



# VIRGINIA

## REGISTER OF REGULATIONS

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### TABLE OF CONTENTS

<b>Register Information Page</b> .....	469
<b>Publication Schedule and Deadlines</b> .....	470
<b>Periodic Reviews and Small Business Impact Reviews</b> .....	471
<b>Notices of Intended Regulatory Action</b> .....	472
<b>Regulations</b> .....	473
1VAC45-20. Regulations Regarding the Virginia Human Rights Act (Final) .....	473
9VAC25-900. Certification of Nonpoint Source Nutrient Credits (Final) .....	479
14VAC5-170. Rules Governing Minimum Standards for Medicare Supplement Policies (Final) .....	480
14VAC7-10. Rules Governing the Certified Application Counselor Program (Proposed) .....	484
18VAC48-45. Time-Share Regulations (Final) .....	488
18VAC48-60. Common Interest Community Board Management Information Fund Regulations (Forms) .....	502
18VAC112-20. Regulations Governing the Practice of Physical Therapy (Final) .....	502
18VAC135-50. Fair Housing Regulations (Final) .....	503
20VAC5-210. Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems (Final) .....	513
<b>Guidance Documents</b> .....	518
<b>General Notices/Errata</b> .....	519



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# VIRGINIA REGISTER INFORMATION PAGE

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**THE VIRGINIA REGISTER OF REGULATIONS** is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposed regulation in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety, and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar of Regulations no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*.

If the Governor finds that the final regulation contains changes made after publication of the proposed regulation that have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-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 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

## **FAST-TRACK RULEMAKING PROCESS**

Section 2.2-4012.1 of the Code of Virginia provides an alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

## **EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at [register.dls.virginia.gov](http://register.dls.virginia.gov).

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. If the agency chooses not 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 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Jennifer L. McClellan**; **Ward L. Armstrong**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Marcus B. Simon**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

Staff of the Virginia Register: **Karen Perrine**, Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Nikki Clemons**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Senior Operations Staff Assistant.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

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## October 2020 through August 2021

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 19, 2020 ( <b>Monday</b> )	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 ( <b>Monday</b> )	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 ( <b>Monday</b> )	January 4, 2021
37:11	December 28, 2020 ( <b>Monday</b> )	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF LAW

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **1VAC45-10, Regulations Governing Disclosure of CID (Civil Investigative Demand)**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins September 28, 2020, and ends October 19, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: David B. Irvin, Senior Assistant Attorney General, Unit Manager, Office of the Attorney General, 202 North 9th Street, Richmond, VA 23219, telephone (804) 786-4047, or email [dirvin@oag.state.va.us](mailto:dirvin@oag.state.va.us).

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins September 28, 2020, and ends October 19, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Joe Mayer, Lead Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email [joseph.mayer@tax.virginia.gov](mailto:joseph.mayer@tax.virginia.gov).

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## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **23VAC10-11, Public Participation Guidelines; 23VAC10-230, Watercraft Sales and Use Tax; 23VAC10-310, Tax on Wills and Administration; 23VAC10-370, Cigarette Tax Regulations; and 23VAC10-390, Virginia Soft Drink Excise Tax Regulations**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-120, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests**. This general permit regulation establishes limitations, monitoring requirements, and other special conditions for point source discharge from petroleum contaminated sites, groundwater remediation, and hydrostatic tests to surface waters to maintain surface water quality. The purpose of the proposed action is to amend and reissue the existing general permit, which expires on February 25, 2023.

Some issues that may need to be addressed include (i) reviewing the quantification levels required and significant figures for reporting purposes; (ii) clarifying when certain parameters must be monitored; (iii) updating the registration statement, including latitude and longitude and State Corporation Commission entity number; (iv) requiring online registrations and electronic discharge monitoring report submittals when these become available by the Department of Environmental Quality for this industry; (v) reviewing effluent limitations and monitoring frequencies based on past compliance history; (vi) reviewing total maximum daily load requirements; (vii) considering expanding coverage to include additional activities; and (viii) reviewing special conditions to ensure they are updated and protective of water quality.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Comment Deadline: October 28, 2020.

Agency Contact: Alison Thompson, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (703) 583-3834, or email [alison.thompson@deq.virginia.gov](mailto:alison.thompson@deq.virginia.gov).

VA.R. Doc. No. R21-6517; Filed September 8, 2020, 9:24 a.m.

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# REGULATIONS

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For information concerning the different types of regulations, see the Information Page.

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## Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF LAW

#### Final Regulation

**REGISTRAR'S NOTICE:** The Department of Law is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved and (ii) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Law will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **1VAC45-20. Regulations Regarding the Virginia Human Rights Act (amending 1VAC45-20-20, 1VAC45-20-30, 1VAC45-20-50 through 1VAC45-20-90, 1VAC45-20-110, 1VAC45-20-120; adding 1VAC45-20-25, 1VAC45-20-55, 1VAC45-20-75, 1VAC45-20-82 through 1VAC45-20-87, 1VAC45-20-92 through 1VAC45-20-98; repealing 1VAC45-20-100, 1VAC45-20-130).**

**Statutory Authority:** § 2.2-520 of the Code of Virginia.

**Effective Date:** October 28, 2020.

**Agency Contact:** R. Thomas Payne II, Senior Assistant Attorney General, Section Chief, Department of Law, 202 North 9th Street, Richmond, VA 23219, telephone (804) 225-2019, or email [oagregcoordinator@oag.state.va.us](mailto:oagregcoordinator@oag.state.va.us).

#### Summary:

*Pursuant to Chapter 1140 of the 2020 Acts of Assembly, which amended the Virginia Human Rights Act (§ 2.2-3900 et seq. of the Code of Virginia), the amendments (i) add new protected classes, (ii) expand prohibited actions, and (iii) codify the general processes by which the Department of Law, Division of Human Rights receives complaints, investigates and attempts to settle complaints, and issues final determinations regarding allegations of unlawful discriminatory practices.*

#### 1VAC45-20-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Virginia Human Rights Act, Chapter 39 (§ 2.2-3900 et seq.) of Title 2.2 of the Code of Virginia.

"Charge of discrimination" or "charge" means a complaint that has been perfected by the division and served on the parties to provide notice that the division has accepted and will investigate a complaint.

"Complaint" means a written statement by a person or by the division alleging an act of discrimination prohibited by ~~§ 2.2-3901~~ of the Code of Virginia Act.

"Complainant" or "charging party" means a person who claims to have been injured by a discriminatory practice.

"Designee" means an individual designated by the director to act in his stead pursuant to this chapter.

"Determination" means the final written report detailing the division's findings of fact and analysis of whether or not there is reasonable cause to believe the Act was violated.

"Director" means an individual designated by the Attorney General to oversee the division and perform the duties and responsibilities outlined in the Act.

"Discharge" means an actual or constructive termination or separation of an employee from employment.

"Division" means the Division of Human Rights of the Department of Law.

"Hearing officer" means a person qualified from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia.

"Person" means, consistent with § 1-230 of the Code of Virginia, any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Respondent" means a person against whom a complaint of violation of the Act is filed. In addition, those terms and any other referring to people will be considered masculine or feminine.

#### 1VAC45-20-25. General.

A. If the division fails to act by dates specified in this chapter, neither the rights of the complainant nor the respondent shall be prejudiced.

B. If the complainant or the respondent fails to comply with the provisions stated in this chapter, except where good cause

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# Regulations

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is shown, the failure may be deemed a waiver of any rights provided in this chapter.

C. After the initial filing, all correspondence relative to the case shall be by certified mail, electronic communications, hand delivered, or by a carrier that will furnish a receipt or proof of delivery.

## **1VAC45-20-30. Complaints by or on behalf of persons claiming to be aggrieved.**

A. The division shall receive information concerning alleged violations of the Act from any person. Where the information discloses that a person is entitled to file a complaint with the division, the division shall render assistance in the filing and perfecting of a complaint.

B. A complaint on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization; however, the complaint shall be made in writing and shall be verified. The written complaint need not identify by name the person on whose behalf it is made. The person making the complaint, however, shall provide the division orally with the name, address, and telephone number of the person on whose behalf the complaint is made. During the division's investigation, the director shall verify the complaint with the person on whose behalf the complaint is made. The division may reveal the identity of complainants to federal, state, or local agencies that have agreed to keep such information confidential.

B. C. The complainant shall provide the division with notice of any change in address and with notice of any prolonged absence from his current address.

C. D. A complaint shall be filed with the division not later than 180 days from the day upon which the alleged discriminatory practice occurred.

E. A complaint alleging a violation of federal statutes governing discrimination in employment that also falls under the jurisdiction of the Act shall be filed with the division not later than 300 days from the day upon which the alleged discriminatory practice occurred.

## **1VAC45-20-50. Contents of complaint.**

A. Each complaint shall contain the following:

1. The full name, address, and telephone number of the person making the complaint;
2. The full name and address of the person against whom the complaint is made;
3. A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practices;
4. The date of filing and the name of the agency in cases where complaints alleging unlawful discriminatory practices have been filed before a local, state, or federal

agency charged with the enforcement of discrimination laws; and

5. Any documentation the complainant believes will support the claim.

B. Notwithstanding the provisions of subsection A of this section, a complaint shall be considered filed when the division receives a written statement that identifies the parties and describes generally the action or practices complained of.

C. A complaint or charge may be reasonably and fairly amended by the complainant or the director at any time prior to a determination, settlement, or hearing. Except for the purposes of notifying the respondent as specified in subsection D of this section, an amended complaint or charge will be considered as having been made as of the original filing date.

D. When an amendment is filed, the division shall forward a copy of the amendment to the respondent within five working days of the amendment. The respondent shall within 10 working days after receiving the amendment file an answer to the amendment.

## **1VAC45-20-55. Cooperative agreements with federal agencies or local commissions.**

The division may enter into cooperative agreements with the U.S. Equal Employment Opportunity Commission (EEOC) or other federal agencies or local commissions to carry out the purposes of the Act. Under such cooperative agreements, the division may dual file cases and exchange information with the EEOC or other federal agencies or local commissions under such agreements. For complaints that also fall under the jurisdiction of federal laws and regulations, the division will recognize the provisions of such laws and regulations to the extent permitted under the laws of Virginia.

## **1VAC45-20-60. Filing referrals to state and federal agencies.**

A. Complaints that are under the jurisdiction of another state agency are considered filed with that agency when received by the division provided the time limit for filing with the other agency has not expired.

B. The division ~~has established~~ may establish interagency agreements with ~~the following other~~ state agencies:

- ~~1. Department of Professional and Occupational Regulation Real Estate Board;~~
- ~~2. Department of Labor and Industry;~~
- ~~3. Department of Human Resources Management; and~~
- ~~4. Department of Human Resources Management, Office of Employee Dispute Resolutions for purposes of carrying out its referral functions.~~



~~C.~~ If the director or ~~his~~ the director's designee determines that the complaint is not within the division's jurisdiction, but possibly in the jurisdiction of ~~one of the interagency agreement agencies~~ another state or federal agency, the complaint shall be promptly sent to the appropriate agency ~~within 15 working days of the~~ after such determination. The complainant shall be notified of this action and provided with a reason provided for the referral. Once the complaint has been ~~forwarded~~ referred to the appropriate agency and the complainant ~~notified~~ has received notification of the referral, the division shall close the case. In the event the complaint is not under the jurisdiction of the agency to which it was referred, or if additional evidence is submitted, ~~the case will be reopened~~ division may reopen the complaint.

~~C.~~ D. Persons filing under Title VII of the Civil Rights Act of 1964, as amended, or the Fair Labor Standards Act shall be promptly notified ~~within 15 days~~ that they should also file with the appropriate federal agency within the appropriate time period if the statute of limitations has not already expired.

~~D.~~ All E. The division shall time-stamp and date all complaints ~~shall be dated and time-stamped~~ upon receipt.

**1VAC45-20-70. Notice of complaint charge of discrimination.**

Within 15 days after the perfecting of a complaint, the director shall ~~notify the respondent of the complaint by mail~~ issue a notice of the charge of discrimination to the respondent by a delivery service with proof of receipt.

**1VAC45-20-75. Withdrawal of a complaint by a complainant.**

A. A complaint filed by or on behalf of a person claiming to be aggrieved by a violation of the Act may be withdrawn only by the person claiming to be aggrieved and only with consent of the division. The director or the director's designee may grant consent to a request to withdraw a complaint, other than a complaint initiated by the division, where the withdrawal of the complaint will not defeat the purposes of the Act.

B. A request for the withdrawal of a complaint shall be made in writing and signed by the person claiming to be aggrieved by the alleged unlawful discriminatory employment practice. The director or the director's designee shall likewise sign and date the request for withdrawal upon granting consent.

**1VAC45-20-80. Investigations by the director or his the director's designee.**

A. During the investigation of a complaint, the director may utilize the information gathered by other government agencies. The director shall accept a statement of position or evidence submitted by the complainant, the person making the complaint on behalf of complainant, any witnesses identified by the parties, or the respondent. The director may

submit a request for ~~information~~ a position statement to the respondent that, in addition to specific questions, may request a response to the allegations contained in the complaint.

~~B.~~ The director's or his designee's request for information by the director or the director's designee shall be mailed within 30 ~~working business~~ working business days of receipt of the ~~complaint charge of discrimination~~. A response to the request for information shall be submitted within 21 ~~working business~~ working business days from the date the request is postmarked.

~~B.~~ C. The complainant and respondent shall provide such additional information deemed necessary by the director or his designee to conduct an investigation.

~~C.~~ The director may require a fact finding conference held in accordance with § 2.2-4019 of the Code of Virginia with the parties prior to a determination of a complaint of discrimination. The conference is an investigative forum intended to define the issues, to determine the elements in dispute, and to ascertain whether there is a basis for a negotiated settlement of the complaint.

~~D.~~ The director's or his designee's authority of the director or the director's designee to investigate a complaint is not limited to the procedures outlined in subsections A, B, and C of this section.

**1VAC45-20-82. Witnesses.**

The division may contact and interview any witnesses identified by the parties as part of its investigation of the allegations set forth in a charge of discrimination. The identity and any information that may reveal the identity of a witness shall remain confidential throughout the division's investigation and in documents that may be available to the parties or to the public once the division's investigation is concluded.

**1VAC45-20-83. Requests for documents.**

A. The division is authorized to collect documents relevant to and in furtherance of its investigation of the allegations set forth in a charge of discrimination.

B If a person receiving a request for documents from the division does not voluntarily produce the requested documents, the division may issue a subpoena for the production of the documents in accordance with the Act and this chapter.

C. Any information in a document that may reveal the identity of a witness shall remain confidential throughout the division's investigation and will be removed or redacted from any documents that may be available to the parties or public once the division's investigation is concluded.

**1VAC45-20-84. Fact-finding conference.**

The director may require a fact-finding conference held in accordance with § 2.2-4019 of the Code of Virginia with the

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# Regulations

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parties prior to issuing a determination regarding a charge of discrimination. The fact-finding conference is an investigative forum intended to define the issues, to determine the elements in dispute, and to ascertain whether there is a basis for a negotiated settlement of the complaint.

## **1VAC45-20-85. Withdrawal of a charge.**

A. A person claiming to be aggrieved by a violation of the Act may withdraw a charge of discrimination only with the consent of the division. The director or the director's designee may grant consent to a request to withdraw a charge of discrimination, other than a charge of discrimination initiated by the division, where the withdrawal of the charge of discrimination will not defeat the purposes of the Act.

B. A request for the withdrawal of a charge of discrimination shall be made in writing and shall be signed by the person claiming to be aggrieved by the alleged unlawful discriminatory employment practice. The director or the director's designee shall likewise sign and date the request for withdrawal of the charge of discrimination upon granting their consent.

C. If the request for a withdrawal of the charges of discrimination includes a request for the division to issue a notice of right to sue, the division will issue such notice in accordance with the provisions of 1VAC45-20-87.

D. Upon the granting of the aggrieved person's request to withdraw that person's charge of discrimination, the division will cease its investigation and dismiss the charge of discrimination.

## **1VAC45-20-86. Negotiated settlement.**

A. Prior to the issuance of a final determination, the division may encourage the parties to settle the charge of discrimination through mediation on terms that are mutually agreeable. The director or the director's designee shall have the authority to sign any settlement agreement that is agreeable to the parties.

B. When the division agrees in any negotiated settlement not to further process the related charge of discrimination, the division's agreement shall be in consideration for the promises made by the other parties to the agreement. Such an agreement shall not affect the processing of any other charge in which the allegations are like or related to the individual allegations settled.

C. The division may also, prior to the issuance of a final determination, facilitate a settlement between a complainant and a respondent by permitting the withdrawal of a charge of discrimination in accordance with 1VAC45-20-85.

## **1VAC45-20-87. Issuance of notice of right to sue during investigation.**

A. If a complainant submits a request that the division issue a notice of right to sue prior to the completion of its

investigation in accordance with the provisions of § 2.2-3907 H of the Code of Virginia, the division will promptly issue a notice of right to sue in accordance with 1VAC45-20-98 upon receipt of such request.

B. A request for the issuance of a notice of right to sue made in accordance with § 2.2-3907 H of the Code of Virginia must be in writing and signed by the complainant and specify that such request is made because either (i) 180 days have passed from the date the complaint was filed or (ii) the division will be unable to complete its investigation within 180 days from the date the complaint was filed.

C. Upon issuing the requested notice for right to sue to the complainant, the division will cease its investigation and dismiss the matter.

## **1VAC45-20-90. Dismissal; procedure and authority.**

A. When the director determines that the complaint or charge (i) is not timely filed or (ii) fails to state a claim under the Act, the director shall dismiss the complaint and provide prompt written notice of the dismissal to the parties by a delivery service with proof of receipt.

~~B. When the director determines after investigation that there is not reasonable cause to believe that the Act has been violated, the director shall dismiss the complaint. If the complainant disagrees with the director's decision, the division can be petitioned within 10 working days for a review of the decision.~~

C. Upon receiving a petition for review, the division shall determine whether to:

- ~~1. Issue a final determination to the parties in accordance with § 2.2-4023 of the Code of Virginia;~~
- ~~2. Refer the matter to the appropriate federal agency when applicable; or~~
- ~~3. Hold a formal hearing in accordance with 1VAC45-20-110.~~

## **1VAC45-20-92. No reasonable cause determinations; procedure and authority.**

A. When the director determines after investigation that there is not reasonable cause to believe that the Act has been violated, the director shall dismiss the complaint and issue the complainant a notice of right to sue. If the matter falls under the jurisdiction of a federal law, the director shall then immediately refer the matter to the appropriate federal agency for further processing.

B. The division will provide the parties a copy of its written no cause determination by a delivery service with proof of receipt.

C. The division may, on its own initiative, reconsider a final determination of no cause within 10 business days from the date of the no cause determination was issued. If the division

decides to reconsider a no cause determination, it shall promptly issue a notice of intent to reconsider to all parties to the charge. Such notice of intent to reconsider shall vacate the no cause determination and shall revoke the complainant's notice of right to sue. After reconsideration, the division shall issue a new final determination and shall, if appropriate, include a new notice of right to sue under which the 90-day period begins upon the date the new determination was issued.

**1VAC45-20-94. Reasonable cause determination; procedure and authority.**

A. When the director determines after investigation that there is reasonable cause to believe that the Act has been violated, the director shall issue a final determination to the parties stating that based on and limited to the evidence obtained by the division, reasonable cause existed to believe that an unlawful discriminatory employment practice has occurred.

B. The division will immediately offer the parties an opportunity to settle the matter in accordance with 1VAC45-20-96. If the parties are unable to conciliate this matter in a timely fashion, the director shall promptly dismiss the matter, notify the parties of the dismissal in writing by a delivery service that verifies receipt, and issue a notice of right to sue to the charging party.

C. The division may, on its own initiative, reconsider a final determination of reasonable cause within 10 business days from the date the reasonable cause determination was issued. If the division decides to reconsider a reasonable cause determination, it shall promptly issue a notice of intent to reconsider to all parties to the charge. Such notice of intent to reconsider shall vacate the reasonable cause determination and shall revoke the charging party's notice of right to sue. After reconsideration, the division shall issue a new determination and shall, if appropriate, include a new notice of right to sue under which the 90-day period begins upon the date the new determination was issued.

**1VAC45-20-96. Conciliation.**

A. Where the division determines there is reasonable cause to believe that the Act has been violated, the division shall endeavor to eliminate such practice by informal methods of conference, mediation, conciliation, and negotiation. In such instances, the division shall attempt to achieve a just resolution of all alleged violations found and to obtain agreement that the respondent will eliminate the unlawful discriminatory practice and provide appropriate affirmative relief.

B. When such conciliation efforts are successful, the terms of the agreement shall be reduced to writing and promptly signed by the complainant, respondent, and the director or the director's designee. A copy of the conciliation agreement shall be sent to the aggrieved person and the respondent.

Where a charge was filed on behalf of an aggrieved person, the conciliation agreement may be signed by the person who filed the charge or by the aggrieved person.

C. Proof of compliance with the terms of the agreement shall be obtained by the division before the case is closed. In an instance in which an aggrieved person or a member of the class claimed to be aggrieved by the unlawful discriminatory practice is not a party to such agreement, the agreement shall not extinguish or in any way prejudice the rights of such person to proceed with a civil action under the Act.

D. Where such conciliation efforts are not successful or the division determines that further conciliation efforts would be futile or unproductive, the division will so notify the parties in writing, cease conciliation efforts, dismiss the matter, and issue the charging party a notice of right to sue in accordance with 1VAC45-20-98.

**1VAC45-20-98. Notice of right to sue.**

A. If a charging party requests a notice of right to sue in accordance with § 2.2-3907 H of the Code of Virginia, the division will immediately cease the investigation, dismiss the charge of discrimination, and issue a notice of right to sue to the charging party. If the matter falls under the jurisdiction of a federal law, the division will promptly notify the appropriate federal agency of the charging party's request for withdrawal and issuance of a notice of right to sue.

B. When the division completes its investigation and issues its final determination, the division will issue a notice of right to sue to the charging party once the matter is dismissed.

C. The charging party will have 90 days from the date the division issues its notice of right to sue to file a civil action in the appropriate state court to enforce their rights under the Act.

**1VAC45-20-100. Settlement. (Repealed.)**

~~A. When the director determines that there is reasonable cause to believe that an unlawful discriminatory practice has occurred or is occurring, the director shall endeavor to eliminate such practice by informal methods of conference, conciliation, and negotiation.~~

~~B. When conciliation or negotiated settlement is successful, the terms of the agreement shall be reduced to writing and signed by the complainant, respondent, and the director within 10 working days of the settlement.~~

**1VAC45-20-110. Formal hearing.**

A. When conciliation efforts fail or when the director determines that the conciliation process will not be in the best interest of the complainant or the Commonwealth, the director shall set the matter for formal hearing conducted in accordance with § 2.2-4020 of the Code of Virginia prior to dismissing the matter and issuing a notice of right to sue or

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# Regulations

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refer the complaint to the appropriate federal agency for further processing.

B. ~~Notice~~ If a matter is set for a formal hearing under subsection A of this section, the division shall mail a notice of the time and place of the hearing ~~shall be mailed~~ to the parties at least 20 working business days before the date of the hearing.

C. All formal hearings shall be open to the public.

D. A ~~case shall be heard by a~~ hearing officer appointed by the division from a list obtained from the Supreme Court of Virginia shall preside over the hearing.

E. The hearing officer shall not be bound by statutory rules of evidence or technical rules of procedure.

F. Both the complainant and the respondent shall appear and be heard in person, but may be assisted by counsel or by an authorized representative.

G. All testimony shall be given under oath or affirmation.

H. The order of presentation shall be established by the hearing officer with the burden of proof being placed on the complainant.

I. Where any party fails to appear at a fact-finding conference or hearing conducted pursuant to this chapter, the division shall proceed in accordance with the provisions of § 2.2-4020.2 of the Code of Virginia.

J. Irrelevant, immaterial, and unduly repetitious evidence shall, at the discretion of the hearing officer, be excluded. The rules of privilege shall be given effect.

K. The hearing officer may accept relevant documents or other evidence into the record as exhibits. Documents to be submitted at the hearing by a party shall be distributed to the division and the other party no later than five working business days prior to the hearing. Documents not submitted in accordance with this rule shall only be admitted when the hearing officer determines that just cause exists.

L. Before the hearing concludes, the parties shall be given an opportunity to present an oral closing argument of their cases and proposed findings and conclusions in accordance with the provisions of § 2.2-4020 of the Code of Virginia.

M. The hearing shall be recorded by an official reporter and one transcript shall be purchased by the division. After the division has received the transcript, the division's copy shall be made available for review within five working business days upon request to the division during regular business hours.

## **1VAC45-20-120. Findings and recommendations.**

A. The hearing officer shall submit a recommended decision with findings of fact and conclusions of law in writing to the division. The recommended decision of the hearing officer

shall be filed with the division within 90 days of the date of completion of the hearing.

B. If the director accepts the hearing officer's findings that the respondent has not engaged in a discriminatory practice, the division shall issue an order dismissing the complaint. A copy of the order shall be furnished to the complainant and the respondent.

C. If the division accepts the hearing officer's findings that the respondent has committed an unlawful discriminatory practice, the division shall state its findings and may issue recommendations to the respondent to eliminate the discriminatory practice, including:

1. Hiring, reinstating, promoting, or upgrading the position of the complainant, with or without back pay, and providing such fringe benefits as the complainant has been denied;
2. Restoring or admitting the complainant to membership in a labor organization, a training program, a guidance program, or other occupational training program, using the objective criteria for admission of persons to such programs;
3. Leasing, renting, or selling property at issue to the complainant;
4. Extending to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, or accommodations of the respondent;
5. Admitting the complainant to a public accommodation or an educational institution;
6. Reporting as to the manner of compliance;
7. Posting notices in a conspicuous place setting forth requirements for compliance with this chapter or other information that the division deems necessary to explain the Act;
8. Revising personnel policies and procedures, including the undertaking of affirmative efforts; and
9. Reimbursing attorney's fees to complainant.

D. If the division rejects the hearing officer's recommended decision, the division shall state its own finding of facts ~~and/or~~ and conclusions of law based on the record.

E. Copies of the division's final decision, including where applicable, any recommendations, shall be furnished to the complainant and respondent within 15 working business days.

## **1VAC45-20-130. General. (Repealed.)**

~~A. If the division fails to act by dates specified in this chapter, neither the rights of the complainant nor the respondent shall be prejudiced.~~

~~B. If the complainant or the respondent fails to comply with the provisions stated in this chapter, except where good cause is shown, the failure may be deemed a waiver of any rights provided in this chapter.~~

~~C. After the initial filing, all correspondence relative to the case shall be by certified mail, hand delivered, or by a carrier that will furnish a receipt.~~

VA.R. Doc. No. R21-6472; Filed August 26, 2020, 4:49 p.m.

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Final Regulation

Title of Regulation: **9VAC25-900. Certification of Nonpoint Source Nutrient Credits (amending 9VAC25-900-91).**

Statutory Authority: § 62.1-44.19:20 of the Code of Virginia.

Effective Date: January 1, 2021.

Agency Contact: Debra Harris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4346, or email [debra.harris@deq.virginia.gov](mailto:debra.harris@deq.virginia.gov).

Background: The Certification of Nonpoint Source Nutrient Credits regulation (9VAC25-900) regulates the process for the certification of nonpoint source nitrogen and phosphorus nutrient credits and assures the generation of those credits. The final regulation, including 9VAC25-900-91, was adopted by the State Water Control Board on December 13, 2019. As part of the approval to adopt, the board deferred submittal of 9VAC25-900-91 for final publication in the Virginia Register of Regulations until such time as (i) the Department of Environmental Quality receives approval of 9VAC25-900-91 pursuant to Executive Order No. 14 (2018) and (ii) the earlier of the date the guidance is submitted to the Registrar of Regulations for publication pursuant to § 2.2-4002.1 of the Code of Virginia or September 1, 2020. The deferral was to provide time for the department to seek input from stakeholders regarding the development of guidance on how to implement the requirements of 9VAC25-900-91. On May 26, 2020, the department received approval of 9VAC25-900, including 9VAC25-900-91, pursuant to Executive Order No. 14 (2018). The guidance regarding implementation of 9VAC25-900-91 is still under development. As the board's action requires submittal by September 1, 2020, 9VAC25-900-91 was submitted for final publication.

Summary:

*The provisions establish requirements for exchange of nonpoint source nitrogen and phosphorus nutrient credits to ensure local water quality is not contravened when these exchanges occur.*

#### **9VAC25-900-91. (Reserved.) Exchange of credits.**

A. Exchange of a credit released by the department is subject to the provisions of § 62.1-44.15:35, 62.1-44.19:15, or 62.1-44.19:21 of the Code of Virginia.

B. Where necessary to ensure compliance with local water quality requirements, the exchange of a credit released by the department is conditioned as follows:

1. Within the Chesapeake Bay Watershed, the exchange of credits within an area subject to an approved local TMDL for total phosphorus or total nitrogen with allocations more stringent than the Chesapeake Bay Watershed TMDL shall be limited to those credits generated upstream of where the discharge reaches impaired waters.

2. Within the Southern Rivers watersheds, the exchange of credits within an area subject to an approved local TMDL for total phosphorus or total nitrogen shall be limited to those credits generated upstream of where the discharge reaches impaired waters.

3. Within an area with waters impaired for dissolved oxygen, benthic community, chlorophyll-a, or nutrients but with no approved local TMDL, the exchange of credits shall be limited to those credits generated in accordance with the following hierarchy:

- a. Upstream of where the discharge reaches impaired waters if credits are available;
- b. Within the same 12-digit HUC if credits are available;
- c. Within the same 10-digit HUC if credits are available;
- d. Within the same 8-digit HUC if credits are available;
- e. Within an adjacent 8-digit HUC within the same tributary if credits are available; or
- f. Within the same tributary.

C. The hierarchy of subdivision B 3 of this section shall not apply when:

1. The department determines through issuance of a VPDES permit that local water quality cannot be protected unless exchange of credits are restricted to upstream of where the discharge reaches impaired waters; or

2. It has been demonstrated to the department's satisfaction that:

- a. The water quality impairment is not likely caused by nutrients; or
- b. The use of credits would not reasonably be considered to cause or contribute to the impairment.

VA.R. Doc. No. R21-6495; Filed September 1, 2020, 2:05 p.m.

## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 14VAC5-170. Rules Governing Minimum Standards for Medicare Supplement Policies (amending 14VAC5-170-160; adding 14VAC5-170-95).

**Statutory Authority:** §§ 12.1-13 and 38.2-223 of the Code of Virginia.

**Effective Date:** November 1, 2020.

**Agency Contact:** Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, FAX (804) 371-9944, or email [jackie.myers@scc.virginia.gov](mailto:jackie.myers@scc.virginia.gov).

**Summary:**

*Pursuant to Chapter 1161 of the 2020 Acts of Assembly, the amendments require insurers, health services plans, and health maintenance organizations issuing Medicare supplement policies or certificates in Virginia to offer to persons younger than 65 years of age who reside in Virginia, are eligible for Medicare by reason of disability, and are enrolled in Medicare Part A and Part B an opportunity to purchase at least one of the Medicare Supplement policies or certificates it issues.*

*A minor change to the proposed regulation was made to one application question concerning future enrollment in Medicare.*

AT RICHMOND, SEPTEMBER 2, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00128

Ex Parte: In the matter of Amending  
Rules Governing Minimum Standards  
for Medicare Supplement Policies

#### ORDER ADOPTING AMENDMENTS TO RULES

By Order to Take Notice ("Order") entered June 22, 2020, insurers and interested persons were ordered to take notice that subsequent to August 17, 2020, the State Corporation Commission ("Commission") would consider the entry of an

order adopting amendments to rules set forth in Chapter 170 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Minimum Standards for Medicare Supplement Policies" ("Rules"), which amends the Rules at 14 VAC 5-170-160 and adds a new section at 14 VAC 5-170-95, unless on or before August 17, 2020, any person objecting to the adoption of the amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required insurers and interested persons to file their comments in support of or in opposition to the proposed amendments to the Rules with the Clerk on or before August 17, 2020.

No request for a hearing was filed with the Clerk. Comments were timely filed with the Clerk from the following: William Vaughan of Falls Church, Virginia; Jill Hanken with the Virginia Poverty Law Center; and Doug Gray, Executive Director of the Virginia Association of Health Plans. Late comments from Kimberly Robinson with Cigna were sent directly to the Bureau of Insurance ("Bureau") which also were considered.

The amendments to the Rules are necessary as a result of action by the 2020 General Assembly, specifically Acts of Assembly Chapter 1161 (SB 250). This new legislation requires insurers, health services plans and health maintenance organizations issuing Medicare supplement policies or certificates in Virginia to offer to persons under age 65 who reside in the Commonwealth, are eligible for Medicare by reason of disability and are enrolled in Medicare Part A and Part B, an opportunity to purchase at least one of the Medicare Supplement policies or certificates it issues. The Bureau created a new section at 14 VAC 5-170-95 to address this new requirement, and amended the application found at 14 VAC 5-170-160. This new section and amendment to the application are necessary to define these new requirements for both health carriers and consumers.

Following review of the submitted comments, the Bureau filed a Response to Comments ("Response"). The Response recommends to the Commission a minor amendment to 14 VAC 5-170-160 application questions concerning future enrollment in Medicare. Regarding the remaining comments, the Response does not recommend any further revisions to the proposed amendments.

NOW THE COMMISSION, having considered the proposed amendments, the comments filed and the Bureau's Response, is of the opinion that the attached amendments to the Rules should be adopted as amended, effective November 1, 2020.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing Minimum Standards for Medicare Supplement Policies at Chapter 170 of Title 14 of the Virginia Administrative Code that amend the Rules at 14 VAC 5-170-160 and adds a new section at

14 VAC 5-170-95, which are attached hereto and made a part hereof, are hereby ADOPTED effective November 1, 2020.

(2) The Bureau shall provide notice of the adoption of the amendments to the Rules to all insurers licensed in Virginia to write accident and sickness insurance and to all interested persons.

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments to the Rules on the Commission's website: <https://scc.virginia.gov/pages/Case-Information>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219, MBrowder@oag.state.va.us; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Julie S. Blauvelt.

**14VAC5-170-95. Persons eligible by reason of disability.**

A. On or after January 1, 2021, an issuer that offers Medicare supplement policies or certificates shall offer at least one of its Medicare supplement plans that it actively markets to any individual who resides in this Commonwealth, is younger than 65 years of age, is eligible for Medicare by reason of disability as defined by 42 USC § 426(b), and is enrolled in Medicare Part A and B, or will be so enrolled by the effective date of coverage in accordance with the provisions of § 38.2-3610 of the Code of Virginia. The Medicare supplement policy or certificate offered shall be guaranteed renewable. Such Medicare supplement policy or certificate shall be offered and issued during the following enrollment periods:

1. Upon the request of the individual during the six-month period beginning with the first month in which the individual is eligible for Medicare by reason of a disability. For those persons who are retroactively enrolled in Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration, the application must be submitted within a six-month period beginning with the month in which the person receives notification of the retroactive eligibility decision; or

2. Upon the request of the individual during the 63-day period following voluntary or involuntary termination of coverage under a group health plan.

B. An individual who met the eligibility requirements outlined in subsection A of this section prior to January 1, 2021, shall begin a six-month period to enroll in a Medicare supplement policy or certificate on January 1, 2021.

C. A Medicare supplement policy or certificate issued to an individual under subsection A of this section shall not exclude benefits based on a preexisting condition if the individual has a continuous period of creditable coverage of at least six months as of the effective date of coverage.

D. An issuer may develop premium rates specific to the class of individuals described in subsection A of this section.

**14VAC5-170-160. Requirements for application forms and replacement coverage.**

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

~~{Statements}~~ Statements:

1. You do not need more than one Medicare supplement policy.
2. If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
3. You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
4. If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

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## Regulations

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5. If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

6. Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

### ~~{Questions}~~ Questions:

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS. (Please mark yes or no below with an "X".)

To the best of your knowledge,

1. a. Did you turn age 65 in the last 6 months?

Yes \_\_\_ No \_\_\_

b. Did you enroll in Medicare Part B in the last 6 months?

Yes \_\_\_ No \_\_\_

c. If yes, what is the effective date? \_\_\_\_\_

2. a. Are you younger than age 65 and eligible for Medicare by reason of disability as defined by federal law?

Yes \_\_\_ No \_\_\_

b. Are you enrolled [ or expect to be enrolled ] in Medicare Part A and Part B?

Yes \_\_\_ No \_\_\_

c. If yes, what is the effective date of Part A \_\_\_\_\_ ; Part B \_\_\_\_\_ ?

~~2.~~ 3. Are you covered for medical assistance through the state Medicaid program?

(NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost," please answer NO to this question.)

Yes \_\_\_ No \_\_\_

If yes,

a. Will Medicaid pay your premiums for this Medicare supplement policy?

Yes \_\_\_ No \_\_\_

b. Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes \_\_\_ No \_\_\_

~~3.~~ 4. a. If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START \_\_\_/\_\_\_/\_\_\_ END \_\_\_/\_\_\_/\_\_\_

b. If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes \_\_\_ No \_\_\_

c. Was this your first time in this type of Medicare plan?

Yes \_\_\_ No \_\_\_

d. Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes \_\_\_ No \_\_\_

~~4.~~ 5. a. Do you have another Medicare supplement policy in force?

Yes \_\_\_ No \_\_\_

b. If so, with what company, and what plan do you have (optional for Direct Mailers)? \_\_\_\_\_

c. If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes \_\_\_ No \_\_\_



5. 6. Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)

Yes \_\_\_ No \_\_\_

a. If so, with what company and what kind of policy?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. What are your dates of coverage under the other policy?

START \_\_\_/\_\_\_/\_\_\_ END \_\_\_/\_\_\_/\_\_\_

(If you are still covered under the other policy, leave "END" blank.)

B. Agents shall list any other health insurance policies they have sold to the applicant.

- 1. List policies sold which are still in force.
- 2. List policies sold in the past five years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant, and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by subsection D ~~above~~ of this section for an issuer shall be provided in substantially the following form in no less than 12 point type:

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE

~~[Insurance company's name and address]~~ [Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to ~~[your application]~~ [information you have furnished] ~~[information you have furnished]~~ (your application) ~~(information you have furnished)~~, you intend to terminate existing Medicare supplement insurance or Medicare Advantage and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, AGENT ~~OR OTHER REPRESENTATIVE~~ (OR OTHER REPRESENTATIVE):

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason (check one):

- \_\_\_ Additional benefits.
- \_\_\_ No change in benefits, but lower premiums.
- \_\_\_ Fewer benefits and lower premiums.
- \_\_\_ My plan has outpatient prescription drug coverage and I am enrolling in Part D.
- \_\_\_ Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. (optional for Direct Mailers)
- \_\_\_ Other. (please specify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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# Regulations

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1. Note: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing preexisting condition limitations, please skip to statement 2 below. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. ~~If the policy or certificate is guaranteed issue, this paragraph need not appear.~~ (If the policy or certificate is guaranteed issue, this paragraph need not appear.)

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

\_\_\_\_\_  
(Signature of Agent, or Other Representative)\*

~~{Typed Name and Address of Issuer, or Agent}~~ (Typed Name and Address of Issuer, or Agent)

\_\_\_\_\_  
(Applicant's Signature)

\_\_\_\_\_  
(Date)

\*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve the application of a new preexisting conditions limitation.

VA.R. Doc. No. R20-6332; Filed September 2, 2020, 12:34 p.m.

## Proposed Regulation

<p><u>REGISTRAR'S NOTICE:</u> The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.</p>
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Title of Regulation: **14VAC7-10. Rules Governing the Certified Application Counselor Program (adding 14VAC7-10-10 through 14VAC7-10-80).**

Statutory Authority: §§ 12.1-13, 38.2-223, and 38.2-6515 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: October 16, 2020.

Agency Contact: Richard Tozer, Bureau of Insurance Manager, State Corporation Commission, Tyler Building, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 786-9525, FAX (804) 371-9290, or email [richard.tozer@scc.virginia.gov](mailto:richard.tozer@scc.virginia.gov).

Summary:

*Chapters 916 and 917 of the 2020 Acts of Assembly add Chapter 65 (§ 38.2-6500 et seq.) of Title 38.2 of the Code of Virginia and establish the Virginia Health Benefit Exchange. Section 38.2-6514 of the Code of Virginia requires the exchange to establish a certified application counselor program pursuant to 45 CFR 155.225. Certified application counselors are individuals who are trained to be able to help consumers seeking health insurance coverage options in the exchange marketplace. The exchange may designate certain organizations to certify and oversee certified application counselors. The new regulation establishes processes and criteria for the designation of organizations, the certification of application counselors, and the duties and obligations of both.*

AT RICHMOND, SEPTEMBER 4, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. HBE-2020-00002

Ex Parte: In the matter of Adopting  
New Rules Governing the Certified  
Application Counselor Program

### ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the

enforcement and administration of all laws within its jurisdiction. In accordance with § 38.2-6515 of the Code, the Commission may adopt any rules and regulations pursuant to § 38.2-223 of the Code as necessary or appropriate for the administration of the Health Benefit Exchange ("Exchange").

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <https://www.scc.virginia.gov/pages/Case-Information>.

The Exchange has submitted to the Commission a proposal to promulgate new rules at Chapter 10 of Title 14 of the Virginia Administrative Code entitled "Rules Governing the Certified Application Counselor Program," which are recommended to be set out at 14 VAC 7-10-10 through 14 VAC 7-10-80.

The proposed new rules are necessary in light of the enactment of § 38.2-6514 of Chapter 65 of Title 38.2 of the Code of Virginia. This Code section requires the Exchange to establish a Certified Application Counselor program pursuant to 45 C.F.R. § 155.225. Certified application counselors are individuals who are trained and able to help consumers seeking health insurance coverage options in the Exchange marketplace. The Exchange may designate certain organizations to certify and oversee certified application counselors. The rules establish processes and criteria for the designation of organizations, the certification of application counselors, and the duties and obligations of both.

NOW THE COMMISSION is of the opinion that the proposal to adopt new rules recommended to be set out at Chapter 10 of Title 14 in the Virginia Administrative Code as submitted by the Exchange should be considered for adoption with a proposed effective date of on or before January 1, 2021.

Accordingly, IT IS ORDERED THAT:

(1) The proposed new rules entitled "Rules Governing the Certified Application Counselor Program," recommended to be set out at 14 VAC 7-10-10 through 14 VAC 7-10-80, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of proposed Chapter 10 shall file such comments or hearing request on or before October 16, 2020, with the Clerk of the Commission, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. HBE-2020-00002. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <https://www.scc.virginia.gov/pages/Case-Information>. All comments shall refer to Case No. HBE-2020-00002.

(3) If no written request for a hearing on the adoption of the proposed new rules as outlined in this Order is received on or before October 16, 2020, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the rules as submitted by the Exchange.

(4) The Exchange shall provide notice of the proposal to all carriers licensed in Virginia to write individual and small group health insurance and to all interested persons.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal on the Commission's website: <https://www.scc.virginia.gov/pages/Case-Information>.

(7) The Exchange shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, [MBrowder@oag.state.va.us](mailto:MBrowder@oag.state.va.us); and a copy hereof shall be delivered to the Commission's Office of General Counsel and to the Commissioner of Insurance, Scott A. White.

**CHAPTER 10**  
**RULES GOVERNING THE CERTIFIED APPLICATION**  
**COUNSELOR PROGRAM**

**14VAC7-10-10. Scope and purpose.**

The purpose of this chapter is to establish standards for a certified application counselor program by the Health Benefit Exchange in accordance with § 38.2-6514 of the Code of Virginia.

**14VAC7-10-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Certified application counselor" means an individual certified by a CDO to perform the duties described in in this chapter and 45 CFR 155.225(c).

"Certified application counselor designated organization" or "CDO" means an organization designated by the exchange to certify its staff members or volunteers to act as certified application counselors who perform the duties and meet the

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# Regulations

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standards and requirements for certified application counselors set forth in this chapter and 45 CFR 155.225.

"CHIP" means the Children's Health Insurance Program under Title XXI (42 USC 7) of the Social Security Act, including FAMIS.

"Exchange" means the Virginia Health Benefit Exchange established pursuant to the provisions of Chapter 65 (§ 38.2-6500 et seq.) of Title 38.2 of the Code of Virginia.

"FAMIS" means the Family Access to Medical Insurance Security Plan, including the FAMIS Plus program, established pursuant to Chapter 13 (§ 32.1-351 et seq.) of Title 32.1 of the Code of Virginia.

"Navigator" means an individual or entity that is registered pursuant to § 38.2-3457 of the Code of Virginia.

"Personal information" has the same meaning assigned to the term in § 38.2-602 of the Code of Virginia.

"Qualified dental plan" means a limited scope dental plan that has been certified in accordance with § 38.2-6506 of the Code of Virginia.

"Qualified health plan" means a health benefit plan that meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act, P.L. 111-148, and has been certified in accordance with § 38.2-6506 of the Code of Virginia.

## **14VAC7-10-30. Designation of organizations.**

A. The exchange may designate an organization to certify its staff members or volunteers as certified application counselors. An organization seeking designation as a CDO shall:

1. Register with the exchange and provide any information required for registration purposes in the form and manner prescribed by the exchange;
2. Submit a compliance agreement with the exchange that outlines the standards and requirements in accordance with 45 CFR 155.225, including subdivisions (d)3 through (d)5; and
3. Attest to the organization's ability to carry out the required duties as set forth in 14VAC7-10-40, and if requested by the exchange, provide documentation or other information evidencing compliance with these duties.

B. If the exchange finds that the applicant meets the requirements of this chapter, it may designate the applicant as a CDO.

C. A designation issued under this chapter shall expire two years from the date it was issued. Each applicant for renewal of designation as a CDO shall submit an application to the exchange in the form and manner prescribed by the exchange.

A designation issued under this chapter is required to maintain application counselor certification.

D. The exchange may withdraw a designation or refuse to designate or renew a designation of an organization for any one or more of the following causes:

1. Providing materially incorrect, misleading, incomplete, or untrue information in the CDO application or any other document filed with the exchange;
2. Obtaining or attempting to obtain a designation through misrepresentation or fraud;
3. Failing to comply with the requirements to certify application counselors; or
4. Failing to comply with requirements in this chapter, § 38.2-6514 of the Code of Virginia, or any other applicable provision of the Code of Virginia.

## **14VAC7-10-40. Duties of a certified application counselor designated organization.**

A CDO shall perform the duties and meet the standards and requirements to certify application counselors. The CDO shall:

1. Meet the terms of the compliance agreement executed with the exchange pursuant to 14VAC7-10-30 A 2;
2. Maintain a registration process and method to track the performance of certified application counselors;
3. Provide data and information to the exchange regarding (i) the identity, number, and performance of its certified application counselors; and (ii) the consumer assistance provided by its certified application counselors in the form and manner specified by the exchange. Beginning in the first quarter of calendar year 2021, each CDO shall submit quarterly reports that include, at a minimum, data regarding the number and identifying information of individuals who have been certified by the organization; the total number of consumers who received application and enrollment assistance from the organization; and of that number, the number of consumers who received assistance in applying for and selecting a qualified health plan or qualified dental plan, enrolling in a qualified health plan or qualified dental plan, or applying for Medicaid or CHIP;
4. Establish procedures to withdraw certification from or refuse to recertify any individual certified application counselor upon a finding of noncompliance with the requirements for certification or a failure to perform duties as required by this chapter; and
5. Establish consumer protection procedures to ensure that:
  - a. Consumers are informed prior to receiving assistance of the functions and responsibilities of a certified application counselor, including that a certified

application counselor may not act as a tax adviser or attorney and cannot provide tax or legal advice when providing assistance in their capacity as a certified application counselor;

b. Consumers provide the CDO with a signed authorization on a form prescribed and furnished by the exchange prior to a certified application counselor obtaining access to a consumer's personal information. The CDO shall maintain a record of the authorization for a period of at least six years; and

c. Consumers understand that they may revoke at any time the authorization provided to the certified application counselor.

#### **14VAC7-10-50. Certification of application counselors.**

A. A CDO may certify an individual staff member or volunteer to perform the duties of a certified application counselor only if the individual staff member or volunteer:

1. Completes exchange-approved training regarding qualified health plan and qualified dental plan options, insurance affordability programs, eligibility, and benefits rules and regulations governing all insurance affordability programs operated in Virginia, as implemented in Virginia, and completes and achieves a passing score on all exchange-approved certification examinations, prior to functioning as a certified application counselor;

2. Discloses to the CDO and potential applicants any relationships the certified application counselor or sponsoring agency has with any qualified health plan, qualified dental plan, insurance affordability program, or other potential conflicts of interest;

3. Complies with the exchange's privacy and security standards adopted consistent with 45 CFR 155.260 and applicable authentication and data security standards;

4. Agrees to act in the best interest of the applicants assisted;

5. Provides, either directly or through an appropriate referral to a navigator or non-navigator assistance personnel authorized under 45 CFR 155.205(d) and (e) or 45 CFR 155.210 or to the exchange call center, information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act (42 USC § 12101 et seq.) and § 504 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act (29 USC § 794); and

6. Enters into an agreement with the CDO regarding compliance with the standards specified in 45 CFR 155.225(d), (f), and (g).

B. The CDO may recertify a certified application counselor on at least an annual basis after the certified application counselor has successfully completed recertification training as required by the exchange.

C. A CDO shall withdraw certification from or refuse to recertify an individual certified application counselor upon a finding of noncompliance with the requirements for certification or any failure to perform required duties in accordance with this chapter.

D. A CDO that does not renew or is no longer designated by the exchange shall result in all application counselors certified by that CDO to become decertified.

#### **14VAC7-10-60. Duties of certified application counselors.**

A certified application counselor certified by a CDO shall:

1. Provide information to individuals and employees about the full range of qualified health plan or qualified dental plan options and insurance affordability programs for which they are eligible, including providing fair, impartial, and accurate information that assists consumers with submitting the eligibility application; clarify the distinctions among health coverage options, including qualified health plans or qualified dental plans; and help consumers make informed decisions during the health coverage selection process;

2. Assist individuals and employees to apply for coverage in a qualified health plan or qualified dental plan through the exchange and for insurance affordability programs;

3. Help to facilitate enrollment of eligible individuals in a qualified health plan or qualified dental plan and any insurance affordability programs; and

4. Adhere to all the requirements and responsibilities set forth by the CDO or the exchange in the performance of the certified application counselor's duties under this chapter.

#### **14VAC7-10-70. Prohibitions on fees, consideration, solicitation, and marketing.**

A CDO or a certified application counselor may not:

1. Impose any charge on a consumer, an applicant, or an enrollee for application or other assistance related to the exchange;

2. Act as an insurance agent or broker;

3. Receive any consideration directly or indirectly from any health insurance issuer or other insurance issuer in connection with the enrollment of any individual in a qualified health plan or qualified dental plan or a nonqualified health plan or nonqualified dental plan;

4. Provide compensation to any individual certified application counselor on a per-application, per-individual-assisted, or per-enrollment basis;

5. Provide to an applicant or potential enrollee a gift of any value as an inducement for enrollment. The value of a gift provided to an applicant and potential enrollee for purposes

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# Regulations

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other than as an inducement for enrollment shall not exceed nominal value, either individually or in the aggregate, when provided to that individual during a single encounter. For purposes of this subdivision the term "gift" includes gift items, gift cards, cash cards, cash, or promotional items that market or promote the products or services of a third party but does not include the reimbursement of legitimate expenses incurred by a consumer in an effort to receive exchange application assistance, such as travel or postage expenses;

6. Solicit any consumer for application or enrollment assistance by going door-to-door or through other unsolicited means of direct contact with a consumer to provide application or enrollment assistance without the consumer initiating the contact, unless the individual has a preexisting relationship with the individual certified application counselor or CDO and other applicable state and federal laws are otherwise complied with; or

7. Initiate any telephone call to a consumer using an automatic telephone dialing system or an artificial or prerecorded voice, except in cases where the individual certified application counselor or CDO has a relationship with the consumer and so long as other applicable state and federal laws are otherwise complied with.

## **14VAC7-10-80. Severability.**

If any provision of this chapter or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.

**NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

## **FORMS (14VAC7-10)**

### **CDO Compliance Agreement**

V.A.R. Doc. No. R21-6514; Filed September 8, 2020, 10:45 a.m.



## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **COMMON INTEREST COMMUNITY BOARD**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The Common Interest Community Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Common Interest Community Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC48-45. Time-Share Regulations (amending 18VAC48-45-20, 18VAC48-45-40 through 18VAC48-45-70, 18VAC48-45-110 through 18VAC48-45-140, 18VAC48-45-160, 18VAC48-45-180 through 18VAC48-45-220, 18VAC48-45-240 through 18VAC48-45-290, 18VAC48-45-320, 18VAC48-45-330, 18VAC48-45-390, 18VAC48-45-400, 18VAC48-45-410, 18VAC48-45-430, 18VAC48-45-450 through 18VAC48-45-480, 18VAC48-45-540, 18VAC48-45-730, 18VAC48-45-740; repealing 18VAC48-45-100).

**Statutory Authority:** §§ 54.1-2349 and 55.1-2247 of the Code of Virginia.

**Effective Date:** December 1, 2020.

**Agency Contact:** Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email [cic@dpor.virginia.gov](mailto:cic@dpor.virginia.gov).

#### **Summary:**

*Pursuant to Chapter 1011 of the 2020 Acts of Assembly, which clarifies the use of the terms "project" and "program" as they relate to registration of a time-share program language in the Virginia Real Estate Time-Share Act, the amendments (i) provide clarification of those terms in regulation and (ii) clarify the applicability of the Virginia Real Estate Time-Share Act to out-of-state time-share programs offered in Virginia in which the timeshares are direct or indirect beneficial interests in a trust created pursuant to the laws of the state where the time-share program is located.*

#### **18VAC48-45-20. Definitions.**

A. Section 55.1-2200 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Affiliate"	"Offering" or "offer"
"Alternative purchase"	"Person"

"Association"	"Product"	escrowing deposits accepted by a developer in connection with the purchase or reservation of a product.
"Board"	"Public offering statement"	"Blanket letter of credit" means a blanket irrevocable letter of credit issued in accordance with the requirements of § 55.1-2220 of the Code of Virginia obtained and maintained by a developer in lieu of escrowing deposits accepted by a developer in connection with the purchase or reservation of a product.
"Board of directors"	"Purchaser"	"Department" means the Department of Professional and Occupational Regulation.
"Common elements"	"Resale purchase contract"	"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
"Contact information"	"Resale service"	"Firm" means a sole proprietorship, association, partnership, corporation, limited liability company, limited liability partnership, or any other form of business organization recognized under the laws of the Commonwealth of Virginia.
"Contract" or "purchase contract"	"Resale time-share"	"Full and accurate disclosure" means the degree of disclosure necessary to ensure reasonably complete and materially accurate representation of the time-share in order to protect the interests of purchasers.
"Conversion time-share project"	"Resale transfer contract"	"Individual bond" means an individual surety bond issued in accordance with the requirements of § 55.1-2220 of the Code of Virginia obtained and maintained by a developer in lieu of escrowing a deposit accepted by a developer in connection with the purchase or reservation of a product.
"Default"	"Reseller"	"Individual letter of credit" means an individual irrevocable letter of credit issued in accordance with the requirements of § 55.1-2220 of the Code of Virginia obtained and maintained by a developer in lieu of escrowing a deposit accepted by a developer in connection with the purchase or reservation of a product.
"Developer"	"Reverter deed"	"Registration file" means the application for registration, supporting materials, annual reports, and amendments that constitute all information submitted and reviewed pertaining to a particular time-share program, <del>time share project</del> , alternative purchase, exchange <del>company</del> program, or time-share reseller registration. A document that has not been accepted for filing by the board is not part of the registration file.
"Developer control period"	"Situs"	"Virginia Real Estate Time-Share Act" means Chapter 22 (§ 55.1-2200 et seq.) of Title 55.1 of the Code of Virginia.
"Development right"	"Time-share"	<b>18VAC48-45-40. <del>Time-share projects</del> <u>Time-shares</u> located outside of Virginia.</b>
"Dispose" or "disposition"	"Time-share estate"	A. In any case involving a time-share <del>project</del> located outside of Virginia in which the laws or practices of the jurisdiction in which such time-share <del>project</del> is located prevent compliance with a provision of this chapter, the board shall prescribe by order a substitute provision to be applicable in
"Exchange company"	"Time-share expense"	
"Exchange program"	"Time-share instrument"	
"Guest"	"Time-share owner" or "owner"	
"Incidental benefit"	"Time-share program" or "program"	
"Lead dealer"	"Time-share project" or "project"	
"Managing agent"	"Time-share unit" or "unit"	
"Managing entity"	"Time-share use"	
"Material change"	"Transfer"	

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Alternative disclosure statement" means a disclosure statement for an out-of-state time-share program or time-share project that is properly registered in the situs.

"Annual report" means a completed, board-prescribed form and required documentation submitted in compliance with § 55.1-2242 of the Code of Virginia.

"Application" means a completed, board-prescribed form submitted with the appropriate fee and other required documentation in compliance with the Virginia Real Estate Time-Share Act and this chapter.

"Blanket bond" means a blanket surety bond issued in accordance with the requirements of § 55.1-2220 of the Code of Virginia obtained and maintained by a developer in lieu of

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# Regulations

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such case that is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words "time-share instrument" and "public offering statement," when used in this chapter with reference to a time-share located outside of Virginia, mean documents, portions of documents, or combinations thereof, by whatever name denominated, that have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The word "recording" or "recordation" when used with reference to time-share instruments of a time-share located outside of Virginia means a procedure that, in the jurisdiction in which such time-share is located, causes the time-share instruments to become legally effective.

D. This chapter shall apply to a contract for the disposition of a time-share located outside of Virginia only to the extent permissible under the provisions of ~~subsection~~ subsections C and D of § 55.1-2201 of the Code of Virginia.

E. In accordance with subsection D of § 55.1-2201 of the Code of Virginia, this chapter applies to any time-share program wherein the time-share interests are either direct or indirect beneficial interests in a trust created pursuant to a situs time-sharing law, or other applicable law of the situs.

F. The time-share shall be properly registered in the state or other jurisdiction where the project is located.

## Part II General Application Requirements

### 18VAC48-45-50. Application procedures.

A developer seeking registration of a time-share ~~project~~ program or an alternative purchase, an exchange company seeking registration of an exchange program, or a reseller seeking registration in order to offer or provide resale services, all in accordance with the Virginia Real Estate Time-Share Act, shall submit an application on the appropriate form provided by the board, along with the appropriate fee specified in 18VAC48-45-70.

By submitting the application to the board, the applicant certifies that the applicant has read and understands the applicable statutes and this chapter.

The receipt of an application and the deposit of fees by the board do not indicate approval or acceptance of the application by the board.

The board may make further inquiries and investigations to confirm or amplify information supplied. All applications shall be completed in accordance with the instructions contained in this chapter and on the application. Applications will not be considered complete until all required documents are received by the board.

Applications that are not complete within 12 months after receipt of the application in the board's office will be purged, and a new application and fee must be submitted in order to be reconsidered for registration.

### 18VAC48-45-60. Review of application for registration, generally.

A. Upon the review of the application for registration, if the requirements of this chapter have not been met, the board shall notify the applicant.

B. The board may refuse initial registration due to an applicant's failure to comply with entry requirements or for any of the reasons for which the board may discipline a regulant.

C. At such time as the board affirmatively determines that the requirements of this chapter have been met, the board shall issue the applicable registration.

D. Notwithstanding the provisions of 18VAC48-45-130 for a time-share ~~project~~ program registration, ~~applicants who~~ applications that do not meet the requirements of this chapter may be ~~approved~~ accepted following consideration by the board in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

### 18VAC48-45-70. Fees.

A. All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the board or its agent will determine whether the fee is timely. Checks or money orders shall be made payable to the Treasurer of Virginia.

B. Fees are as follows:

Time-share <del>project</del> <u>program</u> registration application	\$1,500
Time-share <del>project</del> <u>program</u> phase amendment filing	\$250
Time-share <del>project</del> <u>program</u> registration annual report	\$500
Alternative purchase registration application	\$100
Alternative purchase registration annual report	\$100
Exchange program registration application	\$1,000
Exchange program registration annual report	\$250
Time-share reseller registration application	\$250
Time-share reseller registration renewal	\$250
Time-share reseller registration reinstatement (includes a \$100 reinstatement fee in addition to the \$250 renewal fee)	\$350



## Part IV

Application for Time-Share ~~Project~~ Program Registration**18VAC48-45-100. Registration of time-share ~~project and program.~~ (Repealed.)**

~~In accordance with § 55.1-2238 of the Code of Virginia, a developer offering or disposing of an interest in a time share program must register the time share project and its program with the board. For the purposes of this chapter as it relates to registration, the registration of a time share project shall include the simultaneous registration of the time share program.~~

**18VAC48-45-110. Prerequisites for registration of a time-share ~~project~~ program.**

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55.1-2239 of the Code of Virginia.

1. The developer shall own or have the right to acquire an estate in the land constituting or to constitute ~~the~~ any time-share project included in the time-share program that is of at least as great a degree and duration as the estate to be conveyed in the time-shares.
2. The time-share instrument of any time-share project included in the time-share program must be adequate to bring a time-share project and time-share program into existence upon recordation. This subdivision does not apply to a time-share instrument that may be recorded after the time-share project ~~has~~ and time-share program have been created.
3. The time-share instrument must include a statement detailing that the developer reserves or does not reserve the right to add or delete any alternative purchase.
4. The current and planned time-share advertising activities of the developer shall comply with § 18.2-216 of the Code of Virginia and this chapter.
5. If the developer is a firm, it shall be organized as a business entity under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission in accordance with Chapter 5 of Title 59.1 (§ 59.1-69 et seq.) of the Code of Virginia before submitting an application to the board.

**18VAC48-45-120. Review of application for registration of a time-share ~~project~~ program.**

A. Upon receipt of an application for registration of a time-share ~~project~~ program, the board shall issue the notice of filing required by subsection A of § 55.1-2241 of the Code of Virginia.

B. Upon the review of the application for registration, if the requirements of § 55.1-2239 of the Code of Virginia and this

chapter have not been met, the board shall notify the applicant as required by subsection C of § 55.1-2241 of the Code of Virginia.

C. If the requirements for registration are not met within the application review period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting the registration as required by subsection C of § 55.1-2241 of the Code of Virginia. The order rejecting the registration shall become effective 20 days after issuance.

D. An applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia at any time between receipt of a notification pursuant to subsection B of this section and the effective date of the order of rejection entered pursuant to subsection C of this section. A request for such proceeding shall be deemed a consent to delay within the meaning of subsection A of § 55.1-2241 of the Code of Virginia.

E. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting the registration. If the board determines after review of the corrections that the requirements for registration have not been met, the board may proceed with an informal conference in accordance with § 2.2-4019 of the Code of Virginia in order to allow reconsideration of whether the requirements for registration are met. If the board does not opt to proceed with an informal conference, the applicant may submit a written request for an informal conference in accordance with § 2.2-4019 of the Code of Virginia in order to reconsider whether the requirements for registration are met. If the board does not proceed with an informal conference and no request for an informal conference is received from the applicant, an amended order of rejection stating the factual basis for the rejection shall be issued. A new 20-day period for the order of rejection to become effective shall commence.

F. At such time as the board affirmatively determines that the requirements of § 55.1-2239 of the Code of Virginia have been met, the board shall enter an order registering the time-share program and shall designate the form, content, and effective date of the public offering statement.

**18VAC48-45-130. Minimum application requirements for registration of a time-share ~~project~~ program.**

A. The documents and information contained in §§ 55.1-2208, 55.1-2209, 55.1-2210, 55.1-2214, 55.1-2217, and 55.1-2239 of the Code of Virginia, as applicable, shall be included in the application for registration of a time-share ~~project~~ program.

B. The application for registration of a time-share ~~project~~ program shall include the fee specified in 18VAC48-45-70.

C. The following documents shall be included in the application for registration of a time-share ~~project~~ program as

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# Regulations

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exhibits. All exhibits shall be labeled as indicated and submitted in a format acceptable to the board.

1. Exhibit A: A copy of the certificate of incorporation or certificate of authority to transact business in Virginia issued by the Virginia State Corporation Commission, or any other entity formation documents, together with any trade or fictitious name certificate.
2. Exhibit B: A certificate of recordation or other acceptable documents from the city or county where the time-share is located.
3. Exhibit C: A copy of the title opinion, the title policy, or a statement of the condition of the title to ~~the~~ each time-share project included in the time-share program, including encumbrances as of a specified date within 30 days of the date of application by a title company or licensed attorney who is not a salaried employee, officer, or director of the developer or owner, in accordance with subdivision A 5 of § 55.1-2239 of the Code of Virginia. If the developer is not the record owner of the land, a copy of any contract the developer has executed to purchase the land, any option the developer holds for the purchase of the land, or any lease under which the developer holds the land.
4. Exhibit D: Proof that the applicant or developer owns or has the right to acquire an estate in the land constituting or to constitute ~~the~~ each time-share project included in the time-share program, which is of at least as great a degree and duration as the estate to be conveyed in the time-share.
5. Exhibit E: A statement of the zoning, subdivision, or land use obligations or proffers and other governmental regulations affecting the use of ~~the~~ each time-share project included in the time-share program, including the site plans and building permits and their status, any existing tax, and existing or proposed special taxes or assessments that affect the time-share.
6. Exhibit F: A copy of the time-share instrument, including all applicable amendments and exhibits, that will be delivered to a purchaser ~~to evidence the purchaser's interest in the time-share~~ and copies of the contracts and other agreements that a purchaser will be required to agree to or sign.
7. Exhibit G: A narrative description of the promotional plan for the disposition of the time-shares.
8. Exhibit H: A copy of the proposed public offering statement that complies with § 55.1-2217 of the Code of Virginia and this chapter. Pursuant to subsection ~~G~~ H of § 55.1-2217, a similar disclosure statement required by other situs laws governing time-sharing may be submitted for a time-share located outside of the Commonwealth.
9. Exhibit I: A copy of the buyer's acknowledgment. Pursuant to § 55.1-2226 of the Code of Virginia, the purchaser shall be given this document prior to signing a

purchase contract, and the document shall contain the information required by subsection B of § 55.1-2226.

10. Exhibit J: The signed original of (i) any bond or letter of credit obtained pursuant to § 55.1-2220 of the Code of Virginia in lieu of escrowing deposits and (ii) any bond or letter of credit required by subsection B of § 55.1-2234 of the Code of Virginia, as applicable.
11. Exhibit K: A copy of any management agreements and other contracts or agreements affecting the overall use, maintenance, management, or access of all or any part of the time-share ~~project~~ program.
12. Exhibit L: A list with the names of every officer, manager, owner, or principal, as applicable to the type of firm under which the developer is organized to do business, of the developer or persons occupying a similar status within or performing similar functions for the developer. The list must include each individual's residential address or other address valid for receipt of service, principal occupation for the past five years, and title.
13. Exhibit M: A statement whether any of the individuals or entities named in Exhibit L are or have been involved as defendants in any indictment, conviction, judgment, decree, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity.
14. Exhibit N: A statement whether, during the preceding five years, any of the individuals or entities named in Exhibit L have been adjudicated bankrupt or have undergone any proceeding for the relief of debtors.
15. Exhibit O: If the developer has reserved the right to add to or delete from the time-share program any incidental benefit or alternative purchase, a description of the incidental benefit or alternative purchase shall be provided pursuant to subdivision A 13 of § 55.1-2239 of the Code of Virginia.
16. Exhibit P: ~~Conversion time-share projects must attach~~ For any time-share program containing a conversion time-share project, a copy of the notice required by subsection D of § 55.1-2217 of the Code of Virginia and a certified statement that such notice shall be mailed or delivered to each of the tenants in the building ~~or buildings for which the registration is sought at the time of the registration of the conversion project~~ of each conversion time-share project included in the time-share program.

Part V  
Public Offering Statement

**18VAC48-45-140. Public offering statement requirements, generally.**

In addition to the provisions of § 55.1-2217 of the Code of Virginia, the following will be considered, as applicable, during review of the public offering statement:

1. The public offering statement shall provide full and accurate disclosure in accordance with 18VAC48-45-150.
2. The public offering statement shall pertain to the time-share ~~project~~ program in which the time-shares ~~being~~ are offered ~~are~~ located.
3. The public offering statement shall be clear, organized, and legible.
4. Except for brief excerpts, the public offering statement may refer to, but should not incorporate verbatim, portions of the time-share instruments, the Virginia Real Estate Time-Share Act, or this chapter. This does not preclude compliance with 18VAC48-45-170.

**18VAC48-45-160. Contents of public offering statement.**

A. A cover, if used, must be blank or bear identification information only.

B. The developer may include as part of the public offering statement a receipt page printed in such a way that the developer may obtain verification that a prospective purchaser has received the public offering statement. The receipt page shall include the effective date of the public offering statement as well as a place for the date of delivery and signature lines for the prospective purchaser. The authorized receipt page in proper form, duly executed, shall be evidence that the public offering statement was delivered.

C. The first page of the public offering statement shall be substantially as follows:

**PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S PROTECTION**

**PUBLIC OFFERING STATEMENT**

NAME OF  
TIME-SHARE  
~~PROJECT~~  
PROGRAM: \_\_\_\_\_

LOCATION  
OF TIME-  
SHARE  
PROJECT: \_\_\_\_\_

NAME OF  
DEVELOPER: \_\_\_\_\_

ADDRESS OF  
DEVELOPER: \_\_\_\_\_

EFFECTIVE  
DATE OF  
PUBLIC  
OFFERING  
STATEMENT: \_\_\_\_\_

REVISED: \_\_\_\_\_

**THE PURCHASER OF A TIME-SHARE MAY CANCEL THE CONTRACT UNTIL MIDNIGHT OF THE SEVENTH CALENDAR DAY FOLLOWING THE EXECUTION OF SUCH CONTRACT. THE PURCHASER SHOULD READ THIS DOCUMENT FOR THE PURCHASER'S OWN PROTECTION.**

**Purchasing a time-share carries with it certain rights, responsibilities, and benefits, including certain financial obligations, rights, and restrictions concerning the use and maintenance of units and common elements. The purchaser will be bound by the provisions of the time-share instruments and should review the Public Offering Statement, the time-share instruments, and other exhibits carefully prior to purchase.**

This Public Offering Statement presents information regarding time-share(s) being offered for sale by the developer. The Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq. of the Code of Virginia) requires that a Public Offering Statement be given to every Purchaser in order to provide full and accurate disclosure of the characteristics of and material circumstances affecting the time-share ~~project~~ program and the characteristics of the time-share(s) being offered. The Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the developer to the Virginia Common Interest Community Board. The Board has carefully reviewed the Public Offering Statement but does not guarantee the accuracy or completeness of the Public Offering Statement. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the material shall control.

If the Purchaser elects to cancel the contract within the seven-day cancellation period, all payments made in connection with the purchase contract shall be refunded to the Purchaser within 45 days. If the Purchaser elects to cancel the contract, the Purchaser shall do so either by (i) hand-delivering the notice to the developer at its principal office or at the project or (ii) mailing the notice by certified United States mail, return receipt requested, to the developer or its agent designated in the contract.

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# Regulations

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Allegations of violation of any law or regulation contained in the Virginia Real Estate Time-Share Act or the Time-Share Regulations (18VAC48-45) should be reported to the Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233.

D. A summary of important considerations shall immediately follow the first page for the purpose of reinforcing the disclosure of significant information. The summary shall be titled as such and shall be introduced by the following statement: "The following are important matters to be considered in acquiring a time-share. They are highlights only. The Public Offering Statement should be examined in its entirety to obtain detailed information." Appropriate modifications shall be made to reflect facts and circumstances that may vary. The summary shall consist of, but not be limited to, the following, as applicable:

1. A brief description of the ~~time-share project and the~~ time-share program and any time-share project included in the time-share program.
2. A statement regarding all incidental benefits or alternative purchases that may be offered by the developer.
3. A brief description of all amenities located within or outside of ~~the any~~ time-share project included in the time-share program and available to time-share owners by virtue of ownership in the time-share ~~project program~~. If such amenities are not common elements of the time-share project, identify who owns the amenities and whether time-share owners are required to pay to access and use.
4. A statement describing any exchange program that may be offered to the purchaser.
5. A statement describing (i) the purchaser's responsibility to make principal and interest payment in connection with the purchase of the time-share as well as to pay maintenance fees or assessments, special assessments, user fees, insurance premiums, and real estate taxes and (ii) that a time-share owner cannot reduce the amount of any owner obligation for any reason.
6. A statement regarding the consequences for failure to pay maintenance fees or any special assessment when due. The statement may reference the enforcement mechanisms available to the developer, and if applicable the ~~time-share~~ association, by describing (i) any declaration of an owner being an "Owner Not in Good Standing"; (ii) any civil action taken for the collection of a debt; (iii) means for pursuing foreclosure or obtaining a lien against the time-share unit; and (iv) denial of access to the time-share project and participation in the time-share program.
7. A statement indicating whether the developer or managing agent has indictments, convictions, judgments, decrees, or order of any court or administrative agency for matters related to fraud or consumer protection violations

that may be required to be disclosed by subdivisions A 1 c and A 1 d of § 55.1-2217 of the Code of Virginia.

8. A statement indicating the period of time the developer will retain control of the association ~~for time-share estate projects.~~

9. A statement disclosing any management agreement with a managing agent to perform certain duties for ~~the any~~ time-share project included in the time-share program.

10. A statement indicating whether the developer may expand the time-share ~~project program.~~

11. A statement indicating whether the right of the time-share owner to resell or transfer the time-share is subject to restrictions.

12. A statement indicating the time-share units are restricted to lodging only.

13. A statement indicating that the time-share owner may not alter the interior or exterior of the time-share unit.

14. A statement regarding the obligation of the developer or association to obtain certain insurance benefiting the time-share owner.

15. A statement regarding a time-share estate and time-share owner's obligation to pay real estate taxes.

16. A statement regarding whether or not the developer reserves the right to add or delete any alternative purchase.

E. The content after the summary of important considerations shall include the narrative sections in 18VAC48-45-170 through 18VAC48-45-310. Supplementary sections may be included as necessary.

F. Clear and legible copies of the following documents shall be included as either supplements or exhibits to the public offering statement:

1. ~~Project time-share~~ Time-share instrument;
2. Association articles of incorporation;
3. Bylaws;
4. Association annual report or projected budget for time-share estate programs;
5. Rules and regulations of the ~~time-share owners'~~ association, if available;
6. Any management contract, if applicable;
7. Exchange ~~company~~ program disclosure document and narrative statement required pursuant to subsection B of § 55.1-2217 of the Code of Virginia, if applicable; and
8. Other documents obligating the association or time-share owner to perform duties or obligations or pay charges or fees, if applicable.

G. Other information and documentation may be included as necessary to ensure full and accurate disclosure. The board may also require additional information as necessary to ensure full and accurate disclosure.

**18VAC48-45-180. Narrative sections; creation of time-share project program.**

The public offering statement shall contain a section captioned "Creation of the Time-Share ~~Project~~ Program." The section shall briefly explain the manner in which the time-share ~~project~~ program was or will be created, the locality wherein the time-share instrument will be or has been recorded, and the procedure for its amendment.

**18VAC48-45-190. Narrative sections; description of time-share project.**

A. The public offering statement shall contain a section captioned "Description of the Time-Share Project." The section shall provide a general description of ~~the~~ any time-share project ~~registered with the board~~ included in the time-share program and the units and common elements promised available to purchasers. This section shall also provide the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

B. The section shall state whether the developer has reserved the right to add and delete from the time-share program a time-share project or any incidental benefit or alternative purchase.

C. The section shall refer the purchaser to the reverter deed for an explanation if the developer utilized the possibility of a reverter.

D. The section shall indicate all provisions that have been made for public utilities in the time-share project, including ~~but not limited to~~ water, electricity, telephone, and sewerage facilities.

**18VAC48-45-200. Narrative sections; individual time-shares.**

A. The public offering statement shall contain a section captioned "Individual Time-Shares." The section shall indicate (i) the form of time-share ownership being offered; (ii) the types, duration, and number of units and time-shares in the ~~project registered with the board~~ time-share program; (iii) identification of units that are subject to the time-share program; and (iv) the estimated number of units that may become subject to the time-share program.

B. This section shall explain the extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being offered for sale. The section shall contain a statement of the developer's obligation to complete any promised time-share unit or common element being offered

for sale comprising the time-share project that have not begun or begun but not yet completed.

C. The section shall explain the extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.

**18VAC48-45-210. Narrative sections; developer.**

The public offering statement shall contain a section captioned "The Developer." The section shall disclose the following information concerning the developer:

1. The name and principal address of the developer.
2. The name, principal occupation, and address of every director, partner, limited liability company manager, or trustee of the developer.
3. The name and address of each person owning or controlling an interest of at least 20% in ~~the~~ each time-share project included in the registration.
4. The particulars of any indictment, conviction, judgment, decree, or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local, or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements, or any similar or related activity.
5. The nature of each unsatisfied judgment, if any, against the developer or the managing entity; the status of each pending suit involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof, is a defending party; and the status of each pending suit, if any, of significance to any time-share project ~~registered with the board~~ included in the registration.
6. The name and address of the developer's agent for service of any notice permitted by this chapter.
7. The section shall describe the type of legal entity of the developer and explain if other entities have any obligation to satisfy the financial obligations of the developer.
8. For a time-share use program, a statement as to whether a developer's net worth is more than or less than \$250,000. If the developer's net worth is less than \$250,000, a current audited balance sheet shall be provided with the public offering statement. If the developer's net worth exceeds \$250,000, a statement by the developer that its equity in the time-share program exceeds \$250,000.

**18VAC48-45-220. Narrative sections; terms of offering.**

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a time-

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# Regulations

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share and present information regarding the settlement of purchase contracts as provided in subsections B through H of this section.

B. The section shall indicate any initial or special fees due from the purchaser at settlement including a description of the purpose of such fees.

C. The section shall set forth a general description of any financing offered by or available through the developer to purchasers.

D. The section shall describe (i) services that the developer provides or expenses it pays and that it expects may become at any subsequent time a time-share expense of the owners and (ii) the projected time-share expense liability attributable to each of those services or expenses for each time-share.

E. The section shall discuss all penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase contract.

F. The section shall discuss the process for cancellation of a purchase contract by a purchaser in accordance with § 55.1-2221 of the Code of Virginia. The section shall include a statement that the purchaser has a nonwaivable right of cancellation and refer such purchaser to that portion of the contract in which the right of cancellation may be found.

G. The section shall describe the terms of the deposit escrow requirements, including a statement, if applicable, that the developer has filed a surety bond or letter of credit with the board in lieu of escrowing deposits, in accordance with § 55.1-2220 of the Code of Virginia. The section shall also state that deposits received by the developer may be removed from escrow ~~and or are~~ no longer protected by a surety bond or letter of credit after the expiration of the cancellation period.

H. The section shall set forth all restrictions in the purchase contract that limit the time-share owner's right to bring legal action against the developer or the association. The section shall set forth the paragraph or section and page number of the purchase contract where such provision is located. Nothing in this statement shall be deemed to authorize such limits where those limits are otherwise prohibited by law.

## **18VAC48-45-240. Narrative sections; exchange program.**

If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall contain a section captioned "Exchange Program" that shall include the following:

1. A statement of whether membership or participation in the exchange program is voluntary or mandatory; and
2. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer and whether

there is a fee associated with membership or participation in the exchange program.

## **18VAC48-45-250. Narrative sections; financial matters.**

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a time-share.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair, and replacement of various portions of the time-share as follows: (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55.1-2200 of the Code of Virginia; and (iii) all other costs that may be borne directly by individual time-share owners.

C. A budget shall show projected common expenses in each of the categories in subsection B of this section for the first year of the ~~time-share's~~ time-share program's operation or, if different, the latest year for which a budget is available. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention to such exhibit. The section shall describe the manner in which the projected budget is established. If the time-share is phased, the budget shall project future years until all phases are projected to be developed and all common elements that must be built have been completed. The budget shall include an initial working capital budget showing sources and uses of initial working capital and a reserve table showing amounts to be collected to fund those reserves. The budget shall show regular individual assessments by unit type. The budget shall note that the figures are not guaranteed and may vary.

D. The section shall describe the manner in which (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55.1-2200 of the Code of Virginia; and (iii) all other costs that may be borne directly by individual time-share owners are apportioned among and assessed to the time-share units. The section shall include the substance of the following statement, if applicable: "A time-share owner cannot obtain a reduction of the (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55.1-2200 of the Code of Virginia; and (iii) any other costs that may be borne directly by individual time-share owners assessed against the unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures, if any. If there are no reserves, the section shall so state.

F. The section shall discuss (i) time-share expenses; (ii) time-share estate occupancy expenses as defined in § 55.1-2200 of the Code of Virginia; (iii) all other costs that may be borne directly by individual time-share owners; and (iv) any right the developer or association has to institute special assessments.

G. The section shall indicate any fee, rental, or other charge to be payable by unit owners other than through assessments and maintenance fees to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the time-share project.

H. The section shall discuss the effect of failure of a time-share owner to pay the assessments and maintenance fees levied against the time-share unit. Such discussion shall indicate provisions for charges or other remedies that may be imposed to be applied in the case of unpaid and past due assessments and for acceleration of unpaid assessments.

**18VAC48-45-255. Narrative sections; governmental reviews.**

The public offering statement shall contain a section captioned "Governmental Reviews." The section shall discuss governmental approvals required for the development of ~~the~~ each time-share project included in the time-share program. In addition, the section shall discuss approval of the zoning application and site plan and issuance of building permits by appropriate governmental authorities. The section shall state the current zoning classification for ~~the~~ each time-share project property included in the time-share program. The section shall also include a statement regarding zoning, subdivision, or land use obligations or proffers that would be imposed on the time-share owner or the association, but need not disclose zoning, subdivision, or land use obligations or proffers that do not impose any obligation on the association.

**18VAC48-45-260. Narrative sections; restrictions on transfer.**

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain limitations on leasing or other restraints on free alienability created by the time-share ~~instruments~~ instrument or the rules and regulations of the ~~time-share owners'~~ association that affect ~~the~~ a time-share ~~owners'~~ owner's right to resell, lease, or otherwise transfer an interest in the time-share.

**18VAC48-45-270. Narrative sections; time-share owners' association.**

A. For time-share estate ~~projects~~ programs the public offering statement shall contain a section captioned "Time-Share Owners' Association." The section shall discuss the arrangements for the management and operation of the time-share estate program and for the maintenance, repair, and furnishing of units and shall include the information required by subdivisions 1 through 15 of this subsection. The section shall describe or discuss the following:

1. The creation of the association.
2. The payment of costs and expenses of operating the time-share estate program and owning and maintaining the time-share units.

3. Employment and termination of employment of the managing agent for ~~the~~ each time-share estate project included in the time-share program.

4. Termination of leases and contracts for goods and services for ~~the~~ each time-share estate project included in the time-share program that were entered into during the developer control period.

5. Preparation and dissemination of the annual report required by § 55.1-2213 of the Code of Virginia to the time-share estate owners.

6. Adoption of standards and rules of conduct for the use, enjoyment, and occupancy of units by the time-share estate owners.

7. Collection of regular assessments, fees or dues, and special assessments from time-share estate owners to defray all time-share expenses.

8. Comprehensive general liability insurance for death, bodily injury, and property damage arising out of or in connection with the use and enjoyment of ~~the~~ any time-share project included in the time-share program by time-share estate owners, their guests, and other users. The cost for such insurance shall be a time-share expense.

9. Methods for providing compensation or alternate use periods or monetary compensation to a time-share estate owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation.

10. Procedures for imposing a monetary penalty or suspension of a time-share estate owner's rights and privileges in the time-share estate program or any time-share project included in the time-share program for failure to comply with provisions of the time-share instrument or the rules and regulations of the association with respect to the use and enjoyment of the units and the time-share project. Under these procedures a time-share estate owner must be given reasonable notice and reasonable opportunity to be heard and explain the charges against him in person or in writing to the board of directors of the association before a decision to impose discipline is rendered.

11. Employment of attorneys, accountants, and other professional persons as necessary to assist in the management of the time-share estate program and ~~the~~ any time-share project included in the time-share program.

12. Developer control period, during which time period the developer, or a managing agent selected by the developer, shall manage and control ~~the~~ any time-share estate project included in the time-share program and the common elements and units, including decisions about the financial operation of the association.

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# Regulations

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13. The managing agent, if any, shall be identified, and the section shall indicate any relationship between the managing agent and the developer. The duration of any management agreement shall be stated.

14. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance, or access of all or any part of ~~the any~~ time-share project included in the time-share program shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

15. Rules and regulations of the ~~time-share estate~~ association shall be discussed. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

B. For time-share use ~~projects~~ programs, if an association is formed for management and operation of the time-share use program and for the maintenance, repair, and furnishing of time-share use units comprising the time-share, the public offering statement shall contain a section captioned "Time-Share Owners' Association." This section shall contain the information required by subdivisions A 1 through 15 of this section as applicable to the association for the time-share use ~~project~~ program.

## **18VAC48-45-280. Narrative sections; managing entity.**

The public offering statement shall include a section captioned "Managing Entity." This section shall provide the name and address of the managing entity for ~~the project~~ each time-share project included in the time-share program. The section shall also provide a description of the facilities, if any, provided by the developer to the association in a time-share estate ~~project~~ program for the management of the ~~project~~ program.

## **18VAC48-45-290. Narrative sections; conversion time-share projects.**

A. The public offering statement of a conversion time-share project shall contain a section captioned "Conversion Time-Share Projects." The section shall include the following:

1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project.

2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of the building ~~or buildings~~ within the last three years. This information shall be set forth in a tabular manner within the proposed budget ~~of the project~~. If such building ~~or buildings~~ has not been occupied for a period of three years, then the information shall be set forth for the period

during which such building ~~or buildings were~~ was occupied.

3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect.

4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

B. In lieu of a narrative section pursuant to this section, the requirements of this section may be satisfied in the form of an exhibit to the public offering statement.

## **18VAC48-45-320. Documents from other jurisdictions.**

A. A substituted public offering statement shall only be permitted for a time-share program for which some portion of the time-share project associated with the program is located outside of Virginia.

B. The substituted public offering statement shall be prepared by deleting from the original disclosure document the following: (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the time-share project and its time-share program; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgment of receipt, or related events involving the disclosure document; (iv) the effective date in another jurisdiction of the disclosure document; and (v) all other information that is untrue, inaccurate, or misleading with respect to marketing, offers, or disposition of time-shares in Virginia.

C. The substituted public offering statement shall incorporate all information not otherwise included that is necessary to effect fully and accurately the disclosures required by § 55.1-2217 of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature that is different from the definitions provided in § 55.1-2200 of the Code of Virginia.

D. The substituted public offering statement shall include as the first item of the summary of important considerations a statement that includes the following information: (i) the designation by which the original disclosure document is identified in the original jurisdiction; (ii) the governmental agency of such other jurisdiction where the original



disclosure document is or will be filed; and (iii) the jurisdiction of such filing.

E. The provisions of §§ 55.1-2217 and 55.1-2221 of the Code of Virginia and 18VAC48-45-140, 18VAC48-45-150, and 18VAC48-45-160 shall apply to substituted public offering statements in the same manner and to the same extent that they apply to public offering statements.

F. In the case of a time-share project located outside of the Commonwealth, pursuant to subsection ~~G~~ H of § 55.1-2217 of the Code of Virginia, similar disclosure statements required by other situs laws governing time-sharing that are equivalent to the requirements of this chapter may be accepted by the board as alternative disclosure statements to satisfy the requirements of this chapter.

#### Part VI

##### Time-Share ~~Project Program~~ Post-Registration Provisions

#### **18VAC48-45-330. Minimum post-registration reporting requirements for a time-share ~~project program~~.**

A. Subsequent to the issuance of a registration for a time-share program by the board, the developer ~~of a time-share~~ shall do the following:

1. File an annual report in accordance with § 55.1-2242 of the Code of Virginia and this chapter.
2. Upon the occurrence of a material change, file an amended public offering statement in accordance with the provisions of subsection E of § 55.1-2217 and subsection C of § 55.1-2242 of the Code of Virginia and this chapter. These amendments shall be filed with the board within 20 business days after the occurrence of the material change.
3. In accordance with subsection G of § 55.1-2217, amend the public offering statement to reflect any addition of a time-share project to, or removal of a time-share project from, the existing time-share program.
4. Upon the occurrence of any material change in the information contained in the registration file, the developer shall immediately report such material changes to the board in accordance with the provisions of subsection B of § 55.1-2239 of the Code of Virginia.
4. 5. Notify the board of a change in any bond or letter of credit, as applicable, filed with the board in accordance with § 55.1-2220 of the Code of Virginia or required by subsection B of § 55.1-2234 of the Code of Virginia.
5. 6. File a completed application for registration of an unregistered phase upon the expansion of the time-share program, along with the appropriate fee specified in 18VAC48-45-70.
6. 7. Notify the board of transition of control from the developer to the time-share estate owners' association (time-share estate projects only).

~~7.~~ 8. Submit appropriate documentation to the board once the registration is eligible for termination.

~~8.~~ 9. Submit to the board any other document or information, which may include information or documents that have been amended or may not have existed previously, that affects the accuracy, completeness, or representation of any information or document filed with the application for registration.

~~9.~~ 10. Submit to the board any document or information to make the registration file accurate and complete.

B. Notwithstanding the requirements of subsection A of this section, the board at any time may require a developer to provide information or documents, or amendments thereof, in order to assure full and accurate disclosure to prospective purchasers and to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

#### **18VAC48-45-390. Filing of phase amendment application.**

A. A phase amendment application for a time-share ~~project program~~ shall be filed when adding a phase to the time-share ~~project program~~. Such phase amendment application shall be accompanied by the fee provided for in 18VAC48-45-70 and shall be subject to all of the provisions of 18VAC48-45-50, 18VAC48-45-110, 18VAC48-45-120, and 18VAC48-45-130. Documents on file with the board that have not changed in connection with the additional phase or phases need not be refiled, provided that the phase amendment application indicates that such documents are unchanged.

B. The application shall include a bond or letter of credit required pursuant to subsection B of § 55.1-2234 of the Code of Virginia if any of the time-share units and common elements contained in the submitted additional phase or phases have not been completed.

C. The board shall review the phase amendment application and supporting materials to determine whether the amendment complies with this chapter. If the board's review determines the phase amendment application complies with this chapter, it shall issue an amended order of registration for the time-share ~~project program~~ and shall provide that previous orders and designations of the form, content, and effective date of the public offering statement are superseded. If the board's review determines that the phase amendment application is not complete, the board shall correspond with the developer to specify the particulars that must be completed to obtain compliance with this chapter.

#### **18VAC48-45-400. Annual report for a time-share ~~project program~~ registration required by developer.**

A. A developer shall file an annual report for a time-share ~~project program~~ registration on a form provided by the board to update the material contained in the registration file by June 30 of each year the registration is effective and shall be accompanied by the fee specified in 18VAC48-45-70. Prior to

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# Regulations

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filing the annual report required by § 55.1-2242 of the Code of Virginia, the developer shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the developer shall so certify in the annual report. If such public offering statement is not current, the developer shall amend the public offering statement and the annual report shall, in that event, include a filing in accordance with 18VAC48-45-360.

B. The annual report shall contain the following:

1. Current contact information for the developer;
2. Information concerning the current status of ~~the~~ each time-share project included in the time-share program;
3. Information concerning the current status of the time-share program, including (i) the type of time-shares being offered and sold; (ii) the total number of time-share interests available in the program; (iii) the total number of time-share interests sold; and (iv) information regarding any incomplete units and common elements;
4. If the project program is a time-share estate ~~project program~~ and the developer control period has not yet expired, a copy of the annual report that was prepared and distributed by the developer to the time-share owners required by § 55.1-2213 of the Code of Virginia must accompany the annual report;
5. Date of the public offering statement currently being delivered to purchasers; and
6. Current evidence from the surety or financial institution of bonds or letters of credit filed with the board in accordance with § 55.1-2220 of the Code of Virginia or required pursuant to subsection B of § 55.1-2234 of the Code of Virginia, or submittal of replacement bonds or letters of credit. Such verification shall provide the following:
  - a. Principal of bond or letter of credit;
  - b. Beneficiary of bond or letter of credit;
  - c. Name of the surety or financial institution that issued the bond or letter of credit;
  - d. Bond or letter of credit number as assigned by the issuer;
  - e. The dollar amount;
  - f. The expiration date or, if self-renewing, the date by which the bond or letter of credit shall be renewed; and
  - g. For any blanket bond or blanket letter of credit, a statement of the total amount of deposits held by the developer as of May 31 of that calendar year.

## **18VAC48-45-410. Board review of annual report for a time-share ~~project program~~ registration.**

A. During review of the annual report, the board may make inquiries or request additional documentation to amplify or clarify the information provided.

B. If the board does not accept the annual report and the annual report filing is not completed within 60 days of a request by the board for additional information, the board may take further action pursuant to §§ 55.1-2247 and 55.1-2252 of the Code of Virginia for failing to file an annual report as required by § 55.1-2242 of the Code of Virginia.

C. If the board does not perform the required review of the annual report within 30 days of receipt by the board, the annual report shall be deemed to comply with § 55.1-2242 of the Code of Virginia.

## **18VAC48-45-430. Return of bond or letter of credit filed in lieu of escrowing deposits.**

A. An individual bond or individual letter of credit on file with the board in accordance with § 55.1-2220 of the Code of Virginia may be returned to the developer upon written request. Such request shall include a statement from the developer that indicates (i) the purchaser's cancellation period has expired, (ii) the purchaser's default under a purchase contract for the time-share estate entitling the developer to retain the deposit, or (iii) the purchaser's deposit was refunded.

B. Upon issuance of an order of termination of the time-share project program registration pursuant to 18VAC48-45-450, a blanket bond or blanket letter of credit on file with the board in accordance with § 55.1-2220 of the Code of Virginia will be returned to the developer.

## **18VAC48-45-450. Termination of time-share ~~project program~~ registration.**

A. The time-share ~~project program~~ registration shall be terminated upon receipt of documentation of one of the following:

1. In accordance with subsection A of § 55.1-2243 of the Code of Virginia, an annual report for a time-share estate program filed pursuant to § 55.1-2242 of the Code of Virginia indicates that the developer has transferred title to the time-share owners' association and that no further development rights exist.

2. In accordance with subsection B of § 55.1-2243 of the Code of Virginia, written notification is received from the developer attesting that no further development of the project program is anticipated and that the developer has ceased sales of time-shares ~~at~~ in the project program.

B. Upon receipt and review of documentation pursuant to subsection A of this section, the board shall issue an order of termination for the time-share program registration. The

board may request additional information as necessary during the review of the submitted documentation to ensure that the time-share program registration is eligible for termination.

**18VAC48-45-460. Administrative termination of time-share project program registration.**

A. In accordance with subsection C of § 55.1-2243 of the Code of Virginia, the board may administratively terminate the registration of a time-share project program. Prior to the administrative termination of the registration, the board shall send written notice of its intent to terminate the registration to all known parties associated with the time-share project program, including the registered agent, developer's attorney, and principals of the developer. Such written notice shall be given to the parties by mail or otherwise if acknowledged by them in writing.

B. The board shall issue an order of termination for the time-share program registration if (i) a response is not received within 30 days after sending the written notice, or (ii) the response received does not indicate termination of the registration is inappropriate in accordance with the Virginia Real Estate Time-Share Act and this chapter.

C. Nothing contained in this section shall prevent the board from taking further action as allowed by law including issuance of a temporary cease and desist order, issuance of a cease and desist order, revocation of registration, and bringing action in the appropriate circuit court to enjoin the acts or practices and to enforce compliance.

**18VAC48-45-470. Reporting of other changes to the time-share project program.**

Any other change made or known by the developer that may affect the accuracy or completeness of the time-share program registration file shall be reported promptly to the board. Such change may include the name of the developer, name of the time-share project program, or any other changes in information submitted in accordance with § 55.1-2239 of the Code of Virginia. The board may request additional information as necessary to ensure compliance with the Virginia Real Estate Time-Share Act and this chapter.

Part VII

Alternative Purchase Registration

**18VAC48-45-480. Registration of alternative purchase required.**

As required by § 55.1-2246 of the Code of Virginia, a ~~time-share~~ developer shall register an alternative purchase as defined by § 55.1-2200 of the Code of Virginia.

**18VAC48-45-540. Annual report required for alternative purchase registration.**

A. Prior to the expiration of the registration, the developer shall file an annual report in a form approved by the board for the registered alternative purchase affiliated with such time-

share project program registration. Such alternative purchase annual report shall be accompanied by the fee specified in 18VAC48-45-70.

B. The annual report shall contain, but may not be limited to, the following:

1. Current contact information for the developer.
2. Information concerning the current status of the alternative purchase.

C. Once the annual report has been accepted by the board, the registration shall be extended for an additional one-year period from the date of the expiration of the registration. If the developer fails to complete the annual report filing within one year after the date of expiration, the registration shall not be extended and the developer must apply as a new applicant.

**18VAC48-45-730. Registration required.**

A. No developer or agent of a developer shall offer a time-share prior to the registration of the time-share program ~~and time-share project~~.

B. No developer or agent of a developer shall offer an alternative purchase prior to the registration of the alternative purchase by the developer.

C. No exchange company or agent of an exchange company shall offer an exchange program prior to the registration of the exchange program by the exchange company.

D. No time-share reseller or agent of a time-share reseller shall offer any resale services prior to the registration of the time-share reseller.

**18VAC48-45-740. Time-share advertising standards.**

A. No promise, assertion, representation, or statement of fact or opinion in connection with a time-share marketing activity shall be made that is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances, or features of a time-share program ~~or a time-share project~~.

B. No promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity shall indicate that a unit or common element will be built or placed on the time-share unless proposed within the meaning of subsection A of 18VAC48-45-200.

C. No promise, assertion, representation, or statement of fact or opinion made in connection with a time-share marketing activity and relating to a time-share project program not registered shall, by its express terms, induce, solicit, or encourage a contract for sale or performing some other act that would create or purport to create a legal or equitable interest in the time-share, other than a security interest in or a nonbinding reservation of the time-share, when to do so

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# Regulations

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would circumvent the provisions of the Virginia Real Estate Time-Share Act.

VA.R. Doc. No. R21-6497; Filed September 9, 2020, 10:31 a.m.

## Forms

**REGISTRAR'S NOTICE:** Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

**Title of Regulation:** **18VAC48-60. Common Interest Community Board Management Information Fund Regulations.**

**Contact Information:** Joseph C. Haughwout, Jr., Regulatory Administrator, Common Interest Community Board, Perimeter Center, Suite 400, Richmond, VA 23233, telephone (804) 367-2684, or email [joseph.haughwout@dpor.virginia.gov](mailto:joseph.haughwout@dpor.virginia.gov).

FORMS (18VAC48-60)

~~Common Interest Community Association Registration Application, A492-0550REG-v7 (rev. 11/2019)~~

~~Common Interest Community Association Annual Report Form, A492-0550ANRPT-v9 (rev. 11/2019)~~

[Common Interest Community Association Registration Application, A492-0550REG-v8 \(rev. 7/2020\)](#)

[Common Interest Community Association Annual Report Form, A492-0550ANRPT-v10 \(rev. 7/2020\)](#)

[Common Interest Community Association Contact Person/Management Change Form, A492-0550POCCHG-v3 \(eff. 11/2019\)](#)

[Common Interest Community Association Governing Board Change Form, A492-0550GBCHG-v2 \(eff. 11/2019\)](#)

VA.R. Doc. No. R21-6503; Filed August 27, 2020, 11:05 a.m.

## BOARD OF PHYSICAL THERAPY

### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Physical Therapy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Health Professions pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Board of Physical Therapy will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-27).**

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

**Effective Date:** October 28, 2020.

**Agency Contact:** Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email [ptboard@dhp.virginia.gov](mailto:ptboard@dhp.virginia.gov).

#### Summary:

*The amendments reduce by half the current amount of renewal fees for active and inactive licenses for physical therapists and physical therapist assistants for the December 2020 renewal pursuant to § 54.1-113 of the Code of Virginia.*

#### 18VAC112-20-27. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

1. The application fee shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be \$140 for a physical therapist and \$100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be \$135 and for a physical therapist assistant shall be \$70 and shall be due by December 31 in each even-numbered year. For renewal in 2020, the active license renewal fee for a physical therapist shall be \$70 and for a physical therapist assistant shall be \$35.

2. The fee for an inactive license renewal for a physical therapist shall be \$70 and for a physical therapist assistant shall be \$35 and shall be due by December 31 in each even-numbered year. For renewal in 2020, the inactive license renewal fee for a physical therapist shall be \$35 and for a physical therapist assistant shall be \$18.

3. A fee of \$50 for a physical therapist and \$25 for a physical therapist assistant for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has expired for two or more years shall be \$180 for a physical therapist and \$120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be \$1,000; the fee for an application for reinstatement of a license that has been suspended shall be \$500.
2. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.
3. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.
4. The fee for a letter of good standing/verification to another jurisdiction shall be \$10.
5. The application fee for direct access certification shall be \$75 for a physical therapist to obtain certification to provide services without a referral.

VA.R. Doc. No. R21-6491; Filed August 31, 2020, 8:15 a.m.

**REAL ESTATE BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Real Estate Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The Real Estate Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 18VAC135-50. Fair Housing Regulations (amending 18VAC135-50-10, 18VAC135-50-50, 18VAC135-50-80 through 18VAC135-50-200, 18VAC135-50-220, 18VAC135-50-270, 18VAC135-50-290).

**Statutory Authority:** §§ 36-96.8 and 54.1-2105 of the Code of Virginia; 42 USC § 3613.

**Effective Date:** November 1, 2020.

**Agency Contact:** Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email [reboard@dpor.virginia.gov](mailto:reboard@dpor.virginia.gov).

**Summary:**

*Pursuant to Chapters 477, 1137, and 1140 of the 2020 Acts of Assembly, which amend the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia), the amendments add four new protected classes of individuals.*

Part I  
General Provisions

**18VAC135-50-10. Definitions.**

The definitions provided in the Virginia Fair Housing Law, as they may be supplemented ~~herein~~ in this section, shall apply throughout this chapter.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise:

"Authorized representative" means (i) an attorney licensed to practice law in the Commonwealth, or (ii) a law student appearing in accordance with the third-year student practice rule, or (iii) a non-lawyer under the supervision of an attorney and acting pursuant to Part 6, § 1, Rule 1 (UPR 1-101(A)(1)) of the Rules of the Supreme Court of Virginia, or (iv) a person who, without compensation, advises a complainant, respondent, or aggrieved person in connection with a complaint, a conciliation conference, or a proceeding before the board. When a complainant, respondent, or aggrieved person authorizes a person to represent him under subdivision (iv) of this definition, such authority shall be made to the board, either in writing or orally in an appearance before the board, and shall be accepted by the representative by sending a written acknowledgement to the board or by the representative's appearance before the board.

"Board" means the Real Estate Board or the Fair Housing Board, or both.

"Broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations, or contracts and the administration of matters regarding such offers, solicitations, or contracts or any residential real estate-related transactions.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fair housing administrator" means the individual employed and designated as such by the Director of the Department of Professional and Occupational Regulation.

"Fair housing law" means the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia, effective July 1, 1991.

"Gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

"Person in the business of selling or renting dwellings" means any person who (i) within the preceding 12 months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; (ii) within the preceding 12 months, has participated

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# Regulations

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as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or (iii) is the owner of any dwelling designed or intended for occupancy by or occupied by, five or more families.

"Receipt of notice" means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail, or three days after the date of the proof of mailing of first class mail.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

"Status as a veteran" means a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the Army, Marines, Navy, Air Force, or Coast Guard; the Reserve components thereof, including the Army and Air National Guard and the Virginia Defense Force; the commissioned corps of the Public Health Service; and any other category of persons designated as members of the armed forces by the President in time of war or national emergency.

## **18VAC135-50-50. Scope.**

It is the policy of Virginia to provide, within constitutional limitations, for fair housing throughout the Commonwealth and to impose obligations, rights, and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices in the sale, rental, advertising of dwellings, inspection of dwellings, or entry into a neighborhood, in the provision of brokerage services, financing, the availability of residential real estate-related transactions, or any other discriminatory conduct prohibited by the Virginia Fair Housing Law because of race, color, religion, sex, handicap disability, elderliness, familial status, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

## **18VAC135-50-80. Unlawful refusal to sell or rent or to negotiate for the sale or rental.**

Prohibited actions under this section include, ~~but are not limited to:~~

1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with, any person because of race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

4. Using different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements, because of race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

5. Evicting tenants because of their race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran or because of the race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran of a tenant's guest.

## **18VAC135-50-90. Discrimination in terms, conditions and privileges and in services and facilities.**

Examples of prohibited actions under this section include, ~~but are not limited to:~~

1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
2. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, handicap disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
4. Limiting the use of privileges, services, or facilities associated with a dwelling because of the race, color, religion, sex, handicap disability, familial status, elderliness ~~or~~, national origin, source of funds, sexual orientation, gender identity, or status as a veteran of an owner, tenant, or a person associated with him.
5. Denying or limiting services or facilities in connection with the sale or rental of a dwelling, because a person failed or refused to provide sexual favors.

**18VAC135-50-100. Other prohibited sale and rental conduct.**

A. It shall be unlawful, because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~ to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood, or development.

Prohibited actions under ~~subsection A~~ of this section ~~subsection~~, which are generally referred to as unlawful steering practices, include, ~~but are not limited to~~:

1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~ or because of the race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~ of persons in a community, neighborhood, or development.
2. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~ by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.
3. Communicating to any prospective purchaser that ~~he the purchaser~~ would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~.
4. Assigning any person to a particular section of a community, neighborhood, or development or to a particular floor or section of a building because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~.

B. It shall be unlawful because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~ to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited activities relating to dwellings sales and rental practices under this subsection include, ~~but are not limited to~~:

1. Discharging or taking other adverse action against an employee, broker, or agent because he refused to participate in a discriminatory housing practice.
2. Employing codes or other devices to segregate or reject applicants, purchasers, or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~ or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~.
3. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~.
4. Refusing to provide municipal services or property or hazard insurance for a dwelling or providing such services or insurance differently because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~.

**18VAC135-50-110. Discriminatory advertisements, statements and notices.**

A. It shall be unlawful to make, print or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling ~~which that~~ indicates any preference, limitation, or discrimination because of race, color, religion, sex, ~~handicap disability~~, familial status, elderliness, ~~or~~ national origin, ~~source of funds, sexual orientation, gender identity, or status as a veteran~~ or an intention to make any such preference, limitation, or discrimination.

B. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.

C. Discriminatory notices, statements, and advertisements include, ~~but are not limited to~~:

1. Using words, phrases, photographs, illustrations, symbols, or forms ~~which that~~ convey that dwellings are available or not available to a particular group of persons

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# Regulations

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because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

2. Expressing to agents, brokers, employees, prospective sellers, ~~or~~ renters, or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran of such person.

3. Selecting media or locations for advertising the sale or rental of a dwelling ~~which that~~ deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

D. Publishers' notice. All publishers shall publish at the beginning of the real estate advertising section a notice such as that appearing in this subsection ~~below~~. The notice shall include a statement regarding the coverage of any Virginia and federal fair housing laws prohibiting discrimination in the sale, rental, or financing of dwellings:

All real estate advertised herein is subject to the Virginia and federal fair housing laws, which make it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, ~~handicap~~ disability, familial status, ~~national origin, or~~ elderliness, source of funds, sexual orientation, gender identity, or status as a veteran or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis. (Table III, Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition)).

E. Fair housing poster requirements.

1. Persons subject to § 36-96.3 of the Virginia Fair Housing Law shall post and maintain a HUD approved fair housing poster as follows:

a. With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in

the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.

b. With respect to all other dwellings covered by the Virginia Fair Housing Law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.

c. With respect to those dwellings to which subdivision 1 b of this subsection applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.

2. The poster requirement does not apply to vacant land, or any single-family dwelling, unless such dwelling (i) is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 b (ii) of this subsection, or (ii) is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 a of this subsection.

3. All persons subject to § 36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

4. All persons subject to 18VAC135-50-140, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.

5. Location of posters. All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.

6. Availability of posters. All persons subject to this part may obtain fair housing posters from the Virginia Department of Professional and Occupational Regulation. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department of Professional and Occupational Regulation. Any person who claims to have been injured



by a discriminatory housing practice may file a complaint with the administrator pursuant to Part III (18VAC135-50-300 et seq.) of this chapter.

**18VAC135-50-120. Discriminatory representations on the availability of dwellings.**

A. It shall be unlawful, because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran, to provide inaccurate or untrue information about the availability of dwelling for sale or rental.

B. Prohibited actions under this section include, ~~but are not limited to:~~

1. Indicating through words or conduct that a dwelling ~~which that~~ is available for inspection, sale, or rental has been sold or rented; because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
2. Representing that covenants or other deed, trust, or lease provisions ~~which that~~ purport to restrict the sale or rental of dwellings because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran preclude the sale or rental of a dwelling to a person.
3. Enforcing covenants or other deed, trust, or lease provisions ~~which that~~ preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
4. Limiting information by word or conduct regarding suitably priced dwellings available for inspection, sale, or rental; because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
5. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing; because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

**18VAC135-50-130. Blockbusting.**

A. It shall be unlawful to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person ~~or persons~~ of a particular race, color, religion, sex,

familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran or with a ~~handicap~~ disability.

B. Prohibited actions under this section include, ~~but are not limited to:~~

1. Engaging in conduct (including uninvited solicitations for listing) ~~which that~~ conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran of persons residing in it; in order to encourage the person to offer a dwelling for sale or rental.
2. Encouraging any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, elderliness ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran or with ~~handicaps, disabilities~~ can or will result in undesirable consequences for the project, neighborhood, or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

**18VAC135-50-140. Discrimination in the provision of brokerage services.**

Prohibited actions under this section include, ~~but are not limited to:~~

1. Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
3. Imposing different standards or criteria for membership in a real estate sales, rental, or exchange organization because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.
4. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings; because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin,

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# Regulations

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source of funds, sexual orientation, gender identity, or status as a veteran.

## **18VAC135-50-160. Discrimination in the making of loans and in the provision of other financial assistance.**

A. It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling; or ~~which that~~ is or is to be secured by a dwelling; because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual identity, gender identity, or status as a veteran.

B. Prohibited practices under this section include, ~~but are not limited to,~~ failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, or procedures or standards for the review and approval of loans or financial assistance; or providing information ~~which that~~ is inaccurate or different from that provided others; because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

## **18VAC135-50-170. Discrimination in the purchasing of loans.**

A. It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities ~~which that~~ support the purchase, construction, improvement, repair, or maintenance of a dwelling; or ~~which that~~ are secured by residential real estate; to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness ~~or,~~ national origin, sexual orientation, gender identity, or status as a veteran.

B. Unlawful conduct under this section includes, ~~but is not limited to:~~

1. Purchasing loans or other debts or securities ~~which that~~ relate to; or ~~which~~ are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran of persons in such neighborhoods or communities.

2. Pooling or packaging loans or other debts or securities ~~which that~~ relate to; or ~~which~~ are secured by dwellings differently because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

3. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities ~~which that~~ relate to; or ~~which~~

are secured by; dwellings because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

C. This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of federal law, relating to a transaction's financial security or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

## **18VAC135-50-180. Discrimination in the terms and conditions for making available loans or other financial assistance.**

A. It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

B. Unlawful conduct under this section includes, ~~but is not limited to:~~

1. Using different policies, practices, or procedures in evaluating or in determining credit worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance ~~which that~~ is secured by residential real estate because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

2. Determining the type of loan or other financial assistance to be provided with respect to a dwelling; or fixing the amount, interest rate, duration, or other terms for a loan or other financial assistance for a dwelling ~~or which that~~ is secured by residential real estate because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

## **18VAC135-50-190. Unlawful practices in the selling, brokering, or appraising of residential real property.**

A. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against

any person in making available such services, or in the performance of such services, because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

B. For the purposes of this section the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

C. Practices ~~which that~~ are unlawful under this section include, ~~but are not limited to,~~ using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, sexual orientation, gender identity, or status as a veteran.

**18VAC135-50-200. General prohibitions against discrimination because of handicap disability.**

A. Definitions. As used in this section unless a different meaning is plainly required by the context:

"Accessible," when used with respect to the public and common use areas of a building containing covered multi-family dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "readily accessible to and usable by" is synonymous with "accessible." A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or with any other standards adopted as part of regulations promulgated by HUD at 24 CFR Part 100 providing accessibility and usability for physically ~~handicapped~~ disabled people is accessible within the meaning of this section.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD at 24 CFR Part 100, is an "accessible route."

"ANSI A117.1" means ANSI A117.1-1986, the American National Standard for buildings and facilities providing accessibility and usability for physically ~~handicapped~~ disabled people, or an equivalent or stricter standard. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 USC § 552(a) and 1 CFR Part 51. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112.

"Building" means a structure, facility, or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirements of this paragraph.

"Common use areas" shall include, ~~but not be limited to,~~ rooms, spaces, or elements inside or outside of a building ~~which that~~ are not part of the dwelling unit and ~~which that~~ are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

"Controlled substance" means any drug or other substance as defined in Virginia or federal law.

~~"Disability" or "disabled" means, and is synonymous with, the term "handicap" as defined in the Virginia Fair Housing Law.~~

The following terms, as used in the definition of "disability" contained in § 36-96.1:1 of the Code of Virginia, shall mean:

1. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
2. "Is regarded as having an impairment" means:
  - a. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
  - b. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
  - c. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.

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# Regulations

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3. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

4. "Physical or mental impairment" includes:

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

b. Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

~~The following terms, as used in the definition of "handicap" contained in § 36-96.1:1 of the Code of Virginia, shall mean:~~

~~"Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.~~

~~"Is regarded as having an impairment" means:~~

~~1. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;~~

~~2. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or~~

~~3. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.~~

"Interior" means the spaces, parts, components, or elements of an individual dwelling unit.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Physical or mental impairment" includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, ~~but is not limited to,~~ such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

"Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

B. General prohibitions against discrimination because of ~~handicap~~ disability. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling; a person intending to reside in that dwelling after it is so sold, rented,

or made available; or any person associated with that person, has a ~~handicap~~ disability or to make inquiry as to the nature or severity of a ~~handicap~~ disability of such a person. However, this ~~subdivision~~ subsection does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have ~~handicaps~~ disabilities:

1. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
2. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with ~~handicaps~~ disabilities or to persons with a particular type of ~~handicap~~ disability;
3. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with ~~handicaps~~ disabilities or to persons with a particular type of ~~handicap~~ disability;
4. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
5. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

C. Reasonable modifications of existing premises.

1. It shall be unlawful for any person to refuse to permit, at the expense of a ~~handicapped~~ disabled person, reasonable modifications of existing premises, occupied or to be occupied by a ~~handicapped~~ disabled person, if the proposed modifications may be necessary to afford the ~~handicapped~~ disabled person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for ~~handicapped~~ disabled persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.
2. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.
3. Except as otherwise provided, the Joint Statement of the Department of Housing and Urban Development and the

Department of Justice "Reasonable Modifications under the Fair Housing Act" dated March 5, 2008, is hereby incorporated by reference to provide guidance regarding the rights and obligations of persons with disabilities and housing providers relating to reasonable modifications. A copy of the joint statement may be obtained from the Virginia Fair Housing Office.

D. Reasonable accommodations.

1. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a ~~handicapped~~ disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.
2. Except as otherwise provided, the Joint Statement of the Department of Housing and Urban Development and the Department of Justice "Reasonable Accommodations under the Fair Housing Act" dated May 17, 2004, is hereby incorporated by reference to provide guidance regarding the rights and obligations of persons with disabilities and housing providers relating to reasonable accommodations. A copy of this joint statement may also be obtained from the Virginia Fair Housing Office.

E. Design and construction requirements. Covered multi-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person ~~or persons~~ who designed or constructed the housing facility.

**18VAC135-50-220. Interference, coercion, or intimidation.**

- A. This section provides the board's interpretation of the conduct that is unlawful under § 36-96.5 of the Virginia Fair Housing Law.
- B. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Virginia Fair Housing Law and these regulations.
- C. Conduct made unlawful under this section includes, ~~but is not limited to,~~ the following:
  1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, ~~handicap~~ disability,

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# Regulations

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familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

2. Threatening, intimidating, or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran, of such persons; or of visitors or associates of such persons.

3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction; because of the race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran of that person or of any person associated with that person.

4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.

5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the fair housing law.

## **18VAC135-50-270. Use of words, phrases, symbols and visual aids.**

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the fair housing law, the board will consider the use of these and comparable words, phrases, symbols, and forms to determine a possible violation of the law and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the law is likely to result.

1. Words descriptive of dwelling, landlord and tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.

2. Words indicative of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, ~~including but not limited to~~ source of funds, sexual orientation, gender identity, or status as a veteran, including:

a. Race: African-American, Negro, Black, White, Caucasian, Oriental, Asian, American Indian, Native American, Arab.

b. Color: White, Black, Colored.

c. Religion: Protestant, Christian, Catholic, Jewish, Muslim, Islamic.

d. National origin: Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

e. Sex: The exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or intending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

f. Handicap Disability: crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this section restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

g. Familial status: adults, children, singles, mature persons. Nothing in this section restricts advertisements of dwellings ~~which that~~ are intended and operated for occupancy by older persons and ~~which that~~ constitute "housing for older persons" as defined in 18VAC135-50-210.

h. Elderliness: elderly, senior citizens, young, old, active, available to those between 25 and 55.

i. Sexual orientation: lesbian, gay, bisexual, queer, same-sex couples.

j. Gender identity: transgender, trans.

k. Source of funds: voucher, section 8, social security, disability income, government benefits.

3. Catch words. Words and phrases used in a discriminatory context should be avoided, e.g., "restricted," "exclusive," "private," "integrated," "traditional," "board approval," "membership approval."

4. Symbols or logotypes. Symbols or logotypes ~~which that~~ imply or suggest race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

5. Colloquialisms. Words or phrases used regionally or locally ~~which that~~ imply or suggest race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran.

6. Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example,

references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference.

7. Area (location) description. Names of facilities which cater to a particular racial, national origin, or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

**18VAC135-50-290. Fair housing policy and practices.**

In the investigation of complaints, the board will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law.

1. Use of equal housing opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. See Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition) for suggested use of the logotype, statement, or slogan and size of logotype and copies of the suggested equal housing opportunity logotype, statement and slogan. A copy of Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition) is posted on the Fair Housing Office's website or may be obtained by contacting the Fair Housing Office.

2. Use of human models. Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, ~~handicap~~ disability, familial status, elderliness, ~~or~~ national origin, source of funds, sexual orientation, gender identity, or status as a veteran, and is not for the exclusive use of one such group.

Human models include any depiction of a human being, paid or unpaid, resident or nonresident.

VA.R. Doc. No. R21-6461; Filed September 1, 2020, 1:32 p.m.

**TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS**

**STATE CORPORATION COMMISSION**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** **20VAC5-210. Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems (adding 20VAC5-210-10 through 20VAC5-210-40).**

**Statutory Authority:** §§ 12.1-13 and 56-90.2 of the Code of Virginia.

**Effective Date:** October 1, 2020.

**Agency Contact:** Scott Armstrong, CPA, CDP, Deputy Director, Division of Utility Accounting and Finance, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9535, FAX (804) 371-9549, or email [scott.armstrong@scc.virginia.com](mailto:scott.armstrong@scc.virginia.com).

**Summary:**

*The regulatory action adds a new chapter, Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems (20VAC5-210), pursuant to Chapters 518 and 519 of the 2020 Acts of Assembly to establish minimum filing requirements related to such utility applications under Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia. In response to comments on the proposed regulation, two changes were made to assessment of an asset or asset class by an independent professional engineer.*

AT RICHMOND, AUGUST 27, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00116

Ex Parte: In the matter of adopting new rules of the State Corporation Commission

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# Regulations

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governing utility applications seeking  
fair valuation of acquisitions of municipal  
water or wastewater systems

## ORDER ADOPTING REGULATIONS

The Virginia General Assembly enacted legislation during its 2020 Session<sup>1</sup> requiring the State Corporation Commission ("Commission") to establish rules governing utility applications seeking fair valuation of acquisitions of municipal water or wastewater systems related to applications filed pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Fair Value Legislation").<sup>2</sup> The new rules are to be effective by January 1, 2021.

On June 16, 2020, the Commission entered an Order for Notice and Comment ("Initial Order") initiating this proceeding to promulgate rules governing water or wastewater utility applications seeking fair valuation of acquisitions of municipal water or wastewater systems. The Commission appended to its Initial Order proposed rules ("Proposed Rules"), which were prepared by the Staff of the Commission ("Staff").

Notice of the proceeding and the Proposed Rules were published in the Virginia Register of Regulations on July 6, 2020. An Errata with corrections was printed in the August 3, 2020 issue of the Virginia Register of Regulations. Additionally, the Clerk of the Commission provided notice to utilities providing water or sewer service in the Commonwealth of Virginia that are subject to regulation by the Commission. An electronic version of the Proposed Rules was posted on the Commission's website and the Commission's Division of Public Utility Regulation website. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before July 27, 2020.

Virginia-American Water Company, Inc. and Aqua Virginia, Inc. ("Aqua") (collectively the "Commenters") filed comments. No one requested a hearing on the Proposed Rules. On August 17, 2020, the Staff filed its report. On August 20, 2020, Aqua filed comments to the Staff report ("Comments").

The Commenters noted that the Fair Value Legislation did not prohibit the effective date of the Proposed Rules before January 1, 2021, since it required such rules to be established by January 1, 2021. The Commenters requested that the effective date of the Proposed Rules coincide with the Commission's Final Order adopting the Proposed Rules. In its Report, Staff did not oppose an effective date of the Proposed Rules prior to January 1, 2021. Staff correctly noted that the effective date of new rules cannot precede the date that the final rules are filed with the Registrar's Office. Staff also noted that the Commission may wish to consider whether the regulations should be published prior to an effective date. In

its Comments to the Staff Report, Aqua supported the Staff's anticipated timeframe for finalizing the Proposed Rules.

The Fair Value Legislation does not prohibit the new rules from being effective before January 1, 2021. In consideration of the Commenters' request that the effective date occur with a final order adopting the regulations, we will adopt the Proposed Rules effective October 1, 2020. This effective date will allow time for the final adopted rules to be filed with the Registrar's Office and should also allow their publication in the Virginia Register of Regulations prior to the effective date.

The Commenters also made suggested edits to Section 20VAC5-210-20 B(3)(c) of the Proposed Rules. This section requires the analysis of an independent professional engineer licensed in Virginia regarding the condition of the system, the in-service date and useful life of each asset, and operating condition. In its report, Staff indicated that the Commenters worked with Staff to reach agreement on revisions proposed in the report. In its Comments, Aqua stated that it accepted Staff's proposed amendment and clarification. We find that these changes are reasonable and incorporate them into the final rules.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulations attached hereto as Appendix A should be adopted as final rules, as discussed herein.

Accordingly, IT IS ORDERED THAT:

(1) The rules governing Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems, as shown in Appendix A to this Order, are hereby adopted and are effective as of October 1, 2020.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Appendix A, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Appendix A including the rules governing Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems shall be made available on the Division of Public Utility Regulation's section of the Commission's website: <https://scc.virginia.gov/pages/Rulemaking>.

(4) This docket is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to utilities providing water or sewer service in the Commonwealth of Virginia that are subject to regulation by the Commission as identified on the attached list; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the



Attorney General, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, MBrowder@oag.state.va.us.

<sup>1</sup>Chapter 519 of the 2020 Acts of Assembly (SB 831); Chapter 518 of the 2020 Acts of Assembly (HB 835).

<sup>2</sup>Section 56-88 et seq.

#### CHAPTER 210

#### WATER OR WASTEWATER UTILITY APPLICATIONS SEEKING FAIR VALUATION OF ACQUISITIONS OF MUNICIPAL WATER OR WASTEWATER SYSTEMS

##### **20VAC5-210-10. Purpose and applicability.**

This chapter sets forth minimum filing requirements for Virginia's investor-owned water and wastewater utilities related to applications pursuant to Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia when electing to seek use of fair market value (i) in the acquisition of a municipal or other governmental selling entity's water or wastewater system, and (ii) for purposes of determining initial rate base in conjunction with such acquisition. The commission may waive any or all parts of this chapter for good cause shown.

##### **20VAC5-210-20. General filing instructions.**

A. An applicant shall provide a notice of intent to file an application pursuant to this chapter to the commission at least 30 days prior to the application filing date. Such notice of intent shall identify the parties involved in the proposed transaction and the specific section and subsection of the Code of Virginia pursuant to which the application will be filed.

B. Applications filed pursuant to this chapter shall include, in addition to all other filing requirements in Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia applications:

1. Testimony in support of the proposed acquisition and purchase price. Such testimony shall include a statement from each of the acquiring and selling entities concerning each entity's agreement and intent to consummate the transaction according to the terms and conditions represented in the application.

2. Complete and unredacted copies, including all supporting documentation and workpapers, of two qualified, independent, and impartial utility valuation experts' appraisals of the system assets to be acquired in compliance with the uniform standards of professional appraisal practices. The appraisals shall be submitted and treated confidentially under 5VAC5-20-170. Such appraisals shall be completed and submitted in accordance with the following requirements:

a. One appraisal shall be sponsored by the water or wastewater public utility acquiring the utility system

assets, and one appraisal shall be sponsored by the government entity selling its utility system assets.

b. The qualifications of each utility valuation expert, specifically as they relate to water or wastewater utility systems, shall be clearly identified in the application.

c. The appraisals shall clearly identify whether they are based on a cost, market, income, other methodology, or a combination of such methodologies, and shall state the historical period on which they are based.

d. To the extent any assets are proposed to be acquired apart from those to be currently used and useful in utility service, the appraisals shall (i) separately identify such assets and (ii) describe the acquiring utility's intended use of such assets.

3. A complete and unredacted copy, including all supporting documentation and workpapers, of the assessment performed by an independent professional engineer licensed in Virginia, jointly retained by the acquiring and selling entities, regarding the tangible assets of the utility system to be acquired. For purposes of this section, "jointly retained" means retained collectively by the acquiring and selling entities, retained by the selling entity and adopted by the acquiring entity, or retained by the acquiring entity and adopted by the selling entity. Such assessment shall be (i) used by the utility valuation experts as a basis for their valuations in determining fair market value and (ii) submitted and treated confidentially under 5VAC5-20-170. Such assessments shall be completed and submitted in accordance with the following:

a. The qualifications of such licensed engineer, specifically as the qualifications relate to water or wastewater utility systems, shall be clearly identified in the application.

b. To the extent assets are to be acquired apart from those to be currently used and useful in utility service, such assessment shall separately quantify the assets that are to be currently used and useful in utility service.

c. An analysis of the condition of the system shall be provided, including the in-service date, if available, and an assessment of the useful life of each asset [ or asset class, where information on an individual asset basis is unavailable or would be unduly burdensome to provide, ] and its operating condition. [ If analysis of each asset is not provided, the analysis shall include other details as available and shall explain the basis for how the engineer determined the in-service date, useful life, and condition of the asset class. ]

4. The following market data regarding water or wastewater utility transfers, if available, should be provided as part of the appraisals. To the extent such data

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# Regulations

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is not available from the selling entity, an explanation should be provided.

a. Identification of the acquiring and selling entities.

b. A description of the assets.

c. The geographic footprint of the acquired system.

d. The number of customers.

e. The transaction amount, identification of the recorded cost of the assets, and identification of whether such transaction was based on original cost, fair value, or other basis.

f. Quantification of purchase of equity or debt, if applicable.

g. Date of the transaction.

5. The following cost data for the assets to be acquired, if available, should be included as part of the appraisals. To the extent such data is not available from the selling entity, an explanation should be provided.

a. A detail of historical cost of assets by plant account, or categories of assets if not available by account, including plant additions and retirements by vintage year.

b. A detail of the recorded reserve for depreciation by plant account or categories of assets if not available by account.

c. Existing depreciation rates by account, or categories of assets, for the system to be acquired.

6. The following income data, if available, should be included as part of the appraisals. To the extent such data is not available from the selling entity, an explanation should be provided.

a. Any impairment tests performed for the system to be acquired as performed internally by the selling entity or its external auditors for the five prior years.

b. Annual financial forecasts prepared by management of the selling entity for the three prior years.

c. An analysis of the following for the acquired system by rate class and meter or service line size for the three most recent years:

(1) Number of customers.

(2) Usage data.

(3) Billed revenues.

(4) Net charge-offs.

7. Other required information pertaining to the acquired system to include:

a. An unredacted copy of the purchase agreement.

b. A map of the service area of the acquired system.

c. A detailed description of all assets of the acquired system, with identification of any assets that were not used and useful at the time of the appraisals.

d. A statement of any obsolescence considered (e.g., physical, functional, and economic) and supporting documentation and calculations for any obsolescence quantified.

e. The comprehensive annual financial report for the municipality or other selling governmental entity for the three prior years.

f. Any presentations made by investment advisors or senior management of either the acquiring or selling entity regarding the potential sale.

g. A detailed analysis of any rehabilitations or improvements the acquiring utility plans to make to the acquired system to address any known deficiencies of the acquired system.

8. To the extent the proposed purchase price is different than that provided in the filed appraisals, the application shall identify the proposed purchase price.

9. The acquiring utility's proposed journal entries anticipated to result from the proposed acquisition, including tax entries and account numbers recognized by the National Association of Regulatory Utility Commissioners.

10. An analysis identifying the qualitative and quantitative benefits and estimated customer rate impacts for the next five years as a result of the proposed acquisition for each of (i) the customers of the acquired system and (ii) the legacy customers of the acquiring utility. Such analysis shall clearly identify all assumptions relied upon.

11. Documentation of (i) incurred and additional estimated costs and fees of the utility valuation experts in the fair market value determination and (ii) incurred and additional estimated transaction and closing costs.

C. An application filed pursuant to this chapter shall not be deemed filed pursuant to Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia unless it is in full compliance with this chapter.

## **20VAC5-210-30. Commission determination of rate base.**

A. An average of the three appraisals, which includes one sponsored by commission staff, shall be deemed the fair market value for purposes of the proceeding.

B. The rate base value of the acquired system for purposes of subsequent rate filings made pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia shall be the following: the fees and costs of the utility valuation experts authorized by the acquiring and selling entities, transaction

costs, and other closing costs found by the commission to be reasonable and prudently incurred, plus the lesser of (i) the purchase price negotiated between the acquiring utility and selling entity as the result of a voluntary arm's-length transaction and (ii) the fair market value. The rate base value shall incorporate the provisions for depreciation as identified in this chapter.

**20VAC5-210-40. Miscellaneous general provisions.**

A. Nothing in this chapter shall be construed to relieve the applicant from its duty to demonstrate that "...adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition..." as provided in § 56-90 of the Code of Virginia.

B. Any information deemed confidential by the applicant may be submitted and treated confidentially under 5VAC5-20-170.

C. This chapter does not limit the commission staff or parties from raising issues related to the proposed acquisition for commission consideration that have not been addressed in the applicant's filing before the commission.

D. Commission staff and parties may seek discovery to confirm the reasonableness of, and provide testimony and recommendations regarding, the appraisals and engineering assessment sponsored by the acquiring and selling entities. The applicant may seek discovery as permitted of commission staff pursuant to 5VAC5-20-260 to confirm the reasonableness of the appraisal sponsored by commission staff and may provide rebuttal testimony or response and recommendations regarding such.

E. If the depreciation rates for the acquired system are not based on a depreciation study:

1. The acquiring utility may apply a 3.0% composite depreciation rate to the fair market value of the utility system assets acquired; and

2. A depreciation study on the acquired system shall be performed within five years of acquisition and provided for review by the commission staff. Upon acceptance of the depreciation rates by commission staff for booking purposes, such rates shall be utilized for the system effective as of the date of the study. However, if the acquired system is of a size that would qualify under the Small Water or Sewer Public Utility Act (Chapter 10.2:1 (§ 56-265.13:1 et seq.) of Title 56 of the Code of Virginia), such assets may be exempted from the requirement of performing a depreciation study.

VA.R. Doc. No. R20-6354; Filed August 28, 2020, 1:45 p.m.

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# GUIDANCE DOCUMENTS

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## PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

### BOARD OF ACCOUNTANCY

Title of Document: [Enforcement Processes](#).

Public Comment Deadline: October 28, 2020.

Effective Date: October 29, 2020.

Agency Contact: Elizabeth Marcello, Information and Policy Advisor, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-2006, or email [elizabeth.marcello@boa.virginia.gov](mailto:elizabeth.marcello@boa.virginia.gov).

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Titles of Documents:

[Guidance for a Quality Improvement Plan](#).

[Guidance for Serious Incident Reporting](#).

Public Comment Deadline: October 28, 2020.

Effective Date: October 29, 2020.

Agency Contact: John Cimino, Legal and Regulatory Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 298-3279, or email [john.cimino@dbhds.virginia.gov](mailto:john.cimino@dbhds.virginia.gov).

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### State Implementation Plan Proposed Revision - Maintenance Plan for Richmond-Petersburg 1997 Ozone National Ambient Air Quality Standard Maintenance Area

Notice of action: The Department of Environmental Quality (DEQ) is announcing a public comment period on a proposed second maintenance plan for the Richmond-Petersburg 1997 ozone National Ambient Air Quality Standard (NAAQS) maintenance area. The plan shows that emission reductions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) in the area will continue such that air quality is expected to further improve. The Commonwealth intends to submit the plan as a revision to the Virginia State Implementation Plan (SIP) in accordance with the federal Clean Air Act. The SIP is the plan developed by Virginia in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the NAAQS promulgated by the U.S. Environmental Protection Agency.

Purpose of notice: DEQ is seeking comments on the maintenance plan for the Richmond-Petersburg 1997 ozone maintenance area, which consists of the Counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George, and the Cities of Colonial Heights, Hopewell, Richmond, and Petersburg.

Public comment period: September 28, 2020, through October 28, 2020.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposal consists of the following:

1. An air quality maintenance plan for the Richmond-Petersburg 1997 ozone maintenance area consisting of the Counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George, and the Cities of Colonial Heights, Hopewell, Richmond, and Petersburg.
2. A comprehensive attainment year inventory of actual emissions from all sources of relevant ozone precursor pollutants (carbon monoxide, NO<sub>x</sub>, and VOC) for the year 2014.
3. Air quality data from 2000 to 2019 showing that the area is attaining the 1997 ozone NAAQS with a significant margin of safety.

4. Contingency measures in the unlikely situation where air quality monitors within the area record an exceedance of the 1997 ozone NAAQS.

5. Assurance that the Commonwealth will continue to operate an ozone monitoring network in accordance with 40 CFR Part 58 within the area.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. A cover page with the recipient's full mailing address must be part of each fax. Comments must be submitted to the contact person listed at the end of this notice. All materials received are part of the public record.

To review the proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans and Programs website at <https://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative listed at the end of this notice. The public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA, telephone (804) 698-4249.

2) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4249, or email [doris.mcleod@deq.virginia.gov](mailto:doris.mcleod@deq.virginia.gov).

## STATE CORPORATION COMMISSION

### Bureau of Insurance

September 1, 2020

Administrative Letter 2020-07

To: All Property and Casualty Insurers and Rate Service Organizations Licensed in Virginia

Re: Filing Procedures for Compliance with the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2019; Withdrawal of Administrative Letter 2015-03

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## General Notices/Errata

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The purpose of Administrative Letter 2020-07 is to advise insurers of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2019 amending and extending the Terrorism Risk Insurance Act of 2002. All references to the Terrorism Risk Insurance Act of 2002 and subsequent reauthorizations will be hereafter referenced as "the Act". The 2019 reauthorization of the Act does not require any filing actions by insurers. For further details, please consult the Act itself.

Further, Administrative Letter 2020-07 brings forward relevant provisions of previously issued administrative letters to address filing-related requirements pertaining to coverage for terrorism risk in property and casualty insurance contracts. The previously issued administrative letter listed above is hereby withdrawn.

The reauthorized Act, as amended and extended, contains minimal changes, including:

- Extending the program through December 31, 2027.
- Changing the timing of the mandatory recoupment by moving the date of each referenced year back five years.
- Requiring the Secretary of the Treasury to include in the Secretary's annual report an evaluation of the availability and affordability of terrorism risk insurance, specifically for places of worship.
- Requiring the Comptroller General of the United States to conduct a study on: overall vulnerabilities and potential costs of cyber-attacks on the U.S.; whether state-defined cyber liability under a property and casualty line of insurance is adequate coverage for an act of cyber terrorism; whether such risks can be adequately priced by the private market; and whether the current risk-share systems under the Act are appropriate for a cyber terrorism event.

### Background

In November 2002, the Terrorism Risk Insurance Act of 2002 was enacted. This Federal law provided a federal backstop for coverage for defined acts of terrorism and imposed certain obligations on insurers. The Act has been extended for additional periods and has now been extended through December 31, 2027.

All insurers, as defined in the Act, are required by the Act to participate in the Terrorism Risk Insurance Program and to make available coverage for insured losses, as defined in the Act, resulting from an act of terrorism, as defined in the Act, in all of their property and casualty insurance policies, as defined in the Act. The Act further requires insurers to make available, in all property and casualty insurance policies, coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

### Definition of Insured Loss(es)

The Act defines "insured loss" as any loss resulting from an act of terrorism (including an act of war in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—(A) occurs within the United States; or (B) occurs to an air carrier (as defined in 49 USC § 40102), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

### Definition of Act of Terrorism

Section 102(1) defines an act of terrorism for purposes of the Act. Please note that the unmodified reference to "the Secretary" refers to the Secretary of the Treasury. The revised § 102(1)(A) states, "The term 'act of terrorism' means any act that is certified by the Secretary, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—(i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to—(I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of—(I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion." Section 102(1)(B) states, "No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000." Section 102(1)(C) and (E) specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

The policy form must include a definition of act(s) of terrorism. Section 102(1) defines an act of terrorism for purposes of the Act. To satisfy this filing requirement, insurers may reference the definition of "acts of terrorism" in the Act or restate the definition in the policy form. If the term "acts(s) of terrorism" is defined in the policy form, it is not necessary for the insurer to repeat the definition in endorsements used with the policy form.

### Definition of Property and Casualty Insurance

For details regarding the lines of insurance to which the Act applies, please consult the Act and the Interim Guidance provided by the Department of the Treasury.

## Certified and Non-Certified Acts of Terrorism

As a result of the definitions of "act of terrorism" and "insured loss" contained in the Act, there are essentially two distinct types of losses that a policyholder might face that result from terrorism. One type of loss is the insured loss that is defined within and covered by the provisions of the Act. For convenience, the term "certified loss" will be used to refer to losses resulting from certified acts of terrorism. The second type of loss is one that does not fit within the definition of insured loss as described in the Act. For convenience, the term "non-certified loss" will be used to refer to those losses resulting from acts of terrorism that are not certified.

## Non-Certified Acts of Terrorism

If insurers elect to exclude non-certified acts of terrorism, the coverage form must define a non-certified act, which includes an act of terrorism that fails to be certified solely because it falls below the \$5,000,000 threshold in § 102(1) (B) of the Act.

The Bureau will continue to approve certain limitations to coverage for non-certified acts of terrorism. For policies providing property insurance coverage, the following limitation applies to exclusions of non-certified losses:

- Industry-wide insured losses must exceed \$25,000,000 for related incidents that occur within a 72-hour period;

Exclusions applicable to non-certified acts of terrorism are not subject to this limitation if:

1. The act involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
2. The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
3. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such material.

The exemption in § 38.2-2102 B of the Code of Virginia (Code) does not apply to non-certified acts; therefore, the provisions of § 38.2-2105 of the Code apply to ensuing fire losses for non-certified acts of terrorism.

For policies providing liability insurance coverage, the following limitations apply to exclusions of non-certified losses:

- Industry-wide insured losses must exceed \$25,000,000 for related incidents that occur within a 72-hour period; or
- Fifty or more persons must sustain death or serious injury for related incidents that occur within a 72-hour period. For the purposes of such provisions, serious injury means:
  1. Physical injury that involves a substantial risk of death;

2. Protracted and obvious physical disfigurement; or
3. Protracted loss of or impairment of the function of a bodily member or organ.

- Exclusions applicable to non-certified acts of terrorism are not subject to the above limitations if:

1. The act involves the use, release, or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
2. The act is carried out by means of the dispersal or application of pathogenic or
3. Pathogenic or poisonous biological or chemical materials are released, and it appears one purpose of terrorism was to release such materials.

## Submission of Rates, Loss Cost Multipliers, and Policy Forms or Endorsements

### Coverage Forms, Endorsements

Except to the extent an insurer has authorized a rate service organization (RSO) to file forms on its behalf, insurers must file any policy forms or endorsements that they intend to use to cover or exclude certified losses on or before the date the forms or endorsements are effective. However, for lines or sub-classifications of insurance exempted from form filing requirements by Virginia statutes or administrative orders, the forms or endorsements related to terrorism coverage for those lines or sub-classifications of insurance are also exempt from filing requirements. The requirements of the Act, however, are not affected by such exemptions and continue to apply.

### Conditional Terrorism Exclusions

As a result of uncertainty associated with reauthorizations of the Act, insurers filed conditional terrorism exclusions that would be activated in the event the Act was not renewed or renewed on a basis that substantially affected the risk of the loss assumed by the insurer during the period that the policy was in effect. In response to those concerns, the Bureau approved conditional terrorism exclusions. These endorsements must provide the same limitations to coverage for non-certified acts of terrorism, which are described above, for any terrorism loss that occurred after the termination of the Act. Approved conditional endorsements may remain on file to ensure that they are available for any subsequent uncertainty related to the expiration of the Act. Insurers and rate service organizations should review these endorsements to determine their continued appropriateness.

### Exclusions Not Allowed in Virginia Coverage Forms

- Virginia laws and regulations prohibit the use of terrorism exclusions in personal automobile insurance and insurance covering owner-occupied dwellings.
- Workers' compensation coverage forms are subject to regulation by the Virginia Workers' Compensation

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## General Notices/Errata

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Commission (WCC). Terrorism exclusions have not been approved by the WCC. Any questions pertaining to workers' compensation insurance coverage forms should be directed to the WCC.

- For property insurance policies that are subject to the provisions of Virginia's standard fire policy, as set forth in § 38.2-2105 of the Code, coverage for ensuing fire losses is required. If, however, the insured does not purchase fire coverage for certified acts of terrorism, the provisions of § 38.2-2102 B of the Code apply, and the insurer would be allowed to exclude the ensuing fire loss from certified acts of terrorism.

### Rates, Loss Cost Multipliers – Other than Workers' Compensation

Rate and loss cost multiplier filings will be accepted on a file-and-use basis, in accordance with § 38.2-1906 of the Code. If an insurer relies on an RSO for advisory loss costs and to file supplementary rate information on its behalf, no filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for certified losses. It is important to note that for lines or sub-classifications of insurance exempted from rate filing requirements by Virginia statutes or administrative orders, the rates related to terrorism coverage for those lines or sub-classifications of insurance are also exempt from filing requirements. The requirements of the Act are not affected by such exemptions and continue to apply.

### Rates, Loss Cost Multipliers – Workers' Compensation

If an insurer relies on an RSO to file workers' compensation loss costs and related rating systems on its behalf, no filing is required unless the insurer plans to use a different loss cost multiplier than is currently on file. Refer to Administrative Letter 2010-05 for additional details regarding filing loss cost multipliers. Insurers electing to file independent workers' compensation rates for terrorism exposures that do not rely upon the approved loss costs filed on their behalf by the National Council on Compensation Insurance are subject to the 60-day prior filing requirements of § 38.2-1912 of the Code and must include full actuarial support for their proposed rates.

### Disclosure Notices – Filing Not Required

Insurers should not submit the federally required disclosure notices to the Bureau for review or approval. The federally required disclosure notices do not contain terms or conditions of coverage and are, therefore, not subject to form filing requirements

Please feel free to contact the Property and Casualty Division of the Bureau of Insurance at (804) 371-9965 with your questions about Administrative Letter 2020-07.

/s/ Scott A. White  
Commissioner of Insurance

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Foxglove Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Frederick County

Foxglove Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Frederick County. The proposed project is approximately 668 acres located south of Marlboro Road, north of Vacluse Road, and bisected by Hites View Road and is generally west of Stephens City in Frederick County. The project will have a maximum generating capacity of 75 megawatts alternating current and consist of approximately 206,550 photovoltaic panels. The project will connect to the grid through transmission lines that bisect the property.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4178, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Order for the County of Culpeper

An enforcement action has been proposed for the County of Culpeper for violations of the State Water Control Law and regulations at the Culpeper County Industrial Airpark sewage treatment plant located in Culpeper, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Culpeper County Industrial Airpark sewage treatment plant. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Benjamin Holland will accept comments by email at [benjamin.holland@deq.virginia.gov](mailto:benjamin.holland@deq.virginia.gov) or by postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 29, 2020, through October 29, 2020.

### Proposed Amendment for the Town of Edinburg

The State Water Control Board proposes to issue an amendment to the Town of Edinburg for the Edinburg sewage treatment plant, which includes injunctive relief for a proposed upgrade of the facility. A description of the proposed amendment is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Eric Millard will accept comments by email at [eric.millard@deq.virginia.gov](mailto:eric.millard@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from September 28, 2020, to October 28, 2020.



## **Proposed Consent Order for McLane/Mid-Atlantic Inc.**

An enforcement action has been proposed for McLane/Mid-Atlantic Inc. for violations of the State Water Control Law and regulations associated with the McLane/Mid-Atlantic facility located at 56 McLane Drive in Falmouth, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the McLane facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Stephanie Bellotti will accept comments by email at [stephanie.bellotti@deq.virginia.gov](mailto:stephanie.bellotti@deq.virginia.gov) or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 29, 2020, through October 29, 2020.

## **Proposed Consent Order for the City of Winchester**

An enforcement action has been proposed for the City of Winchester for violations at the City of Winchester wastewater collection system. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to the City of Winchester to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Eric Millard will accept comments by email at [eric.millard@deq.virginia.gov](mailto:eric.millard@deq.virginia.gov), FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from September 28, 2020, to October 28, 2020.

## **Total Maximum Daily Load for Buffalo River, Long Branch, Rutledge Creek, Mill Creek, and Turner Creek Watersheds**

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the draft TMDL Implementation Plan (IP) for bacteria and sediment total maximum daily loads (TMDLs) for Buffalo River, Long Branch, Rutledge Creek, Mill Creek, and Turner Creek watersheds in Amherst County. These streams were listed as impaired on the Virginia's § 303(d) TMDL Priority List and Report due to exceedances of the state's water quality standard for bacteria. The following are the names of the bacteria "impaired" streams, the length of the impaired segments, and the reason for the impairments: Buffalo River, 23.48 miles, bacteria; Buffalo River, 2.09 miles, sediment; Long Branch, 3.59 miles, sediment; Mill Creek, 4.15 miles, bacteria; Rutledge Creek, 7.48 miles, bacteria; Turner Creek, 4.49 miles, bacteria. For previous meeting minutes please visit the DEQ Implementation Planning Progress page at <https://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationProgress.aspx#Buffalo%20River>.

The TMDL studies for these stream impairments were completed in June 2013 and July 2013 and can be found, respectively, in the Bacteria Total Maximum Daily Load Development for Hat Creek, Piney River, Rucker Run, Mill Creek, Rutledge Creek, Turner Creek, Buffalo River, and Tye River in Nelson County and Amherst County, Virginia report is available at <https://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/jamesrvr/tyetribsbact.pdf>; the Sediment TMDL Development Report for Benthic Impairments in Long Branch and Buffalo River Amherst County, Virginia report is available at <https://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/jamesrvr/longbuffsed.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

Given the current State of Emergency related to the COVID-19 pandemic, this meeting will be held entirely virtually to discuss the draft implementation plan for the Buffalo River watersheds. At this meeting, the process by which the implementation plan was developed to restore water quality in the watersheds will be discussed and citizens will learn how they can be part of the water quality improvement process.

A computer or a telephone are necessary to participate virtually. All participants are encouraged to access the meeting using a computer to view presentations or visual displays, although audio only participation using a phone is also an option. The URL to access the virtual meeting is provided at the end of this notice. If meeting participants experience any interruption in the meeting broadcast, they should call the technical support line that is also provided at the end of this notice.

Buffalo River TMDL Implementation Plan Final Public Meeting: Tuesday, October 20, 2020, from 6 p.m. to 8 p.m. This meeting will be held virtually. Please register in advance using the following link: <https://attendee.gotowebinar.com/register/4106924828708741648>.

For technical assistance during the meeting call (804) 698-4470 or email [kevin.vaughan@deq.virginia.gov](mailto:kevin.vaughan@deq.virginia.gov).

DEQ accepts written comments by email, fax, or postal mail. The 30-day public comment period on the information presented at the meeting will begin on October 20, 2020, and ends November 20, 2020. Questions or information requests should be addressed to James Money maker with the Department of Environmental Quality. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to the following:

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## General Notices/Errata

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James Moneymaker, Department of Environmental Quality, Blue Ridge Regional Office, 901 Russell Drive, Salem, VA 24153, telephone (540) 562-6738, email [james.moneymaker@deq.virginia.gov](mailto:james.moneymaker@deq.virginia.gov), or FAX (540) 562-6725.

In the event the Governor's State of Emergency is lifted, the meeting will be held on the same date and time at the: Department of Environmental Quality, Blue Ridge Regional Office, Training Room, 901 Russell Drive, Salem, VA 24153.

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov).

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

## ERRATA

### BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code.**

Publication: 36:12 VA.R. 1581-1747 February 3, 2020.

Corrections to Proposed Regulation:

In 13VAC5-63-210 S,

Page 1609, column two, subdivision 17, Exception, line 3, after "door" replace "if" with "provided" and after "that" insert "the"

Page 1631, column two, P3012.9 Certification., after "Certification." replace "The permit holder" with "A certification"; after "shall" replace "provide a certification" with "be provided"; and after "official" insert ", from the permit holder."

VA.R. Doc. No. R19-5887; Filed September 11, 2020, 8:36 a.m.