

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Labor, Licensing, and Regulation
(DLS Control No. 16-330)**

Overview and Legal and Fiscal Impact

This action makes various changes to regulations on ethics, hearing procedures, time share registrations, continuing education, and disclosure and consent requirements for professionals licensed by the State Real Estate Commission.

This action presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Labor, Licensing, and Regulation:

Real Estate Commission: Code of Ethics: COMAR 09.11.02.01

Hearing Regulations: COMAR 09.11.03.04

Time Share Regulations: COMAR 09.11.04.01 through 03

Continuing Education: COMAR 09.11.06.01

Continuing Education: COMAR 09.11.06.03

Continuing Education: COMAR 09.11.06.05

Continuing Education: COMAR 09.11.06.08 through 10

Residential Property Disclosure/Disclaimer Statement: COMAR 09.11.07.02

Agency Relationship Disclosure/Dual Agency Consent: COMAR 09.11.08.01

Legal Analysis

Background

On July 9, 2015, Governor Larry Hogan established the Regulatory Reform Commission by [Executive Order 01.01.2015.20](#). The commission is charged with examining and making recommendations on how to streamline Maryland's regulatory environment. On November 30, 2016, the commission released its [final report](#). The report recommends 187 regulatory proposals to streamline the State's regulatory system. The recommendations fall into one of four categories: (1) streamlining and clarifying revisions; (2) modernization and electronic submissions; (3) obsolete references; or (4) State or federal statutory requirements. This action implements several of those proposals related to the provision of real estate brokerage services.

Chapter 433 of 2016 authorized an individual licensed by the commission to provide the name of a “service provider” to a client in the provision of real estate brokerage services *without* needing to verify that the service provider is currently licensed by the State to perform the services. “Service provider” includes a mortgage lender, a mortgage broker, a real estate appraiser, a home inspector, a plumber, an electrician, and a heating, ventilation, air-conditioning, and refrigeration (HVACR) contractor; “service provider” does not include a home improvement contractor. Under the Act, the licensee must annually verify the licensure status of a home improvement contractor prior to offering the name to the client and must inform the client of the website on which the licensing information may be found. Chapter 433 superseded a regulation that the commission previously adopted.

Chapter 311 of 2016 altered specified disclosure and consent requirements related to agency relationships in residential real estate transactions. The Act also altered several defined terms, which necessitates conforming changes to the terms where they appear in regulation.

Summary of Regulations

This action makes numerous changes to regulations affecting the licensing and conduct of real estate professionals.

First, this action repeals the superseded provision in COMAR 09.11.02.01 that had required a real estate broker to verify the licensing status of a service provider recommendations. The Regulatory Reform Commission categorized this recommendation as a “State or federal statutory requirement” because of Chapter 433.

Second, this action repeals COMAR 09.11.03.04, which detailed what constitutes “misconduct” for the purpose of bringing a claim against the Real Estate Guaranty Fund. The Regulatory Reform Commission categorized this recommendation as an “obsolete reference” because of a similar statutory requirement in § 17-402 of the Business Occupations and Professions Article.

Third, this action makes several changes to the regulations governing time-share registration.

- For COMAR 09.11.04, the action alters the authority line to refer to the general statutory authority provision for the commission (Business Occupations and Professions, § 17-208) instead of a provision relating to the code of ethics for the State Commission of Real Estate Appraisers, Appraisal Management Companies, and Home Inspectors (Business Occupations and Professions, § 16-208).
- For COMAR 09.11.04.01, the action repeals specifications about hearing procedures for a denial of an application to register as a time-share developer.
- For COMAR 09.11.04.02, the action substitutes a cross-reference to the general hearing procedure regulations (COMAR 09.01.02) for the former cross-reference to a regulation concerning the department’s delegation of authority to the Office of Administrative

Hearings (COMAR 09.01.03.03). The Regulatory Reform Commission categorized this recommendation as a “streamlining and clarifying” revision.

- For COMAR 09.11.04.03, the action substitutes two references to “the developer’s” agents, employees, licensed real estate brokers, or independent contractors for former references to “his.”

Fourth, this action makes several changes to the regulations governing continuing education requirements.

- For COMAR 09.11.06.01, the action repeals references to specific delivery systems for continuing education and substitutes a cross-reference to the delivery systems listed in § 17-315 of the Business Occupations and Professions Article. The Regulatory Reform Commission categorized this recommendation as an “obsolete reference” change.
- For COMAR 09.11.06.03, the action makes three changes for course providers: (1) authorizes licensees to pay a course provider’s third party payment processor for the course; (2) repeals the requirement that all course completion certificates be approved and issued in the name of the attendee by the course provider; and (3) expands the list of reasons why a course provider’s approval may be denied, suspended, or withdrawn. The Regulatory Reform Commission categorized this recommendation as a “modernization and electronic submission” change.
- For COMAR 09.11.06.05, the action repeals one of the content criteria for a continuing education course. The Regulatory Reform Commission categorized this recommendation as an “obsolete reference” change.
- For COMAR 09.11.06.08, the action alters various requirements related to a certificate of completion. The Regulatory Reform Commission categorized this recommendation as a “modernization and electronic submission” change.
- For COMAR 09.11.06.09, the action repeals the limitation that a licensee only use a specified number of hours on the topic of technology. The action also repeals a requirement that a course taken in another jurisdiction meet the requirements of Maryland law and regulation. The Regulatory Reform Commission categorized these changes as removal of “obsolete references.”
- For COMAR 09.11.06.10, the action authorizes a course provider to receive an affirmation that a student has completed every requirement of the course by electronic means. The action also repeals a cross-reference that authorizes a student to pay a course developer for a distance learning course. The Regulatory Reform Commission categorized these recommendations as “modernization and electronic submission” changes.

Fifth, the action revises COMAR 09.11.06.02 to reflect terminology enacted by Chapter 311 for relationships among licensed professionals, their clients, and other individuals.

Last, the action revises COMAR 09.11.08.01 to alter the statutory authority line and a cross-reference to reflect § 17-530, a provision of law amended by Chapter 311 that references various disclosure forms and notice requirements.

Legal Issues

This action presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Labor, Licensing, and Regulation (department) cites §§ 17-207, 17-208, 17-315, and 17-530 of the Business Occupations and Professions Article and § 10-702 of the Real Property Article as statutory authority for the action.

Section 17-207, in part, requires the commission to adopt a code of ethics by regulation. Section 17-208, in part, authorizes the commission to adopt regulations to carry out the title and detail hearing procedures and license application requirements. Section 17-315 establishes a continuing education requirement and specifies other requirements related to the content, conduct, delivery method, verification of completion, waiver, and fee associated with compliance. Section 17-530 requires a broker who participates in a residential real estate transaction to make specified disclosures and provide specified notice to various other individuals.

Section 10-702 of the Real Property Article requires the commission to develop by regulation a single standardized form that includes specified residential property condition disclosure and disclaimer statements.

Although the department does not cite § 11A-122 of the Real Property Article as authority for the action, that section authorizes the State Real Estate Commission to adopt regulations and issue orders consistent with the title governing time shares. This section is not necessary to justify the action but demonstrates legislative intent to delegate oversight of time shares to the commission. Additionally, two uncited 2016 chapter laws – Chapter 311 and Chapter 433 – further underscore the authority to make these revisions.

This authority is correct and complete. The action complies with the legislative intent of the law.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have minimal or no impact on State or local governments. The regulations conform certain provisions to statute or existing policies of the State Real Estate Commission, update and/or correct outdate terminology, and expand the potential

content of continuing education courses available to licensees. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Laura H. Atas – (410) 946/(301) 970-5350

Fiscal Analysis: Stephen M. Ross – (410) 946/(301) 970-5510