

**VIRGINIA HOUSING COMMISSION
2006 ANNUAL REPORT**

MEMBERS

Delegate Terrie L. Suit, Chair
Senator John Watkins, Vice-Chair
Senator Mamie Locke
Senator Mary Margaret Whipple
Delegate John A. Cosgrove
Delegate Robert D. Hull
Delegate Danny Marshall, III
Delegate Melanie L. Rapp
Delegate Gary Reese
Mr. Gary Garczynski
Mr. Andrew Heatwole
Mr. T.K. Somanath

Staff

Ms. Elizabeth A. Palen
Ms. Lisa Gilmer, Senior Staff Assistant

TABLE OF CONTENTS

| | |
|---|----|
| I. Executive Summary..... | 3 |
| II. Commission Meeting Summaries..... | 4 |
| Work Group Status Reports | |
| III. Common Interest Communities..... | 18 |
| IV. Mortgages..... | 27 |
| V. Building Codes and Accessibility..... | 35 |
| VI. Affordable Housing and Real estate Law..... | 42 |

* Full copies of presentations made to the work groups are available on the Housing Commission's website: <http://dls.state.va.us/houscomm.htm>

Executive Summary

The Virginia Housing Commission evolved from the Virginia Housing Study Commission that was created by the 1970 General Assembly. Its mandate, "to study the ways and means best designed to utilize existing resources and develop facilities that will provide the Commonwealth's growing population with adequate housing" is still in effect. The 2004 General Assembly Session (HB 1231) called for the Commission to be a permanent legislative commission charged with studying and providing recommendations for legislation that will ensure all Virginians have safe, sound and affordable housing. Additionally, the Commission serves as a forum for new ideas relating to housing and community development and allows for the development of statutory, regulatory and non governmental initiatives.

The Commission is comprised of 11 members: five members of the House of Delegates, three members of the Virginia Senate and three citizen members appointed by the Governor. During the 2006 interim, Delegate Suit served as Commission Chair, Senator John Watkins as Vice Chair, and Delegate Melanie Rapp, Senator Mary Margaret Whipple and Senator Watkins served as work group chairs for the various work groups. The Commission is staffed by the Division of Legislative Services and is funded through special fund appropriations.

The Commission's activities in the 2006 interim focused primarily on the study of four housing- related subject areas of interest to the Commonwealth: Building Codes and Accessibility; Common Interest Communities; Mortgages; and Housing Affordability and Real Estate Law. Four work groups corresponding to these subject areas were established so each could center exclusively on a particular area of interest. In addition, a full Commission meeting was devoted to housing policy.

The Commission held three full commission meetings in May, October, and November; and numerous work group meetings. The summaries are listed under the individual workgroup reports. Five pieces of legislation were endorsed by the Commission for the 2006 legislative session; four bills were successful in becoming Virginia law. Accomplishing serious work toward the establishment of a statewide housing policy also took place this interim. and the Commission maintained an up-to-date website (<http://dls.state.va.us/houscomm.htm>) available to all housing partners and the general public.

Virginia Housing Commission

**Delegate Terrie Suit, Chair
Commission Meeting
June 7, 2006
General Assembly Building
Richmond, Virginia**

Meeting Summary

Members present:

**Delegate Terrie L. Suit, Chair
Delegate John A. Cosgrove
Delegate Robert D. Hull
Delegate Daniel W. Marshall, III
Delegate Melanie L. Rapp
Senator Mamie E. Locke
Senator John C. Watkins
Senator Mary Margaret Whipple
Mr. F. Gary Garzynski
Mr. Andrew Heatwole
Mr. T. K. Somanath**

Delegate Terrie Suit welcomed everyone and called the meeting to order at 9:40 A.M.

Commission Business

Delegate Suit relinquished the Chair to **Senator Watkins**. **Delegate Marshall** nominated **Delegate Suit** to be Chairperson of the Commission and she was voted Chair by unanimous consent. **Senator Watkins** was then unanimously voted Vice-Chair of the Commission.

Speakers

Representatives from VHDA, DHCD, the SCC and DPOR each gave presentations on their organization and how their organization affects the Housing Commission.

Susan Dewey, Director of Virginia Housing Development Authority (VHDA), gave the first presentation. She gave an overview of the workings of VHDA and answered questions from the Commission on how loan rates are determined for each area; they are determined by federal guidelines.

Bill Shelton, Director of Department of Housing and Community Development (DHCD) briefly told of the contributions that his agency makes toward housing in Virginia.

Jay DeBoer, Director of Department of Professional and Occupational Regulation, and Karen O'Neal, Deputy Director also gave brief presentations.

Susan Hancock Deputy Commissioner of the State Corporation Commission said the main the main goal of the SCC is to regulate companies and make sure they are financially sound.

2006 Session Overview

Elizabeth Palen recited the outcomes of the nine bills endorsed by the Housing Commission last Session as well as a listing of the bills that may be discussed by the Commission this year.

Work Groups

Delegate Suit announced that there would be four work groups formed to address the issues of the Commission. The work groups and their chairs will be the following: **Common Interest Communities**; Senator Whipple, Chair; **Mortgage Lending**; Delegate Suit, Chair; **Housing Affordability and Real Estate Policy**; Delegate Rapp, Chair; **Building and Accessibility Issues**; Senator Watkins, Chair. Sheets to nominate for membership were passed out to the members and participating audience.

Virginia Housing Policy

Susan Dewey said that **Delegate Suit** had requested that VHDA work to assemble the elements of a housing policy. It was suggested that a meeting of the entire Commission be devoted to a discussion of VHDA's compilation and that was agreed to.

Public Comment

Connie Chamberlain of Housing Opportunities Made Equal gave an overview of her opinion concerning the state of housing in Virginia. She recited several facts such as 66% of the people in Virginia are renters and \$741 is the median rent in Virginia and also that 40.2% of new mortgages in the state are interest only. She also stressed the fact that the Housing Trust Fund needs to have a dedicated source of funding in Virginia. Additionally she also asked invited all present to attend the Virginia Housing Coalition's annual awards banquet on June 22.

The meeting was adjourned at 11:40 A.M.

Housing Policy Meeting
October 11, 2006
10:00 A.M.
House Appropriations Conference Room
Ninth Floor, General Assembly Building

SUMMARY

Commission members in attendance:

Delegate Terrie L. Suit
Delegate Robert D. Hull
Delegate Daniel W. Marshall, III
Delegate Melanie L. Rapp
Senator Mamie E. Locke
Senator John C. Watkins
Senator Mary Margaret Whipple
Mr. F. Andrew Heatwole
Mr. T. K. Somanath

Special Guest Speakers:

Ms. Susan Dewey
Mr. Bill Ernst

Appointed Housing Policy Advisory Team:

Mr. Bob Adams, Virginia Housing Coalition (VHC)
Mr. Boyd Allison, Virginia Mortgage Bankers Association (VMBA)
Ms. Kelly Harris Braxton, Virginia First Cities Coalition
Ms. Connie Chamberlin, Virginia Housing Coalition (VHC)
Mr. Mark Flynn, Virginia Association of Housing & Community Development Officials (VACHDO)
Mr. Jeff Gore, Virginia Association of Counties (VACO)
Mr. Mark Ingrao, Apartment and Office Building Association (AOBA)
Mr. Vivek Kundra, Office of the Secretary of Commerce and Trade
Mr. Ned Massie, Virginia Association of Realtors (VAR)
Ms. Julie Stanley, Virginia Office of Community Integration (Olmstead)
Mr. Mike Toalson, Homebuilders' Association of Virginia (HBAV)

Delegate Suit, Chairman of the Virginia Housing Commission, called the meeting to order at 10:10 a.m. She explained that this would not be a voting meeting but instead it would be a meeting to hear and process information on the housing policy structure that the VHDA and DHCD staffs had been working to develop. Susan Dewey, executive director of VHDA, presented her report and then team members who had been in the advisory group spoke and shared their perspectives on housing policy.

Susan Dewey as the first speaker began by stating that the VHDA and DHCD staffs had developed a policy framework that is a comprehensive approach to housing policy. The structure was formed from a broad, comprehensive standpoint.

The second speaker was Bill Ernst of DHCD, and he gave a broad overview of the policy issues along with four parallel policy and planning efforts.

1. The Council on Virginia's Future - This Council designs a roadmap, which is a planning and accountability process capable of creating and sustaining a consistent focus on those things that are most vital to Virginia's future. Housing issues have not been an explicit concern within the Council's overall approach. The planning and performance model used by the Council could have relevance in the future as a means for documenting the impact of policies that might be developed relating to Virginia's quality of life.

2. Economic development policy - The Secretary of Commerce and Trade is required to lead a process for developing and implementing a written comprehensive economic development policy for the Commonwealth. Governor Kaine issued an Executive Order that provided a general schedule for completing the Economic Development Strategic Plan. The plan noted how important it was for workers to live within reasonable commuting distances from their places of employment. For the state to remain economically competitive, Virginia must be able to ensure that decent, affordable housing is available to workers across the Commonwealth.

3. Urban Policy Vision and Priorities - Executive Order 32 (2006) establishes an Urban Policy Task Force, which is lead by the Secretary of Commerce and Trade. Issues which the task force considered include, preserving existing affordable housing options, preventing or alleviating the concentration of lower-income housing in older urban centers, and meeting the challenges facing high-growth areas that need to build new infrastructure without adversely affecting housing opportunities.

4. Community Integration Advisory Commission - The Commission monitors the progress of all executive branch state agencies toward community integration of Virginians with disabilities in accordance with applicable state and federal laws. The Olmstead Act identifies housing and its relationship to a variety of supportive services as a resource critical to the full integration of persons with disabilities into communities.

Susan Dewey then gave an overview of the process used to create the report. The key issues are within a framework of five broad policy areas: 1) Residential Land Use and Development, 2) Housing Subsidies, 3) Mortgage Financing, 4) Housing and Environmental Standards, and 5) Coordination of Housing & Community Services. She stated that the report also gives some guiding principles for the creation of a state housing policy.

The first guiding principle is that housing should be a high state, local, and regional priority. State policy should recognize the importance and priority of an adequate housing supply. The state localities should recognize the linkage between housing and other critical needs and priorities. Housing availability and choice should be addressed on a regional basis and state policy should more clearly define responsibility for housing outcomes and create more effective structures for regional and inter-agency cooperation.

The second principle is that all groups should have fair access to quality housing choices. State and local governments have an obligation to fully accommodate the housing needs of all groups, and housing policy should promote the creation and preservation of safe, attractive, and diverse communities.

The third principle is that increased affordability should be a policy priority. The homeless, people with disabilities, seniors on fixed incomes, and other very low-income households require ongoing housing assistance. Land use planning and regulation should address the growing shortage of developable residential land and its impact on housing costs. The high cost of housing throughout Virginia requires increased assistance to close the affordability gap for low- and moderate-income working households.

The fourth principle is that homeownership should build long-term financial security. Expanded access to mortgage credit should be balanced with increased financial literacy and restriction of predatory lending practices.

The fifth principle is that new design and building practices should be encouraged. The state should actively encourage wider acceptance of new residential design and building practices that enhance accessibility and address environmental concerns.

Lastly, the sixth principle is that sound policy depends on information and analysis. The state should develop sufficient organizational capacity to provide ongoing information and analysis for housing policy-making.

Susan Dewey then spoke about setting a housing policy agenda using the summary of the five key issues. Each of the broad policy areas were broken down into a major issue, a desired outcome, and policy arenas. She further laid out specific problems, the unresolved policy questions, and the barriers to resolution each area is facing. The five key issues are as follows:

1. Residential Land Use and Development - The issue is that the supply and geographic distribution of housing is inadequate to meet the needs of Virginia's population and sustain Virginia's long-term economic growth. The desired outcome is a supply of quality housing adequate to meet the needs of citizens of all economic means in locations providing neighborhood choice and access to economic and social opportunities. The policy arenas are local comprehensive planning, land use regulation, regional planning, state transportation and economic development planning, state and local strategies for urban and rural revitalization, and state agency allocation of housing resources.

2. Housing Subsidies - The issue is that the growing gap between housing costs and incomes is increasing the need for direct and indirect housing subsidies. At the same time, existing communities frequently resist new assisted housing developments, creating the need for a new consensus on successful means for integrating housing serving low-income households into the broader community. The desired outcome is to have sufficient subsidies and improved subsidy models to enable low- and moderate-income households to attain adequate, decent, affordable housing in quality living environments with access to employment and social opportunities. The policy arenas are the appropriation/authorization of direct/indirect public subsidies, public agency allocation/use of public subsidies and enactment of public incentives or regulatory requirements for privately generated direct/indirect housing subsidies.

3. Mortgage Financing - The issue is a growing number of homeowners is at risk of foreclosure due to unwise borrowing choices that result from limited financial literacy and/or deceptive, predatory or discriminatory lending practices. The desired outcome is to have financially literate homebuyers able to make informed borrowing choices with adequate protection from deceptive, predatory, or discriminatory lending and servicing practices. The policy arenas are federal and state regulation of mortgage lending; federal, state and local administration of housing programs; homebuyer education and housing counseling; consumer credit counseling and K-12 financial literacy programs; and fair housing enforcement.

4. Housing and Environmental Standards - The issue is that the marketplace has been constrained in fully responding to a number of public concerns about residential accessibility, energy conservation, safety, and environmental hazards. The desired outcomes are an increased marketplace acceptance of Universal Design concepts and energy conservation and green building practices and cost-effective solutions to safety issues and the remediation of environmental hazards. The policy arenas are the state and local allocation of housing program resources; state enforcement of federal environmental requirements, and statewide uniform building and safety regulations.

5. Coordination of Housing and Community Services - The issue is that very low-income populations require a coordinated array of local services in order to live independently. These services are inadequate in most Virginia communities. The desired outcome is to have enhanced coordination of housing assistance and referrals with other community services that are required by very low-income populations in order to sustain independent living and avoid unwanted and costly institutionalization. The policy arenas are state Olmstead initiatives to provide non-institutional, community living alternatives for people with disabilities; states regulation of and funding for assisted living alternatives; state policy academy to end chronic homelessness; and state initiatives to address prisoner re-entry issues.

Delegate Hull was concerned about developing a statewide housing policy; he worried that the state should not address a lands use issue because he believes the issue is more appropriately addressed at the local level. Delegate Hull also asked which state agencies

get involved in financing. Susan Dewey answered that it was the Fair Housing Commission, VHDA, and the State Corporation Commission.

Susan Dewey was asked by Senator Whipple why housing subsidies and mortgage are separated into two areas when they are both ways of financing. Ms. Dewey answered that mortgage financing deals more with predatory lending and loans as opposed to subsidies. Senator Whipple was concerned about whether predatory lending rises to one of the five policy levels for the state. Ms. Dewey responded that it is up to the Commission to prioritize the issues stated.

Senator Whipple was also concerned with section five. It is her belief that people who are not in the very low income category still have difficulty finding affordable housing, including those persons who are disabled and elderly.

Delegate Hull inquired as to what exactly is the state policy academy that is mentioned in the policy arena of section five. It is a group of interagency representatives who collaborate and are organized by DHCD. Delegate Hull followed up by asking for a clarification about when it states "academy" that it is an interagency collaboration. He was answered in the affirmative and that also that it was started to be addressed as academy because it was a federal initiative to develop policy academies.

Delegate Marshall asked whether there are life cycle costs that have been factored in, such as front and back end costs, like the maintenance of the house. Susan Dewey responded that his question has two elements, both of which are addressed in the report. First is the element of homeowner's education, helping people understand the effects that are associated in buying a house. Second, housing and environmental standard, looking at the energy standards and how costs can be lowered for the utilities. She was further asked by Delegate Marshall whether the report has taken into account how an individual homeowner will pay for the maintenance of the home. It was restated that they try and educate the homeowner. Delegate Marshall again stated that it is not just education but also regulations by VHDA that the house should be sustainable for 10 to 20 years (the life of the house). Delegate Suit responded to him by stating that some of his concerns are answered in the appraisal process.

Delegate Suit was asked by Andrew Heatwole what happens when the high efficiency heat pump breaks? The choice to the homeowner comes down to either fix the heat pump or feed the children. Should homeownership be promoted to someone in that situation? Susan Dewey answered that his concerns would be better addressed through the mortgage financing process.

Delegate Hull stated that he agreed with Delegate Marshall that it is a macro issue and not a micro one. He stated that what they want to do is not just help someone get a home but help them through the life of the home. He stated that the life cycle costs need to be taken into account. Delegate Suit stated that his concerns would be addressed in section four of the report. Delegate Hull said that all of these issues do not fall neatly into one category. Delegate Suit further stated that every state subsidy that is offered offers

homeowners education where significant attention is paid to the maintenance of the home. She would like to see consumer education go into the curriculums for state schools. Delegate Hull responded that it is not an education issue. He wants the state to look at the costs. He stated that it may cost more now to put in a high end product in the home but later on, 10 or 20 years down the road, it would cost less to repair it than to put low- end equipment from the beginning. The response was that some of the programs do have that in place, where they take the life cycle cost into account.

Delegate Suit asked the Advisory Committee members to speak in alphabetical order.

Bob Adams, Housing Commission - He commended the guiding principles and said that the Commission needs to form goals for the housing environment. From the goals will flow legislative action. He urged the commission to resist temptation to go directly to problem solving. He said that there is a better chance of solving the problem if we do it with a broader comprehensive framework. Finally, housing is not an isolated issue; it needs to be considered along side other issues.

Delegate Hull wanted all the speakers to address one question. "Do we need a state housing policy?"

Bob Adams agreed that there is a need for a state housing policy because housing cannot be considered in isolation of other issues.

Mr. Heatwole stated that by developing state housing policy, it may help the General Assembly in areas that then may help local government, and that is a reason for wanting and having a state housing policy.

Boyd Allison, Virginia Mortgage Bankers Association (VMBA) - The Virginia Housing Development Authority has been a leader in creating innovative products that have been used in the private sector and the private sector has followed in their mortgage portfolio. Recently, it has become a business of having an investor so that one can rent to own. Here the rent-to-own person fronts all the closing costs and the investor does 100% financing. Six months to a year later, the rent-to-own person pays 20% over the price the investor purchased the property for.

Kelly Harris Braxton, Executive Director for Virginia First Cities Coalition - The critical link between housing and other priorities (economic, education, health and human services, etc.) needs to be recognized in order to encourage healthy communities. She agrees that a state housing policy is needed because sometimes localities can be short-sighted as they plan and do not address the problem regionally.

Connie Chamberlin, Virginia Housing Coalition (VHC) stated that there is a need to focus on a broad framework. She agreed that there is a need for a state housing policy because there needs to be a roadmap to know where are we going and it needs to be codified. The US Census housing information showed that between 2000 and 2005 median homeowner costs increased by 25%, median renter costs increased by 25%, and

income increased only by 16%. There was a statewide increase in the number of homeowners paying more than 30% of their income for housing. Thirty-one percent of homeowners are paying more than 30% of their income to housing, and that is generally considered to be affordable. Forty-two percent of renters are paying more than 30% of their incomes for housing.

Are we standing in the way of local initiative? Local governments need to be given permission to find ways to work productively. It is important to make the housing sustainable even if the upfront cost is higher.

Mark Flynn, Virginia Association of Housing and Community Development Officials (VACHDO), said that guiding principles should include affordable housing as a part of anything positive that individuals consider doing. Housing cannot be thought of in isolation. Market forces get addressed on page 4 of tab 3 under barriers to resolution.

Delegate Suit said there may be a "push back" from local governments. Developers are applying for tax credit financing from VHDA and are trying to get letters from local governments to help them get the financing. They are finding that there is resistance from local governments because they don't want high density, low-income housing in their jurisdictions. She asked Mr. Flynn what he is hearing from local governments.

Mark Flynn said he has heard a range of responses from Arlington, where low-density is an issue to Goochland, which does not have the facilities to meet the needs of lower income individuals.

Delegate Suit stated that there are a lot of challenges in rezoning for higher density housing. Rezoning has to be offered for age-restrictive housing or the housing will only attract older individuals because localities don't want to bear the cost of educating additional children who may live there. To get affordable housing, you need to have higher density and local governments don't want higher density because of the associated costs.

Flynn responded that the issue is, "How do we pay for the education of the additional children?" Funding, he said, comes from the taxpayer, no matter how it is funneled.

Andrew Heatwole wanted to know what the costs of services are and what burden is being put on local governments, because individuals pay a lot of real estate taxes, etc.

Delegate Hull stated that there is a lot of broad general authority given to counties in the Code. His concern is about forcing a county to conform with the region. He said that regional cooperation cannot be forced.

Andy Friedman stated that a policy is necessary as clear guidelines and not mandates. Goals need to be established so that we can tell the public that we are meeting our goals

and how we are contributing to the public good. Good data needs to be collected, even on a statewide basis.

Senator Whipple agreed that establishing goals is important and gave an example in Arlington County which worked when they had established goals.

Andrew Friedman was asked to elaborate on the quality of construction in Virginia Beach. Friedman said that they define materials for contractors that they use low maintenance, high quality materials that resist weathering so the owner doesn't need to worry about maintenance.

Jeff Gore, Virginia Association of Counties (VACO) - He stated that a one-size-fits-all policy does not work. But we can identify a framework and then figure out how to get to the finish line with the help of tools. Can we have incentives for the localities to work together?

Vivek Kundra, Office of the Secretary of Commerce and Trade - Virginia is ranked number one in Forbes Magazine for business. The area for concern is housing. Two deals have been lost because housing for workforces is too expensive. How do you make sure that you don't price out the intellectual capital that you are developing? We need to make sure that the intellectual capital that we are developing has the freedom to move around because that is our currency as we compete. We need to retain the companies that are here and attract new ones.

Delegate Hull asked whether North Carolina has a housing policy to attract new business since North Carolina is one of the Virginia's competitors. Mr. Kundra answered that he was unaware of it but will get back to him.

T.K Somanath asked if there is some way to communicate so housing issues and economic and urban development are commingled.

Mark Ingrao, Apartment and Office Building Association (AOBA)

First, look at inhibitors to those who provide affordable housing. Sometimes there are more requirements to Section 8 housing than there are benefits. Second, ensure that we look at the cost of the green implementation standards to affordable housing, some are more costly. Ownership versus rent? Affordable housing is rental. Local governments aren't making affordable housing a fiscal priority; it is not in their budgets. People are being artificially qualified for mortgages (zero down, interest-only loans) and they get into the house and after 18 months or so, they can't pay for it. At that point their credit has gone bad and they can't even qualify to rent.

Julie Stanley, Virginia Office of Community Integration (Olmstead) - There is a need to look at affordability and accessibility in terms of housing needs of the disabled. A lot of disabled individuals/elderly are also low income and rely on social security income which is insufficient to cover the high cost of housing in Virginia. Historically, Virginia has

relied heavily on institutions (nursing homes and assisted living facilities) to serve this population.

Mike Toalson, Homebuilders Association of Virginia (HBAV) - We need to address the issue of affordability because the cost of housing is increasing and there is a need for subsidies. Housing needs to be looked at from the broader perspective because of its importance to family stability.

Delegate Suit concluded the meeting by stating that the guiding principles that were discussed today would be the policy document from which the Commission could decide to adopt, amend, or postpone action at the November meeting in Norfolk.

The meeting was adjourned at 2:15 p.m.

VIRGINIA HOUSING COMMISSION

November 29, 2006

Norfolk Marriott Waterside Hotel

1:00 P.M.

Members Present:

Delegate Terrie L. Suit
Delegate Robert D. Hull
Delegate Daniel W. Marshall, III
Senator Mamie Locke
Senator Mary Margaret Whipple
Mr. F. Andrew Heatwole
Mr. T. K. Somanath

Delegate Terrie Suit called the meeting to order at 1:00 p.m. She explained that each work group would give a brief report and that the Commission would then vote on whether or not any proposed legislation would be endorsed by the Housing Commission.

Delegate Hull (in the absence of the Chair, Senator Watkins) began by giving the overview for the Building Codes and Accessibility Work Group. He said that the two major areas of study for the interim, carbon dioxide detectors and sprinklers, both had more information to be ascertained about them before substantive bills could be passed; and therefore no legislation would be endorsed for this Session. The International Building Code Association has yet to make a decision on requiring carbon dioxide detectors and the Work Group had voted to wait on the industry report before making a call on placing the detectors in residential dwelling units.

The Work Group felt that the sprinkler issue still required more study. The discussion was about whether or not a law should require sprinkler systems in buildings over seven stories when they are rehabilitated. Many speakers, local and national, gave testimony, over a series of meetings, about the affect on restoring buildings in Virginia, costs and safety issues.

Delegate Hull gave the Commission members copies of his proposed legislation dealing with increased sanctions for landlords when there are occupancy limit violations in dwelling units. The Work Group had heard from several speakers during the interim and thoroughly debated the issue. Delegate Hull presented the bill but chose to submit it as an individual legislator instead of asking for the Commission's endorsement.

Delegate Suit read the report of the study on Senate Bill 145 (Deeds, 2005) into record for the Commission. (A copy is available on the website)

Delegate Marshall gave an overview of the Housing and Affordability Work Group's issues. The Housing Trust Fund was discussed in this work group and the full Commission voted to put forth a bill endorsing a Trust Fund and using a portion of the recordation tax to provide a funding source. The bill is to be drafted to mirror the Housing Trust Fund bill put forward by the Commission in 2005.

The other issue of focus for this work group was the Virginia Residential Property Act; Discloser/Disclaimer bill. Former Delegate Chip Dicks spoke to this work group twice explaining the origins of a disclaimer and the need for a more up-to-date bill reflective of the current housing market needs in Virginia. The Commission voted to endorse the Virginia Residential Property Act; Discloser/Disclaimer bill.

Senator Whipple told of the controversial flag debate with the condominium associations and explained (with a handout of the United States Flag Act) that the proposed legislation would put Virginia in compliance with the Federal Act which allows the American flag to be flown as long as the time, place and manner are appropriate for the complex. The full commission endorsed this proposed legislation. She then spoke about the pros/cons concerning political signs and stated that Delegate Cosgrove had suggested during the Work Group's meeting that this particular issue might be solved more appropriately in a court of law, and the work group agreed. She then explained the bill on condominium conversions. The full commission, after a complete discussion, recommended removing the bill portion listing low-income as a preferred category but endorsed the amended bill allowing elderly and disabled individuals to be included in the categories of persons a Housing Authority or non profit Housing Corporation could rent to after acquiring the property from the developer.

Delegate Suit gave an overview of the October policy meeting where VHDA gave a presentation of its Policy Stakeholder Work Group's findings. The following are the Guiding Principles the work group espoused:

- Housing should be a high state, local and regional priority,
- All groups should have fair access to quality housing choices,
- Increased affordability should be a policy priority,
- Homeownership should build long-term financial security,
- New design and building practices should be encouraged, and
- Sound policy depends on information and analysis.

The Commission voted to adopt the Guiding Principles as a basis for the state housing policy.

Delegate Suit thanked the Commission members for their dedication and hard work and adjourned the meeting at 3:00 P.M.

2006
VIRGINIA HOUSING COMMISSION
Common Interest Communities Work Group

Commission Members:

Senator Mary Margaret Whipple (Chair)
Delegate Terrie Suit
Delegate John Cosgrove
Senator Mamie Locke

Citizen Members:

Janice Burgess
VHDA

Ralf J. (Joe) Emerson, Jr.
Assistant Director
Comprehensive Planning and Administration
Henrico County

Mark Ingrao
Senior Vice President of Government Affairs
Apartment and Office Building Association

Ronald P. Kirby
President
Virginia Association of Community Managers (VACM)

Tom Meyer
Alexandria

Tom Perry
Department of Professional and Occupation Regulation

Cynthia Schrier
Community Association Liaison
Department of Professional and Occupational Regulation

Mike Toalson
Executive Vice President
Home Builders Association of Virginia

Pia Trigiani
Troutman Sanders

Common Interest Communities Work Group
September 13, 2006
Patrick Henry Building
House Room 1
10:00 A.M.

Work Group members present were:

Senator Mary Margaret Whipple -- Chair

Delegate John Cosgrove

Ron Kirby

Tom Meyer

Tom Perry

Cynthia Schrier

Pia Trigiani

Special Guest: **Delegate Kris Amundson**

Senator Whipple called the meeting to order at 10:00 a.m.

The first item on the agenda, **HB 1096**, was discussed by Delegate Amundson. She discussed how her bill interrelates with federal legislation.

The issue that precipitated this bill was a gentleman who was prohibited from flying his flag at his home within his condominium association.

Both Senator Ticer and Delegate Amundson were invited to speak to the work group. Senator Whipple explained that the bill was a carry over bill being discussed today in the hopes of reaching a consensus. Since last session federal legislation was passed that is very similar to HB 1096 and the condominium association made an allowance for the flag to be flown 12 times a year.

The goal of this legislation is to be able to fly the United States flag. Both, the House and Senate bills say flag flying should not to be regulated except as to reasonable time, place, size and manner.

Senator Whipple said the bills will be amended to apply to the flag of the United States only.

Delegate Amundson said she has not known the federal government to regulate condominium associations. She noted that time, place, and manner are usually a restriction on government not on a condominium association.

A discussion ensued about the notion that there are particular restrains regarding speech.

Delegate Cosgrove said that there are current flag restrictions such prohibiting flying the flag at night with out a spotlight. He said he knows reasonable when he sees it and only 12 days a year is not reasonable.

Senator Whipple said she didn't know if the work group wants to be more expansive on this issue than the federal government.

Work group member Pia Trigiani said that the community association concerns have to do with the ability of the state to monitor restrictive covenants; an example being satellite dishes, where the federal government can preempt the state government. She said the Virginia Constitution does not allow for the modification of a person's contract.

Delegate Cosgrove said that the word "reasonable" frightens him. He wanted to know what would keep an association from saying you could only have a 3x5 inch flag.

Elizabeth Palen explained that that issue would go to the question of being egregious. Senator Whipple said that with a federal law and state law saying what is reasonable and she would be inclined to give the law a chance to work.

A debate over limiting the number of days the flag can be flown took place. Delegate Cosgrove pointed out that September 11 is not included nor is the day the Cole was attacked. He said limiting the number of days the United States flag is flown is an affront. Delegate Amundson agreed that more than 12 days is needed in order to be considered "reasonable."

Senator Whipple asked if the Virginia bill should reference federal law. The response was that it not usually done but can be done if she would like it done. Senator Whipple added that the bill will have to be revised and the first phrase will be taken out so it applies to the United States flag only, and otherwise remain the same.

The work group will look at a revised form of the bill at their next meeting.

Work group member Pia Trigiani was asked if she would draft suggested guidelines for the condominium association for this group's next meeting.

This bill will only be applicable to homeowners and those in condominium associations and will not refer to any flag but instead only the United States flag.

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HB 621 and SB 248

Delegate Frederic was not present but sent speakers who favored and opposed his bill.

Chris Casey spoke first. He said he is from Mont Clair. It has 26,000 single family homes and the local governing body is the Mont Clair property owners association.

The association has reasonable restrictions on signs such as realty signs, yard sale, and welcome home, and it's a boy, it's a girl signs. Only political signs have a total ban. In 1994, he reported that the United States Supreme Court said that political signs are a form of free speech. It is the public policy of Virginia to provide free speech. This is an extreme, all signs need reasonable middle ground and the property owners' association is overreaching. Six states have provided laws allowing for political signs to be used.

He said this issue is not impairment of contract because if the signs are reasonable and useful for public purpose it required for them to be allowed in order for there to be free speech. Public interest outweighs contractual rights. He asks for a reasonable middle ground: allow political signs for a reasonable time (such as 30 to 60 days), duration, and size (such as 20x30 inches.) HB 621 doesn't help him because of the "notwithstanding" declaration.

Doug Taggart spoke next. He said the creation of Mont Clair was the creation of private government and Mont Clair is bound by deed restrictions, covenants and restrictions, and the community guidelines prohibit posting of political signs. This topic is discussed in the 47 pages of guidelines the property association distributes to potential buyers.

Mont Claire Property Owners' Association should not carve out an exception for political signs. It would infringe on the property association rights. This issue is contractual; when you buy in Mont Clair you buy into it, it is inappropriate for the legislature to intervene.

Senator Whipple clarified that in the review of the rules of the Mont Clair Property Owners' Association this issue was explicitly addressed and voted on by their board, composed of 11 elected volunteer, elected, board members.

Delegate Cosgrove inquired if there has there been a homeowner referendum and the answer is this has not been done as of yet.

It was questioned if bumper stickers for a candidate could be on a car in a drive way as you can post and advertise for a home business on the side of a car.

Delegate Cosgrove summarized that certain signs are allowed but not others. It is okay to post "for sale by owner" signs but not a "vote for Bush" or "vote for Kerry" sign. He said there is a tremendous free speech violation and a bill may be needed to prevent this from occurring.

Pia Trigiani said that free speech doesn't apply in private entities and Mont Clair has been challenged on the issue of graffiti. The sign rules were developed in an open meeting and there was an open forum where people could come and speak. Delegate Fredericks's bill, she said, won't pass the Attorney General's review; Senator Puller's might because it has an "unless withstanding" declaration. Property values would go down if political signs were allowed, she said.

Delegate Cosgrove asked about potential language by the property owners' association that declared restrictions on minorities. The response was that such restrictions cannot be written into a covenant and contracts have been voided that said like things. Delegate Cosgrove said he still sees a constitutional infringement because this is a right of free expression.

This issue was not resolved and will be discussed further at the next work group meeting.

Condominium Act/ SB 268

Senator Whipple introduced the topic by saying that a large number of apartments are being turned into condominiums and this has led to displacement. The elderly and disabled have a right to buy their now condo unit, but they are not always able to do so and this bill would preserve the unit as affordable over time.

Karen Harwood said that SB 268 applies only to Fairfax County and would allow a certain number of tenants to assign their right to purchase to the Housing Authority or a nonprofit that operates affordable housing. It is a simple bill to give opportunity for those being displaced to stay in place.

Senator Whipple expounded by saying that state law already allows all tenants the right of first refusal; this bill gives the right to assign to a qualified nonprofit or Housing Authority.

Questions included if it is in perpetuity, and the answer was no, the nonprofit or Housing Authority can sell the property. Is the unit then rent controlled? Is the taxpayer subsidizing this action? The answer is yes and that the unit owner would be a Housing Authority or nonprofit that is not in the business of making money.

Delegate Cosgrove questioned if taxes would not then be paid on the condominium to the locality. The answer was yes.

Senator Whipple explained that this bill keeps elderly from being displaced. She said that over 3,000 units in 2003 were converted from multi-family apartments to condominiums. Any locality can allow leases for three years to the elderly to provide for there to be no displacement of the elderly tenant. If the entire property is designated for the elderly, then only 20% of units need to have long term leases. The statute just requires comparable rent for the elderly tenants and the other unit holders. This is essentially worthless if the elderly person is economically displaced. All tenants are given an exclusive 60 day right to purchase their unit.

If under this bill, an elderly person can assign his right to purchase and then re-rent for a three- year period, as long- term leases are inconvenient to the developer anyway, the elderly are far more likely to be assisted.

It was questioned if there would be a requirement to bring the apartment/condo up to code standards. It was answered affirmatively. There is always a requirement to be up to building code standards, but things such as upgrading the carpet and kitchen cabinets is optional and not required by law but is usually done as part of a conversion.

The discussion concluded and the meeting was adjourned at 11:25 a.m.

VHC Common Interest Communities Work Group Meeting

November 14, 2006

10:00 A.M.

House Room 1, Patrick Henry Building

Present:

Commission Members

Senator Whipple, Chair
Delegate Cosgrove

Advisors

Janice Burgess
Joe Emerson
Ron Kirby
Tom Meyer
Cynthia Schrier
Mike Toalson
Pia Trigiani

Senator Whipple called the meeting to order and explained that since the Work Group had heard each of the bills on the agenda, today would be a the day to have a final disposition on the bills' outcomes.

As to **HB 1096** and **SB 248**, Senator Whipple concluded that the consensus would be to allow the flag of the United States but to also restrict it to the flag of the United States as there can be no objection to the United States flag and Congress has ruled through the Flag Act of 2005 that the Unites States flag cannot be restricted.

Delegate Cosgrove suggested also including the flag of the Commonwealth in the bill.

Work Group advisor member Pia Trigiani said it is her opinion that only federal legislation supersedes covenant restrictions and adding the Commonwealth's flag might create constitutional challenges.

Delegate Amundson inquired as to how restrictive the condominium association can be concerning size and location of the flag. The answer was the usual restrictions, they cannot be overly burdensome.

Delegate Cosgrove wanted it noted that that point is not in most condominium covenants. It was noted that although the United States Code has been changed it is still fairly loosely worded.

The recommendation of the Work Group is to have the bill include the American flag only with reasonable restrictions allowable as to time, place, manner and placement of display of the flag. The bill will be presented to the full Housing Commission at the final meeting.

A discussion about the display of political signs as to whether it should be guided according to terms of contract or are political signs free speech took place.

Chris Casey spoke and said that the Property Owners' Association (POA) in Mont Clair allowed decorations for all holidays. For example: tombstones can be placed in yards for Halloween, Christmas nativity scenes are allowed, all holidays allow decorations if they are taken down within the prescribed time frame. He asked why Election Day cannot be included; he feels his constitutional rights have been violated. He contended that fundamental rights to free speech may not be submitted to vote.

Senator Whipple inquired if holiday displays must be taken down within two weeks and she was answered affirmatively. There are no restrictions about how soon before a holiday decorations can be placed in yards, she was told.

Delegate Cosgrove mentioned that perhaps the constitutionality issue should be resolved through the Virginia Court system. He said a real lack of equality exists where for sale signs can be placed but not political signs.

Pia Trigiani commented that every community handles signs differently, and it is at the discretion of the individual communities. She doesn't think political sign bill would make it past an Attorney General review.

Senator Whipple said her concern lies in providing a legislative fix for an issue at a local level. Also, she has a concern about issue oriented signs, not signs for direct candidates.

Senator Puller's bill (**SB 621**) is a prospective bill as opposed to Delegate Frederick's bill (**HB 878**) which is not.

Delegate Cosgrove said that the Virginia constitution cannot be changed easily therefore, the best route for Chris Casey to take is to judicially challenge the constitutionality of his POA declaration concerning political signs.

Senator Whipple then presented **SB 268** which she is submitting at the request of Fairfax County.

Melodie Barron and Bernie Canton asked the work group to look at a compromise between Delegate Englin's and Senator Whipple's bills. They explained the bills context. In the circumstance where an apartment building is turning into a condominium, a tenant who possesses the right to first refusal may assign that right to a certified nonprofit

Housing Corporation or a housing authority if there is one in the locality. No more than 5% of the units would be affected. The previous tenants would assign their right-to-purchase to the nonprofit or housing authority because that entity would in turn rent back to the tenant at a reasonable rent. Only tenants currently eligible for a long-term lease would be eligible, no one would lose a right they now have. Currently, the developer has to offer the elderly the right to stay for a three-year lease. At the end of the three-year lease, an investor would typically purchase the property. Now it is hard to sell the units to investors and then they have to rent to the previous tenants for a three-year period.

Delegate Cosgrove inquired if the Housing Authority would still control the property if the person living in it passed away. The answer was yes, the unit belongs to the nonprofit or housing authority for perpetuity.

When a building is converted to condominiums the sale price to a certified non-profit housing corporation or an investor would be the same, each would be at market rate. Priority would be given, it was decided, to disabled and elderly individuals as opposed to those persons who are designated low-income.

Senator Whipple said it is an excellent opportunity to sell 5% of units without having to look for a seller. It is a win/win for both sides. She stressed that the locality must certify the nonprofit housing corporation, and that it is a modest proposal only including the greater of one unit or 5% of the condominium units.

Delegate Cosgrove said he would like to hear work group advisor Mark Ingrao's opinion concerning the issue, but unfortunately Mr. Ingrao was not present to give the opinion of the Apartment and Office Building Association.

A vote was taken and an agreement made to bring the bill to the full Housing Commission with the recommendation of the Work Group.

There was no public comment.

Delegate Cosgrove mentioned that he has an interest in time shares and will be proposing a bill for the 2007 General Assembly Session as a vehicle to stimulate discussion. He would like the bill referred to the Housing Commission to study during the next interim.

The meeting was adjourned at 11:50 A.M.

2006
VIRGINIA HOUSING COMMISSION
Mortgage Work Group

Commission Members:

Delegate Terrie Suit (Chair)
Delegate John Cosgrove
Delegate Bob Hull
Gary Garczynski

Citizen Members:

Chris Beale
Chairman of the Board
Chief Executive Officer
Benchmark Mortgage, Inc.

Phillip H. Boykin
Vice President and Director of Government Relations
Virginia Bankers Association

Robert N. Bradshaw
Independent Insurance Agents of Virginia

Connie Chamberlin
Virginia Housing Coalition, HOME

Eric Gregory
Office of the Attorney General
egregory@oag.state.va.us

Susan Hancock
State Corporation Commission

Judson McKellar
VHDA

Schaefer Oglesby

John L. Powell
CRB,CRS,GRI,ABR,SHS
Vice President, Supervising Broker
Long & Foster, REALTORS

Michele Watson
VHDA

VHC Mortgage Work Group Meeting

August 12, 2006
Patrick Henry Building
House Room 1
10:00 A.M.

Members Present:

Delegate Terrie Suit (Chair)
Delegate John Cosgrove
Delegate Bob Hull

Citizen Members:

Chris Beale
Phillip H. Boykin
Robert N. Bradshaw
Connie Chamberlin
Eric Gregory
Susan Hancock
Judson McKellar
Schaefer Oglesby
John L. Powell
Michele Watson

The meeting was called to order at 10:20 a.m.
Introductions were made from the Work Group as well as audience members.

HB 698 (2005)

Delegate Suit gave an overview of her bill from the previous session. The bill allows the Virginia Housing and Development Authority (VHDA) to serve as broker as well as service the mortgage, a practice known as dual compensation. The Mortgage/Lender Broker Act generally prohibits the broker from collecting a fee but on certain loans, where the closing is in the name of VHDA, it is now allowed. If the loan is originated on behalf of VHDA and the lender complies with VHDA program requirements, VHDA will pay an origination fee.

Michele Watson of the Virginia Housing and Development Authority reported that the bill has worked very well and a number of mortgage lenders have returned to the VHDA program.

Real Estate Board Regulations - Broker Responsibility

Karen O'Neal with the Department of Professional and Occupational Regulation explained to the work group the provisions relating to the broker's responsibility for acts of licensees and employees. In 2003 the Board added a prohibition for use without a broker, and also verified what a settlement agent can do.

The meeting was adjourned at 12:00 p.m.

Virginia Housing Commission Report on 2006 Senate Bill 145 (Deeds)

On October 26, 2006, the Virginia Housing Commission's Mortgage Work Group met to review and report on Senate Bill 145 as requested by the House Commerce and Labor Committee via letter from Chairman Harvey Morgan.

The meeting was chaired by Delegate John Cosgrove, Commission member.

Workgroup members present:

| <u>Name</u> | <u>Organization</u> |
|--------------------|------------------------------------|
| Terrie Suit | House of Delegates |
| John Cosgrove | House of Delegates |
| Bob Hull | House of Delegates |
| Chris Beale | Mortgage Brokers Association |
| Phil Boykin | Virginia Bankers Association |
| Bob Bradshaw | Independent Ins. Agents of VA |
| Connie Chamberlain | Housing Opportunities Made Equal |
| Eric Gregory | Office of the Attorney General |
| Susan Hancock | State Corporation Commission |
| Judson McKellar | VHDA |
| Shaffer Oglesby | Virginia Association of Realtors |
| Steve Pearson | Virginia Trial Lawyers Association |
| John Powell | Virginia Association of Realtors |
| Michele Watson | VHDA |

Additional participants in person or by correspondence were:

| <u>Name</u> | <u>Organization</u> |
|------------------|--|
| Creigh Deeds | Senate |
| Tom Dewey | Virginia Association of Mortgage Brokers |
| Travis Hill | Virginia Mortgage Bankers Association |
| Kurt Pfothenaur | Mortgage Bankers Association |
| Paul Richman | Mortgage Bankers Association |
| Vicki Vidal | Mortgage Bankers Association |
| Chris Whitehurst | |

The bill summary as proposed to the House Committee on Commerce and Labor is as follows:

Mortgage loan servicing practices; penalties. Prohibits persons that service mortgage loans from taking certain actions with respect to mortgage loans, including failing to apply promptly to the loan payments made in accordance with the terms of the loan agreement and taking actions for the primary purpose of creating a default under the terms of a mortgage loan. A violation constitutes a Class 1 misdemeanor. The State Corporation Commission is authorized to conduct investigations. The measure does not apply to banks or savings institutions or their subsidiaries or affiliates.

Senator Deeds provided the following explanation for his submission of the legislation:

Senator Deeds had a constituent whose mortgage loan was repeatedly subject to foreclosure over the course of five years. The constituent represented that she always made her mortgage payments on time. No remedy existed to address her situation other than to go to court. She sought assistance through Legal Aide.

Senator Deeds provided a news article which further represented that his constituent obtained her mortgage in 1998 from First Greensboro Mortgage in Roanoke, Virginia. The mortgage servicing was sold and in October of 2000 ended up with Fairbanks Capital Corporation of Salt Lake City, Utah. Fairbanks was later known as Select Portfolio Servicing. During this time there were protracted and confusing communications and multiple incidental charges for late payments, foreclosure advertisements and legal fees related to foreclosure actions which when applied caused the borrowers payments to be treated as late by the mortgage loan servicing company. The news article represents that Legal Aide demanded a full accounting of the payment history and charges on the mortgage under the Federal laws providing for obtaining this information. The detailed accounting was provided. In the midst of receiving this information from Fairbanks the loan was sold to EMC who began new foreclosure proceedings. Legal aide sought an injunction to halt the foreclosure sale. A court order was entered stopping the foreclosure. Two additional mortgage payments were subsequently returned to the borrower with the explanation that they were insufficient to fully reinstate the loan and warning that the foreclosure process would continue. Legal Aide has now worked with the trustee of the mortgage, an Arlington lawyer and has been assured that everything is finally straight.

The article also noted that Fairbanks subsequently paid more than \$40 million in restitution to consumers as a result of suits brought against it by the Federal Trade Commission and HUD.

Problem to be solved:

Senator Deeds stated that he introduced SB 145 to “curb such predatory practices in our mortgage industry.”

Funding of the regulatory program established under SB 145:

In SB 145 powers are granted to the State Corporation Commission to bill the actual costs of examination including travel and reasonable living expenses incurred on account of its examination, supervision and regulation to the mortgage servicer subject to examination. These charges would be required to be paid by the servicer regardless of the findings of the examination.

Background information regarding mortgage lending and servicing in Virginia was provided as follows:

Mortgage loans are originated by a variety of lending institutions to include: Banks, credit unions, thrifts, Virginia licensed mortgage lenders (who fund the loans in their own name) and Virginia licensed mortgage brokers (do not fund the loans, but act on behalf of lenders and collect a fee for services from the borrower and or the lender).

The right to service a mortgage loan can be retained by the originating lender or released/sold to a servicing company. It is common practice that servicing is released and sold by the majority of smaller mortgage lenders or lending institutions. During the life of a mortgage, the servicing can be sold multiple times. Consequently, mortgage loans on property located in Virginia are frequently serviced by out-of-state entities or by federally regulated institutions out of the reach of Virginia regulatory schemes.

Current regulation of mortgage loan servicing:

There is currently regulation at the federal level for mortgage loan servicing in the Real Estate Settlement and Procedures Act (RESPA). Additionally, there is the Federal Trade Commission Act, the Fair Debt Collection Practices ACT (FDCPA), and the Fair Credit Reporting Act (FCRA). In the case of Fairbanks, the mortgage service in question with Senator Deeds' constituent, charges were filed, according to the FTC website, under all of these acts as follows:

Federal Trade Commission Act Violations : The FTC alleged that, in servicing loans, Fairbanks frequently: failed to post consumers' mortgage payments in a timely and proper manner, and then charged consumers late fees or additional interest for failing to make their payments "on time"; charged consumers for placing casualty insurance on their loans when insurance was already in place; assessed and collected improper or unwarranted fees, such as late fees, delinquency fees, attorneys' fees, and other fees; and misrepresented the amounts consumers owed.

Fair Debt Collection Practices Act (FDCPA): The complaint also alleges that Fairbanks violated several provisions of the FDCPA, in connection with collecting loans that were in default when Fairbanks obtained them. Specifically, the FTC alleges that the defendants falsely represented the character, amount, or legal status of consumers' debts; communicated or threatened to communicate credit information which was known or

which should have been known to be false, including the failure to communicate that a debt was disputed; used false representations or deceptive means to collect or attempt to collect a debt, or to obtain information concerning a consumer; collected amounts not authorized by the agreement or permitted by law; and failed to validate debts.

Fair Credit Reporting Act (FCRA): The FTC alleges that the defendants furnished information about each consumer's payment status to consumer reporting agencies when they knew or consciously avoided knowing that the information was inaccurate. Also, when consumers informed the defendants that they disputed the reported information, the defendants did not report the dispute to the consumer reporting agencies.

Real Estate Settlement Procedures Act (RESPA): RESPA is a federal statute that requires loan servicers to respond to borrowers' written requests about their loans and to make timely insurance and property tax payments on behalf of borrowers and otherwise properly administer their escrow accounts. In the complaint, HUD alleges that the defendants failed to timely and adequately acknowledge, investigate, and respond to borrowers' written requests for information about the servicing of their loans and escrow accounts. HUD also alleges that the defendants failed to make timely payments of escrow funds for insurance premiums and property taxes.

Other servicing oversight provisions:

There are also rules and guidelines for servicing mortgage loans issued by the entities which ultimately own the majority of mortgage loans. These are primarily bond issuers FNMA, FHLMC and GNMA, as well as insurers: Veterans Administration (VA) and the Federal Housing Administration (FHA). These entities issue servicing rules which organizations servicing their loans are required to follow.

Key points of discussion during the work group meeting:

1. Do consumers have adequate protections under the law?

There was some disagreement on this point. The major area of concern, however, was how consumers could seek relief. While there is significant regulation at the federal level there was concern that obtaining relief is more difficult for the consumer than some stakeholders believe it would be at the state level.

2. Application of insurance premium payments.

There was significant discussion regarding servicers, who hold insurance escrow accounts, making payments on homeowners' insurance policies on time. It was pointed out, however, that Virginia Code § 6.1-2.8 requires that lenders, who have sufficient funds in escrow but do not make the required insurance payments are fully liable for any charges or loss as a result of the property being uninsured.

Key points represented by stakeholders during the work group meeting:

Significant regulation exists at the federal level pertaining to mortgage loan servicing.

Seeking relief at the federal level is more difficult for consumers than seeking relief at the State or local level.

New regulatory schemes would be financially burdensome to mortgage servicers with those costs being passed on to consumers.

The examples of servicing problems presented during the work group eventually found resolution under federal laws.

A significant portion of mortgage servicers would be excluded from SB145 due to their organization as a bank or thrift.

The SCC is funded via licensing and examination fees. Most mortgage servicers are not licensed mortgage lenders or brokers in Virginia as they are not originating mortgages or are affiliated with a bank or thrift exempt from licensure requirements. Consequently, the only funding identified in SB 145 would require servicers who are examined to pay all of the costs of examination including travel expenses and living expenses regardless of the outcome of the exam. Many servicers are located outside of Virginia significantly affecting the cost of examination and administration of this regulatory scheme by the SCC. These costs would be passed back to the consumer through increased mortgage pricing.

Final analysis:

Consumers need assistance navigating the complex laws and regulations currently in place to protect them from bad actors in the mortgage servicing industry. SB 145 adds a new mortgage servicing regulatory scheme at the state level. There is significant disagreement as to whether this new regulation will provide the consumer with a better avenue of relief than the laws and regulations currently in place at the federal level.

2006
VIRGINIA HOUSING COMMISSION
Building Codes and Accessibility Work Group

Commission Members:

Senator John Watkins (Chair)
Delegate Bob Hull
Delegate Danny Marshall
Delegate Melanie Rapp
Andy Heatwole
T. K. Somanath

Citizen Members:

Michael Congleton
Fairfax County
Department of Planning and Zoning

Kathleen Drumwright
Deputy Director
Department of Human Services
City of Virginia Beach

Mark Flynn
Director of Legal Services
Virginia Municipal League

John Hastings
VHDA - Multi Family Development

Mark Ingraio
Senior Vice President of Government Affairs
Apartment and Office Building Association

Emory Rodgers
Deputy Director, Building and Fire Regulations Division
Department of Housing and Community Development (DHCD)

Neal Rogers
VHDA - Asset Management

Candice Street
Director of Housing Development
Virginia Supportive Housing

Michael L. Toalson
Executive Vice President
Home Builders Association of Virginia

Rick Witt
Virginia Buildings and Code Officials Association
Chesterfield County

VHC Building Codes Work Group Meeting

November 15, 2006
Patrick Henry Building
House Room 1
10:00 A.M.

Present:

Commission Members

Senator John Watkins
Delegate Bob Hull
Andy Heatwole
T.K. Somanath

Advisors

Michael Congleton
Kathleen Drumwright
Mark Flynn
John Hastings
Mark Ingraio
Emory Rodgers
Neil Rodgers
Candice Street
Mike Toalson
Rick Witt

Senator Watkins called the meeting to order at 10 A.M.
There were no opening comments from members of work group.

Retroactive Placement of Sprinklers

The first item on the agenda was a follow-up on legislation dealing with retroactively adding sprinklers to buildings over 75 feet or approximately seven stories high. Senator Watkins asked Emory Rogers to present a report on information regarding sprinklers that he prepared for the work group.

Emory Rodgers addressed the group by saying that at the last meeting of the work group there was an inquiry about what the model codes specify for retroactive sprinklers. He referred attention to the October 6, 2006, memo (posted on line) that indicated that the International Code Council (ICC) and the International Fire Code have no retroactive sprinkler requirements. The Council and Code require sprinklers when occupancy of the building is changed and the International Code Council's existing code requires sprinklers when a building is altered 50 % or more on a particular floor. In November 2005, the International Building Code was adopted. Two NAPA 1 and 101 have requirements for retroactive sprinklers and those two model codes are not utilized in our Uniform Statewide Building Code. At the first work group meeting, I provided some data from our state system on fires in buildings over seven stories, he said. Over a three year period from 2003 to 2005, in buildings 75 feet or higher with fires, there were 21 injuries and about 4.2 million dollars in damages in sprinkled buildings. There were 93 incidents and three injuries and \$380,000 in damages in nonsprinkled buildings of the same height. This data, he said, does not include data about the fire that was in Richmond; that will be included in the next cycle of data collection.

T.K. Somanath asked, "What constitutes alterations to calculate the 50%?"

Emory responded that taking down partitions, removing partitions and walls and rebuilding would. Typically, in office buildings where you have on a floor a tenant and that tenant leaves and a new tenant comes in, alterations are done to that floor or you have multiple tenants on that floor, that's where the 50% comes from. If you are rehabing a building and the facade is there but all interior sections are removed, then that would require sprinkling.

T. K. inquired if the Code distinguishes between commercial and residential buildings in the United States.

Emory replied no. Alterations in commercial or residential buildings are both in the Code. A multi-family building that is being rehabilitated including 50% of the units on a particular floor, then that floor, if it has a water supply, as pointed out by Mark Ingrao, would have to be sprinkled.

Senator Watkins asked if Emory could recall about how many fatalities happened in Virginia in multi-story buildings, and if there had been any incidences of damages, injuries, or fatalities in regard to state-owned buildings. Emory answered that he didn't have a recollection of any other incidents in the last several years in Virginia in high-rise buildings, multifamily or commercial buildings. It appears that all state-owned high-rise buildings are suppressed at this point, he said.

Mike Toalson reported that he had looked into the Chicago sprinkler situation at the request of Senator Watkins.

Chicago enacted in 2004 an ordinance that required all high-rise buildings over 80 feet to establish sprinkler systems, but there were two significant exemptions. The first exemption applies to all landmarks, and this includes all commercial buildings built

before 1975. The second exception is for residential structures. There is a requirement that there has to be a life safety evaluation conducted on all such buildings where exemptions have been applied for and received. There were several other exemptions; for example: there had to be a life safety data sheet completed that required the fire department to be provided with basic information that included the location of the building's steam pipes as well as the building's use and ownership and management requirements. The important point is that Chicago did do this and they had two significant exemptions, one for all buildings determined to be landmark buildings, because it wasn't feasible to sprinkle them, and all residential structures.

Neil Rodgers talked about sprinkled buildings that are financed by VHDA. He said he looked at the VHDA portfolio and identified the properties that catered to or are recognized as being senior properties. He looked exclusively at buildings with four or more stories and the biggest concern is that only 15% of the senior properties are considered to be above mid-rise. All of those are either federally subsidized properties or tax credit properties and the ability of the owners to recoup the cost of retrofitting a sprinkler system is extremely limited and funds are just not available either from HUD or other places to help them recoup these costs. There are 12 properties identified that make up 15% of the portfolio and they fall into a really difficult situation. Section 8 properties are subsidy contracts and some expire before 2016 and others after that, for these properties where the contract might expire before whatever the deadline is for retrofitting sprinklers, they might at least have the ability to recapitalize or to sell the property or do something else with it.

Chris LaGow spoke to give an insurance perspective. He said he looked at a number of insurance companies and tried to find if there was quantification of costs for whether a building was sprinkled or an unsprinkled building. He attempted to see if the cost savings might be sufficient in sprinkling a building, but Chris stated that there was not a lot of hard fast data available. The reason for the lack of data is that most of high-rise buildings are A-rated buildings, and they are individually rated. He said that there is no data to support whether insurance premiums are reduced for buildings that are sprinkled or those that are not.

Dave Johnston who represents commercial property owners in the country said the International Code Council (ICC), favors the use of sprinklers in new construction. This approach is fair, balanced, and cost effective.

Fire Chief Robert Creasy, City of Richmond, spoke on behalf of retroactive sprinkling of buildings. He mentioned the fire at Imperial Plaza in Richmond. He said he is asking for the opportunity to pursue a reasonable solution to a critical and life altering problem for Richmonders and Virginians.

Rus Sanders, Executive Secretary of the Metropolitan Metro Fire Chiefs and Ben Roy of the National Fire Protection Association both submitted written testimony which is posted on the VHC website.

Bob Duffus, Captain and Deputy Fire Marshall, City of Richmond said the price to retrofit sprinklers in Richmond is approximately \$4.50 per square foot.

Senator Watkins suggested a statutory authority where localities can choose from a menu designed to encourage property owners to retrofit their properties, as opposed to mandates. Incentives could include waivers or reduction of fees; state tax credits; real estate tax abatements or reduction in real estate taxes; local and state tax exemptions for materials.

Senator Watkins stated, that in today's legislative climate, he is uncertain that a requirement that all buildings over 75 feet be retroactively sprinkled would pass the General Assembly. Instead, a better alternative would be legislation that will set up the sprinkler requirements to be implemented over a period of years.

Senator Watkins suggested that draft legislation be drawn up to be implemented over 15 years in areas where the population is over 50,000 and in buildings over 75 feet. Localities will need to provide information about how many buildings they have that qualify and then have to be retrofitted; how many of them have public participation, in terms of either ownership or funding of rents. He needs to know the square footage of the buildings and a breakdown between residential and commercial buildings. Housing Commission staff, the Virginia Municipal League, and VACO will work together to obtain this information.

Requiring retroactive sprinklers could raise prices to the extent that it could force low-income people out of their homes and leave them with no where to go.

Senator Watkins suggested that legislation could be limited to the City of Richmond since the City is the requester

Carbon Monoxide Detectors

Item two on the agenda was the discussion of the requirement for mandatory carbon monoxide detectors in residential structures. Emory Rodgers reported that at the present there is not a national standard for the detectors; some detectors last years, others months and the reliability is not predictable.

A discussion ensued about recommending SB 667 to the full committee. It was decided to not recommend the bill at this time because there is no set standard for the detectors.

HB 1451

The third item on the agenda was Delegate Hull's proposed legislation to more strictly enforce the Uniform Statewide Building Code dealing with occupancy limits in single family dwellings. Delegate Hull reported that he was working with interested parties and would give a report when the full commission meets in November. There were no objections and no further comment was made on HB 1451.

The meeting was adjourned at 12:20 p.m.

2006
VIRGINIA HOUSING COMMISSION
Housing Affordability and Real Estate Law Work Group

Commission Members:

Delegate Melanie Rapp (Chair)
Delegate Bob Hull
Delegate Danny Marshall
Delegate Terrie Suit
Senator Mamie Locke
Senator Mary Margaret Whipple
Gary Garczynski
Andy Heatwole
T. K. Somanath

Citizen Members:

Bob Adams
Housing and Development Advisors
Virginia Housing Coalition

Melissa Bondi
Virginia Commission on Housing

Jim Chandler
VHDA

John G. Dicks
Virginia Association of Realtors

Bill Ernst
Policy Office Manager
DHCD

Andrew Friedman
Director
Virginia Beach Dept. of Housing and Neighborhood Preservation

Kit Hale

Mark Ingrao
Senior Vice President of Government Affairs
Apartment and Office Building Association

James E. Naggles
Virginia Poverty Law Center

Chandler Scarborough
Virginia Property Managers Association

Mike Toalson
Executive Vice President
Home Builders Association of Virginia

Meeting Summary

VIRGINIA HOUSING COMMISSION **Housing Affordability and Real Estate Law Work Group**

August 3, 2006

Patrick Henry Building, House Room 1
1:00 P.M.

Commission Members Present:

Delegate Melanie Rapp, Chair
Delegate Bob Hull
Delegate Danny Marshall
Senator Mamie Locke
Andy Heatwole
T. K. Somanath

Work Group Advisors Present:

Bob Adams
Melissa Bondi
Jim Chandler
Chip Dicks
Bill Ernst
Andy Friedman
Kit Hale
Mark Ingrao
Jim Naggles
Chandler Scarborough
Mike Toalson

Delegate Rapp called the meeting to order and welcomed all the participants. She summarized the issues that the work group would discuss this interim. The issues will include: the state housing trust fund, discussion of the community housing tax credit, residential property disclosures and disclaimers, Arlington County's affordable dwelling unit ordinance, and the possible addition of a person representing multi-family housing interests to the Fair Housing Board.

Housing Trust Fund

The first topic on the agenda for today's meeting was the housing trust fund. Andy Friedman and Bob Adams gave an overview of the subject matter and possible solutions for creation of a housing trust fund.

Bob Adams began with a historical perspective on the state's housing fund. Originally called the Virginia Housing Partnership Fund, it was created in 1989 as a self-sustaining revolving loan fund. As a possible funding source, he suggested tying it to the recordation tax, as it will create a rededicated, reliable source of funding to help local governments to work to solve the affordable housing problem.

Andy Friedman spoke about the many different states that have a state housing trust fund including North Carolina, South Carolina, Georgia, and Florida. Thirty-six states and over 250 cities and counties have housing trust funds. Quality workforce and affordable housing units are needed throughout the state. He spoke about localities leveraging state funds through the use of the Housing Trust Fund. More multi-year commitments and long-range planning between developers, the localities and the state could occur if there was an -on-going dedicated funding stream. Funds would be more flexible and thus able to help create a wide variety of housing development including housing for teachers, police officers and firefighters, and service employees among others. He stressed that resources and incentives would support state housing goals for housing which in turn aids transportation and economic development.

Virginia Housing Tax Credit

Jim Chandler of Virginia Housing and Development Authority then spoke about the issue of a state housing credit. SB 279 (2006) and HB 1174 (2006) were endorsed by the Virginia Housing Commission last year and the bills proposed a \$10 million community housing credit. The credit was an attempt to encourage affordable housing in areas where land costs are high. The credit would have equaled 50% of the actual amount the developer expended to purchase the land. The maximum allowed to each developer was \$500,000 in credits and the amount was calculated by \$5,000 multiplied by the number of units of affordable housing and would only be available to developers whose units had received an allocation of federal low-income housing tax credits (LIHTC). Questions concerning the necessity of a private letter ruling from the IRS to make this program feasible prevail.

The original Virginia Housing Tax program was enacted in 1989 but funding was budgeted in 1998. The program was not well used because most partnerships using LIHTC were not Virginia corporations.

A direct land acquisition subsidy funded through a portion of the Housing Trust Fund was suggested. It was noted that the Virginia Housing Trust Fund has yet to pass or receive funding from the General Assembly.

Delegate Rapp then suggested that Mike Toalson and other parties interested in the Virginia tax credit meet at 8:00 A.M. on September 13th to discuss the issue in-depth.

Disclosure/Disclaimer

Chip Dicks gave a brief historical reference to the Virginia Residential Property Disclosure Act. The majority of Virginians use a disclaimer form not a disclosure form. The bill he proposes the work group to endorse will list six disclosures and incorporate the three chapters listed below:

- 1) SB 670 (2006) Chapter 247 - requires notice to advise potential purchasers that they must use due diligence, including reviewing official maps, to determine if the property in question is in a resource protection area or other environmentally protected zone (such as the Chesapeake Bay Preservation area).
- 2) HB 1554 (2006) Chapter 705 - provides that the disclosure/disclaimer forms contain notice to a potential purchaser that if the owner has knowledge the property in question is in a historical district they must provide notice.
- 3) HB 286 (2006) Chapter 247 - states that there are no Uniform Statewide Building Code violations that affect safe, decent and sanitary living conditions known to the owner. Notice is given in the disclosure/disclaimer provisions of the Virginia Residential Property Disclosure Act.

Chip Dicks intends to meet with the Real Estate Section of the State Bar Association prior to the next Affordable Housing and Real Estate Law Work Group meeting in September. He will give a more in-depth report at the September meeting.

Delegate Rapp asked for public comment; there being none she adjourned the meeting at 3:00 P.M.

Housing Affordability and Real Estate Work Group Meeting

**September 13, 2006
Patrick Henry Building, House Room 1
1:00 p.m.**

Present

Commission Members:

Delegate Melanie Rapp (Chair)
Delegate Bob Hull
Delegate Danny Marshall
Senator Mamie Locke
Senator Mary Margaret Whipple
Andy Heatwole
T. K. Somanath

Advisors:

Bob Adams
Melissa Bondi
Jim Chandler
John G. Dicks
Bill Ernst
Andrew Friedman
Kit Hale
Mark Ingrao
Jim Naggles
Chandler Scarborough
Mike Toalson

Delegate Rapp called the meeting to order at 1:00 p.m.

Affordable Dwelling Unit Ordinance; Arlington

Senator Whipple explained the mechanics of the affordable dwelling unit ordinance which was crafted last year through a coalition of developers, local officials, non-profit representatives and others. Arlington County, as part of its comprehensive plan, uses increased densities of development using a floor area ratio, to approve special densities for commercial, mixed-use or residential developments. The ordinance permits on-site or off-site affordable housing or a cash contribution to the county's housing fund in lieu of

providing affordable housing units. Senator Whipple said that the ordinance has been working well so far and could serve as a model for other areas to emulate.

Fair Housing Board

Karen O'Neal, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation gave a breakdown of membership for the Fair Housing Board. As directed by the Code of Virginia § 54.1-2344 there are 11 members of the Board. Currently a local government representative, an architect, a representative of the mortgage lending industry, a property and casualty management industry representative, a contractor, a representative of the disability community, a residential land lease industry representative and three citizen representatives compose the membership of the Board. Delegate Rapp suggested that creating a seat for a representative for Multi-family Housing to the Fair Housing Board membership would enhance the Board. The Work Group did not vote on this suggestion.

Residential Property Disclosure Act

Chip Dicks informed the Work Group about the progress being made on the Residential Property Disclosure Act. Prior to 1992 there were no home inspections and most people sold their homes "as is" with the buyer responsible for using due diligence. Most homeowners opted to use a disclaimer form. Throughout the years several required disclosures were required by the Code of Virginia. The statement will now be a disclosure form and include all mandated disclosures. This Act is endorsed by the Virginia Board of Realtors and the Realty Section of the Virginia Bar Association. The final version of this proposed legislation will be presented at the full Housing Commission meeting in November.

The meeting was adjourned at 3:00 P.M.