

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 91

An Act to amend and reenact §§ 54.1-403, 54.1-406, 54.1-603, 54.1-702, 54.1-1012, 54.1-1013, 54.1-2104, 54.1-2206, 54.1-2210, 54.1-2313, and 54.1-2344 of the Code of Virginia and to repeal § 54.1-404.1 of the Code of Virginia, relating to Department of Professional and Occupational Regulation; obsolete language.

[H 590]

Approved March 9, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-403, 54.1-406, 54.1-603, 54.1-702, 54.1-1012, 54.1-1013, 54.1-2104, 54.1-2206, 54.1-2210, 54.1-2313, and 54.1-2344 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-403. Board members and officers; quorum.

A. The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects shall be composed of thirteen members as follows: three architects, three professional engineers, three land surveyors, two landscape architects and two certified interior designers. However, the two certified interior designer members initially appointed to the Board shall be qualified for certification pursuant to this chapter. Each interior designer appointment to the Board may be made from nominations submitted by the Council of Certified Virginia Interior Designers, who shall nominate three persons for each interior designer vacancy. In no case shall the Governor be bound to make any appointment from the nominees.

Board members shall have actively practiced or taught their professions for at least ten years prior to their appointments. The terms of Board members shall be four years unless otherwise provided in subsection B.

The Board shall elect a president and vice-president from its membership.

Eight Board members, consisting of two engineers, two architects, two land surveyors, one landscape architect and one interior designer, shall constitute a quorum.

B. 1. Of the 1998 appointments, the terms shall be as follows: the landscape architect shall serve a one-year term; one interior designer shall serve a two-year term and one interior designer shall serve a four-year term. Of the 2000 appointments, the terms shall be as follows: one architect shall serve a three-year term; one architect shall serve a four-year term; one professional engineer shall serve a two-year term; one professional engineer shall serve a four-year term; one land surveyor shall serve a two-year term; and one land surveyor shall serve a three-year term. Of the 2001 appointments, the terms shall be as follows: the architect shall serve a four-year term; the professional engineer shall serve a four-year term; the land surveyor shall serve a three-year term; and the landscape architect shall serve a four-year term.

2. Any appointments to a term of less than four years as specified in subdivision 1 shall not be considered a full term pursuant to § 54.1-107.

§ 54.1-406. License required.

A. Unless exempted by § 54.1-401, 54.1-402, or 54.1-402.1, a person shall hold a valid license prior to engaging in the practice of architecture or engineering which includes design, consultation, evaluation or analysis and involves proposed or existing improvements to real property.

Unless exempted by § 54.1-401, 54.1-402, or 54.1-402.1, a person shall hold a valid license prior to engaging in the practice of land surveying.

B. Unless exempted by § 54.1-402, any person, partnership, corporation or other entity offering to practice architecture, engineering, or land surveying without being registered or licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111 of this title.

C. Any person, partnership, corporation or other entity which is not licensed or registered to practice in accordance with this chapter and which advertises or promotes through the use of the words "architecture," "engineering" or "land surveying" or any modification or derivative thereof in its name or description of its business activity in a manner that indicates or implies that it practices or offers to practice architecture, engineering or land surveying as defined in this chapter shall be subject to the provisions of § 54.1-111.

D. Notwithstanding these provisions, any state agency or political subdivision of the Commonwealth unable to employ a qualified licensed engineer, architect, or land surveyor to fill a responsible charge position, after reasonable and unsuccessful search, may fill the position with an unlicensed person upon the determination by the chief administrative officer of the agency or political subdivision that the person, by virtue of education, experience, and expertise, can perform the work required of the position.

E. Through June 30, 2002, any full-time, salaried employee of the Commonwealth or any political subdivision of the Commonwealth on June 30, 1992, who has graduated from an engineering,

engineering technology, or related science curriculum of four years or more, and who has acquired a specific record of thirty years or more of approved progressive professional experience on engineering projects of a grade and character which the Board judges to be pertinent to acquiring professional skills, demonstrating that the individual is eminently qualified to practice engineering, shall qualify for an oral examination for licensure in accordance with the rules and regulations of the Board as adopted May 17, 1990.

F. E. Notwithstanding the provisions of this section, a contractor who is licensed pursuant to the provisions of Chapter 11 (§ 54.1-1100 et seq.) of this title shall not be required to be licensed or registered to practice in accordance with this chapter when bidding upon or negotiating design-build contracts or performing services other than architectural, engineering or land surveying services under a design-build contract. The architectural, engineering or land surveying services offered or rendered in connection with such contracts shall only be rendered by an architect, professional engineer or land surveyor licensed in accordance with this chapter.

§ 54.1-603. License required; requirements for licensure; nonresident applicants.

A. Unless exempted by § 54.1-601, no person or firm shall sell at auction without being licensed by the Board. ~~Any applicant for licensure who was certified by or registered with the Board prior to July 1, 1991, shall be exempt from the requirements of subsection B of this section if he applies prior to January 1, 1992.~~

B. Any auctioneer desiring to obtain a license may apply to the Board and shall establish to the satisfaction of the Board that he:

1. Is a resident of Virginia and meets the application fee requirements set by the Board;
2. Is covered by a surety bond, executed by a surety company authorized to do business in this Commonwealth, in a reasonable amount to be fixed by the Board, conditioned upon the faithful and honest conduct of his business or employment;
3. Has successfully completed a course of study at a school of auctioneering which has obtained course approval from the Board or an equivalent course; and
4. Has passed the Virginia Licensed Auctioneer's Examination, administered by the Auctioneers Board.

C. A nonresident of the Commonwealth may be licensed as an auctioneer by meeting one of the following requirements: (i) conform to the provisions of this chapter and regulations of the Board with reference to resident auctioneers or (ii) hold a valid auctioneer's license or certificate in another state with which reciprocity has been established by the Board. Nonresident applicants shall also file with the Board an irrevocable consent that service of process upon the Director is as valid and binding as service of process upon the applicant.

Any process or pleading served upon the Director shall be filed by the Director in his office and a copy thereof immediately forwarded by registered mail to the main office of the auctioneer at the last known address.

§ 54.1-702. Board for Barbers and Cosmetology; membership; officers; quorum.

A. The Board for Barbers and Cosmetology shall be composed of 10 members as follows: two members shall be licensed barbers, one of whom may be an owner or operator of a barber school; two members shall be licensed cosmetologists, at least one of whom shall be a salon owner and one of whom may be an owner or operator of a cosmetology school; one member shall be a licensed nail technician or a licensed cosmetologist engaged primarily in the practice of nail care, each of whom shall have been licensed in their respective professions for at least three years immediately prior to appointment; one member shall be either a licensed tattooer or a licensed body-piercer; two members shall be licensed estheticians, at least one of whom shall be an esthetics salon owner and one of whom may be an owner, operator, or designated representative of a licensed esthetics school; and two citizen members. The terms of Board members shall be four years. No member shall serve for more than two full successive terms. The Board shall elect a chairman and a vice-chairman. A majority of the Board shall constitute a quorum.

B. ~~The Governor shall appoint to the Board two estheticians who have practiced as an esthetician for at least five consecutive years immediately prior to appointment, effective July 1, 2005. The esthetician members shall not vote on any matters before the Board, except matters related to esthetics, until July 1, 2007.~~

~~Of the esthetician members initially appointed to the Board, one shall be appointed for a term of two years. Thereafter, all such appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms.~~

§ 54.1-2012. Real Estate Appraiser Board; membership; chairman; meetings; seal.

A. ~~Except as provided in the next paragraph, the~~ The Real Estate Appraiser Board shall be composed of nine members as follows: (i) six members shall be licensed as real estate appraisers, provided that, at all times, at least two of the appraiser members on the Board shall be certified general real estate appraisers and one shall be a certified residential real estate appraiser, and provided further, that all six appraiser members have been licensed for a period of at least five years prior to their appointment; (ii) one member shall be an officer or employee familiar with mortgage lending of a financial institution as

defined in § 6.1-2.1 or an affiliate or subsidiary thereof; and (iii) two members shall be citizen members. The terms of Board members shall be four years.

The persons initially appointed to the Board as appraiser members, and those appraiser members thereafter appointed until such time as this chapter has been in effect for six years, need not be licensed for five years as required by this chapter, but they shall have demonstrated professional competence in the field of real estate appraisal, including not less than seven years of full-time, discipline-free experience. All appraiser members appointed to the Board after this chapter has been in effect for two years shall be licensed as provided herein.

The appointment of appraiser members may be made from lists of at least three names each, submitted by Virginia affiliates of professional appraisal organizations that are members of the Appraisal Foundation. The appointment of the bank or savings institution member may be made from lists of at least three names each, submitted by the Virginia Bankers Association and the Virginia Association of Community Banks. Nominations for appointments to regular terms shall be submitted to the Governor on or before June 1 of each year. The Governor may notify the above organizations of any vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor be bound to make any appointment from among the nominees.

Notwithstanding § 54.1-200, all members of the Board, including the citizen members, shall be eligible to participate in all matters, including decisions regarding the examination of applicants for licensure and decisions regarding the professional competence of licensees.

The Board shall elect a chairman and a vice-chairman from its membership, provided that the chairman shall be an appraiser member.

The Board shall meet at least four times annually, and additional meetings may be called by the chairman or, if the chairman is incapacitated, by the vice-chairman, as deemed necessary.

The Board shall adopt a seal by which it shall authenticate its proceedings.

B. As soon as practicable, the Board shall determine the anticipated availability of licensed and certified appraisers to perform appraisals in Virginia. If, at any time, the Board determines that there is, or will be, a scarcity of certified general real estate appraisers, certified residential real estate appraisers, or licensed residential real estate appraisers to perform appraisals in connection with federally related transactions in any part of Virginia that leads, or will lead, to significant delays in the performance of such appraisals, the Board, subject to federal approval, shall extend the effective date of the licensing requirements of this chapter to the extent permitted under any temporary waiver granted under the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. § 3301 et seq.).

§ 54.1-2013. General powers of Real Estate Appraiser Board; regulations; educational requirements for licensure.

The Board shall have all of the powers of a regulatory board under Chapter 2 (§ 54.1-200 et seq.) of this title. The Board may do all things necessary and convenient for carrying into effect the provisions of this chapter and all things required or expected of a state appraiser certifying and licensing agency under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3331 et seq.). The Board shall promulgate necessary regulations. The Director shall have the authority to promulgate initial emergency regulations upon the enactment of this chapter as necessary to comply with applicable federal requirements, provided that within twelve months from the effective date of such emergency regulations, the Board promulgates the regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

The Board shall include in its regulations educational and experience requirements as conditions for licensure, provisions for the supervision of appraiser practices, provisions for the enforcement of standards of professional appraiser practice, and provisions for the disposition of referrals of improper appraiser conduct from any person or any federal agency or instrumentality ~~except that, until December 31, 1992, the Board shall issue transitional licenses to applicants who have satisfied the educational requirements as conditions for licensure and have passed the applicable examination required by the Board but either lack or are not able to verify the experience requirements imposed by the Board. Such transitionally licensed persons must satisfy the experience requirements, within two years of having been issued a transitional license as a condition to remaining licensed under this chapter. Each transitional license shall indicate clearly its transitional nature, period of validity and a nonextendible termination date.~~ This paragraph shall not be construed to limit the powers and authority of the Board.

The Board may set different education and experience requirements for licensed residential real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers. All applicants for licensure under this chapter shall meet applicable educational and experience requirements prior to licensure.

Applicants for licensure as a certified residential real estate appraiser or a certified general real estate appraiser shall successfully complete an examination administered or approved by the Board prior to licensure. The Board may set different examination requirements for certified residential real estate appraisers and certified general real estate appraisers. The Board may require that licensed residential real estate appraisers successfully complete an examination administered or approved by the Board prior

to licensure or prior to the renewal of an initial license.

All regulations established by the Board shall satisfy any minimum criteria that are necessary in order that the federal financial institution's regulatory agencies recognize and accept licenses for licensed residential real estate appraisers, certified residential real estate appraisers, and certified general real estate appraisers issued by the Board.

§ 54.1-2104. Real Estate Board; membership; chairman; seal.

The Real Estate Board shall be composed of nine members as follows: seven members who have been licensed real estate brokers or salespersons for at least five consecutive years before their appointment and two citizen members. ~~For purposes of implementation of these provisions, one licensee and one citizen member of the Board shall be appointed effective July 1, 1992, and one licensee and one citizen member appointed effective July 1, 1994.~~ The terms of Board members shall be four years.

The Board shall elect a chairman from its membership.

The Board shall adopt a seal by which it shall authenticate its proceedings.

§ 54.1-2206. Waiver of examination.

A. The Board may waive the requirement for examination pursuant to § 54.1-2205 upon written application from an individual who holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body which could result in the suspension or revocation of his certificate, if such other state, territory or possession recognizes the certificates issued by the Board.

B. The Board shall waive the requirement for examination pursuant to § 54.1-2206.2 upon the written application from an individual who (i) holds an unexpired certificate or its equivalent issued by a regulatory body of another state, territory or possession of the United States or has been provisionally certified under the U.S. Army Corps of Engineers Wetland Delineator Certification Program of 1993 and is not the subject of any disciplinary proceeding before such regulatory body, which could result in the suspension or revocation of his certificate or (ii) ~~has a record of at least 10 years of experience in wetland delineation the quality of which demonstrates to the Board that the applicant is competent to practice as a certified professional wetland delineator. This provision shall expire two years after initiation of the program.~~

§ 54.1-2210. Board for Waste Management Facility Operators; membership; terms.

The Board for Waste Management Facility Operators shall consist of seven members appointed by the Governor as follows: a representative from the Department of Waste Management, a representative from a local government that owns a sanitary landfill, a representative from a local government that owns a waste management facility other than a sanitary landfill, a representative of a private owner of a sanitary landfill, a representative of a private owner of a waste management facility other than a sanitary landfill, and two citizen members, one of whom shall be a representative of a commercial waste generator. No owner shall be represented by more than one representative or employee. ~~Of the 1999 appointments, the terms shall be as follows: two shall serve a two-year term, two shall serve a three-year term, and three shall serve a four-year term. Thereafter the~~ The terms of Board members shall be four years, except that vacancies shall be filled for the unexpired term. No member shall serve more than two consecutive four-year terms.

§ 54.1-2313. Board; appointment; terms; vacancies; meetings; quorum; other powers; regulations.

A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows: four cemetery operators who have operated a cemetery in the Commonwealth for at least five consecutive years immediately prior to appointment, no more than two of whom shall be affiliated with a cemetery company incorporated in the Commonwealth which is owned, operated or affiliated, directly or indirectly, with a foreign corporation; one representative of local government, and two citizen members. Appointments to the Board shall generally represent the geographical areas of the Commonwealth.

B. ~~Of the members initially appointed to the Board, three shall be appointed for a term of four years, two shall be appointed for a term of three years, and two shall be appointed for a term of two years. Thereafter, all~~ All appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive four-year terms.

C. The Board shall annually elect a chairman and a vice-chairman from among its members. The Board shall hold at least two meetings each year and may meet as often as its duties require. Four members shall constitute a quorum.

D. In addition to the general powers and duties conferred in this subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this

chapter.

E. In addition to such other regulations the Board deems appropriate, the Board shall adopt regulations which provide:

1. A method for executing, at-need, a preneed burial contract, including the petitioning a court of competent jurisdiction for the appointment of a receiver, where a licensee who is a party to such preneed burial contract has had his license to operate a cemetery revoked or suspended for violation of this chapter or Board regulations; and

2. Consumer protections which are consistent with those provisions of the Federal Trade Commission Funeral Rules which the Board finds may be appropriately applied to cemetery companies.

§ 54.1-2344. Fair Housing Board; membership; terms; chairman; powers and duties.

A. The Fair Housing Board shall be composed of 12 members, to be appointed by the Governor, as follows: one representative of local government, one architect licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of this title, one representative of the mortgage lending industry, one representative of the property and casualty insurance industry, two representatives of the residential property management industry not licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.) of this title, at least one of whom is a member of a property owners' association or condominium unit owners' association, one contractor licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of this title, one representative of the disability community, one representative of the residential land lease industry subject to Chapter 13.3 (§ 55-248.41 et seq.) of Title 55, and three citizen members selected in accordance with § 54.1-107. ~~Initial terms of Board members shall be as follows: four members shall be appointed for a term of four years; four members shall be appointed for a term of three years; and three members shall be appointed for a term of two years. Thereafter, all~~ All terms of Board members shall be for terms of four years.

B. The Board shall elect a chairman from its membership.

C. The Board shall adopt a seal by which it shall authenticate its proceedings.

D. The Board shall be responsible for the administration and enforcement of the Fair Housing Law. However, the Board shall have no authority with respect to a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees who have allegedly violated, or who have in fact violated, the Fair Housing Law.

The Board shall have the power and duty to establish, by regulation, an education-based certification or registration program for persons subject to the Fair Housing Law who are involved in the business or activity of selling or renting dwellings. The Board shall have the authority to approve training courses and instructors in furtherance of the provisions of this chapter.

No education-based program established by the Board shall require Board certification or registration where an individual holds a valid license issued by the Real Estate Board. Any courses approved by the Real Estate Board to meet the fair housing requirement of § 54.1-2105.03 and the instructors approved by the Real Estate Board to teach continuing education courses in accordance with § 54.1-2105.02 shall not require additional approval by the Fair Housing Board to meet any education requirements in this section and in the regulations of the Fair Housing Board.

2. That § 54.1-404.1 of the Code of Virginia is repealed.