii) the utilization of any subsidy or other assistance from the federal government or any other source; (iii) the proposed income levels of tenants; (iv) any arrangements contemplated by the applicant for tenant referrals or relocations from federal, state or local government agencies or community organizations; and (v) any criteria to be used for disapproving tenant applications and for establishing priorities among eligible tenant applicants.

10. Any documents required by the authority to evidence compliance with all conditions and requirements necessary to acquire, own, construct, operate and manage the proposed M/D development, including local governmental approvals, proper zoning

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status, availability of utilities, licenses and other legal authorizations necessary to perform requisite functions and any easements necessary for the construction and operation of the M/D development; and

11. A nonrefundable processing fee equal to 0.5% of the proposed M/D loan amount. Such fee shall be applied at closing toward the payment of the authority's financing fee.

In the selection of an application or applications for processing, the executive director may take into account the desirability of allocating funds to different sponsors throughout the Commonwealth of Virginia.

The executive director may for good cause permit the applicant to file one or more of the foregoing forms, documents and information at a later time, and any review, analysis, determination or other action by the authority or the executive director prior to such filing shall be subject to the receipt, review and approval by the executive director of such forms, documents and information.

An appraisal of the land and any improvements to be retained and used as a part of the M/D development will be obtained at this time or as soon as practical thereafter from an independent real estate appraiser selected by the authority. Such appraisal shall not be obtained until the authority has received the processing fee required by § 6.A.11 above. The authority may also obtain such other reports, analyses, information and data as the executive director deems necessary or appropriate to evaluate the proposed M/D development.

If at any time the executive director determines that the applicant is not processing the application with due diligence and best efforts or that the application cannot be successfully processed to commitment and closing within a reasonable time, he may, in his discretion, terminate the application and retain any fees previously paid to the authority.

## B. Review of the application.

The authority's staff shall review each application and any additional information submitted by the applicant or obtained from other sources by the authority in its review of each proposed M/D development. Such review shall be performed in accordance with subdivision 2 of subsection D of § 36-55.33:1 of the Code of Virginia and shall include, but not be limited to, the following:

1. An analysis of the site characteristics, surrounding land uses, available utilities, transportation, recreational opportunities, shopping facilities and other factors affecting the site;
2. An evaluation of the ability, experience and financial capacity of the applicant;

3. An analysis of the estimates of construction costs and the proposed operating budget and an evaluation as to the economic feasibility of the proposed M/D development;

4. A review of the tenant selection plans, including its effect on the economic feasibility of the proposed M/D development and its efficacy in carrying out the programs and policies of the authority;

5. An analysis of the drawings and specifications, the marketability of the units, the amenities and facilities to be provided to the proposed residents, and the management and maintenance characteristics of the proposed M/D development.

## C. Requirement that application satisfy certain criteria.

Based upon the authority staff's analysis of such documents and information and any other information obtained by the authority in its review of the proposed M/D development, the executive director may issue a commitment for an M/D loan to the applicant with respect to the proposed M/D development provided that he has determined that all of the following criteria have been satisfied:

1. The vicinity of the proposed M/D development is and will continue to be a residential area suitable for the proposed M/D development and is not now, nor is it likely in the future to become, subject to uses or deterioration which could cause undue depreciation in the value of the proposed M/D development or which could adversely affect its operation, marketability or economic feasibility.

2. There are or will be available on or before the estimated completion date (i) direct access to adequate public roads and utilities and (ii) such public and private facilities (such as schools, churches, transportation, retail and service establishments, parks and recreational facilities) in the area of the proposed M/D development as the executive director determines to be necessary or desirable for use and enjoyment by the contemplated residents.

3. The applicant either owns or leases the site of the proposed M/D development or has the legal right to acquire or lease the site in such manner, at such time and subject to such terms as will permit the applicant to process the application and consummate the initial closing.

4. The applicant and general contractor have the experience, ability and financial capacity necessary to carry out their respective responsibilities for the acquisition, construction, ownership, operation, maintenance and management of the proposed M/D development.

5. The application and proposed M/D development

conform to the requirements, limitations and conditions, if any, imposed by the executive director pursuant to § 4 of these rules and regulations .

6. The proposed M/D development will assist in meeting the need for such housing in the market area of the proposed M/D development.

7. The applicant's estimates of housing development costs (i) include all costs necessary for the development and construction of the proposed M/D development, (ii) are reasonable in amount, (iii) are based upon valid data and information, and (iv) are comparable to costs for similar multi-family rental developments; provided, however, that if the applicant's estimates of such costs are insufficient in amount under the foregoing criteria, such criteria may nevertheless be satisfied if, in the judgment of the executive director, the mortgagor will have the financial ability to pay any costs estimated by the executive director to be in excess of the total of the applicant's estimates of housing development costs.

8. Subject to review by the authority, in the case of construction loans at final closing or in the case of permanent loans at closing, the categories of the estimated housing development costs to be funded from the proceeds of the mortgage loan are eligible for such funding under the closing documents or under such other requirements as shall be agreed to by the authority.

9. Any administrative, community, health, nursing care, medical, educational, recreational, commercial or other nonhousing facilities to be included in the proposed M/D development are incidental or related to the proposed M/D development and are necessary, convenient or desirable with respect to the ownership, operation or management of the proposed development.

10. The estimated income from the proposed M/D development, including any estimated subsidy or assistance, is sufficient to pay when due the estimates of the debt service on the mortgage loan, the operating expenses, and replacement and other reserves required by the authority.

11. The drawings and specifications shall demonstrate that the proposed M/D development as a whole and the individual units therein shall provide safe and habitable living accommodations and environment for the contemplated residents.

12. The tenant selection plans submitted by the applicant shall comply with these rules and regulations and shall be satisfactory to the authority.

13. The proposed M/D development will comply with (i) all applicable federal laws and regulations governing the federal tax exemption of the notes or

bonds, if any, issued or to be issued by the authority to finance the proposed M/D development and (ii) all requirements set forth in the resolutions, if any, pursuant to which such notes or bonds are issued or to be issued.

14. The prerequisites necessary for the applicant to acquire, own, construct or rehabilitate, operate and manage the proposed M/D development have been satisfied or can be satisfied prior to initial closing. These prerequisites include, but are not limited to obtaining (i) site plan approval, (ii) proper zoning status, (iii) assurances of the availability of the requisite public utilities, (iv) commitments by public officials to construct such public improvements and accept the dedication of streets and easements that are necessary or desirable for the construction and use of the proposed M/D development, (v) building permits, and (vi) fee simple ownership of the site, a sales contract or option giving the applicant or mortgagor the right to purchase the site for the proposed M/D development and obtain fee simple title, or a leasehold interest of the time period required by the Act (any such ownership or leasehold interest acquired or to be acquired shall be free of any covenants, restrictions, easements, conditions, or other encumbrances which would adversely affect the authority's security or the construction or operation of the proposed M/D development).

15. The proposed M/D development will comply with all applicable state and local laws, ordinances, regulations, and requirements.

16. The proposed M/D development will contribute to the fulfillment of the public purposes of the authority as set forth in its Act.

17. Subject to a final determination by the board, the financing of the proposed M/D development will meet the applicable requirements set forth in § 36-55.39 of the Code of Virginia. For the purposes of satisfying subsection B of the aforementioned code section, the term "substantial rehabilitation" means the repair or improvement of an existing housing unit, the value of which repairs or improvements equals at least 25% of the total value of the rehabilitated housing unit.

*In addition, the executive director is authorized to make allocations of funds for M/D Loans to various types of housing sponsors and developments as he deems necessary or desirable to promote and accomplish the purposes set forth herein and in the Act. Any such allocation of funds may be made based upon such conditions as the executive director may require, including without limitation, one or both of the following: (i) DMHMR agrees, subject to terms and limitations acceptable to the authority, to provide funds for the developments in an amount sufficient to pay the operating costs thereof, including debt service with respect to the M/D Loan or loans applicable thereto; and (ii) the authority shall be able to finance the*

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*developments by the issuance of bonds in such amount and under such terms and conditions as the authority deems satisfactory.*

### § 7. Commitment.

If the executive director determines that the foregoing criteria set forth in § 6.C above are satisfied and that he will recommend approval of the application and issuance of the commitment therefor, he shall either (i) present his recommendations to the board or (ii) if the maximum principal amount of the M/D loan does not exceed \$300,000, issue the commitment subject to the approval and ratification of the board. If the executive director determines that one or more of the foregoing criteria have not been adequately satisfied, he may nevertheless in his discretion either (i) in the case of an M/D loan application for which the board's approval is sought in advance of the issuance of the commitment therefor, recommend to the board that the application be approved and that a commitment be issued subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate or (ii) in the case of a commitment to be issued by the executive director subject to ratification by the board all in accordance with these rules and regulations, issue such commitment subject to the satisfaction of such criteria in such manner and within such time period as he shall deem appropriate.

The board shall review and consider the recommendation of the executive director, and if it concurs with such recommendation, it shall by resolution approve the application and authorize or ratify, as applicable, the M/D loan and the issuance of a commitment therefor, subject to such terms and conditions as the board shall require in such resolution.

The term of the M/D loan, the amortization period, the estimated housing development costs, the principal amount of the M/D loan, the terms and conditions applicable to any equity contribution by the applicant, any assurances of successful completion and operational stability of the proposed M/D development, and other terms and conditions of such M/D loan shall be set forth in the board's resolution authorizing or ratifying such M/D loan or in the commitment therefor. The resolution or the commitment shall also include such terms and conditions as the authority considers appropriate with respect to the construction of the proposed M/D development, the marketing and occupancy of such M/D development (including any income limits or occupancy restrictions other than those set forth in these rules and regulations), the disbursement and repayment of the loan, and other matters related to the construction and the ownership, operation and occupancy of the proposed M/D development. Such resolution or commitment may include a financial analysis of the proposed M/D development, setting forth the approved initial budget for the operation of the M/D development and a schedule of the estimated housing development costs. Such a resolution authorizing

an M/D loan to a for-profit housing sponsor shall prescribe the maximum annual rate, if any, at which distributions may be made by such for-profit housing sponsor with respect to the M/D development, expressed as a percentage of such for-profit housing sponsor's equity in such M/D development (such equity being established in accordance with § 10 of these rules and regulations), which rate, if any, shall not be inconsistent with the provisions of the Act. In connection with the establishment of any such rates, the board shall not prescribe differing or discriminatory rates with respect to substantially similar M/D developments. The resolution shall specify whether any such maximum annual rate of distributions shall be cumulative or noncumulative.

An M/D loan shall not be authorized or ratified by the board unless the board by resolution shall make the applicable findings required by § 36-55.39 of the Code of Virginia; provided, however, that the board may in its discretion authorize or ratify the M/D loan without making the finding, if applicable, required by subsection B of § 36-55.39 of the Code of Virginia, subject to the condition that such finding be made by the board prior to the financing of the M/D loan.

If the executive director determines not to recommend approval of the application and issuance of a commitment, he shall so notify the applicant. If any application is not so recommended for approval, the executive director may select for processing one or more applications in its place.

### § 8. Closing.

Upon issuance of the commitment, the applicant shall direct its attorney to prepare and submit the legal documentation (the "closing documents") required by the commitment within the time period specified. When the closing documents have been submitted and approved by the authority staff, the board has approved or ratified the commitment and has determined that the financing of the proposed M/D development meets all the applicable requirements of § 36-55.39 of the Code of Virginia, and all other requirements in the commitment have been satisfied, the closing of the M/D loan shall be held. At this closing, the closing documents shall be, where required, executed and recorded, and the mortgagor will pay to the authority the balance owed on the financing fee, will make any equity investment required by the closing documents and will fund such other deposits, escrows and reserves as required by the commitment. The initial disbursement of M/D loan proceeds will be made by the authority, if appropriate under the commitment and the closing documents.

The actual interest rate on the M/D loan shall be established by the executive director at the time of the execution of the deed of trust note at closing and may thereafter be altered by the executive director in accordance with the authority's rules and regulations and the terms of such note.

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The executive director may require such accounts, reserves, deposits, escrows, bonds, letters of credit and other assurances as he shall deem appropriate to assure the satisfactory construction, completion, occupancy and operation of the M/D development, including without limitation one or more of the following: working capital deposits, construction contingency funds, operating reserve accounts, payment and performance bonds or letters of credit, latent construction defect escrows, replacement reserves, and tax and insurance escrows. The foregoing shall be in such amounts and subject to such terms and conditions as the executive director shall require and as shall be set forth in the initial closing documents.

## § 9. Construction.

In the case of construction loans, the construction of the M/D development shall be performed in accordance with the closing documents. The authority shall have the right to inspect the M/D development as often as deemed necessary or appropriate by the authority to determine the progress of the work and compliance with the closing documents and to ascertain the propriety and validity of M/D loan disbursements requested by the mortgagor. Such inspections shall be made for the sole and exclusive benefit and protection of the authority. A disbursement of M/D loan proceeds may only be made upon compliance with the terms and conditions of the closing documents with respect to any such disbursement; provided, however, that in the event that such terms and conditions have not been satisfied, the executive director may, in his discretion, permit such disbursement if additional security or assurance satisfactory to him is given. The amount of any disbursement shall be determined in accordance with the terms of the initial closing documents and shall be subject to such retainage or holdback as is therein prescribed.

## § 10. Completion of construction and final closing.

In the case of construction loans, the closing documents shall specify those requirements and conditions that shall be satisfied in order for the M/D development to be deemed to have attained final completion. Upon such final completion of the M/D development, the mortgagor, general contractor, and any other parties required to do so by the closing documents shall each diligently commence, complete and submit to the authority for review and approval their cost certification in accordance with the closing documents or in accordance with such other requirements as shall have been agreed to by the authority.

Prior to or concurrently with final closing, the mortgagor, general contractor and other members of the development team shall perform all acts and submit all contracts and documents required by the closing documents in order to attain final completion, make the final disbursement of M/D loan proceeds, obtain any subsidy or assistance and otherwise consummate the final closing.

At the final closing, the authority shall determine the following in accordance with the closing documents:

1. The total development costs, the final mortgage loan amount, the balance of M/D loan proceeds to be disbursed to the mortgagor, the equity investment of the mortgagor and, if applicable, the maximum amount of annual limited dividend distributions;
2. The interest rate to be applied initially upon commencement of amortization, the date for commencement and termination of the monthly amortization payments of principal and interest, the initial amount of such monthly amortization payments, and the initial amounts to be paid monthly into the escrow accounts for taxes, insurance, replacement reserves, or other similar escrow items; and
3. Any other funds due the authority, the mortgagor, general contractor, architect or other parties that the authority requires to be disbursed or paid as part of the final closing.

The equity investment of the mortgagor shall be the difference between the total housing development costs of the M/D development as finally determined by the authority and the final principal amount of the M/D loan as to such M/D development.

## § 11. Seed money loans.

Notwithstanding anything herein to the contrary, the executive director may, in his discretion, approve an application on such forms as he may prescribe for a seed money loan and issue a commitment therefor subject to ratification by the board.

## § 12. M/D loan increases.

Prior to closing, the principal amount of the M/D loan may be increased, if such an increase is justified by an increase in the estimated costs of the proposed M/D development, is necessary or desirable to effect the successful construction and operation of the proposed M/D development, can be funded from available proceeds of the authority's notes or bonds or other available funds of the authority, and is not inconsistent with the provisions of the Act or these rules and regulations. Any such increase shall be subject to such terms and conditions as the authority shall require.

Subsequent to closing, the authority will consider and, where appropriate, approve an M/D loan increase to be financed from the proceeds of the authority's notes or bonds in the following instances:

1. Where cost increases are incurred as the direct result of (i) changes in work required or requested by the authority or (ii) betterments to the M/D development approved by the authority which will improve the quality or value of the M/D development

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or will reduce the costs of operating or maintaining the M/D development;

2. Where cost increases are incurred as a direct result of a failure by the authority during processing of the M/D development to properly perform an act for which the authority is solely responsible;

3. Where an M/D loan increase is determined by the authority, in its sole and absolute discretion, to be in the best interests of the authority in protecting its security for the mortgage loan; or

4. Where the authority has entered into an agreement with the mortgagor prior to closing to provide an M/D loan increase if certain cost overruns occur in agreed line items, but only to the extent set forth in such agreement.

Any such increase in the M/D loan subsequent to closing may be subject to such terms and conditions as the authority shall require, including (but not limited to) one or more of the following:

1. The ability of the authority to sell bonds to finance the M/D loan increase in amounts, at rates and under terms and conditions satisfactory to the authority (applicable only to an M/D loan to be financed from the proceeds of the authority's notes or bonds).

2. The obtaining by the owner of additional subsidy (if the M/D development is to receive such subsidy) in amounts necessary to fund the additional debt service to be paid as a result of such M/D loan increase. The provision of such additional subsidy shall be made subject to and in accordance with all applicable federal regulations.

3. A determination by the authority that the M/D loan increase will have no material adverse effect on the financial feasibility or proper operation and maintenance of the M/D development.

4. A determination by the authority that the M/D loan, as increased, does not exceed such percentage of the total development cost (as certified in accordance with the closing documents as approved by the authority) as is established in the resolution authorizing the M/D loan in accordance with § 4 of these rules and regulations .

5. Such terms and conditions as the authority shall require in order to protect the security of its interest in the M/D loan, to comply with covenants and agreements with the holders of its bonds issued to finance the mortgage loan, to comply with the Act and these rules and regulations, and to carry out its public purpose.

The executive director may, without further action by the board, increase the principal amount of the M/D loan

at any time by an amount not to exceed 2.0% of the maximum principal amount of the M/D loan set forth in the commitment, provided that such increase is consistent with the Act and these rules and regulations . Any increase in excess of such 2.0% shall require the approval of the board.

Nothing contained in this § 12 shall impose any duty or obligation on the authority to increase any M/D loan, as the decision as to whether to grant an M/D loan increase shall be within the sole and absolute discretion of the authority.

## § 13. Operation and management.

The M/D development shall be subject to certain regulatory covenants in closing documents entered into at closing between the authority and the mortgagor. Such regulatory covenants shall govern the occupancy, maintenance, operation, use and disposition of the M/D development and the activities and operation of the mortgagor. The mortgagor shall execute such other documents with regard to the regulation of the M/D development as the executive director may determine to be necessary or appropriate to protect the interests of the authority and to permit the fulfillment of the authority's duties and responsibilities under the Act and these rules and regulations.

The mortgagor shall lease the units in the M/D development only to persons who are eligible for occupancy thereof as described in § 3 of these rules and regulations . The mortgagor shall comply with the provisions of the authority's rules and regulations regarding (i) the examination and determination of the income and eligibility of applicants for initial occupancy of the M/D development and (ii) the periodic reexamination and redetermination of the income and eligibility of residents of the M/D development.

In selecting eligible residents, the mortgagor shall comply with such occupancy criteria and priorities and with the tenant selection plan approved by the authority pursuant to § 6 of these rules and regulations .

The authority shall have the power to supervise the mortgagor and the M/D development in accordance with § 36-55.34:1 of the Code of Virginia and the terms of the closing documents or other agreements relating to the M/D loans. The authority shall have the right to inspect the M/D development, conduct audits of all books and records of the M/D development and to require such reports as the authority deems reasonable to assure compliance with this § 13.

## § 14. Transfers of ownership.

A. It is the authority's policy to evaluate requests for transfers of ownership on a case-by-case basis. The primary goal of the authority is the continued existence of low and moderate income rental housing stock maintained

# Proposed Regulations

in a financially sound manner and in safe and sanitary condition. Any changes which would, in the opinion of the authority, detrimentally affect this goal will not be approved.

The provisions set forth in this § 14 shall apply only to transfers of ownership to be made subject to the authority's deed of trust.

For the purposes hereof, the terms "transfer of ownership" and "transfer" shall include any direct or indirect transfer of a partnership or other ownership interest (including, without limitation, the withdrawal or substitution of any general partner) or any sale, conveyance or other direct or indirect transfer of the M/D development or any interest therein; provided, however, that if the owner is not then in default under the deed of trust or regulatory agreement, such terms shall not include (i) any sale, transfer, assignment or substitution of limited partnership interests prior to final closing of the M/D loan or, (ii) any sale, transfer, assignment or substitution of limited partnership interests which in any 12-month period constitute in the aggregate 50% or less of the partnership interests in the owner. The term "proposed ownership entity," as used herein, shall mean (i) in the case of a transfer of a partnership interest, the owner of the M/D development as proposed to be restructured by such transfer, and (ii) in the case of a transfer of the M/D development, the entity which proposes to acquire the M/D development.

B. The proposed ownership entity requesting approval of a transfer of ownership must initially submit a written request to the authority. This request should contain (i) a detailed description of the terms of the transfer, (ii) all documentation to be executed in connection with the transfer, (iii) information regarding the legal, business and financial status and experience of the proposed ownership entity and of the principals therein, including current financial statements (which shall be audited in the case of a business entity), (iv) an analysis of the current physical and financial condition of the M/D development, including a current audited financial report for the M/D development, (v) information regarding the experience and ability of any proposed management agent, and (vi) any other information and documents requested by the authority relating to the transfer. The request will be reviewed and evaluated in accordance with the following criteria:

1. The proposed ownership entity and the principals therein must have the experience, ability and financial capacity necessary to own, operate and manage the M/D development in a manner satisfactory to the authority.

2. The M/D development's physical and financial condition shall be acceptable to the authority as of the date of transfer or such later date as the authority may approve. In order to assure compliance with this criteria, the authority may require any of the

following:

a. The performance of any necessary repairs and the correction of any deferred or anticipated maintenance work;

b. The addition of any improvements to the M/D development which, in the judgment of the authority, will be necessary or desirable for the successful marketing of the M/D development, will reduce the costs of operating or maintaining the M/D development, will benefit the residents or otherwise improve the liveability of the M/D development, or will improve the financial strength and stability of the M/D development;

c. The establishment of escrows to assure the completion of any required repairs, maintenance work, or improvements;

d. The establishment of such new reserves and/or such additional funding of existing reserves as may be deemed necessary by the authority to ensure or preserve the financial strength and stability or the proper operation and maintenance of the M/D development; and

e. The funding of debt service payments, accounts payable and reserve requirements such that the foregoing are current at the time of any transfer of ownership.

3. The management agent, if any, to be selected by the proposed ownership entity to manage the M/D development on its behalf must have the experience and ability necessary to manage the M/D development in a manner satisfactory to the authority. The management agent must satisfy the qualifications established by the authority for approval thereof.

C. The authority will charge the proposed ownership entity a fee of \$5,000 or such higher fee as the executive director may for good cause require. This fee is to be paid at the closing.

D. In the case of a transfer from a nonprofit owner to a proposed for-profit owner, the authority may require the proposed for-profit owner to deposit and/or expend funds in such amount and manner and for such purposes and to take such other actions as the authority may require in order to assure that the principal amount of the M/D loan does not exceed the limitations specified in the Act and these rules and regulations or otherwise imposed by the authority. No transfer of ownership from a nonprofit owner to a for-profit owner shall be approved if such transfer would, in the judgment of the authority, affect the tax-exemption of the notes or bonds, if any, issued by the authority to finance the development. The authority will not approve any such transfer of ownership if any loss of property tax abatement as a result of such transfer will, in the determination of the authority, adversely affect the

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financial strength or security of the M/D development.

The authority may require that any cash proceeds received by the nonprofit owner (after the payment of transaction costs and the funding of any fees, costs, expenses, reserves or escrows required or approved by the authority) be used for such charitable or other purposes as the authority may approve.

E. A request for transfer of ownership shall be reviewed by the executive director and may be approved by him subject to such terms and conditions as he may require.

After approval of the request, an approval letter will be issued to the mortgagor consenting to the transfer. Such letter shall be contingent upon the delivery and execution of any and all closing documents required by the authority with respect to the transfer of ownership and the fulfillment of any special conditions required by the executive director.

The authority may require that the proposed ownership entity execute the then current forms of the authority's M/D loan documents in substitution of the existing M/D loan documents and/or to execute such amendments to the existing M/D loan documents as the authority may require in order to cause the provisions of such documents to incorporate the then existing policies, procedures and requirements of the authority. At the closing of the transfer, all documents required by the approval letter shall be, where required, executed and recorded; all funds required by the approval letter will be paid or deposited in accordance therewith; and all other terms and conditions of the approval letter shall be satisfied. If deemed appropriate by the executive director, the original mortgagor shall be released from all liability and obligations which may thereafter arise under the documents previously executed with respect to the M/D development.

In the case of an M/D development which is in default or which is experiencing or is expected by the authority to experience financial, physical or other problems adversely affecting its financial strength and stability or its proper operation, maintenance or management, the authority may waive or modify any of the requirements herein as it may deem necessary or appropriate in order to assist the M/D development and/or to protect the authority's interest as lender.

## § 15. Prepayments.

It shall be the policy of the authority that no prepayment of an M/D loan shall be made without its prior written consent for such period of time set forth in the note evidencing the M/D loan as the executive director shall determine, based upon his evaluation of then existing conditions in the financial and housing markets, to be necessary to accomplish the public purpose of the authority. The authority may also prohibit the prepayment of M/D loans during such period of time as deemed

necessary by the authority to assure compliance with applicable note and bond resolutions and with federal laws and regulations governing the federal tax exemption of the notes or bonds, if any, issued to finance such mortgage loans. Requests for prepayment shall be reviewed by the executive director on a case-by-case basis. In reviewing any request for prepayment, the executive director shall consider such factors as he deems relevant, including without limitation the following (i) the proposed use of the M/D development subsequent to prepayment, (ii) any actual or potential termination or reduction of any subsidy or other assistance, (iii) the current and future need and demand for low and moderate housing for mentally disabled persons in the market area of the development, (iv) the financial and physical condition of the M/D development, (v) the financial effect of prepayment on the authority and the notes or bonds, if any, issued to finance the M/D development, and (vi) compliance with any applicable federal laws and regulations governing the federal tax exemption of such notes or bonds. As a precondition to its approval of any prepayment, the authority shall have the right to impose restrictions, conditions and requirements with respect to the ownership, use, operation and disposition of the M/D development, including without limitation any restrictions or conditions required in order to preserve the federal tax exemption of notes or bonds issued to finance the M/D development. The authority shall also have the right to charge a prepayment fee in an amount determined in accordance with the terms of the resolutions authorizing the notes or bonds issued to finance the M/D development or in such other amount as may be established by the executive director in accordance with the terms of the deed of trust note and such resolutions. The provisions of this § 15 shall not be construed to impose any duty or obligation on the authority to approve any prepayment, as the executive director shall have sole and absolute discretion to approve or disapprove any prepayment based upon his judgment as to whether such prepayment would be in the best interests of the authority and would promote the goals and purposes of its programs and policies.

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (BOARD OF)

**Title of Regulation:** VR 470-03-02. Regulations to Ensure the Rights of Residents in Department of Mental Health, Mental Retardation and Substance Abuse Services Operated Facilities.

**Statutory Authority:** §§ 37.1-10 and 37.1-84.1 of the Code of Virginia.

### Public Hearing Dates:

August 14, 1989 - 10:30 a.m.

August 15, 1989 - 10:30 a.m.

August 16, 1989 - 7 p.m.

August 18, 1989 - 1 p.m.

(See Calendar of Events section)

for additional information)

Written comments will be received through October 13, 1989.

## PART I. INTRODUCTION.

These regulations are promulgated under the authority of § 37.1-84.1, Chapter 2, Article 3 of Title 37.1 of the Code of Virginia, and Title 9, Chapter 1.1:1 of the Code of Virginia.

These regulations are intended to protect the legal and human rights of all residents in facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. To the extent that it is within the reasonable capabilities and limitations of the department and is consistent with sound, therapeutic treatment, each resident is assured adequate care consistent with basic human dignity.

These regulations apply to each facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services and under the supervision, management and control of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services. These regulations shall apply to forensic residents, provided, however, that forensic residents may be excluded from the coverage of these regulations to the extent that the commissioner determines that these regulations are not applicable to them.

### Article 1. Definitions.

§ 1.1. The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

"Abuse" means physical acts such as hitting, kicking, scratching, hair pulling, pinching, choking or slapping, or any type of inappropriate striking or touching of a resident; coercion, threats or intimidation which are statements or actions that would evoke fear in a reasonable person or that could reasonably be expected to evoke fear in the resident; neglect in care which is the failure to provide treatment, care, goods or services necessary to the health, safety or welfare of a resident; statements or actions which would humiliate, demean or exploit a resident; or condoning or permitting the abuse of a resident.

"Advocate" means a person or persons, appointed by the commissioner after consultation with State Human Rights Director and the local human rights committee, who exercises the duties set forth in Part IV of these regulations.

"Aversive behavioral program" means a behavior modification program which employs an aversive or

noxious stimulus.

"Aversive stimulus" means any painful or noxious event which, when presented contingent upon a behavior, results in a decrease in the frequency of the behavior.

"Authorized representative" means that person best situated, by law or by his relationship to the resident or his understanding of the resident's condition, to make a decision on behalf of a resident who, because of his mental illness or mental retardation, is unable to make an informed decision to give or withhold consent to facility action for which an informed decision is required. The director shall have the primary responsibility for determining the availability of and designating an authorized representative in the following order of priority:

Wherever the term "he" or "him" is used in these regulations, it shall be construed to include "she" or "her" respectively.

1. A person designated in writing executed pursuant to § 54.1-2984 ("The Natural Death Act"), if that person is given sufficient authority in the writing.

2. A legal guardian of the resident, not employed by the facility and currently authorized to give consent, or, if the resident is a minor, a parent having legal custody of the resident. The director shall make diligent efforts to locate the parent or legal guardian.

3. An attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make a decision. When relied on for these purposes, a durable power executed by a resident while in a facility shall be witnessed by the advocate and shall be accompanied by a written certification by a psychiatrist or clinical psychologist that the principal at the time of execution of the power had the capacity to do so.

4. The resident's next-of-kin. In designating the next-of-kin, the director shall select the best qualified person, if available, according to the following priority, unless from all information available to the director, another person in a lower priority is clearly better qualified: (i) spouse; (ii) an adult son or daughter; (iii) a parent; (iv) adult brother or sister; or (v) any other relative of the resident.

5. A person, or committee of persons, neither presently engaged in the treatment of the resident, nor employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. Such person or persons shall be approved by the LHRC prior to or within 30 days of designation by the director.

6. In the absence of any of the above, the director may designate himself as authorized representative in this instance after a finding by the LHRC that he is the best qualified person within the meaning of these

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regulations for the purpose of implementing § 2.19 B or for the purpose of granting authority to participate in programs or activities of a beneficial nature, and that any further effort to locate or appoint a legal guardian or next-of-kin would delay treatment or other needed services.

“Behavior management committee” (BMC) means a committee including senior facility staff with demonstrated skills in behavior modification programs appointed by the director. The responsibility of the BMC shall be to review and approve behavior modification programs that employ restrictive procedures according to facility policy.

“Behavior modification” means the systematic application of positive reinforcers, negative reinforcers, aversive stimuli or both, to a resident for the purpose of reducing the frequency or intensity of maladaptive behavior or increasing the frequency of desired adaptive behavior.

“Board” means the State Mental Health, Mental Retardation and Substance Abuse Services Board, which exercises the duties set forth in PART IV of these regulations.

“Capacity” means the ability to make treatment decisions that are based on the individual’s preferences and understanding of the risks and benefits of the action which is proposed, regardless of whether the choice of the resident actually reflects those preferences or that understanding. All residents are presumed to have the capacity to make treatment decisions except to the extent that there has been a prior judicial or administrative determination of incapacity or incompetency.

“Commissioner” means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services, who exercises the duties set forth in PART IV of these regulations.

“Consent” means the voluntary and informed agreement of a person to any action of the facility for which consent is required under these regulations. The fact that a person is a resident does not alone render that person incapable of giving such consent, but it does call for added diligence by all employees in assuring that consent obtained from a resident is truly voluntary and informed. To be voluntary, the consent must be given by a person not subject to any form of force, fraud, deceit, duress, constraint or coercion. To be informed, consent usually must be based on disclosure and understanding of the following kinds of information:

1. A fair and reasonable explanation of the action proposed to be taken by the facility and its purpose;
2. A description of any benefits reasonably to be expected and any adverse consequences and risks to be expected;

3. An identification of any research involved, a description of risks in compliance with an approved research protocol, an explanation of how the results of the research will be disseminated and how the identity of the resident will be protected;

4. A disclosure of any alternative procedures that might be equally advantageous for the resident;

5. An offer to answer any inquiries by the resident or his authorized representative;

6. Notification that the person is free to refuse or withdraw his consent and to discontinue participation in any prospective facility action requiring his consent at any time without fear of reprisal against or prejudice to him;

7. A description of the ways in which the resident or his authorized representative can raise concerns and ask questions about the facility action to which consent is given;

8. Where the facility action constitutes experimental or investigational research, an explanation as to any compensation or medical care which is available if injury occurs;

9. Where the facility action involves the disclosure of records:

- (a) The name of the organization and the name and title of the person to whom disclosure is to be made;

- (b) A description of the nature of the information to be disclosed, the purpose of disclosure, and an indication whether the consent extends to information placed on the records after the consent was given but before it expires;

- (c) A statement of when the consent will expire, specifying a date, event or condition upon which it will expire; and

- (d) An indication of the effective date of the consent.

“Convulsive treatment” means any form of psychiatric treatment involving induction of a convulsion in the resident by any means, including electroconvulsive therapy (ECT).

“Department” means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

“Designated member of the treatment team” means that member of the treatment team with appropriate clinical training and experience designated by the director to assure the implementation of the specific function described in these regulations. The designated member of

# Proposed Regulations

the treatment team shall in all cases be directly involved in the provision of treatment to the resident or otherwise personally familiar with the resident.

"Director" means the chief executive officer of a facility operated by the department, who exercises the duties set forth in Part IV of these regulations.

"Emergency" means a situation, expected to last no more than 72 hours, in which a resident is likely to cause serious harm to himself or another or to suffer serious deterioration unless the proposed treatment is provided immediately to the resident.

"Experimental or investigational research" means any medical or psychological research which utilizes human subjects who may be exposed to the possibility of physical or psychological injury as a consequence of participation as subjects and which departs from the application of those established and accepted methods appropriate to meet the subject's or subjects' needs, but does not include: (i) the conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from a human subject in the course of standard medical practice; (ii) epidemiological investigations; or (iii) medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated or to improve the quality of the subject's life.

"Facility" means a state hospital, state training school, or other such institution, by whatever name or designation, which provides residential care or treatment for mentally ill or mentally retarded persons, and which is operated by the department.

"Forensic resident" means a resident who is admitted to a facility pursuant to any one or combination of the following sections of the Code of Virginia: §§ 18.2-254; 19.2-168.1; 19.2-169.1; 19.2-169.2; 19.2-169.3; 19.2-169.5; 19.2-169.6; 19.2-176; 19.2-177.1; 19.2-181; 19.2-264.3.1; 19.2-300; or 53.1-40.2.

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior through the application of aversive stimuli contingent upon the exhibition of such behavior. The term shall not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with these regulations, or psychotropic medications which are used for purposes other than intrusive aversive therapy.

"Local Human Rights Committee" (LHRC) means a committee of at least seven members broadly representative of professional and consumer groups, appointed by the State Human Rights Committee (SHRC) for each facility after consultation with the Commissioner and review and comment by the director, whose responsibility shall be to perform the functions specified in

Part IV of these regulations. Except where otherwise provided, the word LHRC shall mean this body or any subcommittee thereof.

"Protective device" means a mechanical device used either: (i) for a specific protective or supportive purpose to maintain body position, balance or support for a resident with a neurological disorder or to assist the movement of a resident whose mobility is impaired by a physical disorder; or (ii) for a medical or surgical purpose, to prevent the resident's removing dressings, catheters, intravenous tubes, nasogastric intubation, or otherwise interrupting his acute medical or surgical treatment. Totally enclosed cribs shall be considered mechanical restraints, and their use shall be governed by policies and regulations concerning mechanical restraints. Barred enclosures other than enclosed cribs, such as playpens which are not more than three feet in height and do not have tops, are considered to be protective devices.

"Psychosurgery" means any procedure which by direct or indirect access to the brain removes, destroys, or interrupts the continuity of brain tissue which is histologically normal (as distinguished from normal in its physiological or psychological functioning) for the primary purpose of altering behavior or treating a mental disease or disorder. Psychosurgery includes the implantation of electrodes with such an effect and for such a purpose, with or without subsequent electrocoagulation. Psychosurgery does not include neurosurgical procedures designed to treat reliably diagnosed intractable physical pain or epilepsy.

"Resident" means a person involuntarily committed to, certified to, or voluntarily admitted to, or residing in, any facility as defined in this section.

"Restraint" means the use on any resident of physical force or any mechanical device (handcuffs, wristlets, muffs, camisoles or other such devices) that restricts the physical movements of such resident for behavioral purposes. Restraint does not include a protective device. "Physical (or personal) restraint" means that the resident or any part of the resident's body is restricted from free movement as a response to the resident's maladaptive behavior for any period of time by direct physical contact applied by one or more employees.

"Restrictive behavioral program" means a program which employs locked time out, seclusion, separation, restraint or aversive stimuli as a contingent consequence for maladaptive behavior.

"Seclusion" means the placing of a resident in a room with the door either secured in any manner that will not permit the resident to open it, or so situated that, because of the resident's impaired mobility, the resident is unable to open it.

"Separation" means the practice of removing from the regular living unit, unit area, or milieu program an

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aggressive or otherwise behaviorally disordered resident when other less restrictive interventions are deemed to be ineffective or inadequate. Separation is a less restrictive intervention than seclusion because in no instance shall an additional locked door be inserted between the resident and staff. Separation is distinguished from time out in that the resident's removal from the living unit, area, or program environment is not for the purpose of removal from positive reinforcers but is, rather, effected to facilitate the safe management of the resident.

"Significant risk" means that the risks of harm anticipated in the proposed research, treatment or other services are significantly greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations, tests or treatment. Procedures that present a significant risk include, but are not limited to, psychotropic medication, intrusive aversive therapy and surgical procedures.

"State Human Rights Committee" (SHRC) means a committee of nine members appointed by the board whose responsibility it shall be to perform the functions specified in Part IV of these regulations. Except where otherwise provided, the word SHRC shall mean either this body or any subcommittee thereof.

"State Human Rights Director" (SHRD) means a person appointed by and reporting directly to the commissioner, whose responsibility it shall be to perform the functions specified in Part IV of these regulations, to take other necessary and appropriate actions to assist the commissioner and the SHRC to perform their responsibilities under these regulations, and to assure the free exercise of legal and human rights by residents of facilities operated by the department.

"Time out" means the practice of removing a resident from a source of positive reinforcement to an unlocked setting pursuant to an approved behavior modification plan. "Locked time out" means a systematic behavior management technique designed to reduce or eliminate inappropriate behavior by temporarily removing a resident from contact with people or other reinforcing stimuli through placing the resident alone in a room from which egress is prevented. The door must be constructed so that it requires the active behavior of an employee to keep it secure.

"Treatment" means individually planned interventions which are intended to improve an individual's functioning in those areas which show impairment as the result of a mental disability.

## Article 2.

### Allowable Variances and Severability.

§ 1.2. For good cause shown, and consistent with the purposes of these regulations and the provisions of Part V of these regulations, the SHRC may grant to any facility a

variance from these regulations.

§ 1.3. If any clause, sentence, paragraph, subdivision, section or part of these regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

## PART II. RESIDENT RIGHTS.

### Article 1. Notification.

§ 2.1 A. Each facility shall prominently post in each living unit and throughout other locations in the facility a document setting forth the rights of residents and the means by which they can contact an advocate.

B. Each resident or authorized representative, if applicable, shall be personally given notice of these rights in writing upon admission and annually thereafter.

C. Written acknowledgment of receipt of this notice shall be requested from each resident or authorized representative and made part of the resident's record. If the appropriate person refuses or is unable to acknowledge receipt of such notice, the person delivering such notice shall document that fact in the resident's record.

D. Written notice of these rights shall include at least:

1. An abbreviated statement of the rights specified in Part II of these regulations; and

2. The name of the advocate, how to contact the advocate and a brief description of the role of the advocate.

E. If any person entitled to notice under the provisions of this article is unable to read the written notice of these rights, the notice shall be read to him.

F. If there is reason to believe that any person entitled to notice under the provisions of this article is unable to comprehend the written notice of these rights, he shall have such notice explained to him insofar as he is capable of understanding.

### Article 2.

#### Treatment.

§ 2.2. No person shall be admitted to a facility except in conformity with state laws, regulations and policies duly adopted by the board or by the department.

§ § 2.3. The director shall assure that each resident receives an appropriate physical and mental evaluation

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and an assessment of behavioral status immediately prior to admission or within 24 hours after admission to such facility.

§ § 2.4. Immediately upon admission, the director shall assure that the resident's identified needs are met. Within three days following admission, an initial written treatment plan shall be developed based on the resident's immediate problems, physical and emotional condition and behavioral status. If the resident's stay exceeds 10 days in a mental health facility or 30 days in a mental retardation facility, the facility shall formulate a comprehensive, individualized treatment, education, training or habilitation plan, based on humane and acceptable professional practice, which assures appropriate treatment, habilitative or rehabilitative services, and which facilitates the resident's transfer to a less restrictive setting for continued treatment, education, training or habilitation.

§ § 2.5. Each resident and his authorized representative shall be informed, within the limits of his understanding, of the resident's condition and treatment alternatives and shall be encouraged and permitted to participate meaningfully in the decision-making process regarding such treatment, educational training or habilitation program, in accordance with the requirements of Part II, Article 4 of these regulations.

§ § 2.6. Subject to appropriate, periodic revision, each facility shall implement and adhere to the individualized treatment, educational, training or habilitation program of every resident.

§ § 2.7. The director shall assure the review and documentation of the resident's progress at intervals of no more than 30 days after admission, 60 days after admission, 90 days after admission, 180 days after admission, and at least every six months thereafter to determine whether his individual program goals are being met, whether he meets any other statutory criteria upon which his admission was originally based, and whether he should be retained in the facility.

§ 2.8. Each facility shall maintain a permanent record on each resident unless the record is purged or destroyed in compliance with statute, court order or applicable regulations. The record shall include all documentation required by these regulations.

## § 2.9. Predischarge plan.

A. The designated member of the treatment team shall assure the development of a preliminary predischarge plan at the time of admission of each resident, and shall assure that the plan is formulated and updated periodically and whenever the resident's condition changes. Subject to the requirements of Part II, Article 3 of these regulations and the provisions of § 37.1-98.2 of the Code of Virginia the designated member of the treatment team shall consult the community services board or community mental health clinic for the area in which the resident resided prior to

admission or in which he chooses to reside after discharge. Each resident and his authorized representative, shall be informed of the predischarge plan and shall be permitted and encouraged to participate in its preparation. The resident's family shall also be informed of the plan, if he or his authorized representative consents to such disclosure.

## B. The predischarge plan shall, at a minimum:

1. Specify the behavior and treatment goals necessary for discharge;
2. Specify the services, including but not limited to housing, nutritional and human services, which he will require upon discharge;
3. Describe the type of placement he will require upon discharge;
4. List the appropriate service providers and placement alternatives which should be explored and any known reasons why any of those alternatives would not be available; and
5. Identify the members of a prescription team established pursuant to § 37.1-197.1 of the Code of Virginia and designate one particular member of that team to be responsible for the implementation of the plan upon discharge.

C. Subject to the requirements of Part II, Article 3 of these regulations and § 37.1-98.2 of the Code of Virginia governing disclosures of information, the designated member of the treatment team shall assure that the discharge plan is coordinated with the community mental health clinic or community services board in the area in which the resident will reside upon discharge, and shall notify or assure the notification of the board or clinic of the resident's progress and the date the resident will be discharged, in order to assure that the necessary services and placement will be available upon discharge.

§ 2.10 Each resident may, in person or through his authorized representative, request a discharge from the facility at any time. Under no circumstances shall a resident be subjected to punishment, reprisal or reduction in services because he has made such a request. The facility shall review the resident's request for discharge and respond as required by the following sections. Discharge may not be denied or delayed solely because of the refusal or inability of the resident or authorized representative to cooperate with predischarge planning.

## § 2.11. Involuntary residents.

A. If at any time the director determines, upon review, that a resident involuntarily committed under § 37.1-67.3 of the Code of Virginia meets any of the criteria for discharge set out in § 37.1-98 A of the Code of Virginia the facility shall take appropriate steps to arrange the

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resident's discharge.

B. If an involuntarily committed resident who has been in the facility for more than 30 days makes a written request to be discharged and has not made a similar request within the past 30 days, the designated member of the treatment team shall review the resident's status, determine whether the resident continues to meet the criteria for involuntary commitment, and notify the director of his recommendations. If, after such review, the director denies the request for discharge, he shall notify the resident, in writing, within 10 days following his review of the written request, of the reasons for denying the request. The request and the reasons for denial shall be included in the resident's record.

C. The status of a resident who was involuntarily committed pursuant to § 37.1-67.3 of the Code of Virginia may be converted from involuntary to voluntary if:

1. The resident has the capacity to consent and has consented to remain in the facility on a voluntary basis;
2. The appropriate community services board has approved his voluntary admission; and
3. The treatment team has determined that voluntary status will facilitate the resident's treatment and discharge.

D. If at any time the director determines that a forensic resident no longer meets the criteria upon which he was admitted and retained, the facility shall immediately inform the resident, the advocate, and the appropriate court of its determination and shall request authorization to discharge or transfer the resident.

## § 2.12. Voluntary residents:

A. If a voluntary resident admitted under § 37.1-65 of the Code of Virginia notifies the facility of his wish to leave the facility, he shall be released as soon as clinically appropriate. In no event may the facility detain an adult resident longer than 24 hours thereafter, unless the facility is authorized by law to detain the resident for a longer period of time.

B. If a voluntary resident admitted pursuant to § 37.1-67.2 of the Code of Virginia notifies the facility of his wish to leave the facility, the facility shall inform the resident whether it plans to petition for his involuntary commitment and, if so, the reasons for that action. Such information and the provision thereof to the resident shall be documented in his file. If the facility does not petition for involuntary commitment within 48 hours, the resident shall be discharged.

## § 2.13. Certified residents:

A. If a resident who was admitted under § 37.1-65.1 or §

37.1-65.3 of the Code of Virginia or his authorized representative requests discharge, the designated member of the treatment team shall determine whether the resident continues to meet the criteria for certification and shall notify the director of his recommendations. If after such review the director denies the request for discharge, he shall notify the resident or his authorized representative in writing of the reasons for denying the request and of the right to seek relief in the courts. The request and the reasons for denial shall be included in the resident's record.

## Article 3. Confidentiality.

### § 2.14. Confidentiality.

Each facility shall take affirmative steps:

1. To inform the resident, within the limits of his understanding, and his authorized representative of his rights concerning disclosure and correction of his records, of his right to give or withhold consent to disclosure to others, and of the limitations on those rights and conditions under which disclosure may be granted to others without consent;
2. To allow each resident to inspect his records, unless there are clear, therapeutic reasons, documented and explained as required herein, for not doing so, and to assist the resident in understanding his records;
3. To prevent unauthorized disclosures of information from records of residents;
4. To assure the authenticity, accuracy, completeness, timeliness and pertinence of resident records; and
5. To facilitate all disclosures of the records authorized by these regulations.

§ 2.15. Assistance in reading and understanding the records shall be made available to any person who is authorized to inspect them and who is visually impaired, or illiterate, or whose native language is not English, without charge.

§ 2.16. Each resident or, if he is unable, the designated member of the treatment team, may designate family members, friends and others who may be informed of the presence of and general condition or well-being of the resident over the telephone.

§ 2.17. Where disclosure of a resident's records is contemplated, and those records are subject to federal regulations governing the confidentiality of substance abuse records, 42 C.F.R. Part 2 must be complied with in addition to these regulations, and disclosure shall not be made if prohibited by either set of regulations.

§ 2.18. Record disclosure.

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A. Each resident or his authorized representative is entitled to inspect and obtain copies of records pertaining to that resident during the normal business hours of the facility, unless a licensed physician, responsible for the provision or supervision of treatment to the resident:

1. Personally interviews the resident;
2. Reviews the records;
3. Makes a permanent part of those records a signed, written statement that in his opinion the personal review of the records by the resident presently would be injurious to the physical or mental health of the resident; and
4. Explains or discloses to the resident as much of the records as is presently possible without risk of injury to the resident.

B. Where disclosure to the resident is limited or denied, disclosure shall nonetheless be made upon request to any lawyer, physician or psychologist designated by the resident, or to his authorized representative.

C. Each resident or his authorized representative is entitled to be informed upon request of the sources of information contained in his records and of the names of all recipients of information in his records (excluding department employees) for the preceding three years to the extent that they are available.

D. Each resident is entitled, when examining his records, to be accompanied by a person of his choosing; provided, however, that the facility shall require such person to furnish suitable identification, and may require the resident to furnish written authorization for such person's presence while examining or discussing the records.

E. If the resident or his authorized representative wishes to challenge, correct or explain information about the resident in the records, the following minimum procedures shall be followed:

1. The facility shall investigate and file in the record a written report concerning the request;
2. If, after investigation, those records are found to be incomplete, inaccurate, not pertinent, not timely or not necessary to be retained, they shall be marked clearly to indicate that they have been corrected and the manner in which they have been corrected, or they shall be removed from the regular records of the resident and maintained separately; thereafter, the original record shall not be disclosed without separate, specific consent or as compelled by subpoena or other court order;
3. Following any correction of the records, the facility promptly shall notify in writing all past recipients of

the incorrect records that those records have been corrected and the manner in which they have been corrected and shall request that recipients acknowledge the correction;

4. If the investigation and report does not result in a correction to the satisfaction of the resident, he may file in the record a statement setting forth his position and shall receive assistance, if necessary, in preparing this statement;

5. Whenever a statement of dispute is filed, the facility shall furnish to all past recipients of the disputed record a copy of the statement and, in the event of any subsequent disclosure of the disputed record, shall clearly note that it is disputed and supply the statement together with the disputed record; provided, however, that unless authorized by § 2.23 below the statement shall not be disclosed without proper consent; and

6. The advocate shall be notified when disclosure to a resident is limited or denied, or when a correction requested by the resident is denied, and shall provide assistance if the resident requests further review under the procedures specified in Part III of these regulations.

§ 2.19. Unless otherwise authorized by § 2.23 below, disclosures of the records of a resident shall not be permitted without:

1. The personal consent of the resident; or
2. The substitute consent of his authorized representative, if the resident is deceased or in the opinion of the designated member of the treatment team presently lacks the physical or mental ability to give personal consent to such disclosure, irrespective of his ability to give consent to any particular treatment which is the subject of those records, or the object of disclosure. Whenever disclosure is permitted with substitute consent:

a. The designated member of the treatment team shall notify the advocate of the decision, and the advocate shall inform the resident, to the extent of the resident's ability to understand, of this decision and his right to appeal; and

b. The designated member of the treatment team shall clearly indicate in the records that such a determination of inability does not indicate a lack of ability of the resident to make other decisions.

§ 2.20. If the resident is a minor, disclosure of his records shall not be permitted without the concurrent consent of the parent or guardian having legal custody of the minor, unless the treatment which is the subject of the records or object of disclosure has been administered pursuant to the sole consent of the resident under statutes or regulations

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which require only the minor's consent.

§ 2.21. Any person to whom consensual disclosure is contemplated shall:

1. Provide the facility with suitable identification and, if he is relying on substitute consent, suitable proof of the legal authority of the person giving consent;
2. Provide the facility with written documentation of consent; and
3. Agree to refrain from and protect against any disclosure not authorized by further consent or by the provisions of § 2.23 below.

§ 2.22. The facility shall make prompt disclosure as requested if all of the following conditions are met:

1. The facility receives consent or is otherwise required by these regulations to make the disclosure requested;
2. If consent is required, the person giving the consent is himself authorized to inspect the records to be disclosed; and
3. Arrangements satisfactory to the facility are made to make advance payment of any photocopying charges authorized by these regulations.

§ 2.23. Notwithstanding the general prohibition against disclosure of resident records without consent, the facility may disclose records or information concerning the resident without consent to the extent provided below:

1. **Emergencies.** Disclosure may be made to any person necessary where an emergency exists.
2. **Employees.** Disclosure may be made to any full or part-time employee, consultant or agent of the department to the extent required to provide treatment to the resident or to obtain reimbursement for the costs of treatment.
3. **Attorney General.** Disclosure may be made to any full or part-time employee, consultant or agent of the Office of the Attorney General in providing representation of the Commonwealth.
4. **Third party payors.** Disclosure may be made to third party payors in accordance with §§ 37.1-225 through 37.1-233 of the Code of Virginia.
5. **Litigation.** Disclosure may be made where the resident or someone acting on his behalf introduces his mental condition or treatment as an element of a claim before a court, administrative agency or medical malpractice review panel; where compelled by subpoena or other court order; or where commitment or certification is being proposed.

6. **Human rights committees.** Disclosure may be made to any member of a LHRC or SHRC of the records of a resident who has brought a complaint, or on whose behalf a complaint has been brought before that committee, or whose records are relevant to any duly authorized function of that committee.

7. **Historical research.** Upon application to the commissioner, disclosure may be made to persons determined by the commissioner to be engaged in bona fide historical research, provided that: (i) the resident who is the subject of such disclosure is deceased; (ii) there is no known living person authorized by law to consent to such disclosure; and (iii) such disclosure would in no way reveal the identity of any person who is not the subject of the historical research. Application for such disclosure shall include, at a minimum, a summary of the scope and purpose of the research, a description of the product to result from the research and its anticipated date of completion, a rationale explaining the necessity of access to resident records, and a specific identification of the type and location of the records sought.

8. **Others authorized by commissioner or director.** Disclosure may be made to other persons authorized by the commissioner or the director to the extent that disclosure of such records is necessary to enable the person to conduct (i) reviews for the purposes of licensure or accreditation; (ii) hearings or investigations pursuant to these regulations; (iii) program evaluation; (iv) statistical reporting; or (v) similar activities approved by the commissioner or director.

9. **Preadmission, screening, treatment and discharge planning.** A facility may disclose information to a community services board for purposes of discharge and treatment planning to the extent permitted by § 37.1-98.2 of the Code of Virginia.

10. **Reporting statutes.** Disclosure may be made to the persons and to the extent required by any state or federal statute, including, but not limited to:

- a. Section 63.1-248.3 of the Code of Virginia (child abuse and neglect);
- b. Section 63.1-55.3 of the Code of Virginia (adult abuse, neglect or exploitation);
- c. Section 54.1-2906 of the Code of Virginia (misconduct and disorders of health professionals);
- d. Section 54.1-2907 of the Code of Virginia (disorders of health professionals);
- e. Section 54.1-2967 of the Code of Virginia (weapon wounds);

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f. Sections 32.1-36, 32.1-37 and 32.1-37.1 of the Code of Virginia (diseases listed by the Board of Health);

g. Section 32.1-59 of the Code of Virginia (venereal diseases of residents); and

h. Section 32.1-40 of the Code of Virginia (by request of Commissioner of Health).

§ 2.24. Except where disclosure is made pursuant to § 2.23 B, G or H above, whenever disclosure of a resident's records without consent is made, prior to that disclosure, or in the case of an emergency promptly afterward:

1. A written summary of the information subject to disclosure, the name of each recipient of that information, the purpose of the disclosure and the date of disclosure shall be prepared and made a permanent part of the resident's records;

2. Written notice of the disclosure, including the name of each recipient of the information and the nature of the information, shall be given to the resident whose records are involved in the disclosure and to his authorized representative; and

3. Any objections of the resident or of his authorized representative shall be given strong consideration, consistent with the resident's need for treatment, the need for the disclosure and the requirements of the law.

## Article 4. Consent.

§ 2.25. General Principles.

Each facility shall take affirmative steps as follows:

1. To assure that treatment is provided only in a manner which respects, protects and develops the ability of each resident to participate in all decisions affecting his treatment;

2. To obtain the resident's informed consent to any proposed treatment which involves the use of noxious stimuli or presents a significant risk to the resident, and which is not required on an emergency basis;

3. Whenever the resident lacks the capacity to make an informed decision to such treatment as described in subdivision 2 above, but does not object to the treatment, to obtain informed consent of the resident's authorized representative; and

4. To provide independent review of any treatment to which the resident objects, to assure that the treatment is in the resident's best interests and whether the resident lacks capacity to make a decision regarding that treatment.

§ 2.26. Provision applicable regardless of capacity or emergency.

A. Each resident shall be given the opportunity and assistance necessary to participate meaningfully, to the maximum extent permitted by his condition, in the planning of, and all other decisions affecting his treatment.

B. Whenever consistent with the treatment of other needs of the resident, and availability of resources, the facility shall comply with the stated preferences of the resident concerning any proposed treatment.

C. The staff shall document the efforts it has made to maximize the participation of the resident in treatment decision making and to ascertain the preferences of the resident concerning any proposed treatment. All consents to treatment shall be maintained in a separate section of the resident's records. Each facility shall maintain in a single file a record of all treatment that has been provided without consent on an emergency basis or under other authority.

§ 2.27. Informed consent and general requirements.

Except as provided in § 2.30 below, no treatment or course of treatment, including prescribed medications, which involves the use of noxious stimuli, or which presents a significant risk to the resident, may be initiated, administered or undertaken without the prior, informed consent:

1. Of the resident, if the resident has the capacity to make an informed decision regarding the risks and benefits of the proposed treatment; or

2. Of the resident's authorized representative, if the designated member of the treatment team and a physician or licensed clinical psychologist not involved in the treatment of the resident determines that the resident lacks sufficient capacity to make an informed decision regarding the risks and benefits of the proposed treatment, or that disclosure to the resident of material information concerning the proposed treatment would be seriously detrimental to the resident's condition. Such determinations shall be recorded and explained in the resident's records and shall be reviewed as the condition of the resident changes, but no less often than every 180 days.

§ 2.28. Mental Health Facilities.

In the absence of an authorized representative as defined in Part I, Article 1 of these regulations, the director may petition the court for authorization to provide treatment that presents significant risk, including treatment with antipsychotic medication, utilizing the procedures described in § 37.1-134 of the Code of Virginia, or may petition for the appointment of a guardian under any applicable guardianship statute.

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## § 2.29. Mental retardation facilities.

A. In the absence of an authorized representative as defined in Part I, Article 1 of these regulations, the treatment team may, with the approval of the director and in compliance with applicable federal regulations, implement a behavior modification plan which includes the use of antipsychotic medications when developed in accordance with Article 7 § 2.44 with only the approval of the LHRC.

B. In the absence of an authorized representative the director may petition the court for authorization to provide treatment involving significant risk, excluding treatment with antipsychotic medication, utilizing the procedures described in § 37.1-134 of the Code of Virginia or may petition for the appointment of a guardian under any applicable guardianship statute.

## § 2.30. Emergency treatment.

A. A proposed treatment may be initiated, administered or undertaken without the informed consent of the resident, or of his authorized representative, whenever a psychiatrist or the senior physician on duty determines upon personal examination or the examination of an RN that an emergency exists.

B. In the case of a resident who has been admitted within the last 10 days, who does not object to treatment by words or gestures, who lacks capacity to consent to treatment, and for whom an effort is currently being made to locate a person willing to serve as an authorized representative, treatment may be provided on an emergency basis.

C. A licensed health professional or licensed hospital may provide treatment for a physical injury or illness pursuant to § 54.1-2970 of the Code of Virginia when (i) no legally authorized guardian or committee is available to give consent, (ii) a reasonable effort is made to advise a parent or other next of kin of the need for the surgical or medical treatment, (iii) no reasonable objection is raised by the alleged incompetent patient, and (iv) two physicians state in writing that they have made good faith effort to explain the necessary treatment to the individual, and they have probable cause to believe that the individual is incompetent to consent to treatment by reason of mental illness or mental retardation and that delay in treatment might adversely affect recovery.

§ 2.31. Whenever the resident objects to a proposed treatment for which substitute consent has been obtained pursuant to § 2.27 B above, the resident may appeal to the director. If the director concurs with the decision of the designated member of the treatment team, the resident may petition the LHRC for a review of the determination of the director that the personal consent of the resident is not required. In conducting such a review, the LHRC may obtain an examination, at facility expense, by an independent mental health or mental retardation

professional whenever it deems such an examination to be necessary. If the LHRC does not concur with the director's determination, the director may submit the issue to the SHRC pursuant to the procedure in Part III, § 3.4 of these regulations.

## § 2.32. Electroconvulsive therapy.

No convulsive therapy shall be administered to any resident whether in the facility or elsewhere unless the Local Human Rights Committee has determined that valid informed consent has been obtained in accordance with the requirement of Part II, Article 4, § 2.9 or;

1. Valid informed consent has been obtained in accordance with the requirements of § 2.27 above and that a qualified psychiatrist not involved in the resident's treatment has concurred with the judgment of the treating psychiatrist that the treatment is indicated; or

2. Specific judicial authorization has been obtained pursuant to § 37.1-134 of the Code of Virginia or both judicial and guardian's authorization are obtained under any guardianship statute of this or other state.

## § 2.33. Psychosurgery.

Psychosurgery shall not be performed on any resident.

## § 2.34. Research.

No facility shall use a procedure, involving significant risk, which is not commonly accepted as a treatment of the person's condition or which is not supported by accepted scientific studies, without complying with applicable laws, regulations, or policies governing experimental or investigational research.

§ 2.35. Except in an emergency situation, no surgical procedure shall be performed on any resident, in the facility or elsewhere, without the prior determination by an independent reviewer, designated by the director, that consent has been obtained in accordance with this article, unless a court has authorized such surgical procedure in accordance with § 37.1-134 of the Code of Virginia. After consultation with the LHRC, the director shall establish policies or guidelines for designating the independent reviewer. These guidelines shall take into account the seriousness of the risks presented by the various surgical procedures that are likely to be undertaken in the facility.

§ 2.36. No facility shall use a procedure, involving a significant risk, which is not commonly accepted as a treatment of the person's condition or which is not supported by accepted scientific studies, without complying with applicable laws, regulations, or policies governing experimental treatment or human research.

Article 5.  
Dignity.

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§ 2.37. A. Respect for the personal dignity of residents as human beings requires that each resident be assured certain rights, specified in § 2.38 below, which may not be denied, restricted or otherwise abridged by the facility solely because of the resident's condition or his need for treatment.

B. Each facility has the duty to take affirmative steps as follows:

1. To support and protect each resident's right to exercise his fundamental human, civil, constitutional and statutory rights including those rights provided for herein;
2. To assure that no resident is denied admission to a facility, or access to treatment therein, or has his rights restricted on the grounds of race, religion, ethnicity, age, sex or handicap, except as required by law or insofar as appropriate treatment requires restriction of all or part of any facility to residents of the same sex, or similar age, mental handicap or legal status; and
3. To assure that the personal dignity of every resident is recognized and respected.

§ 2.38. The following rights of residents shall be assured and protected and shall not be denied, restricted or otherwise abridged, except as specifically authorized herein:

1. The right to be called by his preferred legal name;
2. The right to be protected from harm, abuse and exploitation;
3. The right to a nutritionally adequate, varied and appetizing diet prepared and served under sanitary conditions and served at an appropriate temperature;
4. The right to a safe, sanitary and humane physical environment, including but not limited to:
  - a. Residential accommodations affording reasonable privacy and private storage space;
  - b. Operating toilets, lavatories, showers and tubs that are adequate in number and design and that afford privacy;
  - c. Direct outside air ventilation provided by an operable window or air conditioner;
  - d. Windows or skylights in all major areas used by residents; and
  - e. Clean air, free of noxious odors;
5. The right to comfortable, clean and seasonable suitable clothing appropriate to the age and size of the resident, for the exclusive use of the resident, and in

sufficient quantity to allow the resident to be dressed in such clothing at all times provided, however, that:

- a. The facility need only provide a resident with such clothing if the resident is unable otherwise to obtain it, in which case the cost of the clothing may be added to the cost of treatment subject to reimbursement; and
- b. The use of such clothing may be restricted if specifically ordered by the same person and for the same period or shorter, who orders seclusion if the resident is provided with alternative clothing adequate for warmth and modesty;
6. The right to apply for, and to receive assistance in applying for and making full use of, any public service or benefit to which the resident may be entitled, including, but not limited to, educational or vocational services, housing assistance, welfare benefits, benefits or services under Titles II, XVI, and XIX of the Social Security Act and services from a legal aid society;
7. The right to communicate in confidence with any person by mail or telephone, and to be assisted in exercising this right subject to the following conditions and limitations:

- a. Whenever an employee has probable cause to believe that mail received by a resident contains contraband or anything that would create a danger to the resident, including elopement and injury to self or others, the mail may be opened by the employee in the presence of the resident and the advocate;
- b. Upon request, an indigent resident is entitled to sufficient letter-writing material and postage to mail one letter per day or the equivalent;
- c. Upon request, and subject to appropriate management limitations, a resident is entitled to make, without charge, collect or local telephone calls from a telephone within the facility, provided such calls do not result in additional cost to the facility; and
- d. Nothing herein shall obligate the facility to assist in the perpetration of or to refrain from reporting or otherwise intervening to prevent any criminal act;
8. The right to communicate or consult in private with any lawyer, judge, legislator, ordained clergyman, licensed health care practitioner, the resident's authorized representative or the advocate who visits the resident; provided, however, that whenever a physician or doctoral level psychologist believes that such access will create a danger to the visitor, the communication may be prohibited or restricted unless the visitor has been informed of the danger involved

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and has agreed to hold the state harmless for any injury sustained by the visitor during the visitation.

a. In the case of a minor resident whose parent with legal custody has consented to the admission of the minor, where such parent objects to the resident's consultation with any of the aforementioned individuals, the parent may withdraw consent and obtain the discharge of the resident.

b. In the case of a minor resident whose parent with legal custody has not consented to his admission, where such parent objects to the resident's consultation with any of the aforementioned individuals, the parent may request a written report from the director on the impact of such consultations on the resident's treatment; and

9. The right to attend or refuse to attend any religious services held on the premises of the facility and to engage in any recognized religious practice, including refusal of treatment or other services, provided that such services or practice neither present a danger of bodily injury to the resident or others, nor interfere with the rights of other residents under this subdivision.

a. In the case of a minor resident whose parent with legal custody has consented to the admission of the minor, such parent shall be permitted to withdraw his consent and obtain the discharge of a child to whose religious practices the parent objects.

b. In the case of a minor whose parent with legal custody has not consented to his admission, where such parent objects to the minor's religious practices, the parent may request a written explanation from the facility of its determination that the religious practices neither present a danger of bodily injury to the resident or others, nor interfere with the rights of other residents.

## Article 6.

### Least Restrictive Alternative.

§ 2.39. A. All restrictive programs for residents shall be implemented in a dignified manner consistent with these regulations. Each resident shall be treated in that setting and under those conditions that are least restrictive of his physical and personal freedom while being consistent with his individual treatment needs and the safety of the resident and others. Any restriction of the resident's physical or personal freedom may be imposed only in accordance with the procedures described herein. Behavior modification, restraint, seclusion, time out and separation may be imposed only in accordance with both the provisions of this section and the provisions of the following sections.

B. Each facility shall establish policies and procedures

for restrictive treatment and behavior management including basic principles, limitations on restrictive programs, staff who may authorize use of such programs and monitoring systems. The facility's written plan for restrictive treatment or behavior management programs with restrictive techniques as a component shall:

1. Be directed to maximizing the habilitation or rehabilitation, growth and development of the resident by incorporating a hierarchy of least to most restrictive methods and emphasizing positive approaches;
2. Be available in each program area and living area;
3. Be available to all residents and their authorized representatives;
4. Define the conditions under which restrictive treatment or behavior management programs may be used, the staff members who may authorize their use and a mechanism for monitoring and controlling their use including the records to be maintained; and
5. Be approved by the LHRC.

§ 2.40. Freedoms which may be restricted only in accordance with the procedures specified herein include but are not limited to:

1. Freedom of movement within the facility and its grounds;
2. Freedom to communicate, associate and meet privately with anyone the resident chooses;
3. Freedom to keep and use personal clothing and other personal items;
4. Freedom to possess and spend personal funds;
5. Freedom to view, hear or receive television, radio, books and newspapers whether privately owned or in a convenient library or day-room;
6. Freedom to make purchases in canteens, vending machines or stores selling a basic selection of food and clothing; and
7. Freedom to use recreational facilities and enjoy the outdoors.

§ 2.41. On admission each resident is entitled to enjoy all freedoms of everyday life which are consistent with the resident's need for care and protection and the need of others to be protected from the resident and which do not interfere with the resident's treatment or the treatment of other residents. Restrictions necessitated by the resident's treatment or habilitation needs should be assessed and ordered on an individualized basis. Restrictions necessitated by the resident's need for care and protection,

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the need to protect others, the treatment or habilitation needs of others and for administrative or fiscal reasons may be imposed through general rules approved under Part II, Article 11 of these regulations.

## § 2.42. Restrictions for individual treatment.

Individual restrictions for treatment needs may be imposed and removed in accordance with the following:

1. No restriction of the resident's physical or personal freedom may be imposed unless the designated member of the treatment team has:

a. Assessed all possible alternatives to the proposed restriction, taking into account such factors as the resident's condition, behavior, preferences, nursing and medication needs and level of functional dependence;

b. Determined that the proposed restriction is necessary for effective treatment of the resident or that it is necessary to protect the resident or others from personal injury; and

c. Documented the specific reasons for the imposition of the restriction.

2. Whenever any restriction of the resident's personal or physical freedom is imposed, the resident and the advocate shall be notified of the restriction, the criteria for removal of the restriction, and the resident shall be notified of the right to an impartial review of the permissibility of the restriction pursuant to Part III of these regulations.

3. Every restriction on personal or physical freedom shall be reviewed by a professional member of the treatment team at least every 30 days and by the designated member of the treatment team at least every 90 days. If it is determined by the reviewer that such restriction is no longer necessary, it shall be removed.

4. No restriction shall be placed on the physical or personal freedom of any resident solely because criminal or delinquency charges are pending against that resident, unless the facility has been ordered to impose such restriction by a court, or is otherwise required by law to impose such a restriction.

## Article 7.

### Restrictive and Intrusive Behavioral Programs.

§ 2.43. Restrictions may be implemented as part of a restrictive behavioral program only if the program has been developed by the designated member of the treatment team as part of the resident's individualized treatment plan and approved by the LHRC. The program shall include:

1. A statement of the lack of success of all other less restrictive programs and a rationale for using this program;

2. A description of the specific intervention to be employed, including objective criteria for implementing the intervention and objective criteria for terminating the intervention;

3. The objectives;

4. An objective baseline of the maladaptive behavior;

5. A procedure for charting the behavior and the application of the interventions;

6. A specified time limit for the program, not to exceed six months without approval of the Behavior Management Committee;

7. A method for evaluating the program, to include review by a designated member of the treatment team at least every 30 days;

8. A provision for positive reinforcement of behavior that is incompatible with the maladaptive behavior;

9. An identification of the persons who are to implement the program and the training they are to receive or have received which is relevant to the success of the program;

10. A full disclosure to the resident or his authorized representative of the program and consent from the resident or his authorized representative to any treatment presenting a significant risk;

11. Documentation of approval, where required, by the resident or his authorized representative;

12. Documentation of approval by the treatment team and the Behavior Management Committee;

13. Documentation of notification of the advocate; and

14. Documentation of the approval of the director and review by the LHRC.

§ 2.44. In the event that a program calls for the use of restrictive techniques exceeding 60 consecutive minutes, documented approval of the SHRC must also be obtained.

§ 2.45. In reviewing the program, the LHRC, or if applicable the SHRC, shall consider whether the proposed program does not involve a greater risk of physical or psychological injury or discomfort to the resident than the behaviors that the program is designed to modify or manage, whether all less intrusive procedures have been tried without success, whether more appropriate behaviors are being positively reinforced, and whether a physician has certified that, in his opinion, the program will not

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endanger the health of the resident.

§ 2.46. No facility shall initiate any behavior modification plan involving intrusive aversive therapy for any resident unless the LHRC has determined that the resident or his authorized representative has made an informed decision to undertake the therapy and, in the case of a minor who is capable of making an informed decision, that the concurrent consent of the parent has been obtained.

## Article 8.

### Restraints and Protective Devices.

§ 2.47. Whenever the use of restraint is ordered as part of a resident's ongoing treatment, this order shall be included in the individualized plan. Such orders shall include:

1. The justifications and purposes for using restraint and the reasons for preferring it to less restrictive procedures; and
2. Provision for, and accompanying documentation of, schedules for physical checks and opportunities for motion, exercise and personal hygiene.

§ 2.48. Physical (personal) restraints may be used only to control behavior that presents an immediate danger to persons or property. Physical restraints shall be used with the highest regard for the safety and dignity of residents and, except in emergencies, only as part of a program that includes less restrictive ways of providing treatment or teaching acceptable behavior.

§ 2.49. Mechanical restraints shall not be used unless other less restrictive techniques have been considered and found insufficient to control maladaptive behavior that is self-injurious, aggressive, a major disruption to the therapeutic environment, or presents a danger to person or property.

§ 2.50. Any order for restraint may be made only by a physician or a doctoral level psychologist (or in a mental retardation facility by a master's level psychologist). The order may be made only after personal observation of the resident by the person writing the order or by a registered nurse and must be based on a finding that the episodes or situation require restraint in accordance with the written policies developed by the facility. When such an order is written by a nonphysician, that person shall ascertain the resident's need for medical examination and request such medical attention if indicated. A physician shall, in any case, make a daily review of all incidents of restraint. Each order shall be for no more than eight hours.

§ 2.51. In extreme emergency situations in which it is likely that a resident could harm himself or others and in which less restrictive interventions are not feasible, the resident may be restrained by any staff member for up to one hour. By the end of one hour, an order shall have

been obtained in conformity with this article.

§ 2.52. The physical and psychiatric condition of each resident placed in restraint shall be monitored at least every 15 minutes by an appropriately trained employee designated by the director for this specific purpose. The resident shall have bathroom privileges according to his needs.

§ 2.53. Each resident whose condition requires restraint for more than three consecutive eight-hour periods shall have the opportunity to bathe at least every 24 hours during the period of each restraint.

§ 2.54. In every instance when a resident has been in restraint for a period of 24 continuous hours, or for 24 hours within any one 72-hour period, the designated member of the treatment team shall within three additional hours notify the advocate in writing of the name of the resident, the reasons for restraint or such other information as the advocate may require.

§ 2.55. Each resident whose condition requires restraint shall have an opportunity to eat at least at the times that other residents normally have their meals and shall be offered fluids at least every hour while awake.

§ 2.56. The use of protective devices shall be subject to the following procedures:

1. The initial order shall be made by a physician after physical observation of the resident. For new admissions, orders shall be renewed weekly for the first month. Thereafter, orders shall be renewed every 30 days or at the time of any change in the condition of the resident.
2. Physical observation by an appropriately trained staff member shall be made every 30 minutes when the device used is one which could cause circulatory problems. Documentation of this observation shall be made every eight hours. Periodic removal for motion and exercise shall be prescribed according to the resident's treatment plan. Bathroom privileges, food and fluids shall be assured according to need. The resident shall have the opportunity to bathe at least every 24 hours.

§ 2.57. The use of geriatric feeding chairs during mealtimes for no more than one hour, of chair belts on potty chairs for no more than 30 minutes, and of bedside rails shall be prescribed and monitored in accordance with standard nursing procedures. Their use may be ordered by a physician or registered nurse after physical observation by the physician or registered nurse, and such orders shall be renewed monthly.

## Article 9. Seclusion.

§ 2.58. Whenever the use of seclusion is ordered as part

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of a resident's ongoing treatment, this order shall be included in the individualized plan. Such order shall specify:

1. The justifications and purposes for using seclusion and the reasons for preferring it to less restrictive procedures; and
2. Provision for, and accompanying documentation of, schedules for physical checks and opportunities for motion, exercise and personal hygiene.

§ 2.59. An order for seclusion may be made only by a physician. Seclusion may not be ordered in a mental retardation facility. The order may be made only after personal observation of the resident by the person writing the order or by a registered nurse and shall be based on a finding that the episodes or situation requires seclusion in accordance with the written policies developed by the facility under Article 6 above. When such order is written by a nonphysician, that person shall ascertain the resident's need for medical examination and request such medical attention if indicated. A physician shall, in any case, review daily all incidents of seclusion. Each order shall be for no more than eight hours.

§ 2.60. In extreme emergency situations in which it is likely that a resident could harm himself or others and in which less restrictive interventions are not feasible, the resident may be secluded by any employee for up to one hour. By the end of one hour, an order shall have been obtained in conformity with this article.

§ 2.61. The physical and psychiatric condition of each resident placed in seclusion shall be monitored at least every 15 minutes by an appropriately trained employee designated by the director for this specific purpose. The resident shall have bathroom privileges according to his needs.

§ 2.62. Each resident whose condition requires seclusion for more than three consecutive eight-hour periods shall have the opportunity to bathe at least every 24 hours during the period of each seclusion.

§ 2.63. In every instance when a resident has been in seclusion for a period of 24 continuous hours, or for 24 hours within any one 72 hour period, the designated member of the treatment team shall, within three additional hours, notify the advocate in writing of the name of the resident, the reasons for seclusion or such other information as the advocate may require.

2.64. Each resident whose condition requires seclusion shall have an opportunity to eat at least at the times that other residents normally have their meals and shall be offered fluids at least every hour while awake.

### Article 10. Time Out and Separation.

§ 2.65. Whenever the use of time out or separation is ordered as part of a resident's ongoing treatment, this order shall be included in the individualized plan. Such order shall specify:

1. The justifications and purposes for using time out or separation and the reasons for preferring it to less restrictive procedures; and
2. Provision for, and accompanying documentation of, schedules for physical checks and opportunities for motion, exercise and personal hygiene.

§ 2.66. In extreme emergency situations in which it is likely that a resident could harm himself or others and in which less restrictive interventions are not feasible, the time out or separation may be implemented by any employee for up to one hour. This period can be extended for a total of one additional hour only through the order of a physician, psychologist, director or his designee.

### Article 11. General Rules of Resident Conduct.

§ 2.67. Notwithstanding the foregoing provisions of Articles 6 through 10, the freedom of residents may be restricted by rules of conduct designed to maintain an orderly, safe and therapeutic environment when such rules are generally applicable to groups of residents and have been approved by the LHRC in advance of their applicability or, in the event of an emergency, as soon as possible after implementation of such rules.

1. Restrictions imposed under this section shall be applied equally to all similarly situated residents, e.g., all residents in a facility or on a ward, subject to the provision of subdivision 2 below.

2. A determination by the designated member of the treatment team shall be made in the case of each resident that application of these restrictions will not impair the quality of services provided to the resident nor unnecessarily limit the resident's freedom.

3. Residents shall be informed and educated to the maximum extent possible regarding any responsibilities imposed by these generally applicable rules.

4. Consistent with the other requirements of these regulations, rules of general applicability may permit the participation of residents in their for mulation and application. Residents may not discipline other residents, except as part of an organized self-government program that is conducted in accordance with a written policy that has been approved by the LHRC.

5. Restrictions imposed under this section shall not include restrictions imposed as part of a resident's individualized treatment program, including prescribed milieu therapy.

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## Article 12. Work.

### § 2.68. Each facility shall take affirmative steps:

1. To assure that no resident is required, enticed, persuaded or permitted to perform labor, other than personal maintenance or personal housekeeping, unless such labor is performed voluntarily and is consistent with his individualized treatment program, and that the resident is compensated fairly;
2. To consider for employment qualified residents on an equal basis with other job applicants and employees, after making reasonable modifications in the nature of the employment for each physically or mentally handicapped applicant or employee; and
3. To educate the residents and employers in the catchment area of the facility regarding the laws and policies affecting the employment of handicapped persons.

### § 2.69. Each facility shall comply with the following minimum standards:

1. The facility shall not withhold or terminate treatment because of the refusal of a resident to perform any labor, including personal maintenance or personal housekeeping.
2. No resident may be required, enticed, persuaded or permitted to perform labor, other than personal maintenance or personal housekeeping, unless he has entered into a written agreement to do so and has the capacity to enter into such an agreement to do the proposed labor, and unless the designated member of the treatment team has determined that the proposed labor is consistent with his individualized treatment program.
3. No resident shall be paid less than the state minimum wage, or less than is paid to any other employee in the same job classification, whichever is greater, without prior approval from the LHRC, or on appeal, the SHRC.

a. Approval of a reduced wage shall be based on proof by the facility that the proposed wage bears the same relation to the wage which the resident would otherwise be entitled to receive as his economic productivity bears to the productivity of the typical employee who is not a resident, and is in no event less than 25% of that typical employee's wage unless appropriate authorization has been received from the Department of Labor.

b. Any interested party may file a complaint regarding a reduced wage in accordance with the procedures set forth herein.

c. No deduction for the cost of treatment or for expenses related to job modification shall be made from the wage of a resident, provided that reimbursement for the costs of treatment may be sought by the department in accordance with its usual practices.

## Article 13. Presumption of Legal Capacity.

§ 2.70. Except as otherwise provided by state or federal law, no person shall be denied legal rights, privileges or benefits, or be presumed to lack legal capacity solely by virtue of being voluntarily admitted or certified, or involuntarily committed to a facility operated by the department. Such legal and civil rights include, but are not limited to, the following:

1. The right to dispose of property;
2. The right to execute legal instruments;
3. The right to make purchases;
4. The right to enter into contractual relationships;
5. The right to register and vote;
6. The right to marry and to obtain a separation, divorce or annulment;
7. The right to hold a professional, occupational or vehicle operator's license;
8. The right to make a will; and
9. The right of access to legal counsel.

## Article 14. Research.

§ 2.71. Research involving resident subjects shall be conducted in compliance with §§ 37.1-234 through 37.1-237 of the Code of Virginia with regulations promulgated pursuant to § 37.1-238 of the Code of Virginia and with all applicable federal laws and regulations.

1. If a facility action is governed by any of the foregoing laws, it shall also be governed by them with respect to matters of consent and confidentiality, except that if the facility action meets the definition of experimental or investigational research, it shall require the consent of the resident or a judicially-appointed guardian of the resident.

2. If a facility action does not meet the definition of experimental or investigational research, and does not meet the applicable definitions of research under the foregoing laws, it shall be governed by these regulations as a facility action not involving research.

## PART III. REMEDIES.

### Article 1. General Provisions.

§ 3.1. Each resident is entitled to a speedy and impartial review of alleged violations of the rights assured under these regulations.

§ 3.2. The information gathered or disclosed during the course of such review shall be strictly confidential and shall not be disclosed to any person except to the extent necessary to conduct the review according to the procedures specified in this section, and except to the extent that disclosure is otherwise required by law. Conferences conducted during the review shall be closed to the public, unless the complainant requests that any such conference be open or unless an open hearing is required by the Virginia Freedom of Information Act, § 2.1-343 of the Code of Virginia. The conference shall also be closed to the public if, in the judgment of the LHRC, the conference must be closed to protect the confidentiality of residents or employees who are not parties to the conference.

§ 3.3. Each resident shall have the right of access to legal counsel of his own choice and at his own expense. Each resident shall be allowed to visit with counsel on the grounds of the facility. Each resident who cannot afford or is otherwise unable to retain private counsel shall be informed of the existence and location of the legal aid office and shall be afforded assistance, if needed, in contacting that office.

§ 3.4. The parties to a complaint filed by a resident are the resident and the director, both of whom may be represented by others. Where the LHRC acts without a complaint having been filed, the director, if so authorized by the commissioner, may appeal the LHRC recommendation to the SHRC. Whenever a resident who has not previously filed a complaint alleges that implementation of a LHRC recommendation would violate his rights, he must first file a complaint with the LHRC and there after pursue an appeal to the SHRC.

### Article 2. Procedures for Handling Complaints.

§ 3.5. When any resident believes that his rights have been violated or are likely to be violated in the immediate future, he may present his complaint to the advocate, who shall reduce it to writing. In the event that the resident is unable, for whatever reason, to initiate a complaint on his own behalf, the advocate, parent or authorized representative of the resident, or any other interested party may do so on his behalf.

§ 3.6. The advocate shall meet with the resident and, where applicable, the resident's chosen representative and may meet with other persons involved as he considers

necessary. He shall attempt to remedy the complaint by informal methods.

§ 3.7. No action shall be taken or threatened by anyone for the purpose of punishing or retaliating against any resident, advocate, employee or other interested party for presenting a complaint hereunder or for providing assistance to the complaining party.

§ 3.8. If the complaint cannot be resolved by informal methods, or if the resident or his chosen representative is otherwise dissatisfied with its resolution, then either of those persons or the advocate may request a conference before the LHRC by filing a request for conference with the chairperson of the LHRC. A request for a conference shall be in writing and shall contain a description of the facts surrounding the alleged violation, references to any provisions of those regulations which might have been violated, and any other information the LHRC considers appropriate. The resident may be assisted by the advocate or by any person of his choice. If the resident chooses a person other than the advocate to assist him, he and his chosen representative may request the advocate's assistance in filing the request for a conference. Immediately upon receipt, the chairperson of the LHRC shall forward a copy of the request for conference to the director, to the persons allegedly responsible for the alleged violation and, if necessary, to the advocate. The alleged violators shall also have the right to file a written statement with the LHRC.

§ 3.9. The LHRC shall hold a fact-finding conference within 15 working days after the receipt of a request for conference. The parties at such a conference shall be the resident and the director. The LHRC chairperson shall give the parties at least five working days' notice of the conference. At the conference, the parties shall have the right to present witnesses and other evidence and shall have an opportunity to be heard. Conferences shall be conducted according to the procedures set forth in § 9-6.14:11 of the Code of Virginia

§ 3.10. Not later than 15 working days after the completion of the conference, the LHRC shall submit in writing to the director and to other parties to the conference its findings of fact and its recommendations. Whenever appropriate, the LHRC shall identify information which it believes the director should take into account in making decisions concerning discipline or termination of personnel at the facility. The director shall then outline in writing the actions he plans to take in response to the recommendations of the LHRC and shall forward this action outline to the LHRC and to all parties to the conference not later than five working days after the LHRC has submitted its findings, and recommendations. The director's action outline shall be considered the final resolution of the complaint unless the complainant or the LHRC objects in writing within five working days after its submission to the LHRC and to the parties. In the event of such objection, the LHRC may direct that the director defer his proposed action until completion of the review

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process specified here under. If so directed by the LHRC, the director may request permission from the commissioner to implement the action outline pending completion of the review process hereunder.

§ 3.11. When the advocate concludes, after his initial investigation, that there is a substantial risk that serious and irreparable harm to a resident will result if the alleged violation of rights is not remedied immediately, he shall so inform both the director and the LHRC. The LHRC shall hold a preliminary fact-finding conference within 48 hours of its receipt of this information. The director and the advocate shall attend the conference, which shall be conducted as outlined above. The LHRC shall make preliminary findings and, if a violation is found, shall make provisional recommendations to the director immediately after this conference. The director shall formulate and implement his action outline within 48 hours of receiving the LHRC's recommendations; provided, however, that he shall not implement the outline if the complainant objects to such implementation. If any party objects to the LHRC's preliminary recommendations or to the director's initial action outline, the LHRC shall conduct a full fact-finding conference according to the procedures outlined. However, the fact that a full LHRC conference is going to be held shall not prevent the director from implementing his action outline prior to that conference, unless the complainant objects thereto.

§ 3.12. The LHRC on the motion of any party or on its own motion may, for good cause, extend any of the foregoing time periods either before or after the expiration of that time period.

### Article 3. Appeals.

§ 3.13. A. If the complainant is not satisfied with the findings of fact or recommendations of the LHRC or if he is not satisfied with the action outline of the director in response to the LHRC recommendations, and if he has filed objections within the time period specified in § 3.10 above, he may request a review by the SHRC. The request for review must be filed within 15 working days of the adverse decision of which the resident complains and shall include the complete record before the LHRC and shall detail his objections and reasons therefor. Any further statement the complainant or the director may wish to make must be filed at least five working days prior to the conference scheduled under § 3.15 below. Responses to such statements, if desired, must be filed at least two days prior to the conference. The request for review shall be filed in the same manner as with the LHRC, and a copy thereof shall be forwarded by the complainant to the director and other interested persons.

B. If the director is not satisfied with the findings of fact or recommendations of the LHRC, and if a written objection has been filed to his action outline, he shall notify the commissioner and file a request for SHRC review within 15 working days of receipt of the written

objection, including the complete record before the LHRC and stating in detail his objections to the LHRC finding or recommendations. The director shall forward a copy of the request for review to the complainant, and both parties shall have the right to file a written statement with the SHRC at least five working days prior to the conference scheduled under § 3.15 below. Responses to such statements, if desired, must be filed at least two days prior to the conference.

§ 3.14. The party requesting the review shall be responsible for transmitting to the SHRC, at the time the request for review is filed, the complete record of the proceedings before the LHRC. When the SHRC is requested to review action on a complaint filed in accordance with these regulations, the record must, at a minimum, include:

1. The original complaint filed with the LHRC;
2. Portions of the resident's record which were considered by the LHRC, and such portions of the record considered by the party requesting the review to be relevant, but which the LHRC failed to consider;
3. All written documents and materials considered by the LHRC, including any independent evaluations which were conducted;
4. A tape or verbatim transcript of the proceedings before the LHRC;
5. The director's action outline; and
6. The written objections to the action outline.

§ 3.15. The SHRC shall hold a review conference within 30 working days after receiving a request for review. The parties shall be given at least 15 days' notice of the date of the review conference which may be held at the facility at which the violation is alleged to have occurred or at any other convenient site designated by the chairperson of the SHRC.

§ 3.16. A. Except as provided in subsection B below, the SHRC shall not take new evidence concerning the alleged violation, shall be bound by the LHRC's findings of fact, and shall limit its review to whether the facts, as found by the LHRC, establish a violation of these regulations. All parties shall have the opportunity to appear before the SHRC to present arguments and answer questions by the members of the SHRC. Any party wishing to argue that the facts were inadequately developed by the LHRC must provide clear and convincing evidence of such.

B. If the SHRC determines that the LHRC's findings of fact are clearly erroneous or that the fact-finding procedures employed by the LHRC were inadequate, the SHRC may, in its discretion, remand the case to the LHRC for another fact-finding conference to be completed within a time period specified by the SHRC, or the SHRC may

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conduct its own fact-finding conference. If the SHRC chooses to conduct its own fact-finding conference, it may designate a subcommittee of no less than three of its members to do so. Such a conference shall be conducted within 30 working days of the review conference pursuant to § 9-6.14:11 of the Code of Virginia. The parties shall be afforded 15 days' notice of the date of such a fact-finding conference and shall be given the opportunity to be heard and to present witnesses and other evidence.

§ 3.17. No later than 30 working days after the review conference conducted under § 3.16 A, or the fact-finding conference conducted under § 3.16 B, the full SHRC shall submit its report, its findings of fact, if applicable, and its recommendations to the commissioner, and copies thereof shall be sent to the LHRC and to the parties. Not later than 15 working days after the SHRC has submitted its recommendations, the commissioner shall outline in writing the action he proposes to take in response to the recommendations of the SHRC, shall explain why he declines to take any of the actions recommended by the SHRC, and shall forward this outline to the SHRC, the LHRC, the director and the complainant. If the SHRC objects, in writing, to the commissioner's proposed actions, the commissioner shall defer these actions and shall meet with the SHRC at its next regularly scheduled meeting to attempt to arrange a mutually agreeable course of action. The commissioner's eventual decision shall be final and binding on all parties; provided, however, that whenever, in the SHRC's opinion, the commissioner's decision is incompatible with the purpose of these regulations, it shall notify the board.

§ § 3.18. The SHRC on the motion of any party or on its own motion may, for good cause, extend any of the foregoing time periods either before or after the expiration of that time period.

## Article 3. Content of Recommendations.

§ 3.19. In making its recommendations, the LHRC and SHRC shall identify any rights which were violated and any practices or conditions which account for any such violations, and shall recommend actions for changing such practices or conditions and for preventing further violations of the rights assured under these regulations.

§ 3.20. If implementation of the recommendations of the LHRC or the SHRC cannot be achieved within a reasonable period of time, the LHRC or the SHRC, as the case may be, shall also recommend such interim action as it deems necessary to effect whatever immediate remedies are appropriate and possible.

## Article 4. Content of Action Outlines.

§ 3.21. Any action outline submitted by the director or the commissioner in response to recommendations of the LHRC or the SHRC, as the case may be, shall address and

respond to both the formal recommendations and interim recommendations made by the LHRC or the SHRC.

## Article 5. SHRC Reports.

§ 3.22. The SHRC shall notify the commissioner and the State Human Rights Director whenever it determines that its recommendations in a particular case are of general interest and applicability to directors, advocates or LHRCs. In such cases, the commissioner and the State Human Rights Director shall take necessary and appropriate steps to reproduce and distribute the opinion or report of the SHRC to the directors, advocates or LHRCs, as the case may be. To the extent practicable, the documents thereby distributed shall not identify the names of residents or employees involved in a particular case.

## PART IV. OFFICES, COMPOSITION, AND DUTIES.

### Article 1. Offices.

#### § 4.1. The Advocate:

1. Shall act, regardless of the position asserted by other interested persons, including the authorized representative, as the representative of any resident whose rights appear to have been violated unless such resident elects otherwise.

2. Shall be responsible for the management of an advocacy program for residents of the assigned facility.

3. Shall promote and monitor the assigned facility's compliance with these and other applicable human rights regulations and policies and shall conduct or participate in training for employees and residents regarding rights and advocacy functions.

4. May make recommendations to the director for changes in facility policies, procedures or practices which may adversely affect the rights of residents and shall inform the LHRC of any such recommendations.

5. With the advice of the LHRC, shall make recommendations to the commissioner or his designee concerning the appointment of assistant advocates and shall supervise assistant advocates or other employees to the extent that they have been designated to serve as advocates.

6. Shall investigate and examine any and all conditions or practices which may interfere with the free exercise of residents' rights.

7. Shall investigate and seek to prevent or to remedy any alleged rights violations by interviewing, advising and consulting with employees, including the director,

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and, if necessary, by filing a complaint with the LHRC either on behalf of a particular resident or, where general conditions or practices are deemed to interfere with residents' rights, by filing a complaint on behalf of a class of affected residents.

8. In the event a resident chooses the advocate to represent him, shall assist the resident during any conference, hearing or other procedure held pursuant to these regulations unless such resident who is capable of understanding elects otherwise. Shall, where the resident chooses a representative other than the advocate, consult with and assist such other representative during any conference, hearing or other procedure under these regulations upon request of the resident or the resident's representative.

9. Shall submit monthly reports to the State Human Rights Director and the LHRC on the implementation of these regulations and shall make such other reports as the State Human Rights Director may require.

10. Shall perform such other duties as are required under these regulations.

## § 4.2. The Board:

1. Shall promulgate regulations delineating the rights of residents in facilities operated, licensed or funded by the department.

2. Shall appoint members of the SHRC.

3. Shall review and approve the bylaws of the SHRC.

4. Shall perform such other duties as are required under these regulations.

## § 4.3. The Commissioner:

1. Shall determine the number and geographical boundaries of LHRCs and shall advise and consult with the SHRC in the appointment of members of LHRCs.

2. May, after consultation with the SHRC, establish any policies and procedures designed to implement these regulations.

3. Shall appoint the State Human Rights Director after consultation with the SHRC.

4. Shall appoint advocates following consultation with the State Human Rights Director and the applicable LHRC.

5. Shall cooperate with the SHRC and State Human Rights Director in investigating and remedying conditions or practices interfering with the free exercise of residents' rights.

6. Shall provide or arrange for provision of such technical and professional assistance and training necessary to implement and enforce these regulations.

7. Shall perform such other duties as are required under these regulations.

## § 4.4. The Director:

1. Shall take necessary and appropriate steps to assure compliance with all provisions of these regulations throughout the facility under his direction.

2. Shall cooperate with the advocate and the LHRC in investigating and remedying conditions or practices interfering with the free exercise of residents' rights, and shall assure that all employees of the facility cooperate with the advocate and the LHRC in the execution of their duties under these regulations.

3. Shall comply with any request by the SHRC, LHRC or advocate to provide any information and written reports regarding compliance with these regulations.

4. May submit applications for variances to the requirements of these regulations in accordance with the provisions set forth in Part V of these regulations.

5. Shall assure that residents or their authorized representatives are notified of rights protected by these regulations in accordance with Part II, Article 1 of these regulations.

6. Shall submit to the advocate for review and comment any proposed policies, procedures or programs which may affect resident rights. Unless immediate implementation is required, this information shall be submitted prior to implementation.

7. Shall provide the advocate unrestricted access to residents and resident records whenever the advocate or State Human Rights Director deems such access to be necessary.

8. Shall designate an employee to act as his representative to the LHRC, who shall provide the LHRC with suitable accommodations, clerical support and equipment, and who shall assure the availability of records and employee witnesses upon the request of the LHRC.

9. Shall perform such other duties as are required under these regulations.

## § 4.5. Employees:

1. As a condition of continued employment, shall cooperate fully with any investigation or conference conducted pursuant to these regulations by the director, advocate, LHRC or SHRC. Such cooperation

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shall include, but is not limited to, the provision by employees of statements or testimony under oath or affirmation.

2. Shall familiarize themselves with these regulations, comply with them in all respects and assist all residents with whom they have contact in understanding and asserting rights provided by these regulations.

## § 4.6. Local Human Rights Committees:

1. Shall consist of no fewer than seven members, appointed by the SHRC, with membership broadly representative of professional and consumer interests. No member shall be an employee of the department.

2. Unless otherwise specified by the SHRC, initial appointments to a LHRC established after the effective date of these regulations shall be staggered, with approximately 1/3 of the members to be appointed for a term of three years, approximately 1/3 for a term of two years, and the remainder for a term of one year. Thereafter, all appointments shall be for a term of three years. A person may be appointed to no more than two consecutive terms regardless of the length of the term. Interim appointments shall be for the remainder of the unexpired term.

3. Shall elect from their own memberships a chairperson who shall coordinate the activities of the LHRC and preside at regular committee meetings and at any conferences held under Part III of these regulations.

4. Shall conduct regular meetings and shall hold at least one such meeting per quarter year.

5. Shall receive complaints filed by or on behalf of residents in the assigned facility regarding alleged violations of residents' rights, and shall hold fact-finding conferences concerning such complaints according to the procedures in Part III of these regulations.

6. May, upon the request of the advocate, director or on their own initiative, review any existing or proposed policies, procedures or practices at the assigned facility which could affect or jeopardize the rights of one or more of the residents, and shall make appropriate recommendations to the director concerning modification of these policies, procedures or practices. In conducting such a review, LHRCs may consult with the advocate or any employee of the facility about such policies, procedures and practices and any actual or potential rights violations which they may produce.

7. Shall conduct investigations as requested by the SHRC.

8. Shall receive, review and make recommendations concerning applications for variances to these regulations filed in accordance with Part V of these regulations.

9. Shall advise and consult with the commissioner and the State Human Rights Director regarding the hiring of advocates at the assigned facility.

10. Shall have written bylaws which cover matters such as making recommendations to the SHRC concerning membership; electing the chairperson and other officers; designation of standing committees and their responsibilities; establishing ad hoc committees; the frequency of meetings; and the parliamentary procedures under which business will be conducted.

11. Shall perform such other duties as are required under these regulations.

## § 4.7. State Human Rights Committee:

1. Shall consist of nine members, appointed by the board, who are broadly representative of professional and consumer groups and of geographic areas in the state. All appointments after the effective date of these regulations shall be for a term of three years. Members may be appointed for no more than two consecutive terms regardless of the length of the term. In the event of a vacancy, interim appointments may be made for the remainder of the unexpired term. No member shall be an employee of the department.

2. Shall elect a chairperson from its own membership who shall coordinate the activities of the SHRC and preside at meetings. The chairperson shall have direct access to the commissioner and the board in carrying out these duties.

3. Shall appoint members of LHRCs with the advice and consultation of the commissioner, the State Human Rights Director, the LHRC and the appropriate facility director, and shall advise and consult with the commissioner in the appointment of the State Human Rights Director.

4. Shall conduct regular meetings and shall hold at least one such meeting per quarter year.

5. Shall review decisions of LHRCs and, if appropriate, hold fact-finding conferences and make recommendations to the commissioner and the board regarding alleged violations of residents' rights pursuant to the procedures specified in Part III of these regulations.

6. Shall grant or deny variances in accordance with the procedures specified in Part V of these regulations.

7. Shall receive, coordinate and evaluate any suggested

# Proposed Regulations

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revisions of these regulations and shall recommend proposed revisions to the board.

8. Shall review all pertinent existing or proposed departmental instructions, regulations and standards to ensure the protection of residents' rights and shall make recommendations to the commissioner concerning revisions of such instructions.

9. Shall review the scope and content of training programs designed to promote responsible performance of the duties assigned under these regulations to employees, advocates and LHRC members. Where appropriate, the SHRC may make recommendations to the commissioner.

10. Shall monitor and evaluate the implementation and enforcement of these regulations and shall make any necessary and appropriate recommendations to the board, the commissioner and the State Human Rights Director.

11. May recommend to the commissioner guidelines or opinions concerning the interpretation of these regulations upon the request of the LHRCs, the commissioner or upon its own initiative.

12. Shall submit a report on its activities to the board on or before August 31 of each year.

13. Shall have written bylaws which cover matters such as making recommendations to the board for membership; election of the chairperson and other officers; appointing members of LHRCs; designation of standing committees and their responsibilities; establishing ad hoc committees; the frequency of meetings; and the parliamentary procedures under which business will be conducted.

14. Shall review and approve the bylaws of LHRCs.

15. Shall perform such other duties as are required under these regulations.

## § 4.8. State Human Rights Director:

1. Shall monitor the implementation of the statewide human rights program and make recommendations to the commissioner, the SHRC and the LHRCs concerning improvements in the program.

2. Shall advise the commissioner concerning the appointment and retention of the advocates.

3. Shall consult with and advise directors and LHRCs concerning their responsibilities under these regulations and other applicable laws, regulations and departmental instructions concerning the protection of human rights.

4. Shall organize and coordinate training programs

designed to promote responsible performance of the duties assigned under these regulations to employees, advocates and members of the SHRC and the LHRCs.

5. Shall conduct periodic visits to facilities to assure free exercise of residents' rights.

6. Shall supervise advocates in the performance of their duties under these regulations.

7. Shall provide any necessary support to the SHRC and the LHRCs in carrying out their duties under these regulations.

8. Shall perform such other duties as are required under these or other applicable regulations.

## PART V. VARIANCES AND REVIEW PROCESS.

### Article 1. Variances.

§ 5.1. A variance to the requirements imposed on any facility by these regulations may be granted by the SHRC upon application by the director, if approved according to the following procedures:

1. After obtaining the approval of the commissioner or his designee and after notifying the advocate and other interested parties, the director shall file with the LHRC a formal application which states his reasons for seeking the variance and which includes a substitute rule or procedure which will substantially accomplish the protective objectives of the regulation to which a variance is requested.

2. Upon receipt of an application for a variance, the LHRC shall invite oral or written statements by the advocate and other interested persons.

3. At its next regularly scheduled meeting following receipt of an application for a variance, the LHRC shall render, in writing, a report outlining the relevant facts, recommending approval, modifications or disapproval of the application, and stating in detail the reasons for its recommendation. A copy of this report shall be sent to the director, the advocate, the SHRC and the commissioner. A copy of the original application shall also be sent by the LHRC to the SHRC.

4. Upon receipt of an application for a variance, the SHRC shall invite oral or written statements by the director, the advocate, the LHRC and other interested persons.

5. At its next regularly scheduled meeting following receipt of an application for a variance, the SHRC shall render, in writing, a decision deferring, disapproving, modifying or approving the application,

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and stating its reasons for its decision. A copy of this decision shall be sent to the director, the advocate, the LHRC and the commissioner.

6. A decision of the SHRC granting variances shall be final. A decision of the SHRC denying variances shall be final unless the commissioner notifies the SHRC and the board within 10 days that he has determined that the variance is necessary to protect the safety or welfare of an individual resident or to establish or maintain minimum standards of safe and humane care at the facility.

## BOARD OF NURSING

**Title of Regulation:** VR 495-01-1. Board of Nursing Regulations.

**Statutory Authority:** § 54.1-2400 and 54.1-3005 of the Code of Virginia.

**Public Hearing Date:** August 24, 1989.  
(See Calendar of Events section for additional information)

### Summary:

The Virginia General Assembly at its 1989 session adopted a bill that amended §§ 38.2-3031, 38.2-4221, 54.1-3000, and 54.1-3013 of the Code of Virginia. The first two changes provide for reimbursement for certain services by a clinical nurse specialist who renders mental health services. The remaining three amendments define clinical nurse specialist and authorize the Board of Nursing to (1) prescribe minimum standards and approve programs that entitle professional nurses to be registered as clinical nurse specialists; (2) promulgate regulations governing clinical nurse specialists; and (3) maintain a registry of clinical nurse specialists.

In March, 1989, the Board of Nursing appointed an advisory committee of three clinical nurse specialists to meet with representatives of the Board for preliminary discussion of the education and practice of clinical nurse specialists. Following publication of the Notice of Intended Regulatory Action, the Board at its regular meeting on May 24, 1989, considered one written comment and heard comments from members of the advisory committee and others present on regulations for clinical nurse specialists. The Board then developed and adopted the proposed new and amended regulations and directed staff to proceed with the appropriate steps in the process of promulgation of regulations.

The proposed new and amended regulations will be found in the following sections of the Board of Nursing Regulations:

§ 1.1. Definitions

§ 1.3. Fees

§ 2.5. Clinical Nurse Specialist Education Program

§ 3.10. Clinical Nurse Specialist Registration

§ 3.11. Clinical Nurse Specialist Practice

§ 4.1.B. Unprofessional Conduct

§ 4.2. Impact of Section of Registered Nurse on Clinical Nurse Specialist Registration.

All relevant documents are available for inspection in the office of the Board of Nursing, 1601 Rolling Hills Drive, Richmond, Virginia 23229. Telephone (804) 662-9909.

## PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

"Approval," as used in these regulations, is synonymous with accreditation and means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, State Council of Higher Education or an Act of the General Assembly.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, the State Council of Higher Education or an Act of the General Assembly.

"Board" means the State Board of Nursing.

"Clinical nurse specialist" means a licensed registered nurse who holds a master's degree from a board approved program and specialist certification from the American Nurses' Association in one of the following categories:

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- Gerontological Nursing;
- Medical-Surgical Nursing;
- Adult Psychiatric and Mental Health Nursing; or
- Child and Adolescent Psychiatric and Mental Health Nursing.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in § 2.2 of these regulations.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure, offered by a Virginia school, that leads to a diploma or certificate in practical nursing, provided the school is authorized by the appropriate governmental agency.

"Program director" means a registered nurse who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

## § 1.2. Delegation of authority.

A. The executive director of the board shall issue a certificate of registration to each person who meets the requirements for initial licensure under §§ 54.1-3017, 54.1-3018, 54.1-3020 and 54.1-3021 of the Code of Virginia. Such certificates of registration shall bear the signature of the president of the board, the executive director and the director of the Department of Health Regulatory Boards.

B. The executive director shall issue license to each applicant who qualifies for such license under § 54.1-3011 of the Code of Virginia. Such licenses shall bear the name

of the executive director.

C. The executive director shall be delegated the authority to execute all notices, orders and official documents of the board unless the board directs otherwise.

## § 1.3. Fees.

Fees required in connection with the licensing of applicants by the board are:

1. Application for R.N. Licensure ..... \$45
2. Application for L.P.N. Licensure ..... \$35
3. Biennial Licensure Renewal ..... \$28
4. Reinstatement Lapsed License ..... \$50
5. Duplicate License ..... \$10
6. Verification of License ..... \$10
7. Transcript of Examination Scores ..... \$5
8. Transcript of Applicant/Licensee Records ..... \$10
9. Returned Check Charge ..... \$15
10. Application for C.N.S. registration ..... \$50
11. Biennial renewal of C.N.S. registration ..... \$30
12. Reinstatement of lapsed C.N.S. registration ..... \$25
13. Verification of C.N.S. registration ..... \$25

## § 1.4. Public participation guidelines.

### A. Mailing list.

The Virginia State Board of Nursing (board) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of intent" to promulgate regulations.
2. "Notice of public hearing" or "informational proceeding," the subject of which is proposed or existing regulation.
3. Final regulation adopted.

Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all above-listed information. Individuals and organizations will be periodically requested to indicate their desire to

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continue to receive documents or be deleted from the list. Where mail is returned as undeliverable, individuals and organizations will be deleted from the list.

## B. Notice of intent.

At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

## C. Public comment period.

At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations. Such proceedings may be held separately or in conjunction with other informational proceedings.

## D. Petitions to the board.

Any person may petition the board to adopt, amend, or delete any regulation. Any petition received shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.

## E. Publication in the Virginia Register of Regulations.

At any meeting of the board or any subcommittee or advisory committee, where the formulation or adoption of regulation occurs, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

## F. Advisory committee.

The board, in cooperation with the Council on Health Regulatory Boards, may appoint advisory committees as they deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.

## PART II. NURSING EDUCATION PROGRAMS.

### § 2.1. Establishing a nursing education program.

#### Phase I.

##### A. An institution wishing to establish a nursing education

program shall:

1. Submit to the board, at least 15 months in advance of expected opening date, a statement of intent to establish a nursing education program;
2. Submit to the board, along with the statement of intent, a feasibility study to include the following information:
  - a. Studies documenting the need for the program;
  - b. Purpose and type of program;
  - c. Availability of qualified faculty;
  - d. Budgeted faculty positions;
  - e. Availability of clinical facilities for the program;
  - f. Availability of academic facilities for the program;
  - g. Evidence of financial resources for the planning, implementation and continuation of the program;
  - h. Anticipated student population;
  - i. Tentative time schedule for planning and initiating the program ; and
  - j. Current catalog, if applicable.
3. Respond to the board's request for additional information.

B. A site visit shall be conducted by a representative of the board.

C. The board, after review and consideration, shall either approve or disapprove Phase I.

1. If Phase I is approved, the institution may apply for provisional approval of the nursing education program as set forth in these regulations.
2. If Phase I is disapproved, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

#### Phase II.

D. The application for provisional approval shall be complete when the following conditions are met:

1. A program director has been appointed and there are sufficient faculty to initiate the program (§ 2.2.C of these regulations);
2. A tentative written curriculum plan developed in accordance with § 2.2.F of these regulations has been

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submitted; and

E. The board, after review and consideration, shall either grant or deny provisional approval.

1. If provisional approval is granted :

a. The admission of students is authorized; and

b. The program director shall submit quarterly progress reports to the board which shall include evidence of progress toward application for approval and other information as required by the board.

2. If provisional approval is denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

F. Following graduation of the first class, the institution shall apply for approval of the nursing education program.

Phase III.

G. The application for approval shall be complete when a self-evaluation report of compliance with § 2.2 of these regulations has been submitted and a survey visit has been made by a representative of the board.

H. The board will review and consider the self-evaluation and the survey reports at the next regularly scheduled meeting.

I. The board shall either grant or deny approval. If denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

§ 2.2. Requirements for approval.

A. Organization and administration.

1. The institution shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution; by resolution of its board of control; or by the institution's own charter or articles of incorporation.

2. Universities, colleges, community or junior colleges, proprietary schools and public schools offering nursing education programs shall be accredited by the appropriate state agencies and the Southern Association of Colleges and Schools.

3. Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Hospitals.

4. Any agency or institution that is utilized by a nursing education program shall be one that is authorized to conduct business in the Commonwealth

of Virginia, or in the state in which the agency or institution is located.

5. The authority and responsibility for the operation of the nursing education program shall be vested in a program director who is duly licensed to practice professional nursing in Virginia and who is responsible to the controlling board, either directly or through appropriate administrative channels.

6. A written organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body; to other departments within the controlling institution; to the cooperating agencies; and to the advisory committee, if one exists.

7. Funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The program director of the nursing education program shall be responsible for the budget recommendations and administration, consistent with the established policies of the controlling agency.

B. Philosophy and objectives.

Clearly written statements of philosophy and objectives shall be:

1. Formulated and accepted by the faculty;

2. Directed toward achieving realistic goals;

3. Directed toward the meaning of education, nursing and the learning process;

4. Descriptive of the practitioner to be prepared; and

5. The basis for planning, implementing and evaluating the total program.

C. Faculty.

1. Qualifications.

a. Every member of a nursing faculty, including the program director, shall hold a current license to practice as a registered nurse in Virginia.

b. Every member of a nursing faculty responsible for teaching students in a cooperating agency located outside the jurisdictional limits of Virginia should hold a current license to practice nursing in that jurisdiction as well.

c. The program director and each member of the nursing faculty shall maintain professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects and professional writing.

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## d. For baccalaureate degree programs:

(1) The program director shall hold a doctoral degree.

(2) Every member of the nursing faculty shall hold a graduate degree. Faculty members without a graduate degree with a major in nursing shall have a baccalaureate degree with a major in nursing.

(3) At least one faculty member in each clinical area shall have master's preparation in specialty.

## e. For associate degree and diploma programs:

(1) The program director shall hold a graduate degree, preferably with a major in nursing.

(2) The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.

(3) Other members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

## f. For practical nursing programs.

(1) The program director shall hold a baccalaureate degree, preferably with a major in nursing.

(2) The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

## g. Exceptions to provisions of subparagraphs d, e, and f of this subsection shall be by board approval.

### (1) Initial request for exception.

(a) The program director shall submit a request for initial exception in writing for considerations at a regular board meeting prior to the term during which the nursing faculty member is scheduled to teach.

(b) A description of teaching assignment, a curriculum vitae and a statement of intent, from the prospective faculty member, to pursue the required degree shall accompany each request.

### (2) Request for continuing exception.

(a) Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by these regulations during each year for which the exception is requested.

(b) The program director shall submit the request for continuing exception in writing for consideration

at a regular board meeting prior to the next term during which the nursing faculty member is scheduled to teach.

(c) A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.

## 2. Number.

a. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and such number shall be reasonably proportionate to:

- (1) Number of students enrolled;
- (2) Frequency of admissions;
- (3) Education and experience of faculty members;
- (4) Number and location of clinical facilities; and
- (5) Total responsibilities of the faculty.

b. When students are giving direct care to patients, the maximum ratio of students to faculty in clinical areas shall be 10 students to one faculty member.

## 3. Conditions of employment.

a. Qualifications and responsibilities for faculty positions shall be defined in writing.

b. Faculty assignments shall allow time for class and laboratory preparation; teaching; program revision; improvement of teaching methods; academic advisement and counseling of students; participation in faculty organizations and committees; attendance at professional meetings; and participation in continuing education activities.

## 4. Functions.

The principal functions of the faculty shall be to:

a. Develop, implement and evaluate the philosophy and objectives of the nursing education program;

b. Participate in designing, implementing, teaching, and evaluating and revising the curriculum;

c. Develop and evaluate student admission, progression, retention and graduation policies within the framework of the controlling institution;

d. Participate in academic advisement and counseling of students; and

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e. Provide opportunities for student evaluation of curriculum and teaching and program effectiveness.

## 5. Organization.

a. The nursing faculty shall hold regular meetings for the purpose of developing, implementing and evaluating the nursing education program. Written rules shall govern the conduct of meetings.

b. All members of the faculty shall participate in the regular faculty meetings.

c. Committees shall be established to implement the functions of the faculty.

d. Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference.

e. There shall be provision for student participation.

## D. Students.

### 1. Admission, promotion and graduation.

a. Requirements for admission to the nursing education program shall not be less than the statutory requirements that will permit the graduate to be admitted to the appropriate licensing examination.

(EXPLANATORY NOTE: Reference subdivision 1 of subsection A of § 54.1-3017 of the Code of Virginia: The equivalent of a four-year high school course of study is considered to be:

(1) A General Educational Development (GED) certificate for high school equivalence; or

(2) Satisfactory completion of the college courses required by the nursing education program.)

b. Students shall be selected on the basis of established criteria and without regard to age, race, creed, sex or national origin.

c. Requirements for admission, readmission, advanced standing, progression, retention, dismissal and graduation shall be available to the students in written form.

## E. Records.

### 1. School records.

A system of records shall be maintained and be made available to the board representative and shall include:

a. Data relating to accreditation by any agency or body,

b. Course outlines,

c. Minutes of faculty and committee meetings,

d. Reports of standardized tests,

e. Survey reports.

## 2. Student records.

a. A file shall be maintained for each student. Each file shall be available to the board representative and shall include:

(1) The student's application,

(2) High school transcript or copy of high school equivalence certificate,

(3) Current record of achievement.

b. A final transcript shall be retained in the permanent file of the institution.

c. Provision shall be made for the protection of student and graduate records against loss, destruction and unauthorized use.

## 3. School bulletin or catalogue.

Current information about the nursing education program shall be published periodically and distributed to students, applicants for admission and the board. Such information shall include:

a. Description of the program.

b. Philosophy and objectives of the controlling institution and of the nursing program.

c. Admission and graduation requirements.

d. Fees.

e. Expenses.

f. Financial aid.

g. Tuition refund policy.

h. Education facilities.

i. Living accommodations.

j. Student activities and services.

k. Curriculum plan.

l. Course descriptions.

m. Faculty-staff roster.

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n. School calender.

## F. Curriculum.

1. Curriculum shall reflect the philosophy and objectives of the nursing education program, and shall be consistent with the law governing the practice of nursing.

2. The ratio between nursing and nonnursing credit shall be based on a rationale to ensure sufficient preparation for the safe and effective practice of nursing.

3. Learning experiences shall be selected to fulfill curriculum objectives.

4. Nursing education programs preparing for practical nursing licensure shall include:

a. Principles and practice in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle;

b. Basic concepts of the nursing process;

c. Basic concepts of anatomy, physiology, chemistry, physics and microbiology;

d. Basic concepts of communication, growth and development, interpersonal relations, patient education and cultural diversity;

e. Ethics, nursing history and trends, vocational and legal aspects of nursing; and

f. Basic concepts of pharmacology, nutrition and diet therapy.

5. Nursing education programs preparing for registered nurse licensure shall include:

a. Theory and practice in nursing, encompassing the attainment and maintenance of physical and mental health and the prevention of illness throughout the life cycle for individuals, groups and communities;

b. Concepts of the nursing process;

c. Concepts of anatomy, physiology, chemistry, microbiology and physics;

d. Sociology, psychology, communications, growth and development, interpersonal relations, group dynamics, cultural diversity and humanities;

e. Concepts of pharmacology, nutrition and diet therapy, and pathophysiology;

f. Concepts of ethics, nursing history and trends, and

the professional and legal aspects of nursing; and

g. Concepts of leadership, management and patient education.

## G. Resources, facilities and services.

1. Periodic evaluations of resources, facilities and services shall be conducted by the administration, faculty, students and graduates of the nursing education program.

2. Secretarial and other support services shall be provided.

3. Classrooms, conference rooms, laboratories, clinical facilities and offices shall be available to meet the objectives of the nursing education program and the needs of the students, faculty, administration and staff.

4. The library shall have holdings that are current, pertinent and accessible to students and faculty, and sufficient in number to meet the needs of the students and faculty.

5. Written agreements with cooperating agencies shall be developed, maintained and periodically reviewed. The agreement shall:

a. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences.

b. Provide that an instructor shall be present on the clinical unit(s) to which students are assigned for direct patient care.

c. Provide for cooperative planning with designated agency personnel.

6. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives.

7. Cooperating agencies shall be approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.

H. Program changes requiring board of nursing approval.

The following proposed changes require board approval prior to their implementation:

1. Proposed changes in the nursing education program's philosophy and objectives that result in program revision.

2. Proposed changes in the curriculum that result in alteration of the length of the nursing education

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program.

3. Proposed additions, deletions or major revisions of courses.

## I. Procedure for approval of program change.

1. When a program change is contemplated, the program director shall inform the board or board representative.

2. When a program change is requested, a plan shall be submitted to the board including:

- a. Proposed change,
- b. Rationale for the change,
- c. Relationship of the proposed change to the present program.

3. Twelve copies of these materials shall be submitted to the board at least three weeks prior to the board meeting at which the request will be considered.

## § 2.3. Procedure for maintaining approval.

A. The program director of each nursing education program shall submit an annual report to the board.

B. Each nursing education program shall be reevaluated at least every eight years and shall require:

1. A comprehensive self-evaluation report based on § 2.2 of these regulations, and
2. A survey visit by a representative(s) of the board on dates mutually acceptable to the institution and the board.

C. The self-evaluation and survey visit reports shall be presented to the board for consideration and action at a regularly scheduled board meeting. The reports and the action taken by the board shall be sent to the appropriate administrative officers of the institution. In addition, a copy shall be forwarded to the executive officer of the state agency or agencies having program approval authority or coordinating responsibilities for the governing institutions.

D. Interim visits shall be made to the institution by board representatives at any time within the eight-year period either by request or as deemed necessary by the board.

E. A nursing education program shall continue to be approved provided the requirements set forth in § 2.2 of these regulations are attained and maintained.

F. If the board determines that a nursing education program is not maintaining the requirements of § 2.2 of

these regulations, the program shall be placed on conditional approval and the governing institution shall be given a reasonable period of time to correct the identified deficiencies. The institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

G. If the governing institution fails to correct the identified deficiencies within the time specified by the board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.) Sections 2.4, B and C of these regulations shall apply to any nursing education program whose approval has been withdrawn.

## § 2.4. Closing of an approved nursing education program.

### A. Voluntary closing.

When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan and date of intended closing. The governing institution shall choose one of the following closing procedures:

1. The program shall continue until the last class enrolled is graduated.

a. The program shall continue to meet the standards for approval until all of the enrolled students have graduated.

b. The date of closure is the date on the degree, diploma or certificate of the last graduate.

c. The governing institution shall notify the board of the closing date.

2. The program shall close after the governing institution has assisted in the transfer of students to other approved programs.

a. The program shall continue to meet the standards required for approval until all students are transferred.

b. A list of the names of students who have been transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

c. The date on which the last student was transferred shall be the closing date of the program.

B. Closing as a result of denial or withdrawal or approval.

When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:

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1. The program shall close after the institution has made a reasonable effort to assist in the transfer of students to other approved programs. A time frame for the transfer process shall be established by the board.

2. A list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

3. The date on which the last student was transferred shall be the closing date of the program.

## C. Custody of records.

Provision shall be made for custody of records as follows:

1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The institution shall inform the board of the arrangements made to safeguard the records.

2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safekeeping.

## § 2.5. Clinical nurse specialist education program.

*An approved program shall be offered by:*

1. *A nationally accredited school that offers a master's degree in nursing designed to prepare a clinical nurse specialist; or*

2. *A college or university that offers a master's degree in a field accepted by the American Nurses' Association for specialty certification.*

## PART III. LICENSURE AND PRACTICE.

### § 3.1. Licensure by examination.

A. The board shall administer examinations for registered nurse licensure and examinations for practical nurse licensure no less than twice a year.

B. The minimum passing score on the examination for registered nurse licensure shall be determined by the board.

C. If a candidate does not take the examination when scheduled, the application shall be retained on file as required for audit.

D. Any applicant suspected of giving or receiving unauthorized assistance during the writing of the

examination shall be noticed for a hearing before the board to determine whether the license shall be issued.

E. The board shall not release examination scores to any individual or agency without written authorization from the applicant or licensee.

F. An applicant for the licensing examination shall:

1. File the required application and fee no less than 60 days prior to the scheduled date of the examination.

2. Arrange for the board to receive the final certified transcript from the nursing education program at least 15 days prior to the examination date or as soon thereafter as possible. The transcript must be received prior to the reporting of the examination results to candidates.

G. Fifteen days prior to an examination date, all program directors shall submit a list of the names of those students who have completed or are expected to complete the requirements for graduation since the last examination. Any change in the status of a candidate within the above specified 15-day period shall be reported to the board immediately.

H. Practice of nursing pending receipt of examination results.

1. Graduates of approved nursing education programs may practice nursing in Virginia pending the results of the first licensing examination given by a board of nursing following their graduation, provided they have filed an application for licensure in Virginia. Candidates taking the examination in Virginia shall file the application for licensure by examination. Candidates taking the examination in other jurisdictions shall file the application for licensure by endorsement.

2. Candidates who practice nursing as provided in § 3.1.I.1 of these regulations shall use the designation "R.N. Applicant" or "L.P.N. Applicant" when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who do not take or who have failed the first examination for which they are eligible.

I. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for reexamination shall file the required application and fee no less than 60 days prior to the scheduled date of the examination.

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3. Applicants who have failed the licensing examination in another U.S. jurisdiction and who meet the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

## § 3.2. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing shall be eligible for licensure by endorsement in Virginia, provided the qualifications for licensure were equivalent to those in effect in Virginia at the time the applicant was initially licensed.

B. An applicant for licensure by endorsement shall submit the required application and fee and submit the required form to the appropriate credentialing agency in the state of original licensure for verification of licensure. Applicants will be notified by the board after 30 days, if the completed verification form has not been received.

C. If the application is not completed within one year of the initial filing date, the application shall be retained on file by the board as required for audit.

## § 3.3. Licensure of applicants from other countries.

A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in § 3.3.B and C of these regulations.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of a passing score on the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and
2. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Request a transcript from the nursing education program to be submitted directly to the board office;
2. Provide evidence of secondary education to meet the statutory requirements;
3. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and

4. Submit the required application and fee for licensure by examination.

## § 3.4. Renewal of licenses.

A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.

B. No less than 30 days prior to the last day of the licensee's birth month, an application for renewal of license shall be mailed by the board to the last known address of each licensee, who is currently licensed.

C. The licensee shall complete the application and return it with the required fee.

D. Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

E. The license shall automatically lapse if the licensee fails to renew by the last day of the birth month.

F. Any person practicing nursing during the time a license has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-3008 of the Code of Virginia.

## § 3.5. Reinstatement of lapsed licenses.

A. A nurse whose license has lapsed shall file a reinstatement application and pay the current renewal fee and the reinstatement fee.

B. The board may request evidence that the nurse is prepared to resume practice in a competent manner.

## § 3.6. Replacement of lost license.

A. The licensee shall report in writing the loss of the original certificate of registration or the current license.

B. A duplicate license for the current renewal period shall be issued by the board upon receipt of the required form and fee.

## § 3.7. Evidence of change of name.

A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

## § 3.8. Requirements for current mailing address.

A. All notices, required by law and by these regulations to be mailed by the board to any licensee, shall be validly

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given when mailed to the latest address on file with the board.

B. Each licensee shall maintain a record of his current mailing address with the board.

C. Any change of address by a licensee shall be submitted in writing to the board within 30 days of such change.

§ 3.9. Licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a registered nurse or a licensed dentist within the context of § 54.1-3408 of the Code of Virginia.

§ 3.10. *Clinical nurse specialist registration.*

A. *Initial registration.*

An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia;
2. Submit evidence of current specialist certification as a clinical nurse specialist as defined in § 1.1. of these regulations; and
3. Submit the required application and fee.

B. *Renewal of registration.*

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed.
2. The clinical nurse specialist shall complete the renewal application and return it with the required fee and evidence of current specialist certification.
3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed and may be reinstated as follows:
  - a. Reinstatement of R.N. license;
  - b. Payment of reinstatement and current renewal fees; and
  - c. Submission of evidence of current specialist certification.

§ 3.11. *Clinical nurse specialist practice.*

A. The practice of clinical nurse specialists shall be consistent with the

1. education required in § 2.5. of these regulations, and

2. experience required for specialist certification.

B. The clinical nurse specialist shall provide only those advanced services that are consistent with the standards of specialist practice as established by the American Nurses' Association for the designated specialty and in accordance with the provisions of Title 54.1 of the Code of Virginia.

## PART IV. DISCIPLINARY PROVISIONS.

§ 4.1. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee upon proof that the licensee has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

A. Fraud or deceit shall mean, but shall not be limited to:

1. Filing false credentials;
2. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or
3. Giving or receiving assistance in writing the licensing examination.

B. Unprofessional conduct shall mean, but shall not be limited to:

1. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 of Title 54.1, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;
2. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;
3. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
4. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;
5. Falsifying or otherwise altering patient or employer records; or
6. Abusing, neglecting or abandoning patients or clients; or
7. Practice of a clinical nurse specialist beyond that defined in § 3.11. of these regulations.
8. Holding self out as or performing acts constituting the practice of a clinical nurse specialist unless so

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*registered by the Board.*

*§ 4.2. Any sanction imposed on the registered nurse license of clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.*

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VIRGINIA STATE BOARD OF NURSING  
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EXISTING	PROPOSED
<p>VIRGINIA BOARD OF NURSING</p> <p>TITLE OF REGULATIONS: VR495-01-1</p> <p>BOARD OF NURSING REGULATIONS</p> <p>STATUTORY AUTHORITY: §§ 54.1-2400 and 54.1-3005 OF THE CODE OF VIRGINIA</p>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
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EXISTING	PROPOSED
<p>PREAMBLE</p> <p>These regulations state the requirements for nursing education programs and the licensing of registered nurses and practical nurses in the Commonwealth of Virginia. The regulations have been adopted by the Virginia State Board of Nursing under the authority of Chapter 24 (§ 54.1-2400) and Chapter 0 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.</p> <p>The Board believes that each practitioner of nursing is accountable to the Commonwealth and to the public to maintain high professional standards of practice in keeping with the ethics of the profession of nursing.</p> <p>The registered nurse shall be responsible and accountable for making decisions that are based upon educational preparation and experience in nursing. The registered nurse shall be held accountable for the quality and quantity of nursing care given to patients by himself or others who are under his supervision.</p> <p>The licensed practical nurse shall be held accountable for the quality and quantity of nursing care given to patients by himself based upon educational preparation and experience.</p> <p>PART I. GENERAL PROVISIONS.</p> <p>Authority: §§ 54.1-2400, 54.1-3005, 54.1-3006 and 54.1-3013 of the Code of Virginia.</p> <p>1.1. Definitions.</p> <p>The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:</p> <p>"Approval", as used in these regulations, is synonymous with accreditation and means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.</p>	<p>No Change</p>

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<p>"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, State Council of Higher Education or an Act of the General Assembly.</p>	<p>No Change</p>
<p>"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, the State Council of Higher Education or an Act of the General Assembly.</p>	<p>"Clinical nurse specialist" means a licensed registered nurse who holds a master's degree from a board approved program and specialist certification from the American Nurses Association in one of the following categories: Gerontological Nursing, Medical Surgical Nursing, Adult Psychiatric and Mental Health Nursing or Child and Adolescent Psychiatric and Mental Health Nursing.</p>
<p>"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in § 2.2 of these regulations.</p>	<p>No Change</p>
<p>"Cooperating agency" means an agency or institution that enters into a written agreement to provide training experiences for a nursing education program.</p>	<p>No Change</p>
<p>"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this State.</p>	<p>No Change</p>
<p>"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.</p>	<p>No Change</p>
<p>"Practical nurse licensure" means a nursing education program preparing for practical nurse licensure, offered by a Virginia school that leads to a diploma or certificate in practical nursing, provided the school is authorized by the appropriate governmental agency.</p>	<p>No Change</p>
<p>"Program director" means a registered nurse who has been designated by the controlling authority to administer the nursing education program.</p>	<p>No Change</p>
<p>"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.</p>	<p>No Change</p>
<p>"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.</p>	<p>No Change</p>
<p>"Requirement" means a mandatory condition that a nursing education program must meet to be approved.</p>	<p>No Change</p>
<p>§ 1.2. Delegation of authority.</p>	<p>No Change</p>
<p>A. The executive director of the board shall issue a certificate of registration to each person who meets the requirements for initial licensure under §§ 54.1-3017, 54.1-3018, 54.1-3020 and 54.1-3021 of the Code of Virginia. Such certificates of registration shall bear the signature of the president of the board, the executive director and the director of the Department of Health Regulatory Boards.</p>	<p>No Change</p>
<p>B. The executive director shall issue a license to each applicant who qualifies for such license under § 54.1-3011 of the Code of Virginia. Such licenses shall bear the name of the executive director.</p>	<p>No Change</p>
<p>C. The executive director shall be delegated the authority to execute all notices, orders and official documents of the board unless the board directs otherwise.</p>	<p>No Change</p>

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<p><b>1.3. Fees.</b></p> <p>Fees required in connection with the licensing of applicants by the board are:</p> <table border="0"> <tr><td>1. Application for R.N. Licensure-----</td><td>\$45</td></tr> <tr><td>2. Application for L.P.N. Licensure-----</td><td>\$35</td></tr> <tr><td>3. Biennial Licensure Renewal-----</td><td>\$28</td></tr> <tr><td>4. Re-Instatement Lapsed License-----</td><td>\$50</td></tr> <tr><td>5. Duplicate License-----</td><td>\$10</td></tr> <tr><td>6. Verification of License-----</td><td>\$10</td></tr> <tr><td>7. Transcript of Examination Scores-----</td><td>\$5</td></tr> <tr><td>8. Transcript of Applicant/Licensee Records-----</td><td>\$10</td></tr> <tr><td>9. Returned Check charge-----</td><td>\$15</td></tr> </table>	1. Application for R.N. Licensure-----	\$45	2. Application for L.P.N. Licensure-----	\$35	3. Biennial Licensure Renewal-----	\$28	4. Re-Instatement Lapsed License-----	\$50	5. Duplicate License-----	\$10	6. Verification of License-----	\$10	7. Transcript of Examination Scores-----	\$5	8. Transcript of Applicant/Licensee Records-----	\$10	9. Returned Check charge-----	\$15	<p>No Change</p>
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<p><b>1.4. Public participation guidelines.</b></p> <p><b>A. Mailing list.</b></p> <p>The Virginia Board of Nursing (board) will maintain a list of persons and organizations who will be mailed the following documents as they become available:</p> <ol style="list-style-type: none"> <li>1. "Notice of Intent" to promulgate regulations.</li> <li>2. "Notice of public hearing" or "informational proceeding", the subject of which is proposed or existing regulation.</li> <li>3. Final regulation adopted.</li> </ol> <p>Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board, at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all above-listed information. Individuals and organizations will be periodically requested to indicate their desire to continue to</p>	<p>No Change</p> <table border="0"> <tr><td>10. Application for CNS.....</td><td>\$50</td></tr> <tr><td>11. Biennial Renewal of CNS registration.....</td><td>\$30</td></tr> <tr><td>12. Reinstatement of lapsed CNS registration.....</td><td>\$25</td></tr> <tr><td>13. Verification of CNS registration to another jurisdiction.....</td><td>\$25</td></tr> </table>	10. Application for CNS.....	\$50	11. Biennial Renewal of CNS registration.....	\$30	12. Reinstatement of lapsed CNS registration.....	\$25	13. Verification of CNS registration to another jurisdiction.....	\$25										
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<p>receive documents or be deleted from the list. Where mail is returned as undeliverable, individuals and organizations will be deleted from the list.</p> <p><b>B. Notice of Intent.</b></p> <p>At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent". This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the <u>Virginia Register of Regulations</u>.</p> <p><b>C. Public comment period.</b></p> <p>At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comments on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in the <u>Virginia Register of Regulations</u>. Such proceedings may be held separately or in conjunction with other informational proceedings.</p> <p><b>D. Petitions to the board.</b></p> <p>Any person may petition the board to adopt, amend, or delete any regulation. Any petition received shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.</p> <p><b>E. Publication in the <u>Virginia Register of Regulations</u>.</b></p> <p>At any meeting of the board or any subcommittee or advisory committee, where the formulation or adoption of regulation occurs, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in the <u>Virginia Register of Regulations</u>.</p>	<p>No Change</p>

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<p>F. Advisory committee.</p> <p>The board, in cooperation with the Board of Health Professions, may appoint advisory committees as they deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.</p> <p style="text-align: center;">PART II. NURSING EDUCATION PROGRAMS.</p> <p>Authority: §§ 54.1-3005, 54.1-3013, and 54.1-3014 of the Code of Virginia.</p> <p>§ 2.1. Establishing a nursing education program.</p> <p>Phase I.</p> <p>A. An institution wishing to establish a nursing education program shall:</p> <ol style="list-style-type: none"> <li>1. Submit to the board, at least 15 months in advance of expected opening date, a statement of intent to establish a nursing education program;</li> <li>2. Submit to the board, along with the statement of intent, a feasibility study to include the following information:               <ol style="list-style-type: none"> <li>a. Studies documenting the need for the program;</li> <li>b. Purpose and type of program;</li> <li>c. Availability of qualified faculty;</li> <li>d. Budgeted faculty positions;</li> <li>e. Availability of clinical facilities for the program;</li> <li>f. Availability of academic facilities for the program;</li> <li>g. Evidence of financial resources for the planning, implementation and continuation of the program;</li> <li>h. Anticipated student population;</li> <li>i. Tentative time schedule for planning and initiating the program; and</li> <li>j. Current catalog, if applicable.</li> </ol> </li> </ol>	<p style="text-align: center;">No Change</p>

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<ol style="list-style-type: none"> <li>3. Respond to the board's request for additional information.</li> </ol> <p>B. A site visit shall be conducted by a representative of the board.</p> <p>C. The board, after review and consideration, shall either approve or disapprove Phase I.</p> <ol style="list-style-type: none"> <li>1. If Phase I is approved, the institution may apply for provisional approval of the nursing education program as set forth in these regulations.</li> <li>2. If Phase I is disapproved, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)</li> </ol> <p>Phase II.</p> <p>D. The application for provisional approval shall be complete when the following conditions are met:</p> <ol style="list-style-type: none"> <li>1. A program director has been appointed and there are sufficient faculty to initiate the program (§ 2.2.C of these regulations);</li> <li>2. A tentative written curriculum plan developed in accordance with § 2.2.F of these regulations has been submitted; and</li> </ol> <p>E. The board, after review and consideration, shall either grant or deny provisional approval.</p> <ol style="list-style-type: none"> <li>1. If provisional approval is granted,           <ol style="list-style-type: none"> <li>a. The admission of students is authorized; and</li> <li>b. The program director shall submit quarterly progress reports to the board which shall include evidence of progress toward application for approval and other information as required by the board.</li> </ol> </li> <li>2. If provisional approval is denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)</li> </ol>	<p style="text-align: center;">No Change</p>

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<p>F. Following graduation of the first class, the institution shall apply for approval of the nursing education program.</p> <p>Phase III.</p> <p>G. The application for approval shall be complete when a self-evaluation report of compliance with § 2.2 of these regulations has been submitted and a survey visit has been made by a representative of the board.</p> <p>H. The board will review and consider the self-evaluation and survey reports at the next regularly scheduled meeting.</p> <p>I. The board shall either grant or deny approval. If denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)</p> <p>§ 2.2. Requirements for approval.</p> <p>A. Organization and administration.</p> <ol style="list-style-type: none"> <li>1. The institution shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution; by resolution of its board of control; or by the institution's own charter or articles of incorporation.</li> <li>2. Universities, colleges, community or junior colleges, proprietary schools and public schools offering nursing education programs shall be accredited by the appropriate state agencies and the Southern Association of Colleges and Schools.</li> <li>3. Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Hospitals.</li> <li>4. Any agency or institution that is utilized by a nursing education program shall be one that is authorized to conduct business in the Commonwealth of Virginia, or in the state in which the agency or institution is located.</li> </ol>	<p>No Change</p>

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<ol style="list-style-type: none"> <li>5. The authority and responsibility for the operation of the nursing education program shall be vested in a program director who is duly licensed to practice professional nursing in Virginia and who is responsible to the controlling board, either directly or through appropriate administrative channels.</li> <li>6. A written organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body; to other departments within the controlling institution; to the cooperating agencies; and to the advisory committee, if one exists.</li> <li>7. Funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The program director of the nursing education program shall be responsible for the budget recommendations and administration, consistent with the established policies of the controlling agency.</li> </ol> <p>B. Philosophy and objectives.</p> <p>Clearly written statements of philosophy and objectives shall be:</p> <ol style="list-style-type: none"> <li>1. Formulated and accepted by the faculty;</li> <li>2. Directed toward achieving realistic goals;</li> <li>3. Directed toward the meaning of education, nursing and the learning process;</li> <li>4. Descriptive of the practitioner to be prepared; and</li> <li>5. The basis for planning, implementing and evaluating the total program.</li> </ol> <p>C. Faculty.</p> <ol style="list-style-type: none"> <li>1. Qualifications. <ol style="list-style-type: none"> <li>a. Every member of a nursing faculty, including the program director, shall hold a current license to practice as a registered nurse in Virginia.</li> <li>b. Every member of a nursing faculty responsible for teaching students in a cooperating agency located outside the jurisdictional limits of Virginia should hold a current license to practice nursing in that jurisdiction as well.</li> </ol> </li> </ol>	<p>No Change</p>

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EXISTING	PROPOSED
<p>c. The program director and each member of the nursing faculty shall maintain professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects and professional writing.</p> <p>d. For Baccalaureate degree programs:</p> <ol style="list-style-type: none"> <li>(1) The program director shall hold a doctoral degree.</li> <li>(2) Every member of the nursing faculty shall hold a graduate degree. Faculty members without a graduate degree with a major in nursing shall have a baccalaureate degree with a major in nursing.</li> <li>(3) At least one faculty member in each clinical area shall have master's preparation in that clinical specialty.</li> </ol> <p>e. For Associate degree and diploma programs:</p> <ol style="list-style-type: none"> <li>(1) The program director shall hold a graduate degree, preferably with a major in nursing.</li> <li>(2) The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.</li> <li>(3) Other members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.</li> </ol> <p>f. For practical nursing programs:</p> <ol style="list-style-type: none"> <li>(1) The program director shall hold a baccalaureate degree, preferably with a major in nursing.</li> <li>(2) The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.</li> </ol>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
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EXISTING	PROPOSED
<p>g. Exceptions to provisions of subparagraphs d, e, and f of this subsection shall be by board approval.</p> <ol style="list-style-type: none"> <li>(1) Initial request for exception.             <ol style="list-style-type: none"> <li>(a) The program director shall submit a request for initial exception in writing for consideration at a regular board meeting prior to the term during which the nursing faculty member is scheduled to teach.</li> <li>(b) A description of teaching assignment, a curriculum vitae and a statement of intent, from the prospective faculty member, to pursue the required degree shall accompany each request.</li> </ol> </li> <li>(2) Request for continuing exception:             <ol style="list-style-type: none"> <li>(a) Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by these regulations during each year for which the exception is requested.</li> <li>(b) The program director shall submit the request for continuing exception in writing for consideration at a regular board meeting prior to the next term during which the nursing faculty member is scheduled to teach.</li> <li>(c) A list of courses required for the degree being pursued and collage transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.</li> </ol> </li> </ol>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
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13.

EXISTING	PROPOSED
<p>2. Number.</p> <p>a. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and such number shall be reasonably proportionate to:</p> <ul style="list-style-type: none"> <li>(1) Number of students enrolled;</li> <li>(2) Frequency of admissions;</li> <li>(3) Education and experience of faculty members;</li> <li>(4) Number and location of clinical facilities; and</li> <li>(5) Total responsibilities of the faculty.</li> </ul> <p>b. When students are giving direct care to patients, the maximum ratio of students to faculty in clinical areas shall be 10 students to one faculty member.</p> <p>3. Conditions of employment.</p> <p>a. Qualifications and responsibilities for faculty positions shall be defined in writing.</p> <p>b. Faculty assignments shall allow time for class and laboratory preparation; teaching; program revision; improvement of teaching methods; academic advisement and counseling of students; participation in faculty organizations and committees; attendance at professional meetings; and participation in continuing education activities.</p> <p>4. Functions.</p> <p>The principal functions of the faculty shall be to:</p> <p>a. Develop, implement and evaluate the philosophy and objectives of the nursing education program;</p> <p>b. Participate in designing, implementing, teaching, and evaluating and revising the curriculum;</p>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

14.

EXISTING	PROPOSED
<p>c. Develop and evaluate student admission, progression, retention and graduation policies within the framework of the controlling institution;</p> <p>d. Participate in academic advisement and counseling of students; and</p> <p>e. Provide opportunities for student evaluation of curriculum and teaching and program effectiveness.</p> <p>5. Organization.</p> <p>a. The nursing faculty shall hold regular meetings for the purpose of developing, implementing and evaluating the nursing education program. Written rules shall govern the conduct of meetings.</p> <p>b. All members of the faculty shall participate in the regular faculty meetings.</p> <p>c. Committees shall be established to implement the functions of the faculty.</p> <p>d. Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference.</p> <p>e. There shall be provision for student participation.</p> <p>D. Students.</p> <p>1. Admission, promotion and graduation.</p> <p>a. Requirements for admission to the nursing education program shall not be less than the statutory requirements that will permit the graduate to be admitted to the appropriate licensing examination.</p>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p>(EXPLANATORY NOTE: Reference subdivision 1 of subsection A of § 54.1-3017 of the Code of Virginia: The equivalent of a four-year high school course of study is considered to be:</p> <ul style="list-style-type: none"> <li>(1) a General Educational Development (GED) certificate for high school equivalence; or</li> <li>(2) satisfactory completion of the college courses required by the nursing education program.</li> </ul> <p>b. Students shall be selected on the basis of established criteria and without regard to age, race, creed, sex or national origin.</p> <p>c. Requirements for admission, readmission, advanced standing, progression, retention, dismissal and graduation shall be available to the students in written form.</p> <p>E. Records.</p> <p>1. School records.</p> <p>A system of records shall be maintained and be made available to the board representative and shall include:</p> <ul style="list-style-type: none"> <li>a. Data relating to accreditation by any agency or body,</li> <li>b. Course outlines,</li> <li>c. Minutes of faculty and committee meetings,</li> <li>d. Reports of standardized tests,</li> <li>e. Survey reports.</li> </ul> <p>2. Student records.</p>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p>a. A file shall be maintained for each student. Each file shall be available to the board representative and shall include:</p> <ul style="list-style-type: none"> <li>(1) The student's application,</li> <li>(2) High school transcript or copy of high school equivalence certificate,</li> <li>(3) Current record of achievement.</li> </ul> <p>b. A final transcript shall be retained in the permanent file of the institution.</p> <p>c. Provision shall be made for the protection of student and graduate records against loss, destruction and unauthorized use.</p> <p>3. School bulletin or catalogue.</p> <p>Current information about the nursing education program shall be published periodically and distributed to students, applicants for admission and the board. Such information shall include:</p> <ul style="list-style-type: none"> <li>a. Description of the program.</li> <li>b. Philosophy and objectives of the controlling institution and of the nursing program.</li> <li>c. Admission and graduation requirements.</li> <li>d. Fees.</li> <li>e. Expenses.</li> <li>f. Financial aid.</li> <li>g. Tuition refund policy.</li> <li>h. Educational facilities.</li> <li>i. Living accommodations.</li> <li>j. Student activities and services.</li> <li>k. Curriculum plan.</li> <li>l. Course descriptions.</li> <li>m. Faculty-staff roster.</li> <li>n. School calendar.</li> </ul>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

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EXISTING	PROPOSED
<p><b>F. Curriculum.</b></p> <ol style="list-style-type: none"> <li>1. Curriculum shall reflect the philosophy and objectives of the nursing education program, and shall be consistent with the law governing the practice of nursing.</li> <li>2. The ratio between nursing and non-nursing credit shall be based on a rationale to ensure sufficient preparation for the safe and effective practice of nursing.</li> <li>3. Learning experiences shall be selected to fulfill curriculum objectives.</li> <li>4. Nursing education programs preparing for practical nursing licensure shall include:               <ol style="list-style-type: none"> <li>a. Principles and practice in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle;</li> <li>b. Basic concepts of the nursing process;</li> <li>c. Basic concepts of anatomy, physiology, chemistry, physics and microbiology;</li> <li>d. Basic concepts of communication, growth and development, interpersonal relations, patient education and cultural diversity;</li> <li>e. Ethics, nursing history and trends, vocational and legal aspects of nursing; and</li> <li>f. Basic concepts of pharmacology, nutrition and diet therapy.</li> </ol> </li> <li>5. Nursing education programs preparing for registered nurse licensure shall include:               <ol style="list-style-type: none"> <li>a. Theory and practice in nursing, encompassing the attainment and maintenance of physical and mental health and the prevention of illness throughout the life cycle for individuals, groups and communities;</li> </ol> </li> </ol>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

18.

EXISTING	PROPOSED
<ol style="list-style-type: none"> <li>b. Concepts of the nursing process;</li> <li>c. Concepts of anatomy, physiology, chemistry, microbiology and physics;</li> <li>d. Sociology, psychology, communications, growth and development, interpersonal relations, group dynamics, cultural diversity and humanities;</li> <li>e. Concepts of pharmacology, nutrition and diet therapy, and pathophysiology;</li> <li>f. Concepts of ethics, nursing history and trends, and the professional and legal aspects of nursing; and</li> <li>g. Concepts of leadership, management and patient education.</li> </ol> <p><b>G. Resources, facilities and services.</b></p> <ol style="list-style-type: none"> <li>1. Periodic evaluations of resources, facilities and services shall be conducted by the administration, faculty, students and graduates of the nursing education program.</li> <li>2. Secretarial and other support services shall be provided.</li> <li>3. Classrooms, conference rooms, laboratories, clinical facilities and offices shall be available to meet the objectives of the nursing education program and the needs of the students, faculty, administration and staff.</li> <li>4. The library shall have holdings that are current, pertinent and accessible to students and faculty, and sufficient in number to meet the needs of the students and faculty.</li> <li>5. Written agreements with cooperating agencies shall be developed, maintained and periodically reviewed. The agreement shall:               <ol style="list-style-type: none"> <li>a. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences.</li> </ol> </li> </ol>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

19.

EXISTING	PROPOSED
<p>b. Provide that an instructor shall be present on the clinical unit(s) to which students are assigned for direct patient care.</p> <p>c. Provide for cooperative planning with designated agency personnel.</p> <p>6. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives.</p> <p>7. Cooperating agencies shall be approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.</p> <p>H. Program changes requiring board of nursing approval.</p> <p>The following proposed changes require board approval prior to their implementation:</p> <ol style="list-style-type: none"> <li>1. Proposed changes in the nursing education program's philosophy and objectives that result in program revision.</li> <li>2. Proposed changes in the curriculum that result in alteration of the length of the nursing education program.</li> <li>3. Proposed additions, deletions or major revisions of courses.</li> </ol> <p>I. Procedure for approval of program change.</p> <ol style="list-style-type: none"> <li>1. When a program change is contemplated, the program director shall inform the board or board representative.</li> <li>2. When a program change is requested, a plan shall be submitted to the board including:               <ol style="list-style-type: none"> <li>a. Proposed change.</li> <li>b. Rationale for the change.</li> <li>c. Relationship of the proposed change to the present program.</li> </ol> </li> <li>3. Twelve copies of these materials shall be submitted to the board at least three weeks prior to the board meeting at which the request will be considered.</li> </ol>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

20.

EXISTING	PROPOSED
<p>2.3. Procedure for maintaining approval.</p> <p>A. The program director of each nursing education program shall submit an annual report to the board.</p> <p>B. Each nursing education program shall be re-evaluated at least every eight years and shall require:</p> <ol style="list-style-type: none"> <li>1. a comprehensive self-evaluation report based on § 2.2 of these regulations, and</li> <li>2. a survey visit by a representative(s) of the board on dates mutually acceptable to the institution and the board.</li> </ol> <p>C. The self-evaluation and survey visit reports shall be presented to the board for consideration and action at a regularly scheduled board meeting. The reports and the action taken by the board shall be sent to the appropriate administrative officers of the institution. In addition, a copy shall be forwarded to the executive officer of the state agency or agencies having program approval authority or coordinating responsibilities for the governing institutions.</p> <p>D. Interim visits shall be made to the institution by board representatives at any time within the eight-year period either by request or as deemed necessary by the board.</p> <p>E. A nursing education program shall continue to be approved provided the requirements set forth in § 2.2 of these regulations are attained and maintained.</p> <p>F. If the board determines that a nursing education program is not maintaining the requirements of § 2.2 of these regulations, the program shall be placed on conditional approval and the governing institution shall be given a reasonable period of time to correct the identified deficiencies. The institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)</p>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

21.

EXISTING	PROPOSED
<p><b>B.</b> If the governing institution fails to correct the identified deficiencies within the time specified by the board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.) Sections 2.4.B and C of these regulations shall apply to any nursing education program whose approval has been withdrawn.</p> <p><b>I.</b> Closing of an approved nursing education program.</p> <p><b>A.</b> Voluntary closing.</p> <p>When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan and date of intended closing. The governing institution shall choose one of the following closing procedures:</p> <ol style="list-style-type: none"> <li>1. The program shall continue until the last class enrolled is graduated.               <ol style="list-style-type: none"> <li>a. The program shall continue to meet the standards for approval until all of the enrolled students have graduated.</li> <li>b. The date of closure is the date on the degree, diploma or certificate of the last graduate.</li> <li>c. The governing institution shall notify the board of the closing date.</li> </ol> </li> <li>2. The program shall close after the governing institution has assisted in the transfer of students to other approved programs.               <ol style="list-style-type: none"> <li>a. The program shall continue to meet the standards required for approval until all students are transferred.</li> <li>b. A list of the names of students who have been transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.</li> <li>c. The date on which the last student was transferred shall be the closing date of the program.</li> </ol> </li> </ol>	<p style="text-align: center;">No Change</p> <div style="border-left: 1px solid black; border-right: 1px solid black; height: 200px; margin: 0 auto;"></div>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p><b>B.</b> Closing as a result of denial or withdrawal of approval.</p> <p>When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:</p> <ol style="list-style-type: none"> <li>1. The program shall close after the institution has made a reasonable effort to assist in the transfer of students to other approved programs. A time frame for the transfer process shall be established by the board.</li> <li>2. A list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.</li> <li>3. The date on which the last student was transferred shall be the closing date of the program.</li> </ol> <p><b>C.</b> Custody of records.</p> <p>Provision shall be made for custody of records as follows:</p> <ol style="list-style-type: none"> <li>1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The institution shall inform the board of the arrangements made to safeguard the records.</li> <li>2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safe-keeping.</li> </ol>	<p style="text-align: center;">No Change</p> <div style="border-left: 1px solid black; border-right: 1px solid black; height: 200px; margin: 0 auto;"></div> <p><u>Section 2.5. Clinical nurse specialist education program.</u>  <u>An approved program shall be offered by</u>  <u>A. a nationally accredited school that offers a master's degree in nursing designed to prepare a clinical nurse specialist; or</u>  <u>B. A college or university that offers a master's degree in a field accepted by the American Nurses' Assoc for specialty certification.</u></p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

23.

EXISTING	PROPOSED
<p style="text-align: center;">PART III. LICENSURE AND PRACTICE.</p> <p>Authority: §§ 54.1-3000, 54.1-3001, 54.1-3005, 54.1-35008, 54.1-3011, 54.1-3017, 54.1-301P, 54.1-3020, and 54.1-3021 of the Code of Virginia.</p> <p>3.1. Licensure by examination.</p> <p>A. The board shall administer examinations for registered nurse licensure and examinations for practical nurse licensure no less than twice each year.</p> <p>B. The minimum passing score on the examination for registered nurse licensure and practical nurse licensure shall be determined by the board.</p> <p>C. If a candidate does not take the examination when scheduled, the application shall be retained on file as required for audit.</p> <p>D. Any applicant suspected of giving or receiving unauthorized assistance during the writing of the examination shall be noticed for a hearing before the board to determine whether the license shall be issued.</p> <p>E. The board shall not release examination scores to any individual or agency without written authorization from the applicant or licensee.</p> <p>F. An applicant for the licensing examination shall:</p> <ol style="list-style-type: none"> <li>1. File the required application and fee no less than 60 days prior to the scheduled date of the examination.</li> <li>2. Arrange for the board to receive the final certified transcript from the nursing education program at least 15 days prior to the examination date or as soon thereafter as possible. The transcript must be received prior to the reporting of the examination results to candidates.</li> </ol>	<p style="text-align: center;">No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

24.

EXISTING	PROPOSED
<p>G. Fifteen days prior to an examination date, all program directors shall submit a list of the names of those students who have completed or are expected to complete the requirements for graduation since the last examination. Any change in the status of a candidate within the above specified 15-day period must be reported to the board immediately.</p> <p>H. Practice of nursing pending receipt of examination results.</p> <ol style="list-style-type: none"> <li>1. Graduates of approved nursing education programs may practice nursing in Virginia pending the results of the first licensing examination given by a board of nursing following their graduation, provided they have filed an application for licensure in Virginia. Candidates taking the examination in Virginia shall file the application for licensure by examination. Candidates taking the examination in other jurisdictions shall file the application for licensure by endorsement.</li> <li>2. Candidates who practice nursing as provided in § 3.1.H.1 of these regulations shall use the designation "R.N. Applicant" or "L.P.N. Applicant" when signing official records.</li> <li>3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who do not take or who have failed the first examination for which they are eligible.</li> </ol> <p>I. Applicants who fail the examination.</p> <ol style="list-style-type: none"> <li>1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.</li> <li>2. An applicant for reexamination shall file the required application and fee no less than 60 days prior to the scheduled date of the examination.</li> <li>3. Applicants who have failed the licensing examination in another U.S. jurisdiction and who meet the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.</li> </ol>	<p style="text-align: center;">No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

25.

EXISTING	PROPOSED
<p>§ 3.2. Licensure by endorsement.</p> <p>A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing shall be eligible for licensure by endorsement in Virginia, provided the qualifications for licensure were equivalent to those in effect in Virginia at the time the applicant was initially licensed.</p> <p>B. An applicant for licensure by endorsement shall submit the required application and fee and submit the required form to the appropriate credentialing agency in the state of original licensure for verification of licensure. Applicants will be notified by the board after 30 days, if the completed verification form has not been received.</p> <p>C. If the application is not completed within one year of the initial filing date, the application shall be retained on file by the board as required for audit.</p> <p>§ 3.3. Licensure of applicants from other countries.</p> <p>A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in § 3.3.B and C of these regulations.</p> <p>B. Such applicants for registered nurse licensure shall:</p> <ol style="list-style-type: none"> <li>1. Submit evidence of a passing score on the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and</li> <li>2. Submit the required application and fee for licensure by examination.</li> </ol> <p>C. Such applicants for practical nurse licensure shall:</p> <ol style="list-style-type: none"> <li>1. Request a transcript from the nursing education program to be submitted directly to the board office;</li> </ol>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

26.

EXISTING	PROPOSED
<ol style="list-style-type: none"> <li>2. Provide evidence of secondary education to meet the statutory requirements;</li> <li>3. Request that the credentialing agency, in the country where licensed, submit the verification of licensure form directly to the board office; and</li> <li>4. Submit the required application and fee for licensure by examination.</li> </ol> <p>3.4. Renewal of licenses.</p> <p>A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.</p> <p>B. No less than 30 days prior to the last day of the licensee's birth month, an application for renewal of license shall be mailed by the board to the last known address of each licensee who is currently licensed.</p> <p>C. The licensee shall complete the application and return it with the required fee.</p> <p>D. Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing the license by the expiration date.</p> <p>E. The license shall automatically lapse if the licensee fails to renew by the last day of the birth month.</p> <p>F. Any person practicing nursing during the time a license has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-2400.35 of the Code of Virginia.</p>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p>§ 3.5. Reinstatement of lapsed licenses.</p> <p>A. A nurse whose license has lapsed shall file a reinstatement application and pay the current renewal fee and the reinstatement fee.</p> <p>B. The board may request evidence that the nurse is prepared to resume practice in a competent manner.</p> <p>§ 3.6. Replacement of lost license.</p> <p>A. The licensee shall report in writing the loss of the original certificate of registration or the current license.</p> <p>B. A duplicate license for the current renewal period shall be issued by the board upon receipt of the required form and fee.</p> <p>§ 3.7. Evidence of change of name.</p> <p>A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.</p> <p>§ 3.8. Requirements for current mailing address.</p> <p>A. All notices required by law and by these regulations to be mailed by the board to any licensee shall be validly given when mailed to the latest address on file with the board.</p> <p>B. Each licensee shall maintain a record of his current mailing address with the board.</p> <p>C. Any change of address by a licensee shall be submitted in writing to the board within 30 days of such change.</p> <p>§ 3.9. Licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a registered nurse or a licensed dentist within the context of § 54.1-524.65 of the Code of Virginia.</p>	<p>No Change</p>

REGULATION

28.

EXISTING	PROPOSED
	<p><u>Section 3.10. Clinical nurse specialist registration.</u></p> <p><u>A. Initial registration.</u></p> <p><u>An applicant for initial registration as a clinical nurse specialist shall:</u></p> <ol style="list-style-type: none"> <li><u>1. be currently licensed as a registered nurse in Virginia;</u></li> <li><u>2. submit evidence of current specialist certification as a clinical nurse specialist as defined in Section 1.1 of these regulations; and</u></li> <li><u>3. submit the required application and fee.</u></li> </ol> <p><u>B. Renewal of registration.</u></p> <ol style="list-style-type: none"> <li><u>1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed.</u></li> <li><u>2. The clinical nurse specialist shall complete the renewal application and return it with the required fee and evidence of current specialist certification.</u></li> <li><u>3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed and may be reinstated as follows:</u> <ol style="list-style-type: none"> <li><u>a. reinstatement of R.N. license;</u></li> <li><u>b. payment of reinstatement and current renewal fees; and</u></li> <li><u>c. submission of evidence of continued specialist certification.</u></li> </ol> </li> </ol> <p><u>Section 3.11. Clinical nurse specialist practice.</u></p> <p><u>A. The practice of clinical nurse specialists shall be consistent with the</u></p> <ol style="list-style-type: none"> <li><u>1. education required in Section 2.5 of these regulations; and</u></li> <li><u>2. experience required for specialist certification.</u></li> </ol> <p><u>B. The clinical nurse specialist shall provide only those advanced services that are consistent with the standards of specialist practice as established by the American Nurses' Association for the designated specialty and in accordance with the provisions of Title 54.1 of the Code of Virginia.</u></p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

29.

EXISTING	PROPOSED
<p style="text-align: center;">PART IV. DISCIPLINARY PROVISIONS.</p> <p>authority: §§ 54.1-3005, 54.1-3007, and 54.1-3008 of the Code of Virginia.</p> <p>4.1. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee upon proof that the licensee has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:</p> <p>A. Fraud or deceit shall mean, but shall not be limited to:</p> <ol style="list-style-type: none"> <li>1. Filing false credentials;</li> <li>2. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or</li> <li>3. Giving or receiving assistance in writing the licensing examination.</li> </ol> <p>B. Unprofessional conduct shall mean, but shall not be limited to:</p> <ol style="list-style-type: none"> <li>1. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 of Title 54.1, as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;</li> <li>2. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;</li> <li>3. Obtaining supplies, equipment or drugs for personal or other unauthorized use;</li> <li>4. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;</li> </ol>	<p style="text-align: center;">No Change</p>

REGULATION

EXISTING	PROPOSED
<p>5. Falsifying or otherwise altering patient or employer records; or</p> <p>6. Abusing, neglecting or abandoning patients or clients.</p>           <p style="text-align: center;">VIRGINIA BOARD OF NURSING</p> <p style="text-align: center;">TITLE OF REGULATIONS: VR495-01-1</p> <p style="text-align: center;">BOARD OF NURSING REGULATIONS</p>    <p style="text-align: center;">EMERGENCY REGULATIONS PART V CERTIFIED NURSE AIDES</p>   <p style="text-align: center;">STATUTORY AUTHORITY: §§ 54.1-2400 and 54.1-3005 OF THE CODE OF VIRGINIA</p>   <p style="text-align: center;">Effective May 11, 1989</p>	<p style="text-align: center;">No Change</p> <p style="text-align: center;">7. Practice of a clinical nurse specialist beyond that defined in Section 1.11 of these regulations; or</p> <p style="text-align: center;">8. Holding self out or performing acts constituting practice of a clinical nurse specialist unless registered by the board.</p> <p style="text-align: center;"><del>Section 4.2. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.</del></p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p style="text-align: center;">VIRGINIA BOARD OF NURSING EMERGENCY REGULATIONS PREAMBLE</p> <p>The federal Omnibus Budget Reconciliation Act (OBRA) of 1987 establishes requirements for states, as a condition for Medicare and Medicaid reimbursement, to implement a program for the following:</p> <ol style="list-style-type: none"> <li>1. By not later than January 1, 1989, specify the nurse aide training and competency evaluation programs.</li> <li>2. By not later than January 1, 1989, establish a registry for nurse aides.</li> <li>3. By January 1, 1990, provide for review and reapproval of all nurse aide training and competency evaluation programs.</li> </ol> <p>Since continued approval of its agreements with the federal government is contingent upon the establishment of this program, the Commonwealth of Virginia through its various components has taken the steps necessary for implementation. The Virginia General Assembly, during the 1989 session, adopted House Bill 1507 authorizing the Board of Nursing to</p> <ol style="list-style-type: none"> <li>1. Certify and maintain a registry of all certified nurse aides;</li> <li>2. Prescribe minimum standards and approve curricula for educational programs preparing persons for certification as nurse aides;</li> <li>3. Promulgate regulations consistent with federal law and regulations; and</li> <li>4. Take action against a certificate holder as allowed by Sections 54.1-3007 and 54.1-3009 of the Code of Virginia.</li> </ol> <p>The timetable from OBRA cited above required that the enabling statutes be introduced as emergency legislation to be effective from passage. As the bill was pending in the General Assembly, a series of meetings were held between representatives of the Department of Health, Department of Medical Assistance Services, Department of Health Professions and Department of Planning and Budget with a goal of establishing the basis for the Board of Nursing to implement the requirements of the new statutes in a timely and efficient manner following signature by the governor. Governor Bates signed the bill on March 20, 1989.</p>	<p style="text-align: center;">No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p>The Board of Nursing has developed proposed emergency regulations. These regulations are presented as a new Part V of the Virginia Board of Nursing regulations (VR495-01-1). As more permanent regulations are developed, merger with other parts of the existing regulations will occur where appropriate.</p> <p>The Division of Licensure and Certification of the Department of Health is receiving information to establish the initial registry of qualified nurse aides who have been deemed by that agency to be competent. Individuals complying with the requirements of the Department of Health will be transferred to and added to the Board of Nursing registry. The Division of Licensure and Certification publishes a list of approved Geriatric Nursing Assistant Training Programs. The programs on this list as of June 30, 1989, will be eligible for the initial post approval review described in Section 5.4.1. of these regulations. Section 5.4.A of the proposed emergency regulations establishes the requirements for approving additional programs not on the list on June 30, 1989.</p> <p style="text-align: center;">PART V CERTIFIED NURSE AIDES</p> <p>Authority: Sections 54.1-2600, 54.1-3000, 54.1-3005, 54.1-3007, 54.1-3009, 54.1-3022, 54.1-3023, 54.1-3024, 54.1-3025, 54.1-3026, 54.1-3027 and 54.1-3028.</p> <p>§ 5.1. Definitions.</p> <p>The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:</p> <p>"Nurse aide education program" means a program designed to prepare nurse aides, offered by a school, college, nursing facility or other institution authorized to conduct such a program.</p> <p>"Nursing facility" means a licensed nursing home or a Medicare or Medicaid certified skilled or intermediate care facility or unit.</p> <p>"Primary Instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.</p>	<p style="text-align: center;">No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

33.

EXISTING	PROPOSED
<p><i>"Program coordinator"</i> means a registered nurse who is administratively responsible and accountable for a nurse aide education program.</p> <p><i>"Program provider"</i> means a school, college, nursing facility or other institution that conducts a nurse aide education program.</p> <p>§ 5.2. Delegation of authority.</p> <p>The Executive Director of the board shall issue a certificate as a Certified Nurse Aide to each applicant who qualifies for such a certificate under Sections 54.1-3024, 54.1-3025, 54.1-3026 and 54.1-3028 of the Code of Virginia.</p> <p>§ 5.3. Fees.</p> <p>Application for nurse aide certification ..... \$15</p> <p>§ 5.4. Nurse aide education programs.</p> <p>A. Establishing a nurse aide education program.</p> <ol style="list-style-type: none"> <li>1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.</li> <li>2. The application shall provide evidence of the ability of the institution to comply with sections 5.4.B. of these regulations.</li> <li>3. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.</li> <li>4. If approval is denied the program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (Section 9-6.14:1 et seq.)</li> </ol>	<p>No Change</p> <p style="text-align: center;">↓</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

34.

EXISTING	PROPOSED
<p>B. Maintaining an approved nurse aide education program. To maintain approval, the nurse aide education program shall demonstrate evidence of compliance with the following essential elements:</p> <ol style="list-style-type: none"> <li>1. Curriculum content and length as set forth in sections 5.4.C.1-3. of these regulations.</li> <li>2. Maintenance of qualified instructional personnel.</li> <li>3. Classroom facilities that meet requirements set forth in section 5.4.H. of these regulations.</li> <li>4. Maintenance of records of graduates' performance on the competency evaluation.</li> <li>5. Skills training experience in a clinical facility which was not terminated from the Medicare or Medicaid programs during the past two years.</li> <li>6. Maintenance of a record showing disposition of complaints against the program.</li> </ol> <p>C. Instructional personnel.</p> <ol style="list-style-type: none"> <li>1. Program coordinator/primary instructor.             <ol style="list-style-type: none"> <li>a. Nursing facility based programs.                 <ol style="list-style-type: none"> <li>1) The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing may assume the administrative responsibility and accountability for the nurse aide education program.</li> </ol> </li> </ol> </li> </ol> <p><small>*Implementing Instructions, dated April 1989, from the Health Care Financing Administration, of the U.S. Department of Health and Human Services, state that, "When the program coordinator is the director of nursing, qualified assistance must be available so that the nursing service responsibilities of the director of nursing are covered."</small></p>	<p>No Change</p> <p style="text-align: center;">↓</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

35

EXISTING	PROPOSED
<p>2) The primary instructor shall hold a current Virginia license as a registered nurse and shall have at least one year of experience, within the preceding five years, in a nursing facility.</p> <p>b. Programs other than those based in nursing facilities.</p> <p>The program coordinator/primary instructor, who does the actual teaching of the students, shall hold a current Virginia license as a registered nurse and shall have two years of experience, within the preceding five years, in caring for the elderly and/or chronically ill of any age. Such experience may include, but not be limited to, employment in a nurse aide education program or in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.</p> <p>c. Prior to being assigned to teach the nurse aide education program, the program coordinator/primary instructor shall demonstrate competence to teach adults by one of the following:</p> <p>(1) Complete satisfactorily a "train-the-trainer" program approved by the board; or</p> <p>(2) complete satisfactorily a credit or noncredit course or courses approved by the board, the content of which must include:</p> <p>(a) basic principles of adult learning;</p> <p>(b) teaching methods and tools for adult learners; and</p> <p>(c) evaluation strategies and measurement tools for assessing the learning outcomes; or</p> <p>(3) provide evidence acceptable to the board of experience in teaching adult learners within the preceding five years.</p>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

36

EXISTING	PROPOSED
<p>2. Each of the other instructional personnel responsible for clinical instruction shall hold a current Virginia license as a registered nurse and have had at least two years of direct patient care experience as a registered nurse.</p> <p>3. The program may utilize resource personnel to meet the planned program objectives for specific topics.</p> <p>4. When students are giving direct care to residents in clinical areas the maximum ratio of students to each instructor shall be ten students to one instructor.</p> <p>D. Curriculum.</p> <p>1. The objective of the nurse aide education program shall be to prepare a nurse aide to provide quality services to residents under the supervision of licensed personnel. The graduate of the nurse aide education program shall be prepared to:</p> <p>a. Communicate and interact competently on a one-to-one basis with the residents;</p> <p>b. Demonstrate sensitivity to residents' emotional, social, and mental health needs through skillful directed interactions;</p> <p>c. Assist residents in attaining and maintaining functional independence;</p> <p>d. Exhibit behavior in support and promotion of residents rights; and</p> <p>e. Demonstrate skills in observation and documentation needed to participate in the assessment of residents' health, physical condition and well-being.</p>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

37.

EXISTING	PROPOSED
<p>2. Content.</p> <p>The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:</p> <p>a. Initial core curriculum (minimum 16 hours). The classroom instruction prior to the direct involvement of a student with a nursing facility resident must include, at a minimum, the topics listed below:</p> <ol style="list-style-type: none"> <li>(1) communication and interpersonal skills</li> <li>(2) infection control</li> <li>(3) safety and emergency procedures</li> <li>(4) promoting resident independence</li> <li>(5) respecting residents' rights</li> </ol> <p>b. Basic skills.</p> <ol style="list-style-type: none"> <li>(1) recognizing abnormal signs and symptoms of common diseases and conditions (e.g., shortness of breath, rapid respirations, fever, coughs, chills, pains in chest, blue color to lips, pain in abdomen, nausea, vomiting, drowsiness, sweating, excessive thirst, pus, blood or sediment in urine, difficulty urinating, urinating in frequent small amounts, pain or burning on urination, urine with a dark color or strong odor) which indicate that the licensed nurse should be notified.</li> <li>(2) measuring and recording routine vital signs.</li> <li>(3) measuring and recording height and weight.</li> <li>(4) caring for the residents' environment.</li> <li>(5) measuring and recording fluid and food intake and output.</li> <li>(6) performing basic emergency measures.</li> <li>(7) caring for resident when death is imminent.</li> </ol>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

38.

EXISTING	PROPOSED
<p>c. Personal care.</p> <ol style="list-style-type: none"> <li>(1) bathing and oral hygiene</li> <li>(2) grooming</li> <li>(3) dressing</li> <li>(4) toileting</li> <li>(5) assisting with eating and hydration including proper feeding techniques</li> <li>(6) caring for skin</li> </ol> <p>d. Individual resident's needs including mental health and social service needs.</p> <ol style="list-style-type: none"> <li>(1) identifying the psychosocial characteristics of the populations who reside in nursing homes</li> <li>(2) modifying behavior in response to behavior of residents.</li> <li>(3) identifying developmental tasks associated with the aging process.</li> <li>(4) providing training in and the opportunity for self care according to residents' capabilities.</li> <li>(5) demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.</li> <li>(6) demonstrating skills supporting age-appropriate behavior by allowing the resident to make personal choices, providing and reinforcing other behavior consistent with residents' dignity.</li> <li>(7) utilizing resident's family or concerned others as a source of emotional support.</li> </ol>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p>e. Basic restorative services.</p> <ol style="list-style-type: none"> <li>(1) using assistive devices in ambulation.</li> <li>(2) eating and dressing.</li> <li>(3) maintaining range of motion.</li> <li>(4) turning and positioning, both in bed and chair.</li> <li>(5) transferring.</li> <li>(6) bowel and bladder training.</li> <li>(7) caring for and using prosthetic devices.</li> <li>(8) positioning of therapeutic devices.</li> </ol> <p>f. Residents' rights.</p> <ol style="list-style-type: none"> <li>(1) providing privacy and maintaining confidentiality.</li> <li>(2) promoting the resident's right to make personal choices to accommodate individual needs.</li> <li>(3) giving assistance in resolving grievances.</li> <li>(4) providing assistance necessary to participate in resident and family groups and other activities.</li> <li>(5) maintaining care and security of the resident's personal possessions.</li> <li>(6) providing care that maintains the resident free from abuse, mistreatment or neglect and reporting improper care to appropriate persons.</li> <li>(7) maintaining the resident's environment and care to minimize the need for physical and chemical restraints.</li> </ol>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p>J. Unit objectives.</p> <ol style="list-style-type: none"> <li>a. Objectives for each unit of instruction shall be stated in behavioral terms including measurable performance criteria.</li> <li>b. Objectives shall be reviewed with the students at the beginning of each unit.</li> </ol> <p>E. Skill record.</p> <p>Each nurse aide education program shall develop an individual performance record of major duties and skills taught. This record will consist of, at a minimum, a listing of the duties and skills expected to be learned in the program, space to record when the nurse aide student performs this duty or skill, spaces to note satisfactory or unsatisfactory performance, the date of performance, and the instructor supervising the performance. At the completion of the nurse aide education program, the nurse aide and his employer must receive a copy of this record.</p> <p>F. Student identification.</p> <p>The nurse aide students shall wear identification that is clearly recognizable to residents, visitors and staff.</p> <p>G. Length of program.</p> <ol style="list-style-type: none"> <li>1. The program shall be at least 80 hours in length.</li> <li>2. The program shall provide for at least 16 hours of instruction prior to direct involvement of a student with a nursing facility resident.</li> <li>3. Skills training in clinical settings shall be at least 40 hours.</li> <li>4. Employment orientation to facilities used in the education program must not be included in the 80 hours allotted for the program.</li> </ol>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

41.

EXISTING	PROPOSED
<p>H. Classroom facilities.</p> <p>The nurse aide education program shall provide facilities that meet federal and state requirements including:</p> <ol style="list-style-type: none"> <li>1. Comfortable temperatures.</li> <li>2. Clean and safe conditions.</li> <li>3. Adequate lighting.</li> <li>4. Adequate space to accommodate all students.</li> <li>5. All equipment needed, including audio-visual equipment and that needed for simulating resident care.</li> </ol> <p>I. Initial Post Approval Review</p> <ol style="list-style-type: none"> <li>1. Nurse aide education programs approved by June 30, 1989, shall submit required information documenting the implementation of and compliance with the requirements of sections 5.4.B.-H. of these regulations no later than January 1, 1990.</li> <li>2. The information shall be presented to the board for consideration and action. The report and the action taken by the board shall be sent to the appropriate administrative officer of the program.</li> <li>3. If the board determines that a nurse aide education program has not implemented or complied with the requirements of Sections 5.4.B.-H. of these regulations, the program shall be placed on conditional approval and be given a reasonable period of time to correct the identified deficiencies. The program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (Sections 9-6.14:1 et seq.)</li> <li>4. If the program fails to correct the identified deficiencies within the time specified by the Board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (Sections 9-6.14:1 et seq.)</li> </ol>	<p>No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

42.

EXISTING	PROPOSED
<p>J. Ongoing review.</p> <ol style="list-style-type: none"> <li>1. Each nurse aide education program shall be reviewed on site by an agent of the board at least every two years following initial review.</li> <li>2. The report of the site visit shall be presented to the board for consideration and action. The report and the action taken by the board shall be sent to the appropriate administrative officer of the program.</li> <li>3. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on site review is not conducted.</li> <li>4. A nurse aide education program shall continue to be approved provided the requirements set forth in § 5.4.B.-H. of these regulations are maintained.</li> <li>5. If the board determines that a nurse aide education program is not maintaining the requirements of § 5.4.B.-H. of these regulations, the program shall be placed on conditional approval and be given a reasonable period of time to correct the identified deficiencies. The program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (Section 9-6.14:1 et seq.)</li> <li>6. If the program fails to correct the identified deficiencies within the time specified by the board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (Section 9-6.14:1 et seq.)</li> </ol> <p>K. Curriculum changes.</p> <p>Changes in curriculum must be approved by the board prior to implementation and shall be submitted for approval at the time of a report of a site visit or the report submitted by the program coordinator in the intervening years.</p>	<p>No Change</p>

# Proposed Regulations

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<p>L. Closing of a nurse aide education program.</p> <p>When a nurse aide education program closes, the program provider shall:</p> <ol style="list-style-type: none"> <li>1. Notify the board of the date of closing.</li> <li>2. Submit to the board a list of all graduates with the date of graduation of each.</li> </ol> <p>§ 5.5. Nurse aide competency evaluation.</p> <ol style="list-style-type: none"> <li>A. The board may contract with a test service for the development and administration of a competency evaluation.</li> <li>B. All individuals completing a nurse aide education program in Virginia shall successfully complete the competency evaluation required by the board prior to making application for certification and to using the title Certified Nurse Aide.</li> <li>C. The board shall determine the minimum passing score on the competency evaluation.</li> </ol> <p>§ 5.6. Nurse aide registry.</p> <ol style="list-style-type: none"> <li>A. Initial certification by examination.           <ol style="list-style-type: none"> <li>1. To be placed on the registry and certified, the nurse aide must               <ol style="list-style-type: none"> <li>a. Satisfactorily complete a nurse aide education program approved by the board;</li> <li>b. Pass the competency evaluation required by the board; and</li> <li>c. Submit the required application and fee to the board.</li> </ol> </li> <li>2. Initial certification by endorsement.               <ol style="list-style-type: none"> <li>a. A graduate of a state approved nurse aide education program who has satisfactorily completed a competency evaluation program and been registered in another state may apply for certification in Virginia by endorsement.</li> </ol> </li> </ol> </li> </ol>	<p style="text-align: center;">No Change</p>

VIRGINIA STATE BOARD OF NURSING  
REGULATION

EXISTING	PROPOSED
<ol style="list-style-type: none"> <li>b. An applicant for certification by endorsement shall submit the required application and fee and submit the required verification form to the credentialing agency in the state where registered, certified or licensed within the last two years.</li> <li>3. Initial certification shall be for two years.</li> </ol> <p>B. Renewal of certification.</p> <ol style="list-style-type: none"> <li>1. No less than 30 days prior to the expiration date of the current certification, an application for renewal shall be mailed by the board to the last known address of each currently registered Certified Nurse Aide.</li> <li>2. The Certified Nurse Aide shall return the completed application with the required fee and verification of employment within the preceding two years.</li> <li>3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.</li> <li>4. A certified nurse aide who has not worked in a nursing facility during the two years preceding the expiration date of the certification shall repeat an approved nurse aide education program and the nurse aide competency evaluation prior to applying for recertification.</li> </ol> <p>C. Evidence of change of name.</p> <p>A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.</p> <p>D. Requirements for current mailing address.</p> <ol style="list-style-type: none"> <li>1. All notices required by law and by these regulations to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.</li> <li>2. Each certificate holder shall maintain a record of his current mailing address with the board.</li> <li>3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.</li> </ol>	<p style="text-align: center;">No Change</p>

# Proposed Regulations

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

### Title of Regulation: VR 615-43-3. Nonagency Placement for Adoption-Consent.

Statutory Authority: §§ 63.1-25 and 63.1-220.3 of the Code of Virginia.

Public Hearing Date: September 15, 1989 - 10 a.m.  
(See Calendar of Events section for additional information)

#### Summary:

The 1989 General Assembly enacted legislation amending Chapter 11 § 63.1-220 et seq.) of Title 63.1 of the Code of Virginia. The statutory changes enable birth parents to place their children for adoption with individuals of their choice; provide procedures for executing consent to the adoption; and specify the penalty for violation of laws governing parental placements. The legislative changes have resulted in changes in responsibilities of agencies, roles of agencies, and time frames for the provision of services. The regulations will enable local departments of social services and licensed child-placing agencies to implement the new legislation.

### VR 615-43-3. Nonagency Placement for Adoption-Consent.

#### PART I.

##### § 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Adult adoption" means the adoption of any person eighteen years of age or older.

"Adoption" means the legal process in which a person's rights and duties toward birth parents are terminated and similar rights and duties are established with a new family.

"Adoptive home" means any family home selected and approved by a parent, local board of public welfare or social services or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of the adoptive family to determine their suitability for adoption.

"Agency" means a local department of social services or a licensed child-placing agency.

"Child" means any person under eighteen years of age.

"Commissioner" means the Commissioner of the Department of Social Services.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Nonagency placement" means the placement for purposes of foster care or adoption of a child who is not in the custody of a social board of social services or child-placing agency. Nonagency placements include parental placements, step-parent adoptions, and adult adoptions.

"Parental placement" means the placement of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Person" means any natural person, or any association, partnership or corporation.

"Step-parent adoption" means the adoption of a child by a new spouse of the birth or adoptive parent.

#### PART II. POLICY.

##### § 2.1. Responsibilities of the agency.

In order for the Juvenile and Domestic Relations Court to make the legally required determinations before accepting consent, the agency shall:

1. Conduct a home study of the prospective adoptive home in accordance with regulations promulgated by the Board of Social Services; and

2. Provide the court with a report of the home study. Two copies of the home study report shall be sent with the original for the court, at its discretion, to provide to the birth and adoptive parents. The report shall include the following:

a. Information regarding whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child;

b. The physical and mental condition of the child;

c. Information about both birth parents including:

(1) Full names and addresses;

(2) Why the parents desire to be relieved of the responsibility for the child and what their attitude is toward the proposed adoption;

(3) Physical description, age, race, marital status, education, employment, and, if known, physical and mental health.

# Proposed Regulations

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d. The circumstance under which the child came to live, or will be living, in the home of the prospective adoptive family;

e. Fees that have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child;

f. A statement as to whether the requirements of law related to execution of consent have been met;

g. The agency's recommendation regarding the suitability of the placement. When the recommendation is that the placement appears to be contrary to the best interest of the child, the agency shall provide its justification for the recommendation; and

h. Any other matters specified by the court.

3. If the agency suspects there has been an exchange of property, money, services, or any other thing of value in violation of law in the placement or adoption of the child, the agency shall report such findings to the commissioner for investigation. The following exceptions apply:

a. Reasonable and customary services provided by a licensed or duly authorized child-placing agency, and fees, based on prevailing community rates, paid for such services;

b. Payment or reimbursement for medical expenses directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, and for expenses incurred for medical care for the child;

c. Payment or reimbursement to birth parents for transportation necessary to execute consent to the adoption;

d. Usual and customary fees, based on prevailing community rates, for legal services in adoption proceedings; and

e. Payment or reimbursement of reasonable expenses incurred by adoptive parents for transportation in intercountry placements and as necessary for compliance with state and federal law in such placements.

4. If the agency suspects that a person has engaged in the activities of a child-placing agency without a license to do so, the agency shall report the findings to the commissioner for investigation. These activities include:

a. Physical placement of the child with the prospective adoptive family;

b. Conducting an adoptive home study; and

c. Providing supervision of the placement to meet legal requirements related to visitation of the child and family.

## § 2.2. Responsibilities of the commissioner.

When reports of suspected violations of law in the placement and adoption of the child are received by the commissioner, the commissioner shall:

1. Investigate the suspected violation; and
2. Take appropriate action.

when the investigation reveals that:

a. There may have been a violation of law; the commissioner shall report his findings to the appropriate attorney for the Commonwealth;

b. The violation occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1 of the Code of Virginia; the commissioner shall also report his findings to the appropriate regulatory authority for investigation and appropriate disciplinary action; and

c. The violation involves engaging in the activities of a child-placing agency without a license; the commissioner may file suit with the court of record having chancery jurisdiction.

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: VR 615-43-10. Nonagency Placements for Adoption - Adoptive Home Study.

Statutory Authority: §§ 63.1-25 and 63.1-220.3 of the Code of Virginia.

Public Hearing Date: September 18, 1989 - 10 a.m.  
(See Calendar of Events section for additional information)

### Summary:

The 1989 General Assembly enacted legislation amending Chapter 11 (Sections 63.1-220 et seq.) of Title 63.1 of the Code of Virginia. The statutory changes enable birth parents to place their children for adoption with individuals of their choice; provide procedures for executing consent to the adoption; and specify the penalty for violation of laws governing parental placements. The statutory changes further requires that a child placing agency perform a home study of the prospective adoptive home prior to the juvenile and domestic relations court accepting the consent of the birth parent to the adoption. These

regulations will provide guidance to child-placing agencies in conducting an adoptive home study.

Definitions in regulations define words never used and/or slightly different from Code definitions.

## PART I. DEFINITIONS.

### § 1.1. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Adult adoption" means the adoption of any person eighteen years of age or older.

"Adoption" means the legal process in which a person's rights and duties toward birth parents are terminated and similar rights and duties are established with a new family.

"Adoptive home" means any family home selected and approved by a parent, local board of public welfare or social services or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Child" means any person under eighteen years of age.

"Child-placing agency" means any person or agency who places children in foster homes or adoptive homes or a local board of public welfare or social services which places children in foster homes or adoptive homes.

"Nonagency placement" means the placement for purposes of foster care or adoption of a child who is not in the custody of a local board of social services or child-placing agency. Nonagency placements include parental placements, step-parent adoptions, and adult adoptions.

"Parental placement" means the placement of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Person" means any natural person, or any association, partnership or corporation.

"Step-parent adoption" means the adoption of a child by a new spouse of the birth or adoptive parent.

## PART II. POLICY.

### § 2.1. Adoptive home study.

The manner in which a family receives a child for adoption shall have no bearing on how the family is assessed for purposes of adoptive placement. The criteria of capacity for parenthood are the same whether the child

was placed by an agency, by the birth parents, or by a legal guardian.

The difference between completing a home study for a child placed by an agency and for a child placed by birth parents is in the role of the agency, not in the assessment of the adoptive family. In an agency placement, the agency approves or denies adoptive applicants based on agency standards. In a parental placement, the agency is to make a recommendation to the court regarding the suitability of the family to adopt. The recommendation is to be based on an assessment of whether the placement is contrary to the best interest of the child. The assessment is based on information gathered during the home study process.

Section 63.1-220.3 B 6 of the Code of Virginia requires home studies to be conducted according to regulations established by the State Board of Social Services. These are described below.

#### A. Method of study.

##### 1. Interviews.

a. There shall be a minimum of three interviews. At least one interview must occur in the home of the adoptive family and, in the case of married applicants, shall be a joint interview with husband and wife.

b. In a parental placement, the agency social worker shall meet at least once with the birth parents and prospective adoptive parents simultaneously.

c. All members of the household shall be interviewed as part of the home study, including children when appropriate.

2. References. Adoptive applicants shall provide at least two references from individuals who are unrelated to them.

##### 3. Criminal and child protective services records.

a. Adoptive applicants shall identify any criminal convictions and be willing to consent to a criminal records search;

b. Adoptive applicants shall not have been convicted of a felony or misdemeanor which jeopardizes the safety or proper care of the child.

c. Adoptive applicants shall be willing to consent to a search of the child protective services central registry.

4. Medical examinations. Adoptive applicants shall provide a physician's statement that reflects their current health and that states that they are in

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*satisfactory physical and mental health to enable them to provide adequate care for the child.*

## *B. Assessment of the family.*

*A thorough assessment of the adoptive family is critical in evaluating whether the placement is contrary to the best interest of the child. The home study shall include, but not be limited to, an assessment of the following criteria, which are based on standards developed by the Child Welfare League of America.*

### *1. Total personality functioning.*

- a. Significant life experiences and the individual's response to them;*
- b. Relationships with nuclear and extended family members;*
- c. Work history and the individual's response to work situations;*
- d. Relationships with friends;*
- e. Involvement in community activities.*

### *2. Emotional maturity.*

- a. Capacity of the family to give and receive love;*
- b. Ability to assume responsibility for the care, guidance and protection of other people;*
- c. The family's flexibility and ability to change in relation to the needs of others;*
- d. Ability to cope with problems, disappointments and frustrations;*
- e. Ability to accept normal hazards and risks;*
- f. Capacity to take responsibility for one's own actions;*
- g. Capacity to accept and handle loss;*
- h. The capacity to understand that adoption is a lifelong experience and that the family may need support over time;*
- i. Capacity to accept professional support.*

### *3. Quality of relationships.*

- a. Duration and stability of spousal relationship, when married; or with significant others, when single;*
- b. The capacity of the nuclear and extended family members to accept the adopted child as an equal*

*member of the family.*

### *4. Capacity to parent.*

- a. The ability of the family to realistically understand the needs and behaviors of children and the impact of adoption on the child and family;*
- b. The ability to love and nurture a child born to someone else;*
- c. The family's willingness to provide linkages to the child's birth family;*
- d. The family's capacity for feeling satisfaction from contributing to the development of a child;*
- e. The family's ability to understand and respond to changing developmental, health, and emotional needs of the child.*

### *5. Reasons for adoption.*

- a. Motivation to adopt;*
- b. In infant adoptions, the primary motivation to adopt may be infertility. Applicants may want help to understand and cope with feelings about the inability to have a child. When indicated, the agency should assist applicants in obtaining services to help resolve feelings associated with infertility. However, unresolved feelings about childlessness do not necessarily indicate inability to parent a child through adoption.*

### *6. Readiness to adopt.*

- a. The ability to make a lifelong commitment to a child not born to them;*
- b. The ability to accept the circumstances of the child's birth and birth family history;*
- c. The capacity to understand the lifelong impact of adoption and to help the child deal with adoption related issues at various developmental stages of life.*

### *7. Home and community environment.*

- a. The degree to which the home environment allows for privacy among family members; adequate play areas; and freedom from health and safety hazards;*
- b. The accessibility of community resources that may be needed for the child.*

*8. Financial circumstances of the family. The ability of the family to meet the basic needs of the child and family (food, clothing, shelter, and medical care).*

*C. Approval period.*

*A home study conducted for purposes of parental placements shall be approved for a period of 12 months from the date of completion of the study.*

# FINAL REGULATIONS

For information concerning Final Regulations, see information page.

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

**Title of Regulation:** VR 115-04-01. **Declaration of Small Whorled Pogonia as an Endangered Plant Species Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act.**

**Statutory Authority:** §§ 3.1-1020 through 3.1-1030 of the Code of Virginia.

**Effective Date:**

### Summary:

The amendment adds 13 rare plant species to the list of endangered plants under the Virginia Endangered Plant and Insect Species Act. The endangered plant species are shale barren rock cress, *Arabis serotina*; mat-forming water-hyssop, *Bacopa stragula*; piratebush, *Buckleya distichophylla*; variable sedge, *Carex polymorpha*; Harper's fimbriistylis, *Fimbristylis perpusilla*; Virginia sneezeweed, *Helenium virginicum*; swamp pink, *Helonias bullata*; long-stalked holly, *Ilex collina*; Peter's mountain mallow, *Iliamna corei*; small whorled pogonia, *Isotria medeoloides*; nestronia, *Nestronia umbellula*; Northeastern bulrush, *Scirpus ancistrochaetus*; and Virginia spiraea, *Spiraea virginiana*. Naturally occurring populations of the endangered species listed range from a single known population in the world to populations in five counties along the foothills of the Blue Ridge Mountains.

The listing of species makes it unlawful for any person other than the landowner, to dig, take, cut, process or otherwise collect, remove, transport, possess, sell, offer for sale or give any species listed under the rules and regulations, except as authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services. Also, by affording endangered-species status to these plants, the board invests the commissioner with authority to carry out an effective conservation program, thereby preventing their further decline and possible extinction.

**REGULATORY NOTE:** The Virginia Freedom of Information Act excludes from required disclosure "Records containing information on the site specific locations of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or

the integrity of the resource."

For further information regarding site specific locations, please contact C. Kermit Spruill, Jr., Director, Division of Product and Industry Regulation, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, Virginia 23209; telephone (804) 786-3523.

VR 115-04-01. Rules and Regulations for the Enforcement of the Endangered Plant and Insect Species Act.

Small whorled pogonia, *Isotria medeoloides*, of the Orchidaceae family, is hereby declared an endangered species as defined in § 3.1-1021 of the Virginia Endangered Plant and Insect Species Act and is subject to all sections of the Virginia Endangered Plant and Insect Species Act in order to preserve those specimens that exist in this Commonwealth.

§ 1. Under authority of the Endangered Plant and Insect Species Act (§§ 3.1-1020 through 3.1-1030 of the Code of Virginia), the Board of Agriculture and Consumer Services hereby adopts the following regulation in order to protect designated plant and insect species that exist in this Commonwealth. All designated species are subject to all sections of the Virginia Endangered Plant and Insect Species Act. The following species are hereby declared an endangered species as defined in § 3.1-1021 of the Virginia Endangered Plant and Insect Species Act:

*Arabis serotina*, Shale Barren Rock Cress.

*Bacopa stragula*, Mat-Forming Water-Hyssop.

*Buckleya distichophylla*, Piratebush.

*Carex polymorpha*, Variable Sedge.

*Fimbristylis perpusilla*, Harper's Fimbriistylis.

*Helenium virginicum*, Virginia Sneezeweed.

*Helonias bullata*, Swamp-Pink.

*Ilex collina*, Long-Stalked Holly.

*Iliamna corei*, Peter's Mountain Mallow.

*Isotria medeoloides*, Small Whorled Pogonia.

*Nestronia umbellula*, Nestronia.

*Scirpus ancistrochaetus*, Northeastern Bulrush.

*Spiraea virginiana*, *Virginia Spiraea*.

## DEPARTMENT OF HEALTH (STATE BOARD OF)

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes from Article 2 regulations which are necessary to conform to changes in the Code of Virginia when no agency discretion is involved. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 355-28-01.02. Regulations for Disease Reporting and Control.

**Statutory Authority:** §§ 32.1-12 and 32.1-35 through 32.1-38 of the Code of Virginia.

**Effective Date:** September 14, 1989

### Summary:

*These regulations explain the requirements for reporting communicable diseases, toxic substances related diseases, and cancer to the health department, including defining who is required to report, which diseases are reportable, and what mechanisms are available for reporting.*

*Amendment 3 of the regulations was approved by the Board of Health to bring the regulations into compliance with statutory requirements. Section 32.1-36 C of the Code of Virginia was modified by the 1989 General Assembly to require physicians to report patients with human immunodeficiency virus (HIV) infection to the local health department. Prior to that, physicians were permitted, but not required, to report such infections. Because reportable disease requirements of the Board of Health extend to persons other than physicians (§ 32.1-37), the amended regulations also state that medical care facilities shall report patients with HIV infection.*

*This change to the Regulations for Disease Reporting and Control has been made solely on the basis of a statutory change. No agency discretion has been required. The regulations clarify disease reporting requirements to those required to report. No other approach would as concisely meet this need.*

VR 355-28-01.02. Regulations for Disease Reporting and Control.

### PART I. DEFINITIONS.

§ 1.1. The following words and terms, when used in these regulations, shall have the following meaning, unless the

context clearly indicates otherwise:

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Carrier" means a person who, with or without any apparent symptoms of a communicable disease, harbors a specific infectious agent and may serve as a source of infection.

"Commissioner" means the State Health Commissioner, his duly designated officer or agent.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Department" means the State Department of Health.

"Designee" or "Designated officer or agent" means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board.

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Foodborne outbreak" means a group manifestation of illness acquired through the consumption of food or water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to heavy metal intoxications, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, *Clostridium perfringens* food poisoning and hepatitis A.

"Immunization" means a treatment which renders an individual less susceptible to the pathologic effects of a disease or provides a measure of protection against the disease (e.g., inoculation, vaccination).

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Investigation" means an inquiry into the incidence,

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extent, source and causation of a disease occurrence.

*"Isolation"* means separation for the period of communicability of infected persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of an infectious agent from those infected to those who are susceptible. The means of isolation shall be the least restrictive means appropriate under the facts and circumstances as determined by the commissioner.

*"Laboratory director"* means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

*"Medical care facility"* means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

*"Midwife"* means any person who is registered as a nurse midwife by the State Board of Nursing or who possesses a midwife permit issued by the State Health Commissioner.

*"Nosocomial outbreak"* means any group of illnesses of common etiology occurring in patients of a medical care facility acquired by exposure of those patients to the disease agent while confined in such a facility.

*"Nurse"* means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia State Board of Nursing.

*"Period of communicability"* means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

*"Physician"* means any person licensed to practice medicine by the Virginia State Board of Medicine.

*"Quarantine"* means generally, a period of detention for persons or domestic animals that may have been exposed to a reportable, contagious disease for purposes of observation or treatment.

1. Complete quarantine. The formal limitation of freedom of movement of well persons or animals exposed to a reportable disease for a period of time not longer than the longest incubation period of the disease in order to prevent effective contact with the unexposed. The means of complete quarantine shall be the least restrictive means appropriate under the facts and circumstances, as determined by the commissioner.

2. Modified quarantine. A selective, partial limitation of freedom of movement of persons or domestic animals, determined on the basis of differences in

susceptibility, or danger of disease transmission. Modified quarantine is designed to meet particular situations and includes but is not limited to, the exclusion of children from school and the prohibition or restriction of those exposed to or suffering from a communicable disease from engaging in a particular occupation. The means of modified quarantine shall be the least restrictive means appropriate under the facts and circumstances, pursuant to § 3.1 E of these regulations or as determined by the commissioner.

3. Segregation. The separation for special control, or observation of one or more persons or animals from other persons or animals to facilitate control or surveillance of a reportable disease. The means of segregation shall be the least restrictive means available under the facts and circumstances, as determined by the commissioner.

*"Reportable disease"* means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

*"Surveillance"* means the continuing scrutiny of all aspects of occurrence and spread of a disease relating to effective control of that disease. Included in the process of surveillance are the collection and evaluation of:

1. Morbidity and mortality reports.
2. Special reports of field investigations of epidemics and individual cases.
3. Isolation and identification of infectious agents by laboratories.
4. Data concerning the availability, use, and untoward side effects of the substances used in disease control.
5. Information regarding immunity levels in segments of the population.

*"Toxic substance"* means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

## PART II. GENERAL INFORMATION.

§ 2.1. Authority.

Chapter 2 of Title 32.1 of the Code of Virginia deals with the reporting and control of diseases. Specifically, § 32.1-35 directs the Board of Health to promulgate regulations specifying which diseases occurring in the Commonwealth are to be reportable and the method by which they are to be reported. Further, § 32.1-42 of the Code authorizes the board to promulgate regulations and orders to prevent a potential emergency caused by a disease dangerous to the public health. Section 32.1-12 of the Code empowers the Board of Health to adopt such regulations as are necessary to carry out provisions of laws of the Commonwealth administered by the Commissioner of the Department of Health.

## § 2.2. Purpose.

These regulations are designed to provide for the uniform reporting of diseases of public health importance occurring within the Commonwealth in order that appropriate control measures may be instituted to interrupt the transmission of disease.

## § 2.3. Administration.

### A. State Board of Health.

The State Board of Health ("board") has the responsibility for promulgating regulations pertaining to the reporting and control of diseases of public health importance.

### B. State Health Commissioner.

The State Health Commissioner ("commissioner") is the executive officer for the State Board of Health with the authority of the board when it is not in session, subject to the rules and regulations of and review by the board.

### C. Local health director.

The local health director is responsible for the surveillance and investigation of those diseases specified by these regulations which occur in his jurisdiction. He is further responsible for reporting all such surveillance and investigations to the State Department of Health. In cooperation with the commissioner, he is responsible for instituting measures for disease control, which may include quarantine or isolation as required by the commissioner.

### D. Office of Epidemiology.

The Office of Epidemiology is responsible for the statewide surveillance of those diseases specified by these regulations, for coordinating the investigation of those diseases with the local health director and regional medical director, and for providing direct assistance where necessary. The Director of the Office of Epidemiology acts as the commissioner's designee in reviewing reports and investigations of diseases and recommendations by local health directors for quarantine or isolation. However, authority to order quarantine or isolation resides solely

with the commissioner, unless otherwise expressly provided by him.

## § 2.4. Application of regulations.

These regulations have general application throughout the Commonwealth.

## § 2.5. Effective date of original regulations.

August 1, 1980.

Effective date of amendment No. 1:

August 21, 1984.

Effective date of emergency amendment of § 3.1:

January 4, 1988.

Effective date of amendment No. 2:

February 15, 1989.

*Proposed Effective Date of Amendment #3.*

*September 14, 1989.*

## § 2.6. Application of the Administrative Process Act.

The provisions of the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 of Title 9 of the Code, shall govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all proceedings and appeals hereunder. All hearings on such regulations shall be conducted in accordance with § 9-6.14:7.

## § 2.7. Powers and procedures of regulations not exclusive.

The board reserves the right to authorize a procedure for enforcement of these regulations which is not inconsistent with the provisions set forth herein and the provisions of Chapter 2 of Title 32.1 of the Code.

## PART III. REPORTING OF DISEASE.

### § 3.1. Reportable Disease List.

The board declares the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in § 3.2:

#### A. List of reportable diseases:

Acquired Immunodeficiency Syndrome	Lymphogranuloma venereum
Amebiasis	Malaria
Anthrax	Measles (Rubeola)
Arboviral infections	Meningococcal infections
Aseptic meningitis	Mumps
	Nosocomial outbreaks

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Bacterial meningitis (specify etiology)	Occupational illnesses
Botulism	Ophthalmia neonatorum
Bruceellosis	Pertussis (Whooping cough)
Campylobacter infections	Phenylketonuria (PKU)
Chancroid	Plague
Chickenpox	Poliomyelitis
Chlamydia trachomatis infections	Psittacosis
Congenital rubella syndrome	Q fever
Diphtheria	Rabies in animals
Encephalitis primary (specify etiology)	Rabies in man
post-infectious	Rabies treatment, post exposure
Foodborne outbreaks	Reye syndrome
Giardiasis	Rocky Mountain spotted fever
Gonorrhoea	Rubella (German measles)
Granuloma inguinale	Salmonellosis
Haemophilus influenzae infections invasive	Shigellosis
Hepatitis	Smallpox
A	Syphilis
B	Tetanus
Non A, Non B	Toxic shock syndrome
Unspecified	Toxic substance related illnesses
Histoplasmosis	Trichinosis
Human immunodeficiency virus (HIV) infection	Tuberculosis
Influenza	Tularemia
Kawasaki Syndrome	Typhoid fever
Legionellosis	Typhus, flea-borne
Leprosy	Vibrio infections including cholera
Leptospirosis	Waterborne outbreaks
Listeriosis	Yellow fever
Lyme disease	

\*Reportable by physicians only, according to the provisions of § 3-1 D of these regulations.

## B. Reportable diseases requiring rapid communication.

Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of these diseases, listed below, shall be made by the most rapid means available, preferably that of telecommunication (e.g., telephone, telegraph, teletype, etc.) to the local health director or other professional employee of the department:

Anthrax	Plague
Botulism	Poliomyelitis
Cholera	Psittacosis
Diphtheria	Rabies in man
Foodborne outbreaks	Smallpox
Haemophilus influenzae infections, invasive	Syphilis, primary and secondary
Hepatitis A	Tuberculosis
Measles (Rubeola)	Yellow Fever
Meningococcal infections	

## C. Diseases to be reported by number of cases.

The following disease in the list of reportable diseases shall be reported as number-of-cases only:

Influenza (by type, if available)

## D. Diseases to be reported under special circumstances. *Human immunodeficiency virus (HIV) infection.*

Any *Every* physician practicing in this Commonwealth may shall report to the local health department any patient of his who has tested positive for exposure to human immunodeficiency virus (HIV). *Every person in charge of a medical care facility shall report the occurrence in or admission to the facility of a patient with HIV infection unless there is evidence that the occurrence has been reported by a physician.* ~~If~~ When such a report is made, it shall include the information required in § 3.2 A. Only individuals who have positive blood tests for HIV antibodies as demonstrated by at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot are considered to have HIV infection. ~~It is recommended that HIV infection shall be reported when the physician or primary care provider needs the Department of Health's support in patient and contact counseling and epidemiologic tracking.~~

## E. Toxic substances related diseases or illnesses.

Diseases or illnesses resulting from exposure to a toxic substance, shall include, but not be limited to the following:

Occupational Lung Diseases:	Occupationally-Related Cancers
silicosis	mesothelioma
asbestosis	
byssinosis	

Furthermore, all toxic substances-related diseases or illnesses, including pesticide poisonings, illness or disease resulting from exposure to a radioactive substance, or any illness or disease that is indicative of an occupational health, public health, or environmental problem shall be reported.

If such disease or illness is verified, or suspected, and presents an emergency, or a serious threat to public health or safety, the report of such disease or illness shall be by rapid communication as in § 3.1 B.

## F. Unusual or ill-defined diseases, illnesses, or outbreaks.

The occurrence of outbreaks or clusters of any illness which may represent an unusual or group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

## § 3.2. Those required to report.

### A. Physicians.

Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable disease, or who is suspected of being a carrier

of a reportable disease shall report that person's name, address, age, sex, race, name of disease diagnosed or suspected, and the date of onset of illness except that influenza should be reported by number of cases only (and type of influenza, if available) and HIV infection may be reported and if reported, shall include the information listed above and comply with the provisions of § 3.1 D. It is recommended that HIV infection shall be reported when the physician or primary care provider needs the Department of Health's support in patient and contact counseling and epidemiologic tracking. Reports are to be made to the local health department serving the jurisdiction where the physician practices. Any physician making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made on a form to be provided by the department (CD-24) and shall be made within seven days unless the disease in question requires rapid reporting under §§ 3.1 B or 3.1 F. (Venereal diseases are reported on Form VD-35C in the manner described above.)

## B. Directors of laboratories.

Any person who is in charge of a laboratory conducting business in the Commonwealth shall report any laboratory examination of any specimen derived from the human body which yields evidence, by the laboratory method(s) indicated, of a disease listed below:

Anthrax - by culture

Campylobacter infections - by culture

Chlamydia trachomatis infections - by culture or antigen detection methods

Cholera - by culture

Diphtheria - by culture

Gonococcal infections - by culture or microscopic examination

Haemophilus influenzae infections - by culture or antigen detection assay of blood or cerebrospinal fluid

Hepatitis A - by serology specific for IGM antibodies

Influenza - by culture or serology

Legionellosis - by culture or serology

Listeriosis - by culture

Malaria - by microscopic examination

Meningococcal infections - by culture of blood or cerebrospinal fluid

Mycobacterial diseases - by culture

Pertussis - by culture or direct fluorescent antibody test

Plague - by culture or direct fluorescent antibody test

Poliomyelitis - by culture or serology

Rabies in animals - by microscopic or immunologic examination

Salmonella infections - by culture

Shigella infections - by culture

Syphilis - by serology or dark field examination

Trichinosis - by microscopic examination of a muscle biopsy

Each report shall give the name and address of the person from whom the specimen was obtained and, when available, the person's age, race and sex. The name and address of the physician or medical facility for whom the examination was made shall also be provided. When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within seven days to the local health department serving the jurisdiction in which the laboratory is located and shall be made on Form CD-24.3 or on the laboratory's own form if it includes the required information. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Exceptions: With the exception of reporting laboratory evidence of gonococcal infections and syphilis, laboratories operating within a medical care facility shall be considered to be in compliance with the regulations when the director of that medical care facility assumes the reporting responsibility.

Laboratory examination results indicating gonococcal infections or syphilis shall be reported either on Form VD-36 or on Form CD-24.3 or another form acceptable to the Director of the Office of Epidemiology.

A laboratory may fulfill its responsibility to report mycobacterial diseases by sending a positive culture for identification or confirmation, or both, to the Virginia Division of Consolidated Laboratory Services. The culture must be identified with the patient and physician information required above.

## C. Person in charge of a medical care facility.

Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in § 3.1 A unless he has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the

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Code of Virginia. The requirement to report shall include all inpatient, outpatient and emergency care departments within the medical care facility. Such report shall contain the patient's name, age, address, sex, race, name of disease being reported, the date of admission, hospital chart number, date expired (when applicable), and attending physician. Influenza should be reported by number of cases only (and type of influenza, if available). Reports shall be made within seven days unless the disease in question requires rapid reporting under §§ 3.1 B or 3.1 F and shall be made on Form CD-24.1. Nosocomial outbreaks shall be reported on Form CD-24.2.

(Note: See § 3.2 B "Exceptions")

#### D. Person in charge of a school.

Any person in charge of a school shall report immediately to the local health department the presence or suspected presence in his school of children who have common symptoms suggesting an epidemic or outbreak situation. Any person so reporting shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

#### E. Local health directors.

The local health director shall forward within seven days to the Office of Epidemiology of the State Health Department any report of a disease or report of evidence of a disease which has been made on a resident of his jurisdiction. This report shall be by telecommunication if the disease is one requiring rapid communication, as required in § 3.1 B or § 3.1 F. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology within seven days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individuals residing in the latter's jurisdiction. The local health director shall review reports of diseases received from his jurisdiction and follow-up such reports, when indicated, with an appropriate investigation in order to evaluate the severity of the problem. He shall determine, in consultation with the regional medical director, the Director of the Office of Epidemiology, and the commissioner if further investigation is required and if complete or modified quarantine will be necessary.

Modified quarantine shall apply to situations in which the local health director on the scene would be best able to judge the potential threat of disease transmission. Such situations shall include, but are not limited to, the temporary exclusion of a child with a communicable disease from school and the temporary prohibition or restriction of any individual(s), exposed to or suffering from a communicable disease, from engaging in an occupation such as foodhandling that may pose a threat to the public. Modified quarantine shall also include the exclusion, under § 32.1-47 of the Code of Virginia of any unimmunized child from a school in which an outbreak, potential epidemic, or epidemic of a vaccine preventable disease has been identified. In these situations, the local

health director may be authorized as the commissioner's designee to order the least restrictive means of modified quarantine.

Where modified quarantine is deemed to be insufficient and complete quarantine or isolation is necessary to protect the public health, the local health director, in consultation with the regional medical director and the Director of the Office of Epidemiology, shall recommend to the commissioner that a quarantine order or isolation order be issued.

F. Persons in charge of hospitals, nursing homes, homes for adults, and correctional facilities.

In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing home, home for adults or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or his agent if the dead person was known to have had, immediately prior to death, any of the following infectious diseases:

Creutzfeldt-Jakob disease

Human immunodeficiency virus infection

Hepatitis B

Hepatitis Non A, Non B

Rabies

Infectious syphilis

#### PART IV. CONTROL OF DISEASE.

§ 4.1. The "Methods of Control" sections of the Fourteenth Edition of the Control of Communicable Diseases in Man (1985) published by the American Public Health Association shall be complied with by the board and commissioner in controlling the diseases listed in § 3.1 A, except to the extent that the requirements and recommendations therein are outdated, inappropriate, inadequate, or otherwise inapplicable. The board and commissioner reserve the right to use any legal means to control any disease which is a threat to the public health.

#### PART V. IMMUNIZATION.

§ 5.1. Dosage and age requirements for immunizations.

Every child in Virginia shall be immunized against the following diseases by receiving the specified number of doses of vaccine by the specified ages:

1. Diphtheria, Tetanus, and Pertussis (Whooping cough) Vaccine - three doses by age one year of

toxoids of diphtheria and tetanus, combined with pertussis vaccine.

2. Poliomyelitis Vaccine, trivalent type - three doses by age 18 months of attenuated (live) trivalent oral polio virus vaccine or inactivated poliomyelitis vaccine.

3. Measles (Rubeola) Vaccine - one dose at 15 months of age, or by age two years, of further attenuated (live) measles virus vaccine (Schwartz or Moraten).

4. Rubella (German measles) Vaccine - one dose at 15 months of age or by age two years of attenuated (live) rubella virus vaccine.

5. Mumps Vaccine - one dose at 15 months of age or by age two years of mumps virus vaccine (live).

## § 5.2. Obtaining immunization.

The required immunizations may be obtained from a physician licensed to practice medicine or from the local health department.

## PART VI. VENEREAL DISEASE.

### § 6.1. Prenatal testing.

Every physician attending a pregnant woman during gestation shall examine and test such woman for syphilis within 15 days after beginning such attendance. Every physician should examine and test a pregnant woman for other venereal diseases as clinically indicated.

## PART VII. PREVENTION OF BLINDNESS FROM OPHTHALMIA NEONATORUM.

### § 7.1. Procedure for preventing ophthalmia neonatorum.

The physician, nurse or midwife in charge of the delivery of a baby shall install in each eye of that newborn baby as soon as possible after birth one of the following: (i) two drops of a 1.0% silver nitrate solution; (ii) two drops of a 1.0% tetracycline ophthalmic solution; (iii) one quarter inch or an excessive of 1.0% tetracycline ophthalmic ointment; or (iv) one quarter inch or an excessive amount of 0.5% erythromycin ophthalmic ointment. This treatment shall be recorded in the medical record of the infant.

## PART VIII. CANCER REPORTING.

### § 8.1. Authority.

Title 32.1 (§ 32.1-70) of the Code of Virginia authorizes the establishment of a statewide cancer registry.

### § 8.2. Reportable cancers.

Newly diagnosed malignant tumors or cancers, as defined in Part I, shall be reported to the Virginia Tumor Registry in the department.

### § 8.3. Those required to report.

Any person in charge of a medical care facility or independent pathology laboratory which diagnoses or treats cancer patients is required to report.

### § 8.4. Data which must be reported.

Each report shall include the patient's name, address, age, sex, date of diagnosis, primary site of cancer, histology, basis of diagnosis, and history of service in the Vietnam war and exposure to dioxin-containing compounds. Medical care facility reports shall also include social security number, date of birth, race, marital status, usual occupation, and usual industry.

The reporting requirement may be met by submitting a copy of the hospital facesheet and pathology report to the Virginia Tumor Registry. Reports shall be made within four months of the diagnosis of cancer.

### § 8.5. Additional data which may be reported.

Any person in charge of a medical care facility may also elect to provide more extensive clinical information as required for cancer programs approved by the American College of Surgeons. These additional data may include staging, treatment, and recurrence information and may be reported by submitting a hospital abstract to the Virginia Tumor Registry within six months of the diagnosis of cancer. Annual follow-up may be conducted on persons reported in this manner.

## PART IX.

### § 1. Reporting and control of diseases.

Chapter 2, §§ 32.1-35 through 32.1-73 of the Code of Virginia relating to the Reporting and Control of Diseases is incorporated by reference and made a part of these regulations.



COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF HEALTH - DIVISION OF EPIDEMIOLOGY  
NOSOCOMIAL OUTBREAK REPORT

Hospital Name \_\_\_\_\_ Date of Report \_\_\_\_\_

Address \_\_\_\_\_

Reported By \_\_\_\_\_  
Name Title Phone Number

Date of Onset of Index Case \_\_\_\_\_ Date of Onset of Last Case \_\_\_\_\_

Is Outbreak Continuing? \_\_\_\_\_ # Cases to Date \_\_\_\_\_ # Deaths to Date \_\_\_\_\_

Etiology \_\_\_\_\_

Description of Outbreak \_\_\_\_\_

Control Measures Instituted \_\_\_\_\_

Comments \_\_\_\_\_

(Please attach additional pages or information as needed.)  
Division of Epidemiology

CD-24.2

7

VIRGINIA STATE DEPARTMENT OF HEALTH  
CONFIDENTIAL REPORT: LABORATORY EVIDENCE OF CERTAIN COMMUNICABLE DISEASES

Last Name		First	Midole	Age	Race	Sex	Date Specimen Submitted
Address			City	Zip	County		
Attending Physician				Address of Hospital			
City		County	Zip	Phone			
Type of Specimen		Pnaryngeal Swab		Sputum	Discharge		
Blood <input type="checkbox"/>	CSF <input type="checkbox"/>	Stool <input type="checkbox"/>	Washing <input type="checkbox"/>		Other <input type="checkbox"/>		
Test		Immunological (SPECIFY)		Microscopic <input type="checkbox"/>			
Culture: Bacterial <input type="checkbox"/>		Parasitic <input type="checkbox"/>	Serological (SPECIFY)		Histologic <input type="checkbox"/>		
Viral <input type="checkbox"/>							
Results							
Date of Report		Name and Address of Lab			Director		

Mail Copies (1) and (2) to Your Local Health Department

CD-24.3



# Final Regulations

## MARINE RESOURCES COMMISSION

**NOTE:** The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

**Title of Regulation:** VR 450-01-0056. Pertaining to Recreational Flounder Fishing.

**Statutory Authority:** § 28.1-23 of the Code of Virginia.

**Effective Date:** August 1, 1989

### Preamble:

*This regulation establishes a daily bag limit of 10 flounder for each recreational angler fishing in Virginia waters. This limitation is adopted in response to the poor recruitment of young flounder into the fishable stock for the previous two years. Further unrestricted harvesting could lead to stock collapse.*

VR 450-01-0056. Pertaining to Recreational Flounder Fishing.

### *§ 1. Authority, related regulation, effective date.*

*A. This regulation is promulgated pursuant to the authority contained in § 28.1-23 of the Code of Virginia.*

*B. Regulation 450-01-0053, Pertaining to the Taking of Summer Flounder, establishes a 13-inch minimum size limit for summer flounder.*

*C. The effective date of this regulation is August 1, 1989.*

### *§ 2. Purpose.*

*The purpose of this regulation is to control the recreational harvest of summer flounder. This restriction will aid in the prevention of collapse of the stock by insuring that more fish survive to spawning.*

### *§ 3. Daily bag limit.*

*A. Except as provided in B below, it shall be unlawful for any person fishing with hook-and-line to catch and retain more than ten summer flounder per day. Any flounder taken after the daily limit has been reached shall be returned to the water immediately.*

*B. The daily limit of summer flounder when fishing from a boat or other vessel shall be equal to the number of persons on board the vessel multiplied by ten. Retention of the legal number of flounder is the responsibility of the boat captain or operator.*

### *§ 4. Penalty.*

*As set forth in § 28.1-23 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.*

/s/ William A. Pruitt  
Commissioner

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

**REGISTRAR'S NOTICE:** This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes from Article 2 regulations which consist only of changes in style or form or corrections of technical errors. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** State Plan for Medical Assistance Relating to Covered Providers of Nutrition Services. **VR 460-03-3.1100** VR 460-03-3.1103. Requirements and Limits Applicable to Specific Services: Expanded Prenatal Care Services.

**Statutory Authority:** § 32.1-325 of the Code of Virginia.

**Effective Date:** September 15, 1989

### Summary:

*This final amendment clarifies existing program policy to allow persons other than Registered Dietitians to provide nutritional counseling to high-risk pregnant women.*

VR 460-03-3.1103. Requirements and Limits Applicable to Specific Services: Expanded Prenatal Care Services.

**A. Comparability of services:** Services are not comparable in amount, duration and scope. Authority of § 9501(b) of COBRA 1985 allows an exception to provide service to pregnant women without regard to the requirements of § 1902(a)(10)(B).

**B. Definition of services:** Expanded prenatal care services will offer a more comprehensive prenatal care services package to improve pregnancy outcome. The expanded prenatal care services provider may perform the following services:

1. Patient education. Includes six classes of education for pregnant women in a planned, organized teaching environment including but not limited to topics such as body changes, danger signals, substance abuse, labor and delivery information, and courses such as planned parenthood, Lamaze, smoking cessation, and child rearing.

# Final Regulations

Instruction must be rendered by Medicaid certified providers who have appropriate education, license or certification.

2. Homemaker. Includes those services necessary to maintain household routine for pregnant women, primarily in third trimester, who need bed rest. Services include, but are not limited to, light housekeeping, child care, laundry, shopping, and meal preparation.

Must be rendered by Medicaid certified providers.

3. Nutrition. Includes nutritional assessment of dietary habits, and nutritional counseling and counseling follow-up. All pregnant women are expected to receive basic nutrition information from their medical care providers or the WIC Program.

Must be provided by a Registered Dietitian (R.D.) or a person with a master's degree in nutrition, maternal and child health, or clinical dietetics with experience in public health, maternal and child nutrition or clinical dietetics.

C. Qualified providers: Any duly enrolled provider which the department determines to be qualified who has signed an agreement may provide expanded prenatal care services. The qualified providers will provide prenatal care services regardless of their capacity to provide any other services under the Plan.

## REAL ESTATE BOARD

**Title of Regulation:** VR 585-01-1. Virginia Real Estate Board Licensing Regulations.

**Statutory Authority:** §§ 54.1-201 of the Code of Virginia.

**Effective Date:** October 1, 1989

### Summary:

*The final regulations have been substantially reformatored for clarity, changed some conditions for licensure, created new educational requirements for renewal of a license and created requirements for the disclosure of a licensee's relationship to the principals in a transaction. The new requirements for licensure expand the scope which allows the board to deny licensure for certain criminal offenses in order to further protect the public whom the licensees come into contact. The new educational requirement is adopted to specifically comply with the new statutory requirement that real estate licensees complete a course of not less than six hours on recent developments in federal, state and local laws, real estate regulations and laws and recent case decisions as a condition for renewal. Lastly, the other major change requires that a licensee disclose to those*

*potential parties to a transaction their agency-principal relationship. All other changes are clarifying in nature.*

VR 585-01-1. Virginia Real Estate Board Licensing Regulations.

## PART I. GENERAL.

### § 1.1. Definitions.

The following words and terms, when used in these regulations, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

*"Actively engaged"* means employment by or ~~association~~ *affiliation as an independent contractor* with a ~~broker~~ *licensed real estate firm or sole proprietorship* in performing those activities as defined in § ~~54-731~~ §§ *54.1-2100 and 54.1-2101* of the Code of Virginia for an average of at least 20 hours per week.

*"Associate broker"* means any individual licensee of the board holding a ~~broker~~ *broker's* license other than a *one who has been designated as the principal broker.*

*"Firm"* means any partnership, association, or corporation, other than a sole proprietorship, which is required by § ~~1-6~~ § *2.1 B* of these regulations to obtain a separate brokerage firm license.

*"Inactive status"* refers to any broker or salesperson who is not ~~associated under the supervision of a principal broker or supervising broker, not affiliated with a firm or sole proprietor~~ *proprietorship* and who is not performing any of the activities defined in §§ ~~54-730 and 54-731~~ §§ *54.1-2100 and 54.1-2101* of the Code of Virginia.

*"Licensee"* means any person, partnership, association, or corporation holding a license by the Real Estate Board to act as a real estate broker or real estate salesperson, as defined, respectively, in §§ *54.1-2100 and 54.1-2101* of the Code of Virginia.

*"Principal"* means a party who has engaged a real estate broker to perform real estate purchases, sales or rental services in a principal-agent relationship.

*"Principal broker"* means the individual broker who shall be designated by each firm to assure compliance with Title ~~54~~ *54.1*, Chapter ~~18~~ *21* of the Code of Virginia, and these regulations, and to receive communications and notices from the board which may affect the firm or any licensee employed by or ~~associated~~ *affiliated* with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees.

# Final Regulations

"Principal to a transaction" means a party to a real estate transaction in the capacity of a seller, buyer, lessee or lessor, or having some other direct contractual connection to such transaction.

"Sole proprietor" means any individual broker, not a corporation, who is trading under the broker's own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervising broker" means the individual associate broker who shall be designated by the firm to supervise the activities of any one of its offices.

## § 1.2. Necessity for license or registration.

It shall be unlawful for any person, partnership, association or corporation, to act as a real estate broker, real estate salesperson, or rental location agent or to advertise or assume to act as such real estate broker, real estate salesperson, or rental location agent - without a salesperson or broker license or rental location agent registration issued by the Virginia Real Estate Board. No partnership, association or corporation shall be granted a license unless every member, director, and officer of such partnership, association or corporation, who actively participates in its brokerage business shall hold a license as a real estate broker, and unless every employee and every independent contractor who acts as a salesperson for such partnership, association or corporation shall hold a license as a real estate salesperson; provided, however, that a person who holds a license as a real estate broker may act as a salesperson for another real estate broker.

## § 1.3. License, registration, and renewal fees.

All application fees for licenses and registrations are nonrefundable.

A. Application fees for original licenses or registrations and biennial renewal fees are as follows:

1. Salesperson by education and examination .....	\$30
2. Salesperson by reciprocity .....	\$65
3. Renewal for salesperson .....	\$30
4. Broker by education and examination .....	\$50
5. Broker by reciprocity .....	\$75
6. Broker [ concurrent ] license .....	\$50
7. Renewal for broker .....	\$50
8. Rental location agents .....	\$30
9. Firm license .....	\$50

10. Branch office license .....\$15

B. The application fee for original license for a proprietary school shall be \$100 and the annual renewal fee shall be \$50.

## § 1.4. Expiration, renewal, and reinstatement of license.

A. Licenses issued under these regulations for salespersons, brokers, and firms shall expire two years from the last day of the month in which they were issued, as indicated on the license. Proprietary school licenses shall expire annually on June 30. Registrations shall expire every two years on June 30.

B. The board will mail a renewal notice to the licensee or registrant at the last known home address. The board will mail a firm renewal notice to the business address of the firm. These notices shall outline the procedures for renewal. The board will notify the firm 90 days after the expiration of the licenses of salespersons and brokers associated with the firm and again at 180 days. Failure to receive these notices shall not relieve the licensee or the registrant of the obligation to renew.

C. Prior to the expiration date shown on the license or registration, each licensee or registrant desiring to renew his license or registration shall return to the board the renewal application notice and the appropriate fee as outlined in § 1.3 of these regulations. Should the licensee or registrant fail to receive the renewal notice, a copy of the license or registration may be submitted with the required fee.

D. If the renewal fee is not received by the board within 30 days of the expiration date noted on the license or registration, a penalty fee shall be required, in addition to the renewal fee, as follows:

1. For firms and brokers, \$50;
2. For salespersons and rental location agents, \$30.

E. Any licensee failing to renew his license within 180 days of the expiration date noted on the license may renew during the next 180 days by paying a penalty fee, in addition to the renewal fee, as follows:

1. For firms and brokers, \$150;
2. For salespersons, \$90.

F. After 12 months, renewal is not possible under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

G. Any licensee who has not been actively licensed with a broker under the provisions of § 2.1, F,2 of these regulations for a period of greater than three years shall be required to meet the educational requirements for a

# Final Regulations

salesperson or broker in effect at the time written request for issuance of such license is filed with the board.

## § 1.5. Individual license.

A real estate broker license shall not be issued to an individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, until the individual signs and acknowledges a certificate provided by the board, setting forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. Each certificate must be attested by the Clerk of Court of the county or jurisdiction wherein the business is to be conducted. The attention of all applicants and licensees is directed to §§ 50.1-60 through 50.1-76 of the Code of Virginia.

## § 1.6. Partnership, association, or corporation.

Every partnership, association, or corporation must secure a real estate license for its brokerage firm before transacting real estate business. Application for such license shall disclose, and the license shall be issued to, the name under which the applicant intends to do or does business and holds itself out of the public. This license is separate and distinct from the individual broker license required of each partner, associate, and officer or director of a corporation who is active in the brokerage business.

A. Partnership. Each partnership acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the partnership; the name and style of the firm; the address of the Virginia office of the firm; the length of time for which it is to continue; and the percentage or part of the partnership owned by each partner. Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

B. Association. Each association acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the association; the name and style of the firm; the length of time for which it is to continue; and the percentage or part of the association owned by each associate. Every change in the association must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

C. Corporation. Each corporation acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each officer of the corporation; the name and style of the corporation; the corporation's place of business; and the names and addresses of the members of

the Board of Directors.

1. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

2. The board will not consider the application of any Corporation or its officers, directors, employees, or associates until the corporation is authorized to do business in Virginia.

§ 1.7. Concurrent licenses. Concurrent licenses shall be issued by the board to brokers active in more than one separate legal entity upon receipt of a concurrent license form and written affidavits stating that written notice of the applicant's concurrent licensure status has been provided to the principal broker of each firm with which the applicant has been associated. Payment will be required for each license.

§ 1.8. The board shall have the authority to appoint such committees as necessary to advise it in carrying out its responsibilities.

## PART II. ENTRY.

### § 2.1. Necessity for license or registration.

*It shall be unlawful for any person, partnership, association or corporation, to act as a real estate broker, real estate salesperson, or rental location agent or to advertise or assume to act as such real estate broker, real estate salesperson, or rental location agent without a salesperson or broker license or rental location agent registration issued by the Real Estate Board. No partnership, association or corporation shall be granted a license unless every member, and officer of such partnership, association or corporation, who actively participates in its brokerage business shall hold a license as a real estate broker, and unless every employee and every independent contractor who acts as a salesperson for such partnership, association or corporation shall hold a license as a real estate salesperson; provided, however, that a person who holds a license as a real estate broker may act as a salesperson for another real estate broker.*

#### A. Individual license.

*A real estate broker's license shall not be issued to an individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, until the individual signs and acknowledges a certificate provided by the board, setting forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. Each certificate must be attested by the Clerk of Court of the county or jurisdiction wherein the business is to be conducted. The attention of all applicants and licensees is directed to §§ 59.1-69 through 59.1-76 of the Code of Virginia.*

# Final Regulations

## B. Partnership, association, or corporation.

Every partnership, association, or corporation must secure a real estate license for its brokerage firm before transacting real estate business. Application for such license shall disclose, and the license shall be issued to, the name under which the applicant intends to do or does business and holds itself out to the public. This license is separate and distinct from the individual broker license required of each partner, associate, and officer of a corporation who is active in the brokerage business.

1. Partnership. Each partnership acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the partnership; the name and style of the firm; the address of the Virginia office of the firm; the length of time for which it is to continue; and the percentage or part of the partnership owned by each partner. Every change in the partnership must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

2. Association. Each association acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each person composing the association; the name and style of the firm; [ the address of the Virginia office of the firm; ] the length of time for which it is to continue; and the percentage of part of the association owned by each associate. Every change in the association must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

3. Corporation. Each corporation acting as a real estate broker shall file with the board a certificate on a form provided by the board, which shall include the following information: the name, business address, and residential address of each officer of the corporation; the name and style of the corporation; [ the address of the Virginia office of the firm; ] the corporation's place of business, and the names and addresses of the members of the Board of Directors.

a. Every change of officers must be evidenced by filing a new certificate with the board within 30 days after the change is effective.

b. The board will not consider the application of any corporation or its officers, employees, or associates until the corporation is authorized to do business in Virginia.

## C. Branch office license.

If a real estate broker maintains more than one place of business within the state, a branch office license shall

be issued for each branch office maintained. Application for the license shall be made on forms provided by the board and shall reveal the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office. Only the branch office license shall be maintained at the branch office location.

## § 2.2. Qualifications for licensure.

Every applicant to the Virginia Real Estate Board for a sales [ person's ] or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.

2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54-740 § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination or and applies for licensure. See § 4.8 7.6 of these regulations for educational requirements for salespersons.

3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every other jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any other jurisdiction within five years prior to applying for licensure in Virginia.

4. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude, [ child abuse sexual offense ], drug distribution or physical injury, or of any felony. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

5. The applicant shall be at least 18 years old.

6. Within the twelve months prior to making application for a license, The applicant, within 12 months prior to making application for a license, shall have passed a written examination provided by the board or by a testing service selected by acting on behalf of the board. Complete applications must be received within the 12-month period.

7. Actively engaged salespersons and associate brokers

# Final Regulations

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must be supervised by a principal broker or designated supervising broker. The applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and the testing service with regard to conduct at the examination shall be grounds for denial of application.

## ~~§ 2-2.~~ § 2.3 Additional qualifications for brokers.

An applicant for a license as a real estate broker shall meet the following requirements in addition to those set forth in ~~§ 2-1~~ § 2.2 of these regulations:

### A. New broker applicants.

1. The applicant shall meet the current educational requirements of ~~§ 54-740(b)~~ § 54.1-2105 of the Code of Virginia.
2. The applicant shall have been actively engaged as defined in § 1.1 of these regulations as a real estate salesperson for a period of 36 of the 48 months immediately preceding application.

### B. Previous brokers.

Any person who has previously held an unrevoked a Virginia real estate ~~broker~~ broker's license which license was not revoked, suspended or surrendered in connection with a disciplinary action may be issued a ~~broker~~ broker's license without first having to meet the experience requirements of ~~§ 2-2, subsection A, paragraph 2~~ § 2.3 A 2 of these regulations by:

1. Completing the current educational requirements of ~~§ 54-740(b)~~ 54.1-2105 of the Code of Virginia; and
2. Passing a written examination provided by the board or by a testing service selected by the board.

## § 2.4 Concurrent licenses.

Concurrent licenses shall be issued by the board to brokers active in more than one separate legal entity upon receipt of a concurrent license form and written affidavits stating that written notice of the applicant's concurrent licensure status has been provided to the principal broker of each firm with which the applicant has been associated. Payment will be required for each license.

## ~~§ 2-3.~~ § 2.5 Qualifications for licensure by reciprocity.

Every applicant to the Virginia Real Estate Board for a license by reciprocity shall have the following qualifications, except that ~~§ 2-3 subsection A-5~~ below § 2.4

A 5 shall only be applicable for salesperson applicants:

A. An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license without taking the Virginia written licensing examination by meeting the following requirements:

1. The applicant shall be at least 18 years of age.
2. The applicant shall have received the salesperson or ~~broker~~ broker's license by virtue of having passed in the jurisdiction of original licensure a written examination deemed to be substantially equivalent to the Virginia examination.
3. The applicant shall sign, as part of the application, an affidavit certifying that the applicant has read and understands the Virginia real estate license law and the regulations of the Virginia Real Estate Board.
4. The applicant shall be in good standing as a licensed real estate broker or salesperson in every other jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended or , revoked , or surrendered in connection with a disciplinary action or which has been the subject of discipline in any other jurisdiction within five years prior to applying for licensure in Virginia.
5. At the time of application for a salesperson's license, the applicant must have been actively engaged in real estate for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia.
6. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.
7. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude , sexual [ abuse, child abuse offense ] , drug distribution or physical injury, or of any felony. Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

B. Additional qualifications for reciprocal licensure as a broker.

An individual who is currently licensed as a real estate broker in another jurisdiction may obtain a Virginia real

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estate broker ~~broker's~~ license without taking a written examination by meeting the following requirements in addition to those set forth in § 2.3, ~~subsection A, paragraphs 1-4, 6 and 7~~ § 2.5 A 1 through A 4, A 6 and A 7.

1. *The applicant shall* have been licensed as a real estate broker and actively engaged as a real estate broker or salesperson in the current jurisdiction of licensure for at least 36 of the 48 months immediately prior to making application in Virginia. (See § 1.1 of these regulations for the definition of "actively engaged.")

2. *The applicant shall* have met *broker* educational requirements that are substantially equivalent to those required in Virginia.

## § 2.6. Activation of license.

*Any inactive licensee may affiliate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board. Further, any licensee who has not been actively licensed with a licensed real estate firm or sole proprietorship for a period of greater than three years shall be required to meet the educational requirements for a salesperson or broker in effect at the time the license activate form for issuance of such license is filed with the board.*

## § 2.4. § 2.7. Rental location agent.

An applicant for registration as a rental location agent need not be employed by or [ ~~associated~~ *affiliated* ] with a real estate broker, but shall apply in writing upon forms provided by the board, and shall meet the following requirements:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a rental location agent *as defined in § 54.1-2102 of the Code of Virginia.*

2. The applicant shall be at least 18 years old.

3. A person shall not be concurrently licensed as a real estate salesperson or broker and registered as a rental location agent. A rental location agent shall not be concurrently registered with more than one rental location agency.

4. The applicant shall not have been convicted in any jurisdiction of a misdemeanor involving moral turpitude, *sexual [ abuse, child abuse offense ], drug distribution or physical injury, or of any felony.* Neither shall the applicant have been found to have violated the fair housing laws of any jurisdiction. Any plea of nolo contendere shall be considered a conviction for purposes of this paragraph. The record of a conviction authenticated in such form as to be

admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

## § 2.5. § 2.8. Rental location agency.

A. Each business operating as a rental location agency, whether in the form of a sole proprietorship, association, partnership, or corporation, shall obtain from the board a firm ~~license~~ *registration* as a rental location agency.

B. Every rental location agency shall be supervised by a supervising rental location agent designated by the agency and registered with the board. The supervising rental location agent shall have responsibility for supervising the activities of the agency and all its registrants.

C. Each rental location agent registration shall be issued only to the agency where the agent is [ ~~associated~~ *affiliated* ] or employed. The supervising rental location agent shall keep such registrations in his custody and control for the duration of the agent's employment or association with that agency.

D. When any rental location agent is discharged or in any way terminates his employment or [ ~~association~~ *affiliation* ] with an agency, it shall be the duty of the supervising rental location agent to notify the board of the termination by returning the registration by certified mail to the board within 10 calendar days. The supervising rental location agent shall indicate on the registration the date of termination, and shall sign the registration before returning it.

## § 2.9. Application and registration fees.

*All application fees for licenses and registrations are nonrefundable.*

A. *Application fees for original licenses or registrations are as follows:*

<i>Salesperson by education and examination</i>	<i>\$50</i>
<i>Salesperson by reciprocity</i>	<i>\$65</i>
<i>Broker by education and examination</i>	<i>\$60</i>
<i>Broker by reciprocity</i>	<i>\$85</i>
<i>Broker concurrent license</i>	<i>\$60</i>
<i>Rental location agent</i>	<i>\$30</i>
<i>Rental location agency</i>	<i>\$75</i>
<i>Firm license</i>	<i>\$75</i>
<i>Branch office license</i>	<i>\$25</i>
<i>Transfer application</i>	<i>\$20</i>

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Activate application ..... \$20

Certification of licensure ..... \$20

**B. Examination fees are as follows:**

Preregistration for sales and brokers ..... \$15

Late registration for sales and brokers ..... \$25

Walk-in registration for sales and brokers ..... \$27

**PART III.  
RENEWAL OF LICENSE/REGISTRATION.**

**§ 3.1. Renewal required.**

Licenses issued under these regulations for salespersons, brokers, and firms shall expire two years from the last day of the month in which they were issued, as indicated on the license. Registrations issued under these regulations for rental location agents and rental location agencies shall expire every two years on June 30.

**§ 3.2. Qualification for renewal.**

**A. Continuing education requirements.**

As a condition of renewal, and pursuant to § 54.1-2105 of the Code of Virginia, all brokers and salespersons either active or inactive, resident or nonresident, shall be required to satisfactorily complete a course of not less than six classroom hours during each licensing term.

1. Schools and instructors shall be those as required under § 54.1-2105 of the Code of Virginia, and § 7.2 of these regulations.

2. The specific course content and curriculum shall be prescribed and approved by the board. The course curriculum shall be provided to each school in final form prior to the course offering and updated periodically to reflect recent developments in federal, state, and local real estate law, regulations and case decisions.

a. Continuing education courses offered in other jurisdictions must meet Virginia's statutory requirements and must conform to the board's specifically prescribed course content and curriculum as described in § 54.1-2105 of the Code of Virginia. Such courses must be approved in advance of offering to be certified for course credit for licenses.

b. Correspondence courses will not be approved for credit for continuing education.

3. Attendance. Credit for continuing education course completion is to be given only for attendance in its entirety. It will be the instructor's responsibility to

ensure compliance with this regulation.

4. Certification of course completion. It shall be the responsibility of the licensee to provide continuing education course completion certification. Proof of course completion shall be made on a form prescribed by the board. Failure to provide course completion certification will result in the license not being renewed and reinstatement will therefore be required.

5. Credit earned by instructors. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses. Verification of instructor compliance with the continuing education course required must be verified by the director or dean of the school at which the course was taught.

B. Applicants for renewal of a license shall meet the standards for entry as set forth in §§ 2.2 3 and 2.2 4 of these regulations.

**§ 3.3. Procedures for renewal.**

A. The board will mail a renewal application form to the licensee or registrant at the last known home address. The board will mail a firm renewal notice to the business address of the firm. These notices shall outline the procedures for renewal. The board will notify the firm 30 days after the expiration of the licenses of salespersons and brokers associated with the firm. Failure to receive these notices shall not relieve the licensee or the registrant of the obligation to renew.

B. Prior to the expiration date shown on the license or registration, each licensee or registrant desiring to renew his license or registration shall return to the board the renewal application forms and the appropriate fee as outlined in § 3.4 of these regulations.

**§ 3.4. Fees for renewal.**

All fees for renewals are nonrefundable and are as follows:

Salesperson .....	\$35
Broker .....	\$50
Concurrent broker .....	\$50
Firm .....	\$75
Rental location agent .....	\$30
Rental location agency .....	\$75
Branch office .....	\$15

**§ 3.5. Board discretion to deny renewal.**

The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline an extant license.

## PART IV. REINSTATEMENT.

### § 4.1. Failure to renew - reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in §§ 3.2 A and 3.2 B of these regulations. Applicants for reinstatement must have completed the continuing education requirement prior to the license expiration date. If the continuing education requirement was not completed during that licensing term, then the individual is not eligible for reinstatement and must reapply as a new applicant.

B. Additional fees for reinstatement are required as follows:

1. If the renewal fee is not received by the board within 30 days of the expiration date noted on the license or registration, a reinstatement fee equal to twice the renewal fee is required.

2. If the reinstatement fee is not received by the board within 180 days of the expiration date noted on the license or registration [ ~~during the next 180 days~~ ], a reinstatement fee equal to four times the renewal fee is required.

C. After 12 months, reinstatement is not possible under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. While a license may be reinstated with additional fee for up to one year following expiration, any real estate activity conducted subsequent to the expiration shall constitute unlicensed activity and may be subject to prosecution under Chapter 1 of Title 54.1 of the Code of Virginia.

### § 4.2. Board discretion to deny reinstatement.

The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline an extant license.

## PART V. STANDARDS OF CONDUCT PRACTICE .

### § ~~3.1~~ § 5.1. Place of business.

A. Within the meaning and intent of § 54-733 § 54.1-2110 of the Code of Virginia, a place of business shall be an office where:

1. The principal broker, either through his own efforts or through the efforts of his employees or associates,

regularly transacts the business of a real estate broker as defined in § 54-730 § 54.1-2100 of the Code of Virginia; and

2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.

B. No place of business shall be in a residence unless it is separate and distinct from the living quarters of the residence and is accessible by the public.

C. The Virginia Real Estate Board or its authorized representative may inspect a place of business to ensure compliance with § 3.1, subsection A, and § 3.1, subsection B, of these regulations. Each place of business and each branch office shall be supervised and personally managed by an on-premises real estate broker who shall supervise only that office and shall be at the office or within easy access during regular business hours.

D. Every individual, partnership, association, or corporation acting as a real estate broker shall may display at all times, in a conspicuous place signage on the outside of each place of business maintained in the Commonwealth for the purpose of transacting business as a real estate broker . ; a sign stating If displayed, the sign shall state the name of such individual, partnership, association, or corporation, as set forth in the license issued by the board, and containing contain the words "real estate," "broker," "real estate agent," "realty" or another word other words or phrases designating a member of a generally recognized association or organization of real estate brokers, whichever is applicable. This regulation shall not apply to any place of business maintained in any locality which has a local ordinance prohibiting signs.

E. Display of license. Every principal broker shall display in a conspicuous and public place have readily available in the firm's main place of business his license and the license of every salesperson and broker associated with or employed by the firm. The licenses shall be displayed together, not individually, in such a manner that the public can readily determine the names of the licensees.

F. Notice in writing, accompanied by all the current licenses, shall be given to the board in the event of any change of business name or location. Such notice shall be mailed to the board within 10 days of the change of name or location, whereupon the board shall reissue the license for the unexpired period.

### F. § 5.2. Maintenance of licenses.

1. A. Salespersons and individual brokers shall at all times keep the board informed of their current home address. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to

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promptly notify the board of any change of address.

2. *B.* Salespersons and brokers shall only be issued a license to the place of business of the sole proprietorship or firm *where with which* the salesperson or broker is associated *affiliated* or *at which such licensee is* employed. The license shall be issued after the sole proprietor or principal broker files a written request on a form supplied by the board.

3. *C.* Salespersons and brokers ~~not associated with a sole proprietorship or firm that is, those on inactive ; status~~ shall receive written acknowledgement of payment from the board at the time they renew their license, but no license shall be issued as *since* they are not associated *affiliated* with a sole proprietorship or firm.

4. *D.* When any salesperson or broker is discharged or in any way terminates his employment or association *affiliation* with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to notify the board and the licensee of the termination and to return the license by certified mail to the board so that it is received within 10 calendar days of the date of termination. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

*E.* The board, upon receipt of a transfer application or request for placement of a license on inactive status from a salesperson or associate broker, will notify the former principle broker of the licensee's change of affiliation or status at the firm's address of record. If the license has not been received by the board by the date on which above notification is issued, then it shall be the duty of the former principal broker to return the license by certified mail to the board so that it is received within 10 calendar days of the date of the above notification.

*F.* All certificates of licensure in any form are the property of the Real Estate Board. Upon termination of a licensee, closing of a firm, death of a licensee, change of licensee name or address such licenses must be returned with proper instruction to the board within 10 days.

*G.* Each place of business and each branch office shall be supervised and personally managed by an on-premises real estate broker who shall supervise only that office and shall be at the office or within easy access during regular business hours.

## § 3.2. Branch office license.

If a real estate broker maintains more than one place of business within the Commonwealth, a branch office license shall be issued for each branch office maintained. Application for the license shall be made on forms provided by the board and shall reveal the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office. Only the branch office license shall be maintained at the branch

office location.

## § 3.3. Change of business locations.

Notice in writing, accompanied by all the current licenses shall be given to the board in the event of any change of business name or location. Such notice shall be received by the board within 10 days of the change of name or location, whereupon the board shall reissue the licenses for the unexpired period.

## § 3.4. Records and deposits of funds.

A complete record of transactions conducted under authority of the principal broker's Virginia license or the rental location agent's registration shall be maintained in the principal broker's place of business, or in a designated branch office, or in the office of the rental location agency. When the principal broker's office or the main office of the rental location agency is located outside of Virginia and the firm has a branch office in Virginia, these records shall be maintained in the Virginia office. These records shall show, in addition to any other requirements of the regulations, the following information: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.

## § 5.3. Maintenance and management of escrow accounts and financial records.

### A. Maintenance of escrow accounts.

*A. 1.* Each firm or sole proprietorship shall maintain in the name by which it is licensed one or more separate escrow or trust accounts in a federally insured depository in Virginia into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's principal or expended on behalf of the principal, or other escrow funds received by him or his associates on behalf of his principal or any other person shall be deposited unless all parties to the transaction have agreed otherwise in writing. The principal broker *shall* and ~~for~~ the supervising broker may be held responsible for these accounts. *All such accounts shall be labeled "escrow" and the account(s) shall be designated as "escrow" accounts with the financial institution where such accounts are established.*

*B.* Unless otherwise agreed in writing by all parties to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

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C. A licensee shall not disburse or cause to be disbursed monies from a property management account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

D. The principal or supervising broker shall maintain a bookkeeping system which shall accurately and clearly disclose full compliance with the requirements outlined in § 3.4 of these regulations.

E. Upon acceptance of a contract, earnest money deposits and down payments received by the principal or supervising broker or his associates shall be placed in an escrow account and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated, the principal or supervising broker shall hold such funds in escrow until (i) all parties to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the party who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to each party not to be paid, by either (i) hand delivery receipted for by the addressee, or (ii) by regular and certified mail, that this payment will be made unless a written protest from that party is received by the broker within 30 days of the delivery or mailing, as appropriate, of that notice. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this regulation.

F. Unless otherwise agreed in writing by all parties to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

G. 2. Funds to be deposited in the escrow account will necessarily include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by § 3.5, paragraph 27, § 6.12 5 of these regulations, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

H. On funds placed in an account bearing interest, written disclosure shall be made to the principals involved in the transaction regarding the disbursement of the interest.

I. 3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by § 3.5, paragraph 27, § 6.12 5 of these regulations.

## B. Disbursement of funds from escrow accounts.

1. Upon acceptance of a contract (ratification), earnest money deposits and down payments received by the principal or supervising broker or his associates shall be placed in an escrow account and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated, the principal or supervising broker shall hold such funds in escrow until (i) all parties to the transaction have agreed in writing as to their disposition, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the broker can pay the funds to the party who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to each party by either (i) hand delivery receipted for by the addressee, or (ii) by regular and certified mail, that this payment will be made unless a written protest from that party is received by the broker within 30 days of the delivery or mailing, as appropriate, of that notice. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this regulation.

2. Unless otherwise agreed in writing by all parties to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

3. On funds placed in an account bearing interest, written disclosure at contract writing shall be made to the principals involved in the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from a property management account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all parties to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

## C. Maintenance of financial records.

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1. A complete record of financial transactions conducted under authority of the principal broker's Virginia license or the rental location agent's registration shall be maintained in the principal broker's place of business, or in a designated branch office, or in the office of the rental location agency. When the principal broker's office or the main office of the rental location agency is located outside of Virginia and the firm has a branch office in Virginia, these records shall be maintained in the Virginia office. These records shall show, in addition to any other requirements of the regulations, the following information: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.

2. The principal broker shall maintain a bookkeeping system which shall accurately and clearly disclose full compliance with the requirements outlined in § 5.3 of these regulations. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.

J. Licensees shall maintain accounting records which are in sufficient detail to provide necessary information to determine compliance with § 3.4 of these regulations.

## § 3.5. Grounds for disciplinary action.

The board has the power to fine any licensee or registrant, or to suspend, revoke, or deny renewal of any license or registration issued under the provisions of Title 54, Chapter 18 of the Code of Virginia and the regulations of the board, at any time after a hearing conducted pursuant to the provisions of the Administrative Process Act, Title 9, Chapter 1.1-1 of the Code of Virginia where the licensee has been found to be guilty of:

1. Obtaining a license by false or fraudulent representation;

2. Paying a commission or other valuable consideration to any person for acts or services performed in violation of Title 54, Chapter 18 of the Code of Virginia or these regulations; provided, however, that referral fees and shared commissions may be paid to any real estate firm licensed in this or another jurisdiction, or to any referral firm in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;

3. Notwithstanding the provisions of § 54-731.1 of the Code of Virginia, accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, for the performance of any of the acts specified in Title 54, Chapter 18 of the Code of Virginia or the regulations of the board, from any person except the licensee's principal broker at the

time of the transaction;

4. Violating or cooperating with others in violating any provision of Title 54, Chapter 18 of the Code of Virginia or any regulation of the board;

5. Representing or attempting to represent as a salesperson or associate broker a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;

6. Acting for more than one party in a transaction without the written consent of all parties for whom the licensee acts;

7. Acting as an agent for any principal in a real estate transaction outside the licensee's brokerage firm(s) or sole proprietorship(s);

8. Making an exclusive agency contract or an exclusive right-to-sell contract which does not have a definite termination date;

9. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor;

10. Failing to make prompt delivery to each party to a document, complete and legible copies of any written or printed listings, contracts, residential leases, or other agreements being negotiated by a salesperson or broker at the time such listings, contracts, residential leases, or other agreements signed by the parties are secured;

11. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent;

12. Placing a sign on any property without the consent of the owner of the property;

13. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship;

14. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee or registrant did in fact have at least that quantity for sale or rent;

15. Failing to disclose in a timely manner to a prospective purchaser/lessee, or seller/lessor, any

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- material information related to the property reasonably available to the licensee or registrant;
16. Failing as a licensee to promptly tender to the seller every written offer to purchase obtained on the property involved;
17. Failing to make prompt delivery of fully executed copies of the contract of lease, signed by the seller/lessor and purchaser/lessee, to both purchaser/lessee and seller/lessor after obtaining a proper acceptance of the offer to purchase or rent;
18. Failing to provide in a timely manner to all parties to the transaction written notice of any material changes to the transaction;
19. Failing to include the complete terms and conditions of the real estate transaction in such offer to purchase or rent, including identification of all those holding any deposits;
20. Acting in the capacity of a settlement agent in a real estate closing by a salesperson, except:
- a. When the salesperson is under the direct supervision of the principal/supervising broker; or
  - b. When the salesperson is under the direct supervision of a licensed officer of the corporation or a licensed partner of the partnership under which the salesperson is licensed; or
  - c. When the settlement agent is a member of the Virginia State Bar or a law firm, the members of which are members of the Virginia State Bar.
- d. When the settlement agent is a title insurance company or an agency thereof of a firm regularly engaged in the business of closing real estate transactions;
21. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of monies received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of monies received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements but shall be responsible for the delivery of the settlement statement;
22. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses;
23. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing a complete and legible copy of each contract, agreement, notice and closing statement related to a real estate transaction, and all other documents material to that transaction;
24. Having received monies on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing;
25. Failing, within a reasonable time, to account for or to remit any monies coming into a licensee's possession which belong to others;
26. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract offer to purchase, or lease, without acknowledging its acceptance in the agreement;
27. Committing the funds of any person by a principal or supervising broker or his employees or associates with his own funds, or those of his corporation, firm, or association; or failure to deposit such funds in an account or accounts designated to receive only such funds as required by § 2-4 subsection A of these regulations;
28. Offering or paying any money or other valuable consideration to any party other than a principal to a transaction which resulted in a fee paid to the licensee;
29. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's principal for expenditures made on behalf of that principal without the written consent of the principal;
30. Receiving, as a real estate firm or sole proprietorship, and monies of other valuable consideration from any party other than a principal to the transaction, a licensed real estate firm, sole proprietorship, or referral firm (see § 3-5, subsection (b)) of these regulations;
31. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:
- a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;
  - b. Changes in terms or extensions of time for any of the items listed in § 3-5, paragraph 31a, whether by renewal, deferment of action, or other means;
  - c. Acceptance, release, or substitution of security for
20. Acting in the capacity of a settlement agent in a real estate closing by a salesperson, except:
- a. When the salesperson is under the direct supervision of the principal/supervising broker; or
  - b. When the salesperson is under the direct supervision of a licensed officer of the corporation or a licensed partner of the partnership under which the salesperson is licensed; or
  - c. When the settlement agent is a member of the Virginia State Bar or a law firm, the members of which are members of the Virginia State Bar.
- d. When the settlement agent is a title insurance company or an agency thereof of a firm regularly engaged in the business of closing real estate transactions;
21. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of monies received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of monies received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements but shall be responsible for the delivery of the settlement statement;
22. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses;
23. Failing, as a principal or supervising broker, to

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any of the items listed in § 3.5, paragraph 31a.

32. Making any misrepresentation;

33. Making a false promise through agents, salespersons, advertising, or other means;

34. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in § 1.7 of these regulations;

35. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;

36. As a currently licensed real estate broker, sitting for a real estate licensing examination;

37. Refusing or failing, upon request or demand, to produce to the board or any of its agents any document, book, record, or copy thereof in a licensee's possession concerning any real estate transaction in which the licensee was involved as a broker or salesperson, or for which the licensee is required to maintain records for inspection and copying by the board or its agents;

38. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

39. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the fair housing laws of any jurisdiction of the United States, including without limitation Title VIII of the Civil Rights Act of 1968, or the Civil Rights Act of 1866, there being no appeal therefrom or the time for appeal having elapsed;

40. Being unworthy or incompetent to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, or otherwise engaging in improper, fraudulent, or dishonest conduct;

41. Accepting or agreeing to accept any fee as a rental location agent without giving the person paying or agreeing to pay such fee a contract or receipt in which the agent sets forth a definite termination date for the services to be provided. The termination date shall not be later than one year from the date of the original agreement or acceptance of a fee. The rental location agent shall agree in the contract or receipt to repay, upon request, within 10 days of the expiration

date, any amount of fee collected over and above the sum of \$10 service charge if no rental is obtained. The rental location agent shall further agree in the contract or receipt that if rental information provided by the agent is not current or accurate, the full fee shall be repaid upon request within 10 days of the delivery of the inaccurate rental information;

42. Referring, as a rental location agent, a prospective tenant to any property for which the agent has not verified the availability of the property within seven working days prior to the referral;

43. Failing, as a rental location agent, to maintain a written registry of all lists of rentals provided to customers and of all advertisements published or caused to be published by the agent, together with the address of the property listed or advertised, the date of verification of the availability, and the name, address, and telephone number, if any, of the party who offered the property for rent. This registry shall be kept for a period of three years from the date of the lists or the publication of any advertisement listed in it;

44. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude.

## § 3.6. § 5.4 Advertising by licensees.

The name under which the broker does business and the manner in which the broker advertises shall not imply that the property listed or marketed by the broker for others is "for sale by owner." A broker shall not advertise in any newspaper, periodical, or sign to sell, buy, exchange, rent, or lease property in a manner indicating that the offer to sell, buy, exchange, rent, or lease such property is being made by a person not licensed as a real estate broker. No advertisement shall be inserted in any publication where only a post office box number, telephone number, or street address appears. Every broker, when advertising real estate in any newspaper or periodical, shall affirmatively and unmistakably indicate that the party advertising is a real estate broker.

A. Every salesperson or associate broker is prohibited from advertising and marketing under the licensee's own name in any manner offering on behalf of others to buy, sell, exchange, rent, or lease any real property. All advertising and marketing must be under the direct supervision of the principal broker or supervising broker and in the name of the firm. The name of the firm must be displayed on all display signs and other types of advertising and marketing and must be printed in a size equal to or greater than the size of the name of the salesperson or broker.

B. Notwithstanding the above restrictions, where a salesperson or associate broker is the owner of or has any

ownership interest in the property being advertised, the licensee shall advertise with the notice that the owner is a real estate licensee, but such advertisement must not indicate or imply that the licensee is operating a real estate brokerage business.

## § 3.7. Service marks and institutional advertising.

As used in § 3.7, unless a different meaning is plainly required by the context:

### A. Definitions.

*The following definitions apply unless a different meaning is plainly required by the context:*

"Advertising" means any communication, whether oral or written, between a licensee or an entity acting on behalf of one or more licensees and any other [ natural ] person or business entity. It shall include, but is not limited to, telephonic communications, insignias, business cards, *advertisements*, telephone directory listings, listing agreements, contracts of sale, billboards, signs, letterheads, as well as radio, television, magazine, and newspaper advertisements; and

"Institutional advertising" means advertising in which neither the registered *licensed* name nor any other identification of any licensed individual is disclosed, no real property is identified, and a service mark is identified.

"Licensee" means a sole proprietorship, partnership, corporation, association, or any other form of business entity licensed by the board as a real estate broker;

"Registered name" means the name in which the licensee's license to act as a real estate broker has been issued;

"Service mark" means the trade name, service mark, or logo, whether or not registered under any federal or state law, which is owned by an entity other than the licensee and which the licensee has obtained permission to use through agreement, license, franchise, or otherwise;

1. All institutional advertising shall state that the service being advertised is real estate brokerage, and shall state affirmatively that each licensed brokerage firm or sole proprietorship displaying or using the service mark is an independently owned and operated business.

2. Any service mark constituting a part of written noninstitutional advertising shall conspicuously disclose that the licensed brokerage firm or sole proprietorship is independently owned and operated. Disclosure that the licensed brokerage firm or sole proprietorship is independently owned and operated shall not be required in the following categories of written noninstitutional advertising:

a. "For sale" and "for lease" signs located on the premises of specific property for sale or lease.

b. Advertising by a licensed brokerage firm or sole proprietorship in newspapers, magazines, or other publications of a single specific property for sale or lease when the advertisement occupies no more than 28 of the standard classified advertising lines of the newspaper, magazine, or other publication in which the advertisement is published.

c. Telephone directory listings; however, disclosure that the licensed brokerage firm or sole proprietorship is independently owned and operated is required in "display" advertisements and "in column informational" or "business card" advertisements, or their equivalent, appearing in telephone directories.

3. In oral noninstitutional advertising, the speaker shall disclose affirmatively the licensee's registered name, and except in the case of telephone communication, shall disclose that the licensed brokerage firm or sole proprietorship is independently owned and operated.

*B. Every salesperson or associate broker is prohibited from advertising and marketing under the licensee's own name in any manner offering on behalf of others to buy, sell, exchange, rent, or lease any real property. All advertising and marketing must be under the direct supervision of the principal broker or supervising broker and in the name of the firm. The name of the firm must be displayed on all display signs and other types of advertising and marketing and must be printed in a size equal to or greater than the size of the name of the salesperson or broker.*

*C. Notwithstanding the above restrictions, where a salesperson or associate broker is the owner of or has any ownership interest in the property being advertised, the licensee shall advertise with the notice that the owner is a real estate licensee, but such advertisement must not indicate or imply that the licensee is operating a real estate brokerage business.*

### D. Service marks and institutional advertising.

1. All institutional advertising shall state that the service being advertised is real estate brokerage, and shall state, if applicable, that each licensed firm or sole proprietorship displaying or using the service mark is an independently owned and operated business.

2. Disclosure that the licensed firm or sole proprietorship is independently owned and operated shall not be required in the following categories of written noninstitutional advertising:

a. "For sale" and "for lease" signs located on the premises of specific property for sale or lease;

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b. Advertising by a licensed firm or sole proprietorship in newspapers, magazines, or other publications of a single specific property for sale or lease when the advertisement occupies no more than 28 of the standard classified advertising lines of the newspaper, magazine, or other publications in which the advertisement is published;

c. Telephone directory advertisements disclosing that the licensed brokerage firm or sole proprietorship is independently owned and operated is required in "display" advertisements and in "in column informational" or "business card" advertisements, or their equivalent, appearing in telephone directories.

3. In oral, noninstitutional advertising, the speaker shall disclose affirmatively the licensee's name, and except in the case of telephone communication, shall disclose that the licensed firm or sole proprietorship is independently owned and operated.

## § 3.8. Disclosure of interest.

A licensee of the Virginia Real Estate Board shall not acquire any interest in real property for himself, or for any member of his immediate family, his firm, or any member of his firm, or for any entity in which he has any ownership interest, without making his true position known to the owner in writing; in selling real property owned by a licensee or in which a licensee has any interest, those facts shall be revealed to the purchaser in writing.

## § 3.9. Licensees dealing on own account.

Any licensee failing to comply with the provisions of Title 54, Chapter 18 of the Code of Virginia, or the regulations of the Virginia Real Estate Board in performing any acts covered by §§ 54-730 and 54-731 of the Code of Virginia, may be charged with improper dealings, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

## § 3.10. Investigation by board.

Upon the complaint of any person, the board may cause to be conducted an investigation of the actions of any licensee or registrant, or of any person who presumes to act in such capacity within the Commonwealth, provided such complaint together with any evidence presented with the complaint alleges a violation of Title 54, Chapter 18 of the Code of Virginia, or a violation of any of these regulations. The board may cause an investigation to be conducted upon its own motion.

## § 3.11. Principal broker's responsibility for acts of associates.

Any unlawful act or violation of any of the provisions of

Title 54, Chapter 18 or of Title 36, Chapter 5 of the Code of Virginia, or of the regulations of the board by any real estate salesperson, employee, partner or associate of a principal broker, may not be cause for disciplinary action against the principal broker unless it appears to the satisfaction of the board that the principal broker knew or should have known of the unlawful act or violation.

## § 3.12. Effect of disciplinary action on subordinate licensees.

Action by the board resulting in the revocation, suspension, or denial of renewal of the license of any principal broker or sole proprietor shall automatically result in an order that the licenses of any and all individuals associated with or employed by the affected firm be returned to the board until such time as they are reissued upon the written request of a sole proprietor or principal broker pursuant to § 3.1 subsection F, paragraph 2 of these regulations.

## PART VI.

### STANDARDS OF CONDUCT.

#### § 6.1. Grounds for disciplinary action.

The board has the power to fine any licensee or registrant, [ and ] to suspend [ ; ] or revoke any license or registration issued under the provisions of Title 54.1, Chapter 21 of the Code of Virginia, and the regulations of the board, at any time after a hearing conducted pursuant to the provisions of the Administrative Process Act, Title 9, Chapter 1.1:1 of the Code of Virginia where the licensee has been found to have violated or cooperated with others in violating any provision of Title 54.1, Chapter 21 of the Code of Virginia, or any regulation of the board.

#### § 6.2. Disclosure of interest.

A. If a selling agent or listing agent knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire real property, the agent must disclose that information to the owner in writing in the contract.

B. A licensee selling property in which he has any interest must disclose that he is a real estate licensee to any purchaser in writing in the contract.

#### § 6.3. Disclosure of agency relationships.

[ All licensees shall make a prompt disclosure of their agency relationship to all prospective buyers and sellers, lessors, lessees, optionors or optionees.

A. Initial disclosure shall be made in writing when specific real estate assistance is provided and shall state the party whom the licensee represents.

*B. Agency disclosure shall be in writing incorporated in or attached to any agreements for the optioning, leasing or purchase of real estate.*

*All licensees shall promptly disclose their agency relationship(s) to all actual and prospective buyers and sellers, lessors and lessees and optionors and optionees in these ways:*

*A. As soon as the licensee has substantive discussions about specific property(ies) with a principal or prospective principal, the licensee shall disclose to the principal or prospective principal the person(s) whom the licensee represents in a principal-agency relationship, and;*

*B. Further, this disclosure shall be made in writing at the earliest practical time, but in any case not later than the time when specific real estate assistance is first provided. This written disclosure shall be acknowledged by the principals. ]*

#### *§ 6.4. Licensees dealing on own account.*

*Any licensee failing to comply with the provisions of Title 54.1, Chapter 21 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia, may be charged with improper dealings, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.*

#### *§ 6.5. Provision of records to the board.*

*A licensee of the Real Estate Board shall upon request or demand, promptly produce to the board or any of its agents any document, book, or record in a licensee's possession concerning any real estate transaction in which the licensee was involved as a broker or salesperson, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. These records shall be made available at the licensee's place of business during regular business hours.*

#### *§ 6.6. Unworthiness and incompetence.*

*Actions constituting unworthy and incompetent conduct include:*

- 1. Obtaining a license by false or fraudulent representation;*
- 2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in these regulations;*
- 3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;*
- 4. As a currently licensed real estate broker, sitting*

*for a real estate licensing examination;*

*5. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual [ abuse; child abuse offense ] , drug distribution or physical injury, or any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;*

*6. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude [ , sexual offense, drug distribution or physical injury ] ;*

*7. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States including without limitation Title VIII of the Civil Rights Act of 1968, or the Civil Rights Act of 1866, there being no appeal therefrom or the time for appeal having elapsed; and*

*8. Failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, or otherwise engaging in improper, fraudulent, or dishonest conduct.*

#### *§ 6.7. Conflict of interest.*

*Actions constituting a conflict of interest include:*

- 1. Being employed by, affiliated with or receiving compensation from a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;*
- 2. Acting for more than one party in a transaction without the written consent of all principals for whom the licensee acts;*
- 3. Acting as an agent for any principal in a real estate transaction outside the licensee's brokerage firm(s) or sole proprietorship(s).*

#### *§ 6.8. Improper brokerage commission.*

*Actions resulting in an improper brokerage commission include:*

- 1. Paying a commission or other valuable consideration to any person for acts or services performed in violation of Title 54.1, Chapter 21 of the Code of Virginia, or these regulations; provided,*

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however, that referral fees and shared commissions may be paid to any real estate firm licensed in this or another jurisdiction, or to any referral firm in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers;

2. Notwithstanding the provisions of § 54.1-2102 of the Code of Virginia, accepting a commission or other valuable consideration, as a real estate salesperson or associate broker, for the performance of any of the acts specified in Title 54.1, Chapter 21 of the Code of Virginia or the regulations of the board, from any person except the licensee's principal broker at the time of the transaction;

3. Receiving a fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or both principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services;

4. Offering or paying any money or other valuable consideration for services required by the terms of the real estate contract to any party other than the principals to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services.

5. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor;

6. Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's principal for expenditures made on behalf of that principal without the written consent of the principal;

## § 6.9. Improper dealing.

Actions constituting improper dealing include:

1. Making an exclusive agency contract or an exclusive right-to-sell contract which does not have a definite termination date;

2. Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on any terms other than those authorized by the owner or the owner's authorized agent;

3. Placing a sign on any property without the consent of the owner of the property or the owner's authorized agent;

4. Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign without including in the advertisement the name of the firm or sole proprietorship;

5. Acting in the capacity of settlement agent in a real estate closing by a salesperson, except:

a. When the salesperson is under the direct supervision of the principal/supervising broker;

b. When the salesperson is under the direct supervision of a licensed officer of the corporation or a licensed partner of the partnership under which the salesperson is licensed;

c. When the settlement agent is a member of the Virginia State Bar or a law firm, the members of which are members of the Virginia State Bar; or

d. When the settlement agent is a title insurance company or an agency thereof or a firm regularly engaged in the business or closing real estate transactions;

## § 6.10. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee or registrant did in fact have at least that quantity for sale or rent;

2. Failing to disclose in a timely manner to a prospective purchaser/licensee, or seller/lessor, any material information related to the property reasonably available to the licensee or registrant;

3. Failing as a licensee to promptly tender to the buyer and seller every written offer or counter-offer to purchase obtained on the property involved;

4. Failing to include the complete terms and conditions of the real estate transaction in any offer to purchase or rent, including identification of all those holding any deposits;

5. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon: [ ~~applications, advance discounts, purchase agreements, repurchase~~

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*agreements, commitments or loans;*

*6. Changing the terms or extensions of time for any of the items listed in § 6.10 5, whether by renewal, deferment of action, or other means;*

*7. Accepting, releasing, or substituting of security for any of the times listed in § 6.10 5;*

*a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;*

*b. Changes in terms or extensions of time for any of the items listed in § 6.10 5 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;*

*c. Acceptance, release, or substitution of security for any of the items listed in § 6.10 5 a without the prior written consent of the principals to the transaction. ]*

[ & 6. ] *Making any misrepresentation; and*

[ & 7. ] *Making a false promise through agents, salespersons, advertising, or other means.*

## § 6.11. *Delivery of instruments.*

*Actions constituting improper delivery of instruments include:*

*1. Failing to make prompt delivery to each party to a document, complete and legible copies of any written or printed listings, contracts, residential leases, addenda or other agreements being negotiated by a salesperson or broker at the time such listings, contracts, residential leases, addenda or other agreements signed by the parties are secured;*

*2. Failing to make prompt delivery of fully executed copies of the contract or lease, and addenda signed by the seller/lessor and purchaser/lessee, to both purchaser/lessee and seller/lessor after obtaining a proper acceptance of the offer to purchase or rent;*

*3. Failing to provide in a timely manner to all parties to the transaction written notice of any material changes to the transaction;*

*4. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of moneys received by the licensee is*

*disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and*

*5. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.*

## § 6.12. *Record keeping and escrow funds.*

*Actions constituting improper record keeping and maintenance of escrow funds include:*

*1. Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing a complete and legible copy of each contract and agreement, notice and closing statement related to a real estate transaction, and all other documents material to that transaction available and accessible to the broker;*

*2. Having received moneys on behalf of others and failed to maintain a complete and accurate record of such receipts and their disbursements for a period of three years from the date of the closing;*

*3. Failing, within a reasonable time, to account for or to remit any moneys coming into a licensee's possession which belong to others;*

*4. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement; and*

*5. Commingling the funds of any person by a principal or supervising broker or his employees or associates with his own funds, or those of his corporation, firm, or association; or failure to deposit such funds in an account or accounts designated to receive only such funds as required by these regulations, see § 5.3 A 1.*

## § 6.13. *Rental location agents.*

*Actions constituting improper activities of a rental location agent include:*

*1. Accepting or agreeing to accept any fee as a rental location agent without giving the person paying or agreeing to pay such fee a contract or receipt in which the agent sets forth a definite termination date for the services to be provided. The termination date shall not be later than one year from the date of the original agreement or acceptance of a fee. The rental location agent shall agree in the contract or receipt to repay, upon request, within 10 days of the expiration date, any amount of fee collected over and above the sum of the service charge if no rental is obtained. The rental location agent shall further agree in the contract or receipt that if rental information*

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provided by the agent is not current or accurate, the full fee shall be repaid upon request within 10 days of the delivery of the inaccurate rental information;

2. Referring, as a rental location agent, a prospective tenant to any property for which the agent has not verified the availability of the property within seven working days prior to the referral; and

3. Failing, as a rental location agent, to maintain a written registry of all lists of rentals provided to customers and of all advertisements published or caused to be published by the agent, together with the address of the property listed or advertised, the date of verification of the availability, and the name, address, and telephone number, if any, of the party who offered the property for rent. This registry shall be kept for a period of three years from the date of the lists or the publication of any advertisement listed in it.

## § 6.14. Principal broker's responsibility for acts of licensees.

Any unlawful act or violation of any of the provisions of Title 54.1, Chapter 21 or of Title 36, Chapter 5 of the Code of Virginia or of the regulations of the board by any real estate salesperson, employee, partner or affiliate of a principal broker, may not be cause for disciplinary action against the principal broker unless it appears to the satisfaction of the board that the principal broker knew or should have known of the unlawful act or violation.

## § 6.15. Effect of disciplinary action on subordinate licensees.

Action by the board resulting in the revocation, suspension, or denial of renewal of the license of any principal broker or sole proprietor shall automatically result in an order that the licenses of any and all individuals affiliated with or employed by the affected firm be returned to the board until such time as they are reissued upon the written request of a sole proprietor or principal broker pursuant to § 5.2 B.

## PART IV VII . SCHOOLS.

### § 4.1. § 7.1. Definitions.

As used in these regulations, unless a different meaning is plainly required by the context:

"Accredited colleges, universities and community colleges," as used in § 54-740(a) § 54.1-2105 2 of the Code of Virginia, means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers.

"Equivalent course" means any course encompassing the principles and practices of real estate and approved by the board.

"Proprietary school" means a privately owned school, not under the authority of the Department of Education, but approved by the Real Estate Board to teach real estate courses.

### § 4.2. Instructor qualifications.

Every applicant to the Virginia Real Estate Board for approval as an instructor shall have one of the following qualifications:

1. Baccalaureate degree in real estate, or in business with a major in real estate or a closely related field; or
2. Baccalaureate degree, a real estate license, and two years of discipline-free active real estate experience within the past five years ("active experience" is defined in § 1-1, subsection A of these regulations); or
3. Seven years of discipline-free active experience acquired in the real estate field in the past ten years and an active broker's license.

### § 4.3. Course evaluation and grading.

A. All real estate courses acceptable to the board are required to have a monitored, final written examination.

B. Students must obtain a minimum course grade of "C," or a minimum score of 75%.

### § 4.4. Texts.

A school may use any textbook chosen from a list of approved texts maintained by the board.

### § 7.2. Proprietary school standards.

Every applicant to the Real Estate Board for a proprietary school certificate shall meet the following standards:

#### § 4.5. A. Educational environment.

All schools must be in a building conducive to academic purposes, with library facilities readily accessible to students at times other than their regularly scheduled class hours. Classroom arrangement should allow for workshop-type instruction and small-group activity. A maximum of 50 students is encouraged. Facilities must meet necessary building code standards, fire safety standards, and sanitation standards.

#### B. Instructor qualifications.

Every applicant to the Real Estate Board for approval

as an instructor shall have one of the following qualifications:

1. *Baccalaureate degree in real estate, or in business with a concentration in real estate or a closely related field; or*
2. *Baccalaureate degree, a real estate license, and two years of discipline-free active real estate experience within the past five years; or*
3. *Seven years of discipline-free active experience acquired in the real estate field in the past 10 years and an active broker's license.*

#### C. Courses.

*All real estate courses must be acceptable to the board and are required to have a monitored, final written examination.*

*D. All schools must establish and maintain a record for each student. The record shall include: the student's name and address; the course name and clock hours attended; and the date of successful completion. Records shall be available for inspection during normal business hours by authorized representatives of the board.*

#### § 7.3. Fees.

*A. The application fee for original certificate for a proprietary school shall be \$100.*

*B. The renewal fee for proprietary school certificates expiring annually on June 30 shall be \$50.*

*C. The Board in its discretion may deny renewal of a certificate. Upon such denial, the certificate holder may request that a hearing be held.*

#### § 4.6. § 7.4. Posting school certificate of approval and license registration.

*Certificate School certificates of approval and license registration, and instructor certificates must be displayed in each approved school facility in a conspicuous place readily accessible to the public.*

#### § 4.7. § 7.5. Withdrawal of approval.

The board may withdraw approval of any school for the following reasons:

1. The school, instructors, or courses no longer meet the standards established by the board.
2. The school solicits information from any person for the purpose of discovering past examination questions or questions which may be used in future examinations.

3. The school distributes to any person copies of examination questions, or otherwise communicates to any person examination questions, without receiving the prior written approval of the copyright owner to distribute or communicate those questions.

4. The school, through an agent or otherwise, advertises its services in a fraudulent, deceptive or misrepresentative manner.

5. Officials, instructors or designees of the school sit for a real estate licensing examination for any purpose other than to obtain a license as a broker or salesperson.

#### § 4.8. § 7.6. Course content of real estate principles and practices.

The following shall be included in the three-semester-hour or six-quarter-hour course which shall not have less than 45 classroom hours:

1. Economy and social impact of real estate
2. Real estate market and analysis
3. Property rights
4. Contracts
5. Deeds
6. Mortgages and deeds of trust
7. Types of mortgages
8. Leases
9. Liens
10. Home ownership
11. Real property and title insurance
12. Investment
13. Taxes in real estate
14. Real estate financing
15. Brokerage and agency contract responsibilities
16. Real estate marketing
17. Real property management
18. Search, examination, and registration of title
19. Title closing
20. Appraisal of residential and income producing

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property

21. Planning subdivision developments and condominiums

22. Regulatory statutes

23. Housing legislation

24. Fair housing statutes

25. [ Virginia ] Real Estate Board regulations

NOTE: THE PROPOSED ADDITIONS, NUMBERS 24 AND 25, WILL ONLY BECOME EFFECTIVE UPON ENACTMENT OF APPROPRIATE LEGISLATIVE CHANGES BY THE GENERAL ASSEMBLY.

~~§ 4-9.~~ § 7.7. Related subjects.

"Related subjects," as referred to in ~~§ 54-740(b)~~ § 54.1-2105 of the Code of Virginia, shall be real estate related and shall include, but are not limited to, courses in property management, land planning and land use, business law, real estate economics, and real estate investments.

~~§ 4-10.~~ § 7.8 Required specific courses.

Brokerage shall be a required specific course with three semester hours or six quarter hours constituting a complete course.

~~§ 4-11.~~ § 7.9 Credit for broker-related courses.

No more than three semester hours or three quarter hours of broker-related courses shall be accepted in lieu of specific broker courses.

~~§ 4-12.~~ § 7.10 Broker-related course approval procedure.

Schools intending to offer equivalent broker courses must submit to the board for approval a copy of the syllabus of the particular course and a copy of the textbook to be used with a cover letter requesting approval. In addition, the school must accompany these materials with a copy of a comparable course syllabus from an accredited university, college, or community college to establish equivalency.

All citations of the authority are pursuant to the Code of Virginia.

All previous regulations of the Real Estate Board are repealed with the exception of Section 12, Fair Housing Regulations, adopted May 22, 1980, and June 5, 1980, effective September 15, 1980; Condominium Regulations, adopted January 16, 1978, effective August 1, 1978; and Time-Share Regulations, adopted December 15, 1982, effective July 1, 1983.

D and E - 2

**ASSOCIATE BROKER APPLICANTS:** This section is to be completed by EACH previous broker for the time period the applicant was associated with that broker. If additional forms are needed, you may photocopy this page.

This is to certify that \_\_\_\_\_ has been actively employed or associated with a broker in those activities defined in Virginia Code Section 54-2311 as a real estate salesperson for an average of at least 20 hours per week for a period of \_\_\_\_\_ months during the past 48 months.

Firm name: \_\_\_\_\_

Principal broker's name (PLEASE TYPE OR PRINT) \_\_\_\_\_  
 I, the undersigned real estate broker, being sworn according to law, depose and say that the answers set forth are true to the best of my knowledge and belief.

Principal broker's signature \_\_\_\_\_  
 Notary: \_\_\_\_\_  
 State of \_\_\_\_\_ City/County \_\_\_\_\_  
 Sworn and subscribed to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 My commission expires \_\_\_\_\_  
 (Notary Public)  
 (Seal) \_\_\_\_\_

**TO BE COMPLETED BY ALL APPLICANTS**

The above signed being duly sworn deposes and says that he/she is the person who executed application, that the statements herein contained are true, that he/she has not suppressed any information that might affect this application, that he/she has read and understands the Virginia Real Estate Board regulations and licensing law, and that he/she has read and understands this affidavit.

Notary: \_\_\_\_\_ Signature of Applicant \_\_\_\_\_  
 State of \_\_\_\_\_  
 City/County \_\_\_\_\_  
 Sworn and subscribed to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

SEAL \_\_\_\_\_  
 Signature of Notary Public \_\_\_\_\_  
 My commission expires \_\_\_\_\_

ATTACHMENT CHECKLIST

\_\_\_\_\_ Copy of examination results from ASI

APPENDIX D and E

**REAL ESTATE SALESPERSON/ASSOCIATE BROKER LICENSE APPLICATION**

KEEP THIS DOCUMENT UNTIL YOU RECEIVE YOUR EXAMINATION SCORE REPORT. Complete and return this application to the address below with appropriate fees and your passing score report from the licensure examination.

**APPLICATION FOR REAL ESTATE LICENSE**

Commonwealth of Virginia  
 Department of Commerce  
 P.O. Box 26792  
 Richmond, VA 23261

Type of license for which applying (check one):  
 \_\_\_\_\_ Salesperson  
 \_\_\_\_\_ Associate Broker

Applicant's name (PRINT): \_\_\_\_\_  
 Applicant's address: \_\_\_\_\_

**PRINCIPAL BROKER'S STATEMENT:** To be completed by the broker who employs or will employ the SALESPERSON/ASSOCIATE BROKER applicant.

Firm name: \_\_\_\_\_  
 Trading name: \_\_\_\_\_  
 Address 1 - Suite: \_\_\_\_\_  
 Address 2 - Street: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Firm Telephone Number: \_\_\_\_\_  
 Firm Real Estate License Number: \_\_\_\_\_

I hereby authorize \_\_\_\_\_ to apply for a license as a real estate licensee to be supervised by me and do whatever is necessary to obtain such a license, and I hereby assume responsibility for the licensee pursuant to Regulation 3.11.

Principal broker's name (PLEASE TYPE OR PRINT) \_\_\_\_\_  
 Date \_\_\_\_\_  
 Principal broker's signature \_\_\_\_\_

For Board Use Only  
 Bd. Review \_\_\_\_\_  
 Required \_\_\_\_\_  
 Lic. No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 Code - AM

APPENDIX F

VIRGINIA REAL ESTATE BOARD  
 3600 WEST BROAD STREET  
 RICHMOND, VIRGINIA 23230

VIRGINIA REAL ESTATE BOARD  
 P. O. Box 11066  
 Richmond, Virginia 23230-1066  
 (804) 257-8526 or Toll Free 1-800-552-3016 (Virginia Only)

EXAMINATION QUESTIONNAIRE FOR RECIPROCAL APPLICANTS

All Candidates seeking a reciprocal license in Virginia must have successfully passed an examination deemed to be "substantially equivalent" to the Virginia examinations as determined by the Virginia Real Estate Board. Examinations currently deemed "substantially equivalent" are those written and administered by ACT, ASI and ETS since 1970. Other examinations are reviewed on a case by case basis by the Board and therefore, we request the following information be supplied and certified by the jurisdiction in which an examination was passed:

Applicant Name \_\_\_\_\_  
 Current Address \_\_\_\_\_

Examinations:  
 Written By: \_\_\_\_\_  
 Pass Score: \_\_\_\_\_  
 Broker: \_\_\_\_\_  
 Written By: \_\_\_\_\_  
 Pass Score: \_\_\_\_\_

Total Number of Questions: \_\_\_\_\_  
 Percentage of Nationally Applicable Questions: \_\_\_\_\_  
 Percentage of State Applicable Questions: \_\_\_\_\_  
 Type of Question - Multiple Choice, Essay, etc. \_\_\_\_\_

Knowledge Tested and Percentage of Total Questions Asked:  
 For Example- Law 25%, Finance 15%, etc.:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Certified By: \_\_\_\_\_  
 Jurisdiction: \_\_\_\_\_

This form is not needed for the following states: Arizona, California, Connecticut, Florida, Mississippi, Minnesota, Nevada, New York, North Carolina, Ohio, Oklahoma, South Carolina, Texas, and West Virginia.

Revised 05/25/88

REAL ESTATE BROKER APPLICATION INSTRUCTIONS

GENERAL INSTRUCTIONS:

1. PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.
2. Print in black ink or type.
3. All application and renewal fees are non-refundable. However, if you are ineligible for licensure by reciprocity, your payment to the Virginia Real Estate Transaction Recovery Fund will be refunded.
4. Acceptance by the Virginia Real Estate Board of an application fee does not indicate approval of your application nor connote eligibility for licensure. The applicant cannot do any of those acts associated with Section 54-730, Code of Virginia, until the principal broker receives and posts the license.
5. Allow up to three weeks for processing the application. Where there is a conviction, processing may take eight weeks or longer.
6. All applicable items must be properly completed or attached or application will be returned and processing will be delayed. This application and related papers will be held four weeks awaiting your educational transcripts. If transcripts are not received, all papers will be returned.
7. This application relates to original broker licensure only. If you are already a licensed Virginia broker with a firm and wish another license to associate with another firm, request a Real Estate Concurrent Broker Application (see regulation 1.7).
8. Nonresident notaries must use seal.
9. It is mandatory that all persons applying for a broker license submit affidavits signed by their broker(s) verifying that they have been actively engaged as a real estate salesperson for a period of 36 of the 48 months immediately preceding application. "Actively engaged" means employment by, or association with, a broker in performing those activities defined in Virginia Code Section 54-731 for an average of at least twenty (20) hours per week.
10. Please note that the principal broker must sign, date and return to the Board by certified mail your Virginia salesperson license before your original broker license can be issued.
11. Please keep instructions for future reference, along with a copy of your application and related papers.
12. MAIL COMPLETED FORMS TO: COMMONWEALTH OF VIRGINIA, DEPARTMENT OF COMMERCE, P. O. BOX 11066, RICHMOND, VIRGINIA 23230-1066, ATTENTION: CC 490.

APPLICATION FORM INSTRUCTIONS:

1. Check the appropriate space to indicate whether you are applying for licensure by examination in Virginia or by reciprocity from another jurisdiction and whether you are applying as a principal broker, associate broker, or sole proprietor of a firm. There can be only one principal broker in a firm; all others must be associate brokers.
2. Disclosure of your Social Security number is helpful to ensure identification and to aid processing of your application.
3. Complete your full legal name (do not use initials), generation (Jr., Sr., III), and title.
4. List other names which you have used (include various spellings, maiden name, etc.).
5. Complete your current residential address; a street address must be provided unless you have a rural route and box number. The Post Office will deliver your renewal application to address listed in Address 2 line if both a street and a P. O. Box number are given. Your zip code must correspond to the address listed in Address 2. If residence is outside Virginia, a "Consent to Suits and Service of Process" form must be completed and attached.
6. Telephone numbers: residence and daytime telephone numbers.
7. Provide date of birth; applicant must be at least 18 years of age.
8. Provide place of birth.
9. If you checked "yes" on item 9, you must submit with this application an original FBI record, an original state police criminal history record, and certified true copies of court papers for all pertinent convictions which provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.) Provide a written account of the part you played at time offense occurred and current status on resolution of final conviction charges relating to jail term, payment of fine, restitution, probation, etc.

To receive an original FBI record, obtain and complete a fingerprint card from your local police department. Attach a certified check for \$14 to "U.S. Department of Treasury" with a request for a copy of applicant's ID record from the FBI. Send to FBI, Identification Division, 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20537-9700. Attn: Recording Section, FOIA.

To receive an original state police criminal history record, request and complete a criminal history record form from your state police department. (Residents of Virginia should complete the Virginia State Police form in the presence of a notary public and mail to the Department of State Police, Central Criminal Records Exchange, PO Box 27472, Midlothian, VA 23261-7472.) When you receive the criminal history record, you must request certified copies of court documents for all pertinent convictions.

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To obtain certified true copies of all pertinent court papers, i.e., all felony convictions and misdemeanors involving moral turpitude, write to the Clerk of the Court in that jurisdiction. Copies must be certified true copies with seal and provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.).

10. If "yes," please provide a brief explanation and a certified true copy of the court documents or conciliation agreement.
11. Indicate date(s) and license number(s) if you have been issued a salesperson and/or broker license in Virginia.
12. List other jurisdictions in which you have ever had or now have licensure. You must submit a certification of licensure for each jurisdiction. (See specific instructions for certifications.)
13. If "yes" was checked, provide certified true copies from that jurisdiction that outline details of suspension, revocation, or disciplinary action.
14. Check "yes" for item 14 if you are applying for licensure but will not be actively engaged in real estate nor associated with a broker as defined in Sec. 54-730, Code of Virginia. If you checked "yes," do not complete items 15 or 16. You will receive acknowledgement of your licensing status, but no license will be issued.
15. If you desire your license as an active associate broker to be issued to a real estate firm or sole proprietorship at this time, the principal broker of the firm or the sole proprietor must complete this item in the presence of a notary public. Any real estate broker affixing his signature to this certification and knowing such certification to be false, will be liable for disciplinary action by the Virginia Real Estate Board.
16. If you wish to become actively licensed as a sole proprietor trading under an assumed or fictitious name, i.e., a name other than the individual's full name, a Statement of Principal Broker must be completed and attested by the Clerk of the Court in the city or county in which the business is located and a Certificate of Ownership must be completed in the presence of a notary public. (If sole proprietor trading under his full name, applicant must complete item 17 instead of 16.)
17. If applicant will be a sole proprietor trading under his full name, not an assumed or fictitious name, provide information for sole proprietorship.
18. If applicant will be principal broker, provide information for firm. If firm is not yet licensed as a brokerage firm, complete and submit a Real Estate Business Application.

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19. All applicants must have the principal broker of the firm or the sole proprietor complete this certification in the presence of a notary public.

If this certification does not cover 36 of the previous 48 months, have your previous brokers submit affidavits with notarized signatures until your certifications cover 36 of the 48 months preceding submission of application.

If your previous brokers are unwilling to supply this information, submit affidavits signed by at least two duly licensed real estate brokers certifying that you "have been actively engaged (employed by, or associated with a broker in performing those activities defined in Virginia Code Section 54-731) for an average of at least 20 hours per week for 36 of the 48 months preceding submission of application."

20. All applicants must complete item 20 in the presence of a notary public.

#### LICENSEE BY EXAMINATION:

Include the following to complete your application:

1. A copy of pass notice from the Virginia testing service;
2. A check in the amount of \$50 made payable to the "Treasurer of Virginia" which is the non-refundable application fee;
3. A certification of licensure from each jurisdiction in which you now hold or have ever held a real estate license dated no more than 30 days prior to submission of this application. This is not a copy of your license. This is an official history of licensure prepared by the licensing agency;
4. A "Consent to Suits and Service of Process" form if your residence is not in Virginia must be notarized, with seal;
5. Please request original transcript(s) with seal from the educational institution(s) where broker educational courses were taken. Please send fee to your college to have transcript(s) sent directly to the Virginia Real Estate Board, 3600 West Broad Street, Richmond, Virginia 23230. Certificates from distributive education classes or proprietary schools must be originals or copies certified as true copies by a notary public. If transcripts are not received within four weeks, this application and all related papers will be returned.
6. Please note that your principal broker must sign, date, and return to the Board by certified mail your Virginia salesperson license before your broker license can be issued.

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#### LICENSEE BY RECIPROCIITY:

Include the following to complete your application:

1. A check in the amount of \$95 made payable to "Treasurer of Virginia." This includes the non-refundable \$75 application fee plus \$20 assessment fee for the Virginia Real Estate Transaction Recovery Fund;
2. A certification of licensure from each jurisdiction in which you now hold or have ever held a real estate license must be dated no more than 30 days prior to submission of application. This is not a copy of your license. It is an official history of licensure prepared by the licensing agency. The certification of licensure from the jurisdiction of original licensure must indicate that the license was issued by virtue of passing a written examination. This examination must be substantially equivalent to the Virginia examination;
3. A "Consent to Suits and Service of Process" form if your residence is not in Virginia must be notarized, with seal;
4. The applicant must submit at least two affidavits from individuals in each prior jurisdiction certifying that the broker applicant has been actively engaged an average of 20 hours per week or more in the brokerage business for 36 of the 48 months immediately prior to application for the Virginia license. If statements are not on letterhead, name and address (either home or business) of affiant must be given. Signatures on these documents must be notarized and sealed by a notary public;
5. Original transcript(s) with seal from the educational institution(s) where broker educational courses were taken must be requested that indicate completion of 12 semester hours of educational courses that are substantially equivalent to those required in Virginia. (See fee to enclosed broker educational requirements document.) Please send fee to your college(s) to have transcript(s) sent directly to the Virginia Real Estate Board, 3600 West Broad Street, Richmond, Virginia 23230. Certificates from distributive education classes or proprietary schools must be originals or copies certified as true copies by a notary public. If transcripts are not received within four weeks, this application and all related papers will be returned to you.

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VIRGINIA REAL ESTATE BOARD  
 P.O. Box 11066  
 Richmond, Virginia 23230-1066  
 (804) 257-8526 or Toll Free 1-800-552-3016 (Virginia Only)

REAL ESTATE BROKER APPLICATION

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION

- I hereby make application by \_\_\_\_\_ examination (fee \$50)/  
 \_\_\_\_\_ reciprocity (fee \$95) for a real estate broker license as  
 \_\_\_\_\_ Principal Broker/ \_\_\_\_\_ Associate Broker/ \_\_\_\_\_ Sole Proprietor with  
 the firm \_\_\_\_\_ The firm  
 license number is \_\_\_\_\_
- Applicant's Social Security No.: \_\_\_\_\_
- Applicant's Name:  
 Last Name Only \_\_\_\_\_ Generation \_\_\_\_\_  
 First Name Only \_\_\_\_\_  
 Middle Name Only \_\_\_\_\_  
 Title \_\_\_\_\_ Mr. \_\_\_\_\_ Ms. \_\_\_\_\_ Mrs. \_\_\_\_\_ Miss \_\_\_\_\_
- Other names which you have used: \_\_\_\_\_
- Applicant's Legal Residence:  
 Address 1-- Apt No. \_\_\_\_\_  
 Address 2-- Street \_\_\_\_\_  
 City, State and Zip Code \_\_\_\_\_
- Telephone Numbers: Residence ( ) \_\_\_\_\_  
 Daytime ( ) \_\_\_\_\_
- Date of Birth: \_\_\_\_\_
- Place of Birth: City \_\_\_\_\_ State \_\_\_\_\_
- Have you ever entered a plea of nolo contendere \_\_\_\_\_ YES \_\_\_\_\_ NO  
 or been convicted in any jurisdiction of any felony  
 or of a misdemeanor involving moral turpitude? If yes,  
 please attach all information listed in item 9 of the  
 Application Form Instructions.
- Have you ever been found to have violated the fair \_\_\_\_\_ YES \_\_\_\_\_ NO  
 housing laws of any jurisdiction? If yes, please  
 provide information listed in item 10 of the Application  
 Form Instructions.

Enf. Req. \_\_\_\_\_  
 Bd. Rev. \_\_\_\_\_  
 Rejected \_\_\_\_\_  
 Lic. No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 Code \_\_\_\_\_

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- Have you ever been issued a real estate license in \_\_\_\_\_ YES \_\_\_\_\_ NO  
 Virginia as a \_\_\_\_\_ salesperson/ \_\_\_\_\_ broker?  
 If yes, give date(s) and license number(s): \_\_\_\_\_
- Have you ever been issued a real estate license in \_\_\_\_\_ YES \_\_\_\_\_ NO  
 any other jurisdiction? Name of jurisdiction(s): \_\_\_\_\_
- Have you had a real estate license which was \_\_\_\_\_ YES \_\_\_\_\_ NO  
 suspended, revoked, or the subject of discipline  
 in any other jurisdiction within the past five years? \_\_\_\_\_
- Do you want to become licensed as an associate \_\_\_\_\_ YES \_\_\_\_\_ NO  
 broker although you will not be actively engaged  
 in real estate nor associated with a firm or  
 sole proprietorship? \_\_\_\_\_
- TO BE COMPLETED BY FIRM'S PRINCIPAL BROKER ONLY IF A LICENSE AS AN  
 ACTIVE ASSOCIATE BROKER IS TO BE ISSUED AT THIS TIME:

I, \_\_\_\_\_, the undersigned, a  
 licensed real estate broker in the Commonwealth of Virginia and  
 principal broker of the firm, \_\_\_\_\_,  
 being duly sworn, depose and say that the statements made and the  
 answers to questions set forth below are true to the best of my  
 knowledge.

I hereby authorize \_\_\_\_\_ to apply for a  
 license as a real estate licensee to be supervised by me and do  
 whatever is necessary to obtain such a license, and I hereby assume  
 responsibility for the licensee pursuant to Regulation 3.11.

In my opinion, the applicant has a good reputation for honesty,  
 truthfulness, and fair dealing, and is competent to transact the  
 business of a real estate broker in such a manner as to safeguard the  
 interests of the public.

Firm License No.: \_\_\_\_\_

Signature of Principal Broker: \_\_\_\_\_

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_  
 Sworn and subscribed to before me at \_\_\_\_\_ this  
 day of \_\_\_\_\_, 19 \_\_\_\_\_

(Notary Public) My commission expires \_\_\_\_\_

(Seal)

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# Final Regulations

16. PLEASE COMPLETE ONLY IF A LICENSE AS AN ACTIVE SOLE PROPRIETOR TRADING UNDER AN ASSUMED OR FICTITIOUS NAME IS TO BE ISSUED AT THIS TIME:

Firm Trading-As-Name: \_\_\_\_\_  
 Firm Address: \_\_\_\_\_  
 Address 1--Suite \_\_\_\_\_  
 Address 2--Street \_\_\_\_\_  
 City, State and Zip Code \_\_\_\_\_  
 Firm Telephone No. \_\_\_\_\_

STATEMENT OF PRINCIPAL BROKER: I hereby certify that, pursuant to regulation 1.5 of the Virginia Real Estate Board, I am the individual principal broker of the above described real estate brokerage firm. I have complied with the provisions of Section 59.1-60 et seq., Code of Virginia, and have filed this certificate with the Clerk of the Court in the city or county in which my place of business is located.

Typewritten Name and Signature of Principal Broker \_\_\_\_\_

Attest: \_\_\_\_\_

Clerk of Court \_\_\_\_\_

Date \_\_\_\_\_

CERTIFICATE OF OWNERSHIP: I hereby certify that I am the sole owner of the above described real estate brokerage firm. I am/ am not a real estate licensee in Virginia and am licensed as a(n) \_\_\_\_\_ salesperson/ associate broker/ principal broker.

Typewritten Name of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Residential Address of Owner \_\_\_\_\_

Social Security No. \_\_\_\_\_ Day Telephone No. \_\_\_\_\_

Notary: \_\_\_\_\_

State of \_\_\_\_\_ City/County \_\_\_\_\_ This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Notary Public) My commission expires \_\_\_\_\_

(Seal)

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17. PLEASE COMPLETE ONLY IF A LICENSE AS AN ACTIVE SOLE PROPRIETOR TRADING UNDER HIS FULL NAME (NOT AN ASSUMED OR FICTITIOUS NAME) IS TO BE ISSUED AT THIS TIME:

Full Name of Sole Proprietor: \_\_\_\_\_  
 Business Address: \_\_\_\_\_  
 Address 1--Suite \_\_\_\_\_  
 Address 2--Street \_\_\_\_\_  
 City, State and Zip Code \_\_\_\_\_  
 Business Telephone: \_\_\_\_\_

18. PLEASE COMPLETE ONLY IF A LICENSE AS AN ACTIVE PRINCIPAL BROKER IS TO BE ISSUED AT THIS TIME:

Firm Name: \_\_\_\_\_  
 Firm Trading-As-Name: \_\_\_\_\_  
 Firm Address: \_\_\_\_\_  
 Address 1--Suite \_\_\_\_\_  
 Address 2--Street \_\_\_\_\_  
 City, State and Zip Code \_\_\_\_\_  
 Firm Telephone No. \_\_\_\_\_  
 Firm Real Estate License No. \_\_\_\_\_

19. PRINCIPAL BROKER MUST COMPLETE THIS CERTIFICATION FOR ALL APPLICANTS BY EDUCATION AND EXAMINATION:

I, the undersigned real estate broker, being sworn according to law, do hereby certify that the answers set forth are true to the best of my knowledge and belief and that the information is given for the purpose of recommending to the Virginia Real Estate Board that the applicant be permitted to receive the real estate broker license in accordance with its regulations.

This is to certify that \_\_\_\_\_ has been employed by or associated with our firm \_\_\_\_\_ and has been actively engaged (employed by or associated with a broker in performing those activities defined in Virginia Code Section 54-731) as a real estate salesperson for an average of at least 20 hours per week for a period of \_\_\_\_\_ months during the past 48 months.

Typewritten Name and Signature of Principal Broker \_\_\_\_\_

Notary: \_\_\_\_\_

State of \_\_\_\_\_ City/County \_\_\_\_\_ This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Notary Public) My commission expires \_\_\_\_\_

(Seal)

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VIRGINIA REAL ESTATE BOARD  
3600 West Broad Street  
Richmond, Virginia 23230

**CONSENT TO SUITS AND SERVICE OF PROCESS**

TO BE EXECUTED BY NONRESIDENT REAL ESTATE SALESPERSON OR BROKER  
READ CAREFULLY BEFORE ASSESSING QUESTIONS AND EXECUTING AFFIDAVIT.  
ALL ANSWERS MUST BE COMPLETE AND UNPREFACED/PRINTED.

Name of Applicant: \_\_\_\_\_  
Legal Residence: \_\_\_\_\_  
Number/Street \_\_\_\_\_  
City/State/Zip \_\_\_\_\_

WHEREAS, I, the above-named applicant for license privilege as a salesperson ( ), associate broker ( ), or broker ( ) trading and/or operating individually or for or under the firm name of \_\_\_\_\_ have made application for a license to act as a real estate salesperson ( ) associate broker ( ) or broker ( ) nonresident, within the State of Virginia, in accordance with the provisions of Chapter 18, Title 54, Section 54-773, Code of Virginia, 1950.

WHEREAS, under the provisions of said Chapter, it is necessary to file in the Executive Office, Richmond, Virginia, of the Virginia Real Estate Board, with its secretary, a consent that suits and actions may be commenced and prosecuted against the subscriber(s) hereto in any of the courts of record of the State of Virginia, by the service of any process or pleading authorized by the laws of said State of Virginia, on the secretary of the Virginia Real Estate Board, the service of such process and pleading on such secretary to be taken and held in all courts legal and valid as if made on the subscriber(s) hereto within said State, and that such consent shall be irrevocable;

NOW, THEREFORE, I \_\_\_\_\_ the above-named applicant for license privilege as salesperson ( ), associate broker ( ), or \_\_\_\_\_ as a nonresident, hereby execute and file with the secretary of the Virginia Real Estate Board my/our irrevocable consent that suits and actions may be commenced and prosecuted against the subscriber(s) either individually, or as partners or members of said firm, or partnership in any of the courts of record of the said State of Virginia, by the service of any process or pleading authorized by the laws of the said State of Virginia, on the secretary of the Virginia Real Estate Board, and it is hereby stipulated and agreed that such service of such process or pleading on said secretary shall be taken and held in all courts to be as valid and binding as if due service

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20. ALL APPLICANTS MUST COMPLETE THIS SECTION IN THE PRESENCE OF A NOTARY PUBLIC:

The undersigned being duly sworn, deposes and says that he is the person who executed application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, that he has read and understands the Virginia Real Estate Board regulations and licensing law, and that he has read and understands this affidavit.

Notary: \_\_\_\_\_ Signature of Applicant \_\_\_\_\_  
State of \_\_\_\_\_, City/County \_\_\_\_\_  
Sworn and subscribed to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
My commission expires \_\_\_\_\_  
(Notary Public)  
(Seal)

- ENCLOSURES:
- BY EXAMINATION
- \_\_\_ Pass Notice
  - \_\_\_ Check (\$50)
  - \_\_\_ Certification(s) of Licensure, \_\_\_ if applicable
  - \_\_\_ "Consent to Suits and Service of Process" form for non-residents
  - \_\_\_ Real Estate Business Application, \_\_\_ if applicable
  - \_\_\_ Additional broker affidavits, \_\_\_ if applicable
- BY RECIPROCALITY
- \_\_\_ Check (\$95)
  - \_\_\_ Certification(s) of Licensure, \_\_\_ if applicable
  - \_\_\_ "Consent to Suits and Service of Process" form for non-residents
  - \_\_\_ Real Estate Business Application, \_\_\_ if applicable
  - \_\_\_ Additional broker affidavits, \_\_\_ if applicable

NOTE: Request original transcript(s) from educational institution(s).  
NOTE: Principal broker must sign, date and return to the Board by certified mail your Virginia salesperson license before your broker license can be issued.

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# Final Regulations

THE VIRGINIA REAL ESTATE BOARD  
P. O. Box 11066  
Richmond, Virginia 23230-1066  
(804) 257-8526 or Toll Free 1-800-552-3016 (Virginia Only)  
REAL ESTATE SALESPERSON APPLICATION INSTRUCTIONS

## GENERAL INSTRUCTIONS

1. PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.
2. Print in black ink or type.
3. All application and renewal fees are non-refundable. However, if you are ineligible for licensure, your payment to the Virginia Real Estate Transaction Recovery Fund will be refunded.
4. Acceptance by the Virginia Real Estate Board of an application fee does not indicate approval of your application nor denote eligibility for licensure. The applicant cannot do any of those acts associated with Section 54-731, Code of Virginia, until the principal broker receives and posts the license.
5. Please allow at least three weeks for processing. If a criminal offense is involved, processing may take eight weeks or longer.
6. All applicable items must be properly completed or attached or the application will be returned and processing will be delayed. This application and related papers will be held four weeks awaiting your educational transcripts. If transcripts are not received, all papers will be returned.
7. Nonresident notaries must use seal.
8. Please keep instructions for future reference, along with a copy of your application and related papers.
9. MAIL COMPLETED FORMS TO: COMMONWEALTH OF VIRGINIA, DEPARTMENT OF COMMERCE, P. O. BOX 11066, RICHMOND, VIRGINIA 23230-1066

## INCLUDE THE FOLLOWING TO COMPLETE YOUR APPLICATION:

1. a check payable to "Treasurer of Virginia"; \$50 for licensure by examination; \$75 for licensure by reciprocity. This includes the non-refundable application fee plus \$20 assessment fee for the Virginia Real Estate Transaction Recovery Fund;
2. a "Consent to Suits and Service of Process" form if your residence is not in Virginia must be notarized, with seal;

## CONSENT TO SUITS AND SERVICE OF PROCESS

had been made upon the subscriber(s) hereto personally within the State of Virginia.

Signature of Applicant: \_\_\_\_\_

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me the subscriber, personally appeared \_\_\_\_\_ who is known to me to be the person named in and who signed the foregoing instrument, and who acknowledged that he/she signed the same as his/her voluntary act and deed for the uses and purposes therein expressed.

STATE OF: \_\_\_\_\_

Notary Public

CITY/COUNTY OF: \_\_\_\_\_

My Commission Expires \_\_\_\_\_

(Seal)

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5. Complete your current residential address; a street address must be provided unless you have a rural route and box number. The Post Office will deliver your renewal application to address listed in Address 2 line if both a street and a P. O. Box number are given. If residence is outside Virginia, a "Consent to Suits and Service of Process" form must be completed and attached.
6. Provide complete residential addresses for previous five years.
7. Telephone numbers for residence and daytime are requested.
8. Provide date of birth; applicant must be at least 18 years of age.
9. Provide place of birth.
10. Provide name of school where "Principles of Real Estate" course was completed.
11. Provide name of your school instructor for "Principles of Real Estate" if course was completed in a Virginia proprietary school.
12. If you checked "yes" on item 12, you must submit with this application an original FBI record, an original state police criminal history record, and certified true copies of court papers for all pertinent convictions which provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.) Also provide a written account of the part you played at time offense occurred and current status on resolution of final conviction charges relating to jail term, payment of fine, restitution, probation, etc.

To receive an original FBI record, obtain and complete a fingerprint card from your local police department. Attach a certified check for \$14 (fee as of 7/15/87) to "U.S. Department of Treasury" with a request for a copy of applicant's ID record from the FBI. Send to FBI Identification Division, 9th and Pennsylvania Avenue, N.W., Washington, D.C. 20537-9700. Attn: Recording Section, FOIA.

To receive an original state police criminal history record, request and complete a criminal history record form from your state police department. Residents of Virginia should complete the Virginia State Police form in the presence of a county public and mail to th. Department of State Police, Central Criminal Records Exchange, PO Box 27472, Midlothian, VA 23261-7472.

When you receive the criminal history record, you must request certified copies of court documents for all pertinent convictions, i.e., all felony convictions and misdemeanors involving moral turpitude. To obtain copies of all pertinent court papers, write to the Clerk of the Court in that jurisdiction. Copies must be certified true copies with seal and provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.).

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3. a copy of licensing examination pass notice from the Virginia testing service (for applicants by examination only);
4. a certification of licensure from each state in which you now hold or have ever held a real estate license must be dated no more than 30 days prior to submission of this application. This is not a copy of your license. This is an official history of licensure prepared by the licensing agency. (For reciprocity: The certification of licensure from the jurisdiction of original licensure must indicate that that license was issued by virtue of passing a written examination. This must be substantially equivalent to the Virginia examination);
5. Please request an original transcript with seal from the educational institution where "Principles of Real Estate" was taken. Please send fee to your college to have transcript sent directly to the Virginia Real Estate Board, 3800 West Broad Street, Richmond, Virginia 23230 or provide certificate from distributive education or proprietary school which must be an original or copy certified as a true copy by a notary public. (For reciprocity: a 48-hour classroom pre-licensing course equivalent to the Virginia course is required. See regulation 4.8 for course content.)

**NOTE:** APPLICANTS FOR RECIPROCIITY MUST SUBMIT INFORMATION FOR EITHER ITEM 5 OR 6 (SEE REGULATION 2.3.A.5)

6. For reciprocity: submit affidavit(s) from principal broker(s) (or, if unavailable, two affidavits from individuals in each prior jurisdiction) certifying active engagement in real estate, as defined in Section 54-731, Code of Virginia, for 12 of the 36 months immediately preceding application. If statements are not on letterhead, name and address (either home or business) of affiant must be given. Signatures on these documents must be notarized and sealed by a notary public.

**APPLICATION FORM INSTRUCTIONS**

1. Check the appropriate space to indicate whether you are applying for licensure by examination in this state or by reciprocity from another state where you are currently licensed in real estate and provide the name of the firm with which you wish to be associated and the firm's real estate brokerage license number. NOTE: If no active license is hereby requested, put "not applicable" in space for firm information.
2. Disclosure of your Social Security Number is helpful to ensure identification and to aid processing of your application.
3. Complete your full legal name (do not use initials), generation (Jr., Sr., III, etc.), and title.
4. List other names you have used (include various spellings, maiden name, etc.).

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# Final Regulations

VIRGINIA REAL ESTATE BOARD  
 P.O. BOX 11066  
 Richmond, Virginia 23230-1066  
 (804) 257-8526 or Toll Free 1-800-552-3016 (Virginia Only)

## REAL ESTATE SALESPERSON APPLICATION

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. I hereby make application by \_\_\_\_\_ examination (fee \$50)/  
 be reciprocity (fee \$75) for a real estate salesperson license to  
 be issued to the firm \_\_\_\_\_  
 The real estate license number of the firm is \_\_\_\_\_.
2. Applicant's Social Security No.: \_\_\_\_\_
3. Applicant's Name: \_\_\_\_\_ Generation \_\_\_\_\_  
 Last Name Only \_\_\_\_\_  
 First Name Only \_\_\_\_\_  
 Middle Name Only \_\_\_\_\_  
 Title: Mr. \_\_\_\_\_ Ms. \_\_\_\_\_ Mrs. \_\_\_\_\_ Miss \_\_\_\_\_
4. Other names which you have used: \_\_\_\_\_
5. Applicant's Legal Residence:  
 Address 1-- Apt. No. \_\_\_\_\_  
 Address 2-- Street \_\_\_\_\_  
 City \_\_\_\_\_  
 State and Zip Code \_\_\_\_\_
6. Previous Residential Addresses:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
7. Telephone Numbers: Residence { } \_\_\_\_\_  
 Day \_\_\_\_\_
8. Date of Birth: \_\_\_\_\_
9. Place of Birth: City \_\_\_\_\_ State \_\_\_\_\_

Emp. Reg.  
 Rec. Reg.  
 Rejected  
 Lic. No.  
 Date  
 Code

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13. If "yes" was checked, provide a brief explanation and a certified true copy of the court documents or conciliation agreement.
14. Indicate date(s) and license number(s) if you have ever been issued a salesperson and/or broker license in Virginia.
15. List other jurisdictions in which you have ever had or now have a license. You must provide certification of licensure for each.
16. If "yes" was checked, provide certified true copies from that jurisdiction that outline details of suspension, revocation, or disciplinary action.
17. Check "yes" for item 17 if you are applying for licensure but will not be actively engaged in real estate nor associated with a broker as defined in Section 54-731, Code of Virginia. You will receive acknowledgement of your licensing status, but no license will be issued to a broker. If you checked "yes," do not complete item 18.
18. If you desire your license to be issued to a real estate firm or sole proprietorship at this time, the principal broker of the firm or sole proprietor must complete this item in the presence of a notary public.
19. All applicants must complete item 19 in the presence of a notary public.

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10. Name of school where Principles of Real Estate course was completed: \_\_\_\_\_
11. Name of instructor: \_\_\_\_\_
12. Have you ever pleaded guilty or entered a plea of nolo contendere, or been convicted in any jurisdiction of a misdemeanor involving moral turpitude or any felony? If yes, provide information as outlined in instructions.  YES  NO
13. Have you been found to have violated the fair housing laws in any jurisdiction? If yes, provide information as outlined in instructions.  YES  NO
14. Have you ever been issued a real estate license in Virginia as a salesperson/broker? If yes, give date(s) and license number(s):  YES  NO
15. Have you ever been issued a real estate license in any other jurisdiction? Name of jurisdiction(s):  YES  NO
16. Have you had a real estate license which was suspended, revoked, or the subject of discipline in any other jurisdiction within the past five years?  YES  NO
17. Do you want to become licensed as a salesperson although you will not be actively engaged in real estate nor associated with a firm or sole proprietorship?  YES  NO
18. PRINCIPAL BROKER MUST COMPLETE IN THE PRESENCE OF A NOTARY PUBLIC IF A LICENSE IS TO BE ISSUED AT THIS TIME FOR ACTIVE ASSOCIATION WITH THE FIRM OR SOLE PROPRIETORSHIP:
- I, \_\_\_\_\_, the undersigned, a licensed real estate broker in the Commonwealth of Virginia, being duly sworn, depose and say that the statements made and the answers to questions set forth below are true to the best of my knowledge.
- I hereby authorize \_\_\_\_\_ to apply for a license as a real estate licensee to be supervised by me and do whatever is necessary to obtain such a license, and I hereby assume responsibility for the licensee pursuant to Regulation 3.11.
- In my opinion the applicant has a good reputation for honesty, truthfulness, and fair dealing, and is competent to transact the business of a real estate salesperson in such a manner as to safeguard the interests of the public.

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This license is to be issued to the applicant at the firm or sole proprietorship listed below:

Firm Name: \_\_\_\_\_  
 Trading-As-Name: \_\_\_\_\_  
 Firm Address: \_\_\_\_\_  
 Address 1--Suite \_\_\_\_\_  
 Address 2--Street \_\_\_\_\_  
 City \_\_\_\_\_  
 State and Zip Code \_\_\_\_\_  
 Firm Telephone No. \_\_\_\_\_  
 Firm Real Estate License No.: \_\_\_\_\_

Typewritten Name and Signature of Principal Broker \_\_\_\_\_

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_  
 Sworn and subscribed to before me at \_\_\_\_\_ this  
 day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_  
 (Notary Public) My commission expires \_\_\_\_\_

(Seal)

19. ALL APPLICANTS MUST COMPLETE THIS SECTION IN THE PRESENCE OF A NOTARY PUBLIC:

The undersigned being duly sworn, deposes and says that he is the person who executed application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, that he has read and understands the Virginia Real Estate Board regulations and license law, and that he has read and understands this affidavit.

\_\_\_\_\_  
Signature of Applicant

Notary:

City/County \_\_\_\_\_ State of \_\_\_\_\_  
 Sworn and subscribed to before me at \_\_\_\_\_ this  
 day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_  
 (Notary Public) My Commission expires \_\_\_\_\_

(Seal)

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LAW S AND REGULATIONS AFFIDAVIT  
COMMONWEALTH OF VIRGINIA

VIRGINIA REAL ESTATE BOARD  
3600 West Broad Street  
Richmond, Virginia 23230  
(804) 367-8526 or 367-8560

VIRGINIA REAL ESTATE BOARD  
P. O. BOX 11066  
RICHMOND, VIRGINIA 23230-1066  
(804) 257-8526 or Toll Free 1-800-552-3016 (Virginia only)

REAL ESTATE BUSINESS APPLICATION INSTRUCTIONS

GENERAL INSTRUCTIONS:

1. PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.
2. Print in black ink or type.
3. All application fees are non-refundable.
4. All applicable items must be properly completed or application will be returned.
5. Nonresident notaries must use seal.
6. Please keep these instructions and a copy of your application for future reference.
7. MAIL COMPLETED FORMS TO: COMMONWEALTH OF VIRGINIA, DEPARTMENT OF COMMERCE, P.O. BOX 11066, RICHMOND, VIRGINIA 23230-1066.

REAL ESTATE BUSINESS APPLICATION FORM INSTRUCTIONS:

1. Check the appropriate space to indicate if you are forming a corporation, partnership, or association and enclose a \$70 application fee, made payable to the "Treasurer of Virginia."
2. Indicate the firm's legal or registered name and the trading-as name (the name in which the firm transacts business.) If the firm is a foreign corporation, i.e., not registered with the State Corporation Commission, a Certificate of Authority from the State Corporation Commission must be submitted; or if the firm is registered as a corporation in Virginia and has been granted a charter by the State Corporation Commission, submit a copy of charter which has been certified as a true copy by a notary public.
3. Provide the main office address. A street address is mandatory unless a rural route and box number are provided. The Post Office will deliver your renewal application to address listed in Address 2 line if both a street and a P.O. Box number are given. Your zip code must correspond appropriately for information in Address 2 line.
4. Provide telephone number of main office.
5. Provide name, title and legal residence of the officers, directors, associates, or partners. Use an "A" if the officer is active and an "I" if the officer is inactive in the real estate brokerage business. All active partners, associates, officers and directors must be licensed as brokers.

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This form is to accompany your application for licensure.

Date: \_\_\_\_\_

I \_\_\_\_\_ do hereby certify that I have read and understand the Virginia Real Estate Board Regulations, Real Estate License Laws and Fair Housing Laws.

\_\_\_\_\_  
Signature of Applicant

State of \_\_\_\_\_, City of \_\_\_\_\_,  
Subscribed and Sworn to before me, the undersigned Notary Public in and for the State and City aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

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- 6. Provide the principal broker's name. If the broker is already licensed and transferring to this firm, he must submit a REAL ESTATE BROKER TRANSFER APPLICATION. If the broker is already licensed with another firm and wishes to retain that association, he must submit a REAL ESTATE CONCURRENT BROKER LICENSING APPLICATION in order to associate with this firm. If the broker-to-be is not presently licensed as a broker, he must attach a REAL ESTATE BROKER APPLICATION. There can be only one principal broker of a firm. All other active brokers must be associate brokers and on file as such with the Virginia Real Estate Board.
- 7. Provide the signature and typed name of president of corporation, general partnership, association, or sole proprietor; title; and date of application with attestation of either the Secretary of the Corporation or a notary public.

VIRGINIA REAL ESTATE BOARD  
 P. O. BOX 11066  
 RICHMOND, VIRGINIA 23230-1066  
 (804) 257-8526 or Toll Free 1-800-552-3016 (Virginia only)

\$70 REAL ESTATE BUSINESS APPLICATION \$70

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. I hereby make application for a brokerage license for a new corporation/ partnership/ association and enclose a \$70 check payable to the "Treasurer of Virginia."

2. Name of Firm: \_\_\_\_\_

Firm Trading-As Name: \_\_\_\_\_

3. Firm Address:

Address 1 -- Suite \_\_\_\_\_

Address 2 -- Street \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

4. Firm telephone number: ( ) \_\_\_\_\_

5. Principals of the Firm (Officers, Directors, Partners, or Associates):

Name/Title	Legal Residence (street, city, state, zip)	Status in Brokerage	
		Active	% Ownership Inactive if applicable
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

6. Name of New Principal Broker : \_\_\_\_\_

Lic. No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 Code \_\_\_\_\_

7. THIS ITEM MUST BE COMPLETED BY APPLICANT:

I hereby certify that the above information is correct to the best of my knowledge and belief and that no information has been suppressed that might affect this application.

\_\_\_\_\_  
 Typewritten Name and Signature of President of Corporation, General Partner, Associate, or Sole Proprietor

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

ATTEST:

\_\_\_\_\_  
 Secretary of Corporation or Notary Public

\_\_\_\_\_  
 Date

My commission expires \_\_\_\_\_

(Seal)

THE VIRGINIA REAL ESTATE BOARD  
 3600 West Broad Street  
 Richmond, Virginia 23230  
 (804) 367-8526 or Toll Free 1-800-552-3016 (Virginia only)

REAL ESTATE ACTIVATE APPLICATION

GENERAL INSTRUCTIONS

1. PLEASE READ THESE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.
2. Print in black ink or type.
3. All applicable items must be properly completed or the application will be returned for completion and resubmittal, thus delaying processing.
4. Receipt by the Virginia Real Estate Board of this application does not indicate approval of your application nor constitute eligibility for a change in your licensing status. The applicant who has been on inactive status cannot do any of those acts associated with Sections 54-730 and 54-731, Code of Virginia, until the principal broker receives and posts the license.
5. Include with your application a "CONSENT TO SUITS AND SERVICE OF PROCESS" form if your residence is not in Virginia. It must be notarized, with seal.
6. Nonresident notaries must use seal.
7. Please keep these instructions and a copy of your application for future reference.
8. MAIL COMPLETED FORMS TO: DEPARTMENT OF COMMERCE, VIRGINIA REAL ESTATE BOARD, 3600 WEST BROAD STREET, RICHMOND, VIRGINIA 23230

APPLICATION FORM INSTRUCTIONS

1. Indicate the type of license for which you are requesting activation. A firm may have only one principal broker. All other brokers must be associate brokers.  
  
 If you will become the principal broker of an existing firm, complete and attach a C-3 application.  
  
 If you will become a sole proprietor trading under an assumed or fictitious name, a name other than the individual's full name, complete and attach a C-2 Application.  
  
 If you will become a sole proprietor trading under your full name, no other application is necessary.  
  
 If you will be associated with a new firm, partnership, or association for which licensure is required, a Real Estate Business Application must be completed and submitted.

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2. Disclosure of your Social Security Number is helpful to ensure identification and will aid in processing your application.
3. Complete your full legal name (do not use initials), generation (I, Jr., Sr., III, etc.).
4. List other names you have used, i.e., various spellings, maiden name, previous married name, etc.
5. Complete your current residential address; a street address is mandatory unless you provide a rural route and box number. The Post Office will deliver your renewal application to address listed in Address 2 line and a P. O. Box number may be given for this purpose. Your zip code must correspond to the mailing address listed in Address 2.
6. Provide residential and current office or daytime telephone numbers.
7. Provide information on firm with which you are requesting association. Indicate the firm's legal or registered name and the trading name (the name in which the firm transacts business). The principal broker must verify the accuracy of this information.
8. If inactive for more than three years, regulations require applicant to meet current educational requirements. Forty-five classroom hours of "Principles of Real Estate" are required to activate a sales license; twelve semester hours or eighteen quarter hours of broker courses are required to activate a broker license. Request and review a current Broker Educational Requirement sheet to determine eligibility.
9. If you do not have a copy of the current regulations, a copy will be sent to you for your review. Please note that item 16 of this application requires that you read the regulations before becoming actively engaged in real estate as defined in Sections 34-130 and 34-731, Code of Virginia.
10. List other jurisdictions in which you have ever had or now have a license. You must submit a certification of licensure for each jurisdiction dated no more than thirty days prior to submission of application. This is not a copy of your license. It is an official history of licensure prepared by the licensing agency.
11. If "yes," provide certified true copies from that jurisdiction that outline details of suspension, revocation, or disciplinary action.
12. If you checked "yes" on Item 13, you must submit with this application an original FBI record, an original state police criminal history record, and certified true copies of court papers for all pertinent convictions which provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.) Provide a written account of the part you played at time offense occurred and current status on resolution of final conviction charges relating to jail term, payment of fine, restitution, probation, etc.

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- To receive an FBI record, obtain and complete a fingerprint card from your local police department. Attach a certified check for \$14 (fee as of 7/15/87) to "U.S. Department of Treasury" with a request for a copy of applicant's ID record. Send to FBI, Identification Division, 9th and Pennsylvania Avenue, N.W., Washington, DC 20535-9700. AITN: Recording Section, FOIA.
- To receive an original state police criminal history record, request and complete a criminal history record form from your state police department. (Residents of Virginia should complete the Virginia State Police form in the presence of a notary public and mail to the Department of State Police, Central Criminal Records Exchange, PO Box 27472, Midlothian, VA 23261-7472).
- When you receive the criminal history record, you must request certified copies of court documents for all pertinent convictions, i.e., all felony convictions and misdemeanors involving moral turpitude. To obtain certified true copies of all pertinent court papers, write to the Clerk of the Court in that jurisdiction. Copies must be certified true copies with seal and provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.).
13. If "yes," please provide a brief explanation and a certified true copy of the court documents or conciliation agreement.
  14. The principal broker of sole proprietor with whom you will be associated must complete item 15 in the presence of a notary public.
  15. All applicants must complete item 16 in the presence of a notary public.

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10. Do you have a copy of the July 15, 1987 Regulations of the Virginia Real Estate Board?  YES  NO
11. Are you now licensed in any other jurisdiction(s)?  YES  NO  
Name of jurisdiction(s): \_\_\_\_\_
12. Have you ever had a real estate license which was suspended, revoked, or the subject of discipline in any other jurisdiction within the past 5 years?  YES  NO  
If yes, provide details on separate sheet.
13. Have you ever pleaded guilty or entered a plea of no contest or been convicted in any jurisdiction of any felony or a misdemeanor involving moral turpitude? If yes, see item 13 of the Application Form Instructions.  YES  NO
14. Have you ever been found to have violated the fair housing laws of any jurisdiction? If yes, see item 14 of the Application Form Instructions.  YES  NO
15. PRINCIPAL BROKER MUST COMPLETE IF A SALESPERSON OR ASSOCIATE BROKER LICENSE IS TO BE ISSUED AT THIS TIME TO APPLICANT:

I, the undersigned, a licensed real estate broker in the Commonwealth of Virginia, being duly sworn, depose and say that the statements made and the answers to questions set forth below are true to the best of my knowledge.

I hereby authorize \_\_\_\_\_ to apply for an active real estate license to become actively engaged as a real estate licensee, as defined by regulation 1-1, for association with \_\_\_\_\_, a licensed real estate broker in the Commonwealth of Virginia. I hereby verify the information in item 7 of this application and answer. I hereby assume responsibility for supervision of the licensee pursuant to Regulation 3-11.

In my opinion the applicant has a good reputation for honesty, truthfulness, and fair dealing, and is competent to transact the business of a real estate licensee in such a manner as to safeguard the interests of the public.

Typewritten Name and Signature of Principal Broker \_\_\_\_\_

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_  
Sworn and subscribed to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Notary Public)  
By commission expires \_\_\_\_\_

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VIRGINIA REAL ESTATE BOARD  
1600 West Broad Street  
Richmond, Virginia 23220  
804) 367-8526 or Toll Free 1-800-552-3016 (Virginia only)

REAL ESTATE ACTIVATE APPLICATION

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSE LAWS AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. I hereby make application to activate my real estate \_\_\_\_\_ salesperson/associate broker/\_\_\_\_ principal broker/\_\_\_\_ sole proprietor license.
2. Social Security Number: \_\_\_\_\_
3. Applicant's Name:  
Last Name Only \_\_\_\_\_ Generation \_\_\_\_\_  
First Name Only \_\_\_\_\_  
Middle Name Only \_\_\_\_\_
4. Other names which you have used: \_\_\_\_\_
5. Applicant's Legal Residence:  
Address 1 - Apt. No. \_\_\_\_\_  
Address 2 - Street \_\_\_\_\_  
City, State and Zip Code \_\_\_\_\_  
State and Zip Code \_\_\_\_\_
6. Telephone Numbers: (Residence) ( ) ( ) \_\_\_\_\_  
(Day) \_\_\_\_\_
7. This license is to be issued for association with the firm or sole proprietorship listed below:  
Firm Name: \_\_\_\_\_  
Trading-as-Name: \_\_\_\_\_  
Firm Address: \_\_\_\_\_  
Firm Telephone No.: \_\_\_\_\_ YES  NO
8. Has your license been on inactive status for more than three years? If yes, see item 8 of the Application Form Instructions.

Enf. Ren. \_\_\_\_\_ Lic. No. \_\_\_\_\_  
Ad. Rev. \_\_\_\_\_ Date \_\_\_\_\_  
Rejected \_\_\_\_\_ Code \_\_\_\_\_

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THE VIRGINIA REAL ESTATE BOARD  
3600 West Broad Street  
Richmond, Virginia 23230  
(804) 257-8326 or Toll Free 1-800-552-3016 (Virginia only)

REAL ESTATE TRANSFER APPLICATION

GENERAL INSTRUCTIONS

1. PLEASE READ THESE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.
2. Print in black ink or type.
3. All applicable forms must be properly completed or the application will be returned for completion and resubmittal, thus delaying processing.
4. Include with your application a "CONSENT TO SUITS AND SERVICE OF PROCESS" form if your residence is not in Virginia. It must be notarized, with seal.
5. Nonresident notaries must use seal.
6. Please keep these instructions and a copy of your application for future reference.
7. MAIL COMPLETED FORMS TO: DEPARTMENT OF COMMERCE, VIRGINIA REAL ESTATE BOARD, 3600 WEST BROAD STREET, RICHMOND, VIRGINIA 23230

APPLICATION FORM INSTRUCTIONS

1. Indicate the type of license which you presently have and the type of license you are requesting. A firm may have only one principal broker. All other brokers must be associate brokers.  
If you will become the principal broker of an existing firm, complete and attach a C-3 application.  
If you will become a sole proprietor trading under an assumed or fictitious name, a name other than the individual's full name, complete and attach a C-2 Application.  
If you will become a sole proprietor trading under your full name, no other application is necessary.  
If you will be associated with a new firm, partnership, or association for which licensure is required, a Real Estate Business Application must be completed and submitted.
2. Disclosure of your Social Security Number is helpful to ensure identification and will aid in processing your application.
3. Complete your full legal name (do not use initials), generation (Jr., Sr., III, etc.).

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16. ALL APPLICANTS MUST COMPLETE THIS SECTION IN THE PRESENCE OF A NOTARY PUBLIC:

The undersigned, being duly sworn, deposes and says that he is the person who executed application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, and that he has read and understands this affidavit. The undersigned further deposes and says that he will read the current Virginia Real Estate Board regulations which became effective July 15, 1987 as well as the licensing laws to ensure complete understanding before becoming actively engaged in real estate.

(Signature of Applicant)

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

My commission expires \_\_\_\_\_.

(Notary Public)

(Seal)

5/88

(C)

# Final Regulations

VIRGINIA REAL ESTATE BOARD  
 3600 West Broad Street  
 Richmond, Virginia 23220  
 (804) 257-8576 or Toll Free 1-800-557-3016 (Virginia only)

## REAL ESTATE TRANSFER APPLICATION

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSE LAWS AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. I hereby make application to transfer my present real estate salesperson/associate broker/principal broker/sole proprietor license, and I am requesting that a new license be issued as a salesperson/associate broker/principal broker/sole proprietor.

2. Social Security Number: \_\_\_\_\_  
 Applicant's Name: \_\_\_\_\_  
 Last Name Only \_\_\_\_\_ Generation \_\_\_\_\_  
 First Name Only \_\_\_\_\_  
 Middle Name Only \_\_\_\_\_

3. Other names which you have used: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. Applicant's Legal Residence:  
 Address 1 -- Apt. No. \_\_\_\_\_  
 City, State and Zip Code \_\_\_\_\_  
 State and Zip Code \_\_\_\_\_

5. Telephone Numbers: (Residence) ( ) \_\_\_\_\_  
 ( ) \_\_\_\_\_

6. My license is presently issued to the firm/sole proprietorship listed below:  
 Firm Name: \_\_\_\_\_  
 Trading-As-Name: \_\_\_\_\_  
 Firm Address: \_\_\_\_\_  
 Firm Telephone No.: \_\_\_\_\_

7. My license is to be transferred for association with the firm or sole proprietorship listed below:  
 Firm Name: \_\_\_\_\_  
 Trading-As-Name: \_\_\_\_\_  
 Firm Address: \_\_\_\_\_  
 Firm Telephone No.: \_\_\_\_\_

Enf. Req. \_\_\_\_\_ Lic. No. \_\_\_\_\_  
 Rd. Rev. \_\_\_\_\_ Date \_\_\_\_\_  
 Rejected \_\_\_\_\_ Code \_\_\_\_\_

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4. List other names you have used, i.e., various spellings, maiden name, previous married name, etc.  
 5. Complete your current residential address; a street address is mandatory unless you provide a rural route and box number. The Post Office will deliver your renewal application to address listed in Address 2 line and a P. O. Box number may be given for this purpose. Your zip code must correspond to the mailing address listed in Address 2.

6. Provide residential and current office or daytime telephone numbers.  
 7. Provide information on firm with which you are presently associated.  
 8. Provide information on firm with which you are requesting association. Indicate the firm's legal or registered name and the trading-as-name (the name in which the firm transacts business).

9. If you checked "yes" on Item 9, you must submit with this application an original FBI record, an original state police criminal history record, and certified true copies of court papers for all pertinent convictions which provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.). Provide a written amount of the part you played at time offense occurred and current status on resolution of final conviction charges relating to jail term, payment of fine, restitution, probation, etc.

To receive an FBI record, obtain and complete a fingerprint card from your local police department. Attach a certified check for \$14 (fee as of 7/15/87) to U.S. Department of Treasury with a request for a copy of applicant's ID record. Sent to FBI, Identification Division, 9th and Pennsylvania Avenue, N.W., Washington, DC 20537-9700. ATTN: Recording Section, FOIA.

To receive an original state police criminal history record, request and complete a criminal history record form from your state police department. (Residents of Virginia should complete the Virginia State Police form in the presence of a notary public and mail to the Department of State Police, Central Criminal Records Exchange, PO Box 27472, Midlothian, VA 23261-7472.)

When you receive the criminal history record, you must request certified copies of court documents for all pertinent convictions, i.e., all felony convictions and misdemeanors involving moral turpitude. To obtain certified true copies of all pertinent court papers, write to the Clerk of the Court in that jurisdiction. Copies must be certified true copies with seal and provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.).

10. If salesperson or associate broker license is to be issued to applicant, the principal broker or sole proprietor with whom you will be associated must complete item 10 in the presence of a notary public.

11. All applicants must complete item 11 in the presence of a notary public.

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VIRGINIA REAL ESTATE BOARD  
3600 West Broad Street  
RICHMOND, VIRGINIA 23230-4917

(804) 257-8526 or Toll Free 1-800-552-3016 (Virginia only)  
APPLICATION FOR FIRM CHANGE OF NAME OR ADDRESS INSTRUCTIONS

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. Complete only one form for a firm change of name and/or address; enclose all sales and broker licenses, in alphabetic order, by surname as well as the firm license to facilitate issuance of new licenses. **NOTE:** If you anticipate any individual changes of status (change in home address or transfer to or from this firm during this transition), please submit changes on the appropriate individual forms and include a separate list of those names noting the type of change by each name.
2. Print in black ink or type.
3. If the corporation's legal or registered name and the trading-as name (the name in which the firm transacts business) are to be changed, please submit the following: (1) a Certificate of Authority from the State Corporation Commission if the firm is a foreign corporation; i.e., not registered with the State Corporation Commission; or (2) a copy of charter which has been certified as a true copy by a notary public if the firm is registered as a corporation in Virginia and has been granted a charter by the State Corporation Commission; and, if applicable, (3) a certified true copy of registration of fictitious name with the State Corporation Commission.
4. If there will be a change of principal broker or change of principals (officers, directors, partners, or associates), please request, complete, and attach a Real Estate C-3 Application.
5. Provide the main office address. A street address is mandatory unless a rural route and box number are provided. The Post Office will deliver your renewal application to address listed in Address 2 line if both a street and a P.O. Box number are given. Your zip code must correspond appropriately for information you provide in Address 2 line.
6. All applicable items must be properly completed or application will be returned.
7. Please keep a copy of the instructions and your application for future reference.

9. Regulation 3.5.44 requires a licensee to inform the Board in writing within 30 days of pleading guilty or not guilty of any felony or of a misdemeanor involving moral turpitude. Does this require your compliance? If yes, please submit with this application the required documents as listed in item 9 of the Application Form Instructions.

10. PRINCIPAL BROKER MUST COMPLETE IF A SALESPERSON OR ASSOCIATE BROKER LICENSE IS TO BE ISSUED AT THIS TIME TO APPLICANT:

I, the undersigned, a licensed real estate broker in the Commonwealth of Virginia, being duly sworn, depose and say that I hereby authorize \_\_\_\_\_ to transfer to my firm as a real estate licensee to be supervised by me and do hereby request that the State Corporation Commission issue such a license and I hereby assume responsibility for the licensee pursuant to regulation 3.11.

In my opinion the applicant has a good reputation for honesty, truthfulness, and fair dealing, and is competent to transact the business of a real estate salesperson in such a manner as to safeguard the interests of the public.

Typewritten Name and Signature of Principal Broker \_\_\_\_\_

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, this \_\_\_\_\_ (Notary Public) \_\_\_\_\_ My commission expires \_\_\_\_\_ (Seal)

11. ALL APPLICANTS MUST COMPLETE THIS SECTION IN THE PRESENCE OF A NOTARY PUBLIC:

The undersigned, being duly sworn, deposes and says that he is the person who executed application, that the statements herein contained are true and correct, and that he requested his present principal broker to return his license to me pursuant to regulation 3.11.7, and that he has read and understands the Virginia Real Estate Board regulations, licensing laws, and this affidavit.

(Signature of Applicant)

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, this \_\_\_\_\_ (Notary Public) \_\_\_\_\_ My commission expires \_\_\_\_\_ (Seal)

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# Final Regulations

VIRGINIA REAL ESTATE BOARD  
 P.O. Box 11066  
 Richmond, Virginia 23230-1066  
 (804) 257-8526 or Toll Free 1-800-552-3016 (Virginia Only)

## REAL ESTATE CONCURRENT BROKER APPLICATION INSTRUCTIONS

### GENERAL INSTRUCTIONS

1. PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

2. Print in black ink or type.

3. All application and renewal fees are non-refundable.

4. Each non-refundable concurrent license application fee is \$50; make check payable to the Treasurer of Virginia. No additional payment is required for the Virginia Real Estate Transaction Recovery Fund.

5. All applicable items must be properly completed or attached or application will be returned and processing will be delayed.

6. Indicate firm name with which you wish to be associated and check the appropriate block to indicate whether you are applying for licensure as a principal broker, associate broker, or sole proprietor of a firm. (See regulations for description of terms.)

7. Non-resident notaries must use seal.

8. Please keep these instructions and a copy of your application for future reference.

9. MAIL COMPLETED FORMS AND FEE TO: COMMONWEALTH OF VIRGINIA, DEPARTMENT OF COMMERCE, P. O. BOX 11066, RICHMOND, VIRGINIA 23230-1066, ATTENTION: CC 490.

### APPLICATION FORM INSTRUCTIONS

1. Indicate whether you want a license as a principal broker, associate broker, or sole proprietor and give the name of the firm with which you are to be associated.

A firm may only have one principal broker. If the firm already has and will retain a principal broker, you must request an associate broker license.

If you are to become the principal broker for an existing licensed firm, you must also submit a C-3 form requesting a change of principal broker.

If you are to become the principal broker for a new firm, submit a Real Estate Business Application for a brokerage firm license.

2. Disclosure of your Social Security Number is helpful to ensure identification and to aid processing of your application.

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VIRGINIA REAL ESTATE BOARD  
 3600 West Broad Street  
 RICHMOND, VIRGINIA 23230-4917

(804) 257-8526 or Toll Free 1-800-552-3016 (Virginia only)

NO FEE APPLICATION FOR FIRM CHANGE OF NAME OR ADDRESS NO FEE

1. I am hereby requesting:  change of firm name  
 change of firm address

#### 2. Present Firm License Information:

Firm Name \_\_\_\_\_  
 Firm Trading-As Name \_\_\_\_\_  
 Address 1 -- Suite \_\_\_\_\_  
 Address 2 -- Street \_\_\_\_\_  
 City, State and Zip Code \_\_\_\_\_

#### 3. New Firm License Information:

Firm Name \_\_\_\_\_  
 Firm Trading-As Name \_\_\_\_\_  
 Address 1 -- Suite \_\_\_\_\_  
 Address 2 -- Street \_\_\_\_\_  
 City, State and Zip Code \_\_\_\_\_  
 Firm Telephone Number (\_\_\_\_) \_\_\_\_\_

4. I hereby certify that the above information is correct to the best of my knowledge and belief and that no information has been suppressed that might affect this application.

Typewritten Name and Signature of Principal Broker \_\_\_\_\_

Date \_\_\_\_\_

Lic. No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 Code \_\_\_\_\_

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10. If "yes," please provide a brief explanation and a certified true copy of the court documents or conciliation agreement.
11. If you wish to become actively licensed as a sole proprietor trading under an assumed or fictitious name, i.e., a name other than the individual's full name, a Statement of Principal Broker must be completed and attested by the Clerk of the Court in the city or county in which the business is located and a Certificate of Ownership must be completed in the presence of a notary public. There can be only one principal broker in a firm; all other brokers must be associate brokers.
12. If applicant wishes a concurrent real estate license as an associate broker, the principal broker is to complete this section in the presence of a notary public. Attach affidavits from each principal broker with whose firm you will be associated that written notice of your concurrent licensure status has been provided to the principal broker.
13. All applicants must complete this section in the presence of a notary public. Submit a certified true copy of each written affidavit from the principal broker of each firm stating that written notice of concurrent licensure status has been provided to that principal broker.

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3. Complete your full legal name (do not use initials), generation (I, II, III), and title.
4. List other names which you have used (include various spellings, maiden name, etc.).
5. Complete your current residential address; a street address is mandatory. The Post Office will deliver your renewal application to address listed in Address 2 line if both a street and a P. O. Box number are given. Your zip code must be appropriate for information in Address 2 line. If "residence is outside Virginia," a "Consent to Suits and Service of Process" form must be completed and attached.
6. Telephone numbers: "residence and daytime telephone numbers."
7. Provide all firm or sole proprietorship data.
8. List all your present Virginia broker license numbers, note the corresponding firm name, and indicate "A" if the license is for an associate broker or "P" if for a principal broker.
9. If you checked "yes" on item 9, you must submit with this application an original FBI record, an original state police criminal history record, and certified true copies of court papers for all pertinent convictions which provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.). Provide a written account of the part you played at time offense occurred and current status on resolution of final conviction charges relating to jail term, payment of fine, "restitution, probation, etc.

To receive an original FBI record, obtain and complete a finger-print card from your local police department. Attach a certified check for \$10 (fee as of 7/13/87) to U.S. Department of Treasury with a request for a copy of your record to be sent from the FBI and send to FBI, Identification Division, 9th Pennsylvania Avenue, N.W., Washington, D.C. 20537-9700. Act: Recording Section, FOIA.

To receive an original state police criminal history record, request and complete a criminal history record form from your state police department. (Residents of Virginia should complete the Virginia State Police form in the presence of a notary public and mail to the Department of State Police, Central Criminal Records Exchange, PO Box 27472, Midlothian, VA 23261-7472)

When you receive the criminal history record, you must request certified copies of court documents for all pertinent convictions. I.e., all felony convictions and misdemeanors involving moral turpitude. To obtain certified true copies of all pertinent court papers, write to the Clerk of the Court in that jurisdiction. Get address from your local police department. Copies must be certified true copies with seal and provide information on original indictment and final conviction charges (jail term, monetary fine, probation terms, counseling, etc.).

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VIRGINIA REAL ESTATE BOARD  
P.O. Box 11066  
Richmond, Virginia 23230-1066  
(804) 257-8526 or Toll Free 1-800-552-3016 (Virginia Only)

REAL ESTATE CONCURRENT BROKER APPLICATION

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION

- I hereby make application and enclose a \$50 fee for a concurrent broker license as a(n) Principal Broker/ Associate Broker/ Sole Proprietor with the firm
- Applicant's Social Security Number: \_\_\_\_\_
- Applicant's Name: \_\_\_\_\_  
Last Name Only \_\_\_\_\_ Generation \_\_\_\_\_  
First Name Only \_\_\_\_\_  
Middle Name Only \_\_\_\_\_  
Title Mr. Ms. Mrs. Miss
- Other names which you have used: \_\_\_\_\_
- Applicant's Legal Residence:  
Address 1-- Apt No. \_\_\_\_\_  
Address 2-- Street \_\_\_\_\_  
City, State and Zip Code \_\_\_\_\_
- Telephone Numbers: Residence ( ) \_\_\_\_\_  
Day ( ) \_\_\_\_\_
- Firm Name: \_\_\_\_\_  
Firm or Sole Proprietorship Address:  
Address 1--Suite \_\_\_\_\_  
Address 2--Street \_\_\_\_\_  
City, State and Zip Code \_\_\_\_\_  
Firm Telephone No. \_\_\_\_\_
- List all present Virginia broker license numbers, the corresponding firm name, and indicate whether an associate broker (A) or principal broker (P) license is with that firm:  

License Number	Firm	Associate/Principal Broker

Enf Req. \_\_\_\_\_ Lic. No. \_\_\_\_\_  
Bd. Rev. \_\_\_\_\_ Date \_\_\_\_\_  
Rejected \_\_\_\_\_ Code \_\_\_\_\_

- Regulation 3.5.44 requires a licensee to inform the Board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude. Does this require your compliance? If yes, please submit with this application the required documents as listed in item 9 of the Application Form Instructions. YES NO
- Have you ever been found to have violated the fair housing laws of any jurisdiction? If yes, please provide information listed in item 10 of the Application Form Instructions. YES NO
- PLEASE COMPLETE IF A LICENSE AS AN ACTIVE SOLE PROPRIETOR TRADING UNDER AN ASSUMED OR FICTITIOUS NAME IS TO BE ISSUED AT THIS TIME:

STATEMENT OF PRINCIPAL BROKER: I hereby certify that, pursuant to Regulation 1.5 of the Virginia Real Estate Board, I am the individual principal broker of the above described real estate brokerage firm, I have complied with the provisions of Section 59.1-69 et seq., Code of Virginia, and have filed this certificate with the Clerk of the Court in the city or county in which my place of business is located.

Typewritten Name and Signature of Principal Broker \_\_\_\_\_

Attest: \_\_\_\_\_

Clerk of Court \_\_\_\_\_

Date \_\_\_\_\_

CERTIFICATE OF OWNERSHIP: I hereby certify that I am the sole owner of the above described real estate brokerage firm. I am/am not a real estate licensee in Virginia and am licensed as a(n) salesperson/associate broker/principal broker.

Typewritten Name of Owner \_\_\_\_\_ Signature of Owner \_\_\_\_\_

Residential Address of Owner \_\_\_\_\_

Social Security No. \_\_\_\_\_ Day Telephone No. \_\_\_\_\_

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_  
Sworn and subscribed to before me at \_\_\_\_\_ this  
day of \_\_\_\_\_, 19\_\_\_\_.

(Notary Public) My commission expires \_\_\_\_\_  
(Seal)

VIRGINIA REAL ESTATE BOARD  
 P. O. BOX 11066  
 RICHMOND, VIRGINIA 23220-1066  
 (804) 257-8526 or Toll Free 1-800-552-3016 (Virginia only)  
 REAL ESTATE C-3 APPLICATION INSTRUCTIONS  
 CHANGE OF PRINCIPALS/CHANGE OF PRINCIPAL BROKER

**PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.**

1. Indicate the firm's legal or registered name and the trading-as-name (the name by which the firm transacts business).
2. Provide the main office address. A street address is mandatory unless you provide a rural route and box number. The Post Office will deliver your e-mailed application to address listed in Address 2 line if both a street and P.O. Box number are given. Your zip code must correspond appropriately to information in Address 2 line.
3. Provide telephone number of main office.
4. Complete item 4 if you are changing, for an existing firm, any of the officers, directors, associates, or partners. Use an "A" if the officer is active and an "I" if the officer is inactive in the real estate brokerage business. All active partners, associates, officers and directors must be licensed as brokers.
5. Provide the new principal broker's name. If the broker is already licensed and transferring to this firm, he must submit a REAL ESTATE TRANSFER APPLICATION. If the broker is already licensed with another firm and wishes to retain that association, he must submit a REAL ESTATE CONCURRENT BROKER LICENSING APPLICATION in order to associate with this firm. If the principal broker-designated is not presently licensed as a broker, he must attach a REAL ESTATE BROKER APPLICATION.
6. For an existing firm, provide the current principal broker's name. Current principal broker's license must be returned to the Virginia Real Estate Board with this application so that an associate broker's license may be issued. There can only be one principal broker in a firm.
7. Provide the signature and typed name of president of corporation, general partnership, association, or sole proprietor; title; and date of application with attestation of either the Secretary of the corporation or a notary public.

**12. PRINCIPAL BROKER MUST COMPLETE ONLY IF A CONCURRENT ASSOCIATE BROKER LICENSE IS TO BE ISSUED TO APPLICANT:**

As a licensed real estate broker in the Commonwealth of Virginia and principal broker of the firm \_\_\_\_\_, being duly sworn, depose and say that the statements set forth below are true to the best of my knowledge.

I hereby authorize \_\_\_\_\_ to apply for a concurrent broker license to be supervised by me and I hereby assume responsibility for the licensee pursuant to regulation 311.

The applicant has submitted to me a certified true copy of each written affidavit from the principal broker of each firm stating that written notice of the applicant's concurrent licensure status has been provided to that principal broker.

(Signature of Principal Broker) (Broker's License Number)

Notary:

City/County \_\_\_\_\_ State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 My Commission expires \_\_\_\_\_  
 (Notary Public)  
 (Seal)

**13. ALL APPLICANTS MUST COMPLETE THIS SECTION IN THE PRESENCE OF A NOTARY PUBLIC:**

The undersigned being duly sworn, deposes and says that he is the person who executed application, that the statements herein contained are true, that he has not suppressed any information that might affect this application, that he hereby submits a certified true copy of each written affidavit from the principal broker of each firm stating that written notice of concurrent licensure status has been provided to that principal broker, that he has read and understands the Virginia Real Estate Board's regulations and license law, and that he has read and understands this affidavit.

Notary: \_\_\_\_\_ Signature of Applicant \_\_\_\_\_  
 State of \_\_\_\_\_ City/County \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
 My commission expires \_\_\_\_\_  
 (Notary Public)  
 (Seal) (3)

VIRGINIA REAL ESTATE BOARD  
P. O. BOX 11066  
RICHMOND, VIRGINIA 23230-1066  
(804) 257-8526 or Toll Free 1-800-552-3016 (Virginia only)

REAL ESTATE C-3 APPLICATION  
NO FEE CHANGE OF PRINCIPALS/CHANGE OF PRINCIPAL BROKER NO FEE

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. Name of Firm: \_\_\_\_\_  
Firm Trading-As Name: \_\_\_\_\_
2. Firm Address:  
Address 1 -- Suite \_\_\_\_\_  
Address 2 -- Street \_\_\_\_\_  
City, State and Zip Code \_\_\_\_\_
3. Firm telephone number: ( ) \_\_\_\_\_
4. Principals of the Firm (Officers, Directors, Partners, or Associates):  

Name/Title	Legal Residence (street, city, state, zip)	Status in Brokerage Active % Ownership Inactive if applicable
5. Name of New Principal Broker : \_\_\_\_\_
6. Name of Current Principal Broker: \_\_\_\_\_

(continued on reverse)

Lic. No. \_\_\_\_\_  
Date \_\_\_\_\_  
Code \_\_\_\_\_

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7. THIS ITEM MUST BE COMPLETED BY APPLICANT:

I hereby certify that the above information is correct to the best of my knowledge and belief and that no information has been suppressed that might affect this application.

\_\_\_\_\_  
Typewritten Name and Signature of President of Corporation, General Partner, Associate, or Sole Proprietor

TITLE \_\_\_\_\_ Date \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Secretary of Corporation or Notary Public

Date \_\_\_\_\_

My commission expires \_\_\_\_\_

(Seal)

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THE VIRGINIA REAL ESTATE BOARD  
P.O. Box 11066  
Richmond, Virginia 23230-1066  
(804) 257-8526 or Toll Free 1-800-552-3016 (Virginia Only)

C-2 APPLICATION  
CERTIFICATE OF OWNERSHIP  
INDIVIDUAL TRADING UNDER AN ASSUMED OR FICTITIOUS NAME

Name of Sole Proprietorship: \_\_\_\_\_

Sole Proprietorship Address:  
Address 1--Suite \_\_\_\_\_  
Address 2--Street \_\_\_\_\_  
City, State and Zip Code \_\_\_\_\_  
Telephone No. \_\_\_\_\_

PLEASE COMPLETE IF A LICENSE AS AN ACTIVE SOLE PROPRIETOR TRADING UNDER AN ASSUMED OR FICTITIOUS NAME IS TO BE ISSUED AT THIS TIME:

STATEMENT OF PRINCIPAL BROKER: (to be signed in the presence of the Clerk of the Court)

I hereby certify that, pursuant to Regulation 1.5 of the Virginia Real Estate Board, I am the individual principal broker of the above described real estate brokerage firm, I have complied with the provisions of Section 59.1-69 et seq., Code of Virginia, and have filed this certificate with the Clerk of the Court in the city or county in which my place of business is located.

\_\_\_\_\_  
Typewritten Name and Signature of Principal Broker

Social Security Number \_\_\_\_\_ ( ) \_\_\_\_\_  
Day Telephone Number \_\_\_\_\_

Attest: \_\_\_\_\_

Clerk of Court \_\_\_\_\_

Date \_\_\_\_\_

(continued on reverse)

Lic. No. \_\_\_\_\_  
Date \_\_\_\_\_  
Code \_\_\_\_\_

CERTIFICATE OF OWNERSHIP: (to be completed in the presence of a notary public)

I hereby certify that I am the sole owner of the above described real estate brokerage firm. I \_\_\_\_\_ am/ \_\_\_\_\_ am not a real estate licensee in Virginia and am licensed as a(n) \_\_\_\_\_ salesperson/ \_\_\_\_\_ associate broker/ \_\_\_\_\_ principal broker.

\_\_\_\_\_  
Typewritten Name and Signature of Owner

\_\_\_\_\_  
Residential Address of Owner

Social Security No. \_\_\_\_\_ ( ) \_\_\_\_\_  
Day Telephone No. \_\_\_\_\_

Notary:

State of \_\_\_\_\_, City/County \_\_\_\_\_  
Sworn and subscribed to before me at \_\_\_\_\_ this  
\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
(Notary Public) My commission expires \_\_\_\_\_

(Seal)

INSTRUCTIONS

RENTAL LOCATION AGENT

I. GENERAL INSTRUCTIONS:

- Please read the instructions and application carefully before completing.
- Print or type.
- All application fees are non-refundable.
- All applicable items must be properly completed or application will be returned.
- Non-resident notaries must use seal.
- Make check payable to "Treasurer of Virginia."
- Mail check (with application) to COMMONWEALTH OF VIRGINIA, DEPARTMENT OF COMMERCE, P. O. BOX 11066, RICHMOND, VIRGINIA 23230-1106.

II. APPLICATION FORM INSTRUCTIONS:

1. Complete your full legal name (do not use initials) and generation (i.e., Jr., Sr., III, etc.).
2. List other names you have used, i.e., various spellings, maiden name, etc.
3. Complete your current residential address. The Post Office will deliver your renewal application to address listed in "ADDRESS 2" line, if both a street and a P. O. Box number are given.
4. Home telephone number and office telephone number.
5. Disclosure of your Social Security Number is helpful to ensure identification and will aid in processing your application.
6. Date of birth; applicant must be at least 18 years of age.
7. Complete your place of birth.
8. Indicate male (M) or female (F).

9. Give full explanation if you checked "yes" (to include date and place of offense, date and place of conviction, name of court, the part you played at the time the offense occurred, and charge and final disposition - jail term, fine, amount, probation terms, etc.) on a separate sheet of paper and submit with certified documents.
10. Please provide past licensing status information.
11. Please provide present licensing status information.
12. Provide information on firm you are registering with.
13. Affidavit must be signed and notarized by applicant.

VIRGINIA REAL ESTATE BOARD  
RENTAL LOCATION AGENT REGISTRATION

Fee: \$30

PLEASE READ THE INSTRUCTIONS AND APPLICATION CAREFULLY BEFORE COMPLETING

1. Registrant Name:

Last Name Only \_\_\_\_\_ Generation: \_\_\_\_\_

First Name Only \_\_\_\_\_

Middle Name Only \_\_\_\_\_

2. Other names which you have used: \_\_\_\_\_

3. Registrant's Legal Residence: \_\_\_\_\_

Street Address 1 \_\_\_\_\_

Street Address 2 \_\_\_\_\_

City \_\_\_\_\_

State and Zip Code \_\_\_\_\_

4. Telephone Number: ( ) \_\_\_\_\_

5. Social Security Number: \_\_\_\_\_

6. Date of Birth: \_\_\_\_\_

7. Place of Birth: City \_\_\_\_\_ State \_\_\_\_\_

Computer Record: \_\_\_\_\_

Initials: \_\_\_\_\_

8. Sex:  M  F

9. Have you been convicted of any offense other than a minor traffic violation, or is there any such charge pending against you?  YES  NO

10. Have you ever been issued a real estate license in Virginia? Salesperson  Broker   YES  NO

11. Are you currently licensed in Virginia? Salesperson  Broker   YES  NO

12. Name, address, and telephone of firm, partnership, association, or corporation you are registering with as a rental location agent:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State and Zip: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

13. The undersigned being duly sworn, deposes and says that he/she is the person who executed application, and that the statements herein contained are true, that he/she has not suppressed any information that might affect this application, and that he/she has read and understands this affidavit.

\_\_\_\_\_  
Signature of Applicant

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Notary Public) My commission expires \_\_\_\_\_

# Final Regulations

VIRGINIA REAL ESTATE BOARD  
P. O. BOX 11066  
RICHMOND, VIRGINIA 23230-0666  
(804) 367-8326 or Toll Free 1-800-552-3016 (Virginia only)

\$50.00 RENTAL LOCATION AGENCY REGISTRATION \$50.00

PLEASE READ THE INSTRUCTIONS, REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. I hereby make application for Rental Location Registration and enclose a \$50.00 check made payable to the "Treasurer of Virginia."

2. Name of Rental Location Agency: \_\_\_\_\_

Rental Location Agency Trading-As Name: \_\_\_\_\_

3. Rental Location Agency Address:

Address 1 — Suite \_\_\_\_\_

Address 2 — Street \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

4. Rental Location Agency Telephone Number: ( ) \_\_\_\_\_

5. Name of Supervising Rental Location Agent: \_\_\_\_\_

R. L. Agency No.: \_\_\_\_\_

Date Issued: \_\_\_\_\_

6.) THIS ITEM MUST BE COMPLETED BY APPLICANT:

I hereby certify that the above information is correct to the best of my knowledge and belief and that no information has been suppressed that might affect this application.

Typewritten Name and Signature of Owner of Rental Location Agency

Signature of Supervising Rental Location Agent

Date

ATTEST:

Notary Public

Date

My Commission expires

(Seal)

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(2)

VIRGINIA REAL ESTATE BOARD  
 P.O. BOX 11066

RICHMOND, VIRGINIA 23230-1066  
 (804) 257-8526 or Toll Free 1-800-552-3016 (Virginia only)

\$15 BRANCH OFFICE APPLICATION \$15

PLEASE READ THE REGULATIONS, LICENSING LAWS, AND APPLICATION CAREFULLY BEFORE COMPLETING THE APPLICATION.

1. I, \_\_\_\_\_, principal broker of the firm named below, hereby make application for a license for a new branch office and enclose a \$15 check payable to the "Treasurer of Virginia."

2. Name of Firm for which a Branch Office License is Requested: \_\_\_\_\_

Firm Trading As-Name: \_\_\_\_\_

3. Branch Office Supervising Broker: \_\_\_\_\_

4. Branch Office Address:

Address 1--Suite \_\_\_\_\_

Address 2--Street \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

Telephone Number: \_\_\_\_\_

5. Main Office Address:

Address 1--Suite \_\_\_\_\_

Address 2--Street \_\_\_\_\_

City, State and Zip Code \_\_\_\_\_

6. Main Office Telephone Number: ( ) \_\_\_\_\_

7. Statement of Principal Broker:

I hereby certify that the above information is correct to the best of my knowledge and belief, that no information has been suppressed that might affect this application, and that I have read and am in compliance with regulations 3.1 and 3.2 which became effective July 15, 1987.

Notary: \_\_\_\_\_  
 Typewritten Name and Signature of Principal Broker

State of \_\_\_\_\_, City/County \_\_\_\_\_  
 sworn and subscribed to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_

My commission expires \_\_\_\_\_

(Notary Public)

(Seal)

Lic. No. \_\_\_\_\_  
 Date \_\_\_\_\_  
 Code \_\_\_\_\_

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# Final Regulations

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

**Title of Regulation:** VR 615-08-1. Virginia Energy Assistance Program.

**Statutory Authority:** § 63.1-25 of the Code of Virginia.

**Effective Date:** October 15, 1989

### Summary:

*The amendments incorporate several changes to the Crisis Assistance Component. All local departments of social services will operate the program from October 15 to March 15 of the following year. Providing space heaters for temporary use and providing emergency shelter will be mandatory services offered statewide. The maximum allowed for major repairs or replacement of heating equipment will be increased to \$700. Payment of the electric bill up to \$200, when electricity is needed to operate the primary heating equipment, will be provided once every five years. The copayment requirement for electricity will be eliminated. Providing blankets or clothing, emergency repairs of dwelling to prevent heat loss, and other services as specified by the locality, will no longer be offered.*

*Definition of "Disabled person" is expanded to include persons receiving 100% Veterans Administration disability.*

VR 615-08-1. Virginia Energy Assistance Program.

### PART I. DEFINITIONS.

§ 1.1. The following words and terms, when used herein, shall have the following meaning unless the context indicates otherwise:

*"Department"* means the Department of Social Services.

*"Disabled person"* means a person receiving Social Security disability, Railroad Retirement Disability, 100% Veterans Administration disability, Supplemental Security Income as disabled, or an individual who has been certified as permanently and totally disabled for Medicaid purposes.

*"Elderly person"* means anyone who is 60 years of age or older.

*"Household"* means an individual or group of individuals who occupies a housing unit and functions as an economic unit by: purchasing residential energy in common (share heat); or, making undesignated payments for energy in the form of rent (heat is included in the rent).

*"Poverty guidelines"* means the Poverty Income Guidelines as established and published annually by the

Department of Health and Human Services.

*"Primary heating system"* means the system that is currently used to heat the majority of the house.

*"Resources"* means cash, checking accounts, savings account, saving certificates, stocks, bonds, money market certificates, certificates of deposit, credit unions, Christmas clubs, mutual fund shares, promissory notes, deeds of trust, individual retirement accounts, prepaid funeral expenses in excess of \$900, or any other similar resource which can be liquidated in not more than 60 days.

*"Energy-related, weather-related, or supply shortage emergency"* means a household has: no heat or an imminent utility cut-off; inoperable or unsafe heating equipment; major air infiltration of housing unit; or a need for air conditioning because of medical reasons.

### PART II. FUEL ASSISTANCE.

§ 2.1. The purpose of the Fuel Assistance component is to provide heating assistance to eligible households to offset the costs of home energy that are excessive in relation to household income.

#### A. Eligibility criteria.

1. Income limits. Maximum income limits shall be at or below 150% of the Poverty Guidelines. In order to be eligible for Fuel Assistance, a household's income must be at or below the maximum income limits.

2. Resource limits. The resource limit for a household containing an elderly or disabled person shall be \$3,000. The resource limit for all other households shall be \$2,000. In order to be eligible for Fuel Assistance, a household's resources must be at or below the amount specified.

#### B. Resource transfer.

Any applicant of fuel assistance shall be ineligible for that fuel season if he improperly transfers or otherwise improperly disposed of his legal or equitable interest in nonexempt liquid resources without adequate compensation within one year of application for Fuel Assistance.

Compensation that is adequate means goods, services or money that approximates the value of the resources.

This policy does not apply if any of the following occur:

1. The transfer was not done in an effort to become eligible for Fuel Assistance;
2. The resource was less than the allowable resource limit;
3. The disposition or transfer was done without the

person's full understanding.

## § 2.2. Benefits.

Benefit levels shall be established based on income in relation to household size, fuel type, and geographic area, with the highest benefit given to households with the least income and the highest energy need.

Geographic areas are the six climate zones for Virginia recognized by the National Oceanic and Atmospheric Administration and the United States Department of Commerce. The six climate zones are: Northern, Tidewater, Central Mountain, Southwestern Mountain, Eastern Piedmont, and Western Piedmont.

Each year, the Division of Energy within the Department of Mines, Minerals and Energy will supply data on the average costs of various fuels.

Each year the benefit amounts for each geographic area shall be determined by the following method:

A. A projection will be made of the number of households who will apply for Fuel Assistance. The projection will be based on the number of households who applied the previous year increased by the additional number of people who applied the year before.

B. An average grant per household will be determined based on the estimated amount of funds that will be available for benefits.

$$\frac{\$ \text{ available}}{\text{no. of households}} = \text{average grant}$$

C. The benefits for each geographic area will be determined by using the average grant as a base figure and obtaining the highest and lowest benefits by using a ratio for each area based on degree days and the cost of various fuel types.

## PART III. CRISIS ASSISTANCE.

§ 3.1. The purpose of the Crisis Assistance component is to assist households with energy-related, weather-related or supply shortage emergencies. This component is intended to meet energy emergencies that cannot be met by the Fuel Assistance component or other local resources.

### A. Eligibility criteria.

In order to be eligible for Crisis Assistance, a household shall meet the following criteria:

1. All of the Fuel Assistance criteria as set forth in Part II, § 2.1;
2. Have an energy-related, weather-related or supply shortage emergency as defined in Part I;

3. Other resources cannot meet the emergency (including Fuel Assistance);

4. Did not receive Crisis Assistance during the current federal fiscal year: October 1 15 - April 30. ~~March 15.~~

### B. Benefits.

An eligible household can receive no more than \$200 for Energy Crisis Assistance during any federal fiscal year, unless the assistance is for the major repair or replacement of heating equipment, in which case the maximum amount of assistance shall be ~~\$500.~~ \$700.

The following forms of assistance shall be provided:

1. Repairs or replacement of inoperable or unsafe heating equipment ; .
2. Payment of electricity when it is needed to operate the primary heating equipment. Payment will be limited to a portion of the bill unless the household's income is zero in which case the entire bill will be paid up to the \$200 maximum ; . Assistance may be provided once every five years.
3. A one-time-only payment per fuel type of a heat-related utility security deposit.

The following forms of assistance can be provided at local option:

1. 4. Providing space heaters.
2. Providing blankets or warm clothing.
3. 5. Providing emergency shelter.
4. Emergency repairs of dwelling to prevent heat loss.
5. Other (locality must specify).

## PART IV. COOLING ASSISTANCE.

§ 4.1. Cooling Assistance program is an optional component of the Energy Assistance Program that is designed to provide help to persons medically in need of cooling assistance due to the heat.

Local agencies who choose this option will be given a separate allocation that will be based on a percentage of their ECAP crisis allocation and will provide the assistance no earlier than June 15 through no later than August 31.

### A. Eligibility criteria.

In order to be eligible for cooling assistance, a household must meet all of the fuel assistance eligibility criteria and must be in critical medical need of cooling.

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## B. Benefits.

The assistance is limited to: no more than \$200 for repairing or renting a fan or air conditioner, purchasing a fan, or paying an electric bill or security deposit; or no more than \$400 for purchasing an air conditioner.

## PART V. ADMINISTRATIVE COSTS.

§ 5.1. Local administrative expenditures for the implementation of the Energy Assistance Program shall not be reimbursed in excess of 7.0% of the program grant allocation.

## COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

**REGISTRAR'S NOTICE:** Due to its length, the VASAP Policy and Procedures Manual filed by the Commission on the Virginia Alcohol Safety Action Program is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, a summary is being published in lieu of full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Commission on the Virginia Alcohol Safety Action Program.

**Title of Regulation:** VR 647-01-02, VASAP Policy and Procedure Manual.

**Statutory Authority:** §§ 18.2-271.1 and 18.2-271.2 of the Code of Virginia.

**Effective Date:** September 13, 1989

### Summary:

*The General Assembly established a criminal justice program named the Virginia Alcohol Safety Action Program (VASAP) using community and state services to reduce the threat to transportation safety caused by the use of alcohol or other drugs.*

*At the state level, the Commission on VASAP is empowered to coordinate and oversee this important program.*

*These three manuals, the Policy and Procedure, Case Management, and Certification Requirements Manuals, set forth the minimum standards and criteria for local Alcohol Safety Action Program (ASAP) operations and performance, accounting, auditing, public information and administration.*

*A number of substantial changes were incorporated into the Policy and Procedure, Case Management and Certification Requirements Manuals as a result of public comment received in writing and at three public hearings.*

*The term "counseling" through on the manuals was changed to "treatment."*

*In the Policy and Procedure Manual the changes are:*

- 1. A "definition" section was added, striking the "abbreviations" section.*
- 2. The "History" section, formerly 130.00, was deleted as it was unnecessary.*
- 3. The "Certification Requirement" section in paragraphs 231.10, 232.00, 234.00, 234.10, and 234.20 were transferred from the Policy and Procedure Manual to the Certification Requirements Manual. See Category 12 of the Certification Requirements Manual.*
- 4. In paragraph 220.30, "Policy Board," instead of referring to a document, the document itself was incorporated.*
- 5. In paragraph 251.10, now 220.40, "Conflict of Interest," was changed to "Personnel Policy Guidelines" because the state law on Conflicts of Interest supercedes any effort to introduce individual agency conflict of interest policies.*
- 6. Paragraph 230.20, "Budget Deficits," was incorporated into the "Fiscal" section which was rewritten and rearranged. In addition, the commission established the percentage of offender fees each ASAP is required to transmit to the commission.*
- 7. Paragraph 330.00, "Classification Criteria," was transferred to the Case Management Manual and substantially rewritten for clarity as well as substance. See paragraph 540.00 et seq. of the Case Management Manual.*

*In the Case Management Manual no other substantial changes other than in 7 above were made.*

*In the Certification Requirements Manual, in addition to the change described in 3 above, these substantial changes were made:*

- 1. The concept of "De-certification" was added as Section 4 of Division 1.*
- 2. In Division 4, the format for the "Final Certification Decision" was deleted as it was unnecessary. At the same time, the commission's actions on certification were rewritten throughout the manual and were moved to Division 4.*

## STATE WATER CONTROL BOARD

**Title of Regulations:** Water Quality Standards.

**VR 680-21-01.11. Chlorine Standard and Policy.**  
**VR 680-21-07.2. Outstanding State Resource Waters.**

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Effective Date: September 13, 1989

Background:

Water quality standards and criteria consist of narrative statements that describe water quality requirements in general terms and numerical limits for specific physical, chemical and biological characteristics of water. These statements and limits describe water quality necessary for reasonable, beneficial water uses such as swimming, propagation and growth of aquatic life, and domestic water supply.

Summary:

The purpose of this regulatory action is to promulgate as permanent regulations two amendments to the Water Quality Standards, VR 680-21-01.11 - Chlorine in Surface Waters and VR 680-21-07.2 - Outstanding State Resource Waters. These regulations were previously adopted as emergency regulations which became effective on September 29, 1988. The regulations establish a statewide chlorine standard and policy and designate certain state waters as outstanding state resource waters. Further, the regulations prohibit or restrict the use of chlorine or other halogen compounds for disinfection by dischargers of more than 20,000 gallons per day to natural trout waters, or waters containing endangered or threatened species except for dischargers who intermittently chlorinate.

The final regulation differs from the proposed in §§ A.4 and A.5. The changes provide, among other things, that (i) case-by-case demonstrations for exceptions contain both alternative instream concentrations and appropriate permit limitations to protect beneficial uses; and (ii) dischargers who intermittently chlorinate (not more than two hours in any eight hour period) be required to install equipment and or employ procedures to assure dechlorination to a chlorine residual that meets the requirements of the standard, to apply effective best management practices for chlorine, and to have storage or back-up dechlorination systems in case of a system malfunction.

**VR 680-21-01.11. Chlorine in Surface Waters.**

*§ 1. Standard.*

A. The average daily concentration of total residual chlorine (TRC) in freshwater shall not exceed 11 parts per billion (ug/l) and the average daily concentration of

chlorine produced oxidant (CPO) in saline waters (annual mean salinity of 5 parts per thousand or greater) shall not exceed 7.5 parts per billion (ug/l).

B. The one-hour average concentration of total residual chlorine (TRC) in freshwater shall not exceed 19 parts per billion (ug/l) and the one-hour average concentration of chlorine produced oxidant (CPO) in saline waters shall not exceed 13 parts per billion (ug/l).

*§ 2. Policy.*

The board, pursuant to [ § 62.1-44.05(3) § 62.1-44.15(3a) ] of the Code of Virginia, hereby sets forth its policy for implementation of the chlorine standard in surface waters of the Commonwealth. These concentrations shall apply to all surface waters of the Commonwealth except where the permittee can demonstrate to the board that exceptions may be allowed without resulting in damage to aquatic life.

1. Mixing zones may be established on a case-by-case basis according to VR 680-01-01.2 C. Since VR 680-21-01.2 C does not allow acutely toxic concentrations within the mixing zone, chlorine residuals within the mixing zone shall not exceed the one-hour average of 19 ug/l TRC in freshwater or 13 ug/l CPO in saline waters.

2. Effluent limitations on chlorine shall be imposed to assure compliance with subdivisions A 1 and A 2 at the boundary of the mixing zone and subdivision A 2 within the mixing zone. These effluent limitations shall be calculated presuming complete mixing.

3. The permittee may present to the board site specific analytical data showing that a modified effluent limit will result in compliance with subdivisions A 1 and A 2 of the standard.

4. Exceptions to these concentrations may be allowed [ by the Board ] only upon a case-by-case demonstration by the permittee [ to the board for ]. These case-by-case demonstrations shall contain both alternative instream concentrations and appropriate permit limitations to protect beneficial uses. Exceptions may be considered for only [ the following situations:

a. The nature of the receiving waters or the nature and composition of the chlorine discharged are such that this TRC or CPO concentration is not necessary to protect aquatic life.

b. Receiving streams such as drainage ditches whose nature is such that they cannot reasonably be expected to support the propagation and growth of aquatic life and do not provide reasonable beneficial uses with respect to aquatic life. Compliance shall nonetheless be required where these waters discharge into other state waters

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capable of sustaining reasonable beneficial uses. In such situations, the board may place effluent limits at the confluence of these two waters.

[ c. Discharge of intermittently chlorinated water (not more than two hours in any eight hour period). ]

5. Notwithstanding the foregoing, chlorine or other halogen compounds' shall not be used for disinfection purposes or other treatment purposes including biocide applications for any treatment facility with a permitted flow of 20,000 gallons per day or more discharging to waters containing endangered or threatened species as identified in VR 680-21-07.2 or to waters classified as natural trout waters [ except for dischargers who intermittently chlorinate ]. [ ~~For~~ ] Dischargers of less than 20,000 gallons per day [ ; ~~dechlorination~~ shall dechlorinate to the requirements of subsections A.1 and A.2 or ] to a nondetectable chlorine residual [ of ~~chlorinated discharges~~ shall be required for discharges to such waters ] . [ Dischargers who intermittently chlorinate (not more than two hours in any eight-hour period) shall be required to install equipment or employ, or both, procedures to assure dechlorination to a chlorine residual that meets the requirements of subsections A.1 and A.2, and to apply effective best management practices for chlorine. Dischargers who intermittently chlorinate shall, in order to address a possible malfunction of the dechlorination system, either have storage sufficient to contain the chlorinated water until it can be dechlorinated prior to discharge or have online redundant and operational back-up dechlorination system. ]

Variance to this requirement shall not be made unless it has been affirmatively demonstrated that [ the beneficial uses of the water will be maintained and that either ] a change is justifiable to provide necessary economic or social development [ ; ~~that~~ or ] the degree of waste treatment necessary to preserve the existing quality can not be economically or socially justified [ ; and that the present and anticipated uses of such water will be preserved and protected ] .

<sup>1</sup> Bromine, bromine chloride, hypochloride and chlorine dioxide.

## VR 680-21.07.2. Outstanding State Resource Waters.

The following section recognizes waters which the General Assembly, board or other state agencies have determined to be of special ecological or recreational significance to the Commonwealth. The designation of a Scenic River and the significance of this designation are the subject of the Scenic Rivers Act (§ 10.1-400 et seq. of the Code of Virginia). The listing of Outstanding State Resource Waters that follows constitutes those waters

which the board has designated as high quality state resource waters subject to the protections found in the anti-degradation policy in VR 680-21-01.3.

## § 1. Scenic Rivers.

The purpose of the Scenic Rivers Act is to provide for identification, preservation, and protection of certain rivers which possess natural beauty of high quality to assure their use and enjoyment for their scenic, recreational, geologic, fish and wildlife, historic, cultural or other values. According to the Act "in all planning for the use and development of water and related land resources including the construction of impoundments, diversions, roadways, crossings, channelization, locks, canals, or other uses which change the character of a stream or waterway or destroy its scenic values, full consideration and evaluation of the river as a scenic resource shall be given before alternative plans for use and development are approved."

The following have been included by the General Assembly in the Scenic Rivers System:

### POTOMAC RIVER BASIN

#### Potomac River Subbasin

SR-1 Goose Creek from its confluence with the Potomac River upstream to the Fauquier-Loudoun County line (about 28 miles).

SR-2 Catoctin Creek in Loudoun County from its confluence with the Potomac River upstream to the Town of Waterford.

#### Shenandoah River Subbasin

SR-3 The Shenandoah River in Clarke County from the Warren-Clarke County line to Lockes Landing.

### JAMES RIVER BASIN

SR-4 The Saint Marys River in Augusta County within the George Washington National Forest.

SR-5 Rivanna River from its confluence with the James River upstream to the Fluvanna-Albemarle County line.

SR-6 Appomattox River from the Route 36 bridge crossing in the City of Petersburg upstream to the abutment dam located about 1.3 miles below Lake Chesdin (about 5 miles).

SR-9 The James River from Orleans Street extended in the City of Richmond westward to the 1970 corporate limits of the City.

SR-10 The Upper James River from a point two miles below Eagle Rock to the Route 630 bridge in

Springwood, 14+/- miles.

## RAPPAHANNOCK RIVER BASIN

SR-11 The Rappahannock River from its headwaters near Chester Gap to the confluence of Deep Run at the Fauquier/Stafford County line, 64+/- miles.

## ROANOKE RIVER BASIN

SR-7 Roanoke (Staunton) River from Brookneal upstream to Long Island.

## CHOWAN AND DISMAL SWAMP BASIN

### Chowan River Subbasin

SR-8 The Nottoway River in Sussex County from the Route 40 bridge at Stony Creek to the Southampton County line.

### § 2. Trout Streams.

Trout streams that are Class I and II according to the [ Commission Department ] of Game and Inland Fisheries Classification System are indicated by Trout Stream subclassifications i and ii in this booklet.

### § 3. Waters containing endangered or threatened species.

The following waters provide essential or critical habitat for endangered or threatened species which have been identified by the United States Fish and Wildlife Service under the Endangered Species Act of 1973, as amended. If the U.S. Fish and Wildlife Service identifies new waters containing endangered or threatened species, the board shall consider the need to protect these beneficial uses in reviewing discharge permits and other actions until such time as the waters are officially added to the list in this section.

## TENNESSEE AND BIG SANDY RIVER BASINS

### Clinch River Subbasin

Powell River from river mile 136 (south of Jonesville) downstream to the Tennessee/Virginia line (river mile 115.8 - total 20.2 miles).

#### Endangered Species:

Appalachian monkeyface pearly mussel	Quadrula sparsa
Birdwing pearly mussel	Conradilla caelata
Cumberland monkeyface pearly mussel	Quadrula intermedia
Dromedary pearly mussel	Dromus dromas
Fine-rayed pigtoe pearly mussel	Fusconaia cuneolus

Shiny pigtoe pearly mussel      *Fusconaia edgariana*

#### Threatened Species:

Slender chub      *Hybopsis cahnii*  
 Yellowfin madtom      *Noturus flavipinnis*

Clinch River from river mile 323 (Richlands) downstream to the Tennessee/Virginia State line (river mile 202.1).

#### Endangered Species:

Appalachian monkeyface pearly mussel      *Quadrula sparsa*  
 Birdwing pearly mussel      *Conradilla caelata*  
 Fine-rayed pigtoe pearly mussel      *Fusconaia cuneolus*  
 Green blossom pearly mussel      *Dysnomia torulosa gubernaculum*  
 Pink mucket pearly mussel      *Lampsilis orbiculata*  
 Shiny pigtoe pearly mussel      *Fusconaia edgariana*

Clinch River from the Scott/Russell County line (at Bangor - river mile 244.2) downstream to the Tennessee boundary (river mile 202.1).

#### Threatened Species:

Slender chub      *Hybopsis cahnii*

Copper Creek from 2 miles above its confluence with the Clinch River (at river mile 211.6).

#### Endangered Species:

Fine-rayed pigtoe pearly mussel      *Fusconaia cuneolus*  
 Shiny pigtoe pearly mussel      *Fusconaia edgariana*

Copper Creek from Dickensonville (river mile 56) in Russell County downstream to its confluence with the Clinch River.

#### Threatened Species:

Yellowfin madtom      *Noturus flavipinnis*

### Holston River Subbasin

North Fork Holston River from river mile 93.3 (near Broadford) downstream to the Smyth/Washington County line (river mile 82.1)

#### Endangered Species:

Shiny pigtoe pearly mussel      *Fusconaia edgariana*

North Fork Holston River from the Smyth/Washington

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*County line (river mile 82.1) to the Tennessee/Virginia boundary (river mile 5).*

*Threatened Species:*

*Spotfin chub                      Hybopsis monacha*

*Middle Fork Holston River from river mile 43 (in Marion) downstream to river mile 18.4.*

*Endangered Species:*

*Tan riffle shell mussel      Dysnomia walkeri*

*Middle Fork Holston River from river mile 6.5 to river mile 3.2 near Osceola.*

*Threatened Species:*

*Spotfin chub                      Hybopsis monacha*

# EMERGENCY REGULATIONS

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

**Title of Regulation:** VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

**Statutory Authority:** § 10.1-2103 of the Code of Virginia.

**Effective Date:** July 21, 1989 through July 20, 1990  
(unless sooner superseded  
by permanent regulations)

### Preamble:

The Chesapeake Bay Local Assistance Board's existing public participation guidelines, which were adopted by the Board as emergency regulations at its first Board meeting on July 24, 1988, will expire on July 24, 1989. This leaves a period from July 24, 1989, until at least November 22, 1989, the earliest date that the Board's proposed public participation procedures can become effective, during which the Board would be without effective public participation procedures, as required by the Administrative Process Act.

**Finding of Emergency.** The Chesapeake Bay Local Assistance Board finds that being without public participation procedures could endanger the orderly effectiveness of its Chesapeake Bay Preservation Area Designation and Management Regulations, that timely effectiveness of such regulations is essential, and that action must be taken to prevent any possible interference with such regulations becoming effective.

**Nature of the Emergency.** Being without public participation procedures would place the Board in the position of being potentially unable to complete the adoption of the Chesapeake Bay Preservation Area Designation and Management Regulations, which have been adopted as final regulations by the Board but will not have completed the administrative review process and become effective prior to July 24, 1989.

**Necessity for Adoption of Emergency Regulations.** The timely continuation of this regulatory adoption process is vital to the protection of the Chesapeake Bay and other state waters. The Chesapeake Bay Preservation Act required the Board to adopt regulations within one year and required local governments to designate Chesapeake Bay Preservation Areas within one year thereafter. Local governments need final effective regulations to enable them to begin the process of developing programs to designate Chesapeake Bay Preservation Areas and to manage the use and development of land in such areas. To risk delay in this implementation because of the lack of public participation procedures would not be in the best interest of protecting Chesapeake Bay water quality.

Therefore, to ensure that there is no gap in this authority, and hence no risk to further delay of

implementation of the Chesapeake Bay Preservation Area Designation and Management Regulations, the enactment of new emergency public participation procedures is both vital and appropriate. These emergency public participation procedures will be superseded upon the effective date of the Board's current proposed public participation procedures, on or about November 22, 1989.

The Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of these emergency regulations.

These regulations will become effective upon their filing with the Registrar of Regulations, pursuant to § 9-6.14:9 of the Code of Virginia, and shall expire not later than twelve months thereafter, unless sooner superseded by permanent regulations adopted pursuant to the Administrative Process Act.

VR 173-01-00. Public Participation Procedures for the Formation and Promulgation of Regulations.

## PART I. PURPOSE AND AUTHORITY.

§ 1.1. These regulations establish public participation procedures for the development or revision of regulations by the Chesapeake Bay Local Assistance Board. These procedures are required under § 9-6.14:7.1 of the Code of Virginia (Administrative Process Act), and under § 10.1-2100 *et seq.* of the Code of Virginia (Chesapeake Bay Preservation Act). These guidelines do not apply to any regulation adopted on an emergency basis nor to other regulations excluded from the operation of Article 2 of the Administrative Process Act under § 9-6.14:4.1 C of the Code of Virginia.

§ 1.2. The invalidity of any one of these guidelines shall not affect the validity of any other provision enacted thereunder.

## PART II. DEFINITIONS.

§ 2.1. The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Board" means the Chesapeake Bay Local Assistance Board established under § 10.1-2102 of the Code of Virginia.

"Department" means the Chesapeake Bay Local Assistance Department.

"Director" means the Executive Director of the Chesapeake Bay Local Assistance Department.

"Person" means any corporation, association, or

# Emergency Regulation

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partnership, one or more individuals, or any unit of government or agency thereof.

## PART III. INITIATION OF REGULATION DEVELOPMENT PROCEDURES.

§ 3.1. Regulation development may be initiated at any time by the board on its own motion or in response to a petition.

§ 3.2. Any group or individual may petition the board for the promulgation, amendment, addition, or repeal of a regulation. The petition shall, at a minimum, contain the following information:

1. Name of petitioner.
2. Petitioner's mailing address and telephone number.
3. Petitioner's interest in the proposed action.
4. Recommended regulation or addition, deletion, or amendment to a specific regulation or regulations.
5. Statement of need and justification for the proposed action.
6. Statement of impact on the petitioner and other affected persons.
7. Supporting documents, as applicable.

If the board determines not to act upon a petition it shall provide a written response to such petition.

## PART IV. INFORMATION DISSEMINATION LISTS.

§ 4.1. The board shall develop and maintain a general information mailing list of persons who indicate an interest in its activities or whom the board believes are interested in its activities.

§ 4.2. The board shall develop a regulation development list for each regulatory proceeding, consisting of persons from the general information mailing list who express an interest in the proceeding and such other persons as the board believes have an interest in the proceeding. The board shall maintain such list until the conclusion of each proceeding.

## PART V. PUBLIC PARTICIPATION PROCEDURES.

§ 5.1. When the board decides to adopt or change regulations, it shall notify its general information mailing list of the subject matter of the proposed regulations and invite any interested persons to indicate their interest in the proposed regulation. Those who indicate an interest in the proposed regulation shall be placed on the regulation

development mailing list for that regulation.

§ 5.2. Persons will be added to the regulation development list when they so request, or at the request of the director or of a board member.

§ 5.3. The board shall schedule one or more public information meetings to assist in the formulation of the regulation and to provide interested persons an opportunity to submit data, views and arguments either orally or in writing. Notice of such meetings shall be mailed to the Regulation Development Mailing List and given such other reasonable notice as the board determines. The notice shall include the following information:

1. Subject of proposed action.
2. Discussion of the purpose of the proposed action and the issues involved.
3. Proposed timetable for reaching a decision.
4. Request for comments from interested parties and a date by which comments must be received.
5. Name, address, and telephone number of staff person to be contacted for further information.

§ 5.4. The board will form an advisory committee consisting of persons selected from the Regulation Development Mailing List to assist in developing an initial draft of the proposed regulation. The board may also form such other policy and technical advisory groups as it considers desirable.

§ 5.5. After considering all public input, the board shall prepare a final draft of the proposed regulation and publish a notice requesting public comment in accordance with the Administrative Process Act.

§ 5.6. The board will send a copy of the final draft of the proposed regulation to any person who requests it.

§ 5.7. The board shall submit a notice of hearing and the proposed regulation for a 60-day comment period pursuant to § 9-6.14:7.1 by forwarding the required documents for publication in the Virginia Register of Regulations.

§ 5.8. The board shall mail a copy of the notice of hearing to persons on its Regulation Development Mailing List. The board may also publish the notice of hearing in other media as it may deem appropriate.

§ 5.9. Upon expiration of the public comment period, the remaining steps in the adoption process shall be carried out in accordance with the provisions of the Administrative Process Act.

§ 5.10. The failure of any person to receive notice or copies of documents shall not affect the validity of any regulation otherwise properly adopted under the provisions

# Emergency Regulation

of the Administrative Process Act.

Adopted this 21st day of July, 1989.

/s/ James C. Wheat, Chairman  
Chesapeake Bay Local Assistance Board

Approved this 18th day of July, 1989.

/s/ John W. Daniel II  
Secretary of Natural Resources

Approved this 21st day of July, 1989.

/s/ Gerald L. Baliles  
Governor

Filed with the Registrar of Regulations on this 21st day of July, 1989.

/s/ Joan W. Smith

## DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: Emergency Regulation - Notice of Establishment and Description of Shellfish Area Condemnation Number 13A, Onancock Creek.

Statutory Authority: §§ 28.1-178, 32.1-13, 32.1-20 of the Code of Virginia. These regulations are exempted from usual emergency process by § 9-6.14:4.1 B16 of the Code of Virginia.

Effective Dates: July 18, 1989, through July 17, 1990.

### NOTICE OF ESTABLISHMENT AND DESCRIPTION OF SHELLFISH AREA CONDEMNATION NUMBER 13A, ONANCOCK CREEK

EFFECTIVE JULY 18, 1989 TO JULY 17, 1990

1. Pursuant to §§ 28.1-178, 32.1-13, 32.1-20 and 9-6.14:4.1 B 16 and 9-6.18 of the Code of Virginia, an emergency closure on Onancock Creek is hereby established. It shall be unlawful for any person, firm, or corporation to take shellfish from this area for any purpose except by permit granted by the Marine Resources Commission, as provided in § 28.1-179 of the Code of Virginia. The boundaries of this area are shown on map titled "Onancock Creek, Condemned Shellfish Area Number 13A, Emergency Closure" which is a part of this notice.

2. Because the area described below has been subjected to untreated sewage and is likely to be polluted and is not a safe area from which to take shellfish for direct marketing, and because shellfish exist in such area, an emergency exists and the immediate promulgation of this regulation is needed to protect the public health.

3. The Department of Health will receive, consider and

respond to petitions by any interested person at any time with respect to reconsideration or revision of this emergency regulation. In addition, the Department of Health has initiated a sampling program and will reopen the area closed by this regulation once the area has been shown to meet the guidelines for an approved shellfish harvesting area.

### BOUNDARIES OF EMERGENCY CLOSURE 13A

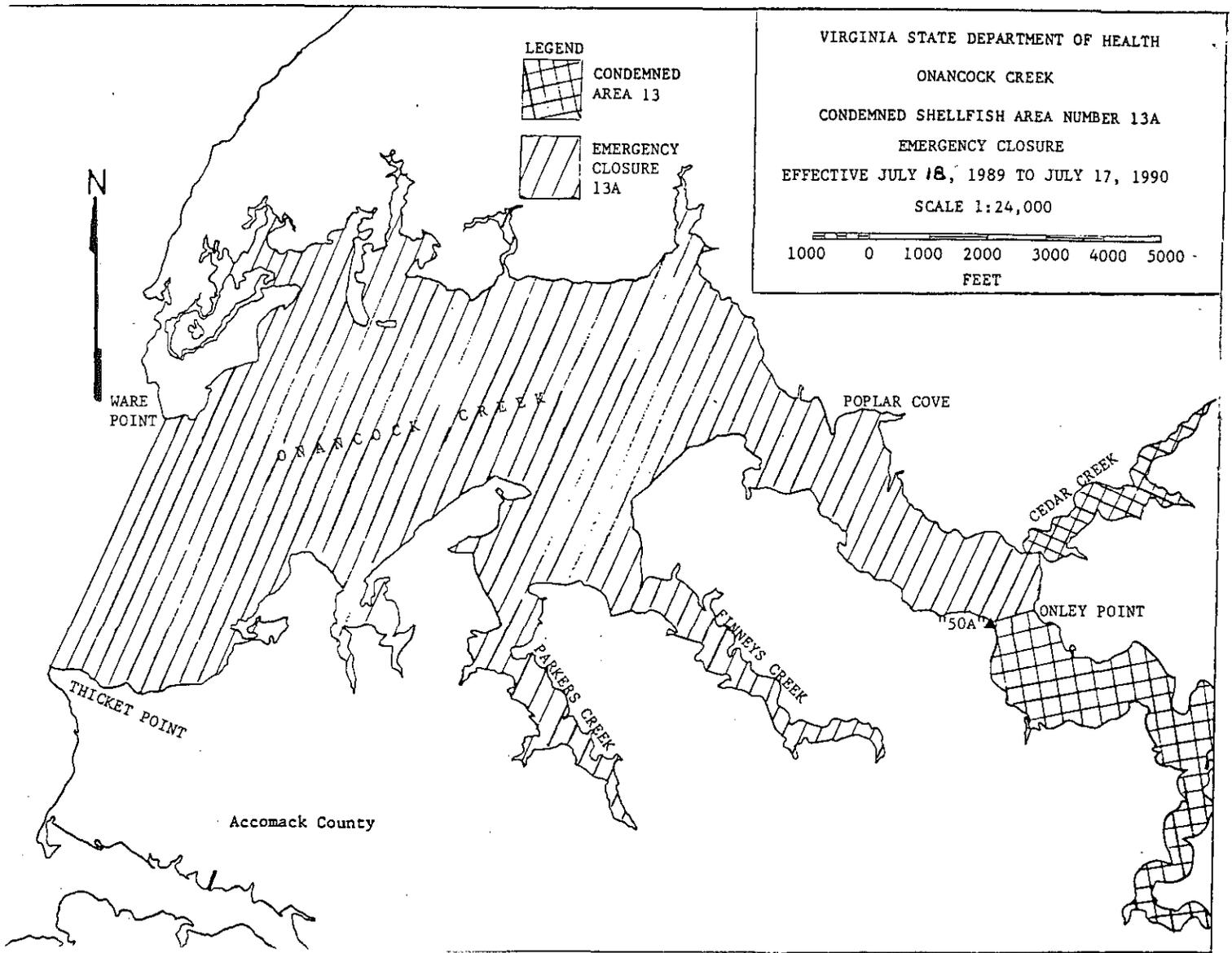
The condemned area shall include all of that portion of the Onancock Creek and its tributaries located upstream of a line drawn from Ware Point to Thicket Point and downstream of the downstream boundaries of condemned shellfish area number 13.

Recommended by:

/s/ Cloyde W. Wiley, Jr.  
Director  
Division of Shellfish Sanitation

Ordered by:

/s/ C. M. G. Buttery  
State Health Commissioner  
Date: July 18, 1989



# Emergency Regulation

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**Title of Regulation:** VR 370-01-01. Emergency Rules and Regulations of the Virginia Health Services Cost Review Council.

**Statutory Authority:** § 9-164 of the Code of Virginia.

**Effective Dates:** July 18, 1989 through July 17, 1990, or adoption of final regulations (whichever occurs first).

### Summary:

*The Health Services Cost Review Council is required to bring nursing homes under the financial reporting and review beginning July 1, 1989 and will require an audited consolidated financial statement from each hospital that reports to the Council or any corporation that controls a hospital. The Council is required to submit the results of this Commercial Diversification Survey of Virginia hospitals to the General Assembly by December 1, 1989.*

*These legislative mandates were set forth in Senate Bill 761 and House Bill 1860 (identical bills).*

VR 370-01-001. Emergency Rules and Regulations of the Virginia Health Services Cost Review Council.

### PART I. DEFINITIONS.

§ 1.1. The following words and terms, when used in these regulations, shall have the following meaning:

*"Adjusted patient days"* means inpatient days divided by the percentage of inpatient revenues to total patient revenues.

*"Aggregate cost"* means the total financial requirements of an institution which shall be equal to the sum of:

1. The institution's reasonable current operating costs, including reasonable expenses for operating and maintenance of approved services and facilities, reasonable direct and indirect expenses for patient care services, working capital needs and taxes, if any;

2. Financial requirements for allowable capital purposes, including price level depreciation for depreciable assets and reasonable accumulation of funds for approved capital projects;

3. For investor-owned institutions, after tax return on equity at the percentage equal to two times the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for the months in a provider's reporting period, but not less, after taxes, than the rate or weighted average of rates of interest borne by the individual institution's outstanding capital

indebtedness. The base to which the rate of return determined shall be applied is the total net assets, adjusted by paragraph 2. of this section, without deduction of outstanding capital indebtedness of the individual institution for assets required in providing institutional health care services.

*"Certified nursing facility"* means any skilled nursing facility, skilled care facility, intermediate care facility, nursing or nursing care facility, or nursing home, whether freestanding or a portion of a freestanding medical care facility, that is certified as a Medicare or Medicaid provider, or both, pursuant to § 32.1-137.

*"Council"* means the Virginia Health Services Cost Review Council.

*"Consumer"* means any person (i) whose occupation is other than the administration of health activities or the provision of health services (ii) who has no fiduciary obligation to a health care institution or other health agency or to any organization, public or private, whose principal activity is an adjunct to the provision of health services, or (iii) who has no material financial interest in the rendering of health services.

*"Health care institution"* means (i) a general hospital, ordinary hospital, or out-patient outpatient surgical hospital, nursing home or certified nursing facility licensed pursuant to § 32.1-123 et seq. of the Code of Virginia and mental or psychiatric hospital licensed pursuant to § 37.1-170 et seq. of the Code of Virginia but in no event shall such term be construed to include any physician's office, nursing home, intermediate care facility, extended nursing care facility of a religious body which depends upon prayer alone for healing, independent laboratory or out-patient clinic, or certified pursuant to Chapter 5, Article 1 (§ 32.1-123 et seq.) of Title 32.1, (ii) a mental or psychiatric hospital licensed pursuant to Chapter 8 of Title 37.1 (§ 37.1-179 et seq.) and (iii) a hospital operated by the University of Virginia or Virginia Commonwealth University. In no event shall such term be construed to include any physician's office, nursing care facility of a religious body which depends upon prayer alone for healing, independent laboratory or outpatient clinic;

*"Hospital"* means any facility licensed pursuant to §§ 32.1-123, et seq. or 37.1-179 et seq. of the Code of Virginia.

*"Late charge"* means a fee that is assessed a health care institution that files its budget, annual report, or charge schedule with the council past the due date.

*"Nursing home"* means any facility or any identifiable component of any facility licensed pursuant to Chapter 5, Article 1 (§ 32.1-123 et seq.) of Title 32.1, in which the primary function is the provision, on a continuing basis, of nursing services and health-related services for the treatment and inpatient care of two or more nonrelated individuals, including facilities known by varying nomenclature or designation such as convalescent homes,

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*skilled nursing facilities or skilled care facilities, intermediate care facilities, extended care facilities and nursing or nursing care facilities.*

"Voluntary cost review organization" means a nonprofit association or other nonprofit entity with a federally exempt tax status which has as its function the review of health care institutions' costs and charges but which does not provide reimbursement to any health care institution or participate in the administration of any review process under Chapter 4 of Title 32.1 of the Code of Virginia, P.L. 93-641 ; or P.L. 92-603 including the Statewide Health Coordinating Council, Department of Health and any health systems agency .

"Patient day" means a unit of measure denoting lodging facilities provided and services rendered to one inpatient, between census-taking-hour on two successive days. The day of admission but not the day of discharge or death is counted a patient day. If both admission and discharge or death occur on the same day, the day is considered a day of admission and counts as one patient day. For purposes of filing fees to the council, newborn patient days would be added. For a medical facility, such as an ambulatory surgery center, which does not provide inpatient services, each patient undergoing surgery during any one 24-hour period will be the equivalent to one patient day.

## PART II. GENERAL INFORMATION.

### § 2.1. Authority for regulations.

The Virginia Health Services Cost Review Council, created by §§ 9-156 through 9-166 of the Code of Virginia, is required to collect, analyze and make public certain financial data and findings relating to hospitals which operate within the Commonwealth of Virginia. Section 9-164 of the Code of Virginia directs the council from time to time to make such rules and regulations as may be necessary to carry out its responsibilities as prescribed in the Code of Virginia.

### § 2.2. Purpose of rules and regulations.

The council has promulgated these rules and regulations to set forth an orderly administrative process by which the council may govern its own affairs and require compliance with the provisions of §§ 9-156 through 9-166 of the Code of Virginia.

### § 2.3. Administration of rules and regulations.

These rules and regulations are administered by the Virginia Health Services Cost Review Council.

### § 2.4. Application of rules and regulations.

These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act, codified as § 9-6.14:1,

et seq. of the Code of Virginia applied to their promulgation.

### § 2.5. Effective date of rules and regulations.

These rules and regulations or any subsequent amendment, modification, or deletion in connection with these rules and regulations shall become effective 30 days after the final regulation is published in the Virginia Register July 1, 1989 .

### § 2.6. Powers and procedures of regulations not exclusive.

The council reserves the right to authorize any procedure for the enforcement of these regulations that is not inconsistent with the provision set forth herein and the provisions of § 9-156 et seq. of the Code of Virginia.

## PART III. COUNCIL PURPOSE AND ORGANIZATION.

### § 3.1. Statement of mission.

The council is charged with the responsibility to promote the economic delivery of high quality and effective institutional health care services to the people of the Commonwealth and to create an assurance that the charges are reasonably related to costs.

The council recognizes that health care institutional costs are of vital concern to the people of the Commonwealth and that it is essential for an effective cost monitoring program to be established which will assist health care institutions in controlling their costs while assuring their financial viability. In pursuance of this policy, it is the council's purpose to provide for uniform measures on a statewide basis to assist in monitoring the costs of health care institutions without sacrifice of quality of health care services and to analyze the same to determine if charges and costs are reasonable.

### § 3.2. Council chairman.

The council shall annually elect one of its consumer members to serve as chairman. The chairman shall preside at all meetings of the council and shall be responsible for convening the council.

### § 3.3. Vice-chairman.

The council shall annually elect from its membership a vice-chairman who shall assume the duties of the chairman in his absence or temporary inability to serve.

### § 3.4. Expense reimbursement.

Members of the council shall be entitled to be reimbursed in accordance with state regulations for necessary and proper expenses incurred in the performance of their duties on behalf of the council.

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## § 3.5. Additional powers and duties.

The council shall exercise such additional powers and duties as may be specified in the Code of Virginia.

### PART IV. VOLUNTARY COST REVIEW ORGANIZATIONS.

#### § 4.1. Application.

Any organization desiring approval as a voluntary rate review organization may apply for approval by using the following procedure:

1. Open application period. A voluntary cost review organization may apply for designation as an approved voluntary cost review organization to be granted such duties as are prescribed in § 9-162 of the Code of Virginia.

2. Contents of application. An application for approval shall include:

a. Documentation sufficient to show that the applicant complies with the requirements to be a voluntary cost review organization: including copies of its Commonwealth of Virginia Charter, by laws, and evidence of its nonprofit status. Full financial reports for the one year preceding its application must also be forwarded. If no financial reports are available, a statement of the projected cost of the applicant's operation with supporting data must be forwarded;

b. If any of the organization's directors or officers have or would have a potential conflict of interests affecting the development of an effective cost monitoring program for the council, statements must be submitted with the application to fully detail the extent of the other conflicting interest;

c. A detailed statement of the type of reports and administrative procedures proposed for use by the applicant;

d. A statement of the number of employees of the applicant including details of their classification; and

e. Any additional statements or information which is necessary to ensure that the proposed reporting and review procedures of the applicant are satisfactory to the council.

#### § 4.2. Review of application.

##### A. Designation.

Within 45 calendar days of the receipt of an application for designation as a voluntary cost review organization, the council shall issue its decision of approval or disapproval.

Approval by the council shall take effect immediately.

##### B. Disapproval.

The council may disapprove any application for the reason that the applicant has failed to comply with application requirements, or that the applicant fails to meet the definition of a cost review organization, or fails to meet the specifications cited in paragraph A above concerning application contents or that the cost and quality of the institutional reporting system proposed by the applicant are unsatisfactory.

##### C. Reapplication.

An organization whose application has been disapproved by the council may submit a new or amended application to the council within 15 calendar days after disapproval of the initial application. An organization may only reapply for approval on one occasion during any consecutive 12-month period.

#### § 4.3. Annual review of applicant.

A. By March 31 of each year, any approved voluntary cost review organization for the calendar year then in progress which desires to continue its designation shall submit an annual review statement of its reporting and review procedures.

##### B. The annual review statement shall include:

1. Attestation by the applicant that no amendments or modifications of practice contrary to the initially approved application have occurred; or

2. Details of any amendments or modifications to the initially approved application, which shall include justifications for these amendments or modifications.

C. The council may require additional information from the applicant supporting that the applicant's reports and procedures are satisfactory to the council.

#### § 4.4. Revocation of approval.

The council may revoke its approval of any cost review organization's approval when the review procedures of that organization are no longer satisfactory to the council or for the reason that the voluntary cost review organization could be disapproved under § 4.2 B of these regulations.

#### § 4.5. Confidentiality.

A voluntary cost review organization approved as such by the council shall maintain the total confidentiality of all filings made with it required by these regulations or law. The contents of filings or reports summaries and recommendations generated in consequence of the council's regulations may be disseminated only to members of the council, the council's staff and the individual health

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care institution which has made the filings or which is the subject of a particular report.

## PART V. CONTRACT WITH VOLUNTARY COST REVIEW ORGANIZATION.

### § 5.1. Purpose.

It is the intention of the council to exercise the authority and directive of § 9-163 of the Code of Virginia whereby the council is required to contract with any voluntary cost review organization for services necessary to carry out the council's activities where this will promote economy and efficiency, avoid duplication of effort, and make best use of available expertise.

### § 5.2. Eligibility.

In order for a voluntary cost review organization to be eligible to contract with the council, it shall have met all other requirements of §§ 4.1 and 4.5 of these regulations relating to voluntary cost review organization and have been approved as such an organization.

### § 5.3. Contents of contract.

The written agreement between the council and any voluntary cost review organization shall contain such provisions which are not inconsistent with these regulations or law as may be agreed to by the parties. Any such contract shall be for a period not to exceed five years.

## PART VI. FILING REQUIREMENTS AND FEE STRUCTURE.

§ 6.1. Each health care institution shall file an annual report of revenues, expenses, other income, other outlays, assets and liabilities, units of service, and related statistics as prescribed in § 9-158 of the Code of Virginia on forms provided by the council together with the certified audited financial statements (or equivalents) as prescribed in § 9-159 of the Code of Virginia, which shall be received by the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. Extensions of filing times may be granted for extenuating circumstances upon a health care institution's written application for a 30 to 60 -day extension. Such request for extension shall be filed no later than 90 120 days after the end of a health care institution's fiscal year.

§ 6.2. Each health care institution shall file annually a projection (budget) of annual revenues and expenditures as prescribed in § 9-161 B of the Code of Virginia on forms provided by the council. The institution's projection (budget) shall be received by the council no later than 60 days before the beginning of its respective applicable fiscal year. *This regulation shall be applicable to nursing homes or certified nursing facilities for each fiscal year starting on or after June 30, 1990.*

§ 6.3. Each health care institution shall file annually a schedule of charges to be in effect on the first day of such fiscal year, as prescribed in § 9-161 D of the Code of Virginia. The institution's schedule of charges shall be received by the council no later than 10 days after the beginning of its respective applicable fiscal year.

Any subsequent amendment or modification to the annually filed schedule of charges shall be filed at least 60 days in advance of its effective date, together with supporting data justifying the need for the amendment. Changes in charges which will have a minimal impact on revenues are exempt from this requirement.

§ 6.3:1. Each hospital or any corporation that controls a hospital shall respond to a survey conducted by the council to determine the extent of commercial diversification by such hospitals in the Commonwealth. The survey shall be in a form and manner prescribed by the council and shall request the information specified in subdivision a, f, g, h and i below on each hospital or such corporation and, with respect to any tax-exempt hospital or controlling corporation thereof, the information specified in subdivision a through i below for each affiliate of such hospital or corporation, if any:

- a. The name and principal activity;
- b. The date of the affiliation;
- c. The nature of the affiliation;
- d. The method by which each affiliate was acquired or created;
- e. The tax status of each affiliate and, if tax-exempt, its Internal Revenue tax exemption code number;
- f. The total assets;
- g. The total revenues;
- h. The net profit after taxes, or if not-for-profit, its excess revenues; and
- i. The net quality, or if not-for-profit, its fund balance.

§ 6.3:2. The information specified in § 6.3:1 shall relate to any legal controls that exist as of the 1st of July 1 of each calendar year in which the survey is required to be submitted.

§ 6.3:3. Each hospital or any corporation that controls a hospital and that is required to respond to the survey specified in § 6.3:1 shall complete and return the survey to the council by the 31st day of August 31 of each calendar year in which the survey is required to be submitted.

§ 6.3:4. Each hospital that reports to the council or any

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corporation which controls a hospital that reports to the council shall submit an audited consolidated financial statement to the council which includes a balance sheet detailing its total assets, liabilities and net worth and a statement of income and expenses and includes information on all such corporation's affiliates.

§ 6.4. All filings prescribed in § 6.1, § 6.2 and § 6.3:1 of these regulations will be made to the council for its transmittal to any approved voluntary cost review organization described in Part IV of these regulations.

§ 6.5. A filing fee based on an adjusted patient days rate shall be set by the council, based on the needs to meet annual council expenses. The fee shall be established and reviewed at least annually and reviewed for its sufficiency at least annually by the council. All fees shall be paid directly to the council. *The filing fee shall be no more than 11 cents per adjusted patient day for each health care institution filings.*

§ 6.6. Fifty percent of the filing fee shall be paid to the council at the same time that the health care institution files its budget under the provisions of § 6.2 of these regulations. The balance of the filing fee shall be paid to the council at the same time the health care institution files its annual report under the provisions of § 6.1 of these regulations. When the council grants the health care institution an extension, the balance of the filing fee shall be paid to the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. *During the year of July 1, 1989, through June 30, 1990, each nursing home and certified nursing facility shall pay a fee of 7 cents per adjusted patient day when it files its annual report in order to comply with subdivisions A1 and A2 of § 9-159 of the Code of Virginia. Following June 30, 1990, all nursing homes and certified nursing facilities shall submit payment of the filing fees in the amount and manner as all other health care institutions.*

§ 6.7. A late charge of \$10 per working day shall be paid to the council by a health care institution that files its budget or annual report past the due date.

§ 6.8. A late charge of \$50 shall be paid to the council by the health care institution that files the charge schedule past the due date.

§ 6.9. A late charge of \$25 per working day shall be paid to the council by the reporting entity required to complete the survey required in § 6.3:1.

## PART VII. WORK FLOW AND ANALYSIS.

§ 7.1. The annual report date filed by health care institutions as prescribed in § 6.1 of these regulations shall be analyzed as directed by the council. Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75

days after receipt of properly filed data, after which these summaries and comments, including council recommendations, may be published and disseminated as determined by the council. The health care institution which is the subject of any summary, report, recommendation or comment shall receive a copy of same at least 10 days prior to the meeting at which the same is to be considered by the council.

§ 7.2. The annual schedule of charges and projections (budget) of revenues and expenditures filed by health care institutions as prescribed in § 6.2 of these regulations shall be analyzed as directed by the council. Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75 days after receipt of properly filed data, after which these summaries and comments, including council recommendations, will be published and disseminated by the council. Amendments or modifications to the annually filed schedule of charges shall be processed in a like manner and reviewed by the council no later than 50 days after receipt of properly filed amendments or modifications. Any health care institution which is the subject of summaries and findings of the council shall be given upon request an opportunity to be heard before the council.

## PART VIII. PUBLICATION AND DISSEMINATION OF INFORMATION RELATED TO HEALTH CARE INSTITUTIONS.

§ 8.1. The staff findings and recommendations and related council decisions on individual health care institutions' annual historical data findings will be kept on file at the council office for public inspection. However, the detailed annual historical data filed by the individual health care institutions will be excluded from public inspection in accordance with § 9-159 B, of the Code of Virginia.

§ 8.2. Periodically, but at least annually, the council will publish the rates charged by each ~~hospital~~ health care institution in Virginia for at least each of the 25 most frequently used ~~hospital~~ services in Virginia, including each ~~hospital's~~ institution's average semi-private and private room rates. The data will be summarized by geographic area in Virginia, and will be kept on file at the council office for public inspection and made available to the news media. In addition, annual charge schedules and subsequent amendments to these schedules filed under the provisions of § 6.3 of these rules and regulations will be kept on file at the council office for public inspection. Staff findings and recommendations and related council decisions on changes to health care institutions' rates and charges will also be kept on file at the council office for public inspection and available to the news media.

§ 8.3. Periodically, but at least annually, the council will publish an annual report which will include, but not be limited to the following: cost per admission comparison, cost per patient day comparison, ~~Virginia's hospital costs~~

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compared with other states, percentage increase in cost per patient day, budget and historical reports reviewed, interim rate changes, excess operating expenses, revenue reduction recommendations, operating profits and losses, deductions from revenue (contractuals, bad debts, and charity care) and hospital utilization.

§ 8.3.1. *The council will also periodically publish and disseminate information which will allow consumers to compare costs and services of hospitals, nursing homes and certified nursing facilities.*

§ 8.4. The staff findings and recommendations and related council decisions on individual health care institutions' annual budget and related rate filings will be kept on file at the council office for public inspection. However, the detailed annual budget data filed by the individual health care institutions will be excluded from public inspection.

§ 8.5. The council may release historical financial and statistical data reported by health care institutions to state or federal commissions or agencies based on individual, specific requests, and the merit of such requests. Requests must list the purpose for which the requested data is to be used to permit the council to reach a valid decision on whether or not the data requested will fit the need and should, therefore, be made available. Under no circumstances will data be released which contains "personal information" as defined in § 2.1-379(2) of the Code of Virginia.

§ 8.6. The council shall not release prospective (budgeted) financial and statistical data reported by health care institutions to anyone, except for the staff findings and recommendations as provided for in § 8.4 of these regulations.

§ 8.7. ~~The provisions of § 8.5 of these regulations will also apply to recognized and designated health systems agencies (HSAs) and professional standards review organizations (PSROs) in the Commonwealth of Virginia, provided that the data requested have a definite bearing on the functions of these organizations.~~

§ 8.8. ~~§ 8.7.~~ No data, beyond that specified in §§ 8.1 through 8.4 of these regulations will be released to other nongovernmental organizations and entities, except that data deemed pertinent by the council in negotiations with third-party payors such as Blue Cross/Blue Shield, commercial insurers, etc. Such pertinent data may be released and used on an exception, as needed, basis.

§ 8.9. ~~§ 8.8.~~ Except for data specified in §§ 8.1 through 8.4 of these regulations available to anyone, the council shall have a right to furnish data, or refuse to furnish data, based on merit of the request and ability to furnish data based on data and staff time availability. The council may levy a reasonable charge to cover costs incurred in furnishing any of the data described in this section of the rules and regulations.

Concurrence:

/s/ Eva S. Teig  
Secretary of Human Resources

Approve:

/s/ Gerald L. Baliles  
Governor

Filed:  
Date: July 17, 1989

/s/ Joan W. Smith  
Registrar of Regulations  
Date: July 18, 1989 - 11:19 a.m.

## BOARD OF NURSING HOME ADMINISTRATORS

Title of Regulation: VR 500-01-1. Board of Nursing Home Administrators Regulations.

Statutory Authority: §§ 54.1-103 and 54.1-2400 of the Code of Virginia.

Effective Dates: July 21, 1989 through June 30, 1990 or date of promulgation (whichever occurs first).

### Preamble:

*On March 1, 1989, regulations of the Board of Nursing Home Administrators became effective which in part required 30 classroom hours of continuing education. The requirement to present evidence of continuing education is due December 31, 1989.*

*Over the course of the last 15 months it has become apparent the regulation contains several unintended effects that must be corrected to grant relief to individual licensees that can be implemented only through the adoption of emergency regulations.*

*The board's proposed changes to § 1.5 provides relief in two ways. First, it eliminates the requirement that courses must be specifically approved by any accrediting body, but allows submittal of course work from a variety of sources wherever courses can be shown directly beneficial to the administrator. Secondly, it allows individuals recently licensed to obtain lesser credit corresponding to their period of licensure.*

*The Board of Nursing Home Administrators has developed these emergency regulations to be effective upon filing with the Registrar and to be replaced with nonemergency regulations dealing with these issues within one year.*

VR 500-01-1. Board of Nursing Home Administrators Regulations.

# Emergency Regulation

## PART I. GENERAL.

### § 1.1. Definitions.

The following definitions shall apply in these regulations unless the context clearly requires a different meaning.

"Nursing home administrator" means any individual who is charged with the general administration of a nursing home, whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

"Nursing home" means any institution or facility or part thereof required to be licensed under the provisions of Chapter 16 (§ 32.1-123 et seq.) of Title 32 of the Code of Virginia, and the rules and regulations promulgated pursuant to § 32.1-127 thereof, as a nursing home, including but not limited to nursing homes owned or administered by any agency of the Commonwealth of Virginia or by any political subdivision thereof.

"Examination" means a two-part written examination and personal interview required by the board.

"Preceptor" means a currently licensed nursing home administrator certified in accordance with §§ 2.7 and 2.8 of these regulations who conducts an approved Administrator-in-Training (A.I.T.) program.

### § 1.2. License required.

In order to engage in the general administration of a nursing home, it shall be necessary to hold a valid license.

### § 1.3. License renewal required.

A. Licenses issued under these regulations shall expire on December 31 of each odd numbered year. The Department of Commerce shall mail a renewal notice to the licensee, outlining the procedures for renewal. Failure to receive this notice shall not relieve the licensee of the obligation to renew.

B. Each licensee applying for renewal shall return the renewal notice and fee of \$125 established by the board pursuant to § 54-1.28:1 of the Code of Virginia, to the Department of Commerce prior to the expiration date shown on the license. Any licensee failing to receive the renewal notice may substitute a copy of the license together with a written request for renewal and the required fee.

C. If the licensee fails to renew the license within 30 days after the expiration date, a fee of \$125 established by the board pursuant to § 54-1.28:1 of the Code of Virginia shall be required in addition to the renewal fee.

D. If the licensee fails to renew the license by June 30 of the year following expiration, the applicant shall then

apply as a new applicant and shall be required to successfully complete the requirements for examination.

### § 1.4. Examination.

A. The examination will be given in three parts: (§ 54-1.28)

1. Part I is an objective-type written examination given nationally.

2. Part II is an objective-type written examination covering the Rules and Regulations for the Licensure of Nursing Homes in Virginia issued by the Virginia State Health Department.

3. Part III is a personal interview to evaluate the applicant's communication skills.

B. To pass the examination, an applicant shall successfully complete all parts within 12 months of the date on which the application is received by the board. If the A.I.T. program completion date has been extended, the applicant shall successfully complete all parts within the extended period.

C. An applicant may make a written request to take the scheduled examination most closely preceding the expected completion of the required formal education requirement or administrator-in-training program.

D. If early examination is granted pursuant to § 1.4 C of these regulations, licensure shall be deferred until applicant successfully completes all requirements of either the baccalaureate degree as specified in § 2.2 B of these regulations or the Administrator-in-Training program specified in § 2.2 C of these regulations.

### § 1.5. Continuing education.

~~In renewal applications, maintenance of competency shall be demonstrated by documentation of attendance at 30 classroom hours of courses previously approved by the National Association of Boards (NAB) or such other regulatory certifying body the board may hereafter approve within the current two-year licensure period.~~

*Candidates for renewal of a nursing home administrator's license must submit proof of attendance at 30 classroom hours of continuing education courses directly beneficial to nursing home administrators and to long-term care administrators within the current two-year licensure period as evidence of maintenance of continued competency.*

#### *Exceptions.*

*For those administrators initially licensed in the second year of the renewal period, the requirements are as follows:*

# Emergency Regulation

A. Administrators licensed between January 1 and May 31 of the second year shall be required to complete 15 classroom hours of continuing education.

B. Administrators licensed between June 1 through December 31 of the second year shall not be required to submit any evidence of continuing education during the licensure period.

## § 1.6. Fees.

All fees are nonrefundable and shall not be prorated. All fees shall be established by the board pursuant to § ~~54-1-28.1~~ § 54.1-2400 5 of the Code of Virginia.

1. The application fee for a nursing home administrator is \$125 and shall be established by the board pursuant to § ~~54-1-28.1~~ § 54.1-2400 5
2. The reexamination fee is \$75 for each part of the examination failed and shall be established by the board pursuant to § ~~54-1-28.1~~ § 54.1-2400 5
3. The application fee for the Administrator-in-Training program is \$100 and shall be established by the board pursuant to § ~~54-1-28.1~~ § 54.1-2400 5
4. The fee for additional administrative costs for late renewal is \$125 and shall be established by the board pursuant to § ~~54-1-28.1~~ § 54.1-2400 5
5. The application fee for certification as a preceptor is \$50 and shall be established by the board pursuant to § ~~54-1-28.1~~ § 54.1-2400 5

## PART II. ENTRY.

### § 2.1. General requirements.

To qualify for a license as a nursing home administrator, an applicant:

1. Shall be at least 21 years of age as demonstrated by such legal documentation as a copy of the birth certificate, passport, or valid driver's license and attested to before a notary public when application is signed; and
2. Shall never have been convicted of a felony involving a crime against a person; and
3. Shall never have been convicted of any other act which is a felony under the laws of the Commonwealth or of the United States, except that a person convicted of such other act which is a felony may become eligible for licensure if, within five years after the date of final release, no additional felonies have been committed; and
4. Shall declare that he does not use liquors, narcotics,

or other drugs to the extent that it impairs his performance as an administrator.

### § 2.2. Ways to become licensed.

#### A. License through endorsement.

The board may issue a Virginia license to any person by endorsement when:

1. An approved national nursing home administrator's written examination was passed by the person under the laws of the base licensure state;
2. The person holds a current license from any state;
3. The person has met the requirements of this board or has equivalent qualifications acceptable to the board and has provided sufficient written evidence of these equivalent qualifications at the time of application for licensure;
4. The person has successfully completed the written examination covering nursing home regulations in Virginia; and
5. The person has successfully completed the personal interview.

#### B. License by examination.

To take the examination without having completed the A.I.T. program:

1. An applicant must have a baccalaureate or higher degree in nursing home administration or in a health administration field from an accredited institution of higher learning; and
2. The applicant's regular curriculum must have included a minimum 400 hour residency experience in nursing home administration.

#### C. License by Administrator-in-Training (A.I.T.) program and examination.

1. Education. An applicant may be approved by the board to enter the A.I.T. program described in §§ 2.3 through 2.6 of these regulations by showing evidence of successful completion of a total of 60 semester hours of education in business administration and health care related fields in an accredited institution of higher learning.

### § 2.3. Training program.

The A.I.T. program shall consist of 2,080 hours of continuous training to be completed within not less than 12 months and not more than 24 months. Training shall be conducted in a licensed facility as defined in a board certified preceptor in accordance with § 2.5 A and B of

# Emergency Regulation

these regulations. Extension may be granted by the board on an individual case basis.

A. The board certified preceptor shall be a nursing home administrator in full-time residence in the facility where the A.I.T. is being trained.

B. The curriculum shall be designed to include the Core of Knowledge as defined by Title XIX of the Social Security Act as appended to these regulations.

## C. EXCEPTIONS TO A.I.T. PROGRAM REQUIREMENTS.

An A.I.T. applicant with prior health care work experience may request approval to participate in a modified A.I.T. program subject to the following:

1. Nonprofessional. Up to a maximum of 200 hours can be applied toward the A.I.T. program total of 2,080 hours by an employee who is not in the professional-administrative level and who has been employed for the last three years in a Virginia licensed nursing home.

2. Professional. Up to a maximum of 1,000 hours can be applied toward the total of 2,080 hour A.I.T. program provided the professional employee has been employed full-time for four of the last five years in a Virginia licensed nursing home.

3. Hospital administrators. Up to 1,000 hours credit may be applied toward the 2,080 hour A.I.T. program.

## § 2.4. Board developed training program.

The board shall develop a training program based on the nine points in the Core of Knowledge as defined in Title XIX of the Social Security Act. This program shall be used by all trainees.

A. No trainee may begin training without written board approval.

B. Retroactive approval of an A.I.T. program starting date is not permitted.

## § 2.5. Preceptor.

### A. Qualification.

Each nursing home administrator/preceptor, hereinafter called "preceptor" shall:

1. Be an administrator currently licensed and approved by the board; and

2. Have served as a full-time administrator for a minimum of two years immediately prior to the preceptorship.

### B. Certification.

A qualified applicant for preceptorship may be approved by the board upon receipt of a completed application and payment of the fee established by the board pursuant to § ~~54-1-28-1~~ § 54.1-2400 5 pertaining to the A.I.T. program.

## C. Ratio of preceptor to administrators-in-training.

No preceptor shall supervise and train more than two A.I.T.s at any time.

## D. Change in preceptor.

If the approved preceptor is unable to fulfill the approved program of an A.I.T., a new preceptor shall be obtained immediately. No training shall be conducted until the new preceptor has been approved by the board. Any lapse in time between approved preceptors shall necessitate an equal amount of time being added to the training period. In special circumstances the board, upon application thereof, may authorize additional time in which a new preceptor may be secured. If an alternate training plan is developed, it shall be submitted to the board for approval.

## § 2.6. Reporting requirements.

The preceptor shall submit to the board a training progress report for the A.I.T. at the end of each quarter.

1. Before the beginning of the A.I.T. program, the preceptor shall develop a list of objectives geared to the specific needs of the individual. This will be used to assist the A.I.T. in measuring progress in the program.

2. The A.I.T.'s final quarterly report shall be submitted to the board within 30 days following the completion of the program. Upon receipt and acceptance of all documents, the Department of Commerce will send to the A.I.T. an application to sit for the Nursing Home Administrators' Examination. This shall be completed by the A.I.T. and returned to the department.

## § 2.7. Facility.

The facility in which the training will take place shall be:

1. A nursing home, licensed by the Department of Health, Commonwealth of Virginia, or

2. An institution licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board, or

3. A certified nursing home owned or operated by an agency of the Commonwealth or of the United States government; or

4. A certified nursing home unit located in and operated by a general or special hospital licensed

# Emergency Regulation

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under procedures of "Rules and Regulations for Licensure of General and Special Hospitals."

## PART III. STANDARDS OF PRACTICE.

§ 3.1. The board may discipline a licensed nursing home administrator for any violation of regulations promulgated by the board or any improper conduct, including, but not limited to:

1. Demonstrated inability to fulfill the duties and responsibilities of a nursing home administrator as outlined in the State Health Department's Rules and Regulations for the Licensure of Nursing Homes in Virginia.
2. Negligence in the performance of the duties and responsibilities of a licensed nursing home administrator as specified in § 3.1(1) above.
3. Malfeasance in the performance of duties by the licensed nursing home administrator as specified in 3.1(1) above.
4. Failure to comply with federal, state or local laws and regulations applicable to the profession.
5. Conviction of a felony including but not limited to crimes against the person, sexual crimes, fraud, larceny, abuse of patients, bodily harm, chemical or alcohol abuse or drug trafficking.
6. Failure to provide to the board correct and complete information while serving as an approved preceptor.
7. Failure to comply with board regulations and provide the training approved by the board while serving as an approved preceptor for an administrator-in-training.

### Appendix A

The Core of Knowledge referred to in this program consists of the disciplines under the federal guidelines:

A. Applicable standards of environmental health and safety.

1. Knowledge of local, state and federal regulations applicable to nursing homes. (Example: HHS Conditions of Participation for Medicare (Title XVIII), and Medicaid (Title XIX).
2. Resources: Local and state health departments, local and state regulatory agencies, and federal regulatory agencies (HHS, Etc.).

B. Local and state health and safety regulations.

C. General administration.

D. Psychology of patient care.

1. Resources: Staff, patient and advisory physicians; social worker and patient's social history; principles and techniques of long term care nursing (director of nursing, nursing supervisors).

E. Principles of medical care.

1. Resources: Medical director, staff, patient and advisory physicians, medical colleges, especially those offering degree programs in Health Care Administration or Long Term Health Care.

F. Personal and social care.

1. Resources: Nursing staff, social workers, activities director and administrators.

G. Therapeutics and supportive care and services in long term care.

1. Resources: Dietary, physical therapy, occupational therapy, clinic, social services, volunteers, family and pharmacist.

H. Departmental organization and management administrator, advisor physicians, director of nursing, food service manager, laundry and housekeeping supervisor, and maintenance supervisor.

I. Community interrelationships.

1. Resources:
  - a. Hospitals
  - b. Hospice programs
  - c. Other nursing homes
  - d. Homes for the adults
  - e. Retirement or life care communities
  - f. Home health care
  - g. Health department
  - h. Social service agencies
  - i. Department for the Aging
  - j. Area agencies on aging ]
  - k. Clinics
  - l. Physicians

# Emergency Regulation

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- m. Medical societies
- n. Regulatory agencies
- o. Long term care professional associations
- p. Advocates for the aged
- q. Omsbudsman
- r. Volunteers
- s. Educators
- t. Schools
- u. Religious communities

I recommend the approval of the appended regulations of the Virginia Board of Nursing Home Administrators on an emergency basis under the provisions of the Code of Virginia § 54.1-2400(1), (4) and (8) and § 54.1-103. These emergency regulations, if approved by the Governor, shall expire one year following the date upon which they become effective or upon the effective date of replacement regulations proposed and promulgated under the nonemergency provisions of the Administrative Process Act (Code § 9-6.14:6), whichever is sooner.

/s/ Bernard L. Henderson, Jr.  
Department of Health Professions  
Date: June 27, 1989

/s/ Eva S. Teig  
Secretary of Health and Human Resources  
Date: July 2, 1989

I approve the appended emergency regulations of the Board of Nursing Home Administrators on an emergency basis under the provisions of Code of Virginia § 9-6.14.4.1.C.5.

/s/ Gerald L. Baliles  
Governor  
Date: July 18, 1989

I acknowledge receipt of the appended emergency regulations to become effective on July 21, 1989 - 10:36 a.m.

/s/ Joan W. Smith  
Registrar of Regulations  
Date: July 21, 1989 - 10:36 a.m.

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# STATE CORPORATION COMMISSION

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June 23, 1989

## ADMINISTRATIVE LETTER 1989-7

TO: All Insurance Companies, Health Services Plans  
Health Maintenance Organizations, and Other  
Interested Parties

RE: Legislation enacted by the 1989 Session of the  
General Assembly of Virginia

Attached are summaries of certain statutes enacted or  
amended and re-enacted by the General Assembly of  
Virginia during the 1989 Session.

The effective date of each statute is July 1, 1989, EXCEPT  
as otherwise indicated in the attachment.

Each organization to which this letter is being sent should  
review the attachment carefully and see that notice of  
these laws is directed to the proper persons (including its  
appointed representatives) to ensure that appropriate  
action is taken to effect compliance with these new legal  
requirements. Please note that this document is a  
summary of legislation and is neither a legal review and  
interpretation nor a full description of legislative  
amendments made to insurance-related laws during the  
1989 Session. Each organization is responsible for legal  
review of the statutes pertinent to its operations.

### Summary of 1989 Insurance Legislation Commonwealth of Virginia

(All Bills Effective July 1, 1989, Unless Otherwise  
Noted)

#### Property and Casualty Insurance

##### House Bill 73

#### Minimum limits of liability

This 1988 carry-over bill amends Title 46.1 (Motor  
Vehicles) and § 38.2-2206 (Uninsured motorists coverage)  
by increasing the minimum limits of motor vehicle liability  
insurance required by the financial responsibility laws of  
the Motor Vehicle Code. The minimum limits of liability  
have been increased from \$10,000 to \$20,000 for damage  
or destruction of property in any one accident. The  
minimum limits of liability for bodily injury or death have  
not been increased. The provisions of this law apply to all  
original or renewed policies issued or delivered on or  
after July 1, 1989. We interpret this to mean the new limit  
applies to all policies (new or renewal) effective on or  
after July 1, 1989.

##### House Bill 1148

#### Loss of use of motor vehicles

This bill amends Section 8.01-66 of the Civil Remedies

Code relating to recovery of damages for loss of the use  
of motor vehicles. In addition to "any insurance company",  
"any self insured company must provide a comparable  
temporary substitute vehicle to any person entitled to  
recover for damage to or destruction of a motor vehicle.

##### House Bill 1217

#### Birth - related neurological injury fund

This bill amends Chapter 50 of Title 38.2 (Neurological  
Injury Compensation Act) by allowing a physician or  
hospital that was previously not eligible to become a  
participating physician or hospital in the Birth Injury Fund  
to join the Fund during a particular calendar year by  
paying the required assessment by December 1 of the  
previous year. The bill allows the Board of Directors to  
authorize a pro-rated assessment for physicians who  
become licensed, commence practice, or complete a  
residency training program described in § 38.2-5020 during  
a calendar year. The bill also allows certain hospitals with  
residency training programs to pay an annual assessment  
for physicians in such programs. The definition of  
participating physician is amended to include licensed  
nurse midwives who perform obstetrical services either  
full- or part-time, as authorized in the plan of operation.  
The bill also changes the number of citizens on the Board  
of Directors from 1 to 3 and the number of directors from  
5 to 7. Section 38.2-5019 of the Code of Virginia is  
repealed by this law. The provisions pertaining to the  
initial assessment and exemptions from the assessments  
have been incorporated into § 38.2-5020.

##### House Bill 1220 and Senate Bill 524

#### Fire programs fund

These bills repeal the third enactment clause of chapter  
545 of the 1985 Acts of Assembly so as to eliminate the  
sunset clause of the Fire Programs Fund. The Fire  
Programs Fund as established in Section 38.2-401, is  
maintained through an annual assessment against all  
licensed insurance companies doing business in the  
Commonwealth writing any type of insurance defined in §§  
38.2-110, 38.2-111, 38.2-126, 38.2-130 and 38.2-131.  
Seventy-five percent of the total amount collected annually  
pursuant to this section shall be allocated to the several  
counties, cities and towns of the Commonwealth providing  
fire service operations. Such funds shall be used solely for  
the purposes of fire service training facilities, purchasing  
fire-fighting equipment or protective clothing and  
protective equipment for fire-fighting personnel. The effect  
of eliminating the sunset clause is to require the Bureau  
of Insurance to collect and remit these funds to the  
Virginia Fire Services Board on a permanent basis.

##### House Bill 1252 and Senate Bill 653 (Effective 3/22/89)

#### Birth - related neurological injury fund

These bills amend Chapter 50 of Title 38.2 (Neurological

Injury Compensation Act) by allowing a physician or hospital that was previously eligible but who did not meet the requirements of § 38.2-5020 on or before January 1, 1989 to become a participating physician or hospital in the Birth Injury Fund by filing the necessary agreements and paying the required assessment by May 15, 1989. The assessment is to be pro-rated for the months remaining in 1989.

## House Bill 1311

### Fire insurance coverage under certain loans

This bill adds a new section to Title 6.1 (Banking and Finance). Under this law, lenders are prohibited from requiring borrowers who apply for a loan secured by a mortgage or deed of trust, to purchase property insurance coverage in an amount exceeding the replacement value of the improvements on the real property. In determining the replacement value of the improvements on the real property, the lender may:

1. Accept the value placed on the improvements by the insurer; or
2. Use the value placed on the improvements that is determined by the lender's appraisal of the real property.

## House Bill 1467 (Effective 3/20/89)

### Commercial liability insurers' reports

This bill amends § 38.2-1905.1 (Report on level of competition, availability, and affordability) by stipulating that the Commission shall hold a hearing by September 30 (instead of two months after the supplemental reports are due) to determine whether competition is an effective regulator of rates. In making this determination the Commission may consider, among other things, whether a pattern of unreasonably high rates (instead of "excessive" rates) exists. Section 38.2-1905.2 is amended to require a commercial liability insurer that did not actually write the designated lines or subclassifications to report to the Commission that it wrote no such insurance (instead of allowing the insurer to forego submitting a report if it did not write any of the designated lines or subclassifications). The proposed changes also make the failure to file a substantially complete report equivalent to not filing a report. Section 38.2-2228.1 is amended to require the Commission to establish the date the commercial liability claims reports are to be filed and makes the failure to file the reports by the due date a violation of the chapter.

## House Bill 1495

### Arbitrary refusal of insurers to settle small claims

This bill amends § 8.01-66.1 of the Civil Remedies Code relating to the arbitrary refusal of an automobile insurer to settle a small claim. The bill makes an insurer liable for double the amount of the claim plus attorney's fees

and expenses if the insurer in bad faith denies, refuses, or fails to pay a claim of \$1,000 or less in excess of the deductible. The old language set the amount at \$500 or less in excess of the deductible.

## House Bill 1583

### Medical malpractice claim reports

This bill is the result of the State Corporation Commission's study of Alternative Premium Distribution Methods for Medical Malpractice Insurance requested by HJR 186. The bill amends § 38.2-2228 of the Code of Virginia by requiring all medical malpractice claims (not just closed claims) to be reported annually to the Commissioner of Insurance. The bill requires certain additional data to be submitted including the amount of attorney's fees and expenses paid and reserved, the date the claim was reported to the company, the date the loss occurred, the date the claim was closed, the date and amount of the initial reserve, the reserve valued at the end of the current calendar year, and the amount of the loss paid by the insurer if different from the amount of settlement or judgement awarded to the claimant.

The new law states that statistical summaries and individual closed-claim reports shall be a matter of public record, but that individual open-claim reports shall not be a matter of public record. The law also includes a provision that the date and amount of the initial reserve and the reserve valued at the end of the current calendar year shall not be disclosed to the public if so requested by the reporting insurer.

## House Bill 1925

### Recodification of Title 46.1

This bill is the recodification of the Motor Vehicle Code (Title 46.1). The new code title is 46.2. This code was revised to remove ambiguities, simplify language and structure, and improve the clarity of the law. A cross-reference table of new and old Code sections is found in House Document No. 42.

## House Bill 1955

### Cancellation and non-renewal of commercial auto policies

This bill amends § 38.2-231 (Notice of cancellation and refusal to renew) by requiring insurers of commercial automobile policies to meet the same cancellation and non-renewal notice provisions required for other commercial liability policies. In addition, the notice of cancellation or non-renewal of a commercial automobile policy must advise the insured of the availability of coverage through the V.A.I.P. (assigned risk plan); and the policy may not be terminated solely because of the lack of supporting business or the potential for acquiring it. The bill also requires insurers of commercial automobile

# State Corporation Commission

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policies to meet the same notification provisions as required for other commercial liability policies when rates are being increased by more than 25%. The law further provides that the insurer must keep a copy of the lienholder's notice of cancellation, refusal to renew, or increase in rate. Proof of mailing must also be retained as required by the section.

## House Bill 1967 (Effective January 1, 1990)

### Notice of optional auto liability insurance coverage

This bill amends §§ 38.2-2201 and 38.2-2202 pertaining to the notice of optional medical expense coverage. The new law changes the time period within which all reasonable and necessary medical expenses may be incurred in order to be reimbursed under this coverage. Under the new law, the expenses must be incurred within three years after the date of the accident. (The old law set the time limit at two years.) The law provides that all original or renewed policies issued or delivered on or after January 1, 1990, must contain the new notice provision. We interpret this to mean that all policies effective on or after January 1, 1990, must contain the new notice provision.

## House Bill 1986

### Medical malpractice review panels

This bill amends § 8.01-581.1 of the Civil Remedies Code pertaining to medical malpractice review panels and the arbitration of malpractice claims. The definition of "health care provider" is expanded to include a professional corporation, all of whose shareholders or members are licensed to provide health care or professional services as a physician, hospital, dentist, pharmacist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist or assistant, clinical psychologist, or HMO.

### Life and Health

## House Bill 1024

### Mandated provider list to include clinical nurse specialist

This bill amends § 38.2-3408 of the accident and sickness chapter and § 38.2-4221 of the health services plan chapter to provide that a clinical nurse specialist who renders mental health services must be reimbursed by an insurer or health services plan if the clinical nurse specialist (CNS) provides a covered service that can legally be performed by that provider (CNS). The bill defines CNS in Title 54.1.

## House Bill 1195

### Mandated provider list to include audiologists/speech pathologists

This bill amends § 38.2-3408 of the accident and sickness chapter and § 38.2-4221 of the health services plan chapter to provide that a licensed audiologist/speech pathologist must be reimbursed by an insurer or health services plan if the audiologist/speech pathologist provides a covered service that can legally be performed by that provider.

## House Bill 1265

### Pre-need contracts

This bill amends one section of the insurance code (§ 38.2-4021) and adds Article 5 to the funeral directors and embalmers code along with changes to §§8.01-512.4, 37.1-142, 54.1-2800, and 54.1-2803 through 54.1-2807 of the Code of Virginia. This bill prescribes regulations for pre-need funeral contracts and pre-need funeral trust accounts. The bill also provides for disclosure requirements.

## House Bill 1449

### Mandated benefits for mammograms

This bill amends and re-enacts §§ 38.2-3607 and 38.2-4319 and adds § 38.2-3418.1 to require that insurers, health services plans and health maintenance organizations offer coverage for mammograms for policies delivered, issued for delivery or renewed after January 1, 1990. The requirement applies to all individual and group accident and sickness policies and contracts and specifically states that individual and group Medicare supplement policies are included. The bill defines the term "mammogram" and includes requirements relating to who should perform, interpret, and order the mammogram. The bill by reference, includes standards for the equipment to be used and the retention of the film. The bill also provides that mammograms shall be offered biannually to persons 40-49; annually to those over 50 and one mamogram shall be covered for persons 35-39. The mammogram benefit may be limited to \$50 and is subject to the same dollar limits, deductibles and co-insurance factors as for physical illness generally.

## House Bill 1575

### Subrogation

This bill amends and re-enacts § 38.2-3405 of the accident and sickness insurance chapter. The bill provides that an insurance policy, or subscription contract or health services plan cannot require a beneficiary to sign an agreement requiring the beneficiary to repay the company or plan for any benefits recovered from any other source. The provision does not apply to benefits paid by Worker's Compensation Coverage or state or federal programs. It does not apply to coordination of benefits provisions of two or more coverages that pay for the same claim.

## House Bill 1869

# State Corporation Commission

## Credit insurance age limit extended

This bill amends § 38.2-3708 of the Credit Life and Accident and Sickness Chapter to provide that insurers must offer credit life insurance to debtors who are up to 70 years old by the maturity date of the debt. The present requirement is to offer the coverage to debtors who are up to 65 years old by the maturity date.

## House Bill 1971

## Commission may promulgate regulations to govern AIDS and HIV virus underwriting practices, advertising practices, claims practices, policy provisions and other practices

This bill amends and re-enacts § 38.2-501 of the Unfair Trade Practices Chapter, § 38.2-3401 of the Accident and Sickness Insurance Chapter, § 38.2-4214 of the Health Services Plan Chapter, § 38.2-4319 of the Health Maintenance Organizations Chapter, and § 38.2-4509 of the Dental or Optometric Services Plan Chapter. The bill also adds § 38.2-3100.1 to the Life Insurance Chapter. The bill clarifies that the Unfair Trade Practices Act applies to individual and group contracts, certificates and evidences of coverage including but not limited to the types of insurers and plans already listed. New § 38.2-3100.1 provides that life insurance and annuity contracts can only be issued as group or individual contracts. Section 38.2-3100.1 also provides that the Commission may promulgate necessary or appropriate regulations to govern advertising practices, underwriting practices, policy provisions, claim practices or other practices with regard to group and individual life insurance and annuities for AIDS and the HIV Virus. Section 38.2-3401 is amended to include the same authority with regard to individual and group accident and sickness policies. Sections 38.2-4214, 38.2-4319, 38.2-4509 are amended to clarify that the language in § 38.2-3401 applies to health services plans, HMOs and dental and optometric services plans.

## House Bill 1988

## HMO discrimination against pharmacists

This bill amends § 38.2-4312 of the Code of Virginia, to prohibit Health Maintenance Organizations from unreasonably discriminating against pharmacists when contracting for specialty or referral practitioners or providers, provided the plan covers services which the members of such classes are licensed to render.

## Senate Bill 729

## Medicare supplement policies

This bill amends and re-enacts § 38.2-3604, adds §§ 38.2-3608 and 38.2-3609, and repeals 38.2-3602.

The repeal of § 38.2-3602 changes the loss ratio required for group medicare supplement policies offered to

individuals through the mails or by mass media advertising. The loss ratio required will be 75%. The bill provides that all Medicare Supplement policies must include a 30-day free look. Companies are also required to file all advertisements for Medicare Supplement policies with the Commission prior to use. The bill also provides that the Commission may issue rules to establish claims payment requirements.

## Insurance Agents

## House Bill 1633

## Licensing of agents

This bill amends and re-enacts §§ 38.2-1814, 38.2-1814.1, 38.2-1816, 38.2-1817, 38.2-1819, 38.2-1822, 38.2-1830 and 38.2-1836 of the Insurance Agents Chapter. Most of these amendments clarify existing requirements as to time limits between dates of satisfaction of prelicensing requirements and date licenses must be obtained; or modifying or, deleting wording due to the use of an automated prelicensing examination service. In addition, the bill removes the requirement that title insurers annually supply the Commission with a list of their appointed agents. The bill also clarifies the relationship between temporary licenses and appointments made under such licenses. Finally, the bill requires agents to notify the Commission of any assumed or fictitious names under which they are conducting business, and to again notify the Commission at such time as the assumed or fictitious name is no longer being used.

## Senate Bill 542

## Notice of claim or suit

This bill amends § 38.2-1801 of the Agents Chapter to clarify that for policies of life or accident and sickness insurance and annuities and variable annuities notice of claim or suit must be given to insurers at the home office address shown on the policy.

## Financial Regulation

## House Bill 1335

## Prohibition against administrator & service company affiliation

This bill amends the Code of Virginia by adding a section numbered 65.1-104.3 to prohibit any employee, officer, director, or any person with a direct or indirect interest in any service company which provides services for a group self-insurance association from acting as administrator of such group self-insurance association.

This bill also prohibits any person, firm, or corporation acting as an administrator from also being an employee, officer, or director of, or having any direct or indirect financial interest in any service company of such group

# State Corporation Commission

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self-insurance association.

This bill has no effect on extension or renewal contracts for services as an administrator or service company. It will only affect those contracts entered into after January 1, 1989.

## House Bill 1636

### Mortgage guaranty contingency reserves

This bill amends § 38.2-1315 of the Code of Virginia pertaining to mortgage guaranty insurance contingency reserves. This bill allows industry more flexibility in utilizing contingency reserves for loss payments. Industry will no longer need the approval of the Commission to utilize the reserve funds, so long as the incurred losses in any twelve-month period, less any amounts already released from the contingency reserve during that period, exceed 35% of the corresponding earned premium.

## House Bill 1791

### Affiliate transactions

This bill amends §§ 38.2-1331 and 38.2-4214 of the Code of Virginia and adds in Chapter 42 of Title 38.2 an article numbered 2, relating to corporate activities of nonstock corporations offering health services plans.

This bill will give the Commission regulatory oversight in affiliate transactions of nonstock corporations offering health service plans (i.e. BC/BS). The Commission will be authorized to set standards for transactions with affiliates and have oversight over the terms and conditions of transactions by a nonstock corporation offering health services plans and its affiliates.

Nonstock corporations that are members of a holding system will be required to register with the Commission. Written approval of the Commission will be required for any transaction between a nonstock corporation licensed under this chapter and any affiliates, if such transaction involves more than 3/4 of 1/0% of admitted assets or 5.0% of surplus as of the immediately preceding December 31, whichever is less.

## House Bill 1798

### HMO insolvency plans

This bill amends §§ 38.2-4310, 38.2-4311 and 38.2-4317 of the Code of Virginia and adds a section numbered 38.2-4317.1 to provide enrollees additional protection against the insolvency of an HMO.

This bill will require that each HMO have a plan for handling insolvencies which allow for continuation of benefits for the duration of the contract period for which premiums have been paid.

In the case of HMO insolvency, there would be a required thirty-day open enrollment period of all other carriers that participated in the open enrollment process with the insolvent HMO.

This bill would also require a mandatory hold harmless agreement, and establish an insolvency deposit assessment which would require all HMO's to contribute in the event of an insolvency.

The Commission may also require that an HMO have a special deposit to secure non-participating providers.

## STATE CORPORATION COMMISSION

AT RICHMOND, JULY 21, 1989

COMMONWEALTH OF VIRGINIA ex rel.

CASE NO. INS890007

## STATE CORPORATION COMMISSION

Ex Parte: In the matter of adopting revised Rules Governing Insurance Premium Finance Companies

### ORDER ADOPTING REGULATION

WHEREAS, pursuant to an order entered herein January 13, 1989, the Commission's Hearing Examiner conducted a hearing on February 16, 1989, for the purpose of considering comments of interested persons concerning the adoption of a revised regulation proposed by the Bureau of Insurance and entitled "Rules Governing Insurance Premium Finance Companies";

WHEREAS, on April 14, 1989, the Commission's Hearing Examiner filed his report in this matter; and

THE COMMISSION, having considered the evidence and the report of its Hearing Examiner, concurs with the findings and recommendations of its Hearing Examiner and adopts his conclusions as its own,

THEREFORE, IT IS ORDERED that the proposed revised regulation entitled "Rules Governing Insurance Premium Finance Companies,"; as amended, which is attached hereto and made a part hereof, should be, and it is hereby, ADOPTED, to be effective September 1, 1989.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to David F. Peters, Esquire, Hunton & Williams, P.O. Box 1535, Richmond, Virginia 23212; Brain G. Appels, Esquire, General Counsel, Tifco, Inc., 658 Kenilworth Drive, Towson, Maryland 21204-2374; Richard P. Keating, Esquire, General Counsel, AFCO Credit Corporation, Ten Hanover Street, New York, New York 10004; Alfred E. Bittner, Corporate Credit Manager, Agency Services, Inc., P.O. Box 17335, Baltimore, Maryland 21203;

# State Corporation Commission

Tim Walker, 7702 Balla Court, Richmond, Virginia 23228; and the Bureau of Insurance in care of Deputy Commissioner Robert A. Miller who shall forthwith mail a copy of this order together with a copy of the regulation to every licensed insurance premium finance company and file with the Clerk of the Commission an affidavit of compliance with the mailing requirements.

## RULES GOVERNING

### INSURANCE PREMIUM FINANCE COMPANIES.

#### Section 1. Licensing.

##### § 1.1. Application for license.

Each application for a license or the renewal of a license as an insurance premium finance company shall be made on the applicable form prescribed and provided by the Commission. It shall be completed in accordance with the instructions accompanying the form and shall be submitted with the applicable fee and all required documents.

##### § 1.2. Individual questionnaire.

Each application for a license as an insurance premium finance company shall be accompanied by an individual questionnaire on a form prescribed by the Commission. The questionnaire shall be duly completed and executed in the following manner:

(a) in the case of a sole proprietor, by the sole proprietor;

(b) in the case of a partnership, by each partner; or

(c) in the case of a corporation, by each officer, director, and any individual who owns or controls directly or indirectly more than 10% of the outstanding voting securities.

Individual questionnaires need not be completed and filed with applications for renewal of a license if the person required to file an individual questionnaire certifies under penalty of perjury that no change has occurred requiring an answer different from any given on the individual questionnaire last filed with the Commission.

##### § 1.3. Transfer of licenses.

Licenses are not transferable.

##### § 1.4. Changes in composition of licensee.

When a person ceases to be an officer, director, or ceases to have ownership or control of more than 10% of the outstanding voting securities of a licensed corporation or when a person becomes an officer, director, or owner or controller of more than 10% of the outstanding voting securities of a licensed corporation, the Commission shall,

within thirty (30) days after the event, be notified of the facts in writing in detail. The notice shall be accompanied by a duly completed individual questionnaire for any new officer, director, or owner or controller of more than 10% of the outstanding voting securities. Each licensee shall supply such additional information as the Commission may request.

##### § 1.5. Changes in condition.

The Commission shall, within ten (10) days after the event be advised of the facts in writing in detail if any licensee or any person who is a partner of a licensee or who is an officer, director, or who owns or controls more than 10% of the outstanding voting securities of a licensee shall be:

(a) convicted of any crime (other than a misdemeanor resulting from the operation of a motor vehicle); or

(b) refused a license as an insurance premium finance company or an insurance agent or agency in any other jurisdiction; or

(c) declared bankrupt, or who has petitioned for the protection of the National Bankruptcy Act, or has made an assignment for the benefit of creditors.

##### § 1.6. Waiver.

The Commission may waive as to any insurance premium finance company any or all of the provisions of sections 1.2 to 1.5, inclusive.

##### § 1.7. Prohibited license.

No license to engage in the business of financing premiums shall be issued to any individual, partnership, or corporation that is a licensed insurance agent. Nothing in this section shall be deemed to invalidate licenses for premium finance and insurance agent businesses issued to a single individual, partnership, or corporation prior to the effective date of this Regulation.

#### Section 2. Forms.

##### § 2.1. Required forms.

Every insurance premium finance company shall prepare and file with the Commission for its approval the following forms:

(a) Insurance Premium Finance Contract;

(b) Payment Book;

(c) Notice of Overdue Payment or Intent to Cancel;

(d) Notice of Cancellation;

(e) Rate Chart or Charts.

# State Corporation Commission

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All forms shall be printed in 10-point type or greater.

## § 2.2. Optional forms.

Every insurance premium finance company shall file with the Commission all other forms that it prepares for delivery or mailing to a customer or an insurer. This Regulation shall not apply to correspondence except for form letters designed for repeated use.

## § 2.3. Identification of forms.

All forms shall disclose:

(a) the name of the licensee exactly as it appears on the license, provided that a licensee may use a legally filed assumed or fictitious name. The licensee shall provide the Bureau of Insurance with proof that an assumed or fictitious name has been legally filed in the appropriate circuit court before the assumed or fictitious name may be used on an insurance premium finance contract;

(b) the street address of the licensee; and

(c) the telephone number of the licensee.

## § 2.4. Filing of forms.

Every form shall be filed with the Commission in duplicate. If the form is approved, the Commission shall stamp both copies APPROVED with the date of approval. One copy, so stamped, will be returned to the licensee, and the other copy will be retained for the Commission's files.

## § 2.5. Unapproved forms.

No licensee shall make use of any form that has not been given final approval pursuant to section 2.4 of this Regulation. In no instance shall tentative approval of a form be deemed to constitute final approval.

## § 2.6. Prohibited provisions.

Under no circumstances shall any insurance premium finance contract provide for:

(a) the financing of any additional premium under any insurance contract listed thereon without either the written consent of the insured or payment of the appropriate down payment by the insured, such consent being given or such downpayment being made at the time such additional premium is financed;

(b) the financing of notary public fees, fees for obtaining records of the Department of Motor Vehicles, motor club membership fees, or any other charges, costs, or fees other than premiums, taxes, or other fees relative to the policies of insurance.

## § 2.7. Form blanks.

No licensee shall accept any form which is signed in blank or is lacking any information required by such form except that if the insurance policy has not been issued at the time the insured signs the agreement, the policy number may be left blank and inserted on a copy of the agreement after the insurance policy has been issued. In all cases, the name of the insurer, broker, or residual market facility must be shown. A legible copy of the insurance premium finance contract shall be delivered to each insured at the time the contract is signed.

## § 2.8. Power of attorney.

Any power of attorney authorizing a licensee to cancel an insurance policy shall appear on the face of the insurance premium finance contract.

## Section 3. Records.

### § 3.1. Separation of records.

If the licensee engages in any other business, the records relating to the insurance premium finance business shall be kept separate from the records of any other business.

### § 3.2. Preservation of records.

Every insurance premium finance contract, all documents relating thereto, and copies of all documents delivered to an insured, shall be retained so as to be readily available for inspection at all reasonable hours during the term of the contract and for a period of two years thereafter.

### § 3.3. Required records.

All records shall be maintained at a single location as designated in the application for license or at such other single location as the licensee shall designate by written notice to the Commission. Each licensee shall keep records for each insurance premium finance contract, other than those acquired as security for a debt, that shall include the following information:

- (a) Date of contract or of acquisition;
- (b) Name and address of insured;
- (c) Premium for each insurance policy financed;
- (d) Principal balance at acquisition;
- (e) Amount of service charge;
- (f) Time balance;
- (g) Total finance charge;

(h) Annual percentage rate;

(i) Number, interval and amount of payments;

(j) Distribution of the proceeds showing the date, amount, purpose and name of all persons to whom any part of the proceeds was paid.

## Section 4. Cancellation of insurance.

### § 4.1. Authority and conditions required.

No licensee shall cancel a policy of insurance unless the insurance premium finance contract contains an authorization for the licensee to cancel any insurance policy listed therein. Except as provided in section 4.3. of this Regulation, no licensee shall cancel a policy of insurance for any default other than a default in the payment of money due the licensee or a default consisting of the transfer of the policy of insurance to a third party.

### § 4.2. Notice of intent to cancel.

No notice of intent to cancel may be given prior to default in the insurance premium finance contract. In no event shall the date of cancellation of any insurance policy be effective prior to forty-five (45) days following the days of execution of the insurance premium finance contract. Prior to any cancellation, the licensee shall advise the insured and the agent by mail of its intent to cancel insurance policies referred to in the notice, unless all payments in default are received within ten (10) days of the date the notice is mailed; or, if the default consists of a transfer of the policy, unless the transferee, within ten (10) days of the date the notice is mailed, assumes or discharges the transferor's debt to the licensee.

### § 4.3. Notice of cancellation.

After providing the appropriate notice of intent to cancel, the licensee may exercise its right to cancel if the default has not been cured or if the additional premium has not been financed or otherwise paid. A copy of the notice of cancellation shall be mailed to the insured and insurance agent with an effective date of cancellation no earlier than five (5) days after its mailing. No later than five (5) days after mailing a copy of the notice of cancellation to the insured and insurance agent, the licensee shall send the notice of cancellation to the insurer, provided the default remains uncured. If more than one insurance policy is listed on an insurance premium finance contract, a licensee shall not cancel one insurance policy without cancelling all such policies listed thereon.

### § 4.4. Cancellation.

Every insurer, upon receipt of such notice, shall, subject to section 4.5 hereof, cancel such insurance policy or policies as of the date specified in such notice and shall promptly notify by mail the insured, the insurance agent

and the licensee of such cancellation. Such notification shall include but not be limited to the following information:

(a) Insured's complete name;

(b) Producer's name;

(c) Policy number;

(d) Effective date of the policy;

(e) Effective date of cancellation;

(f) Total policy premium;

(g) Reason for cancellation.

No insurer shall cancel any insurance policy when notified by the licensee unless such insurer has received a copy of a power of attorney signed by the insured authorizing such cancellation. No insurer shall require the return or surrender of the insurance policy as a prerequisite to such cancellation.

### § 4.5. Additional requirements.

Notwithstanding the provisions of section 4.4., where notice and a period of time is a prerequisite to cancellation under any statutory, regulatory, or contractual restriction, no insurance policy shall be cancelled until the required notice shall have been given by the insurer and the requisite period of time shall have elapsed, and the insurer shall then cancel the policy as soon as it legally may.

### § 4.6. Return of premiums.

Except as provided in Virginia Code section 38.2-1806, upon any cancellation whenever the insurer has received notice that the return premium has been assigned to a licensee, the insurer shall return any gross unearned premium to the licensee within 60 days after the effective date of cancellation or within 60 days after the completion of any audit whichever is later. If the amount returned is in excess of the amount due the licensee, the excess shall be remitted within ten (10) business days by the licensee to the insured.

No insurer or agent shall apply any return premium due as a result of a cancellation of a particular policy to any outstanding balance on another policy of the insured.

### § 4.7. Multiple insureds. -

When there is more than one insured, all notices required hereunder shall be given to each insured, unless they reside at the same address.

### § 4.8. Life insurance.

# State Corporation Commission

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The provisions of Part 4 hereof shall not apply to the financing of life insurance and annuity premiums by licensees.

## Section 5. Surety bond.

### § 5.1. Requirement.

No application will be considered unless the applicant files with the Commission a bond in the amount of fifty-thousand (\$50,000) dollars in the form prescribed by and with a corporate surety acceptable to the Commission and conditioned to protect its customers and the public in the manner prescribed by law. This bond must remain in effect at all times.

## Section 6. Annual report.

### § 6.1. Requirement.

Each licensee shall furnish to the Commission on forms prescribed by the Commission an annual report of all business conducted in the Commonwealth of Virginia on or before March 1 of each year.

### § 6.2. Extension of filing time.

At the written request of the licensee, the Commission may extend a licensee's deadline for filing an annual report. The deadline shall not be extended beyond May 1 of the year in which the report is due.

## Section 7. Miscellaneous.

### § 7.1. Agent of licensee.

Any insurance agent or broker or any person who, with the authorization or consent of a licensee, shall take any action on behalf on such licensee shall be deemed to be an agent of such licensee as to such action. This supersedes any contrary language in the insurance premium finance contract.

### § 7.2. Violations by insurance agents.

Any licensee having knowledge of any violations of law or irregularities committed by an insurance agent or agency shall promptly report such violations or irregularities to the Commission. Violations and irregularities required to be reported shall include, but not be limited to, issuance of dishonored checks, failure to promptly refund unearned premiums and failure to promptly deliver any monies or documents required to be delivered to a licensee.

### § 7.3. Refunds.

In the event of prepayment of an insurance premium finance contract, interest shall be refunded to the insured on either a short-rate or a pro-rata basis. Upon receipt from an insurer of the gross unearned premium, a

licensee shall refund to the insured within ten (10) business days of such receipt any premium that is due the insured.

### § 7.4. Unclaimed refunds.

All refund checks payable to an insured shall be mailed to the insured's last known address. If a refund check is returned to a licensee unclaimed, the licensee shall make a diligent effort to locate the insured. Each licensee shall maintain a separate account for unclaimed refunds due insureds, and the balance of such account, together with a list of the names of such insured(s), shall be reported in the licensee's annual report to the Commission. Whenever funds from such an account are disbursed, the licensee shall retain proof of payment to the insured(s). The requirements of this section are in addition to the requirements of section 55-210.12 of the Code of Virginia relating to disposition of unclaimed property.

### § 7.5. Penalties.

Any company or person violating any provisions of these rules and regulations shall be subject to the penalties provided in sections 38.2-218, 38.1-219, 38.2-4704 and 38.2-4710 of the Code of Virginia to the extent that they are applicable to such company or person.

## STATE CORPORATION COMMISSION

AT RICHMOND, July 21, 1989

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC890014

Ex Parte: In the matter of  
allocating costs pursuant to  
Paragraph 22 of the Experimental  
Plan for Alternative Regulation  
of Virginia Telephone Companies

### ORDER ADOPTING PRINCIPLES AND GUIDELINES

By order of May 4, 1989, the Commission proposed Principles and Guidelines for the allocation of costs between competitive and regulated services pursuant to the provisions of Paragraph 22 of the Experimental Plan for Alternative Regulation of Virginia Telephone Companies (Plan). That order called for comments concerning the proposed cost allocations principles and guidelines to be filed on or before May 19, 1989. That deadline was subsequently changed to May 24, 1989. Comments were received from AT&T Communications of Virginia, Inc. (AT&T), MCI Telecommunications of Virginia, Inc. (MCI), Central Telephone Company of Virginia (Centel), Chesapeake and Potomac Telephone Company of Virginia (C&P), Contel of Virginia, Inc. (Contel), GTE South, United

# State Corporation Commission

Inter-mountain Telephone Company (United), and the Virginia Citizens Consumer Counsel (VCCC). MCI had reserved its right to participate in oral argument on the proposals and comments but, when contacted by the Staff, stated that they did not desire oral argument unless other parties had requested it.

Having reviewed the comments, the Commission is of the opinion that modifications to the Principles and Guidelines set out in Exhibit A to our Order of May 4, 1989 should be made. The revised Principles and Guidelines which we are today adopting are set out and attached hereto as Exhibit A. Also attached, as Exhibit B, are Cost Allocation Manual Content and Audit financial and accounting reporting requirements which will assist the companies in compiling and retaining necessary data.

Throughout this proceeding the Commission has been guided by the basic objectives of accuracy, fairness, and administrative ease. These objectives contribute toward our goals of ensuring that monopoly services do not subsidize competitive services, and that the competitive communications markets are fair for all participants. Today the Commission is adopting changes in the guidelines proposed in our May 4, 1989, Order, which we regard as an essential step in our pursuit of these objectives and goals.

The major change in the proposed guidelines and principles involves the allocation of network investment. The Commission is adopting guidelines which specify that this investment shall be allocated according to peak relative-use forecasts, instead of the two-part allocation proposed earlier. The Commission finds that the peak relative-use method will be much easier to administer while providing comparable accuracy.

Aside from minor clarifications, the other change reflected in the principles and guidelines attached hereto is an expansion of the proposed treatment of new competitive services. The Commission finds that reclassified competitive services shall be treated the same as new services as long as their revenue levels remain insignificant.

Another essential part of this proceeding is a determination of the appropriate recognition to be given to the allocations required by the Federal Communications Commission (FCC) in their earlier proceeding, CC Docket 86-111, to implement Part 64 of the Code of Federal Regulations. Our May 4, 1989, Order requested comments on this issue. The Commission finds that the companies' Part 64 allocation procedures shall be accepted as complying with the requirements stated in Paragraph 22 of the Plan insofar as they are applied to services pre-emptively deregulated or recognized by the FCC as never regulated. However, the results of these allocations shall now become subject to the monitoring requirements of Paragraph 16 of the Plan.

The Commission is adopting these principles and

guidelines with the expectation that they will produce reasonable cost allocation results. However, monitoring of results is necessary to determine whether our goals have been met. Paragraph 16 of the Plan provides the mechanism with which these determinations can be made.

## ACCORDINGLY, IT IS THEREFORE ORDERED:

(1) That the Principles and Guidelines attached hereto as Exhibit A together with the Cost Allocation Manual (CAM) Content and Audit Requirements attached hereto as Exhibit B are hereby adopted;

(2) That telephone companies participating in the Plan prepare Cost Allocation Manuals containing detailed procedures in accord with the Principles and Guidelines set out in Exhibits A & B and submit them to the Commission on or before October 2, 1989;

(3) That comments concerning each company's CAM from the parties to this Case will be filed on or before November 1, 1989.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each certificated interexchange carrier operating in Virginia as set out in the Attachment A attached hereto; to the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Tabb, Virginia 23602; Dellon E. Coker, Chief Regulatory Law Office, U.S. Army Legal Services, Agency, JALS-RL, 5611 Columbia Pike, Falls Church, Virginia 22041-5013, Ronald B. Mallard, Director, Department of Consumer Affairs, County of Fairfax, 3959 Pender Drive, Fairfax, Virginia 22030; Mr. Gerald T. Lowasic, P.O. Box 642, Locust Grove, Virginia 22508; Mr. Charles R. Smith, Hello, Inc., 2315 West Broad Street, Richmond, Virginia 23220; Sue D. Blumenfeld, Esquire, and Mary P. Jaffe, Esquire, attorneys for Cable and Wireless Communications, Inc., 3 Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20036; Andrew D. Lipman, Esquire, and Russell M. Blau, Esquire, attorneys for DAVID Systems, Inc., 3000 K Street, N.W., 3rd Floor, Washington, D.C. 20007; Laura Burley, Cable and Wireless Communications, Inc., 1919 Gallows Road, Vienna, Virginia 22180; Nancy J. Rollin, Manager, Legal and Regulatory Department, MCI Telecommunications Corporation, 601 South 12th Street, Arlington, Virginia 22202; Warner F. Brundage, Jr., Esquire, C&P Telephone Company, 703 East Grace Street, Richmond, Virginia 23219; Dallas H. Reid, Director, Regulatory/Industry Relations, Contel of Virginia, Inc., 1108 East Main Street, Suite 1108, Richmond, Virginia 23219; C. Dean Kurtz, Government and Industry Relations Manager, Central Telephone Company of Virginia, 2307 Hydraulic Road, P.O. Box 6788, Charlottesville, Virginia 22906; Warren C. Saunders, Director, Government Affairs, United Intermountain Telephone Company, 1001 East Broad Street, Richmond, Virginia 23219; N. L. Farmer, Director - Revenue and Earnings Management, GTE South, P.O. Box 1412, 4100 North Roxboro Road, Durham, North Carolina

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27702; Wilma R. McCarey, Esquire, AT&T Communications, 3201 Jermantown Road, Room 3A2, Fairfax, Virginia 22030-2087; Rita A. Barmann, Esquire, U.S. Sprint Communications Company, 1850 M Street, N.W., Washington, D.C. 20036; and Richard Gabel, Virginia Citizens Consumer Counsel, 3401 South Utah Street, Arlington, Virginia 22206; to the Commission's Office of General Counsel; and to the Commission's Divisions of Communications, Accounting and Finance, and Economic Research and Development.

Exhibit A

CASE NO. PUC890014

## COST ALLOCATIONS PURSUANT TO PARAGRAPH 22 OF THE EXPERIMENTAL PLAN

### Principles and Guidelines

#### I. General Principles and Guidelines

The allocations shall be based upon a "fully distributed costs" methodology. That is, all costs incurred by telephone companies and recorded on their Virginia books of account must be distributed between competitive and regulated services.\*

\* Competitive services are (1) those listed as Actually Competitive on Appendix A to the Final Order in Case No. PUC880035 (which is included at the end of this exhibit) and (2) any future additions. Regulated services are all others.

##### A. General Principles

The basic allocation principles are as follows:

- (1) Costs shall be directly assigned when feasible. Directly assignable costs are those incurred exclusively for providing a particular service(s).
- (2) When direct assignment is infeasible, direct attribution shall be attempted. Directly attributable costs are the costs of shared resources that can be allocated using direct measures of cost causation. Special studies shall be used to develop the appropriate direct measures of cost causation.
- (3) Costs that cannot be directly assigned or attributed shall be indirectly attributed when possible. Indirectly attributable costs are the costs of shared resources which have no directly measurable link to the services' provision; therefore, they require indirect measures of cost causation and/or benefits for allocation purposes. Indirectly attributable costs shall be accumulated for allocation purposes in homogeneous groupings having similar causal/beneficial characteristics.
- (4) Costs of shared resources for which none of the

above causal/beneficial relationships exist are unattributable. These costs shall be allocated by using the general allocator specified in the specific guidelines in Part II, A, (3).

##### B. General Guidelines

An analysis in appropriate detail shall be performed on each account and subaccount to begin the process of classifying the costs according to the aforementioned principles. Each account and subaccount shall be reviewed to determine the nature of the cost.

In the case of assets, the analysis shall consider at a minimum:

- (1) the type of asset (e.g., outside plant cable, circuit equipment, computer hardware);
- (2) the use of the asset (e.g., switching, transmission, maintaining billing information);
- (3) the applicability and/or benefit of the asset to competitive services;
- (4) the cost-causing characteristics of the asset (e.g., volume sensitive, software-driven).

In the case of expenses, the analysis shall consider at a minimum:

- (5) the nature of the function being performed or expense incurred (e.g., selling, maintaining outside plant, supplies);
- (6) the manner in which the function is being performed (e.g., dedicated work group, multiple workgroups, as one function among many performed by a workgroup);
- (7) the purpose for which the cost was incurred; and
- (8) the behavioral characteristics of the cost (e.g., the related costs are sensitive to the level of usage of the service).

#### II. Specific Guidelines

##### A. Account Related

The detailed procedures shall reflect the following specific guidelines. Each company may accomplish the objectives of these guidelines in the most convenient way. Any study required to develop a reusable allocation factor(s) must be updated at least once per year. All allocations shall be done on a total company cost basis. The total company results shall be separated between the interstate and intrastate jurisdictions according to Part 36 of the Code of Federal Regulations, when required for reporting purposes.

## (1) Network Investment (Central Office Equipment and Outside Plant)

This investment, like all other costs, shall be directly assigned when possible. If direct assignment cannot be done, directly attributable network investment shall be allocated according to peak relative-use forecasts, and indirectly attributable investment shall be allocated as appropriate according to these principles and guidelines.

Peak relative-use forecasts are special studies which determine the highest annual relative use proportion expected to be achieved by competitive services during a future period equal to the normal capacity planning interval for the kind of investment under study. Forecasts shall be prepared on a calendar year basis for the units upon which the investment allocation will be based; for example, loops shall be forecasted for subscriber outside plant investment allocations, Dial Equipment Minutes shall be forecasted for use-sensitive switching investment allocations, line terminations shall be forecasted for line-sensitive switching investment allocations, etc. These forecasts, like other special studies, shall be updated annually. However, the allocation proportion may be adjusted only under the conditions described below.

Actual relative use shall be continually measured to determine when future allocation adjustments are required. Such adjustments shall occur only (1) when an updated forecast indicates an increase in the competitive proportion, (2) when a calendar year's measured relative-use proportion for competitive services exceeds the corresponding forecasted peak relative-use proportion, or (3) when necessitated by an adaptation(s) to changing conditions pursuant to part (e) of Paragraph 22 of the Experimental Plan.

When any measured relative-use proportion for competitive services during a calendar year exceeds the forecasted proportion used for that year, a new forecast must be prepared to determine an increased peak relative-use proportion for future allocations. To compensate for the past use of investment allocated to regulated services, the cost allocations for all affected past periods must be recalculated using the newly determined proportion.

## (2) Other Investments

These investments may be in supporting equipment for network investment; e.g., poles, conduit, buildings, etc.; or they may be personnel-supporting investment; e.g., vehicles, computers, furniture, etc.; or other kinds. Their allocations shall follow the costs they are supporting. For example, poles, conduit, and central office buildings shall follow the associated network investment, and motor vehicles for transportation of people shall follow the associated personnel costs.

## (3) Operating Expenses

Each operating expense account shall be analyzed to determine how much of the expense is attributable to one or more of the following categories: (1) expenses necessary to support and maintain currently active services, (2) expenses for planning and developing future services and technology, and (3) expenses necessary for the general management of the business. Examples of the first category are plant-specific expenses, service order expenses, product management expenses, etc. Examples of the second category are fundamental engineering planning, central staff research and development, etc. Examples of the third category are executive and legal expenses.

These expenses shall be directly assigned where it can be determined that they are caused by or benefit only regulated or competitive services. Allocations shall be the second choice.

The first category shall be allocated according to the related cost being supported (investment, in the case of plant-specific expenses), or the related output produced by the expenses (service orders, analysis of services in the case of product management, circuit designs, labor hours, etc.), with the output units appropriately weighted to reflect differing unit-costs, where necessary. An exception to this guideline shall be applied to central office software expenses. Costs of initial software shall be allocated as above; updates shall be allocated according to an analysis of the benefits realized.

The second category, planning and developmental, shall be allocated according to analyses of the purposes of the work. This shall include specific identification of projects performed by centralized staffs who have costs that are paid by the local telephone companies or allocated to them. The allocation decisions in these analyses should be based on the service-category definitions in Paragraph 6 of The Experimental Plan.

The third category shall be allocated according to a general allocator that is an equally weighted average of the allocations of revenues, expenses, and investment.

## (4) Other Expenses, Taxes, and Income Charges

These costs shall be allocated according to their cause. For example, property taxes shall be allocated according to the associated investment, interest expense according to the associated investment, etc.

## B. Service Related

The detailed procedures shall incorporate techniques to ensure that the following guidelines are reflected in the allocations of Directly Attributable and Indirectly

# State Corporation Commission

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Attributable costs, regardless of the accounts in which they appear.

## (1) Yellow Pages

Determining the costs of producing the white page portion of directories shall be the basic allocation objective, with the remaining directory-related expenses allocated to Yellow Pages.

Care shall be exercised to ensure that all service order expenses caused by Yellow Pages are captured. This includes the effort required to determine the proper classification of business subscribers, orders taken for Yellow Page ads, and any other activity benefiting Yellow Pages.

Costs of other activities shall be carefully analyzed to identify any that are causally linked and/or provide benefits to the Yellow Page operations.

## (2) Customer Premises Equipment & Inside Wire

The direct labor expenses for these competitive services shall be determined as the amount remaining after a specific determination of the incidental expenditures for regulated services. In other words, direct labor shall be assumed to be competitive, with the regulated portion determined on an exception basis.

Labor expenses allocated to competitive services shall be properly loaded for associated benefits, payroll taxes, supervision, clerical support, vehicles, buildings, communications services, and anything else that supports or benefits these operations.

Other associated expenses, such as materials, billing, advertising, and so forth, shall be allocated according to appropriate measures of cost causation or benefit.

## (3) CENTREX (Intercom & Features)

Because switching equipment is shared by CENTREX and regulated services, the line-sensitive investment shall be allocated according to the peak relative-use forecast of lines served; and the use-sensitive investment shall be allocated according to the peak relative-use forecast of Dial Equipment Minutes produced by each service, appropriately weighted to reflect any additional memory and call-processing capacity required by CENTREX features. When it is infeasible to measure CENTREX Dial Equipment Minutes separately, they may be estimated based on the busy hour CCS of the CENTREX lines, with the assumption that total use is six times the busy-hour use (unless a more accurate estimate can be substantiated). These requirements require that switching equipment for CENTREX be allocated on a location specific basis.

Outside plant investment required for CENTREX loops shall be allocated according to the peak relative-use forecast of CENTREX intercommunicating loops to total loops. CENTREX intercommunicating loops may be determined as total CENTREX loops less the number of loops that would be required to supply the necessary trunks to carry the busy-hour CENTREX exchange-network traffic. Where the traffic cannot be measured, it may be estimated. Adjustments for CENTREX loop length are not appropriate.

## (4) Billing & Collection (Processing, Rendering and Inquiry)

Costs of billing and collecting for LECs' own competitive services are, of course, administrative costs that shall be allocated in connection with studies involving those competitive services. Billing and collection as discussed herein involves only the services rendered to persons other than the LEC itself.

The primary input to billing and collection allocations shall be studies that first divide these costs into service groups. Care must be exercised to ensure the inclusion of all costs that benefit this service, such as service-order related costs. Total message toll, WATS and WATS-like costs shall then be allocated between competitive (interLATA) and regulated (intraLATA) based on the relative numbers of messages billed. Private line (Channel services) billing costs shall be allocated based on the relative numbers of bill pages and/or output billing entries containing charges for private line services.

Billing and collection costs for products/services other than those covered by the preceding paragraph shall be allocated to competitive services.

## (5) Mobile and Paging Services

The plant involved for these services shall be determined by specific analysis of property records. Other costs should be allocated as appropriate.

## (6) Speed Calling

Use-sensitive switching investment is the only direct investment that shall be allocated to this service. This allocation shall be based on a determination of the average additional memory assigned and central-processor use required to service speed calling equipped lines, compared to unequipped lines; then, the allocation to competitive services shall be based on the number of lines equipped for speed calling. CENTREX lines may, of course, be ignored because their feature costs are covered in the CENTREX allocations.

Other costs shall be allocated as appropriate.

## (7) Apartment Door Answering

This service shall be covered by a specific analysis of the involved plant to determine investment. Other costs shall be allocated as appropriate.

(8) C.O. LANs

Central office equipment shall be allocated by a direct analysis of the involved plant. Outside plant investment in the associated loops is assumed to be completely assigned to competitive services in CENTREX-service-driven studies where the LAN customers are also CENTREX customers. Where the LAN customers are not also CENTREX customers, 1/2 of the loop investment shall be allocated to competitive services when the LAN is combined voice and data. Where LAN customers use data-only loops, all the associated loop investment shall be allocated to competitive services.

Other costs shall be allocated as appropriate.

(9) New or Reclassified Competitive Services

Until the end of the calendar year that any competitive service is introduced or reclassified as competitive, the allocated costs shall be based on a unit cost determined at the time of service introduction. Unit costs may be used longer, provided that the new service's revenue is less than .01% of total company revenue. The unit upon which this cost is based shall be the one which best measures resources required for the service, e.g., lines equipped, messages, minutes-of-use, etc. Moreover, this unit cost shall recognize any capacity additions or nonrecurring expenses (unless directly assignable) necessary to introduce the service, and ensure that the service bears the entire cost of such expenditures. Other costs shall be allocated to the service's unit cost in the same proportions they would be if the service were already a part of the current ongoing mix of services. All costs allocated to the service but simultaneously appearing in various current accounts shall, of course, be withheld from other allocations involving those accounts.

Appendix A

MARKET CLASSIFICATIONS OF LEC SERVICES

Actually Competitive	Potentially Competitive	Discretionary	Basic
1. Yellow Page Advertising	1. Bulk Private Line	1. Non-list & Non-pub Numbers	1. Access to Switched Network (DTLs)
2. Customer Premises Equipment	2. Bulk Special Access	2. Preferred (Vanity) Numbers	2. Exchange Usage
3. Inside Wiring	3. Operator Call Completion Services	3. Additional Listings & Bold Type	3. Switched Access
4. CENTREX Intercom & Features	4. 3-Way Calling	4. Operator Verification & Interrupt	4. MTS/WATS/800
5. Billing & Collection (Processing, Rendering Inquiry)	5. Call Forwarding	5. Call Waiting	5. Basic Service Charges
6. Mobile Services	6. Time-of-Day Service	6. Remote (Fixed) Call Forwarding	6. Optional Calling Plans
7. Paging Services	7. Weather Forecast Service	7. DTMF Signaling (Touch-Tone, U-Touch)	7. CENTREX Exchange Access & Usage
8. Speed Calling	8. C.O. Data Sets	8. B&C Security Functions	8. B&C With DNP
9. Apartment Door Answering	9. Toll Restriction	9. Special Billing Numbers	9. ANI & Recording
10. C.O. LANS		10. Referral Service (customized Intercept)	10. Directory Assistance
		11. Transfer Arrangements	11. Maintenance Visit (Trouble Isolation)
		12. Exclusion	12. "Single" Private Line & Special Access
		13. Call Restriction	13. Operator Service - Emergency & Troubles
		14. Make Busy Arrangements	14. Intercept (Standard)
		15. Break Rotary Hunt	15. White Page Listing
			16. List Service
			17. Number Screening (Selective Class of Call Screening)
			18. FX Service
			19. Public and Semi Public Telephone Service
			20. IXC Coinless Telephone Service
			21. Four-wire Service Terminating Arrangements
			22. Concentrator-Identifier Equipment
			23. Emergency Number "911" Service
			24. Public Data Network
			25. Direct Inward Dialing
			26. Extended Area Calling
			27. Hunting Arrangements
			28. PBX Night, Sunday, etc. Arrangements
			29. Split Supervisor Drops
			30. Identified Outward Dialing

Exhibit B

CASE NO. PUC890014

## COST ALLOCATIONS PURSUANT TO PARAGRAPH 22 OF THE EXPERIMENTAL PLAN

### Cost Allocation Manual(CAM) Content and Audit Requirements

The following procedures are necessary to demonstrate that each company is in compliance with the cost allocation requirements of paragraph 22. As used below, the term 'cost pool' refers to a homogeneous group which can be directly assigned or allocated using the same measure. Cost pools should be determined in accordance with the basic allocation principles set forth in the General Principles section of Exhibit A.

#### I. CAM Content Requirements

The cost allocation manuals should permit a comprehensive understanding of all allocation procedures. At a minimum, the following detail should be included:

- A. The cost allocation manuals should be broken down according to the Uniform System of Accounts (USOA) - Part 32. Each account should be segregated into (a) cost pools for Part 64 allocations (those services which are pre-emptively deregulated or have never been regulated) and (b) cost pools for Paragraph 22 allocations. Each of these procedures must be performed on a total company basis.
- B. A clear description of the composition of each cost pool and the basis on which the cost pool will be allocated.
- C. A clear explanation of the development of special studies employed by the company to allocate costs. For example, include the techniques and the planning period used in peak relative-use forecasts, the sampling techniques used in minutes of use studies, etc.
- D. A procedure which will enable the Company to describe and justify any change in an allocation mechanism which results in a shift in the competitive or regulated allocation of a cost pool by 10% or more.

#### II. Audit Requirements

- A. Records will be retained until the evaluation of the plan is completed.
- B. Each company will maintain fully documented records to enable the Staff to verify the accuracy of each allocation procedure. The Company should maintain the per cost pool and per USOA account.

- C. As a result of this Commission's tentative adoption of Part 64 allocations procedures for pre-emptively deregulated or never regulated services, the Staff must have access to all documents and audit reports (both internal and external) related to Part 64 allocation procedures.
- D. Retain the description, justification and financial documentation resulting from a change in an allocation factor which falls within the parameters of item I.D. above.

REPORTING FORMS

DEPARTMENT OF MINES, MINERALS AND ENERGY

This form is being revised to incorporate changes made to the Code of Virginia, §§ 54.1-270.2 and 45.1-270.3 during the 1989 General Assembly session.



COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY
DIVISION OF MINED LAND RECLAMATION
DRAWER U, BIG STONE GAP, VA 24219
TELEPHONE: (703) 523-2925



APPLICATION - COAL SURFACE MINING RECLAMATION FUND
Permit No.:
Application No.:

Pursuant to Article 5, Chapter 19 of Title 45.1 of the Code of Virginia, an eligible person may choose to participate in the Coal Surface Mining Reclamation Fund (Pool Bond Fund) in order to be relieved of the bonding requirements of Section 480-03-19.800.14 and 480-03-19.800.17 of the Virginia Coal Surface Mining Reclamation Regulations.

The applicant is requested to provide the following:

- 1. Applicant (Company Name) Address
2. Location of proposed operation: County(ies) Latitude Longitude Nearest community Nearest public road
3. Proposed permit area: acres
4. Operation type:
5a. Does the applicant have a consecutive three year history of compliance under Chapter 19 of Title 45.1 of the Code of Virginia or any other comparable state or federal act? Yes No

b. If yes:

(i) List the permit(s) by company name, permit number, dates and State which demonstrate the consecutive years history of compliance.

Table with columns: Company Name, Permit Number, From, To, State

(ii) List the name, address, and official title of every officer, partner, director, principal, and each stockholder owning 10 percent or more of any class of voting stock for each company needed to meet the demonstration.

6a. Is an exemption being requested for extended distances for rough backfilling and grading? Yes No

b. If yes, complete c. and d. below.

c. Does the applicant have a consecutive seven year history of Chapter 19 of Title 45.1 of the Code of Virginia or any other comparable state or federal act? Yes No

d. If yes:

(i) Provide sufficient information under 5b.(i) above to demonstrate the consecutive seven year history of compliance.

(ii) List under 5b.(ii) above the name, address, and official title of every officer, partner, director, principal, and each stockholder owning 10 percent of more of any class of voting stock for each company needed to meet the demonstration.

7. I understand that at permit issuance, the entrance fee may be \$1,000.00 or \$5,000.00, depending on the status of the balance of the Reclamation Fund.

8. What form of bond does the applicant intend to furnish?

9. If the applicant intends to "self-bond", the following must be submitted:

a. Name and address of the suitable agent to receive service of process in the Commonwealth.

b. Name and address of the independent certified public accountant who prepared the financial statement required by Section 480-03-19.801.13(a)(2).

c. Location of financial records used to prepare the financial statement:

- d. **Financial Statement:** The applicant, must have a net worth, certified by the independent certified public accountant in the form of a qualified opinion appended to the financial statement submitted, of no less than one million dollars after total liabilities are subtracted from total assets.\* The applicant shall attach to this application form the certification prepared by the certified public accountant.
- e. **Cognovit Note:** For a proposed underground mining operation, a cognovit note shall be submitted to the Division prior to issuance of the permit. The note shall be a binding obligation, jointly and severally on all who execute it. The note shall be executed by the applicant and:
  - (i) If a corporation, two corporate officers who are authorized to sign the note by resolution of the board of directors, a copy of which shall be provided.
  - (ii) If the applicant is a partnership, all of its general partners and their parent organization or principal investors.
  - (iii) If the applicant is a married individual, the applicant's spouse.
- f. **Indemnity Agreement:** For a proposed surface mining operation or associated facility, an indemnity agreement shall be submitted to the Division prior to issuance of the permit. The agreement shall be a binding obligation, jointly and severally on all who execute it. The agreement shall contain a date of execution and be:
  - (i) Made payable to the "Treasurer of Virginia";
  - (ii) Immediately due and payable in the event of forfeiture of the permit's bond;
  - (iii) Payable in a sum certain of money;
  - (iv) Signed by the maker(s);
  - (v) Executed by the applicant and by -
    - (A) If a corporation, two corporate officers who are authorized to sign the agreement by a resolution of the Board of Directors, a copy of which shall be provided;
    - (B) To the extent that the history or assets of a parent organization are relied upon to make the showings of this Part, the parent organization of which it is a subsidiary, whether first-tier, second-tier, or further removed, in the form of (A) above;
    - (C) If the applicant is a partnership, all of its general partners and their parent organization or principal investors; and

(D) If the applicant is a married individual, the applicant's spouse.

Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the agreement.

g. The applicant is hereby advised that if at any time the conditions upon which the self-bond is approved no longer prevail, the Division shall require the posting of a surety or collateral bond before coal surface mining operations may continue. The permittee shall be required to immediately notify the Division of any change in his total liabilities or total assets which would jeopardize the support of the self-bond.

h. Self-bonding is subject to the discretion and approval of the Director or his designee.

\*Please note according to Section 45.1-270.3(C) of the Code of Virginia, the net worth amount of the Pool Bond Fund participant must be certified annually on the permit's anniversary date by an independent certified public accountant.

CERTIFICATION

I hereby certify that the information provided in this document and attachments thereto are true to the best of my knowledge and belief.

\_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_  
 \_\_\_\_\_ Title \_\_\_\_\_

NOTARIZATION

SUBSCRIBED AND SWORN TO BEFORE ME BY \_\_\_\_\_  
 THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_  
 NOTARY PUBLIC \_\_\_\_\_ MY  
 COMMISSION EXPIRES \_\_\_\_\_

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# GOVERNOR

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## GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)  
**BOARD OF BRANCH PILOTS**

Title of Regulation: **VR 535-01-01. Branch Pilot Regulations.**

Governor's Comment:

The promulgation of these regulations will ensure that branch pilots have the necessary qualifications to guide safe passage of vessels in state waters. Pending public comment, I recommend approval of these regulations.

/s/ Gerald L. Baliles  
Date: July 17, 1989

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: **VR 240-02-01. Regulations Relating to Criminal History Record Information Use and Security.**

Governor's Comment:

I have no substantive objection to the proposed regulations, which update existing procedures governing the maintenance of and access to criminal history records. I would encourage the Department to consider carefully any comments provided by local law-enforcement agencies, which will be most directly affected by the regulatory changes, during the current public comment period.

/s/ Gerald L. Baliles  
Date: July 24, 1989

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **VR 460-01-46. Utilization Control: State Plan for Medical Assistance Relating to Preadmission Screening.**

Governor's Comment:

I concur with the form and content of this proposal. My final assessment will be contingent upon a review of the public's comments.

/s/ Gerald L. Baliles  
Date: July 17, 1989

## BOARD OF PHARMACY

Title of Regulation: **VR. 530-01-1. Regulations of the Board of Pharmacy.**

Governor's Comment:

I have no objection to the form of this proposal. I would encourage the Board, however, to consider carefully the comments of affected individuals and entities regarding the impact of the proposed fee increases.

/s/ Gerald L. Baliles  
Date: July 17, 1989

## VIRGINIA RACING COMMISSION

Title of Regulation: **VR 662-01-01. Virginia Racing Commission Public Participation Guidelines for Adoption or Amendment of Regulations.**

Governor's Comment:

The intent of this regulation is to establish procedures in accordance with the Administrative Process Act for obtaining comments from interested parties regarding regulations from the Virginia Racing Commission. Pending public comment, I recommend approval of this regulation.

/s/ Gerald L. Baliles  
Date: July 17, 1989

## REAL ESTATE BOARD

Title of Regulation: **VR 585-01-1. Real Estate Board Licensing Regulations.**

Governor's Comment:

The promulgation of the proposed regulations is designed to enhance the professional standards of realtors, to protect consumers, and to increase the revenue for the Real Estate Board to cover administrative costs. Pending public comment, I recommend approval of these regulations.

/s/ Gerald L. Baliles  
Date: July 17, 1989

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-08-01. Virginia Energy Assistance Program.**

Governor's Comment:

I concur with the form and content of this proposal. My concurrence in these standards is based on my understanding that those services which are being eliminated by these regulations are either provided through other sources or are among those for which demand is very low. Based on this information, it appears that these regulations are carefully designed to make the most effective use of limited resources, to assist the greatest number of persons and to provide uniformity of

service delivery throughout the Commonwealth. I would urge the Board, however, to conduct a careful assessment of these standards to ensure that the proposed elimination of services does not deprive recipients of critical services which are unavailable from other sources. My final assessment of these standards will be contingent upon a review of the public's comments.

/s/ Gerald L. Balles  
Date: July 17, 1989

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# GENERAL NOTICES/ERRATA

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<b>Symbol Key †</b>
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† Indicates entries since last publication of the Virginia Register
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## STATE AIR POLLUTION CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed action is to require the owner to limit source emissions of noncriteria pollutants to a level that will not produce ambient air concentrations that may cause, or contribute to, the endangerment of public health.

A public meeting will be held on September 20, 1989, at 10 a.m. in House Committee Room 1, State Capitol Building, Richmond, Virginia, to receive input on the development of the proposed regulations.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until September 20, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Nancy S. Saylor, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed regulation is to enhance the Department of Air Pollution Control's ability to ensure compliance with emission standards by requiring a permit to operate.

A public meeting will be held on September 27, 1989, at 10 a.m. in House Committee Room 1, State Capitol Building, Richmond, Virginia to receive input on the development of the proposed regulation.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until September 27, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240.

Contact: Nancy S. Saylor, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The purpose of the proposed action is to reduce ozone producing evaporative volatile organic compound (VOC) emissions, by limiting gasoline volatility during the ozone season (June through September), for the protection of public health and welfare.

A public meeting will be held on August 16, 1989, at 10 a.m., in House Committee Room 1, State Capitol, Capitol Square, Richmond, Virginia, to receive input on the development of the proposed regulation.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until August 16, 1989.

Contact: Ellen P. Snyder, Policy and Program Analyst, Division of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-0177 or SCATS 786-0177

## VIRGINIA ATHLETIC BOARD

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Athletic Board intends to consider amending regulations entitled: **Virginia Athletic Board Rules and Regulations.** The purpose of the proposed action is to promulgate and amend technical rules and equipment requirements for the safety of contestants. Standard of conduct pertaining to controlled narcotic substances. Repeal outdated technical rules.

Statutory Authority: § 54.1-805 of the Code of Virginia.

Written comments may be submitted until September 15, 1989.

Contact: C. Douglas Beavers, Assistant Director, 3600 W.

Broad St., Richmond, VA 23230, telephone (804) 367-8507 or toll-free 1-800-552-3016

## DEPARTMENT OF CONSERVATION AND RECREATION

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Conservation and Recreation intends to consider promulgating regulations entitled: **VR 215-02-00. Stormwater Management Regulations.** The purpose of the proposed action is to implement the Stormwater Management Law, Chapter 467 and Chapter 499 of the 1989 Virginia Acts of Assembly (Formerly SB 722 and HB 1848) to provide the minimum state requirements whereby local governments may adopt comprehensive Stormwater Management Programs at their option. All state agency projects involving land clearing, soil movement or construction activity involving soil movement or land development will be governed by these regulations.

**Note:** This replaces notice published in 5:19 V.A.R. 2722 June 19, 1989.

Statutory Authority: §§ 10.1-104 and 10.1-603.4 of the Code of Virginia.

Written comments may be submitted until August 30, 1989, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

**Contact:** John R. Poland, Urban Programs Supervisor, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483 or SCATS 371-7483

## BOARD OF CORRECTIONS

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-01-003. Rules and Regulations Governing the Certification Process.** The purpose of the proposed action is to provide regulations governing the process and procedures utilized by the Board of Corrections to monitor and certify correctional programs.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Written comments may be submitted until August 21, 1989.

**Contact:** John T. Britton, Certification Unit Manager, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3237 or SCATS 634-3237

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **Regulations Governing Driver Education.** The purpose of the proposed regulation is to more clearly define the regulations for public, nonpublic and commercial schools related to driver education requirements.

Statutory Authority: §§ 22.1-205, 46.1-357, 46.1-368 and 54.1-1003 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

**Contact:** Claude A. Sandy, Director, Department of Education, Division of Sciences and Elementary Administration, P.O. Box 6Z, Richmond, VA 23216, telephone (804) 225-2865 or SCATS 225-2865

## DEPARTMENT OF HEALTH (STATE BOARD OF)

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Regulations for Disease Reporting and Control.** The purpose of the proposed action is to amend the regulations so that they comply with current disease control policies.

Statutory Authority: § 32.1-12 and Chapter 2 (§ 32.1-35 et seq.) of Title 32.1 of the Code of Virginia.

Written comments may be submitted until August 18, 1989.

**Contact:** Diane Woolard, M.P.H., Senior Epidemiologist, Office of Epidemiology, Department of Health, James Madison Bldg., 109 Governor St., Room 701, Richmond, VA 23219, telephone (804) 786-6261

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **Board of Health Regulations Governing Vital Records.** The purpose of the proposed action is to bring standard certificates of birth, death, fetal death, induced abortion, marriage, and divorce into conformity with federal requirements.

Statutory Authority: § 32.1-12 and Chapter 7 (§ 32.1-249 et seq.) of Title 32.1 of the Code of Virginia.

Written comments may be submitted until September 5,

# General Notices/Errata

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1989.

Contact: Russell E. Booker, Jr., State Registrar, Division of Vital Records, P.O. Box 1000, Richmond, VA 23208-1000, telephone (804) 786-6221 or SCATS 786-6221

## STATE LOTTERY DEPARTMENT

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider amending regulations entitled: **VR 447-01-2, Administration Regulations**. The purpose of the proposed action is to amend certain portions of the Administration Regulations which deal with ineligible players, Operations Special Reserve Fund, procedures for small purchases and vendor background check.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until August 14, 1989.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433 or SCATS 367-9433

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider amending regulations entitled: **VR 447-02-1, Instant Game Regulations**. The purpose of the proposed action is to amend certain portions of the Regulations in order to conform to the State Lottery Law and to refine sections of the Instant Game Regulations which deal with the retailer application procedure, ticket price, retailer's compensation, retailer's conduct, settlement of accounts, prize payment procedures and the elimination of claim form under certain circumstances.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until August 14, 1989.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433 or SCATS 367-9433

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Lottery Department intends to consider promulgating regulations entitled: **VR 447-02-2, On-Line Game Regulations**. The purpose of the proposed regulation is to set out general parameters for the on-line game. This includes setting standards and requirements for licensing of on-line lottery

retailers, ticket validation, setting the framework for the operations of on-line lottery games and the payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Written comments may be submitted until August 14, 1989.

Contact: Barbara L. Robertson, Lottery Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433 or SCATS 367-9433

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Amount, Duration and Scope of Services: Coverage of Prosthetics Services and Expansion of Dental under EPSDT**. The purpose of the proposed action is to modify the State Plan Section for the Amount, Duration and Scope of Services concerning limited coverage of prosthetics and expanded dental services under EPSDT.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., August 15, 1989, to Stephen B. Riggs, Director, Division of Health Services Review, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Eligibility for Children, to age 2, at 100% of Poverty**. The purpose of the proposed action is to provide Medicaid eligibility for children, up to the age of two years, whose families' incomes are at 100% of the federal poverty guidelines.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., August 15, 1989, to Marsha Vandervail, Manager, Eligibility and Appeals, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator,

Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **Safeguarding of Client Information**. The purpose of the proposed regulation is to establish regulations by which DMAS guarantees the confidential handling of client information.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., August 15, 1989, to Angie Chambliss, Eligibility and Appeals, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **State/Local Hospitalization**. The purpose of the proposed action is to establish regulations by which DMAS will administer the State/Local Hospitalization Program.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m., August 15, 1989, to David Coronado, Director, Indigent Health Programs, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933

## BOARD OF NURSING

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled: **VR 495-01-1. Board of Nursing Regulations**. The purpose of the proposed action is to establish standards for approval of nursing education programs, licensure and practice of registered and licensed practical nurses, disciplinary

provisions and to replace emergency regulations for certified nurse aides. Existing regulations will be reviewed for effectiveness, efficiency, necessity, clarity, and cost of compliance.

A public hearing to receive oral comments will be held on August 24, 1989, at 1:30 p.m. in the General Assembly Building, Capitol Square, House Room C, Richmond, Virginia.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Written comments may be submitted until October 1, 1989.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or SCATS 662-9909

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

### Division of Benefit Programs

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **Aid to Dependent Children (ADC) Program - Lump Sum, Shortening the Period of Ineligibility**. The purpose of the proposed action is to delete language in policy that gives final authority to the local social services agency for decisions regarding conditions deemed to have occurred beyond the control of the assistance unit, that could shorten the period of ineligibility established due to the receipt of a lump sum. The revision will remove any implication that the client does not have the right to appeal agency decisions.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until August 31, 1989, to I. Guy Lusk, Director, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

**Contact:** Peggy Friedenber, Agency Regulatory Coordinator, Division of Planning and Program Review, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9217

## VIRGINIA SOIL AND WATER CONSERVATION BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Soil and

# General Notices/Errata

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Water Conservation Board intends to consider promulgating regulations entitled: **VR 625-02-00. Erosion and Sediment Control Regulations**; and repeal regulations entitled: **VR 625-01-01. The Virginia Erosion and Sediment Control Handbook, including standards, criteria and guidelines.** The purpose of the proposed action is to implement the Erosion and Sediment Control Law, as amended, for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any local control program to prevent unreasonable degradation of properties, stream channels and other natural resources.

Note: This replaces notice published in 5:19 V.A.R. 2722 June 19, 1989.

Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

Written comments may be submitted until August 30, 1989, to Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, Virginia 23219.

Contact: John R. Poland, Urban Program Supervisor, Department of Conservation and Recreation, Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 371-7483 or SCATS 371-7483

## DEPARTMENT OF TAXATION

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-2-335. Virginia Individual Income Tax Regulation: Virginia Tax Credit.** The purpose of the proposed regulation is to set forth the correct procedure for the claiming of the Virginia Tax Credit.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 31, 1989.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010 or SCATS 367-8010

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-27-640 through VR 630-27-644. Virginia Tire Tax Regulations.** The purpose of the proposed regulations is to set forth the application of the Virginia tire tax to the retail sale of new tires.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 31, 1989.

Contact: Janie E. Bowen, Director, Tax Policy Division, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8010 or SCATS 367-8010

## GENERAL NOTICES

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Legal Notice

Take notice that a referendum will be conducted by mail ballot among Virginia corn producers regardless of age, and as otherwise defined in § 3.1-1035, Title 3.1 of the Code of Virginia, who sold corn, except sugar corn, popcorn, and ornamental corn during two of the past three years preceding September 1, 1989.

The purpose of the referendum is to allow Virginia farmers producing corn to vote to determine whether they want to increase the corn assessment from 1/4 cent to 1 cent per bushel sold. The increased assessment shall be used by the Virginia Corn Board to provide programs for additional research, education, publicity and promotion of the sale and use of corn.

The processor, dealer, shipper, exporter or any other business entity who purchases corn from the producer shall deduct the assessment from payments made to the producer for corn. The levy thereon shall be remitted to the Virginia State Tax Commissioner.

Producers must establish their eligibility to vote in this referendum by properly completing a certification form and returning the form to the Virginia Department of Agriculture and Consumer Services no later than July 31, 1989.

Eligible voters will be mailed a ballot and a return envelope. Each eligible voter must return the ballot, and the ballot must be received by the Director, Division of Marketing, Virginia Department of Agriculture and Consumer Services on or before 5 p.m. September 1, 1989.

Producers may obtain eligibility certification forms from the following sources: County Extension Offices; Virginia Corn Growers Association, 10806 Trade Road, Richmond, Virginia 23236; Virginia Department of Agriculture and Consumer Services Office, Division of Marketing, P.O. Box 1163, Richmond, Virginia 23209.

## DEPARTMENT OF HEALTH

### † Notice of Intent to Solicit Comments on the Proposed WIC Program State Plan of Program Operations and Administration for Federal Fiscal Year 1990

Notice is hereby given that the Special Supplemental Food Program for Women, Infants and Children (WIC) is soliciting additional comments from the general public regarding its proposed WIC State Plan for Federal FY 1990.

The WIC State Plan includes state goals and objectives for FY 1990, names and addresses of local agencies, a map identifying the areas being served, an affirmative action plan, a description of the financial management system, fair hearing procedures, state agency monitoring procedures, an outreach program description, a plan for the provision of nutrition education, a description of the methods used to certify participants, the specific nutritional risk criteria used to determine a person's eligibility, a description of the food delivery system and other sections required by federal regulations.

The State WIC Office has provided one copy of the proposed State Plan for public review at the headquarters office in each of the state's 36 health districts. The location of the office in your area may be obtained by calling your local health department or the State WIC Office at (804) 786-5420. Additional copies of the proposed State Plan are available on a limited basis upon request.

Those individuals wishing to comment in person on the proposed State Plan are invited to attend a public hearing from 1 - 5 p.m. on September 12, 1989, in the Main Floor Conference Room, James Madison Building, 109 Governor Street, Richmond, VA 23319.

Written comments will be accepted until 5 p.m. on October 13, 1989, and should be sent to:

WIC Program Director  
State Department of Health  
109 Governor Street - 6th Floor  
Richmond, Virginia 23219

## DEPARTMENT OF LABOR AND INDUSTRY

### Notice to the Public and Opportunity for Informal Comment

Notice is hereby given that the Commissioner of the Virginia Department of Labor and Industry is developing internal procedures to be followed by department staff in investigating and recommending criminal charges to local Commonwealth's Attorneys in certain cases involving workplace fatalities.

These internal procedures are not subject to the formal notice and comment procedures required under the

Virginia Administrative Process Act. They are published in DRAFT form solely for the purpose of providing the public an opportunity for informal comment on the procedures prior to finalization.

All comments should be sent to the address listed below and must be received no later than August 15, 1989, at 5 p.m.:

Carol Amato  
Commissioner  
Department of Labor and Industry  
P.O. Box 12064  
Richmond, Virginia 23241

Any questions should be directed to:

Elizabeth Scott  
Lead Agency Management Analyst  
(804) 786-6760

### AGENCY POLICY STATEMENT NO. ....

Subject: Manslaughter Charges as a Result of Workplace Fatalities

Effective Date: .....

#### I. Purpose:

The purpose of this policy statement is to establish a uniform policy for determining when a charge of manslaughter as a result of a workplace fatality is appropriate, how such cases shall be investigated, and how the investigation shall be coordinated with the appropriate Commonwealth's Attorney.

#### II. Background:

##### A. Statutory Law

Virginia Code § 40.1-49.4 (K) provides for misdemeanor sanctions against any "employer" who willfully violates provisions of the Occupational Safety and Health laws and regulations, when the violation results in the death of an employee. There may be cases, however, where a person's conduct is so egregious that a more stringent criminal penalty is warranted. In those cases, the department may recommend that the appropriate Commonwealth's Attorney bring a charge of manslaughter against a violator.

A recent Supreme Court ruling has defined "willful" violations in a civil context to include those situations where the employer exhibits a conscious disregard for the provisions of the Act or a plain indifference to the Act's requirements. McLaughin v. Richland Shoe Company, 56 USLW 4433, 4436 (1988).

When an employer willfully violates safety and health

## General Notices/Errata

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laws or regulations, and an employee is killed as a result, the employer can be cited by the department for a civil willful violation. In those cases which meet the criteria of Chapter IV of the VOSH Field Operations Manual (F.O.M.) (attached), the employer may also be charged with a criminal misdemeanor by the Commonwealth's Attorney under § 40.1-49.4(K).

### B. Common Law

The criminal laws of Virginia provide for felony sanctions where the conduct resulting in death is:

so flagrant, culpable, and wanton as to show utter disregard of the safety of other under circumstances likely to cause injury.

King v. Commonwealth, 217 Va. 601, 606, 231 S.E.2d 312, 316 (1977). Where the death is an unintentional result of such flagrant, culpable, or wanton conduct, a charge of involuntary manslaughter is appropriate.

Under the common law, a person who involuntarily takes the life of another in the "performance of an unlawful but not felonious act," or in the "improper performance of a lawful act," can be charged with involuntary manslaughter.

Where the charge is the "improper performance of a lawful act," the act must be more than mere negligence. The negligent conduct must be "performed in a manner so gross, wanton, and culpable as to show a reckless disregard for human life." Gooden v. Commonwealth, 226 Va. 565, 571, 311 S.E.2d 780, 784 (1984). See also Davis v. Commonwealth, 230 Va. 201, 206, 335 S.E.2d 375, 378 (1985).

Virginia courts have found such a "callous disregard for human life" where the defendant has violated a safety statute and that violation was the proximate cause of the fatal accident. In the case of Beck v. Commonwealth, 216 Va. 1, 216 S.E.2d 8 (1975), the defendant was driving while intoxicated and killed two pedestrians.

However, in a later case, King v. Commonwealth, 217 Va. 601, 231 S.E.2d 312 (1977), the Commonwealth was unsuccessful in arguing that the defendant's driving at night without headlights (as required by statute) was criminal negligence. The Court stated that not every "statutory violation that proximately caused death constitutes involuntary manslaughter." Id. at 605, 231 S.E.2d at 316. The violation of a statute falls within the common law definition of involuntary manslaughter where it is:

so flagrant, culpable, and wanton as to show utter disregard of the safety of others under circumstances likely to cause injury ... Inadvertent acts of negligence, without recklessness, while giving rise to civil liability, will not suffice to impose

criminal responsibility ... Intentional, willful, and wanton violations of safety statutes, resulting in death, however, will justify conviction of involuntary manslaughter.

Id. at 606, 231 S.E.2d at 316. See also Darnell v. Commonwealth, 6 Va. App. 485, 489, 370 S.E.2d 717, 719 (1988).

### III. Statement of Policy

#### A. General:

It shall be the policy of the department to recommend felony prosecution for manslaughter of any natural person whose flagrant, culpable, or wanton violation of the Occupational Safety and Health laws and regulations results in the death of an employee.

Because these charges are criminal, it shall further be the policy of the department to coordinate investigation of such fatalities with the local police or sheriff's office, and with the Commonwealth's Attorney. The Commonwealth's Attorney shall make the final decision whether to pursue a manslaughter charge.

Misdemeanor charges for criminal willful violations of the VOSH law under § 40.1-49.4(K) will only be brought against the "employer" (as defined by statute and case law) in circumstances meeting the criteria of the F.O.M. Chapter 4. This charge can be brought against any legal entity that is an employer, including corporations and natural persons. Individuals may also be charged as aiders and abettors of the employer. (Va. Code §§ 18.2-18 to 18.2-21.) As with felony prosecutions, final discretion as to whether to pursue charges lies with the appropriate Commonwealth's Attorney.

Manslaughter charges, on the other hand, will be brought against "any natural person" whose flagrant, culpable, and wanton conduct brings about the death of an employee.

#### B. Definitions:

For the purposes of this policy, "any natural person" shall mean any individual having direction, management, control, or custody of any worksite, place of employment, or employee and shall exclude corporate or other legal entities.

#### C. Criteria For Determining When a Manslaughter Charge is Appropriate

1. In order to establish grounds for a manslaughter charge, the department must document that the death occurred as the result of either:

a. the performance of some unlawful, but not felonious, act, OR

b. the improper performance of a lawful act.

2. If the charge is based on 1(a) above, i.e., an unlawful but not felonious act, the CSHO must document that:

a. the individual whose conduct brought about the death committed a misdemeanor violation of Virginia law.

[Note: This element is established in those cases where the responsible individual is also the "employer" and has thus committed a criminal willful violation of VOSH standards under § 40.1-49.4(K). The criminal willful misdemeanor violation could be considered a lesser included offense. It is not established where the responsible individual is a co-worker or person outside of the supervisory chain-of-command];

b. the conduct of the responsible individual is so flagrant, culpable, and wanton as to show utter disregard of the safety of others under circumstances likely to cause injury.

[Note: An accidental or inadvertent act of negligence will not support a charge of involuntary manslaughter];

AND

c. the statutory violation is the proximate cause of the victim's death.

[Note: If several factors contributed to the victim's death, and the statutory violation was one of the contributing causes, this element is satisfied].

### Example:

A foreman in charge of a construction worksite decides that a job is moving too slowly to allow for proper safety precautions and orders employees to enter a 12 foot deep trench with vertical unshored walls. This same foreman had been responsible for earlier violations of VOSH trench standards and has clear knowledge of the requirements for sloping and shoring.

If the trench caves in, resulting in a fatality, the employer would be cited by VOSH for a civil willful violation of VOSH standards. In addition, a recommendation for criminal willful charges against the "employer" under § 40.1-49.4(K) would be made to the appropriate Commonwealth's Attorney.

Because the foreman committed a nonfelonious criminal violation of the statute, and because his conduct, considering his actual or imputed knowledge of the dangers of unshored trenches, was flagrant, culpable, and proximately caused the employee's death, a manslaughter charge against the foreman would be appropriate.

3. If the charge is based on 1(b) above, i.e., the improper performance of a lawful act, the department must document that:

a. the individual whose conduct brought about the death was negligent in the performance of his duty, and the negligence was so gross and culpable as to indicate a callous disregard of human life. Each element should be analyzed separately:

i. the individual had a legal duty under § 40.1-51.1(a) to provide a workplace free from recognized hazards and to comply with Virginia Occupational Safety and Health laws and regulations; OR

the individual has a legal duty under § 40.1-51.2(a) to comply with Virginia Occupational Safety and Health laws and regulations; OR

the individual has a legal duty imposed by contract to protect employee safety and health;

ii. the individual negligently breached that duty;

iii. the individual's negligent breach of duty was the proximate cause of the victim's death; AND

iv. the negligence was so reckless, wanton, and flagrant as to indicate a callous disregard for human life.

### Example:

An example of this type of manslaughter would be the foreman who sends an untrained maintenance employee to paint an unlocked enclosure for an electrical installation, and, knowing that the electrical box was live, fails to warn the employee about the exposed live parts or to instruct him in methods of disconnecting live equipment, resulting in the electrocution of the employee.

A second example would be the highrise construction site where a county building inspector tells the General Contractor, the Safety Director, and the Subcontractor's foreman on 3 occasions to replace missing guardrails on the 10th floor. The project is under a deadline and all three men ignore his warnings, and a worker falls to his death from the unguarded 10th floor.

In both cases described above, the persons responsible had either a statutory or contractual responsibility for the safety of the employees, they breached that duty by failing to take action (warning/training employee, installing guardrails), and their behavior showed a callous disregard for the lives of the deceased employees.

### D. Manslaughter Distinguished From Murder

If an individual willfully or purposefully (rather than negligently) embarks on a course of wrongful conduct

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with an obvious likelihood of death or serious bodily harm, the charge is not manslaughter, but murder. Second degree murder is defined as any purposeful, cruel act committed by one individual against another without great provocation. If the death results from an intentional or malicious omission of the performance of a duty defined in § C(3)(a)(i), the charge is also murder.

## E. Procedure:

1. When a jobsite fatality has occurred, the Compliance Safety and Health Officer (CSHO) shall follow existing procedures in the Field Operations Manual and the Significant Case Review Policy for fatality investigations.

2. At any time during the investigation, if the CSHO determines that a willful violation of the Act may have occurred, the CSHO shall immediately notify his/her Supervisor. The CSHO, Supervisor, and Enforcement Director shall review the evidence in the case with the Office of Federal Liaison and Technical Support.

3. If the evidence at this point seems to support a criminal violation of the Act, the Enforcement Director shall notify the Assistant Commissioner, the Commissioner, and the Assistant Attorney General. At the direction of the Commissioner, the CSHO and/or the Technical Support staff shall immediately consult with the appropriate Commonwealth's Attorney.

4. After the initial determination is made, all stages of the investigation shall be coordinated with local law enforcement officials. The Commonwealth's Attorney may determine the type and scope of investigatory procedures to be followed, and shall determine whether the investigation has proceeded to a point at which Miranda warnings should be given by local law enforcement officials.

5. Once the investigation is completed, the Enforcement Director shall review the case and recommend the appropriate course of action to the Assistant Commissioner and Commissioner. The Commissioner, on review of the evidence in the case file, shall recommend a course of action to the Commonwealth's Attorney, who has final discretionary authority in the matter.

6. If the Commonwealth's Attorney determines that prosecution is warranted, the CSHO and Technical Support staff, at the direction of the Attorney General's Office and the Commissioner, shall provide the Commonwealth's Attorney with all requested support.

## IV. Recisions.

None.

## V. Impact.

This is not a regulation which requires action on the part of any individual party or entity other than agency employees. This is rather an internal procedural outline not intended to create any rights or disabilities in third parties.

## VI. Reference.

"Criminal/Willful Violations," VOSH F.O.M., Chapter IV, pp. 26-29.

4. Criminal/Willful Violations, § 40.1-49.4.K., Code of Virginia, provides that: "Any employer who willfully violates any safety or health provisions of this title or standards, rules or regulations adopted pursuant thereto, and that violation causes death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both such fine and imprisonment. If the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both such fine and imprisonment."

a. The Division Director, in coordination with the Technical Services Director and Assistant Attorney General, shall carefully evaluate all cases involving workers' deaths to determine whether they involve criminal violation of § 40.1-49.4.K, Code of Virginia.

b. In cases where an employee's death has occurred which may have been caused by a willful violation of a VOSH standard, the supervisor shall be consulted prior to the completion of the investigation to determine whether evidence exists and whether further evidence is necessary to establish the elements of a criminal/willful violation. The Division Director shall consult with the Technical Services Director and, if appropriate, with the Assistant Attorney General after the initial determination has been made concerning possible willful violation.

c. The following criteria shall be considered in investigating possible criminal/willful violations:

(1) Establishment of Criminal/Willful. In order to establish a criminal/willful violation VOSH must prove that:

(a) The employer violated a VOSH standard. A criminal/willful violation cannot be based on violation of § 40.1-51.1.(a).

(b) The violation was willful in nature; i.e.,

1 The employer had knowledge of the hazardous working conditions. Knowledge could be demonstrated through such evidence as the foreman

having been in the vicinity of an unshored, unshored trench in which employees are working.

2 The employer had knowledge of the requirements of the applicable standard.

a Providing knowledge of the requirements of the applicable standard may present greater difficulties. Evidence of knowledge of the applicable standard gained through a prior citation, discussions with VOSH or other safety and health personnel of the requirements of the standard, or other similar evidence would be sufficient to support this element of knowledge.

b In addition, it may be possible to establish willfulness, even in the absence of specific knowledge of the VOSH standard, where the requirements of the standard are known to the employer. Where it can be shown that it was recognized by the employer that certain precautions must be taken in order to make a trench safe, either through the employer's past practice of shoring or sloping, through employee complaints, or otherwise, knowledge of the standard's requirements will have been shown.

c Finally, in particularly flagrant situations, willfulness can be proved where employees are exposed to a working condition which a reasonably prudent employer should have recognized as being hazardous and requiring corrective action. Even in the absence of evidence that an employer knew that specific precautions should have been taken, if the working conditions are so obviously hazardous and the accepted industry practice is to take certain precautions, an employer's conduct could constitute a willful violation.

NOTE: It must be emphasized that, particularly with regard to this situation, a key element of willfulness is flagrancy of the conduct and the employer's plain indifference to employee safety.

(c) The violation of the standard caused the death of an employee. In order to prove that the violation of the standard caused the death of an employee, there must be evidence in the file which clearly demonstrates that the violation of the standard was the cause of or a contributing factor to an employee's death.

(2) Division Director Responsibilities. Although it is generally not necessary to issue "Miranda" warnings to an employer when a criminal/willful investigation is in progress, the Division Director shall seek the advice of the Assistant Attorney General on this question.

(a) If the Division Director determines that expert assistance is needed to prove the causal connection

between an apparent violation of the standard and the death of an employee, such assistance shall be obtained in accordance with instructions in Chapter III, B.3.

(b) Following the investigation, if the Division Director decides to recommend criminal prosecution, a memorandum containing that recommendation shall be forwarded promptly to the Technical Services Director who will consult with the Assistant Attorney General. The memo shall include an evaluation of the possible criminal charges, taking into consideration the greater burden of proof which requires that the Commonwealth's case be proven beyond a reasonable doubt. In addition, if the correction of the hazardous condition appears to be an issue, this shall be noted in the transmittal memorandum because in most cases the prosecution of a criminal/willful case delays the affirmance of the civil citation and its correction requirements.

(c) The Division Director shall normally issue a civil citation in accordance with current procedures even if the citation involves allegations under consideration for criminal prosecution. The Technical Services Director and the VOSH Assistant Commissioner shall be notified immediately of such cases. The Technical Services Director shall notify the Assistant Attorney General and assist him in determining whether or not to refer the case to the appropriate Commonwealth's Attorney.

### NOTICES TO STATE AGENCIES

RE: Forms for filing material on dates for publication in the Virginia Register of Regulations.

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Jane Chaffin, Virginia Code Commission, P.O. Box 3-AG, Richmond, Va. 23208, telephone (804) 786-3591.

#### FORMS:

NOTICE OF INTENDED REGULATORY ACTION - RR01  
NOTICE OF COMMENT PERIOD - RR02  
PROPOSED (Transmittal Sheet) - RR03  
FINAL (Transmittal Sheet) - RR04  
EMERGENCY (Transmittal Sheet) - RR05  
NOTICE OF MEETING - RR06  
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08  
DEPARTMENT OF PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure

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Manual may also be obtained from Jane Chaffin at the above address.

# CALENDAR OF EVENTS

## Symbols Key

- † Indicates entries since last publication of the Virginia Register
- ☒ Location accessible to handicapped
- ☎ Telecommunications Device for Deaf (TDD)/Voice Designation

## NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

## VIRGINIA CODE COMMISSION

## EXECUTIVE

### VIRGINIA AGRICULTURAL COUNCIL

**August 14, 1989 - 9 a.m. - Open Meeting**  
Holiday Inn-Airport, 5208 Williamsburg Road, Sandston, Virginia

A meeting of the council called by the chairman and per minutes of meeting of May 15, 1989 to hear (i) any new project proposals which are properly supported by the Board of Directors of a commodity group; and (ii) any other business that may come before the members of the council.

**Contact:** Henry H. Budd, Assistant Secretary, Washington Bldg., 1100 Bank St., Room 1111, Richmond, VA 23219, telephone (804) 371-8038

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

**September 27, 1989 - 10 a.m. - Public Hearing**  
Washington Building, 1100 Bank Street, Board Room, 2nd Floor, Richmond, Virginia. ☒

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to amend regulations entitled: **VR 115-02-12. Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and other Animals or Birds into Virginia.** The amendment to the regulation is necessary to establish a program in Virginia for the

eradication of pseudorabies in swine and to improve the regulation's clarity and effectiveness.

**Statutory Authority:** §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Written comments may be submitted until August 28, 1989, to William D. Miller, D.V.M., State Veterinarian, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

**Contact:** Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or SCATS 786-2483

\* \* \* \* \*

**September 27, 1989 - 10 a.m. - Public Hearing**  
Washington Building, 1100 Bank Street, Board Room, 2nd Floor, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-02-16. Rules and Regulations Governing Pseudorabies in Virginia.** The regulation is necessary to establish a program in Virginia for the eradication of pseudorabies in swine.

**Statutory Authority:** §§ 3.1-724, 3.1-726 and 3.1-730 of the Code of Virginia.

Written comments may be submitted until August 28, 1989, to William D. Miller, D.V.M., State Veterinarian, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Suite 600, Richmond, Virginia 23219.

**Contact:** Paul J. Friedman, D.V.M., Chief, Bureau of Veterinary Services, Division of Animal Health, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Suite 600, Richmond, VA 23219, telephone (804) 786-2483 or SCATS 786-2483

### Pesticide Control Board

† **August 19, 1989 - 8:30 a.m. - Open Meeting**  
† **August 20, 1989 - 8:30 a.m. - Open Meeting**  
Wintergreen, North and Central Room, Wintergreen, Virginia. ☒

# Calendar of Events

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A meeting for orientation of members to discuss priorities and receive reports from staff.

**Contact:** C. Kermit Spruill, Jr., Director, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 403, Richmond, VA 23209, telephone (804) 786-3523 or SCATS 786-3523

## DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

**September 20, 1989 - 10 a.m. - Public Hearing**  
2901 Hermitage Road, First Floor Hearing Room, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend numerous regulations which relate to (i) corporations not being required to be represented by attorneys at initial or appeal hearings with respect to matters involving legal conclusions, examination of witnesses, preparation of briefs or pleadings, (ii) statutory reference changes to the Wine Franchise Act, (iii) permitting more alcoholic beverage advertising inside retail licensee establishments through the use of printed paper and cardboard materials which are not obtained from manufacturers, bottlers or wholesalers, (iv) regulation subsection and subdivision changes, (v) the sale of ice and the cleaning and servicing of equipment, (vi) changing licensee record keeping requirements for beer and 3.2 beverages to two years, and (vii) permitting the 45% food sales ratio requirement for special mixed beverage licensees located in food courts to be determined by reference to the combined sales of all places primarily engaged in the sale of meals or light lunches in a food court.

**Statutory Authority:** §§ 4-7(1), 4-11, 4-36, 4-69, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq. of the Code of Virginia.

Written comments may be submitted until 10 a.m., September 20, 1989.

**Contact:** Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616 or SCATS 367-0616

## STATE AIR POLLUTION CONTROL BOARD

**September 6, 1989 - 10 a.m. - Public Hearing**  
Department of Air Pollution Control, Southwest Virginia Regional Office, 121 Russell Road, Abingdon, Virginia

**September 6, 1989 - 10 a.m. - Public Hearing**  
Department of Air Pollution Control, Valley of Virginia Regional Office, 5338 Peters Creek Road, Suite D, Roanoke, Virginia

**September 6, 1989 - 10 a.m. - Public Hearing**  
Department of Air Pollution Control, Central Virginia Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia

**September 6, 1989 - 10 a.m. - Public Hearing**  
Department of Air Pollution Control, State Capitol Regional Office, 8205 Hermitage Road, Richmond, Virginia

**September 6, 1989 - 10 a.m. - Public Hearing**  
Department of Air Pollution Control, Hampton Roads Regional Office, Old Greenbrier Village - Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia

**September 6, 1989 - 10 a.m. - Public Hearing**  
Department of Air Pollution Control, National Capitol Regional Office, Springfield Towers, Suite 502, 6320 Augusta Drive, Springfield, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution.** The proposed amendments to the regulations will provide the latest edition of referenced documents and incorporate newly promulgated federal New Source Performance Standards and National Emissions Standard for Hazardous Air Pollutants.

**Statutory Authority:** § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until September 6, 1989, to Director of Program Development, Department of Air Pollution Control, P.O. Box 10089, Richmond, Virginia 23240.

**Contact:** Nancy S. Saylor, Policy Analyst, Department of Air Pollution Control, Division of Program Development, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249 or SCATS 786-1249

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

### Board for Professional Engineers

**August 23, 1989 - 9 a.m. - Open Meeting**  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting to (i) approve minutes from May 4, 1989, meeting; (ii) review applications; (iii) review general correspondence; and (iv) review enforcement files.

**Contact:** Bonnie S. Salzman, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514, toll-free 1-800-552-3016 or SCATS 367-8514

# Calendar of Events

## BOARD OF AUDIOLOGY AND SPEECH PATHOLOGY

**October 4, 1989 - 10 a.m. - Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive,  
Richmond, Virginia. ☒

A board meeting.

**Contact:** Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111

## VIRGINIA COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

† **September 8, 1989 - 10 a.m. - Open Meeting**  
Virginia House, Richmond, Virginia

The commission is the statewide organization charged with planning and coordinating Virginia's celebration of the Constitution and the Bill of Rights bicentennial. The September meeting will include a resume of past activities and a discussion of future activities commemorating the birth of the Bill of Rights.

**Contact:** Tracy K. Warren, Associate Director, Virginia Commission on the Bicentennial of the United States Constitution, Center for Public Service, University of Virginia, 2015 Ivy Rd., Charlottesville, VA 22903-1795, telephone (804) 924-0948

## BOARD FOR BRANCH PILOTS

**NOTE: CHANGE OF HEARING DATE**

**September 12, 1989 - 9 a.m. - Public Hearing**  
Virginia Port Authority, World Trade Center, Suite 600,  
Norfolk, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to adopt, amend and repeal regulations entitled: **VR 535-01-01. Branch Pilot Regulations.** The purpose of the proposed amendments is to continue and revise the standards for Branch Pilot licensure, continued licensure and conduct in piloting vessels in Virginia's waters.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until September 5, 1989.

**Contact:** David E. Dick, Deputy Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8500, toll-free 1-800-552-3016 or SCATS 367-8500

## CHESAPEAKE BAY COMMISSION

† **September 7, 1989 - 10:30 a.m. - Open Meeting**  
† **September 8, 1989 - 9 a.m. - Open Meeting**  
Norfolk Airport Hilton, 1500 North Military Highway at Northampton Boulevard, Norfolk, Virginia

A quarterly meeting. Agenda will include Chesapeake Bay oil and gas regulations for drilling, storage and transportation; boating pump-out; and the 1991 re-evaluation of progress made under the Chesapeake Bay Agreement.

**Contact:** Ann Pesiri Swanson, 60 West St., Suite 200A, Annapolis, MD 21401, telephone (301) 263-3420

## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **October 13, 1989 -** Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Chesapeake Bay Local Assistance Board intends to adopt regulations entitled: **VR 173-01-00. Public Participation Procedures for the Formulation and Promulgation of Regulations.** These regulations establish public participation procedures for the development or revision of regulations by the Chesapeake Bay Local Assistance Board, in accordance with Administrative Process Act.

## STATEMENT

Subject, substance, issues, basis, and purpose:

These proposed regulations establish public participation procedures for the development or revision of regulations by the Chesapeake Bay Local Assistance Board. These procedures address the initiation of regulation development, the development and maintenance of information dissemination lists, and public participation. These procedures are required under § 9-6.14:7.1 of the Code of Virginia (Administrative Process Act) and under § 10.1-2100 et seq. of the Code of Virginia (Chesapeake Bay Preservation Act). The purpose of the proposed regulations is to establish procedures consistent with the Administrative Process Act for public involvement in the development and modification of the board's regulations. These procedures are intended to replace emergency public participation procedures previously adopted by the board and approved by the Governor.

Statutory Authority: § 10.1-2103 of the Code of Virginia.

Written comments may be submitted until 5 p.m., October 13, 1989.

**Contact:** Scott Crafton, Regulatory Assistance Coordinator, Chesapeake Bay Local Assistance Department, 701 Eighth Street Office Bldg., Richmond, VA 23219, telephone (804)

# Calendar of Events

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225-3440, toll-free 1-800-243-7229 or SCATS 225-3440

## LOCAL EMERGENCY PLANNING COMMITTEE OF CHESTERFIELD COUNTY

September 7, 1989 - 5:30 p.m. - Open Meeting  
October 5, 1989 - 5:30 p.m. - Open Meeting  
Chesterfield County Administration Building, 10001  
Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

To meet requirements of Superfund Amendment and  
Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services  
Coordinator, Chesterfield Fire Department, P.O. Box 40,  
Chesterfield, VA 23832, telephone (804) 748-1236

## VIRGINIA COUNCIL ON CHILD DAY CARE AND EARLY CHILDHOOD PROGRAMS

† August 24, 1989 - 10 a.m. - Open Meeting  
Washington Building, 1100 Bank Street, 2nd Floor  
Conference Room, Richmond, Virginia. ☒

A regular business meeting open to the public.

Contact: Linda Sawyers, Director, Virginia Council on Child  
Day Care and Early Childhood Programs, Washington  
Bldg., 1100 Bank St., Suite 1116, Richmond, VA 23219,  
telephone (804) 371-8603 or SCATS 371-8603

## CONSORTIUM ON CHILD MENTAL HEALTH

September 6, 1989 - 9 a.m. - Open Meeting  
Eighth Street Office Building, 805 East Broad Street, 11th  
Floor Conference Room, Richmond, Virginia. ☒

A regular business meeting open to the public,  
followed by an executive session, for purposes of  
confidentiality, to review applications for funding of  
services to individuals.

Contact: Wenda Singer, Chair, Virginia Department for  
Children, 805 E. Broad St., Richmond, VA 23219, telephone  
(804) 786-2208 or SCATS 786-2208

## DEPARTMENT FOR CHILDREN

### Child Abuse Fatalities Study Committee

September 7, 1989 - 3 p.m. - Open Meeting  
† September 28, 1989 - 3 p.m. - Open Meeting  
State Capitol, Capitol Square, Senate Room 4, Richmond,  
Virginia. ☒

A meeting of the legislative study committee reviewing  
criminal sanctions in child abuse fatality cases.

Contact: Gerardine Luongo, Planner, Virginia Department  
for Children, 805 E. Broad St., 11th Floor, Eighth Street  
Office Bldg., Richmond, VA 23219, telephone (804) 786-5399  
or SCATS 786-5399

## COORDINATING COMMITTEE FOR INTERDEPARTMENTAL LICENSURE AND CERTIFICATION OF RESIDENTIAL FACILITIES FOR CHILDREN

September 8, 1989 - 8:30 a.m. - Open Meeting  
Interdepartmental Licensure and Certification, Office of the  
Coordinator, Tyler Building, 1603 Santa Rosa Drive, Suite  
210, Richmond, Virginia. ☒

Regularly scheduled meetings to consider such  
administrative and policy issues as may be presented  
to the committee.

Contact: John Allen, Coordinator, Interdepartmental  
Licensure and Certification, Office of the Coordinator, 8007  
Discovery Dr., Richmond, VA 23229-8699, telephone (804)  
662-7124 or SCATS 662-7124

## BOARD OF CORRECTIONS

August 23, 1989 - 10 a.m. - Open Meeting  
Board of Corrections, 6900 Atmore Drive, Board Room,  
Richmond, Virginia. ☒

A regular monthly meeting to consider such matters  
as may be presented to the board.

August 28, 1989 - 10 a.m. - Open Meeting  
Board of Corrections, 6900 Atmore Drive, Board Room,  
Richmond, Virginia. ☒

Special board meeting/budget briefing.

NOTE: If this briefing is completed during the August  
23, 1989, board meeting; the August 28, 1989, special  
meeting will not be held.

Contact: Vivian Toler, Secretary of the Board, 6900  
Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235

## DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

August 16, 1989 - 10 a.m. - Public Hearing  
Board of Corrections, 6900 Atmore Drive, Meeting Room,  
Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Virginia Board of  
Corrections intends to adopt regulations entitled: **VR  
230-30-005. Guide for Minimum Standards in Design  
and Construction of Jail Facilities.** These regulations  
establish minimum standards for the design and

# Calendar of Events

construction of jail facilities.

Statutory Authority: § 53.1-68 of the Code of Virginia.

Written comments may be submitted until August 18, 1989.

**Contact:** Dave Hawkins, Architect, Department of Corrections, Architecture and Design Unit, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3231 or SCATS 674-3231

\* \* \* \* \*

† **November 14, 1989 - 1 p.m.** – Public Hearing  
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Board of Corrections intends to adopt regulations entitled: **VR 230-01-003. Regulations Governing the Certification Process.** These regulations establish the procedures utilized to conduct compliance audits.

## STATEMENT

**Impact:** This regulation will affect all corrections oriented programs and facilities that are governed by standards adopted and approved by the Board of Corrections. The types of programs include Jails and Lockups, Adult Residential Care Programs, Youth and Adult Institutions, Youth and Adult Court Services, Community Diversion Incentive as well as all local and state youth community programs such as youth group homes and detention home programs.

**Basis:** Section 53.1-5 of the Code of Virginia requires the Board of Corrections to prescribe program standards and to monitor the activities of the department in implementing the standards.

**Purpose:** This regulation has been promulgated to fulfill the board's Code requirements to monitor Correctional Programs.

**Issues:** These standards have been promulgated by the Board of Corrections for the purpose of carrying out the provisions of § 53.1-5 of the Code of Virginia.

**Substance:** A committee appointed by the Board of Corrections and composed of local and state administrators and members of the Board of Corrections developed these regulations. These regulations were designed to describe the compliance audit process in terms of the responsibilities of the Certification Unit, the program under review and the Board of Corrections.

Statutory Authority: § 53.1-5 of the Code of Virginia.

Written comments may be submitted until October 16, 1989.

**Contact:** John T. Britton, Certification Unit Manager, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3237 or SCATS 674-3237

## BOARD FOR COSMETOLOGY

**August 14, 1989 - 9 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ☒

A meeting to (i) review enforcement cases; (ii) review correspondence; (iii) review applications; (iv) conduct routine board business; (v) conduct old business; and (vi) conduct new business.

**Contact:** Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590 or toll-free 1-800-552-3016 (VA only)

## DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

NOTE: CHANGE OF HEARING DATE

**September 15, 1989 - 10 a.m.** – Public Hearing  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Criminal Justice Services intends to amend regulations entitled: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.** Regulations to ensure the completeness, accuracy, privacy and security of criminal history record information. Amendments expand present language to provide further clarification of procedures.

Statutory Authority: §§ 9-170 and 9-184 through 9-196 of the Code of Virginia.

Written comments may be submitted until August 30, 1989.

**Contact:** Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000 or SCATS 786-4000

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**October 4, 1989 - 9:30 a.m.** – Public Hearing  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☒

Notice is hereby given in accordance § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to amend regulations entitled: **VR 240-03-01. Rules Relating to Compulsory Minimum Training Standards for Private Security Services**

# Calendar of Events

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**Business Personnel.** The amended regulations will revise and update training standards and requirements of Private Security Services Business Personnel.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until September 29, 1989, to L.T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

**Contact:** Paula Scott, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000 or SCATS 786-4000

## BOARD OF DENTISTRY

**September 21, 1989 - 2 p.m. – Public Hearing**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

An informational public hearing for the Virginia Board of Dentistry for the purpose of receiving proposed regulations.

**September 20, 1989 - 1 p.m. – Open Meeting**  
**September 21, 1989 - 8:30 a.m. – Open Meeting**  
**September 22, 1989 - 1:45 p.m. – Open Meeting**  
**September 23, 1989 - 10 a.m. – Open Meeting**  
Richmond-Marriott Hotel, 500 East Broad Street, Richmond, Virginia. ☐

A business meeting, formal hearings, committee meetings, disciplinary actions, and committee reports.

**Contact:** Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906

## STATE EDUCATION ASSISTANCE AUTHORITY

### Board of Directors

**September 26, 1989 - 2 p.m. – Open Meeting**  
State Education Assistance Authority, 6 North 6th Street, Suite 300, Richmond, Virginia

A general business meeting.

**Contact:** Lyn Hammond, Secretary to the Board, State Education Assistance Authority, 6 N. 6th St., Suite 300, Richmond, VA 23219, telephone (804) 786-2035, toll-free 1-800-792-5626 or SCATS 786-2035

## DEPARTMENT OF EDUCATION

**August 31, 1989 - 7 p.m. – Public Hearing**  
Hermitage High School, Richmond, Virginia  
Lake Taylor High School, Norfolk, Virginia

George Wythe High School, Wytheville, Virginia  
Osborn High School, Manassas, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Education intends to amend regulations entitled: **VR 270-01-0012. Standards for Accrediting Public Schools in Virginia.** These regulations provide a foundation for quality education and provide guidance and direction to assist schools in their continuing efforts to offer educational programs to meet the needs, interests and aspirations of students. These proposed regulations establish minimum standards and criteria which serve as the basis for determining the accreditation status of public schools in the Commonwealth.

Statutory Authority: §§ 22.1-16 and 22.1-19 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

**Contact:** Dr. Robert B. Jewell, Associate Director, Accreditation and Evaluation Service, Department of Education, P.O. Box 6Q, Richmond, VA 23216, telephone (804) 225-2105

## VIRGINIA FIRE SERVICES BOARD

**August 17, 1989 - 7 p.m. – Public Hearing**  
Fredericksburg City Council Chambers, 715 Princess Ann Street, Fredericksburg, Virginia

**August 24, 1989 - 7 p.m. – Public Hearing**  
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia

The Virginia Fire Services Board is requested by HJR 351 to study the feasibility of adopting the National Fire Protection Association (NFPA) 1500 - standard for a fire department occupational safety and health program. The design of NFPA 1500 is to provide the framework for a safety and health program for a fire department or any type of organization providing similar services. This standard is intended to meet or exceed any existing mandatory or voluntary compliance standards addressing any aspect of firefighter safety and health. The purpose of the public hearings is two-fold. One is to provide complete and accurate information about NFPA 1500 to the fire service personnel throughout the State. The other purpose is to solicit comments from the fire service community concerning the adoption of NFPA 1500 by the Commonwealth of Virginia.

**Contact:** Carl N. Cimino, Executive Director, Department of Fire Programs, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681 or SCATS 225-2681

# Calendar of Events

**August 24, 1989 - 7 p.m. - Public Hearing**  
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ☐

A public hearing to discuss fire training and fire policies. This public hearing is for comments and questions relating to the fire services in the Commonwealth and the area in which the hearing is held. Also at this session the NFPA 1500 Standard will be discussed.

**August 25, 1989 - 9 a.m. - Open Meeting**  
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ☐

A regular business meeting of the board. This meeting is open to the public for their input and comments.

## Fire/EMS Education Committee

**August 24, 1989 - 1 p.m. - Open Meeting**  
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ☐

A committee meeting to discuss fire training and fire policies. The meeting is open to the public for their input.

## Fire Prevention Committee

**August 24, 1989 - 9 a.m. - Open Meeting**  
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ☐

A committee meeting to discuss fire training and fire policies. The meeting is open to the public for their input.

## Legislative Committee

**August 24, 1989 - 1 p.m. - Open Meeting**  
Holiday Inn-Waterfront, 8 Crawford Parkway, Portsmouth, Virginia. ☐

A committee meeting to discuss fire training and fire policies. The meeting is open to the public for their input.

**Contact:** Anne J. Bales, Executive Secretary Senior, James Monroe Bldg., 17th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2681 or SCATS 225-2681

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

**August 27, 1989 - 3 p.m. - Open Meeting**  
**August 28, 1989 - 9 a.m. - Open Meeting**  
**August 29, 1989 - 9 a.m. - Open Meeting**  
Koger Center - West, 1601 Rolling Hills Drive, Surry Building, Richmond, Virginia.

August 27, 1989 - Preneed Committee Meeting.

August 28, 1989 - Certify candidates for September examination, general board meeting, and discuss proposed regulations.

August 29, 1989 - Informal fact-finding conferences.

**Contact:** Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907

## BOARD OF GAME AND INLAND FISHERIES

† **August 24, 1989 - 11 a.m. - Open Meeting**  
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia

The following committees of the board will meet on Thursday, August 24, 1989

Planning - 11 a.m.  
Finance - 1:30 p.m.  
Wildlife and Boat - 3:30 p.m.  
Law and Education - 4:30 p.m.

to discuss administrative and related matters which will be reported to the full board at its meeting on Friday, August 25.

† **August 25, 1989 - 9:30 a.m. - Open Meeting**  
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia

- Discussion of proposed regulation regarding Virginia Beach thoroughway.
- Establish Migratory Waterfowl Seasons for 1989-90.
- Consider proposed changes in fish regulations for 1989-90.
- The board will consider proposed changes re: VR 325-02-1. § 6, Hunting with dogs or possession of weapons in certain locations during closed season.
- Committee reports will be given.
- General Administrative matters will be considered.
- Sportsman Award Presentation.

**Contact:** Nancy B. Dowdy, Agency Regulatory Coordinator, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000, toll-free 1-800-237-5712 (Hotline) or SCATS 367-1000

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## GLOUCESTER COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

August 30, 1989 - 6:30 p.m. - Open Meeting  
The Old Courthouse, Gloucester, Virginia. ☒

The committee will conduct a table top exercise addressing a Haz-Mat scenario for Gloucester County.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

August 22, 1989 - 9:30 a.m. - Open Meeting  
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. ☒

A monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting.

Contact: Ann Y. McGee, Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371 or SCATS 786-6371

## BOARD FOR HEARING AID SPECIALISTS

September 11, 1989 - 9 a.m. - Public Hearing  
Department of Commerce, 3600 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to amend regulation entitled: VR 375-01-02. Board for Hearing Aid Specialists Regulations.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until August 30, 1989.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230-4917, telephone (804) 367-8534

## DEPARTMENT OF HISTORIC RESOURCES

### State Review Board

August 15, 1989 - 10 a.m. - Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☒

A meeting to consider the addition of the following properties to the Virginia Landmarks Register and their nomination to the National Register of Historic

### Places:

1. Bellevue, Bedford Co.
2. Bolling Island, Goochland Co.
3. Brooks House, Franklin Co.
4. Cocke's Mill, Albemarle Co.
5. Louisiana Camp, City of Manassas Park
6. Marion Male Academy, Marion, Smyth Co.
7. Mountain Glen, Bland Co.
8. Richmond Almshouse (Boundary Adjustment), Richmond (City)
9. Shelley Archaeological District, Gloucester Co.
10. Cape Charles Historic District, Northampton Co.
11. Conjuror's Field Archaeological Site, Colonial Heights

Contact: Margaret Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143, SCATS 786-3143 or 786-4276/TDD ☎

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

August 15, 1989 - 9 a.m. - Open Meeting  
Omni International Hotel, 777 Waterside Drive, Norfolk, Virginia. ☒

A regular meeting to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as they may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

August 21, 1989 - 10 a.m. - Public Hearing  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☒

The purpose of this hearing is to receive public input on the proposed criteria for accrediting local jurisdictions' Building Code Academies. Localities which establish training academies for building code officials, that are consistent with these accreditation criteria, will be exempt from transmitting the 1% levy proposed for adoption in the Uniform Statewide Building Code, Volume I, New Construction Code.

# Calendar of Events

See General Notices section for criteria.

**Contact:** Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

## DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

**August 21, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-03. Survey Standards for the Inspection of Buildings Being Converted to Condominiums.** The purpose is to amend the survey standards for inspection of buildings being converted to condominiums for the presence of asbestos.

Statutory Authority: § 55-79.94 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

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**August 21, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Housing and Community Development intends to amend regulations entitled: **VR 394-01-06. Virginia Uniform Statewide Fire Prevention Code/1987 Edition.**

Statutory Authority: §§ 27-95 and 27-97 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

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**August 21, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-7. Asbestos Survey Standards for Buildings to be Renovated or Demolished.** The purpose is to amend the standards for inspection and management of buildings to be renovated or demolished.

Statutory Authority: § 36-99.7 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

\* \* \* \* \*

**August 21, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I, New Construction Code, 1987 Edition.**

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

\* \* \* \* \*

**August 21, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-22. Virginia Uniform Statewide Building Code - Volume II Building Maintenance Code/1987.** The purpose is to amend those portions of the regulations pertaining to: Application to Pre-USBC and Post-USBC Buildings; Fire Protection Systems for Use Group R-1 (Hotels, Motels).

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Written comments may be submitted until August 25, 1989.

# Calendar of Events

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**Contact:** Gregory H. Revels, Program Manager, Department of Housing and Community Development, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772 or SCATS 371-7772

## COUNCIL ON INDIANS

† **August 16, 1989 - 10 a.m.** – Open Meeting  
Ninth Street Office Building, Cabinet Conference Room, 6th Floor, Richmond, Virginia. ☒

**September 18, 1989 - 2 p.m.** – Open Meeting  
Old City Hall, 1001 East Broad Street, AT&T Communications Conference Room, 1st Floor, Richmond, Virginia

A regular meeting of the Council on Indians to conduct general business and to receive reports from the council standing committees.

**Contact:** Mary Zoller, Information Director, Virginia Council on Indians, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9285 or SCATS 662-9285

## COUNCIL ON INFORMATION MANAGEMENT

† **August 30, 1989 - 9 a.m.** – Open Meeting  
Washington Building, 1100 Bank Street, 9th Floor Conference Room, Richmond, Virginia. ☒

A regular meeting of the council to receive a report on Central Agencies Information Systems which will be voted on for submission to the General Assembly.

**Contact:** Linda Hening, Administrative Assistant, Washington Bldg., 1100 Bank St., Suite 1100, Richmond, VA 23219, telephone (804) 225-3622, SCATS 225-2622 or (804) 225-3624/TDD ☎

## STATE LAND EVALUATION ADVISORY COUNCIL

**August 18, 1989 - 10 a.m.** – Open Meeting  
**September 8, 1989 - 10 a.m.** – Open Meeting  
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ☒

A meeting to determine a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open-space uses in the various areas of the Commonwealth.

**Contact:** David E. Jordan, Assistant Director, Property Tax, P.O. Box 6-L, Richmond, VA 23282, telephone (804) 367-8020 or SCATS 367-8020

## LIBRARY BOARD

† **September 7, 1989 - 9:30 a.m.** – Open Meeting  
Virginia State Library and Archives, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia. ☒

A meeting to discuss administrative matters of the library.

**Contact:** Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332 or SCATS 786-2332

## COMMISSION ON LOCAL GOVERNMENT

† **September 18, 1989 - 10 a.m.** – Open Meeting  
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. ☒

A regular meeting of the commission to consider such matters as may be presented.

**Contact:** Barbara W. Bingham, Administrative Assistant, 702 Eighth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6508

## VIRGINIA LONG-TERM CARE COUNCIL

**September 28, 1989 - 9:30 a.m.** – Open Meeting  
Cabinet Conference Room, 622 Ninth Street Office Building, Richmond, Virginia. ☒

Business pertains to developing increased long-term care services for disabled or chronically ill people of all ages.

**Contact:** Thelma E. Bland, Deputy Commissioner, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271/TDD ☎, toll-free 1-800-552-4464 or SCATS 225-2271

## LONGWOOD COLLEGE

### Board of Visitors

**August 24, 1989 - 10 a.m.** – Open Meeting  
Longwood College Campus, Virginia Room, Farmville, Virginia. ☒

A meeting to conduct business pertaining to the governance of the institution.

**Contact:** William F. Dorrill, Longwood College, Farmville, VA 23901, telephone (804) 392-9211 or SCATS 265-4211

STATE LOTTERY BOARD

† August 23, 1989 - 10 a.m. - Open Meeting  
State Lottery Department, 2201 West Broad Street,  
Conference Room, Richmond, Virginia. ☒

A regularly scheduled monthly meeting of the board.  
Business will be conducted according to items listed  
on the agenda which has not yet been determined.

Contact: Barbara L. Robertson, Lottery Staff Officer, State  
Lottery Department, 2201 W. Broad St., Richmond, VA  
23220, telephone (804) 367-9433 or SCATS 367-9433

BOARD OF MEDICAL ASSISTANCE SERVICES

† August 29, 1989 - 9 a.m. - Open Meeting  
Department of Medical Assistance Services, 600 East Broad  
Street, Richmond, Virginia

A meeting to discuss 1990 proposed budget-addenda.

Contact: Jacqueline Fritz, 600 E. Broad St., Richmond, VA  
23219, telephone (804) 786-7958

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES  
(BOARD OF)

September 1, 1989 - Written comments may be submitted  
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Board of Medical  
Assistance Services intends to amend regulations  
entitled: VR 460-02-4.191. Disproportionate Share  
Adjustments for Inpatient Hospitals. These proposed  
regulations intend to regulate the additional  
reimbursement to qualifying hospitals which serve a  
disproportionately higher number of Medicaid days.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m.,  
September 1, 1989, to William R. Blakely, Director,  
Division of Cost Settlement and Audit, Department of  
Medical Assistance Services, 600 East Broad Street, Suite  
1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator,  
Department of Medical Assistance Services, 600 E. Broad  
St., Suite 1300, Richmond, VA 23219, telephone (804)  
786-7933

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September 15, 1989 - Written comments may be submitted  
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Board of Medical  
Assistance Services intends to adopt regulations  
entitled: VR 460-03-3.1100; VR 460-05-2000.0000; VR  
460-05-2000.1000. New Drug Review Program. The  
proposed regulations will regulate Medicaid's coverage  
of new drugs as a cost savings measure.

Statutory Authority: § 32.1-325 of the Code of Virginia.

Written comments may be submitted until September 15,  
1989, to Stephen B. Riggs, D.D.S., Director, Division of  
Health Services Review, 600 E. Broad Street, Suite 1300,  
Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator,  
Department of Medical Assistance Services, 600 E. Broad  
St., Suite 1300, Richmond, VA 23219, telephone (804)  
786-7933

GOVERNOR'S ADVISORY BOARD ON MEDICARE AND  
MEDICAID

August 29, 1989 - CANCELLED  
Hyatt Hotel - I-64, West Broad Street, Richmond, Virginia.  
☒

This meeting has been cancelled.

Contact: Jacqueline Fritz, Department of Medical  
Assistance Services, 600 E. Broad St., Richmond, VA 23219,  
telephone (804) 786-7958

BOARD OF MEDICINE

September 20, 1989 - Written comments may be submitted  
until this date.

Notice is hereby given in accordance with § 9-6.14:7.1  
of the Code of Virginia that the Board of Medicine  
intends to adopt and amend regulations entitled: VR  
465-02-01. Practice of Medicine, Osteopathy, Podiatry,  
Chiropractic, Clinical Psychology, and Acupuncture.  
The purpose is to amend regulations to clarify  
advertising free services/examination of practitioners  
of the healing arts and establish fees for special  
purpose examinations, out-of-state candidates to sit for  
FLEX, and withdrawing an application for licensure.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until September 20,  
1989, to Hilary H. Conner, M.D., Executive Director,  
Virginia Board of Medicine, Department of Health  
Professions, 1601 Rolling Hills Drive, Surry Building,  
Richmond, VA 23229-5005, telephone (804) 662-9908.

Contact: Eugenia K. Dorson, Board Administrator, Board of  
Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005,  
telephone (804) 662-9925 or SCATS 662-9925

# Calendar of Events

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## Informal Conference Committee

† August 18, 1989 - 1 p.m. - Open Meeting  
Fort Magruder Inn, Williamsburg, Virginia. ☒

The committee composed of three members of the Board of Medicine will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 (a)(6) of the Code of Virginia.

Contact: Karen D. Waldron, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Surry Bldg., 2nd Floor, Richmond, VA 23229-5005, telephone (804) 662-7006

## STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

August 23, 1989 - 10 a.m. - Open Meeting  
State Capitol, Capitol Square, House Room 4, Richmond, Virginia. ☒

A regular monthly meeting. Agenda to be published on August 9, 1989. Agenda may be obtained by calling Jane Helfrich.

Contact: Jane Helfrich, Administrative Staff, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921 or SCATS 786-3921

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

August 15, 1989 - 10 a.m. - Public Hearing  
James Monroe Building, 101 North 14th Street, Conference Rooms D and E, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 10 a.m. - Public Hearing  
Roanoke City Hall, 215 Church Avenue, Council Chambers, Room 450, Roanoke, Virginia. ☒ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 10 a.m. - Public Hearing  
Norfolk Public Schools Building, 800 East City Hall Avenue, 12th Floor Board Room, Room 202, Norfolk, Virginia. ☒ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 10 a.m. - Public Hearing  
Oakton Corporate Center, 10461 White Granite Drive, 3rd Floor Training Room, Suite 300, Oakton, Virginia. ☒ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 7:30 p.m. - Public Hearing  
Holiday Inn-Koger Center-South, 1021 Koger Center Boulevard, Anna Room, Richmond, Virginia. ☒ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

August 15, 1989 - 7:30 p.m. - Public Hearing  
Roanoke City Hall, 215 Church Avenue, Council Chambers, Room 450, Roanoke, Virginia. ☒ (Interpreter for deaf provided upon request. Please request by July 24, 1989.)

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Mental Health, Mental Retardation and Substance Abuse Services, acting as the lead agency administering Part H (EHA) early intervention services to infants and toddlers with handicaps (Public Law 99-457), intends to conduct public hearings for the purpose of presenting the FY 89 State Early Intervention Grant Application. Interested parties are asked to give their comments and suggestions. Copies of the grant may be obtained by contacting the Department of Mental Health, Mental Retardation and Substance Abuse Services employee listed below. The application will be available as of June 1, 1989. Written comments will be accepted by the listed contact person until August 18, 1989.

Contact: Michael Fehl, Ed.D., Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710

\* \* \* \* \*

† August 14, 1989 - 10:30 a.m. - Public Hearing  
Northern Virginia Mental Health Institute, Medical Library, Falls Church, Virginia

† August 15, 1989 - 10:30 a.m. - Public Hearing  
Eastern State Hospital, Auditorium Building # 3, Williamsburg, Virginia

† August 16, 1989 - 7 p.m. - Public Hearing  
Southwestern State Hospital, Marion, Virginia

† August 18, 1989 - 1 p.m. - Public Hearing  
Southside Virginia Training Center, Conference Room, Building # 1, Petersburg, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Mental Health, Mental Retardation and Substance Abuse Services intends to adopt new regulations and repeal existing regulations entitled: **VR 470-03-02. Regulations to Ensure the Rights of Residents.** The purpose is to delineate the rights of residents in state operated facilities by the Department of Mental Health, Mental Retardation and Substance Abuse Services. These regulations apply to all facilities operated by the DMHMRSAS.

## STATEMENT

The facility regulations identify those fundamental rights which may not be restricted by facilities. These regulations further define those rights which may be restricted for therapeutic reasons, and in the assurance of resident participation in treatment decision-making and define client participation in work activities. The regulations also establish an administrative review process for review of alleged violations of rights, delineating the roles and responsibilities of the person involved. The relationship between the State Human Rights Committee and Local Human Rights Committees and the facilities are also delineated.

The department proposes to repeal the current regulations.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until October 13, 1989.

**Contact:** Elsie D. Little, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988 or SCATS 786-3988

### Virginia Interagency Coordinating Council

† **September 20, 1989 - 9 a.m.** – Open Meeting  
Richmond Airport Hilton, Richmond, Virginia. ☐  
(Interpreter for deaf provided if requested)

A meeting of Virginia's Early Intervention Coordinating Council for Part H, P.L. 99-457 (VICC). The council is an advisory body assisting the Department of Mental Health, Mental Retardation and Substance Abuse Services, the lead agency, in the development and implementation of a statewide interagency multidisciplinary system of early intervention services for infants and toddlers with disabilities, ages birth through two.

**Contact:** Michael Fehl, Ed.D., Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710

### MIGRANT AND SEASONAL FARMWORKERS BOARD

† **September 5, 1989 - 1 p.m.** – Open Meeting  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☐

This will be a regular meeting of the board.

**Contact:** Marilyn Mandel, Director, Office of Planning and Policy Analysis, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2385 or SCATS 786-2385

## DEPARTMENT OF MOTOR VEHICLES

**September 11, 1989 - 10:30 a.m.** – Public Hearing  
Department of Motor Vehicles, 2300 West Broad Street, Cafeteria, Richmond, Virginia

**September 12, 1989 - 1 p.m.** – Public Hearing  
Ramada Renaissance, Herndon, Virginia. ☐

**September 14, 1989 - 10:30 a.m.** – Public Hearing  
Sheraton Inn, Military Circle, Norfolk, Virginia

**September 15, 1989 - 10:30 a.m.** – Public Hearing  
Holiday Inn, Route 58 & I-85, South Hill, Virginia. ☐

**September 19, 1989 - 10:30 a.m.** – Public Hearing  
Virginia Highlands Community College Auditorium, Bristol, Virginia. ☐

**September 20, 1989 - 10:30 a.m.** – Public Hearing  
Roanoke Airport Marriott, Roanoke, Virginia. ☐

**September 21, 1989 - 10:30 a.m.** – Public Hearing  
Red Carpet Inn, Waynesboro, Virginia. ☐

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Motor Vehicles intends to adopt regulations entitled: **VR 485-50-8901. Virginia Commercial Driver's License Regulations.** These regulations establish certain standards and requirements for licensing drivers of commercial motor vehicles in Virginia. These requirements and standards relate to (i) the licensing of new residents and nonresidents, (ii) the satisfaction of vision requirements, and (iii) the administration of skills tests by persons other than DMV employees. The Virginia Commercial Driver's License Act (House Bill 1675, enacted by the 1989 General Assembly); the federal Commercial Motor Vehicle Safety Act of 1986 (Title XII of Public Law 99-750), and §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Statutory Authority: §§ 46.1-26 and 46.1-370.2 of the Code of Virginia.

Written comments may be submitted until September 1, 1989.

**Contact:** Dan W. Byers, DSA Assistant Administrator or Rudy C. McCollum, CDL Program Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-1836 (Dan Byers) or 367-6633 (Rudy McCollum)

**September 26, 1989 - 10 a.m.** – Public Hearing  
Holiday Inn Airport, 6626 Thirlane Road, Roanoke, Virginia. ☐ (Interpreter for deaf provided if requested)

**September 27, 1989 - 1 p.m.** – Public Hearing  
Best Western Springfield Inn, 6550 Loisdale Court, Springfield, Virginia. ☐ (Interpreter for deaf provided if requested)

# Calendar of Events

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requested)

**October 2, 1989 - 10 a.m. - Public Hearing**  
Omni, 100 Batten Bay Boulevard, Newport News, Virginia.  
☒ (Interpreter for deaf provided if requested)

**October 3, 1989 - 1 p.m. - Public Hearing**  
Department of Motor Vehicles, 2300 West Broad Street,  
Richmond, Virginia. ☒ (Interpreter for deaf provided if  
requested)

The Department of Motor Vehicles, in conjunction with the Commission on Virginia Alcohol Safety Action program and the Transportation Safety Board, will conduct a public hearing for the purpose of discussing issues regarding SJR 172, administrative revocation of the driver's licenses of persons who operate motor vehicles while under the influence of alcohol or drugs, or both, or who refuse to submit to chemical testing after having been arrested for driving under the influence.

**Contact:** Vince M. Burgess, Administrator, Traffic Safety Administrator, P.O. Box 27412, Richmond, VA 23269, telephone (804) 367-8150 or SCATS 367-8150

## BOARD OF NURSING

† **August 14, 1989 - 1:30 p.m. - Open Meeting**  
Hampton University, William Freeman Hall, Room 131,  
Hampton, Virginia. ☒ (Interpreter for deaf provided if  
requested)

† **August 17, 1989 - 9:30 a.m. - Open Meeting**  
Sheraton Hotel, I-95 and Route 3, P.G.A. Board Room,  
Fredericksburg, Virginia. ☒ (Interpreter for deaf provided  
if requested)

† **August 22, 1989 - 10 a.m. - Open Meeting**  
Old Dominion University, 4401 Hampton Boulevard, Batten  
Arts and Letters Building, Room 106, Norfolk, Virginia. ☒  
(Interpreter for deaf provided if requested)

† **August 23, 1989 - 10 a.m. - Open Meeting**  
Department of Health Professions, 1601 Rolling Hills Drive,  
Conference Room 1, Richmond, Virginia. ☒ (Interpreter for  
deaf provided if requested)

Formal hearings will be held to inquire into allegations that certain laws and regulations governing the practice of nursing in Virginia may have been violated.

**August 24, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☒ (Interpreter for deaf provided if  
requested)

10 a.m. - Public hearing to receive comments on proposed regulations to establish a registry for Clinical

Nurse Specialists and to prescribe MINIMUM standards for programs preparing such specialists.

1:30 p.m. - Public hearing to receive comments on existing Board of Nursing Regulations including emergency regulations for Certified Nurse Aides. Hearing is first step in the board's biennial review of its regulations.

**Contact:** Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or toll-free 1-800-533-1560

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† **August 24, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☒

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing intends to adopt and amend regulations entitled: **VR 495-01-1. Board of Nursing Regulations.** The purpose of the proposed action is to establish a registry for clinical nurse specialists, minimum standards for education of clinical nurse specialists and requirements for the practice of clinical nurse specialists.

## STATEMENT

Statement of purpose: The purpose of these proposed (amended and new) regulations is to provide for a registry for clinical nurse specialists, to establish minimum standards for programs preparing clinical nurse specialists and to establish requirements for the practice of clinical nurse specialists. Fees to support the clinical nurse specialist program are included to insure that expenditures of the Board of Nursing continue to be met by revenue received from licensure and applicants for licensure and registration.

Basis: The proposed new and amended regulations are needed to implement the changes to §§ 54.1-3000, 54.1-3005 and 54.1-3013 of the Code of Virginia which were effective on July 1, 1989. These regulations establish the requirements for a registry for clinical nurse specialists, establish the fees to support the program and provide for minimum essential standards for approval of education programs preparing clinical nurse specialists and for the practice of those registered. These regulations will facilitate the reimbursement of clinical nurse specialists included in the amendments of §§ 38.2-3408 and 38.2-4221 by defining the education and practice of clinical nurse specialists. It is expected that the public health, safety and welfare will be protected in this process of registration of those qualified for the advanced practice of nursing based on the education and experience as defined in the proposed new and amended regulations.

Estimated impact:

## A. Regulated entities.

1. It is estimated that there are approximately 250 registered nurses in the Commonwealth who are prepared by education and experience as clinical nurse specialists.
2. There are currently five universities in the Commonwealth offering a master's degree in nursing for clinical nurse specialists. All meet the approval standards proposed by these new regulations in § 2.5.

## B. Projected cost to regulated entities.

1. Amendments to § 1.3 establish fees to be paid by applicants for registration and for the renewal of registration. A one-time application fee of \$50 with a biennial renewal fee of \$30 is estimated to be sufficient to meet the costs of the maintenance of the registration program. A reinstatement fee of \$25 is provided to cover the cost of processing the renewal of a lapsed registration. Since some states have provisions for licensure or certification for advanced practice, it is anticipated that requests may be received to verify registration as a clinical nurse specialist to the licensing authority in another state. A fee of \$25 is proposed to cover this activity.

2. The addition of the new regulation found in § 2.5 is not anticipated to result in increased cost to the regulated entity. The Board of Nursing has an ongoing nursing education program approval process and its staff is accustomed to reviewing programs and transcripts. All of the programs currently preparing clinical nurse specialists in Virginia meet the proposed standards.

3. The cost for implementation of § 3.10 is addressed in part B.1 above with the exception of the requirement for providing evidence of professional certification for initial and continuing registration. At the present time the only national professional certification for clinical nurse specialists is available from the American Nurses' Association (ANA). The cost ranges from \$100 for members to \$225 for nonmembers. The board has included this requirement for a number of reasons including:

- a. almost all clinical nurse specialists have obtained this professional certification.
- b. the education and experience requirements for professional certification are reasonable and consistent with the board's expectation to provide for the safe advanced practice of nursing.
- c. professional standards have been established for practice by those certified by the ANA including provision for peer review and continuing education.

While this cost is present for the individual clinical

nurse specialist, acceptance of professional certification will reduce the cost to the board and the regulated entity, in that the board will not have to conduct comprehensive reviews of education programs and documents related to experience.

4. It is not estimated that § 3.11 will result in additional costs beyond that described above.

5. The amendment of § 4.1 to add an additional definition of unprofessional conduct is not expected to add to the cost to the regulated entity.

6. The new § 4.2 may save the cost of additional hearings by providing for automatic sanction of the clinical nurse specialist registration if the registered nurse license is sanctioned.

## C. Costs to the public.

It is difficult to estimate that there will be a cost to the public as the result of these new and amended regulations. The minimal fees imposed on the regulated entities should not result in a significant increase in fees they may charge. By authorizing the advanced practice of nursing by clinical nurse specialists, there may be a reduction in cost to the public, since fees charged by these individuals may be less than other health care providers. Their practice also tends to focus on "wellness promotion" and could conceivably result in decreased health care costs.

## D. Cost to agency.

The clinical nurse specialist registration program will be assigned to current staff. No additional staff or work space is required. Forms necessary for application, initial certification and renewal of certification, computer time, space and data entry and postage will be adequately covered by the estimated initial revenue of \$12,000 with an ongoing annual revenue of approximately \$10,000.

## E. Source of funds.

All fees of the Board of Nursing are derived from fees paid by licensees, registrants and applicants. This program will be self-supporting.

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Written comments may be submitted until October 14, 1989.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909 or SCATS 662-9909

## Special Conference Committee

† August 25, 1989 - 8:15 a.m. -- Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive,

# Calendar of Events

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Conference Room 2, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A Special Conference Committee, comprised of three members of the Virginia Board of Nursing, will inquire into allegations that certain licensees may have violated laws and regulations governing the practice of nursing in Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or toll-free 1-800-533-1560

## JOINT BOARDS OF NURSING AND MEDICINE

### Special Conference Committee

† August 14, 1989 - 9 a.m. - Open Meeting  
Hampton University, William Freeman Hall, Room 131, Hampton, Virginia. ☒ (Interpreter for deaf provided if requested)

Three informal hearings will be held to inquire into allegations that certain laws and regulations governing the practice of Nurse Practitioners in Virginia may have been violated.

Contact: Corinne F. Dorsey, R.N., Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9909 or toll-free 1-800-533-1560

## BOARD OF NURSING HOME ADMINISTRATORS

September 6, 1989 - 8 a.m. - Open Meeting  
September 7, 1989 - 8 a.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

National and State Examinations will be given to applicants for licensure for nursing home administrators.

Board committee meetings.

Contact: Mark L. Forberg, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9111

## POLYGRAPH EXAMINERS ADVISORY BOARD

† August 15, 1989 - 9 a.m. - Open Meeting  
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

The board will meet for the purpose of administering the Polygraph Examiners Licensing Examination to eligible Polygraph Examiner Interns and to conduct other board business.

Contact: Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534, toll-free 1-800-552-3016 or SCATS 367-8534

## COMMISSION ON PRISON AND JAIL OVERCROWDING

† September 20, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☒

Full commission meeting. Committees final reports will be given to members.

Contact: Lin Corbin-Howerton, Staff Director, Ninth Street Office Bldg., 3rd Floor, Richmond, VA 23219, telephone (804) 786-1657

## BOARD OF PROFESSIONAL COUNSELORS AND THE BOARD OF PSYCHOLOGY

August 24, 1989 - 9 a.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

The Board of Psychology and the Board of Professional Counselors will meet jointly to hear testimony in a formal hearing regarding a licensee of both boards.

Contact: Stephanie A. Sivert, Executive Director, or Joyce D. Williams, Administrative Assistant, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9912 or SCATS 662-9912

## BOARD OF PSYCHOLOGY

August 24, 1989 - 9 a.m. - Open Meeting  
See preceding entry under "Board of Professional Counselors and the Board of Psychology."

August 25, 1989 - 9 a.m. - Open Meeting  
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ☒

A meeting to (i) conduct general board business and (ii) review applications for licensure, residency, and registrations as Technical Assistants.

Contact: Stephanie A. Sivert, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9913

## VIRGINIA RACING COMMISSION

September 1, 1989 - Written comments may be received until this date.

# Calendar of Events

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **VR 662-01-01. Virginia Racing Commission Public Participation Guidelines for Adoption or Amendment of Regulations.** The guidelines will establish permanent procedures to solicit and obtain comments from interested individuals and organizations as the commission drafts and promulgates regulations governing horse-racing and parimutuel wagering.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until September 1, 1989, to Chairman, Virginia Racing Commission, P.O. Box 1123, Richmond, Virginia 23208.

**Contact:** Elizabeth Kaplan, Senior Analyst, Department of Planning and Budget, P.O. Box 1422, Richmond, VA 23211, telephone (804) 786-7478 or SCATS 786-7478

## REAL ESTATE BOARD

† **October 3, 1989 - 10 a.m.** – Open Meeting  
Department of Commerce, 3600 West Broad Street, Conference Room 1, Richmond, Virginia. ☒

The board will meet to conduct a formal hearing:

The Real Estate Board v. Clyde Wayne London.

**Contact:** Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8524

## BOARD OF REHABILITATIVE SERVICES

† **August 24, 1989 - 9:30 a.m.** – Open Meeting  
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The board will review and adopt new proposed Vocational Rehabilitation Regulation Amendments. It will make final comments on proposed biennial budget.

### Finance Committee

† **August 23, 1989 - 2 p.m.** – Open Meeting  
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The committee will make its final review of biennial budget. It will review the first monthly financial report for FY 90.

### Legislation and Evaluation Committee

† **August 23, 1989 - 1 p.m.** – Open Meeting

4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The committee will continue its review of department programs and develop recommendations for board action.

### Program Committee

† **August 23, 1989 - 3 p.m.** – Open Meeting  
4901 Fitzhugh Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

The committee will review department recommendations on proposed vocational rehabilitation regulation amendments and prepare its recommendations for board approval and adoption.

**Contact:** James L. Hunter, Board Administrator, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-6446, toll-free 1-800-552-5019/TDD ☎, SCATS 367-6446 or (804) 367-0289/TDD ☎

## STATE SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **August 23, 1989 - 10 a.m.** – Open Meeting  
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. ☒

A meeting to hear and render a decision on all appeals of denials of on-site sewage disposal system permits.

**Contact:** Deborah E. Randolph, 109 Governor St., Room 500, Richmond, VA 23219, telephone (804) 786-3559

## VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

† **August 24, 1989 - 10 a.m.** – Open Meeting  
Virginia Small Business Financing Authority Offices, 1021 East Cary Street, 14th Floor, Board Room, Richmond, Virginia

The authority will conduct its regular business meeting and will conduct a public hearing to consider Industrial Development Bond Applications received by the authority and for which public notice has appeared in the appropriate newspapers of general circulation.

**Contact:** Cathleen M. Surface, Virginia Small Business Financing Authority, 1021 E. Cary St., Richmond, VA 23219, telephone (804) 371-8254

## BOARD OF SOCIAL SERVICES

† **August 16, 1989 - 2:30 p.m.** – Open Meeting

# Calendar of Events

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† August 17, 1989 - 9 a.m. - Open Meeting (If necessary)  
Highland Inn, Main Street, Monterey, Virginia. ☒

† September 20, 1989 - 2 p.m. - Open Meeting  
† September 21, 1989 - 9 a.m. - Open Meeting (If necessary)  
Mountain Lake Lodge, Route 700, Mountain Lake, Virginia.  
☒

A work session and formal business meeting of the board.

Contact: Phyllis Sisk, Administrative Staff Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9236 or SCATS 662-9236

## DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

August 24, 1989 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled: **VR 615-70-17. Child Support Enforcement Programs.** This regulation describes the rules the Department of Social Services will use in establishing, enforcing, and collecting child support payments.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until August 24, 1989, to Jane Clements, Department of Social Services, Division of Child Support Enforcement, 8007 Discovery Drive, Blair Building, Richmond, Virginia, 23229-8699.

Contact: Margaret J. Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Drive, Blair Building, Richmond, VA 23229-8699, telephone (804) 662-9217 or SCATS 662-9217

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† September 18, 1989 - 10 a.m. - Public Hearing  
Department of Social Services, 8007 Discovery Drive, Conference Rooms A and B, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled: **VR 615-43-3. Nonagency Placements for Adoption-Consent.** The regulations will enable local departments of social services and licensed child placing agencies to implement new legislation governing parental placements for adoption.

### STATEMENT

Basis: These regulations are issued under the authority

granted by the Code of Virginia, Title 63.1.

Subject: These regulations relate to placement of a child by his birth parents for the purpose of adoption with individuals of their choice, to execution of consent to the adoption, and to the responsibilities of agencies and the commissioner when violations of laws governing parental placements are suspected.

Purpose: The intent of these regulations is to provide guidelines to local departments of social services and licensed child-placing agencies in order to effectively implement the new requirements of law.

Substance: These regulations require agencies to conduct a home study, to submit a report of the home study to the juvenile and domestic relations court, and to report suspected violations of the parental placement laws to the Commissioner of Social Services. These regulations require the commissioner to investigate and take appropriate action when reports of suspected violations of law in the placement and adoption of a child are received.

Issues: These regulations address changes in legal requirements for parental placements, time frames for provision of services, and changes in the roles and responsibilities of agencies.

Statutory Authority: § 63.1-220.3 of the Code of Virginia.

Written comments may be submitted until October 13, 1989.

Contact: Margaret J. Friedenber, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217 or SCATS 662-9217

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† September 18, 1989 - 10 a.m. - Public Hearing  
Department of Social Services, 8007 Discovery Drive, Blair Building, Conference Rooms A and B, Richmond, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to adopt regulations entitled: **VR 615-43-10. Nonagency Placements for Adoption-Adoptive Home Study.** The regulations provide guidelines to child-placing agencies in conducting an adoptive home study when children are placed for adoption by their birth parents or legal guardian.

### STATEMENT

Basis: These regulations are issued under the authority granted by the Code of Virginia, Title 63.1.

Subject: These regulations relate to the completion of adoptive home studies in the parental placements.

**Purpose:** The intent of these regulations is to provide guidelines to local departments of social services and licensed child-placing agencies for assessing adoptive families when a child is placed for adoption by his birth parents.

**Substance:** These regulations address the method of study, criteria for assessing families, and the approval period for a completed home study.

**Issues:** These regulations provide consistent criteria for agencies to use in assessing the ability of prospective adoptive families to adequately parent a child not born to them.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until October 13, 1989.

**Contact:** Margaret J. Friedenberg, Legislative Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9217 or SCATS 662-9217

## BOARD OF SOCIAL WORK

† September 8, 1989 - 10 a.m. - Open Meeting  
† September 9, 1989 - 10 a.m. - Open Meeting  
† September 10, 1989 - 10 a.m. - Open Meeting  
Virginia Beach Resort and Convention Center, 2800 Shore Drive, Virginia Beach, Virginia

General board business; review and planning for the board for the next biennium; long-range goals of the board.

### Oral Examination Study Subcommittee

† August 18, 1989 - 1 p.m. - Open Meeting  
† August 19, 1989 - 9 a.m. - Open Meeting  
Family Counseling Center, 4356-2 Bonney Road, Suite 101, Virginia Beach, Virginia

Oral Examination Study Subcommittee of the Board of Social Work will meet to discuss its study of the oral examination process for the board and its report to be sent to the Board of Social Work.

**Contact:** Stephanie A. Sivert, Executive Director, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229, telephone (804) 662-9914

## COMMONWEALTH TRANSPORTATION BOARD

August 16, 1989 - 2 p.m. - Open Meeting  
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

August 17, 1989 - 10 a.m. - Open Meeting  
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval.

**Contact:** Albert W. Coates, Jr., Assistant Commissioner, Department of Transportation, 1401 E. Broad St., Richmond, VA, telephone (804) 786-9950

## TRANSPORTATION SAFETY BOARD

† August 18, 1989 - 8:15 a.m. - Open Meeting  
Hyatt Fair Lakes, Fairfax County, Virginia

The board will discuss various subjects which pertain to transportation safety.

**Contact:** John T. Hanna, Deputy Commissioner, 2300 W. Broad St., Richmond, VA 23219-0001, telephone (804) 367-6620 or SCATS 367-6620

## DEPARTMENT FOR THE VISUALLY HANDICAPPED

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

August 22, 1989 - 1:30 p.m. - Open Meeting  
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☒

A regular monthly meeting.

**Contact:** Glen R. Slonneger, Jr., Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140

### Advisory Committee on Services

† October 14, 1989 - 11 a.m. - Open Meeting  
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☒ (Interpreter for deaf provided if requested)

Committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually handicapped citizens of the Commonwealth.

**Contact:** Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3055, toll-free 1-800-622-2155, SCATS 371-3055 or

# Calendar of Events

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371-3140/TDD TELE

## VIRGINIA WASTE MANAGEMENT BOARD

† September 21, 1989 - 10 a.m. - Public Hearing  
James Monroe Building, 101 North 14th Street, Conference Room C, Richmond, Virginia. ☒

A public hearing and work session on proposed infectious waste management regulations.

Contact: Cheryl Cashman, Legislative Liaison, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667, toll-free 1-800-552-2075 or SCATS 225-2667

## DEPARTMENT OF WASTE MANAGEMENT

August 31, 1989 - 7:30 p.m. - Public Hearing  
Charles City County Neighborhood Center, Courthouse Complex, Charles City, Virginia.

A public hearing on the draft permit for the proposed Charles City County landfill will be held pursuant to § 7.2 E 2, VR 672-20-10. The draft permit will be available for public review and comment by August 17, 1989, subject to the results of the full review pursuant to § 7.2 D 3, VR 672-20-10. A public announcement will be made in the Richmond Times-Dispatch at least two weeks prior to the scheduled date should cancellation become necessary.

Contact: Persons wishing to speak contact: A. C. McNeer, Hearing Officer, Department of Waste Management, Division of Administration, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667; for additional information contact: E. D. Gillispie, Department of Waste Management, Division of Technical Services, James Monroe Bldg., 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667

## STATE WATER CONTROL BOARD

August 17, 1989 - 2 p.m. - Open Meeting  
Virginia War Memorial, 621 South Belvidere Street, Richmond, Virginia. ☒

The purpose of this meeting is to allow the public an opportunity to review and comment on the board's draft list of targeted FY 90 loan recipients, the FY 90 draft list and FY 90 Intended Use Plan.

Contact: Doneva A. Dalton, Hearing Reporter, State Water Control Board, Office of Policy Analysis, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6829

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August 22, 1989 - 10 a.m. - Public Hearing  
Augusta County Office Building, 6 East Johnson Street, Board Room (# 174), Staunton, Virginia

August 22, 1989 - 7 p.m. - Public Hearing  
Washington County Board of Supervisors Room, 205 Academy Drive, Abingdon, Virginia

August 23, 1989 - 2 p.m. - Public Hearing  
City of Danville Council Chambers, Municipal Building, 4th Floor, 418 Patton Street, Danville, Virginia

August 29, 1989 - 2 p.m. - Public Hearing  
Williamsburg/James City Courthouse Council Chambers, 321-45 Court Street, West, Williamsburg, Virginia

August 31, 1989 - 7 p.m. - Public Hearing  
Prince William County, McCourt Building, Board Room, 1 County Complex, 4850 Davis Ford Road, Prince William, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-21-01. Surface Water Standards with General, Statewide Application; and VR 680-21-03. Water Quality Criteria for Surface Water.** The board proposes to repeal existing regulations. The purpose of this proposed action is to adopt standards for toxics for protection of aquatic life to comply with federal regulations which state that water quality standards must be adopted for section 307(a) toxic pollutants. The associated narrative and amendments to existing sections are necessary to clarify the language, specify the implementation of the standards and provide a mechanism whereby permittees could request alternate permit limitations due to site specific factors, technology/economic limitations, or cases where natural background levels exceed established standards.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 18, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Eleanore Moll, Office of Environmental Research and Standards, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-6418 or SCATS 367-6418

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August 29, 1989 - 7 p.m. - Public Hearing  
Williamsburg/James City Courthouse Council Chambers, 321-45 Court Street, West, Williamsburg, Virginia

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-13-04. Eastern Virginia Groundwater Management Area.** The proposed amendments would expand the existing Groundwater Management Area in Southeastern Virginia to include the counties of Charles City, James City, King William, New Kent, and York; the areas of Chesterfield, Hanover, and Henrico counties east of Interstate 95; and the cities of Hampton, Newport News, Poquoson, and Williamsburg.

Statutory Authority: § 62.1-44.96 of the Code of Virginia.

Written comments may be submitted until 4 p.m., September 15, 1989, to Doneva Dalton, Hearing Reporter, State Water Control Board, P.O. Box 11143, Richmond, Virginia 23230.

**Contact:** Fred C. Cunningham, Officer of Water Resources Management, State Water Control Board, P.O. Box 11143, Richmond, VA 23230, telephone (804) 367-0411 or SCATS 367-0411

## VIRGINIA COUNCIL ON THE STATUS OF WOMEN

**September 11, 1989 - CANCELLED**  
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

This meeting has been cancelled.

**September 12, 1989 - 9 a.m. - CANCELLED**  
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia

This meeting has been cancelled.

**Contact:** Bonnie H. Robinson, Executive Director, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9200 or SCATS 662-9200

## LEGISLATIVE

### JOINT SUBCOMMITTEE STUDYING THE FEASIBILITY OF CREATING AN ADMINISTRATIVE LAW JUDGE PANEL AND THE ESTABLISHMENT OF UNIFORM RULES OF PROCEDURE FOR ADMINISTRATIVE HEARINGS

**August 28, 1989 - 10 a.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

The joint subcommittee will consider alternatives, including the establishment of these alternatives, to the current hearing officers systems in Virginia. HJR 333

**Contact:** Mary Geisen, Division of Legislative Services, General Assembly Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-3591

### SENATE COMMITTEE ON AGRICULTURE, CONSERVATION AND NATURAL RESOURCES

**August 17, 1989 - 10 a.m. - Public Hearing**  
General Assembly Building, Capitol Square, Senate Room A, Richmond, Virginia. ☐

A public hearing on the implementation of the Chesapeake Bay Preservation Act.

**Contact:** Marty G. Farber, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

### AGRICULTURAL LINKED DEPOSIT PROGRAM

† **August 24, 1989 - 10 a.m. - Open Meeting**  
State Capitol, Capitol Square, House Room 2, Richmond, Virginia. ☐

The members of the Joint Subcommittee Studying the Feasibility of the Creation of an Agricultural Linked Deposit Program will hold their initial meeting. HJR 381

**Contact:** Deanna S. Byrne, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

### COMMISSION TO STUDY ALTERNATIVE METHODS OF FINANCING CERTAIN FACILITIES AT STATE-SUPPORTED COLLEGES AND UNIVERSITIES

**August 17, 1989 - 1 p.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

An organizational meeting to set agenda for interim meetings. HJR 373

† **September 11, 1989 - 2 p.m. - Open Meeting**  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

This commission is meeting to study alternative methods of financing certain facilities at state-supported colleges and universities. HJR 373

**Contact:** Kathleen G. Harris, Staff Attorney, Division of Legislative Services, General Assembly Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-3591

# Calendar of Events

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## JOINT SUBCOMMITTEE STUDYING BANKING SERVICES FOR LOW AND MODERATE INCOME CONSUMERS

August 24, 1989 - 11 a.m. - Public Hearing  
Roanoke City Council Chambers, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia

A public hearing. SJR 226

Contact: Arlen Bolstad, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591, or Thomas Gilman, Chief Committee Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-7869

## VIRGINIA CODE COMMISSION

September 5, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, Sixth Floor Conference Room, Richmond, Virginia. ☐

The commission will meet to begin its revision of Title 51 (Pensions and Retirement). It will also review the current status of The Virginia Register of Regulations.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg., Room 292, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

## JOINT SUBCOMMITTEE EVALUATING STATEWIDE COURT APPOINTED SPECIAL ADVOCATE (CASA) PROGRAMS IN THE COMMONWEALTH

† August 15, 1989 - 2 p.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room C, Richmond, Virginia. ☐

This is a meeting of the Joint Subcommittee Evaluating Statewide Court Appointed Special Advocate (CASA) Programs in the Commonwealth. HJR 261

Contact: Oscar Brinson, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

## VIRGINIA STATE CRIME COMMISSION

August 14, 1989 - 4 p.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Purpose of the meeting will be for the Law Enforcement Subcommittee to review matters concerning Court Security and Plastic Firearms (HJR 367) and discussion of any other concerns pertaining to law-enforcement issues.

August 14, 1989 - 2 p.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Purpose of the meeting will be for the Treatment Issues Subcommittee to review matters concerning the education of handicapped inmates which was authorized by HJR 283.

August 15, 1989 - 9 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Purpose of the meeting will be for the Victims and Witnesses Subcommittee to review matters concerning the continued study as authorized by HJR 48. Review reports from the Division of Crime Victims Compensation and any other concerns of members.

August 15, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Purpose of the meeting will be for the Corrections Subcommittee to review matters concerning the study of Shock Incarceration (HJR 321) and the Youthful Offender Act, and discussion of any other concerns pertaining to on-going correctional issues.

August 15, 1989 - 2 p.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Purpose of the meeting will be for the Law Enforcement Subcommittee to examine drug-related efforts in law-enforcement and the effectiveness of the state's anti-drug efforts as authorized by SJR 144.

August 16, 1989 - 9 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Purpose of the meeting will be for the Education Subcommittee to examine drug awareness education efforts in the Commonwealth pursuant to SJR 144.

August 16, 1989 - 1 p.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room D, Richmond, Virginia. ☐

Purpose of the meeting will be for the Corrections/Rehabilitation Subcommittee to examine drug-related treatment efforts and assess the effectiveness of consumption reduction programs pursuant to SJR 144.

Contact: Robert E. Colvin, Executive Director, General Assembly Bldg., 9th Floor, Room 915, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 225-4534

## JOINT SUBCOMMITTEE STUDYING EARLY CHILDHOOD AND DAY CARE PROGRAMS

† August 23, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☐

The purpose of this meeting is to review the recent report of the Joint Legislative Audit and Review Commission on Day Care Programs. HJR 27 (1988)

Contact: Brenda Edwards, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591 or Jeffrey A. Finch, House of Delegates, P.O. Box 406, Richmond, VA 23203, telephone (804) 786-2227

## NEEDS OF HEAD AND SPINAL CORD INJURED CITIZENS

† September 12, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☐

This meeting is one of several scheduled to be held during the interim to discuss needs of head and spinal cord injured citizens. HJR 287

Contact: Brenda Edwards, Research Associate, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

## INDIGENT DEFENSE SYSTEMS

† September 15, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☐

The joint subcommittee is studying indigent defense systems. HJR 279

Contact: Mary P. Devine, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

## COMMISSION ON LOCAL GOVERNMENT STRUCTURES AND RELATIONSHIPS

† August 14, 1989 - 2 p.m. - Open Meeting  
General Assembly Building, Capitol Square, Sixth Floor  
Conference Room, Richmond, Virginia. ☐

The second working session of the interim for this commission. Dates and times for public hearings will be set at this work session. HJR 286

Contact: C. M. Conner, Jr., Staff Attorney, or Dr. R. J. Austin, Research Associate, Division of Legislative Services,

P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

## LONG-TERM CARE SUBCOMMITTEE OF THE JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS

August 21, 1989 - 9:30 a.m. - Open Meeting  
September 11, 1989 - 1 p.m. - Open Meeting  
General Assembly Building, Capitol Square, House  
Appropriations Room, 9th Floor, Richmond, Virginia. ☐

A regular meeting. SJR 214

Contact: Jane Kusiak, House Appropriations Office, 9th Floor, General Assembly Bldg., Richmond, VA 23219, telephone (804) 786-1837 or John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639

## UNINSURED SUBCOMMITTEE OF THE JOINT SUBCOMMITTEE STUDYING HEALTH CARE FOR ALL VIRGINIANS

September 18, 1989 - 1:30 p.m. - Open Meeting  
General Assembly Building, Capitol Square, 10th Floor  
Conference Room, Richmond, Virginia. ☐

A regular meeting. SJR 214

Contact: John McE. Garrett, Deputy Clerk, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-4639 or Dick Hickman, Senate Finance Office, 10th Floor, General Assembly Bldg., Richmond, VA 23219, telephone (804) 786-4400

## MILITIA AND POLICE SUBCOMMITTEE ON VIRGINIA NATIONAL GUARD AND THE VIRGINIA STATE DEFENSE FORCE

† September 7, 1989 - 10 a.m. - Open Meeting  
State Capitol, Capitol Square, House Room 2, Richmond,  
Virginia. ☐

The subcommittee will meet to receive report from the Virginia Defense Force.

Contact: Oscar Brinson, Staff Attorney, Division of Legislative Services, P.O. Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591

# Calendar of Events

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## JOINT SUBCOMMITTEE STUDYING THE CREATION, MEMBERSHIP AND STANDARDS OF CONDUCT OF A NONPARTISAN FAIR CAMPAIGN PRACTICES COMMISSION

† September 11, 1989 - 10 a.m. - Public Hearing  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☐

A public hearing to receive testimony with regard to  
the need for a Fair Campaign Practices Commission.  
HJR 416

Contact: Mary Spain, Staff Attorney, or Dr. R. J. Austin,  
Research Associate, Division of Legislative Services, P.O.  
Box 3-AG, Richmond, VA 23208, telephone (804) 786-3591.  
Persons wishing to speak contact: Anne R. Howard, House  
Committee Operations Office, P.O. Box 406, Richmond, VA  
23203, telephone (804) 786-7681

## COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

† August 24, 1989 - 10 a.m. - Open Meeting  
† September 28, 1989 - 10 a.m. - Open Meeting  
† October 26, 1989 - 10 a.m. - Open Meeting  
† November 30, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, Sixth Floor  
Conference Room, Richmond, Virginia. ☐

Meetings to address matters relevant to the mission of  
the commission.

Contact: Jeffrey A. Finch, House of Delegates, P.O. Box  
406, Richmond, VA 23203, telephone (804) 786-2227

## JOINT SUBCOMMITTEE STUDYING REINSURANCE, INSURANCE ANTITRUST LAWS AND LIABILITY INSURANCE COVERAGE

August 21, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room  
D, Richmond, Virginia. ☐

September 22, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☐

The focus of each meeting will be devoted to either  
Reinsurance, Anti-trust laws or Liability Insurance  
Coverage. HJR 382

Contact: Bill Cramme, Staff Attorney, or Arlen Bolstad,  
Staff Attorney, Division of Legislative Services, P.O. Box  
3-AG, Richmond, VA 23208, telephone (804) 786-3591, or  
Jeffrey A. Finch, House of Delegates, P.O. Box 406,  
Richmond, VA 23203, telephone (804) 786-2227

## REGULATION OF SPORTS AGENTS

† August 14, 1989 - 10 a.m. - Open Meeting  
General Assembly Building, Capitol Square, House Room C,  
Richmond, Virginia. ☐

The first meeting of this joint subcommittee to discuss  
the regulation of sports agents. HJR 407

Contact: Angela Bowser, Staff Attorney, Division of  
Legislative Services, P.O. Box 3-AG, Richmond, VA 23208,  
telephone (804) 786-3591

## JOINT SUBCOMMITTEE STUDYING SURROGATE MOTHERHOOD

September 6, 1989 - 10 a.m. - Open Meeting  
State Capitol, Capitol Square, Senate Room 4, Richmond,  
Virginia. ☐

A regular meeting. SJR 178

Contact: Norma Szakal, Staff Attorney, Division of  
Legislative Services, P.O. Box 3-AG, Richmond, VA 23208,  
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## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### August 14

Agricultural Council, Virginia  
Cosmetology, Board for  
Crime Commission, Virginia State  
† Local Government Structures and Relationships,  
Commission on  
† Nursing, Board of  
† Nursing and Medicine, Joint Boards of  
- Special Conference Committee  
† Sports Agents, Regulation of

#### August 15

† Court Appointed Special Advocate (CASA) Programs  
in the Commonwealth, Joint Subcommittee Evaluating  
Statewide  
Crime Commission, Virginia State  
Historic Resources, Department of  
- State Review Board  
Housing Development Authority  
† Polygraph Examiners Advisory Board

#### August 16

Crime Commission, Virginia State  
† Indians, Council on

# Calendar of Events

† Social Services, Board of  
Transportation Board, Commonwealth

## August 17

Alternative Methods of Financing Certain Facilities at  
State-Supported Colleges and Universities, Commission  
to Study  
† Nursing, Board of  
† Social Services, Board of  
Transportation Board, Commonwealth  
Water Control Board, State

## August 18

Land Evaluation Advisory Council, State  
† Medicine, Board of  
- Informal Conference Committee  
† Social Work, Board of  
- Oral Examination Study Subcommittee  
† Transportation Safety Board

## August 19

† Agriculture and Consumer Services, Department of  
- Pesticide Control Board  
† Social Work, Board of  
- Oral Examination Study Subcommittee

## August 20

† Agriculture and Consumer Services, Department of  
- Pesticide Control Board

## August 21

Long-Term Care Subcommittee of the Joint  
Subcommittee Studying Health Care for All Virginians  
Reinsurance, Insurance Antitrust Laws and Liability  
Insurance Coverage, Joint Subcommittee Studying

## August 22

Health Services Cost Review Council  
† Nursing, Board of  
Visually Handicapped, Department for the  
- Interagency Coordinating Council and Delivery of  
Related Services to Handicapped Children

## August 23

Architects, Professional Engineers, Land Surveyors and  
Landscape Architects, Board for  
- Board for Professional Engineers  
Corrections, Board of  
† Early Childhood and Day Care Programs, Joint  
Subcommittee Studying  
† Lottery Board, State  
Mental Health, Mental Retardation and Substance  
Abuse Services Board, State  
† Nursing, Board of  
† Rehabilitative Services, Board of  
- Finance Committee  
- Legislation and Evaluation Committee  
- Program Committee  
† Sewage Handling and Disposal Appeals Review  
Board, State

## August 24

† Agricultural Linked Deposit Program  
Banking Services for Low and Moderate Income  
Consumers, Joint Subcommittee Studying  
† Child Day Care and Early Childhood Programs,  
Virginia Council on  
Fire Services Board, Virginia  
- Fire EMS/Education Committee  
- Fire Prevention Committee  
- Legislative Committee  
† Game and Inland Fisheries, Board of  
Longwood College  
- Board of Visitors  
† Population Growth and Development, Commission on  
Professional Counselors, Board of; Psychology, Board  
of  
† Rehabilitative Services, Board of  
† Small Business Financing Authority, Virginia

## August 25

Fire Services Board, Virginia  
† Game and Inland Fisheries, Board of  
† Nursing, Board of  
- Special Conference Committee  
Psychology, Board of

## August 27

Funeral Directors and Embalmers, Board of

## August 28

Administrative Law Judge Panel and the Establishment  
of Uniform Rules of Procedures for Administrative  
Hearings, Joint Subcommittee Studying the Feasibility  
of Creating an  
Corrections, Board of  
Funeral Directors and Embalmers, Board of

## August 29

Funeral Directors and Embalmers, Board of  
† Medical Assistance Services, Board of

## August 30

Gloucester County Local Emergency Planning  
Committee  
† Information Management, Council on

## August 31

Education, Department of

## September 5

Code Commission, Virginia  
† Migrant and Seasonal Farmworkers Board

## September 6

Child Mental Health, Consortium on  
Nursing Home Administrators, Board of  
Surrogate Motherhood, Joint Subcommittee Studying

## September 7

† Chesapeake Bay Commission  
Chesterfield County Local Emergency Planning

# Calendar of Events

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Committee  
Children, Department for  
- Child Abuse Fatalities Study Committee  
† Library Board  
† Militia and Police Subcommittee on Virginia  
National Guard and the Virginia State Defense Force  
Nursing Home Administrators, Board of

**September 8**  
† Bicentennial of the United States Constitution,  
Virginia Commission on the  
† Chesapeake Bay Commission  
Children, Coordinating Committee for Licensure and  
Certification of Residential Facilities for  
Land Evaluation Advisory Council, State  
† Social Work, Board of

**September 9**  
† Social Work, Board of

**September 10**  
† Social Work, Board of

**September 11**  
† Alternative Methods of Financing Certain Facilities  
at State-Supported Colleges and Universities,  
Commission to Study  
Long-Term Care Subcommittee of the Joint  
Subcommittee Studying Health Care for All Virginians

**September 12**  
† Head and Spinal Cord Injured Citizens, Needs of

**September 15**  
† Indigent Defense Systems

**September 18**  
Health Care for All Virginians, Uninsured  
Subcommittee of the Joint Subcommittee Studying  
Indians, Council on  
† Local Government, Commission on

**September 20**  
Dentistry, Board of  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of  
- Virginia Interagency Coordinating Council  
† Prison and Jail Overcrowding, Commission on  
† Social Services, Board of

**September 21**  
Dentistry, Board of  
† Social Services, Board of

**September 22**  
Dentistry, Board of  
Reinsurance, Insurance Antitrust Laws and Liability  
Insurance Coverage, Joint Subcommittee Studying

**September 23**  
Dentistry, Board of

**September 26**  
Education Assistance Authority, State  
- Board of Directors

**September 28**  
† Children, Department for  
- Child Abuse Fatalities Study Committee  
Long-Term Care Council, Virginia  
† Population Growth and Development, Commission on

**October 3**  
† Real Estate Board

**October 4**  
Audiology and Speech Pathology, Board of

**October 5**  
Chesterfield County, Local Emergency Planning  
Committee of

**October 14**  
† Visually Handicapped, Department for the  
- Advisory Committee on Services

**October 26**  
† Population Growth and Development, Commission on

**November 30**  
† Population Growth and Development, Commission on

## PUBLIC HEARINGS

**August 14**  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of

**August 15**  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of

**August 16**  
Corrections, Board of  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of

**August 17**  
Agriculture, Conservation and Natural Resources,  
Senate Committee on  
Fire Services Board, Virginia

**August 18**  
† Mental Health, Mental Retardation and Substance  
Abuse Services, Department of

**August 21**  
Housing and Community Development, Board of  
Housing and Community Development, Department of

**August 22**  
Water Control Board, State

# Calendar of Events

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**August 23**  
Water Control Board, State

**August 24**  
Fire Services Board, Virginia  
† Nursing, Board of

**August 29**  
Water Control Board, State

**August 31**  
Education, Department of  
Waste Management, Department of  
Water Control Board, State

**September 6**  
Air Pollution Control Board, State

**September 11**  
Hearing Aid Specialists, Board for  
Motor Vehicles, Department of  
† Nonpartisan Fair Campaign Practices Commission,  
Joint Subcommittee Studying the Creation, Membership  
and Standards of Conduct of a

**September 12**  
Branch Pilots, Board for  
Motor Vehicles, Department of

**September 14**  
Motor Vehicles, Department of

**September 15**  
Motor Vehicles, Department of

**September 18**  
† Social Services, Department of

**September 19**  
Criminal Justice Services, Department of  
Motor Vehicles, Department of

**September 20**  
Alcoholic Beverage Control, Department of  
Motor Vehicles, Department of

**September 21**  
Motor Vehicles, Department of  
† Waste Management Board, Virginia

**September 26**  
Motor Vehicles, Department of

**September 27**  
Agriculture and Consumer Services, Department of  
Motor Vehicles, Department of

**October 2**  
Motor Vehicles, Department of

**October 3**

Motor Vehicles, Department of

**October 4**  
Criminal Justice Services Board

**November 14**  
† Corrections, Department of

**Calendar of Events**

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